

ICMA Feedback for Commission - proposed amended text – March 2022

1. Pre-trade transparency

a. Context

ICMA would like to highlight that market participants all agree MiFIR pre-trade transparency is not desired or used in bond market trading. ICMA considers the European Commission and ESMA should focus instead on pre-trade pricing distribution definitions¹ and best practice, as illustrated in ICMA’s published [industry guide to definitions and best practice bond pricing distribution](#), and also on posttrade transparency. ICMA notes, transparency is not a goal in and of itself. The goal is a wellfunctioning, competitive bond market.

In addition, ICMA would also like to highlight that to date the European Commission has not carried out an in-depth cost/benefit analysis for MiFIR pre-trade transparency. ICMA considers if the European Commission had carried out this analysis, the European Commission would have observed there are no “benefits” to bond markets for MiFIR pre-trade transparency costs and industry effort.

Recently, it was noted in the UK HMT ‘Wholesale Market Review’: “In 2018 the MiFID pre- and posttrade transparency regime was extended to cover bonds, ETCs, ETNs, structured finance products,

¹ **Bond pricing distribution standardised definitions: Cash bonds – corporates & sovereigns**

	Run	Market-run	Axe	Streaming	Executable
Direction	Bid or offer/ Optional to publish/ Indicative (but should not change)	Bid <u>and</u> offer	Bid or offer	Bid or offer	Bid or offer
Price/Quote	Optional to publish/Indicative state	Optional to publish/Indicative state (but should show price)	Optional to publish/Indicative state	Mandatory to publish/Indicative state	Mandatory to publish/Firm state
Size	Optional to publish/Indicative state	Optional to publish/Asymmetric or Identical/Indicative state	Mandatory to publish/Indicative state (but ideally firm)	Mandatory to publish/Firm state	Mandatory to publish/Firm state

Trade interest	Non-committal	Non-committal	Committed	Committed	Committed
Good until	N/A	N/A	Cancelled	Cancelled	Cancelled

emission allowances and derivatives. It was also expanded to cover trading conducted on newly defined OTFs, which previously took place OTC.”

They further observed: “Although the MiFID II transparency regime intended to accommodate the specific characteristics of equity and non-equity markets, it does not go far enough in accounting for the fundamental differences between and within the two categories of markets. For example, it does not acknowledge that the nature and depth of liquidity is fundamentally different for fixed income [and derivative] instruments compared with equities. This has resulted in a number of bespoke illiquid instruments falling within scope of the regime, while some liquid and standardised contracts are not subject to any transparency requirements.

The current [MiFIR] framework is also based on an inaccurate assumption that transparency, especially pre-trade, plays the same role in fixed income [and derivatives] markets as it does in equities. Unlike equity markets where transactions are typically executed on electronic order books, most fixed income [and derivatives] transactions occur through voice, request-for-quote (RFQ) systems, or bilateral negotiation [with the notable exceptions of some exchange-traded and OTC derivatives].”

Looking at pre-trade transparency in more detail, HMT stated: “MiFID II established a very broad pre-trade regime for fixed income [and derivatives] markets. It requires any bid and offer prices that are broadcast through a venue’s systems to be disclosed to the public. However, a complex system of waivers – which are supported by transparency calculations – offer exemptions from pre-trade transparency requirements if: there is no liquid market for the instrument in question; if an order is large in size (with extra conditions on the trading protocol and partial transparency requirements for smaller sizes specific to the instrument); if the instrument is held in an order management facility; or if it is part of a package order or an exchange for physical (EFP) transaction.”

However, HMT further observed: “The available evidence from the operation of the MiFID II transparency regime for bonds [and derivatives] is that the application of pre-trade transparency to such markets has not worked effectively. This is because, order books (which list bids and offers for all instruments), are not widely used by fixed income [and derivatives] traders. Instead, liquidity is usually provided on a request for quote basis, or instruments are traded bilaterally. The reason for this is because a lot of fixed income [and derivative] instruments are bespoke, illiquid, and complex.

To ensure that the pre-trade transparency regime is correctly calibrated, HMT is proposing to “limit the scope of the regime to systems such as electronic order books and periodic auctions, that currently operate under full transparency. This would mean that bespoke trades that are traded bilaterally, where pre-transparency does not play an important role, are exempt from the regime. However, more liquid instruments that tend to be traded on an order book would remain in scope. More broadly, this approach would give investors some degree of optionality as to whether they opt for pre-trade transparency and thus execute on an order book or prefer to utilise an RFQ method and limit pre-trade transparency. This would sit alongside improvements to post trade transparency that would allow for price formation and competition.”

