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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 600/2014 as regards enhancing market data transparency, removing obstacles to the emergence of a consolidated tape, optimising the trading obligations and prohibiting receiving payments for forwarding client orders

(Text with EEA relevance)

{SEC(2021) 573 final} - {SWD(2021) 346 final} - {SWD(2021) 347 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

This initiative is one of a series of measures that implement the Capital Markets Union (CMU). It aims to empower investors, in particular smaller and retail investors,[1] by enabling them to access market data necessary to invest in shares or bonds more easily and by making EU market infrastructures more robust. This will also help increase market liquidity, making in turn easier for companies to get funding from capital markets. In order to deliver on its objective of fostering a true and efficient single market for trading, the Commission has identified three priority areas for the review: improving transparency and availability of market data, improving the level-playing field between execution venues and ensuring that EU market infrastructures can remain competitive at international level. This initiative is accompanied by a proposal to amend Directive 2014/65/EU on markets in financial instruments (MiFID) and is included in the Commission's 2020 Work Programme.

In its Communication on 'The European economic and financial system: fostering openness, strength and resilience' of 19 January 2021,[2] the European Commission confirmed its intention to propose to improve, simplify and further harmonise capital markets' transparency, as part of the review of the MiFID II and MiFIR framework (MiFID/R). In the wider context of the efforts aimed at strengthening the international role of the euro, the Commission announced that such a reform would include the design and implementation of a consolidated tape, in particular for corporate bond issuances with an aim of increasing the liquidity of secondary trading[3] in euro-denominated debt instruments.

On the establishment of a consolidated tape, in the 2020 CMU Action Plan[4] the Commission announced that it would put forward a legislative proposal by the end of 2021 to *create a centralised database* meant to provide, for equity and equity-like financial instruments, a comprehensive view on market data, namely on prices and volume of securities traded throughout the Union across a multitude of trading venues. This centralised database, also referred to as the 'consolidated tape'[5] would have the objective to "improve overall price transparency across trading venues".

• Problems that this proposal intends to tackle

This proposal intends to tackle liquidity and trade execution risk. The former corresponds to the risk that there is not enough depth of market (*i.e.* buyers and sellers willing to trade), the latter corresponds to the inability to execute at a given price limit or in a given time period. Both result from a lack of correct and timely information on prices and available trading volumes for traded securities, as well as the risk that insufficient transparency affects the share trading landscape and the competitiveness of the EU as a financial hub.

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1 Retail investors refers to a large spectrum of investors that are non-professional investors.

2 https://ec.europa.eu/info/publications/210119-economic-financial-system-communication_en.

3 Secondary trading denotes capital market activity that takes place after the issuance of a financial instrument. The issuance can be done for example by means of an initial public offering (IPO).

4 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:590:FIN.

5 The concept of a consolidated tape originates from equity markets in the US and dates back to the late 1970s. Magnetic tape is used as a recording medium to store data. Whereas magnetic tape is used today still for long-term data storage (backup and archiving), in the 1970s this was the main storage medium.

As pointed out in the Market Structure Partners (MSP) study on the creation of an EU consolidated tape[6], liquidity risk is a consequence of the need to navigate the fragmented execution markets in the Union in order to identify buying and selling interests to execute a transaction in its entirety. Absent a comprehensive picture of all available liquidity pools, certain investors might not be in a position to execute all transactions, or they might only execute transactions in part or at a less attractive price. The economic cost of imperfect market transparency can be measured both in terms of "implementation shortfall" (*i.e.* trades are executed at prices that do not reflect the best available sales offer or purchase bid) and in terms of missed trading and investment opportunities. These costs go against the objectives of the CMU, which is to provide well-functioning, liquid and integrated capital markets.

The impact of market fragmentation, especially across national lines, is particularly acute for smaller asset managers and smaller banks. These market participants do not have the same possibilities to access information on market data across multiple venues as sophisticated market participants, such as large "sell-side" investment banks or electronic market makers have. Lack of market information leads to the risk of ill-considered investment decisions that could be avoided if a complete picture of the market would have been available.

In **equities markets**, asset managers interviewed as part of the MSP study estimate that the annual cost of not having a complete and accurate view of market data (defined as "slippage") is between 0 to 1.0 basis points of their annual traded value. Some interviewees rated the annual costs even higher at above 5.0 basis points. Respondents to the MSP study make different estimates on the cost of having an imperfect view of the market. The larger the firm and the more extensive the resources available to compile and clean the data, the lower the estimate might be. By applying these estimates to the annual traded value of European equities, the total cost of not having an accurate view of the equities markets can be as high as EUR 10.6 billion annually whereas almost a third of the respondents indicate that the cost is between 0.5 and 1 billion euro annually[7].

In **bond markets**, asset managers estimate the cost in basis points to their annual trading strategies resulting from a lack of consolidated and accurate market data view in the range of 0 to 5 basis points[8] .

Liquidity and trade execution risks are also prevalent in markets for derivatives that are not traded on venues (also called 'over-the-counter' trades or 'OTC'). OTC derivatives markets are dealer markets, where major international banks offer bespoke contracts to their clients, e.g., for taking a position to protect against future price movements (hedging). There is very little post-trade transparency in OTC markets. The 2020 ESMA annual statistical report[9] shows that OTC derivatives still account for 85% of the notional value of derivatives traded in the Union (with the remaining 15% being traded on exchange). Because there is currently no consolidated public view of prices for OTC derivatives, the high percentage of OTC trading contributes to opacity in the pricing of these derivatives and, in consequence, to information asymmetries that primarily hurt smaller market participants.

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6 MSP (2020), The study on the creation of an EU consolidated tape, commissioned by the European Commission. https://op.europa.eu/en/publication-detail/-/publication/82763219-1cbe-11eb-b57e-01aa75ed71a1/language-en/format-PDF/source-169654830.

7 MSP study, Figure 14, p 42

8 MSP study, Figure 15, p 43

9 https://www.esma.europa.eu/sites/default/files/library/esma50-165-1355_mifid_asr.pdf.

The absence of consolidated market data also prevents accurate portfolio valuations and reduces the accuracy of indices across all asset classes (European equity, bond and derivatives benchmarks are less reliable). Large cap stocks are favoured by most investors, as evidenced in the large number of investment indices that focus on the large cap universe of listed companies (e.g., DJ 100, S&P 500, STOXX 600). Informational inefficiency results in less indices that comprise smaller capitalisation companies and, in consequence, less index-driven funds channelling capital to smaller cap issuers (e.g., by virtue of exchange-traded funds that track a small or midcap index).

Imbalance in the share trading landscape: another driver behind the proposed reform is the need to ensure that the share trading on lit (term used for pre-trade transparent) venues in the EU is approximately in line with ratios observed in other international financial centres. Stock exchanges argue that the decline of their market share in stock trading is detrimental to the development of the Union's capital markets as only exchanges and multilateral trading facilities (MTFs) offer full transparency on bids and offers (pre trade data) and on completed transactions (post trade data) and contribute to price formation. Banks and investments firms on the other hand claim that lit platforms have maintained and even increased market share in the EU. The importance of maintaining a balance between traditional stock exchanges, alternative trading platforms, investment banks and other players that provide trading systems is well acknowledged. The review will therefore include amendments aiming to maintain this balance.

Competitiveness of EU financial markets: certain provisions of the current regulatory framework have created legal uncertainty for market participants. The open access provisions for exchange traded derivatives have been suspended multiple times by the co-legislators for a variety of reasons. The Commission deems it necessary to remove these provisions in order to foster competition, innovation and development of exchange-traded derivatives in the EU on one side and building further clearing capability in the EU. It will also reflect the long-standing international trend of vertical integration between trading and clearing for these types of derivatives. The rationale underpinning this trend is that innovation in exchange-traded derivatives is not served by the "open access" obligation, as this rule removes incentives to launch new exchange-traded derivatives contracts if competitors do not have to make the upfront investment. Likewise, exchanges would no longer be obliged to accept that non-affiliated clearing-houses ensure their post-trade operations. This proposal would also refine the perimeter of the share trading obligation (STO) to clearly limit it to EU ISINs. In addition, the proposal would introduce a possibility to suspend the derivatives trading obligation (DTO) for certain investment firms that would be subject to overlapping obligations when interacting with non-EU counterparties on non-EU platforms.

- **Consistency with existing policy provisions in the policy area**

The initiative builds upon and improves the existing rules that govern participation in the capital markets of the European Union. In 2007, **MiFID I**[10] introduced competition in the market for equity trading. Later iterations of MIFID extended competition to trading in non-equity asset classes, such as bonds and derivatives. The consequence is that, when a broker or investor wants to execute an order to buy or sell an asset, they can choose from different

[10] Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

venues, such as regulated markets (RMs), multilateral trading facilities (MTFs), dark pools[11], and systematic internalisers (SIs).

Since MiFID I entered into application, the combined amount of multilateral venues and SIs across all asset classes in the EEA increased by 344, to a total of 476.[12] Every trading venue is publishing separate market data reports. Soon after MiFID I was implemented, the issue of market data fragmentation and market data monopolies[13] came to the fore, primarily in equity markets.

MiFIR,[14] in application since 3 January 2018, recognises the benefits of transparency and market data consolidation for the investment community.

To maintain a well-balanced trading landscape, the transparency rules that govern trading on exchanges as well as on the alternative platforms or through systematic internalisers (investment banks and market makers) would benefit from certain adjustments. The use of certain exemptions from the transparency rules (so-called "waivers") are seen as being responsible for the relatively low percentage of share trades that are executed on price transparent venues. The current regulation already contains rules to curb the use of the most commonly used transparency waivers. Rules like the "double volume cap" intend to put an upper limit (cap) on the amount of shares that market participants can trade under a transparency waiver. Such provisions, apart from being resource-intensive to administer on the part of the regulators, have proven to be rigid and collectively introduce unnecessary complexity in the operation of equity markets. The review therefore plans to streamline the complex interplay between transparency waivers and the double volume cap.

Furthermore, as regards data consolidation, MiFIR already comprises the concept of a 'consolidated tape provider' ('CTP').[15] The idea behind a CTP is that exchanges and alternative trading venues would send real-time data streams to an accredited CTP. This CTP would make available to the public the exact same information, at so-called reasonable cost, using identical data tags and formats.

The current rules on the CT rely on private actors (competing consolidators) consolidating market data from various execution venues. Based on the MiFIR provisions, there can be multiple competing CTPs, but it is also possible to have one single CTP in case multiple providers do not step up. To date, this has not happened for a variety of reasons.

The proposed reform of MiFIR addresses the reasons why no CTP has come forward. It amends the CT provisions in MiFIR to facilitate the emergence of one CTP for each asset class (shares, ETFs, bonds and derivatives).

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11 Dark pools are (dedicated parts of) MTFs or RMs that do not apply pre-trade transparency following the use of pre-trade transparency waivers.

12 Data is based on the 2021 figures from the ESMA register of MiFID entities. See Annex 4 for the picture of the market in the main asset classes.

13 Copenhagen Economics (2018), Pricing of market data

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 Provisions regarding the CTP were initially introduced in MiFID II, but have been replaced to MiFIR, which changes enter into force as of 1 January 2022.

- **Consistency with other Union policies**

The European Union's financial services policy encourages transparency and competition. These policy goals extend to core market data. As part of the Capital Markets Union (CMU) action plan, the Union aims to create an integrated view of EU trading markets. A consolidated tape will provide consolidated data on prices and volume of traded securities in the EU, thereby improving overall price transparency across trading venues. It will also give investors access to considerably improved market information at a pan-European level.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The MiFID/R framework is the rulebook governing participation in European capital markets. It consists of a Directive 2014/65/EU (MiFID II) and a Regulation (EU) No 600/2014 (MiFIR). The legal basis for the adoption of MiFIR is Article 114 of the Treaty on the Functioning of the European Union (TFEU). The proposal aims at enhancing market data quality and market data consolidation through amendments to existing rules on market data in MiFIR. Therefore, the proposed reform should also fall under the same legal basis.

