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# CONTRÔLES SPOT

Summary of bond post-trade transparency

AUTORITÉ  
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AMF

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## INTRODUCTION

**In accordance with the supervision priorities of the Autorité des Marchés Financiers (hereinafter "the AMF") for 2021 and in relation with the strategic supervision priorities of the European Union, a series of short thematic "SPOT"<sup>1</sup> inspections relating to post-trade transparency for fixed-income products were carried out during the period from July to December 2021. These inspections were conducted within the framework of the provisions introduced by Regulation (EU) No 600/2014 of 15 May 2014 on markets in financial instruments (hereinafter "MiFIR"), which came into force on 3 January 2018, and the subsequent Delegated Regulations.<sup>2</sup> The investigations covered a sample group of five investment services providers (hereinafter "ISPs") and covered a period ranging from 3 January 2018 to 30 June 2021.**

The main objective of this series of SPOT inspections was to check ISPs' compliance with the requirements relating to post-trade transparency for fixed-income products.<sup>3</sup> Therefore, particular attention was paid to: *i) governance of the publication of transactions subject to such a requirement, ii) the accessibility, exhaustiveness and quality of data, and iii) the compliance control system.* This summary aims to shed light on the procedures for implementing the requirements relating to bond post-trade transparency enacted by the MiFIR provisions. It analyses the arrangements adopted by each ISP at the date of the inspections. It is also noted that the topic of post-trade transparency had been the subject of a "Review" by the AMF in May 2020.<sup>4</sup>

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 (hereinafter "**MiFID II**") and MiFIR have strengthened the post-trade transparency requirements. Whereas the post-trade publication of transactions only concerned shares admitted to trading on a regulated market by virtue of the requirements of Directive 2004/39/EC of 21 April 2004 ("**MiFID I**"), the requirement was extended by MiFID II to numerous financial instruments, including bonds admitted to trading on a European platform. The MiFIR regulation in particular, applicable as from 3 January 2018, established post-trade transparency requirements. These are applicable to trading venues, systematic internalisers and investment firms executing over-the-counter transactions (hereinafter "**OTC**"). The regulation nevertheless provides for waivers or even exemptions from this principle of transparency. For example, MiFIR establishes a possibility for national authorities to authorise deferred publication of transactions on the basis of various criteria such as the transaction type or size. These waivers concern both trading venues such as organised trading facilities (hereinafter "**OTF**") and systematic internalisers, or investment firms executing OTC transactions. Post-trade transparency allows investors to be informed of the level of bond transactions, irrespective of the trading venue.

**Three years after the entry into force of MiFIR, the AMF has detected significant shortcomings in compliance with the required due diligence regarding bond post-trade transparency by the ISPs in the sample group. This document is neither a position nor a recommendation. The practices identified as either "good" or "bad" highlight approaches identified during the inspections that may facilitate, or complicate, compliance with the regulations governing post-trade transparency concerning fixed-income products.**

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<sup>1</sup> Supervision des Pratiques Opérationnelle et Thématique (operational and thematic supervision of practices).

<sup>2</sup> In particular Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 (hereinafter "**RTS 2**").

<sup>3</sup> This series of inspections only concerned fixed-income products, in other words the bonds referred to in Article L.213-5 of the Monetary and Financial Code.

<sup>4</sup> AMF, "Review of bond transparency under MiFID II", May 2020.

## 1. SUMMARY OF THE MAIN FINDINGS OF THE INSPECTIONS

First, concerning governance arrangements, the inspection task force noted that four ISPs in the sample group had personnel specifically dedicated to the transaction publication system. However, the system adopted by these firms for post-trade transparency is decentralised,<sup>5</sup> and they are unable to ensure sufficient continuity of technical competencies in the teams located in France, especially for the compliance function. This is a bad practice. It was also noted that two ISPs use certain tools that are also used in other regulatory reporting systems, allowing the optimisation of human and technical resources, which is a good practice. In addition, four ISPs have IT tools that can be used to perform certain automated checks, materialised by performance indicators designed to supervise statistical data and monitor any incidents, which is also a good practice.

