

EDMA Position Paper: Impact of MiFIR Article 26(5)

The Electronic Debt Markets Association (EDMA) represents the common interests of companies whose primary business is the operation of regulated electronic fixed income trading venues (multilateral trading facilities and regulated markets) in Europe. EDMA seeks to foster and promote liquid, transparent, safe and fair markets and act as the voice and a source of consultation between the members in their roles as operators of such venues.

Background

Given the European Commission's stated priority of enabling European competitiveness via simpler, lighter, and faster EU regulation, EDMA appreciates the opportunity to provide input on the challenges and implications arising from the transaction reporting obligations under Article 26(5) of MiFIR (Regulation (EU) No 600/2014). We wish to raise awareness regarding problems in the regulatory treatment of transactions executed on a trading venue¹ (TV) compared to transactions executed outside a trading venue. Under Article 26(5) of MiFIR, TVs must submit transaction reports in relation to the transactions in financial instruments traded on their platforms which are executed through their systems by firms that are not subject to MiFIR. The TV must populate all the details that the firm would have to report if it were subject to MiFIR. The venue must collate not only market-side information, such as the economics of the trade and the identity of the non-MiFIR and/or third country firm involved, but also client-side information, such as fields containing information about the underlying client or clients of that non-MiFIR and/or third country firm. The collection and reporting of these underlying client data requires significant ongoing investment in operational infrastructure by TVs; a cost that is ultimately borne by market participants.

There is a regulatory asymmetry when comparing trading on a trading venue ("on-venue") to trading outside of a trading venue ("off-venue"). When trading off-venue, non-MiFIR and/or third country firms have no obligation to transaction report their side of a given trade. Their counterparts who are subject to MiFIR must only report their side of the transaction (market-side information). However, when trading on-venue, the TV must collect transaction reporting data from the non-MiFIR and/or third country firm in order to fulfil their Article 26(5) obligation. The non-MiFIR and/or third country firm consequently faces a greater burden when

¹ As defined in Article 4(1)(24) of Directive 2014/65/EU: *'trading venue' means a regulated market, an MTF or an OTF;*

Article 4(1)(21) of Directive 2014/65/EU: *'regulated market' means a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with Title III of this Directive;*

Article 4(1)(22) of Directive 2014/65/EU: *'multilateral trading facility' or 'MTF' means a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with Title II of this Directive;*

Article 4(1)(23) of Directive 2014/65/EU: *'organised trading facility' or 'OTF' means a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with Title II of this Directive;*

trading on-venue. This contradicts one of the stated aims of MiFID II/R by acting as a discouragement to on-venue trading.

The Opportunity for EU markets

In addition to putting TVs at a competitive disadvantage to off-venue trading, we believe that the substantial disruptions non-MiFIR and/or third country firms face to their existing workflows when trading on EU regulated TVs acts as a deterrent to participating in EU capital markets. TVs oblige their non-MiFIR and/or third country firms to supply them with data for which they would otherwise have no purpose. Non-MiFIR and/or third country firms must provide this information when trading on TVs, but not when trading off-venue. This creates a barrier for non-MiFIR and/or third country firms to access liquidity in European markets most efficiently, by engaging European liquidity providers in competition via TVs. We believe that this reduces the competitiveness of EU markets by acting as a deterrent for non-MiFIR and/or third country firms investing in EU markets or participating on EU TVs.

Proposed solution

To address the challenges described above, EDMA proposes that the transaction reporting requirements under Article 26(5) of MiFIR be limited to the market-side of transactions only. Namely, the information related to the transaction itself and direct participant of the TV, rather than the client-side allocations information on the clients of the TV participant.

We believe that this approach would 1) level the playing field by aligning the reporting requirements for TVs with those of off-venue trading, 2) improve competitiveness by reducing barriers to entry for non-MiFIR and/or third country firms and 3) preserve regulatory oversight by ensuring that Competent Authorities continue to receive critical transaction details.

EDMA believes that amending reporting requirements for trading venues as set out above would, beyond fairness and levelling the playing field within the Union, remove barriers to entry for third-country firms, thus enabling EU-regulated venues to attract greater participation, enhancing liquidity and market depth in fixed income markets.

We therefore call upon ESMA and the European Commission to adjust the requirements stemming from Article 26(5) of MiFIR, either via level two or three changes, to amend the reporting requirements on trading venues. We note that this will facilitate the goals of the European Union as set out in the Savings and Investments Union.