In particular, Article 114 TFEU confers the European Parliament and the Council with the competence to adopt measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have, as their object, the establishment and functioning of the internal market. Article 114 TFEU allows the EU to take measures not only to eliminate current obstacles to the exercise of the fundamental freedoms, but also to prevent, if they are sufficiently concretely foreseeable, the emergence of such obstacles, including those that make it difficult for economic operators, including investors, to take full advantage of the benefits of the internal market. Thus, Article 114 TFEU is the appropriate legal basis to address obstacles in data consolidation that result from (1) fragmented market data sources; (2) unclear market data reporting standards and (3) complex market data licensing schemes. These are the main drivers that prevent a consolidated view of trading liquidity across the Union.

More specifically, the continued lack of a centralised database showing market data for securities traded on EU trading venues would prevent EU investors, other than the very sophisticated ones, from having a consolidated view of where to find the best investment opportunities. This would perpetuate the current information asymmetries preventing investors from fully benefiting from the single market. Therefore, the use of Article 114 TFEU appears as the most appropriate legal basis to tackle these problems comprehensively and uniformly and to avoid market fragmentation.

- **Subsidiarity (for non-exclusive competence)**

According to Article 5.3 of the TFEU on the principle of subsidiarity, action on EU level should be taken only when the objectives cannot be achieved sufficiently by Member States alone and can therefore, by reason of the scale or effects of the proposed action, be better achieved at Union level.

Trading markets for various financial instruments classes are spread across the Union. Consolidating market data published by these trading venues requires a rulebook that applies across the Union. Action taken by individual Member States would not effectively address the need for consolidation of market data across the Union. Member States could attempt to harmonise market data reporting standards and licensing conditions for a market data

consolidator by means of national laws. National initiatives cannot address problems stemming from market data fragmentation across the Union.

Different Member States might adopt different standards or opt for different licensing schemes applicable to a market data consolidator. Some Member States might not take any action at all. As market data consolidation has to work across the entire Union, it is both more effective and efficient to address reporting standards and data licensing conditions, necessary for the production of a consolidated view of all trading markets at Union level. Standardisation of data reports and licensing conditions would apply only to reporting to the provider of a consolidated market data tape. For example, market data licenses that do not pertain to the production of a consolidated tape would not be subject to the proposed rules.

- **Proportionality**

The proposed harmonisation of market data standards and licensing conditions for the supply of market data to consolidated tape providers do not go beyond what is necessary to achieve the stated aims. A patchwork of national rules on any of the measures contained in this proposal would not achieve the stated aims of market data consolidation in order to make this information accessible to a wider group of market participants. Addressing the problems of market data quality and the complexities around market data licensing requires the proposed harmonisation of market data reports and the mandatory use of these reporting standards to supply market data to the provider of a consolidated tape.

- **Choice of the instrument**

An amendment to the MiFIR Regulation is the most appropriate legal instrument to solve issues arising from the lack of a consolidated view of the core market data across the EU markets as it allows amending certain provision in MiFIR as well as adding new specific requirements. The use of a Regulation, which is directly applicable without requiring national legislation, will restrict the possibility of divergent measures being taken by competent authorities at national level, and will ensure a consistent approach and greater legal certainty throughout the EU (e.g. for the mandatory contribution of core market data from exchanges of different Member States).

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The first stakeholder consultation undertaken by the Commission after the entry into application of the MiFID/R rules in January 2018 was carried out between February and May 2020 (see below). It revealed that most investors do not have a complete view of prices and available volumes (ie liquidity) when deciding to invest in the Union's capital markets.

The consultation revealed that the exchange-specific (proprietary) market data products that have emerged under MiFID I and MiFID/R do not create a consolidated view of all trading markets. Liquidity available in alternative markets (MTFs/OTFs) and via investment banks that trade financial instruments against their inventory (systematic internalisers –SIs) are not represented on these proprietary data streams. This creates significant information impediments, as volumes on these alternative platform can constitute up to 50% of trading volume on any given trading day.

Securities brokers and broker-dealers are responsible for providing best execution, which means achieving the most advantageous transaction in terms of price and the lowest total explicit and implicit costs[16] to investors. Best execution means that brokers have to show their customers the prices at which they bought and sold compared with prices and volumes available on different exchanges and alternative trading venues at the time the trade was executed. The absence of a consolidated view of all trading markets is a problem when a financial instrument is made available for trading not just on a single listing venue, but across several competing venues. An investor has, and should continue to have, the choice between competing venues, but currently has to rely on market data that only cover individual venues. As a result, investors have insufficient access to consolidated and comparable market data and cannot compare whether they would have obtained better execution conditions on an alternative platform. This prevents them from holding their securities **brokers and broker-dealers accountable** on whether they achieved the best execution for any given trading order.

The consultation has also revealed significant issues around the cost to procure market data from multiple data sources. The cost of obtaining the market data from contributors (connecting and obtaining a license) currently accounts for roughly two-thirds of the overall cost of assembling market data. Because of this, data vendors, who make this data available to users, tend to narrow the selection of sources from which they collect and offer data. As a result, investors lack a comprehensive view of liquidity across all trading markets and most investors are unable to afford the cost of obtaining a more comprehensive view.

Between the end of 2019 and 2021 ESMA performed in-depth analyses of the MiFID/R framework, primarily focussing on the topics addressed in the review clauses in Article 90 MiFID and Article 52 MiFIR, and published review reports containing recommendations for changes in the legal framework[17]. These review reports built on extensive public consultations and contained detail recommendations relating to market structure topics, in particular the current transparency regime.

In particular, in its 'MiFID II/MiFIR Review Report No. 1'[18], ESMA found that fragmentation of market data sources increases dependency on multiple, venue-specific, proprietary data streams which only cover a partial view of available trading liquidity.

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16 Explicit costs relate to the execution costs of a trade (in particular broker commission rates and trading venue fees), while implicit costs relate to the impact of a trade on liquidity.

17 ESMA published the following review reports:
- MiFID II/MiFIR Review Report No. 1 On the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments: mifid_ii_mifir_review_report_no_1_on_prices_for_market_data_and_the_equity_ct.pdf (europa.eu)
- MiFID II/MiFIR Review Report on the transparency regime for equity and equity-like instruments, the double volume cap mechanism and the trading obligations for shares: https://www.esma.europa.eu/sites/default/files/library/esma70-156-2682_mifidii_mifir_report_on_transparency_equity_dvc_tos.pdf
- MiFIR report on systematic internalisers in non-equity instruments: https://www.esma.europa.eu/sites/default/files/library/esma70-156-2756_mifidii_mifir_report_on_systematic_internalisers.pdf
- MiFID II/MiFIR Review Report on the transparency regime for non-equity instruments and the trading obligation for derivatives: https://www.esma.europa.eu/sites/default/files/library/esma70-156-3329_mifid_ii_mifir_review_report_on_the_transparency_regime_for_non-equity_instruments.pdf

18 ESMA MiFID II/MiFIR Review Report No. 1 on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments.

Verifying whether all market data sources provide access to their market data in a fair, equitable and timely manner is made difficult by the complexity of how proprietary market data is licensed and how compliance with usage restrictions is administered. The fact that trading data from individual venues is unique and non-substitutable has allowed data licensing agreements to become increasingly detailed and onerous. Firms receiving market data therefore face significant complexity in managing ongoing variation in their licensing agreements, incurring operation costs and risks; they also often bear the cost of complex audits of their licenses, imposed by data providers through ex-post fees.

In light of the heterogeneous market data pricing policies across the single market, it is difficult for a consolidator of market data to access proprietary market data streams on fair, equitable and timely conditions. In its report on the consolidated tape, ESMA took the view that the current MiFID II rules do not oblige trading venues and APAs to submit market data to a consolidated tape on fair and reasonable terms. Therefore, ESMA suggests that trading venues and APAs should be required to provide data to the consolidated tape either by (i) requesting trading venues and APAs to provide data to the consolidated tape, or, (ii) setting forth criteria to determine the price (and usage terms and conditions) for contributions to the consolidated tape.

According to ESMA, MiFID/R did not deliver on its objective to create more clarity on licensing and pricing of proprietary market data. Prices for market data, in particular for data for which there is high demand, such as non-display data, have increased since 2017. One trade association estimates that the total costs of data for a hypothetical small principal trading firm with access to various venues have increased by 27%, from EUR 917.000 in 2016 to EUR 1,16 million in 2019[19]. ESMA furthermore recommends that a consolidated tape should share its revenue with the contributing entities and should deliver the tape as close to real time as technically possible.

In the MiFID II/MiFIR Review Report on the transparency regime for equity and equity-like instruments, the double volume cap mechanism and the trading obligations for shares, ESMA has reviewed the MiFIR transparency regime for equity instruments and made proposals for targeted amendments. It also includes recommendations on other key transparency provisions, in particular the trading obligation for shares and the transparency provisions applicable to systematic internalisers in equity instruments.

In its Report on MiFIR Review Report on transparency for non-equity[20], ESMA concluded that the current regime was too complicated and not always effective in ensuring transparency for market participants and made several proposals to improve it:

- deleting the specific waiver and deferral for respectively orders and transactions above the "size-specific to the instrument" threshold;
- streamlining the deferral regime with both a simplified system based on volume masking and full publication after two weeks as well as removing the supplementary deferral options left to National Competent Authorities (NCAs) under the current MiFIR text;

[19] ESMA MiFID II/MiFIR Review Report No. 1 on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments, p. 17.

[20] ESMA MiFID II/MiFIR Review Report on the transparency regime for non-equity instruments and the trading obligation for derivatives.

- transforming the possibility granted to NCAs to temporarily suspend MiFIR transparency provisions into a mechanism coordinated at EU-level;
- including the possibility to suspend at short notice the application of the derivative trading obligation similarly to the mechanism available in EMIR; and
- complementing the criteria used to grant equivalence to third-country trading venues for the purpose of the derivative trading obligation with conditions relating to transparency and non-discriminatory access.

- **Who is affected by the low-performing transparency framework?**

Market participants are expected to adhere to highly complex transparency rules, including as regards the application of waivers, deferrals and the double volume cap. This results in costly administration costs that affect the overall competitiveness of EU platforms and places an undue burden on EU market participants. Streamlining the transparency rules would benefit the entire investment community by increasing the availability of trading data and decrease execution costs. It would also result in more price discovery in the Union.

Data vendors already offer proprietary consolidated version of data from multiple sources. However, no data vendor has been able to provide a complete picture of EU trading in any asset class. Moreover, as data vendors interpret the data fields and choose the venues they incorporate, they differ not only in terms of market coverage, but also on the level of detail provided, data tags and will provide different results for the same securities.

The cost of producing and normalising bad quality data has led to additional expense and **asset and portfolio managers** complain that data providers are charging high fees for their data feeds.[21] As a result it is very costly for **all investors** and their intermediaries to manage their liquidity and trade execution risk throughout the trading day. Investors are also unable to hold their brokers accountable for whether they achieved best execution for their trades, as verification of the best price currently requires a subscription to a proprietary market data product produced by a **data vendor** or the proprietary data feed that each **stock exchange** offers for its venue.