Regarding comitology and procedures relating to post-trade transparency arrangements, the inspection task force noted that four ISPs had committees dedicated to the handling of post-trade transparency issues, making it possible in particular to monitor any incidents; the establishment of these committees is therefore a good practice. At the same time, four ISPs do not mention the deferrals that they use in their procedural corpus, which is a bad practice. Regarding the execution venues and publication procedure, it is noted that two ISPs in the sample group operate an OTF. One of these ISPs uses an Approved Publication Arrangement (hereinafter "**APA**") to publish both the transactions executed over the counter and the transactions executed on its OTF. While no article provides for or prohibits this possibility, it should be remembered that the use of an APA by an ISP operating an OTF does not limit its responsibility with regard to its post-trade transparency requirements. When an ISP operating an OTF uses an APA for the publication of its eligible transactions, the applicable framework is that of a conventional outsourced service. Among the bad practices noted, four ISPs in the sample group do not make available to the public on their website the link permitting access to the publications performed on their behalf by the APA.

As regards the use of deferred publications by the ISPs in the sample group, it was noted that none of them performed an ex-post inspection of the service performed by the APA concerning the calculation and application of deferrals, which is not consistent with the ESMA recommendations.<sup>6</sup> Regarding the sharing of tasks relating to transaction publication between the APAs and the ISPs in the sample group that use them, it was noted that, in the agreements entered into with the APA, three ISPs included arrangements targeting the management of incomplete and/or erroneous information and the format and time stamping of the information to be published, which is a good practice. The inspection task force also noted that four ISPs did not specify explicitly, in these agreements, the regulatory requirements incumbent on the stakeholders within the framework of post-trade publication of transactions. These imprecisions are a bad practice. Moreover, it was noted that four ISPs had instructive documentation describing the management rules applied by the APA in detail and presenting the interfaces made available to them, which is a good practice. Lastly, among the bad practices, it was noted that no ISP checked the existence of an actual publication at the location planned for that purpose, whether it be the APA website or the website on which the trading venue publishes its transactions.

Second, the inspection task force formed samples of transactions for each firm, which revealed numerous shortcomings constituting infringements of the regulations. More precisely:

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<sup>5</sup> In this case the system involves teams that may be located outside France but in the European Union, or else outside the European Union. Note that these teams are included in the personnel of the groups concerned.

<sup>6</sup> ESMA, "*Questions and Answers On MiFID II and MiFIR transparency topics*", answer 1 – part 8 "*Data reporting services providers*".

- The inspection task force noted that three ISPs had either not published certain transactions executed on their OTF, or not submitted certain transactions to their APA with a view to their publication. These facts infringe the provisions of Articles 10 (1) and 21 (1) of MiFIR. Moreover, the inspection task force noted that one ISP had adopted an incorrect client reference document as a basis for determining the eligibility for publication of the transactions and that another ISP had applied an incorrect MIC code,<sup>7</sup> preventing any publication of the transactions concerned, infringing the provisions mentioned above.
- The inspection task force also examined the compliance with transaction publication deadlines. This assessment first concerned transactions having to be published "in real time", i.e. within 15 minutes<sup>8</sup> of their execution. This showed that four ISPs in the sample group had not published all the transactions analysed within the allotted time limits, infringing the provisions of Article 7 (4) a) of RTS 2. The assessment then covered transactions that had benefited from deferred publication. The inspection task force noted that three ISPs had not complied with the regulatory deadlines for several transactions, infringing the provisions of Article 8 (1) of RTS 2. Moreover, for two ISPs, in the case of transactions executed over the counter and eligible for deferred publication, the task force noted the late submission of post-trade information to the APA, even though these transactions were published within the regulatory time limits, which is a bad practice.
- The inspection task force also assessed the quality of the post-trade information published and noted that the five ISPs had either sent inaccurate information to the APA or published information that was erroneous or in a non-regulatory format. The inspection task force also noted that one ISP had published certain transactions unduly, causing a risk of double publication, infringing the provisions of Articles 21 (2) of MiFIR and 7 (5), (6) and (7) of RTS 2, in light of the ESMA Q&A "On MiFiD II and MiFIR transparency topics". The inspection task force also noted that three ISPs were not able to know the duration of publication of the post-trade information on the APA website, which is a bad practice. For another ISP, this information was published for more than 24 hours. ESMA recommends that transactions be published during at least 24 hours, so this is a good practice.<sup>9</sup>

