

# The next stage in reviewing MiFIR

Public hearing on revised rules following the MiFIR review

**Verena Ross**

Chair

Ladies and Gentlemen, good morning,

I would like to warmly welcome you to our public hearing on the MiFIR review. It is a pleasure to see so many of you joining us online today.

At ESMA, we are committed to ensure regular engagement with our stakeholders, as we believe that cooperation and transparency are critical to our work. This is the reason why we have organised this public hearing on our recent proposals for technical standards, exactly three months after the entry into force of the revised MiFIR.

Before getting down to these – sometimes quite technical – issues, I would like us to take a step back, and to remember the ideas underlying the MiFIR review, and more broadly how it fits into the wider policy agenda towards stronger EU capital markets.

I am sure that the audience of this hearing needs no reminding or convincing on the urgency for making progress in building more effective and attractive capital markets in the EU. This was the title of ESMA's own position paper contributing to this policy debate on the future of the European Capital Markets Union, which we published one month ago.

As you may have read, the paper looks at three dimensions of our capital markets. First, Europe's citizens and investors – those who create the demand for goods and services but also supply the essential capital for investments. We wanted to focus on the need for citizens to have interesting savings and investment opportunities through engagement in capital markets. Second, Europe's companies – they form the backbone of economic growth, but for that they require funding to implement their business ideas. And third, Europe's overarching regulatory and supervisory framework – the rules that govern how we interact, that ensure fairness and provide equal opportunities. Around these three dimensions we have developed 20 recommendations which we believe will help to further strengthen our capital markets.

While I do not want to touch on all 20 of those recommendations, I'd like to highlight some of our key proposals in the third area, which is all about improving the EU's regulatory agility, supervisory consistency, and international competitiveness – and thus directly related to today's topic, the MiFIR review.

In our recommendation 15, labelled "Modernising the EU's regulatory framework for financial services", we call for enhanced clarity and simplicity of European regulation. As such, we propose that EU legislation should be foremost principles-based with a focus on strategic policy choices while leaving more room for technical choices through amendments to existing Level

2 and 3 rules and guidance – as they are developed by bodies such as ESMA. This will significantly reduce the time to update the regulatory framework, making it overall more agile and able to adapt. An illustration is the obligation to make data available on reasonable commercial basis, where the principles in MiFIR are supplemented with more specific elements for technical implementation, be it the existing level 3 guidance or the forthcoming level 2 provisions.

We also recommend the use of regulations rather than directives to implement political choices, and we welcome that some provisions previously in the Directive (MIFID II) were moved to the Regulation (MiFIR), for example the definition of a multilateral system. Having such common definitions across the EU, without differences creeping in through national transposition, helps to support consistent implementation and supervision, creating a level playing field.

In our recommendation 16, labelled “Reviewing financial regulation with a more holistic vision” we call for streamlining the European rules for the financial markets. Without losing sight of issues and vulnerabilities to address, we must aim for a simpler single rulebook, to the extent allowed by the Level 1 texts.

In this regard, the MiFIR review introduces welcome changes. For example, the shift from the current double volume cap to a single volume cap also empowers trading venues to apply suspensions directly, without the interim step of NCA approval. Similarly, applying the MiFIR review reduces the overall number of the pre-trade transparency waivers, notably in the non-equity space, in turn simplifying the trading landscape.

This recommendation also entails an overall reduction of reporting burdens for entities operating in Europe. This is for example at the core of the revised approach to post-trade transparency, with set thresholds replacing annual calculations. This is a significant simplification for market participants and ESMA alike.

As third example, I’d like to draw your attention to our recommendation 19 on “Evaluating direct supervision at EU level”. With the most recent MiFIR review, ESMA has been not only entrusted with the authorisation and the supervision of Consolidated Tape Providers, but also with their selection – a particularly challenging new mandate.

Data Reporting Services Providers and Consolidated Tape Providers are but two examples within our various different direct supervisory mandates. We have adapted well to each of these mandates, creating appropriate approaches to supervision, and have proven that it does not need to be a one-size-fit all supervisory approach. Therefore, our heterogeneous supervisory experiences illustrate how different supervisory approaches at ESMA level can work and can be adapted to the specificities of different capital market sectors.

I would like to turn now to the specific objectives of the MiFIR review. Overall, the review aims at adapting the existing framework to current market realities, to simplify applicable rules, and to pave the ground for the further integration of European capital markets, oftentimes in line with ESMA’s various opinions and recommendations over the last years.