- **Stakeholder consultations**

On 28 June 2019, the Commission organised a workshop intended to engage with stakeholders about the creation of an EU consolidated tape, bringing together around 80 market participants to debate the merits and technical characteristics of an EU CTP, as well as the obstacles to its creation. The participants were experts in trading or market data from the buy-side, data vendors, trading venues, and on the regulatory side, ESMA and several NCAs. Generally, participants of all types agreed that such a tool could be useful, even if there were different views as to the optimal characteristics of a tape.

On 17 February 2020, DG FISMA published a public consultation on MiFID/R review intended to gather evidence from stakeholders, and more generally from EU citizens, on the overall functioning of the regime after two years of application. Stakeholders had until 18 May 2020 to express their views via the online EU Survey portal. 458 stakeholders replied to the open consultation on several topics including the functioning of the transparency framework, the consolidated tape, the share and derivative trading obligations, with responses

[21] EFAMA (2021), Joint statement by EFAMA and EFSA on Consolidated Tape and market data costs, https://www.efama.org/newsroom/news/joint-statement-efama-and-efsa-consolidated-tape-and-market-data-costs

coming from sell side, buy side, trading venues, data providers, end users as well as regulators.

Beyond the above, the Commission has been actively studying the issues at hand, mandating an extensive study for assessing and defining it ex-ante, with the final goal of supporting an informed decision-making process.

Finally, the Commission staff has had many bilateral contacts with a broad spectrum of stakeholders, notably companies that specialise in the aggregation of market data, further refining its analysis and policy approach.

- **Collection and use of expertise**

The proposal builds on the expertise of EU competent authorities that supervise trading venues as well as on the expertise of market operators. In addition, the Commission monitors closely developments in other jurisdictions (notably U.S. and Canada) that have already developed their consolidated tapes in the past, and the possible changes that these jurisdictions are contemplating for their respective tapes. The Commission considered the various alternatives and has taken a view on whether these alternatives could be applied to the EU situation.

- **Impact assessment**

The Regulatory Scrutiny Board reviewed the impact assessment that focussed on the development of a framework for consolidation of market data.[22] Other topics included in the proposal were already covered in-depth in the various ESMA reports on the functioning of the MiFIR framework which explains why they were not the focus of the impact assessment.

The impact assessment contains five options to achieve the consolidation of market data:

Option 1– Self-aggregation. Self-aggregators of market data are defined as market participants that collect and consolidate market data for their internal use. Electronic market makers (high-frequency trading firms) or big investment banks have the capacity to become self-aggregators. Self-aggregators will collect market data from trading markets and consolidate this data directly at their own premises (**decentralised consolidation**). Upon registration with ESMA as "**self-aggregators**", market participants would be allowed to collect all core (harmonised) market data and consolidate the information solely for their internal use (harmonisation of reporting standards diminishes the cost of data consolidation). Self-aggregators would not publish a consolidated tape. In order to avoid complex, individual market data licensing arrangements with often hundreds of execution platforms or their APAs that act as data contributors, all market data sources would have to make standardised core market data available to self-aggregators (mandatory contributions).

Option 2 – competing consolidators. The competing consolidator model also takes a **decentralised approach** to core market data consolidation. Upon registration with ESMA, competing consolidators would be allowed to collect harmonised market data from the individual data sources (trading venues, APAs) and then consolidate these market data at the data centre where its subscribers are located (thus avoiding consolidation at a central hub). A decentralised model for data consolidation aims to address geographical dispersion and latency by showing each market data subscriber its local reality. As a result, each subscriber

[22] The RSB sheet and opinion can be found at: [include link]

will be able to observe the best price available from its geographical location. The decentralised model aims to neutralise a common criticism made with respect to a consolidated tape: The fact that "best execution" is a local reality, true at one moment, for one specific location where the executing broker is located.

Option 3 – exchange operated consolidators. The exchange-operated consolidator operates a centralised "hub and spoke model". With this approach, each stock exchange would become the exclusive data consolidator with respect to shares or other instruments listed on its exchange. The result would be that listing exchanges become the consolidators (the "hub") for all market data that involve their listings (the "reportable securities"). In practice, Option 3 would lead, e.g., to a separate tape for each European listed exchange (examples are Euronext, Deutsche Börse, NASDAQ OMX, BME, Vienna stock exchange, Warsaw stock exchange).

Option 4 – single, independent consolidator for each asset class. The single consolidator would operate a centralised "hub and spoke model" for each asset class (shares, ETFs, bonds and derivatives). With this approach, the exclusive data consolidators would collect data for specific stocks from geographically separated venues, consolidate the data in one centralised data centre, and then disseminate them from such a central location to subscribers that are in other locations. Compared to a decentralised operating model, a centralised model would therefore be slightly less accurate in terms of the timeliness of the pre-trade quotes provided on the consolidated tape but it would guarantee more data integration and operate a more efficient revenue participation scheme.

Option 5 – the concentration rule. All trading in listed shares is concentrated on the listing exchange (for non-equities on the existing primary centre of liquidity), there is no need for consolidation of core market data with an exclusive or non-exclusive securities market data consolidator. This option would not involve the creation of a consolidated tape. This option would rather aim to consolidate the flow of market data (indirectly) by concentrating trading in certain asset classes on designated execution platforms.

The preferred options for market data consolidation:

Option 1.2 (competing consolidators) and 1.4 (a single, independent consolidator) constitute the two preferred options. In terms of achieving optimal market data quality and timely delivery, the decentralised consolidation model in Option 1.2 enjoys a slight advantage over the centralised consolidation (Option 1.4). On the other hand, the competitive tender in Option 1.4 provides ESMA with more discretion to award the consolidator role to an entirely new market entrant. This would allow selection of a consolidator that is entirely independent of both market data contributors and market data companies and that operate a more efficient revenue participation scheme.

Option 1.2, on the other hand, would most likely present an opportunity for incumbent market data companies to leverage their expertise in data aggregation into the new market of consolidated data. While this allows for ease of entry and potentially lower set-up and operating cost, it entails the risk that many of the emerging consolidators will be part of established financial groups and therefore not free of potential conflicts of interest.

With respect to **ensuring fair remuneration of market data contributors**, the impact assessment considered three options:

Option 2.1 – Mandatory contributions with "minimum revenue targets" incumbent on market data consolidators. All market data sources would have to make standardised core market data available to market data aggregators (mandatory contribution). In order to create

additional revenue for allocation to market data contributors, there would be "minimum revenue targets" that form part of the selection process for a single consolidator (Option 1.4) or part of the registration process for competing consolidators (Option 1.2). The minimum revenue targets would be established and regularly reviewed by an independent operating committee. The revenue targets would take into account various uses that subscribers make of the consolidated tape and take into account relevant parameters such as commercial redistribution, price referencing, indexing, syndication, sales of market data to media outlets. The revenue targets with respect to professional users could be set at levels sufficient to largely subsidize the cost of granting retail access for minimal or no cost.

Option 2.2 – Mandatory contributions with statutory subscription fees. Option 2.2 would comprise statutory minimum subscription fees for consolidated market data feeds. Making mandatory contributions contingent on a "revenue participation model" aims to create a commonality of interest between market data contributors and market data consolidators. By setting fee floors for the use of core market data, market data contributors participate in the commercial success of consolidated market data streams and share the risk of success of the consolidated market data product with market data consolidators. The subscription fees would be designed and regularly reviewed by an independent operating committee.

Option 2.3 – Mandatory contributions with compensation by means of a "reference price usage fee". Option 2.3 envisages to ensure compensation for market data contributors by means of a usage fee for all execution venues that do not contribute to price formation in the equity markets ("dark trading"). Technically "dark trading" is defined as a form of trading that is not pre-trade transparent – no quotes are published and trades are executed at the reference price set at the primary market execution platforms that match trades using a reference price "imported" from the listing exchange. Users of the reference price waiver would need to "buy" the reference price by means of a monthly "ad valorem" fee, to be paid (for rebating back to the listing exchange) to the operator of the consolidated tape.

In the end, **the preferred option for market data remuneration** is Option 2.1 as the least intrusive on the consolidator's business model, while ensuring a revenue stream in line with that that can be generated with either Options 2.2 or 2.3. When compared to the complexity of setting individual subscription fees centrally, Option 2.1 allows for more commercial freedom in establishing and revising subscription fees.

Overall policy choice on consolidation and fair remuneration

In terms of achieving optimal combination ensuring high market data quality and timely delivery, the competitive tender process on Option 1.4 is the most appropriate method to ensure competition for the new market of establishing the essential infrastructure necessary for market data consolidation. On the other hand, many of the positive features of Option 1.2 can be maintained by, possibly at a later stage, creating a new "downstream" market for market data publication and data advanced analytics, a market that is open to competition. Revenue participation for market data contributors is best ensured with Option 2.1 (revenue participation model).

- **Likely impacts of the preferred option**

The positive impacts of eliminating the obstacles for market data consolidation would accrue to investors, the buy-side, in capital markets. The buy-side (i.e. investors in capital markets) would be the main beneficiaries of market data consolidation as a consolidated tape will ensure investors and their investment managers get a complete overview of the entire liquidity in any given financial instrument ultimately allowing them to take full advantage of the benefits of the single market.

By removing barriers to the creation of a consolidated tape, asset and portfolio managers will be incentivised to include in the portfolios they manage the most optimal (combination of) instruments available in the Union and not just the instrument available on the (few) venues whose market data they currently subscribe to. They would have the information allowing them to decide if they need to become member of (other) venues, when these venues provide the optimal products for their purpose. It will function as an important guide to the buy-side trader on assessing and making their trading decisions and setting up their algorithmic parameters.

The main investor (buy-side manager) benefit of a consolidated tape is the avoidance of liquidity risk and slippage. For equities, 56% of asset managers that participated in a survey conducted by MSP[23] identified slippage of between 0-0.5 basis points of the annual traded value as the main consequence of a lack of transparency with respect to liquidity in the market. Avoidance of this slippage would result in investor gains of up to EUR 1.06 billion.

For bonds, potential gains from a consolidated view of the markets would be even greater. This is because the estimated losses due to slippage by far exceed the above estimates for shares. 60% of bond asset managers interviewed for the MSP study estimated slippage costs of up to 5 basis points, 25% estimated slippage cost of up to 10 basis points, while 11% estimated slippage of up to 50 basis points. The absence of any reliable data for the traded value in bonds makes it impossible to quantify slippage in absolute terms.

Potential benefits are also foreseeable for regulated markets, as the tape will enhance the level of visibility of shares, especially those of SMEs, listed on such venues which will have a wider visibility than their own local markets and a consequential increase in liquidity. This increased visibility increases the attractiveness of investments and the possibilities of the shares being included in investment funds or investment portfolios. As a consequence of increased attractiveness of SME shares the consolidated tape could therefore also increase the effectiveness of raising capital for SMEs.

- **Fundamental rights**

The proposal respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the principle establishing a high level of consumer protection for all EU citizens (Article 38). Without creating the condition for a consolidated tape to be created in the EU, retail clients would potentially remain without a tool to assess compliance with the best execution rule by their brokers and to allow them an increased range of investment opportunities, particularly in certain Member States where trading venues are smaller and offer fewer investment opportunities.

4. BUDGETARY IMPLICATIONS

The initiative does not have an impact on the EU budget. The consolidated tape will be provided by the private sector, under the supervision of ESMA. The other elements that the proposal tackles do not have an impact on the EU budget either.

5. OTHER ELEMENTS

Apart from the provisions on consolidation of market data and the operation of consolidated tape providers for the main MiFIR asset classes, shares, ETFs, bonds and derivatives, the

[23] MSP (2019), The Study on the Creation of an EU Consolidated Tape, Figure 14.

proposal contains a series of accompanying measures that aim to strengthen the transparency and competitiveness of the Union's capital markets.