This UK view is not a pre-trade transparency 'silo' view. It is in keeping with other jurisdictions such as the US. ICMA's Transparency Taskforce agrees with HMT UK view of MiFIR pre-trade transparency.

ICMA Amended text

(5) MiFIR Article 8 is amended as follows:

Paragraphs 1 – 4 are deleted

a) MiFIR Article 9 is amended as follows:

Paragraphs 1 – 6 are deleted

b) MiFIR Article 18 is amended as follows:

Paragraphs 1 – 11 are deleted

2. Post-trade transparency

a. Context

Getting a post-trade transparency regime right is crucial to well-functioning markets. However, many ICMA members have observed how strongly MiFIR is equity-biased in language, workflow understanding and terminology. Therefore, in financial markets, if the EU is going to propose deferral frameworks, it supports the EU if policymakers understand the asset class they are 'framing'. Specifically, there is no asset class referred to as 'non-equities'. It is also not defined in Article 2, definitions, under MiFIR. It seems that 'non-equities' refers to the individual asset classes of bonds, structured finance products, emission allowances and derivatives. These asset classes are radically different to each other in how they trade. In Article 11, these individual asset classes are co-mingled. This makes it difficult to set out how an individual asset class deferral regime should be framed. ICMA recommends that level 1 sets out post-trade transparency regime frameworks based on individual asset classes and their respective needs, even if the more detailed deferral/threshold work is carried out in level 2. The result will be level 1 subsections (bonds, derivatives, structured finance products, emission allowances) under Article 11 that will cover the European Commission proposed deferral framework per individual asset class. This way, for Council and Parliament members, it will be easier to understand Commission deferral proposals and to address any changes that may be required. The following post-trade transparency amendment suggestions are solely related to cash bonds.

Post-trade transparency promotes price competition and facilitates accurate assessment of current market and liquidity dynamics, increasing overall investor confidence, particularly during time of market volatility.

Balancing simplicity and complexity in a post-trade transparency regime is key to a workable transparency regime. Overcomplicating the transparency regime is unproductive while the same is true for oversimplifying the transparency regime. It is important to keep in mind bond markets are not black and white they are more nuanced, when determining any future post-trade transparency regime.

ICMA believes for debt instruments, there should be three buckets of transparency: small, medium and large. The small bucket should provide real-time, which is considered to be as soon as technically possible and within 15 minutes (to allow for bond market participants who may not have access to institutional toolkits to report), data and be based on one variable of 'size'. Whereas the medium and large credit buckets should incorporate two extra variables of amount outstanding and HY/IG instrument classification.

The medium and large variables, which are additional to size, are required in order to have a granular enough credit regime to support both the orderly functioning of liquid secondary bond markets and increased transparency. The principle underlying ICMA's position is to try to provide as much transparency into the credit market as possible, in order to aid price formation for participants and potential participants who do not currently have sufficient information. This protransparency position is tempered by the trade-off between transparency and liquidity provision where liquidity is provided by risk taking intermediaries, as opposed to *information-only intermediaries*. The reason for ICMA's multi-dimensional (rating/amount outstanding/trade size) approach versus the single dimension (trade size) approach, is to try to isolate the activities (instruments and trades) that are most at risk of diminished liquidity and limit transparency only in relation to those trades, while providing as much transparency as possible to activity that is most likely to benefit from transparency and least likely for liquidity to be compromised.

The 'small, medium, and large transparency buckets with three variables' proposed amendments refer mostly to corporate bond instruments. However, ICMA considers that since corporate bonds represent some of the least liquid sub-classes of bonds, ICMA believes that the corporate bond proposed framework, minus credit HY/IG instrument classification, could be applied to sovereigns. Although further analysis is required before any final calibrations could be suggested for sovereign bonds.

Lastly, market participants strongly believe a bond consolidated tape should have both corporate bonds and sovereign bonds in the bond consolidated tape and not just corporate bonds, which appears to be the case in looking at the European Commission's proposed amendments. For sovereign bonds to populate a bond consolidated tape, competent authorities should not allow market operators and investment firms the ability to publish several sovereign bond transactions in aggregated form. Instead, sovereign bond transactions can defer the price and volume for individual transactions for an extended period of deferral, but not an indefinite period of time. Aggregation of sovereign bond trades does not facilitate a bond consolidated tape that can provide market insight and improved transparency for end-investors, institutional or retail, who want to trade sovereign bonds. A consolidated tape cannot 'consolidate' already 'consolidated' data.

