

## **EDMA Position Paper** **Introduction of a Consolidated Tape for Bonds in Europe**

EDMA is keen to contribute to ongoing discussions regarding evaluation, development and provision of a bond consolidated tape (“CT”) in Europe. In that spirit, we believe there remain critical issues which require further collaboration and consideration.

### **(1) There should be a single, separate bond post-trade Consolidated Tape Provider (“CTP”) with a clear scope.**

EDMA is pleased that all authorities agree that, in order to create a unique and unambiguous reference price, a separate consolidated tape for bonds should not be associated with an equity tape or an equity CT provider (“CTP”)<sup>1</sup>, and that multiple non-equity CTPs specialising in subsets of the bond asset class would be counterproductive to the concept of CT provision. A single bond CTP will be able to reach the proposed 80% threshold<sup>2</sup> if properly governed and if revenue sharing is transparent and equitable. To achieve the above goal, we believe two scoping questions should be further clarified:

#### **a) Definition of bond instruments**

EDMA concurs that the correct definition of bonds should mirror the ToTV universe under MiFID/MiFIR definitions except for ETNs and ETCs. For the avoidance of doubt, sovereign bonds would be included. EDMA also believes the introduction of new fields and flags to help launch the CT should be kept to an absolute minimum.

#### **b) Timeline of implementation**

EDMA believes that changes to the transparency regime should be agreed and implemented well before the CT is launched to ensure the CT is inherently viable and therefore a practical commercial and success. This is also in line with ESMA’s preparation agenda<sup>3</sup>.

### **(2) Deferrals must continue to be applied by Trading Venues (“TVs”) and not by the Consolidated Tape Providers (“CTPs”)**

In accordance with the latest ECON report released by the European Parliament, the ECON report introduces Article 22a(5) requires “[e]ach CTP shall apply the deferrals as laid down in Articles 7, 11, 20 and 21 to the market data to be submitted to the CTP, and disseminate them in accordance with Articles 6, 10, 20 and 21”<sup>4</sup>. It is equally important to highlight that Article 27h(e) introduced in the European Commission’s proposal which requires that CTPs “ensure that the publication of core market data complies with the applicable waivers and deferrals”<sup>5</sup> is deleted by the ECON report with the following assertion: “[t]he responsibility to apply waivers

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<sup>1</sup> P.7, Rogge, E. The MiFIR Review and a European Consolidated Tape: the next step towards a Capital Markets Union. ERA Forum (2023), available at: <https://doi.org/10.1007/s12027-023-00743-y>

<sup>2</sup> Article 15a(2) of Commission Delegated Regulation (EU) 2017/571.

<sup>3</sup> *It was therefore decided to conduct the review RTS 1 and RTS 2 in two steps and to (i) publish a first series of proposed amendments to address issues that have received broad support from stakeholder and/or are considered important in the context of establishing a consolidated tape provider (CTP)*. See further in ESMA: Final Report on the review of RTS 2 (non-equity transparency).

<sup>4</sup> A9-0040/2023, available at: [https://www.europarl.europa.eu/doceo/document/A-9-2023-0040\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2023-0040_EN.html)

<sup>5</sup> 2021/0385(COD), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0727>

*and deferrals should not be given to the CTP, but remain with trading venues, APAs and SIs according to the Articles of this Regulation*.<sup>6</sup>

A CTP's role is to consolidate data, not to originate. By ensuring/applying deferrals, a CTP would effectively be altering inputs to create, rather than distribute, transparency data. Indeed, there are no circumstances where a CTP needs to ensure/apply deferrals (including re-submission and historical amendments) to meet its primary consolidation and redistribution objectives. Creation should therefore stay within the domain expertise of trading venues who crucially have continual contact with trading counterparties to guarantee the integrity of inputs at the point of trade so that correct trade reports are published and delivered to the CTP via relevant market data contributors.

In terms of cost management, if a CTP must correctly ensure/apply deferrals, it follows that a CTP must either (i) audit data sent to it by trading venues or (ii) receive raw data and apply its own application. To do so, a CTP would need to take each trading venue's individual raw feed which in turn requires a CTP to install and maintain systems that are programmed with the specifics of each trading venue's deferral application protocol; validate the exact methodology of deferral application to each trading venue's data feed; and continuously update at precisely the same time when each trading venue makes a modification to its deferrals logic. Clearly this would unnecessarily increase CTP operating costs. The higher costs introduced by a duplication of deferral application will be a barrier to entry for potential CTPs.