Thirdly, the inspection task force examined the control systems of the ISPs in the sample group applicable to the topic inspected. This analysis showed that these systems were inadequate. For example, only four ISPs had a formal control plan. This lack of definition of regular check points by the last ISP is not in compliance with the provisions of Articles L. 533-10 II 1° of the Monetary and Financial Code (hereinafter "**MFC**"), 312-1 of the AMF General Regulation (hereinafter "**AMF GR**") and 22 of Delegated Regulation (EU) 2017/565.<sup>10</sup> Moreover, the control plan of one of the four ISPs mentioned above proved insufficiently substantiated, infringing the aforementioned provisions. The inspection task force noted that four ISPs formally defined the implementation of remedial measures above a certain score assigned to the results of a check, which is a good practice. The inspection task force also noted the inadequacy of the "level 1" control system concerning two ISPs, due to the lack of sufficient coverage of the scope incumbent on them and, for one of these ISPs, due to the lack of a formal definition and sufficient traceability of the due diligence performed. Among the three bad practices noted for the "level 1" checks, four ISPs have not established a check allowing them to detect major changes in the volume of transactions sent to the APA, so as to identify anomalies affecting the correct publication of transactions. Among the four good

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<sup>7</sup> Market Identifier Code (MIC).

<sup>8</sup> This was the time limit applicable to transactions executed over part of the period selected by the inspection task force (until 3 January 2021) pursuant to Article 7 (4) a) of RTS 2.

<sup>9</sup> Question 10 of the ESMA Q&A "On MiFiD II and MiFIR transparency topics".

<sup>10</sup> Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

practices identified, one ISP deployed a test programme allowing the performance of specific checks, in addition to the "standard" checks defined in "level 1". Lastly, the compliance system proved inadequate for all the ISPs in the sample group, due to the lack of definition of "level 2" checks (two ISPs) or because of the scope of coverage of the topic (three ISPs), infringing the provisions mentioned above.

## 2. CONTEXT AND SCOPE

### 2.1. PRESENTATION OF THE SAMPLE OF ISPS INSPECTED

These SPOT inspections were carried out simultaneously at five ISPs authorised to provide the investment service of own-account trading or to operate an organised trading facility, authorisations referred to in Article L. 321-1 (3) and (9) of the MFC.

In detail, all the ISPs in the sample group execute OTC bond transactions. However, the nature of this OTC business varies depending on the ISP. For example, three ISPs perform OTC bond transactions as a systematic internaliser only. The last two ISPs operate an OTF and do pure over-the-counter trading. In the remainder of this summary, OTC activities will be referred to without distinguishing between "pure over-the-counter" and operations as a systematic internaliser. The activities of the various ISPs in the sample group can be summarised as follows:

Table 1: Activities of the ISPs in the sample group and entities in charge of publication

	OTC activity		Operation of an OTF and entity in charge of the publication of transactions	
	As a systematic internaliser	As "pure OTC"	Operation of an OTF	Entity performing publication
ISP A	Yes	No	No	APA
ISP B	Yes	No	No	APA
ISP C	Yes	No	No	APA
ISP D	No	Yes	Yes	OTF
ISP E	No	Yes	Yes	APA <sup>11</sup>

The criteria which governed the choice of the five firms selected are as follows:

- A significant volume traded on bond markets compared with French ISPs as a whole (60% of trading volumes for the five ISPs combined); and
- An activity as systematic internaliser for three ISPs or as an OTF, concerning two ISPs.

### 2.2. TOPICS ADDRESSED AND METHODOLOGY USED

The following topics were addressed during these inspections:

- the governance arrangements for the publication of transactions, and in particular *i) trading venues, ii) personnel and departments involved in the arrangements, iii) publication tools and procedures, iv) the procedural corpus, v) comitology, and vi) the use of deferred publication;*

<sup>11</sup> The service is outsourced to the APA.

- the accessibility, exhaustiveness and quality of data, and in particular the verification of *i) the existence of a publication for the eligible transactions considered, ii) verification of the time limits for publication of transactions not eligible for deferral, iii) verification of the time limits for publication of transactions eligible for deferral, and iv) verification of the quality of published data;* and
- the verification of the control system applicable to the topic inspected.

For each firm inspected, the inspection task force analysed in particular the procedures in force regarding the topics indicated above. Moreover, in order to investigate in greater detail and assess the operational implementation of the requirements and arrangements mentioned above, the inspection task force established two samples of transaction for each firm.