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The proposal contains a monitoring and evaluation of the development of an integrated EU market for consolidated market data. Monitoring will cover both the evolution of operating models for a consolidated tape used and the success in facilitating universal access to consolidated market data for the wider investor community. Particular focus of monitoring will be on the asset classes for which a consolidated tape has emerged; the timeliness and delivery quality of market data consolidation; the role of market data consolidation in reducing implementation shortfall per asset class; the number of subscribers to consolidated market data per asset class; the success of revenue allocation models for regulated markets for their contribution of market data in shares; the effect of market data consolidation on remedying information asymmetries between various capital market participants; and the effect on more democratic access to consolidated market data on investments in SMEs.

- **Detailed explanation of the specific provisions of the proposal**

Article 1(1) amends certain aspects of the matter and scope of the Regulation, in particular with regard to the obligation for multilateral systems to operate with a trading venue licence.

Article 1(2)(a) are moving provisions on the delineation between multilateral and bilateral systems from MiFID II to MiFIR in order to obtain a higher degree of harmonization which aims at increasing transparency as a consequence.

Article 1(2)(b)(c)(d) contains new definitions, in particular the ones that are essential for market data consolidation, such as the definition of core market data.

Article 1(3) proposes to institute a minimum threshold trade size for the reference price waiver (RPW) preventing any alternative trading venue (MTFs) from executing small trade sizes under the reference price waiver, in line with ESMA recommendations.

Article 1(4) replaces the double volume cap with a single volume cap set at 7% of trades that are executed under the reference price waiver or the negotiated trade waiver.

Article 1(6) shortens and harmonises publication deferrals for non-equity post trade reports to the public. It also removes the discretion of national competent authorities to allow that post-trade reports for non-equities are deferred for four weeks, by replacing it with Union wide thresholds. Only with regard to sovereign debt the national competent authorities remain to have discretion.

Article 1(7) empowers ESMA to specify the content, format and terminology of the reasonable commercial basis concept, which has been interpreted very differently.

Articles 1(8) and (9) strengthen the public quoting obligations incumbent on a systematic internaliser (SI). This new provision increases a SIs pre-trade quotation obligation related to equities to cover quotes for trade sizes up to a minimum twice the standard market size. It also proposes to replicate the RPW floor to trades undertaken by an SI without pre-trade transparency. In line with the floor on the RPW, SIs will not be allowed to match small trades at midpoint.

Article 1(10) introduces the obligation for trading venues to contribute harmonised market data directly and exclusively to the entities appointed by ESMA as the CTP for each asset class (mandatory contributions). Article 1(10) also aligns the trade reporting formats and reporting obligations for SIs with those applicable to exchanges and alternative execution venues (MTFs/OTFs). This will be achieved by means of a delegated act that makes the current reporting format used by the exchanges (the Model Market Typology or 'MMT') mandatory for all SI market data reports. In addition, Article 1(10) extends the mandate of synchronisation of business clocks beyond trading venues and their members to systematic internalisers, APAs and CTPs (Article 22c).

Article 1(11) codifies the perimeter of the share trading obligation (STO). In line with ESMA's proposals in its Final report on the transparency regime for equity instruments, following its approach in its statement, this article defines the perimeter of the STO as shares that are admitted to trading on an EEA regulated market, and establishes an EU "official list" of shares subject to the STO, avoiding current ambiguities in the perimeter of application of the STO.

Articles 1(12), (13) and (14) introduce some technical changes in relation to transaction reporting and reference data.

Article 1(15) introduces a selection procedure for the appointment of a consolidated tape provider for each asset class (shares, ETFs, bonds and derivatives).

Article 1(16) introduces a provision on the organisational requirements and quality of service standards that apply to all CTPs selected and appointed by ESMA (Article 27h). Requirements for the CTP include: (a) the collection of consolidated core market data; (b) the collection of licensing fees from subscribers; and (c) for shares a revenue participation scheme for regulated markets for their contribution of market data.

Article 1(17) introduces a new Article 27ha which contains a series of public reporting obligations incumbent on the CTPs. These reporting obligations concern service level requirements quality features, e.g., on speed of delivery, and reports on operational resilience.

Articles 1(18), (19) and (20) make adjustment to the derivatives trading obligations in line with recommendations made by ESMA. The trading obligation for counterparties to trade derivatives that are subject to the clearing obligation on trading venues is triggered when a class of derivatives is declared to be subject to the clearing obligation. In light of this close interconnection, the amendment aligns the derivatives trading obligation under MiFIR with the clearing obligation for derivatives under 'EMIR Refit'[24], to ensure legal certainty between the two obligations, in particular with respect to the scope of the entities that are subject to the clearing and trading obligation and the possible suspension of such obligations. Article 1(20) introduces a new Article 32a containing a stand-alone suspension mechanism for the Commission to suspend the trading obligation for certain investment firms acting as market-makers with non-EEA counterparties when certain conditions are met. The mechanism can be activated at the request of the competent authority of a Member state and takes the form of an

[24] Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories

implementing act adopted by the Commission. The suspension needs to be accompanied by evidence that at least one of the conditions for suspension is met.

Articles 1(21), (22) and (23) remove the "open access" obligation for exchange-traded derivatives. Clearing infrastructures in the Union would no longer be obliged to clear derivatives trades that are not executed on their vertically integrated trading platform. Likewise, trading venues in the Union no longer need to accept that non-affiliated clearing infrastructure clear trades executed on their platform.

Articles 1(24) and 1(25) ensure that ESMA has sufficient supervisory powers for the consolidated tape providers.

Article 1(26) prohibits SIs from offering payment for (retail) order flow (PFOF). This proposal would end the controversial practice that certain high-frequency traders, organised as SIs on account of their large transaction volumes, pay retail brokers in exchange for the latter channelling their retail orders to the high-frequency trader for execution. The expectation is that, in the absence of PFOF, retail orders will be sent to a pre-trade transparent market (regulated market or MTF) for execution. Combined with the increased pre-trade quoting obligation for SI, these entities would have to "earn" the retail flow by publishing competitive pre-trade quotes. On the assumption that retail order flow accounts for anything between 7 to 10% of overall daily volumes and the expected increase in online brokerage, the prohibition of PFOF promises to increase execution quality for retail investors and increase pre-trade transparency of all execution platforms that execute retail orders.

Article 1(27) empowers the Commission to adopt delegating acts supplementing the Regulation.

Article 1(28)(a) tasks ESMA with the obligation to provide monitoring reporting.

Article 1(28)(b) and (29) delete a transitional measure and the empowerment for the Commission to adopt delegated acts based on the replaced CTP framework.

Article 2 provides that entry into force and application occur on the twentieth day following that of publication.

2021/0385 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 600/2014 as regards enhancing market data transparency, removing obstacles to the emergence of a consolidated tape, optimising the trading obligations and prohibiting receiving payments for forwarding client orders

(Text with EEA relevance)

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 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[25],

Having regard to the opinion of the European Economic and Social Committee[26],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) In its 2020 CMU Action Plan[27], 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[28], 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[29], the Commission confirmed its intention to 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[30]

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25 OJ C […], […], p. […].

26 OJ C […], […], p. […].

27 COM/2020/590 final.

28 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;

29 COM/2021/32 final.

30 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).

and of Regulation (EU) No 600/2014 the European Parliament and of the Council[31]. 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 of the European Parliament and of the Council[32] provides for a legislative framework for 'consolidated tape providers' or 'CTPs', both for equity and non-equity. Those CTPs are currently responsible for collecting from trading venues and approved publication arrangements ('APAs') market data about financial instruments and consolidating those data into a continuous electronic live data stream, which provides market data per financial instrument. The idea behind the introduction of a CTP was that market data from trading venues and APAs would be made available to the public in a consolidated manner, including all of the Union's trading markets, using identical data tags, formats and user interfaces.

(4) To date, however, no supervised entity has applied for authorisation to act as a CTP. ESMA has identified three main obstacles that have prevented supervised entities to apply for registration as a CTP[33]. First, a lack of clarity as to how the CTP is to procure market data from the various execution venues or from the data reporting service providers concerned. Second, insufficient quality in terms of harmonisation of the data reported by those execution venues to allow for a cost-efficient consolidation. Third, a lack of commercial incentives to apply for authorisation as a CTP. It is therefore necessary to remove those obstacles. Such removal requires, first, that all trading venues and systematic internalisers ('SIs') provide CTPs with market data (provision rule). It secondly requires an improvement of the data quality by harmonising the data reports that trading venues and SIs should submit to the CTP.

(5) Article 1(7) of Directive 2014/65/EU of the European Parliament and of the Council[34] 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'). The placement of that requirement in Directive 2014/65/EU has left room for varying interpretations of that requirement, which has led to an uneven playing field between multilateral systems that are licensed as an RM, MTF or OTF, and multilateral systems that are not licensed as such. In order to ensure a uniform application of that requirement, it should be introduced in Regulation (EU) No 600/2014.

(6) Article 4 of Regulation (EU) No 600/2014 allows competent authorities to waive the pre-trade transparency requirements for market operators and investment firms operating a trading venue who determine their prices by reference to the midpoint

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31 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).

32 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).

33 ESMA MiFID II/MiFIR Review Report No. 1 on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments.

34 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).

price of the primary market or the most relevant market in terms of liquidity. As there is no justification for excluding the smallest orders from a transparent order book and in order to increase pre-trade transparency and thereby reinforce the price formation process, that waiver should be applicable to orders with a size greater than or equal to twice the standard market size. Where the consolidated tape for shares and exchange-traded funds (ETFs) will provide bid and offer prices from which a midpoint can be derived, the reference price waiver should also be available for systems deriving the midpoint price from the consolidated tape.

(7) Dark trading is trading without pre-trade transparency, using the reference price waiver laid down in Article 4(1), point (a) of Regulation (EU) No 600/2014 and the negotiated trade waiver laid down in Article 4(a) point (a), point (i) of that Regulation. The use of both waivers is capped by the double volume cap ('DVC'). The DVC is a mechanism that limits the level of dark trading to a certain proportion of total trading in an equity instrument. The amount of dark trading in an equity instrument on an individual venue may not exceed 4% of total trading in that instrument in the Union. When this threshold is breached, dark trading in that instrument on that venue is suspended. Secondly the amount of dark trading in an equity instrument in the Union may not exceed 8% of total trading in that instrument in the Union. When this threshold is breached all dark trading in that instrument is suspended. The venue specific threshold leaves room for continued use of those waivers on other platforms on which trading in that equity instrument is not yet suspended, until the Union wide threshold is breached. This causes complexity in terms of monitoring the levels of dark trading and of enforcing the suspension. To simplify the double volume cap while keeping its effectiveness, the new single volume cap should rely solely on the EU-wide threshold. That threshold should be lowered to 7 % to compensate for a potential increase of trading under those waivers as a consequence of abolishing the venue specific threshold.

(8) Article 10 of Regulation (EU) No 600/2014 contains requirements for trading venues to publish information related to transactions in non-equity instruments, including the price and the volume. Article 11 of that Regulation contains the grounds for national competent authorities to allow for delayed publication of those details. Deferred publication of those details is allowed where a transaction is above the large in scale ('LIS') size threshold and is in an instrument for which there is no liquid market, or where that transaction is above the size specific to the instrument threshold in case the transaction involves liquidity providers. National competent authorities have discretion in the duration of the deferred period and in the details of the transactions that may be deferred. That discretion has led to differing practices among the member states and to ineffective post-trade transparency publications. To ensure transparency towards all types of investors, it is necessary to harmonise the deferral regime at the level of the European Union, remove discretion at national level and facilitate market data consolidation. It is therefore appropriate to reinforce post-trade transparency requirements by removing the discretion for competent authorities.