Further, CTP quality assurance concerns EDMA members. This unnecessary additional operational complexity exposes the marketplace to operational/technological risk as the additional layer of CTP activity could result in delay and/or the wrong deferral applied to a trading venue's feed; as well as transparency prints mismatch, e.g., the CTP gathers prints fractionally earlier/later/more inconsistently than trading venues do now. This IT risk of data getting out of sync could result in the same trade having two different publication outcomes, leading to market confusion. From the supervisory perspective, this would trigger a new cycle of scrutiny, quality assurance, supervisory time and reconciliation costs between data sets of the CTP versus the data sets of trading venues with whom the primary responsibility (presumably) still remains. Such additional complexities and costs are likely to be wildly disproportionate to the benefit and contrary to the principle of proportionality set in the EU Treaties<sup>7</sup>.

Whilst we focus on deferrals above, EDMA appreciates the removal of waivers in the latest ECON text. Waivers are more complicated than deferrals and the same issues exist regarding the possible transfer or duplication of waiver management in the proposed amendments.

Only "reportable trades" should be published by the CTP, i.e., financial instruments within scope of the transparency regime excluding any exempt trades, for example the activities of European System of Central Bank (ESCB) members. As a further example of unnecessary technological complexity, trades by an ESCB member in performance of monetary, FX and financial stability policy are exempted from transparency. A "raw" file sent to the CTP would

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<sup>6</sup> Amendment 81 made in PE731.644v01-00, available at:  
[https://www.europarl.europa.eu/doceo/document/ECON-PR-731644\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/ECON-PR-731644_EN.pdf)

<sup>7</sup> In accordance with Article 5(4) of the Treaty on European Union, 'the content and form of Union's legislative proposals are required to be proportionate', 2016 OJ C 202/18. See further in Article 5 of Treaty on the Functioning of the European Union - PROTOCOLS - Protocol (No 2) on the application of the principles of subsidiarity and proportionality: 'Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved', 2008 OJ C115/206.

not necessarily delineate the purpose behind a particular trade which could result in unwanted transparency disclosure.

We would like to emphasise that our understanding of the policy intention behind the establishment of the CTPs is to make it easier for market participants to gain access to a consolidated view of trade transparency information at the lowest possible cost<sup>8</sup>, so the role of the CTP is to collect, consolidate and redistribute transparency information<sup>9</sup>. We therefore support the latest agreed MiFIR Review position announced on 30<sup>th</sup> June 2023.<sup>10</sup>

### **(3) Ensuring a revenue participation scheme for a bond consolidated tape**

We are aware that, in both the latest proposals from the European Commission and the ECON text, the redistribution of CTPs' revenues to trading venues does not cover asset classes other than shares<sup>11</sup>. EDMA believes that treating non-equity/fixed income differently to equities, or indeed other major asset classes, for CT revenue-sharing arrangements is fundamentally disproportionate, unjustified and inequitable.

The concept of remuneration for data (either via revenue sharing or direct charges) is applicable and appropriate in bond markets as it is in equity markets.

Whilst the concerns around revenue sharing in equity markets are not fully apparent in bond markets (as the absolute level of data revenue is lower in bonds), possible amendments to MiFID II under consideration contemplate, in part, reducing the delayed nature of bond data. Should this come to pass then the value of bond data and associated revenues will increase and, therefore, trading venues not being compensated directly for the cost of data production via revenue sharing may necessitate that operators' data production costs will be incorporated into other fees, notably execution fees. When considering the cost of data production all costs both direct and indirect must be included. There are substantial costs associated with operating a regulated venue including, but not limited to, regulatory, operational, legal, technology, R&D, marketing and sales. All of these costs of production contribute to ensuring a deep liquid, reliable, low risk marketplace. Absent these investments by venues they would not have data to contribute. EDMA believes that authorities should ensure that trading venues are able to recover costs.