The first sample consisted of 36 to 51 transactions and was produced by the AMF personnel based on the firms' transaction reporting ("RDT") ("sample 1"). The second sample consisted of 50 transactions and was selected by the inspection task force based on an extraction of the transactions executed by the firms in November 2020 ("sample 2"). The inspection task force first provided a blank template to be filled in by the firms in order to collect several items of information for selection of the transactions for this sample n° 2.

To select these 50 transactions, the inspection task force endeavoured to comply with several representativeness criteria for the sample by calculating, for four defined categories, the proportion of the extracted transactions concerned. These categories were as follows: *i) the type of execution venue (transaction executed as a systematic internaliser, purely over the counter or else on a trading venue), ii) the use of deferred publication, iii) the type of bond<sup>12</sup> and iv) the direction of the transaction (buy/sell).* The inspection task force selected 45 transactions that had been indicated as published and five transactions that had not been published.

Tests were therefore performed primarily in order to:

- verify the existence of a publication for the transactions subject to such a requirement. This information was reported on a declarative basis and then verified by obtaining evidences testifying to such a publication;
- ensure that the information provided by the ISPs as having been published corresponded to the information actually published, with the ISPs having provided, where applicable, evidence of publication of the transactions concerned;
- verify the justification for the non-eligibility for publication of certain transactions, by establishing a sample of five transactions not eligible for publication for each firm, carefully studying, in particular, the evidence submitted in support of the firm's declarations;
- check publication within the regulatory 15-minute time limit for transactions subject to publication without being eligible for deferred publication;<sup>13</sup>
- check the deferred publication of transactions within the required regulatory time limits, by establishing a sample of five transactions eligible for deferred publication; and
- check the quality of the post-trade information required in particular under RTS 2.

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<sup>12</sup> For example, sovereign or corporate bonds.

<sup>13</sup> See Article 7 (4) of RTS 2. The regulatory 15-minute time limit was applicable during the first three years of application of MIFIR. Since 2021, the time limit for publication of transactions has been 5 minutes.

## 2.3. APPLICABLE REGULATIONS

In exercising its prerogatives, the inspection task force was supported by the following regulations and work of ESMA:

### **Governance arrangements for the publication of transactions**

- ✓ **Article 1 of MiFIR** concerning, in particular, the exemption from publication of transactions where the counterparty is a member of the European System of Central Banks (ESCB);
- ✓ **Articles 10, 12 and 21 of MiFIR** concerning the post-trade transparency requirements for trading venues and investment firms, including systematic internalisers, in respect of bonds;
- ✓ **Article 11 of MiFIR** relating to the authorisation of deferred publication of the details of transactions that may be granted by the competent authorities to market operators and investment firms operating a trading venue;
- ✓ **Article 7 of RTS 2** concerning the post-trade transparency requirements for trading venues and investment firms operating outside a trading venue;
- ✓ **Articles 8 and 11 of RTS 2** describing in detail the procedures for deferred publication of post-trade information by investment firms operating outside a trading venue and investment firms operating a trading venue;
- ✓ **Articles 9 and 10 of RTS 2** concerning transactions that may be considered as being "*large in scale*" or "*above a size specific to the financial instrument*";
- ✓ **Article 12 of RTS 2** relating to the application of post-trade transparency to certain transactions executed outside a trading venue;
- ✓ **Article 13 of RTS 2** concerning the methodology to be applied to perform transparency calculations;
- ✓ **Articles 14 and 15 of RTS 2** relating to transactions to which the exemption referred to in Article 1(6) of MiFIR applies;
- ✓ **Article 16 of RTS 2** on the temporary suspension of transparency obligations;
- ✓ **Annex II of RTS 2** concerning the details of transactions to be made available to the public;
- ✓ **Annex III of RTS 2** concerning the liquidity, large in scale (LIS) and size specific to the instruments (SSTI) thresholds for bonds;
- ✓ **Article 10 of Delegated Regulation (EU) 2017/571 of 2 June 2016** (hereinafter "**RTS 13**") relating in particular to the management of incomplete or potentially erroneous information by APAs;
- ✓ **Article 14 of RTS 13** relating in particular to the requirement for APAs to publish post-trade information in a machine-readable way;
- ✓ **Articles 18 and 19 of RTS 13** relating to the details to be published by the APA;
- ✓ **Article 2 of Implementing Regulation No. 2016/824 of 25 May 2016** regarding the information to be provided by OTFs to their competent authority, and in particular the measures applied to comply with post-trade transparency requirements;
- ✓ **Article L. 533-32 of the MFC** concerning the definition of a systematic internaliser;
- ✓ **Article L. 549-11 of the MFC**<sup>14</sup> relating in particular to the obligation for APAs to have policies and mechanisms enabling them to make post-trade information public in time limits as close to real time as technical facilities will allow;
- ✓ **Article L. 549-13 of the MFC**<sup>15</sup> relating in particular to the obligation for APAs to have reliable security mechanisms ensuring the security of information transfer facilities, reducing the risk of damage to data and of unauthorised access, and preventing information leaks prior to publication;