Amended text

(6) EU Commission amended Article 11 is further amended as follows:

(a) Paragraph 1 is amended to the following:

Bonds

- i) Paragraph 1 is replaced by the following

Market operators and investment firms operating a trading venue shall defer the publication of details of **bond** transactions based on the liquidity and size of the transaction, based on the deferral regime as set out in paragraph 4, for the following categories:

- a) Category 1 – liquid and illiquid instruments with small (retail level) trade size threshold
- b) Category 2 – liquid instruments with a medium trade size threshold
- c) Category 3 – illiquid instruments with a medium trade size threshold
- d) Category 4 - liquid instruments with a large trade size threshold
- e) Category 5 - illiquid instruments with a large trade size threshold
- f) Category 6 – liquid and illiquid instruments with very large trade size threshold

(b) Paragraph 3 is replaced by the following:

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) for a defined period of time, to allow the omission of the publication of the price and volume for an individual transaction for an extended period of deferral. When the omission extended time period lapses, all details of the transactions on an individual basis shall be published.
- (b) For a defined period of time, to publish in an aggregated form several transactions. When the aggregated time period lapses, all details of the transactions on an individual basis shall be published.
- (c) Paragraph 3 b is deleted

(c) Paragraph 4 is amended as follows:

Market operators and investment firms operating a trading venue shall defer the publication, as referred to in paragraph 1, of the price and volume of the transactions for any combination of the following durations

1. 15 minutes
2. End of day
3. 2 weeks
4. 4 weeks

The duration of deferral will be based on the liquidity and size of the transaction and will be defined by ESMA as per paragraph 4.

When developing the draft technical standards, ESMA shall allow market operators and investment firms operating a trading venue to publish an extended time period of deferral referred to in paragraph i (b) above. When the deferral time period lapses, the outstanding details of the transaction and all the details of the transaction on an individual basis shall be published.

ESMA will update RTS 2, MiFIR Article 10 and 21 accordingly to come into line with paragraph i (b).

When developing the draft technical standards, ESMA shall also allow non-institutional market participants, who may not have access to institutional toolkits, extra time to publish, as stated in paragraph i (c). In effect, the publishing will be as soon as practicable but no later than within 15 minutes of time of execution.

- (d) The criteria to be applied when determining the size or type of transaction for which a deferred publication of a transaction for certain financial instruments, depending on their liquidity, is allowed under paragraph 3.

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

For the purposes of the first subparagraph, point (d), ESMA shall specify the categories' thresholds and which deferral period for price and volume shall apply across the Union by using the following criteria:

- (a) Liquidity determination based on amount outstanding**
- (b) The size of the transaction, in particular transactions in illiquid markets or transactions that are large in scale;**
- (c) For corporate bonds, the classification of the bond as investment grade or high yield.**

ESMA shall review the regulatory technical standards [implementing technical standards] in conjunction with the expert stakeholder group under article 22(b) and amend the standards to take into account substantial changes in calibration of categories under the first subparagraph point (d) and second subparagraph or this paragraph.

3. Consolidated tape

a. Context

Greater transparency in OTC bond markets and other “non-equity” asset classes is one of the key objectives of MiFID II and MiFIR. However, in bond markets, MiFID II/R did not fully achieve its objective of creating greater transparency. A key reason for this is held to be the lack of a central database, which aggregates the various post-trade data sources into a single “golden source” view, also referred to as a “consolidated tape”. Instead, post-trade data is fragmented across the different APAs with inconsistent presentation formats and differing modes of machine readability. Insufficient data quality poses yet a further challenge.

The goal of the bond CT, as perceived by ICMA members, is to improve transparency, assist decisionmaking and provide market insights to end-investors, large or small, retail or institutional. Adoption of the appropriate structure will benefit the whole market, by providing a centralised, high quality, affordable, trustworthy data source, offering a comprehensive market view. This will bring immediate benefits to the professional bond market and the retail sector more widely. The resulting consolidated tape will become the ‘vehicle’ for all bond market transparency.

In order to determine the appropriate thresholds and deferrals for transparency in bond markets, it will be necessary to analyse the operational effectiveness of bond markets. This is particularly nuanced in the case of bond markets, as they are primarily a risk-based market.