### **(4) Limited use of core market data by the CTP**

Mandatory contribution of data for the creation of a CT must be accompanied by a regime that only allows CTPs to make use of such data for the sole purpose of providing the tape.

The use of core market data by a CTP for the purpose of providing the tape should be strictly limited to the collection, consolidation, and redistribution of such data (and not, by way of example, separately redistributing the data or commercialising it in any other way or for another purpose other than as directly required to create and provide the tape). We note, and would support, the newly introduced definition of a CTP in Article 2(i)(35) of MiFIR.

The contribution of market data does not transfer Intellectual Property in that data and the contribution of market data is provided on an "as-is" basis only, without any representations

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<sup>8</sup> Recital 17 of MiFID II.

<sup>9</sup> Article 2(1)(53) of MiFID II. Similar wording is also in the revision on Article 2(1)(35) of MiFIR in both the latest ECON text.

<sup>10</sup> Specifically, Line 165 and Lines 221 & 226 agreed in the negotiation table dated on 29 June 2023 (available at: [https://www.europarl.europa.eu/RegData/publications/trilogue/2021/0385/NEGO\\_CT\(2021\)0385\(2023-06-29\)\\_XL.pdf](https://www.europarl.europa.eu/RegData/publications/trilogue/2021/0385/NEGO_CT(2021)0385(2023-06-29)_XL.pdf)).

<sup>11</sup> Article 27h(1)(c) of 2021/0385(COD) and A9-0040/2023 specifically.

or warranties as to its authoritativeness, accuracy, completeness, timeliness or fitness for any particular purpose. The contributors accept no liability whatsoever in relation to any loss or damage suffered (directly or indirectly) in relation to the contributed data.

## **(5) Assessment of market data consumers**

Commercial data revenue redistribution models are very common in fixed income and have been in place in some cases for many decades, especially in sovereign bonds. As a result of this historical expertise, EDMA stresses that client types (e.g., professional/ non-professional) and associated use cases for CT market data will significantly impact licensing and applicable charges. This must be considered when implementing commercial terms and licensing as well as the scope of consumption. EDMA believes there should be specific categories of data license for CT consumption, namely:

- a) Internal
  - i) Display usage by CT subscriber
  - ii) Non-display usage by the CT subscriber, e.g., as an input for electronic trading system, APIs, end-of-day mark-to-market
  - iii) Derived data usage for use by the subscriber internally only and not for external commercial purposes (e.g. index creation, ETPs, values for swaps)
- b) External
  - i) Redistribution by the CT subscriber, e.g. data vendors
  - ii) Derived data usage by the CT subscriber, e.g., as an input for indices and composite prices

EDMA believes CTPs must be obligated to put in place an agreement with CT subscribers when distributing CT data. The CTP's license should include:

- a) Data license selected, e.g., internal display, internal non-display, etc.
- b) Audit rights
- c) Delivery frequency (should more than one option be available)

Other necessary subscriber provisions include:

- The CTP should report the number of CT subscribers and usage of CT data to market data contributors
- EDMA believes that TVs should have the right to audit both CTP and CT subscribers
- In case that the CTP or CT subscribers create historic time series for purpose of redistribution this should be chargeable and contribute towards the revenue share
- A requirement for subscriber to maintain internal controls (e.g. the electronic systems (including software and hardware), network configurations, rules, procedures, and policies which, taken together and to the satisfaction of the contributors: (i) identify the ability to access information; (ii) permit access to Information using a defined Unit of Count<sup>12</sup>; (iii) prevent any unauthorised access to information; and (iv) retain auditable records of the forgoing)
- Limitations of liability and indemnity clauses
- Data agreement amendment clauses
- Termination clauses
- Clear IP rights

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<sup>12</sup> : the measure for identifying, recording and controlling use and distribution of Information. We propose "Device" is the default Unit of Count, meaning means any display unit (fixed or portable), piece of software or method, which may access, receive, process or display the information.

## About EDMA

Electronic Debt Markets Association 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. EDMA projects collective views on regulatory matters and market structure topics to governments, policy makers and regulators for the benefit of the electronic fixed income markets. Our 6 members are: BGC Fenics, Bloomberg, BrokerTec, MarketAxess, MTS and Tradeweb. More information at [www.edmae.org](http://www.edmae.org)



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