



EUROPEAN COMMISSION

Brussels, 26.7.2022  
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*Dear President,*

*The Commission would like to thank the Bundesrat for its reasoned Opinion on the 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 trading and prohibiting the receipt of payments for the transmission of client orders {COM(2021) 727 final}.*

*This proposal forms part of a broader package of ambitious measures designed to implement the Capital Markets Union (CMU). The EU markets in financial instruments are highly fragmented. In the absence of a consolidated tape pertaining to these financial instruments it is practically impossible for market participants to obtain a complete and accurate overview of all the liquidity available in the EU. The proposal aims to empower investors, in particular smaller and retail investors, by enabling them to access market data necessary to invest in financial instruments.*

*The Commission welcomes the Bundesrat's broad support for the aims of the proposal but notes its doubts relating to various topics. The Commission is pleased to have this opportunity to provide a number of clarifications regarding its proposal and trusts that these will allay the Bundesrat's concerns about:*

***the expectation that the creation of the consolidated tape will significantly limit market data revenue of trading venue;***

*On the basis of the market input gathered in the context of the impact assessment, the Commission services have assessed that the vast majority of data revenue for trading venues stems from the sale of low-latency data, in particular low latency pre-trade data. According to the Commission assessment, this revenue source should not be endangered by the consolidated tape since the latter will not offer low latency data. The proposal furthermore includes a revenue sharing mechanism which will allow trading venues to participate in the revenues of the consolidated tape provider and hence be refunded for potential data revenue losses. It is the Commission's view that therefore the consolidated tape would not significantly limit market data revenue of trading venues.*

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***the time at which the data needs to be made available to and by the consolidated tape provider;***

*The Commission extensively researched the use cases connected to various versions of the consolidated tape and concluded that the most beneficial consolidated tape for shares would be a close to real time tape with, at a minimum, the first layer of the order book as well as transaction data. The result of the impact assessments showed that the benefits and commercial viability of a delayed data consolidated tape are expected to be limited. The Commission therefore opted for a close to real-time transaction tape in the first iteration, with the possibility for pre-trade data to be included in the second iteration, upon advice from ESMA. This proposal reflects, in the view of the Commission, the various of stakeholders while still ensuring a sufficient level of usability and commercial viability of the consolidated tape.*

***the ban on payment for order flow***

*As rightly emphasised in the Opinion issued by the Bundesrat, financial intermediaries should strive to achieve the best way of executing their client orders. This means they should select the trading venue or executing broker through which they can best achieve this. The practice by which intermediaries forward their client orders to a fixed counterparty on a venue in return for compensation does not allow for a proper assessment of whether best execution was achieved. The Commission welcomes the increase of (retail) participation which can be attributed to so called 'neo-brokers'. In the Commission's view, however, such innovations should not be at the expenses of best execution for the clients and be made dependent on the payment for order flow. Of course the Commission remains open towards any research that shows that PFOF does not create issues in terms of conflict of interest and best-execution or market structure.*

*The Bundesrat's Opinion has been made available to the Commission's representatives in the ongoing negotiations with the co-legislators and will inform these discussions.*

*Discussions between the Commission and the co-legislators concerning the proposal are now underway and the Commission remains hopeful that an agreement will be reached in the near future.*

*The Commission hopes that the clarifications provided in this reply address the issues raised by the Bundesrat and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*

*Mairead McGuinness  
Member of the Commission*

## Annex

*The Commission has carefully considered each of the issues raised by the Bundesrat in its Opinion and is pleased to offer the following clarifications.*

### ***On the concern about administrative burdens for trading venues and legal uncertainty as a consequence of the empowerments for the Commission with regard to data quality***

*The Commission has indeed found that data quality issues are among the main reasons for the lack of emergence of a consolidated tape in various financial instruments. The Commission has identified that there is a need for separate data standards for the (input to and output by) the consolidated tape provider to accommodate for maximum usability of the consolidated data. These standards should nevertheless be as close to the existing data standards as possible. Especially for trading venues the differences should be minimal. Once the consolidated tape is operational the contributors to and users of the consolidated tape may run into unexpected data quality issues. Although the aim is not to change the data standards regularly, it is important that significant issues can be addressed without undue delay. This requires that the expert group at regular intervals has the opportunity to signal shortcomings.*

### ***On the question whether the threshold to the reference price waiver and the minimum quotation size can achieve better price formation for small investors***

*In order to achieve a more level playing field between various execution venues the Commission included measures to increase pre-trade transparency of small orders related to equity instruments. Limitation of pre-trade transparency should be allowed as a measure to provide protection against price impact, which should typically occur at large sizes, above the average trade size. This should lead to more transparency and better price formation pertaining to orders of small investors.*

### ***On the question whether the single volume cap should apply to all types of execution venues and not just to trading venues***

*The single volume cap applies to trading venues that apply the reference price waiver or the negotiated trade waiver. The Commission has not assessed if this cap should also apply to investment banks when they internalise transactions in equity instruments. Instead the scope of the single volume cap has remained the same as the current scope of the double volume cap.*

### ***On the concerns related to the limited scope of the derivatives consolidated tape***

*The transparency regime for derivatives traded over the counter relies on the concept of 'trading on a trading venue'. This concept has proven to be ineffective in terms of transparency. With the aim of having a clear scope for the consolidated tape that includes the most significant and most standardized derivatives the Commission opted to include all derivatives subject to the clearing obligation. Exchange traded derivatives have been excluded because they are already transparent and traded on a single venue, which limits the need for consolidation.*