(9) To ensure an adequate level of transparency, the price of a non-equity transaction should be published as close to real time as possible and only be delayed until maximally the end of the trading day. However, in order not to expose liquidity providers in non-equity instruments to undue risk, it should be possible to mask volumes of transactions for a short period of time, which should not be longer than two weeks. The exact calibration of the various buckets corresponding to different time deferrals should be left to ESMA due to the technical expertise required to

specify the calibration as well as due to the need to allow for the flexibility to amend the calibration. Those deferrals should be based on the liquidity of the non-equity instrument, the size of the transaction and, for bonds, the credit rating and it should no longer include the size specific to the instrument concerned.

(10) Article 13 of Regulation (EU) No 600/2014 requires market operators and investment firms operating a trading venue to make the pre-trade and post-trade information on transactions in financial instruments available to the public on a reasonable commercial basis ('RCB'), and to ensure non-discriminatory access to that information. That Article has, however, not delivered on its objectives. The information provided by trading venues, APAs and systematic internalisers on a reasonable commercial basis does not enable users to understand market data policies and how the price for market data is set. ESMA issued guidelines explaining how the concept of RCB should be applied. These guidelines should be converted to legal obligations. Due to the high level of detail required to specify RCB and the required flexibility in amending the applicable rules based on the fast changing data landscape, ESMA should be empowered to develop draft regulatory technical standards specifying how RCB should be applied, thereby further strengthening the harmonised and consistent application of Article 13 of Regulation (EU) No 600/2014.

(11) In order to reinforce the price formation process and to maintain a level playing field between trading venues and systematic internalisers, Article 14 of Regulation (EU) No 600/2014 requires systematic internalisers to make public all quotes in equity instruments placed by that systematic internaliser below the standard market size. Systematic internalisers are free to decide which sizes they quote, as long as they quote at a minimum size of 10% of the standard market size. That possibility, however, has led to very low levels of pre-trade transparency provided by systematic internalisers in equity instruments, and has hampered the achievement of a level playing field. It is therefore necessary to require systematic internalisers to publish firm quotes relating to a minimum of twice the standard market size.

(12) In order to create a level playing field, in addition to the obligation to publish firm quotes relating to a minimum of twice the standard market size, systematic internalisers should also no longer be allowed to match at midpoint below twice the standard market size. It should furthermore be clarified that systematic internalisers should be allowed to match at midpoint in so far as they comply with the tick-size rules in accordance with Article 49 of Directive 2014/65/EU when they trade above twice the standard market size but below the large in-scale threshold. When systematic internalisers trade above a large in-scale threshold, they should continue to be allowed to match at midpoint without complying with the tick-size regime.

(13) Market participants need core market data to be able to make informed investment decisions. Pursuant to the current Article 27h of Regulation (EU) 600/2014, sourcing core market data about certain financial instruments directly from trading venues and APAs requires that consolidated tape providers enter into separate licensing agreements with all those data contributors. That process is burdensome, costly and time consuming. It has been one of the obstacles to consolidated tape providers emerging on a cross market basis. This obstacle should be removed in order to enable consolidated tape providers to obtain the market data and to overcome licencing issues. Trading venues and APAs, or investment firms and systematic internalisers without intervention of APAs ('market data contributors') should be required to submit their market data to consolidated tape providers, and to use harmonised templates respecting high–quality data standards to do so. Only CTPs selected and

authorised by ESMA should be able to collect harmonised market data from the individual data sources in accordance with the mandatory contribution rule. To make the market data useful for investors, market data contributors should be required to provide the CTP with market data as close as technically possible to real time.

(14) Title II and III of Regulation (EU) 600/2014 require trading venues, APAs, investment firms and systematic internalisers ('market data contributors') to publish pre-trade data on financial instruments, including bid and offer prices and post-trade data on transactions, including the price and volume at which a transaction in a specific instrument has been concluded. Market participants are not obliged to use the consolidated core market data provided by the CTP. The requirement to publish those pre-trade and post-trade data should therefore remain applicable to enable market participants to access market data. However, to avoid undue burden on market data contributors, it is appropriate to align the requirement for market data contributors to publish data as much as possible with the requirement to contribute data to the CTP.

(15) Due to the disparate quality of market data, it is difficult for market participants to compare those data, which devoids data consolidation of much added-value. It is of the utmost importance for the proper functioning of the transparency regime set out in Title II and III of Regulation (EU) 600/2014 and for the consolidation of data by consolidated tape providers that market data are of high quality. It is therefore appropriate to require that those market data comply with high quality standards in terms of both substance and format. It should be possible to change the substance and the format of the data within a short time to allow for changing market practices and insights. Therefore the requirements for the quality of data should specified by the Commission in a Delegated Act and should take into account the advice of a dedicated consultative group, composed of experts from the industry and from public authorities.

(16) To better monitor reportable events, Directive 2014/65/EU harmonised the synchronisation of business clocks for trading venues and their members. To ensure that, in the context of the consolidation of market data, timestamps reported by different entities can be compared meaningfully, it is appropriate to extend the requirements for harmonisation of the synchronisation of business clocks to systematic internalisers, APAs and consolidated tape providers. Due to the level of technical expertise required to specify the requirements for application of a synchronized business clock, ESMA should be empowered to develop draft regulatory technical standards to specify the accuracy with which the clocks should be synchronized.

(17) Article 23 of Regulation (EU) No 600/2014 requires that the majority of trading in shares takes place on trading venues or systematic internalisers ('share trading obligation'). This requirement does not apply to trades in shares which are non-systematic, ad hoc or irregular and infrequent. It is not clear when this exemption applies. ESMA therefore clarified this by making a distinction between shares on the basis of their International Securities Identification Number (ISIN). Pursuant to that distinction, only shares with an EEA ISIN are subject to the share trading obligation. That approach provides clarity to market participants trading in shares. It is therefore appropriate to incorporate ESMA's current practice in Regulation (EU) No 600/2014, while simultaneously removing the exemption for trades in shares which are non-systematic, ad-hoc or irregular and infrequent. In order to provide market participants with certainty on which instruments fall under the share-trading obligation, ESMA should be empowered to publish and maintain a list containing all the shares subject to that obligation.

(18) Determination of the date by which transactions are reported is important to ensure sufficient preparedness by both supervisors and reporting entities. It is also crucial to align the timing of changes in different reporting frameworks. Setting this date in a delegated act will provide the necessary flexibility and aligns ESMA's empowerments with those laid down in Regulation (EU) 2019/834. To increase overall market reporting consistency, ESMA should also take account of international developments and standards agreed upon at Union or global level when developing relevant draft regulatory technical standards.

(19) Reporting in financial markets – in particular transaction reporting – is already highly automated and data is more standardised. Some inconsistencies between frameworks have already been resolved in the European Market Infrastructure Regulation (EMIR) Refit and Securities Financing Transactions Regulation (SFTR). The empowerments for ESMA should be aligned to adopt technical standards and ensure greater consistency in transaction reporting between the EMIR, SFTR and MiFIR frameworks. This will improve transaction data quality and avoid unnecessary additional costs for the industry.

(20) Competition among consolidated tape providers ensures that the consolidated tape is provided in the most efficient way and under the best conditions for users. However, no entity has, up until now, applied to act as a consolidated tape provider. It is therefore considered appropriate to empower ESMA to periodically organise a competitive selection procedure to select a single entity which is able to provide the consolidated tape for each specified asset class. Taking into account the novelty of the proposed scheme, ESMA should only mandate the provision of post-trade transparency data for the first selection procedure that it runs in relation to shares. At least 18 months before the launch of the second selection procedure, ESMA should submit a report to the Commission assessing whether there is market demand for extending the data contributed to the tape to pre-trade data. On the basis of such a report, the Commission should be empowered, by way of a delegated act, to further specify the depth of pre-trade data to the tape.

(21) According to data presented in the impact assessment accompanying the proposal for this Regulation, the expected revenue generation for the consolidated tape will vary depending on the precise features of the tape. The expected revenue of the CTP should significantly exceed the cost of its production and therefore help to build a solid revenue participation scheme whereby the CTP and the market data contributors share aligned commercial interests. This principle should not prevent CTPs from making a necessary margin to maintain a viable business model and from using the core market data to offer further analytics or other services aimed to increase the revenue pool.

(22) There is an objective difference between a venue of primary admission and other trading venues that serve as secondary trading markets. A venue of primary admission admits companies to the public markets, playing a crucial role in the life of a share and for the share's liquidity. This is particularly true in the case of shares listed on smaller regulated markets which remain typically traded mostly on the venue of primary admission. When the pre-trade transparent trading of a certain share takes place exclusively or predominantly on the venue of primary admission, such smaller venue plays a more important role in the price formation for that share. The core market data a smaller regulated market contributes to the consolidated tape therefore plays a more determining role in the price formation for the shares this venue admits to trading. A preferential treatment in the revenue participation scheme is therefore considered appropriate to allow these smaller exchanges to maintain their local admissions and

safeguard a rich and vibrant ecosystem in line with the objectives of the Capital Markets Union.

(23) Small regulated markets are regulated markets which admit shares of issuers for which trading in the secondary market tends to be less liquid than the trading of shares admitted to trading on larger regulated markets. In order to avoid that lower trading volumes (or nominal values) penalise smaller exchanges in the revenue participation scheme designed for the consolidated tape for shares, data from trades in these less liquid shares should attract a higher remuneration than their notional trading value would indicate. Whether a share is less liquid should be determined on the basis of the proportion of pre-trade transparent liquidity displayed by the regulated market that admits the less liquid share, relative to the average daily trading turnover in that share.

(24) Given the novelty of the consolidated tape in the context of the EU financial markets, ESMA should be entrusted with providing the European Commission with an assessment of the revenue participation scheme designed for regulated markets in the context of the consolidated tape for shares. This report should be prepared on the basis of at least 12 months of operation of the CTP and subsequently at the request of the Commission, where deemed necessary or appropriate. The assessment should focus in particular on whether the participation of small regulated markets in the revenue of the CTP is fair and effective in safeguarding the role that these markets play in their local financial ecosystem. The Commission should be empowered to revise the mechanism of allocation by way of a delegated act, where necessary or appropriate.

(25) It is necessary to ensure that consolidated tape providers remedy information asymmetries in the capital markets in a sustainable manner, and to ensure that consolidated tape providers provide consolidated data that are reliable. Consolidated tape providers should therefore be obliged to adhere to organisational requirements and quality of service standards that must be met at all times once they have been authorised by ESMA. Quality standards should cover aspects related to the collection of consolidated core market data, accurate time-stamping of such data at various stages in the delivery chain, collection and administration of market data subscription fees, and allocation of revenue to market data contributors.

(26) In order to safeguard market participants' continued trust in the operation of a consolidated tape provider, such entities should periodically make a series of public reports concerning compliance with their obligations under this Regulation, in particular on performance statistics and incident reports relating to data quality and systems. Due to the highly technical nature of the substance of the report, ESMA should be empowered to specify the substance, format and timing.

(27) The requirement that trade reports should be made available free of access charges after 15 minutes currently applies to all trading venues, APAs and CTPs. For CTPs, that requirement stands in the way of commercialising the consolidation of the core market data and considerably limits the commercial viability of a potential CTP, since certain potential clients could prefer waiting for the consolidated free data rather than subscribing to the consolidated tape. This is in particular the case for bonds and derivatives that are in general not traded frequently and for which the data has often kept most of its value after 15 minutes. While the requirement to deliver the data for free after 15 minutes should remain in place for trading venues and APAs, it should be abandoned for CTPs to protect its potential business model.

