

# Statement by the Spokesperson on the Venice Commission and OSCE

We have taken good note of the Venice Commission and OSCE Office for Democratic Institutions and Human Rights' Opinion on a draft revision of the electoral legislation of the Republic of Moldova.

As highlighted by the Venice Commission and OSCE Office for Democratic Institutions and Human Rights' Opinion, the choice of an electoral system is a sovereign decision of a State.

However, we share the view of the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights that the proposed changes raise serious concerns in the current political context and that the existing polarisation around this legislative initiative is not indicative of meaningful consultation and a broad consensus among key stakeholders.

The most significant concerns include: risks of influence on candidates and on the design of single-mandate constituencies, excessive thresholds for parliamentary representation in the proportional component and risks of inadequate representation of minorities and women.

In addition, this proposed revision does not address earlier recommendations of the Venice Commission and OSCE Office for Democratic Institutions and Human Rights and concerns pertaining to the regulation and oversight of political party and campaign finance, which would pose further challenges to effective control and supervision, also due to a lack of appropriate resources in the Republic of Moldova.

Against these concerns and considering the lack of consensus on this legislative initiative, we concur with the opinion of the Venice Commission and OSCE Office for Democratic Institutions and Human Rights that *"such a fundamental change, while a sovereign prerogative of the country, is not advisable this time"*.

The proposed revision, if adopted by the Parliament, and its practical implementation, will be assessed in light of the Republic of Moldova's obligations as a member of the Council of Europe. We recall that democracy and the rule of law are also at the core of our Association Agreement.

In this spirit, we expect the authorities of the Republic of Moldova to respect the authority of the Venice Commission and we encourage the Republic of Moldova to pursue and further deepen its close cooperation with the Council of Europe and its bodies, addressing all their concerns and recommendations.

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## ESMA consults on draft standards for trading obligation for derivatives under MiFIR

MiFIR's trading obligation will move over-the-counter (OTC) trading in liquid derivatives onto organised venues thus increasing market transparency and integrity alike. MiFIR, which implements parts of the MiFID II framework, outlines the process for determining which derivatives should be traded on-venue.

ESMA invites stakeholders to provide feedback on ESMA's approach, which was revised following an earlier consultation in 2016. Key elements of today's published consultation include:

- liquidity analysis for interest rate derivatives and Index CDS based on a dataset covering the second half of 2016, incl. the proposal on which derivatives should be made subject to the trading obligation;
- the proposal on how to phase-in the trading obligation for derivatives
- ESMA's approach concerning the instrument register to be maintained by ESMA for the trading obligation; and
- a high-level cost-benefit-analysis.

The consultation is open for comments until 31 July 2017. ESMA will use the feedback received to finalise its draft RTS on the trading obligation. The submission of supportive data would be particularly appreciated. ESMA will send the final draft standards to the European Commission for endorsement.

### **Background**

The trading obligation for derivatives under MiFIR is closely linked to the clearing obligation under the European Market Infrastructure Regulation (EMIR). Once a class of derivatives needs to be centrally cleared under EMIR, ESMA must determine whether these derivatives (or a subset of them) should be traded on-venue, meaning on a regulated market (RM), multilateral trading facility (MTF), organised trading facility (OTF) or an equivalent third-country trading venue.

MiFIR foresees two tests to determine the trading obligation: *The venue test* (a class of derivatives must be admitted to trading or traded on at least one admissible trading venue) and *the liquidity test* (whether a derivative is 'sufficiently liquid' and there is sufficient third-party buying and selling interest).

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# Consultation on trading obligation for derivatives under MiFIR

## **Responding to this paper**

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

1. respond to the question stated;
2. indicate the specific question to which the comment relates;
3. contain a clear rationale; and
4. describe any alternatives ESMA should consider.

ESMA will consider all comments received by **31 July 2017**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Your input – Consultations'.

## **Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

## **Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](#).

## **Who should read this paper**

All interested stakeholders are invited to respond to this consultation paper. In particular, responses are sought from trading venues and from counterparties trading OTC-derivatives that may become subject to the trading obligation.

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