Therefore, to properly analyse bond market functioning on an ongoing basis, one must analyse both market data quality and the efficiency of balance sheet provision in the bond market. Together, these two elements will determine what thresholds and deferrals should be regulated in order to accurately reflect current bond market functioning as well as the information useful for market participants.

Well rounded analysis of bond markets should be quantitative and data-led and qualitative and expert-based. As such ICMA supports the creation of a Commission expert industry stakeholder group which will comprise senior market data experts as well as senior trading specialist experts. These experts will rotate, as required, but both will contribute to a semi-annual report that will aim to recommend any necessary modifications to the current standards, transmission formats and reporting requirements, as well as recommend any increases, decreases or holds to bond market post-trade transparency thresholds. These expert stakeholder recommendations will be published ongoing and on a 6-month basis, based on real market experiences and backed up with quantitative and qualitative evidence. Moreover, these stakeholder recommendations should be considered ‘actionable’.

The senior trading expert specialists could also in times of crisis (e.g. Covid) recommend necessary changes to post-trade transparency thresholds. Any emergency recommendation must be published as well.

ICMA considers the European Commission should investigate legal measures to establish 6-month repetitive delegated acts to allow the European Commission to set up an expert industry stakeholder group as described below, amending Articles 22a and Article 22b and also associated RTS and Articles as follows:

1. Provision of market data to the CTP
Market data contributors shall, with regard to bonds that are traded on a trading venue, provide the CTP with all the market data, amending Article 22 (a), Article 11 and related RTS as required, for the CTP to be operational.
 - a. 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. The Commission shall set up an expert industry stakeholder group [3 months as of entry into force, amending Article 22 (b), Article 11 and related RTS as required]:
 - a. consisting of buy-side and sell-side senior trading specialists to meet on a six-month basis to review and look back at the transparency situation from the previous sixmonths and make recommendations for the next six-months. If the market is working well with current thresholds and deferrals and the trading specialists agree, on a majority basis, that there would not be any undue risk to increasing transparency, then thresholds and deferrals could be changed to increase transparency. However, if there are found to be negative market liquidity impacts, perhaps from reduced sell-sides' balance sheet risk provision, then thresholds could be modified to provide less transparency. This trading specialist senior expert sector of the stakeholder group shall provide advice in the form of 'increase', 'decrease' or 'hold' recommendations on a six-month basis. That advice shall be made public.
 - i. The buy-side and sell-side senior trading specialists should include a balance of natural transparency preferences, some wanting more and some wanting less.
 - b. consisting of trading venue, data provider, buy-side and sell-side senior market data specialists to look back at the last six-months to provide advice on the quality and the substance of market data, the common interpretation of market data and the quality of transmission protocol referred to in Article 22a (1). This market data expert sector of the stakeholder group shall provide advice on a six-month basis. That advice shall be made public.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 50 to specify
 - a. every six-months, the necessary changes to the current transparency thresholds and deferrals based on recommendations from the trading based expert stakeholder group.
 - b. every six-months, the quality and the substance of the market data and the quality of the transmission protocol.

Those delegated acts shall specify all of the following:

- a. 'Increase', 'decrease', or 'hold' recommendations regarding bond transparency regime thresholds and deferrals.

- b. 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;
- c. What constitutes core market data referred to in Article 2 (1) (36bb) 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 stakeholder 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 also take into account the reporting requirements laid down in Articles 3, 6, 8, 10, 14, 18, 20, 21, and 27g.

Article 2 – Definitions

1 (36b) – Core Market Data

a. Context

ICMA agrees that a ‘market data contributor’ will contribute post-trade data to the consolidated tape and that as noted in (34a) that the market data contributor can mean a trading venue, an APA, a systematic internaliser or an investment firm who is self-reporting to the consolidated tape provider.

However, ICMA notes that while trading venues are identified [via their MIC code](#) in post-trade transparency, investment firms and SIs are not identified for the purposes of bond post-trade reporting. Therefore, the core market data consolidated tape requirements must be amended to exclude investment firms and SIs’ market identifier codes (MIC) from being reported by the CTP, which would result in publicly identifying individual counterparties.

ICMA Amended Text – Article 2 - Definitions

1.36 bb (ii) – Non-equity Core Market Data

1. For the purposes of this Regulation, the following definitions apply:
(36b) core market data means:
 - (b) all of the following data on non-equities:
 - (ii) the market identifier code identifying the regulated market, MTF or OTF

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