(30) Article 28 of Regulation (EU) No 600/2014 requires that OTC derivatives that are subject to the clearing obligation are traded on trading venues. Regulation (EU)

2019/834 of the European Parliament and of the Council[35] amended Regulation (EU) No 648/2012 of the European Parliament and of the Council[36] to reduce the scope of the entities that are subject to the clearing obligation. In light of the close interconnection between the clearing obligation under Regulation (EU) 648/2012 and the derivatives trading obligation under Regulation (EU) 600/2014, and to ensure greater legal coherence and to simplify the legal framework, it is necessary and appropriate to re-align the derivatives trading obligation with the clearing obligation for derivatives. Without that alignment, certain smaller financial counterparties and non-financial counterparties would no longer be captured by the clearing obligation but continue to be captured by the trading obligation.

(31) Article 6a of Regulation (EU) No 648/2012 provides for a mechanism to temporarily suspend the clearing obligation where the criteria on the basis of which specific classes of OTC derivatives have been made subject to the clearing obligation are no longer met, or where such suspension is considered necessary to avoid a serious threat to financial stability in the Union. Such suspension may, however, prevent counterparties from being able to comply with their trading obligation, laid down in Regulation (EU) 600/2014 because the clearing obligation is a pre-requisite to the trading obligation. It is therefore necessary to lay down that, where the suspension of the clearing obligation would lead to a material change in the criteria for the trading obligation, it should be possible to concurrently suspend the trading obligation for the same class or classes of OTC derivatives that are subject to the suspension of the clearing obligation.

(32) An ad-hoc suspension mechanism is necessary to ensure that the Commission may swiftly react to significant changes in market conditions that may have a material effect on the trading of derivatives and their counterparties. Where such market conditions are present, and upon the request of the competent authority of a Member state, the Commission should be able to suspend the trading obligation, independently from any suspension of the clearing obligation. Such a suspension of the trading obligation should be possible where the activities of an EU investment firm with a non-EEA counterparty are unduly affected by the scope of the EU trading obligation on derivatives and where that investment firm acts as a market-maker in the category of derivatives subject to the trading obligation. The issue of overlapping DTOs is particularly acute when trading with counterparties domiciled in a third-country jurisdiction that applies its own DTO. This suspension would also help EU counterparties remaining competitive on global markets. When deciding upon the suspension of the trading obligation, the Commission should take into consideration the impact of such suspension on the clearing obligation laid down in Regulation (EU) No 648/2012.

(33) Open access provisions for exchange-traded derivatives reduce attractiveness to invest in new products as competitors may be able to get access without the upfront investment. The application of the open access regime for exchange-traded derivatives, laid down in Article 35 and 36 of Regulation (EU) No 600/2014, may thus

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35 Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (OJ L 141, 28.5.2019, p. 42).

36 Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

limit competitiveness in these products, by removing incentives for regulated markets to create new exchange-traded derivatives. It should therefore be laid down that that regime should not apply to the CCP or trading venue concerned in respect of exchange-traded derivatives, thus fostering innovation and the development of exchange-traded derivatives in the Union.

(34) Financial intermediaries should strive to achieve the best possible price and the highest possible likelihood of execution for trades that they execute on behalf of their clients. To that end, financial intermediaries should select the trading venue or counterparty for executing their client trades solely on the basis of achieving best execution for their clients. It should be incompatible with that principle of best execution that a financial intermediary receives a payment from a trading counterpart in exchange for ensuring the execution of client trades. Investment firms should be therefore be prohibited from receiving such payment.

(35) The Commission should adopt the draft regulatory technical standards developed by ESMA regarding the precise characteristics of the deferral regime for non-equity transactions, regarding the provision of information on a reasonable commercial basis, regarding the application of the synchronised business clocks by trading venues, systematic internalisers, APAs and CTPs and regarding characteristics of the public reporting obligation of the CTP. The Commission should adopt those draft regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

(36) Since the objectives of this Regulation, namely to facilitate the emerging of a consolidated tape provider cross markets for each asset classes and to amend certain aspects of the existing legislation in order to improve transparency on markets in financial instruments but also to further enhance the level playing field between regulated markets and systematic internalisers, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, be better achieved at the Union level, measure should be adopted at Union level, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives. This Regulation furthermore respects the fundamental rights and observes the principles recognised in the Charter, in particular the freedom to conduct a business and the right to consumer protection,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 600/2014

(1) Article 1 is amended as follows:

(a) in paragraph 1, the following point (i) is added:

(h) the scope of multilateral trading.';

(b) paragraph 3 is replaced by the following:

'3. Title V of this Regulation shall also apply to all financial counterparties referred to in Article 4a(1), second subparagraph, of Regulation (EU) No 648/2012 and to all non-financial counterparties referred to in Article 10(1), second subparagraph, of that Regulation.';

(c) the following paragraph 7a is inserted:

'7a. All multilateral systems shall operate either in accordance with the provisions of Title II of Directive 2014/65/EU concerning MTFs or OTFs, or the provisions of Title III of that Directive concerning regulated markets.

All investment firms which, on an organised, frequent, systematic and substantial basis, deal on own account when executing client orders outside a regulated market, an MTF or an OTF shall operate in accordance with Title III of this Regulation.

Without prejudice to Articles 23 and 28, all investment firms concluding transactions in financial instruments which are not concluded on multilateral systems or systematic internalisers shall comply with Articles 20, 21, 22, 22a, 22b and 22c, of this Regulation.';

(2) in Article 2, paragraph 1 is amended as follows:

(a) point (11) is replaced by the following:

'(11) 'multilateral system' means any system or facility in which multiple third-party buying and selling trading interest in financial instruments are able to interact in the system;';

(b) the following point (34a) is inserted:

'(34a) 'market data contributor' means a trading venue, an investment firm, including systematic internalisers, or an APA;';

(c) point (35) is replaced by the following:

'(35) 'consolidated tape provider' or 'CTP' means a person authorised in accordance with Title IVa, Chapter 1 of this Regulation to provide the service of collecting market data for shares, ETFs, bonds or derivatives, from market data contributors, and of consolidating those data into a continuous electronic live data stream providing core market data per share, ETF, bond or derivatives and of providing them to user of market data;';

(d) the following points (36b) and (36c) are inserted:

(36b) 'core market data' means:

(a) all of the following data on equities:

(i) the best bids and offers with corresponding volumes;

(ii) the transaction price and volume executed at the stated price;

(iii) the intra-day auction information;

(iv) the end-of-day auction information;

(v) the market identifier code identifying the execution venue;

(vi) the standardised instrument identifier that applies across venues;

(vii) the timestamp information on all of the following:

- the time of execution of the trade;
- the time of publication of the trade;
- the receipt of market data from the market data contributors;

- the receipt of market data by the consolidated tape provider;
- the dissemination of consolidated market data to subscribers;

(viii) the trading protocols and the applicable waivers or deferrals;

(b) all of the following data on non-equities:

(i) the transaction price and quantity/size executed at the stated price;

(ii) the market identifier code identifying the execution venue;

(iii) standardised instrument identifier that applies across venues;

(iv) the timestamp information on all of the following:

- the time of execution of the trade;
- the time of publication of the trade;
- the receipt of market data from the market data contributors;
- the receipt of market data at the consolidator's aggregation/consolidation mechanism;
- the dissemination of consolidated market data to subscribers;

(v) the trading protocols and the applicable waivers or deferrals;

(36c) 'regulatory data' means data related to the status of systems matching orders in financial instruments, including information about circuit breakers, trading halts, and opening and closing prices of those financial instruments;'

(3) Article 4 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (a) is replaced by the following:

'(a) systems matching orders that are larger than twice the standard market size and that are based on a trading methodology by which the price of the financial instruments referred to in Article 3(1) is derived from either of the following:

(i) the price of those financial instruments at the trading venues where those financial instruments were first admitted to trading;

(ii) the price of those financial instruments at the most relevant market in terms of liquidity where that price is widely published and is regarded by market participants as a reliable reference price;

(iii) the consolidated tape for shares or ETFs.';

(ii) the following subparagraph is added:

'For the purposes of point (a), the continued use of that waiver shall be subject to the conditions set out in Article 5.';

(b) in paragraph 2, the first subparagraph is replaced by the following:

'The reference price referred to in paragraph 1, point (a) shall be established by obtaining either of the following:

(a) the midpoint within the current bid and offer prices of any of the following:

(i) the trading venue where those financial instruments were first admitted to trading;

(ii) the most relevant market in terms of liquidity;

(iii) the consolidated tape for shares or ETFs;

(b) when the price referred to in point (a) is not available, the opening or closing price of the relevant trading session.';

(4) Article 5 is amended as follows:

(a) the title is replaced by the following:

'*Article 5*
Volume cap';

(b) paragraph 1 is replaced by the following:

'1. Trading venues shall suspend their use of the waivers referred to in Article 4(1), point (a), and 4(1), point (b)(i) where the percentage of volume traded in the Union in a financial instrument carried out under those waivers exceeds 7% of the total volume traded in that financial instrument in the Union. Trading venues shall base their decision to suspend the use of those waivers on the data published by ESMA in accordance with paragraph 4, and shall take such decision within two working days after this publication of those data and for a period of six months.';

(c) paragraph 2 and 3 are deleted;

(d) paragraph 4 is replaced by the following:

'4. ESMA shall publish within five working days of the end of each calendar month all of the following data:

(a) the total volume of Union trading per financial instrument in the previous 12 months;

(b) the percentage of trading in a financial instrument carried out across the Union under the waivers referred to in Article 4(1), point (a), and Article 4(1), point (b)(i);

(c) the methodology that is used to derive the percentage referred to in point (b).';

(e) paragraph 5 is deleted;

(f) paragraph 7 is replaced by the following:

'7. To ensure a reliable basis for monitoring the trading taking place under the waivers referred to in Article 4(1), point (a), and Article 4(1), point (b)(i) and for determining whether the limits referred to in paragraph 1 have been exceeded, operators of trading venues shall have in place systems and procedures to enable the identification of all trades which have taken place on their venue under those waivers.';

(5) Article 9 is amended as follows:

(a) in paragraph 1, point (b) is deleted;

(b) in paragraph 5, point (d) is deleted;

(6) Article 11 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the first subparagraph is replaced by the following:

'Based on the deferral regime as set out in paragraph 4, competent authorities shall authorise market operators and investment firms operating a trading venue to defer the publication of the price of transactions until the end of the trading day, or the volume of transactions for a maximum of two weeks.';

(ii) in the second subparagraph, point (c) is deleted;

(b) paragraph 3 is replaced by the following:

'3. Competent authorities may, when authorising a deferred publication as referred to in paragraph 1 with regard to transactions in sovereign debt, allow market operators and investment firms operating a trading venue:

(a) to allow the omission of the publication of the volume of an individual transaction during an extended time period of deferral; or

(b) to publish in an aggregated form several transactions in sovereign debt for an indefinite period of time.'

(c) paragraph 4 is amended as follows:

(i) the first subparagraph is amended as follows:

point (c) is replaced by the following:

'(c) the transactions eligible for price or volume deferral, and the transactions for which competent authorities shall authorise market operators and investment firms operating a trading venue to provide for deferred publication of the volume or price for one of the following durations:

(i) 15 minutes;

(ii) end of trading day;

(iii) two weeks.';

(ii) the following subparagraph is inserted after the first subparagraph:

'For the purposes of the first subparagraph, point (c), ESMA shall specify the buckets for which the deferral period shall apply across the Union by using the following criteria:

(a) the liquidity determination;

(b) the size of the transaction, in particular transactions in illiquid markets or transactions that are large in scale;

(c) for bonds, the classification of the bond as investment grade or high yield.';

(7) in Article 13, the following paragraph 3 is added:

'3. ESMA shall develop draft regulatory technical standards to specify the content, format and terminology of the reasonable commercial basis information that trading

venues, APAs, CTPs and systematic internalisers have to make available to the public.