The review touches upon some key components of the European Commission's 2020 CMU action plan, focussing on three priority areas which are: first, to improve transparency and availability of market data; second, to improve the level-playing field between execution venues; and third, to ensure that EU market infrastructures can remain competitive at international level.

One of its primary objectives is the creation of consolidated tapes in the EU. At the current juncture, trading and trading data is fragmented across the continent. Investors would need to approach each marketplace separately and consolidate this information. Only then can they obtain a comprehensive picture of the trading landscape and be able to evaluate market quality or compare the prices that are asked and offered at different exchanges. By contrast with the MiFIR review proposals, investors are expected to gain easier access to market data at a lower cost through the establishment of the EU consolidated tapes.

Indeed, by collecting and centrally aggregating individual price feeds and making the resulting tape available on a reasonable commercial basis, consolidated tapes will enable investors to make better informed investment decisions. ESMA will play a key role in the establishment of three consolidated tapes, for bonds, for equity instruments (shares and ETFs), and for OTC derivatives. We are preparing for this role, meticulously, very conscious of the fact that our decisions in this space may have a significant impact on EU capital markets.

The transition towards the revised MiFIR rules is another area where our voice as ESMA is crucial. We acknowledge this transition is challenging. Most of us will remember the implementation of MiFID II and MiFIR in January 2018, which required significant efforts. This time around, we can expect the process to be smoother, as the most recent review is of lesser magnitude, and as the existing rules can continue to apply in the interim. We are keen to take a pragmatic approach and make this transition as efficient and predictable as possible.

We know that the broad-brush approach of the transitional regime provided for in Article 54(3) of MiFIR needs to be completed with more details on its practical application. This is the reason why we have worked, in close collaboration with the Commission, to issue public guidance at the end of March 2024. We are conscious that there are still many questions out there. You can rest assured that more clarity is due to come from ESMA. In the coming weeks, we will use our Interactive Single Rulebook to provide more granular guidance. In particular, we will indicate, for each article amended by the MiFIR review, whether the amended article will only apply at a later date and clarify the application of related delegated acts during the transition period.

We have also launched an in-depth analysis of our existing Level 3 measures and are aiming to publish updated guidance in the coming months. These tools will evolve over time, as existing technical standards are revised, and new Level 2 mandates are fulfilled. I am confident that NCAs, who we are working with closely in this endeavour, will in their supervisory activities be mindful of the evolutive nature of the MiFIR rulebook during this interim phase. We encourage all of you to reach out to ESMA if you encounter issues in applying the new rules. We are committed to continue to assess these requests and will provide explanation and clarity where needed.

One month ago, we published the first two MIFIR review consultation packages at the core of today's public hearing, alongside a more targeted paper on amendments for commodity derivatives from the MiFID II review. We are aiming to adopt the Final Reports linked to these consultations by the end of 2024.

July 2024 will see a second wave of consultation papers, covering equity transparency, flags for non-equity transparency, notifications for Systematic Internalisers, and circuit breakers, as well as a separate paper on order execution policies. We will also consult on transaction reporting and order book record-keeping in October. The Final Reports for these consultations are expected in March 2025, after assessing the responses you will have provided during the forthcoming consultation periods.

Last but not least, towards the end of this year or the beginning of 2025 we will propose a second review of RTS 2 with a specific focus on transparency for derivatives and package orders, amongst others. We will be aiming for Final Reports in September 2025.

I am sure, most of you are already aware of this timeline, available on our website<sup>1</sup>, but I still wanted to outline it orally, to highlight our collective endeavours in the coming 18 months.

Speaking about collective efforts and now turning to the topics for today. I am glad to be joined by Rodrigo Buenaventura, who is chairing our Markets Standing Committee and by Armi Taipale, the Chair of ESMA's Data Standing Committee.

They will briefly outline the main changes arising from the MiFIR review before experts from ESMA will present our concrete proposals. We are looking forward to an interactive debate and you are encouraged to ask questions, either by raising your hand or in the chat.

The morning session will be devoted to the reform for the transparency for bonds, the proposed new standards on the provision of market data on a reasonable commercial basis, and the revision of the rules on the supply of reference data.

The afternoon session will then focus on the standards related to the Consolidated Tape Providers (CTPs) and other Data Reporting Services Providers, including the assessment criteria for the CTP selection procedures.

Finally, I want to remind you that today's hearing is recorded and will be made available on our website.

With these words, I would like to conclude, and hand over to the MSC Chair who will introduce the morning session. Rodrigo, the floor is yours!

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<sup>1</sup> <https://www.esma.europa.eu/trading/mifid-ii-and-mifir-review>