ESMA shall submit those draft regulatory technical standards to the Commission by [*OP please insert nine months after entry into force*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.';

(8) Article 14 is amended as follows:

(a) paragraphs 2 and 3 are replaced by the following:

'2. This Article and Articles 15, 16 and 17 shall apply to systematic internalisers when they deal in sizes up to twice the standard market size. Systematic internalisers shall not be subject to this Article and Articles 15, 16 and 17 when they deal in sizes above twice the standard market size.

3. Systematic internalisers are allowed to quote any size. The minimum quoting size shall be at least the equivalent of twice the standard market size of a share, depositary receipt, ETF, certificate, or other financial instrument that is similar to those financial instruments and that is traded on a trading venue. For a particular share, depository receipt, ETF, certificate or other financial instrument that is similar to those financial instruments and that is traded on a trading venue, each quote shall include a firm bid and offer price, or firm bid and offer prices for a size or sizes which could be up to twice the standard market size for the class of shares, depositary receipts, ETFs, certificates or financial instruments that are similar to those financial instruments, to which the financial instrument belongs. The price or prices shall reflect the prevailing market conditions for that share, depositary receipt, ETF, certificate or financial instrument that is similar to those financial instruments.';

(b) the following paragraph 6a is inserted:

'6a. Systematic internalisers shall not match orders at the mid-point within the current bid and offer prices.';

(9) Article 17a is replaced by the following:

'Article 17a
Tick sizes

1. Systematic internalisers' quotes, price improvements on those quotes and execution prices shall comply with the tick sizes set in accordance with Article 49 of Directive 2014/65/EU.

2. The application of the tick sizes set in accordance with Article 49 of Directive 2014/65/EU shall not prevent systematic internalisers from matching orders large in scale at mid-point within the current bid and offer prices. Matching orders at mid-point within the current bid and offer prices below large in scale but above twice the standard market size shall be allowed in so far as those tick sizes are complied with.';

(10) the following Articles 22a, 22b and 22c are inserted:

'Article 22a
Provision of market data to the CTP

1. Market data contributors shall, with regard to shares, ETFs and bonds that are traded on a trading venue, and with regard to OTC derivatives as defined in Article 2(7) of Regulation (EU) No 648/2012 that are subject to the clearing obligation as referred to in Article 4 of that Regulation, provide the CTP with all the market data as set out in Article 22b(2) as needed for the CTP to be operational. Those market data shall be provided in a harmonised format, through a high quality transmission protocol, and as close to real-time as is technically possible.

2. Each CTP shall be free to choose, from among the types of connection that the market data contributors offer to other users, which connection it wishes to use for the provision of those data. Market data contributors shall not receive any remuneration for providing the connectivity other than the revenue sharing for shares, as specified in the conditions for appointment of the CTP in the selection process laid down in 27da.

3. Market data contributors shall, with regard to transactions in the instruments referred to in paragraph 1 that are concluded by investment firms outside a trading venue, provide the CTP with the market data concerning those transactions either directly or through an APA.

4. Market data contributors shall not receive any remuneration for the market data provided other than the revenue sharing as referred to in Article 27da(2), point (c).

5. Market data contributors shall provide the information with regard to waivers and deferrals as laid down in Articles 4, 7, 11, 14, 20 and 21.

Article 22b

Market data quality

1. The Commission shall set up an expert stakeholder group by [*OP add 3 months as of entry into force*] to provide advice on the quality and the substance of market data, the common interpretation of market data and the quality of the transmission protocol referred to in Article 22a(1). The expert stakeholder group shall provide advice on a yearly basis. That advice shall be made public.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 50 to specify the quality and the substance of the market data and the quality of the transmission protocol.

   Those delegated acts shall in particular specify all of the following:

   (a) the market data, contributors need to provide to the CTP in order to produce the core market data needed for the CTP to be operational, including the substance and the format of those market data;

   (b) what constitutes core market data referred to in Article 2(1)(36b) and the regulatory data referred to in Article 2(1)(36c).

   For the purposes of the first subparagraph, the Commission shall take into account the advice from ESMA and from the technical expert group established in accordance with paragraph 2, international developments, and standards agreed at Union or international level. The Commission shall ensure that the delegated acts adopted take into account the reporting requirements laid down in Articles 3, 6, 8, 10, 14, 18, 20, 21 and 27g.

Article 22c

Synchronisation of business clocks

1. Trading venues and their members or participants, systematic internalisers, APAs and CTPs shall synchronise their business clocks to record the date and time of any reportable event.

2. ESMA shall, in accordance with international standards, develop draft regulatory technical standards to specify the level of accuracy to which clocks are to be synchronised.

ESMA shall submit those draft regulatory technical standards to the Commission by [*OP insert a date 6 months as of entry into force*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.';

(11) in Article 23, paragraph 1 is replaced by the following:

'1. An investment firm shall ensure that the trades it undertakes in shares with an EEA International Securities Identification Number (ISIN) shall take place on a regulated market, MTF, systematic internaliser or a third-country trading venue assessed as equivalent in accordance with Article 25(4), point (a) of Directive 2014/65/EU, as appropriate, unless :

(a) those shares are traded on a third-country venue in the local currency;; or

(b) those trades are carried out between eligible counterparties, between professional counterparties or between eligible and professional counterparties and do not contribute to the price discovery process.

ESMA shall publish a list on its website containing the shares with an EEA ISIN subject to the share trading obligation and shall update that list regularly.';

(12) Article 26(9) is amended as follows:

(a) the following point (j) is added:

'(j) the date by which transactions are to be reported.';

(b) the following subparagraph is inserted after the first subparagraph:

'When drafting those regulatory technical standards, ESMA shall take into account international developments and standards agreed upon at Union or global level, and their consistency with the reporting requirements laid down in Regulation (EU) 2019/834 and Regulation (EU) 2015/2365.';

(13) in Article 26, the following paragraph 11 is added:

'11. By [*OP insert date 2 years as of date of publication*], ESMA shall submit to the Commission a report assessing the feasibility of more integration in transaction reporting and streamlining of data flows under Article 26 of this Regulation to:

(a) reduce duplicative or inconsistent requirements for transaction data reporting, and in particular duplicative or inconsistent requirements laid down in this Regulation and Regulation (EU) 2019/834 of the European Parliament and of the Council[*1] and Regulation (EU) 2015/2365;

(b) improve data standardisation and efficient sharing and use of data reported within any Union reporting framework by any relevant competent authority, both Union and national.

When preparing the report, ESMA shall, where relevant, work in close cooperation with the other bodies of the European System of Financial Supervision and the European Central Bank.

[*1] Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (OJ L 141, 28.5.2019, p. 42)';

(14) Article 27(3) is amended as follows:

(a) the following point (c) is added:

'(c) the date by which reference data are to be reported'.

(b) the following subparagraph is inserted after the first subparagraph:

'When drafting those draft regulatory technical standards, ESMA shall take into account international developments and standards agreed upon at Union or global level, and the consistency of those draft regulatory technical standards with the reporting requirements laid down in Regulation (EU) 2019/834 and Regulation (EU) 2015/2365.';

(15) the following Article 27da is inserted:

'*Article 27da*

Selection process for the authorisation of a single consolidated tape provider for each asset class

1. By [*OP insert date 3 months as of entry into force*], ESMA shall organise a selection procedure for the appointment of the CTP for a five year term. ESMA shall organise a separate selection procedure for each of the following asset classes: shares, exchange traded funds, bonds and derivatives (or relevant subclasses of derivatives).

2. For each of the asset classes referred to in paragraph 1, ESMA shall assess the applications on the basis of the following criteria:

(a) the technical ability of the applicants to provide a resilient consolidated tape throughout the Union;

(b) the capacity of the applicants to comply with the organisational requirements laid down in Article 27h;

(c) the governance structure of the applicants;

(d) the speed at which the applicants can disseminate core market data;

(e) the capacity of the applicants to disseminate good quality data;

(f) the total expenditure needed by the applicants to develop the consolidated tape and the costs of operating the consolidated tape on an ongoing basis;

(g) the level of the fees that the applicant intends to charge to the different types of users of the core market data;

(h) the possibility of the applicants to use modern interface technologies for the provision of the core market data and for connectivity;

(i) the storage medium the applicants will use for the storage of historic data;

(j) the protocols the applicants will use to prevent and address outages.

3. The first selection procedure organised for shares shall only invite bids for the provision of a consolidated tape containing post trade data. Prior to subsequent selection procedures, ESMA shall assess market demand and revenue impacts on regulated markets and based on that assessment, report to the Commission on the opportunity of adding best bids and offers and corresponding volumes to the tape. Based on that report and on the experience gained further to the first selection procedure, the Commission is empowered to adopt a delegated act specifying the appropriate level of pre-trade data to be contributed to the CTP.

4. The selection of the CTP for shares shall, in addition to the criteria in paragraph 2, consider the revenue participation scheme, and in particular the formula, applicable to regulated markets that are market data contributors. ESMA shall, when considering the competing tenders, select the CTP for shares that offers the revenue participation scheme that provides regulated markets, in particular smaller regulated markets, with the highest amount of revenue that remains for distribution once deducted operating costs and a reasonable margin. This revenue shall be distributed in accordance with Article 27h(1)(c), and in a manner commensurate to the market data contributed according to Article 22a.

5. ESMA shall adopt a fully reasoned decision selecting and authorising the entities operating the consolidated tapes within 3 months as of initiation of the selection procedure referred to in paragraph 2. Such reasoned decision shall specify the conditions under which the CTPs shall operate, and in particular the level of fees referred to in paragraph 2, point (g) and for shares the level of the participation referred to in paragraph 3, in particular for smaller regulated markets.

6. The selected CTPs shall comply at all times with the organisational requirements set out in Article 27h and with the conditions set out in the decision of ESMA authorising the CTP referred to in paragraph 3. A CTP that is no longer able to comply with those requirements and conditions, including the requirements and conditions on system disruptions and intrusions, shall inform ESMA thereof without undue delay.

7. The withdrawal of the authorisation referred to in Article 27e shall only take effect as of the moment that a new CTP has been selected and authorised in accordance with paragraphs 1 to 4.

(16) Article 27h is replaced by the following:

‘*Article 27h*

Organisational requirements for consolidated tape providers

1. CTPs shall, in accordance with the conditions for authorisation referred to in Article 27da:

(a) collect all market data provided through contributions in relation to the asset class for which they are authorised;

(b) collect monthly subscription fees from users;

(c) in the case of market data concerning shares, redistribute part of their revenues for the purposes of covering the cost related to mandatory contribution and of ensuring a fair level of participation for regulated markets, and in particular

smaller regulated markets, in the revenue generated by the consolidated tape, in accordance with Article 27da(4);

(d) make consolidated core market data, for the provision of which the CTP is selected in accordance with Article 27da, available in accordance with the data quality requirements set out in Article 22b to users into a continuous electronic data stream on non-discriminatory terms as close to real time as technically possible;

(e) ensure that the publication of the core market data complies with the applicable waivers and deferrals in Articles 4, 7, 11, 14, 20 and 21;

(f) ensure that the consolidated core market data is easily accessible, machine readable and utilisable for all users, including retail investors.

For the purpose of establishing the participation in point (c), the revenue of the CTP shall be allocated among regulated markets according to a formula that reflects the proportion of pre-trade transparent liquidity in shares displayed by a regulated market relative to the average daily turnover in these shares in the Union.

2. CTPs shall adopt and publish on their website service level standards covering all of the following:

(a) an inventory of market data contributors from whom market data are received;

(b) modes and speed of delivery of consolidated market data to users;

(c) measures taken to ensure operational continuity in the provision of consolidated market data.

3. CTPs shall have sound security mechanisms in place designed to guarantee the security of the means of transfer of market data between the market data contributors and the CTP and between the CTP and the users and to minimise the risk of data corruption and unauthorised access. CTPs shall maintain adequate resources and have back-up facilities in place to offer and maintain its services at all times.

4. After 12 months of full operation of the CTP for shares, ESMA shall provide the Commission with a motivated opinion on the effectiveness and fairness of the level of participation of regulated markets in the revenues generated by the CTP as set out in accordance with the second subparagraph of paragraph 1. The Commission may request ESMA to provide further opinions, where necessary or appropriate. The Commission shall be empowered to adopt a delegated act in accordance with Article 50 to revise the allocation key for the revenue redistribution, where appropriate.';

(17) the following Article 27ha is inserted:

'*Article 27ha*

Reporting obligations for consolidated tape providers

1. CTPs shall, at the end of each quarter, publish on their website, which shall be accessible for free, performance statistics and incident reports relating to data quality and systems.

2. 2. ESMA shall develop draft regulatory technical standards to specify the content, timing, format and terminology of the reporting obligation.

ESMA shall submit those draft regulatory technical standards to the Commission by [*OP please insert nine months after entry into force*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.';

3. CTPs shall keep and preserve records relating to their business for a period of no less than five years. Information concerning the first two years shall be kept in an easily accessible place, and the CTP shall promptly provide ESMA with such records upon request.';

(18) in Article 28(1), paragraph 1, the introductory wording is replaced by the following:

'1. Financial counterparties that meet the conditions set out in Article 4a(1), second subparagraph, of Regulation (EU) No 648/2012, and non-financial counterparties that meet the conditions set out in Article 10(1), second subparagraph, of that Regulation, shall conclude transactions, which are neither intragroup transactions as defined in Article 3 of that Regulation nor transactions covered by the transitional provisions laid down in Article 89 of that Regulation, with other such financial counterparties or other such non-financial counterparties in derivatives pertaining to a class of derivatives that has been declared subject to the trading obligation in accordance with the procedure set out in Article 32 of this Regulation and listed in the register referred to in Article 34 of this Regulation only on:';

(19) in Article 32, the following paragraphs 7, 8 and 9 are added:

'7. Where ESMA considers that the suspension of the clearing obligation as referred to in Article 6a of Regulation (EU) No 648/2012 is a material change in the criteria for the trading obligation to take effect, as referred to in paragraph 5 of this Article, ESMA may request the Commission to suspend the trading obligation laid down in Article 28(1) and (2) of this Regulation for the same classes of OTC derivatives that are subject to the request to suspend the clearing obligation.

8. The request referred to in paragraph 7 shall not be made public.

9. After having received the request referred to in paragraph 7, the Commission shall, without undue delay and, on the basis of the reasons and evidence provided by ESMA, do either of the following:

(a) in an implementing act suspend the trading obligation for the classes of OTC derivatives that are subject to the request to suspend the clearing obligation;

(b) reject the requested suspension.

For the purposes of point (b), the Commission shall inform ESMA of the reasons why it rejected the requested suspension. The Commission shall immediately inform the European Parliament and the Council of that rejection and forward them the reasons provided to ESMA. The information provided to the European Parliament and the Council regarding the rejection and the reasons for that rejection shall not be made public.';

(20) the following Article 32a is inserted:

'Article 32a

Stand-alone suspension of the trading obligation

1. At the request of the competent authority of a Member State, the Commission may suspend the derivatives trading obligation with respect to certain investment firms in accordance with the procedure referred to in Article 51 and after having consulted ESMA. The competent authority shall indicate why it considers that the conditions

for a suspension are met. In particular, the competent authority shall demonstrate that an investment firm within its jurisdiction:

(a) regularly receives requests for a quote for the derivatives subject to the derivatives trading obligation;

(b) from a non-EEA counterpart which has no active membership on a EU trading venue that offers trading in the derivative subject to the trading obligation; and

(c) regularly acts as a market maker in the derivative subject to the derivatives trading obligation.

2. When assessing whether to suspend the trading obligation in accordance with paragraph 1, the Commission shall take into account whether such suspension of the trading obligation would have a distortive effect on the clearing obligation laid down in Article 4(1) of Regulation (EU) No 648/2012.

3. The implementing act referred to in paragraph 1 shall be accompanied by the evidence presented by the competent authority requesting the suspension.

4. The implementing act referred to in paragraph 1 shall be communicated to ESMA and shall be published in the ESMA register referred to in Article 34 of this Regulation.

5. The Commission shall regularly review whether the grounds for the suspension of the trading obligation continue to apply.';

(21) Article 35 is amended as follows:

(a) in paragraph 1, first subparagraph, the introductory wording is replaced by the following:

'1. Without prejudice to Article 7 of Regulation (EU) No 648/2012, a CCP shall accept to clear financial instruments on a non-discriminatory and transparent basis, including as regards collateral requirements and fees relating to access, regardless of the trading venue on which a transaction is executed.

The requirement in the first subparagraph shall not apply to exchange-traded derivatives.

The CCP shall in particular ensure that a trading venue has the right to non-discriminatory treatment of contracts traded on that trading venue in terms of:';

(b) paragraph 3 is replaced by the following:

'3. The CCP shall provide a written response to the trading venue either within three months of permitting access, on condition that a relevant competent authority has granted access pursuant to paragraph 4, or within three months of denying access. The CCP may deny a request for access only under the conditions specified in paragraph 6(a). Where a CCP denies access, it shall provide full reasons in its response and inform its competent authority in writing of the decision. Where the trading venue is established in a Member State other than the one of the CCP, the CCP shall also provide such notification and reasoning to the competent authority of that trading venue. The CCP shall provide access within three months of providing a positive response to the access request.';

(22) Article 36 is amended as follows:

(a) in paragraph 1, the first subparagraph is replaced by the following:

‘Without prejudice to Article 8 of Regulation (EU) No 648/2012, a trading venue shall, upon request, provide trade feeds on a non-discriminatory and transparent basis, including as regards fees related to access, to any CCP authorised or recognised by that Regulation that wishes to clear transactions in financial instruments that are concluded on that trading venue. That requirement shall not apply to:

(a) any derivative contract that is already subject to the access obligations under Article 8 of Regulation (EU) No 648/2012;

(b) exchange-traded derivatives.’;

(b) paragraph 3 is replaced by the following:

‘3. The trading venue shall provide a written response to the CCP within three months either permitting access, under the condition that the relevant competent authority has granted access pursuant to paragraph 4, or denying access. The trading venue may deny access only under the conditions specified pursuant to paragraph 6, point (a). When access is denied, the trading venue shall provide full reasons in its written response and forward that written response to its competent authority. Where the CCP is established in a different Member State than the trading venue, the trading venue shall also forward that written response to the competent authority of the CCP. The trading venue shall provide access within three months of providing a positive response to the access request.’;

(c) paragraph 5 is deleted;

(23) in Article 38, paragraph 1 is replaced by the following:

‘1. A trading venue established in a third country may request access to a CCP established in the Union only if the Commission has adopted a decision in accordance with Article 28(4) relating to that third country.

A CCP established in a third country may request access to a trading venue in the Union subject to that CCP being recognised under Article 25 of Regulation (EU) No 648/2012.

CCPs and trading venues established in third countries shall only be permitted to make use of the access rights referred to in Articles 35 and 36 with regard to financial instruments covered by those Articles and provided that the Commission has adopted a decision in accordance with paragraph 3 of this Article, determining that the legal and supervisory framework of the third country is considered to provide for an effective equivalent system for permitting CCPs and trading venues authorised under foreign regimes access to CCPs and trading venues established in that third country.’;

(24) in Article 38g(1), the introductory wording is replaced by the following:

‘Where ESMA finds that a person listed in Article 38b(1), point (a), has not complied with any of the requirements laid down in Article 22a, Article 22b, or Title IVa, it shall take one or more of the following actions:’;

(25) in Article 38h(1), the first subparagraph is replaced by the following:

‘Where ESMA, in accordance with Article 38k(5), finds that a person listed in Article 38b(1), point (a), has intentionally or negligently not complied with any of

the requirements provided for in Article 22a, Article 22b, or in Title IVa, it shall adopt a decision imposing a fine in accordance with paragraph 2 of this Article.';

(26) the following Article 39a is inserted:

'*Article 39a*

Ban on payment for forwarding client orders for execution

Investment firms acting on behalf of clients shall not receive any fee or commission or non-monetary benefits from any third party for forwarding client orders to such third party for their execution.';

(27) Article 50 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. The power to adopt delegated acts as referred to in the following provisions shall be conferred for an indeterminate period from 2 July 2014: Article 1(9), Article 2(2) and (3), 13(2), 15(5), 17(3), Article 19(2) and (3), and Articles 22b(2), 27(4), 27da(3), 27g(7), 27h(4), 31(4), 38k(10), 38n(3), 40(8), 41(8), 42(7), 45(10) and 52(10).';

(b) in paragraph 3, the first sentence is replaced by the following:

'The delegation of power referred to in the following provisions may be revoked at any time by the European Parliament or by the Council: Article 1(9), Article 2(2) and (3), Articles 13(2), 15(5), 17(3), Article 19(2) and (3), and Articles 22b(2), 27(4), 27da(3), 27g(7), 27h(4), 31(4), 38k(10), 38n(3), 40(8), 41(8), 42(7), 45(10) and 52(10).";

(c) in paragraph 5, the first sentence is replaced by the following:

'A delegated act adopted pursuant to Article 1(9), Article 2(2) and (3), Articles 13(2), 15(5), 17(3), Article 19(2) and (3), and Articles 22b(2), 27(4), 27da(3), 27g(7), 27h(4), 31(4), 38k(10), 38n(3), 40(8), 41(8), 42(7), 45(10) and 52(10) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object.";

(28) Article 52 is amended as follows:

(a) paragraphs 11 and 12 are replaced by the following:

'11. Three years after the first authorisation of a consolidated tape, the Commission shall, after having consulted ESMA, submit a report to the European Parliament and to the Council on the following:

(a) the asset classes covered by a consolidated tape;

(b) the timeliness and delivery quality of market data consolidation;

(c) the role of market data consolidation in reducing implementation shortfall;

(d) the number of subscribers to consolidated market data per asset class;

(e) the effect of market data consolidation on remedying information asymmetries between various capital market participants;

(f) the appropriateness and functioning of the participation scheme for market data contributions;

(g) the effects of the consolidated market data on investments in SMEs.

(h) the possibility that the tape facilitates the identification of financial instruments which display features aligned with Regulation [PO please insert reference to the Regulation on European green bonds]

12. If by [*OP insert date 1 year as of entry into force*], no consolidated tape has emerged through the selection procedure organised by ESMA as referred to in Article 27da, the Commission shall review the framework and may accompany that review, where appropriate and after having consulted ESMA, with a legislative proposal setting out how ESMA should provide a consolidated tape.';

(b) paragraph 14 is deleted;

(29) in Article 54, paragraph 2 is deleted.

Article 2
Entry into force and application

This Regulation shall enter into force and apply on the twentieth day following that of its publication in the *Official Journal of the European Union.*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*