<sup>14</sup> Article repealed since 1 January 2022 by Act No. 2021-1308 of 8 October 2021 containing various provisions for adaptation to European Union law in the fields of transport, the environment, the economy and finance (the "**DADUE Law**") and superseded by a new Article 27(8) of MiFIR introduced by Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 ("**Regulation 2019/2175**").

<sup>15</sup> Article repealed since 1 January 2022 by the DADUE Law and superseded by a new Article 27(8), paragraph 4 of MiFIR introduced by Regulation 2019/2175.

- ✓ **Article L. 549-14 of the MFC<sup>16</sup>** concerning the obligation for APAs to establish systems capable of effectively checking the exhaustiveness of transaction reporting, identifying obvious omissions and errors and requesting that the reports be sent **again** if necessary;
- ✓ **Article D. 549-4 of the MFC<sup>17</sup>** on the minimum information to be published by an APA;
- ✓ **Article 315-7 of the AMF GR** relating to the authorisation granted by the AMF to ISPs to defer the publication of transactions concerning the financial instruments mentioned in Article 21(1) of MiFIR in the cases stipulated in (4) of said Article;
- ✓ **Article 315-26 of the AMF GR** relating to the authorisation granted by the AMF to systematic internalisers to defer the publication of transactions concerning the financial instruments mentioned in Article 21(1) of MiFIR in the cases stipulated in (4) of said Article;
- ✓ **Articles 532-3 and 532-4 of the AMF GR** concerning the derogations to transparency principles that may be granted to OTFs by the AMF; and
- ✓ **ESMA "Questions and Answers On MiFID II and MiFIR transparency topics"**, ESMA70-872942901-35, updated on 30 September 2021, in particular parts "*1 Introduction*", "*2 General Q&As on transparency topics*", "*4 Non-equity transparency*", "*7 The systematic internaliser regime*" and "*8 Data reporting services providers*".

#### **Accessibility, exhaustiveness and quality of data**

- ✓ **Article 1 of MiFIR** concerning, in particular, the exemption from publication of transactions where the counterparty is a member of the European System of Central Banks (ESCB);
- ✓ **Articles 10, 12 and 21 of MiFIR** concerning the post-trade transparency requirements for trading venues and investment firms, including systematic internalisers, in respect of bonds;
- ✓ **Article 7 of RTS 2** concerning the post-trade transparency requirements for trading venues and investment firms operating outside a trading venue;
- ✓ **Articles 8 and 11 of RTS 2** describing in detail the procedures for deferred publication of post-trade information by investment firms operating outside a trading venue and investment firms operating a trading venue;
- ✓ **Articles 9 and 10 of RTS 2** concerning transactions that may be considered as being "large in scale" or "above a size specific to the financial instrument";
- ✓ **Article 12 of RTS 2** relating to the application of post-trade transparency to certain transactions executed outside a trading venue;
- ✓ **Article 13 of RTS 2** concerning the methodology to be applied to perform transparency calculations;
- ✓ **Articles 14 and 15 of RTS 2** relating to transactions to which the exemption referred to in Article 1(6) of MiFIR applies;
- ✓ **Article 16 of RTS 2** on the temporary suspension of transparency obligations;
- ✓ **Annex II of RTS 2** concerning the details of transactions to be made available to the public;
- ✓ **Annex III of RTS 2** concerning the liquidity, large in scale (LIS) and size specific to the instruments (SSTI) thresholds for bonds;
- ✓ **Article 10 of RTS 13** relating in particular to the management of incomplete or potentially erroneous information by APAs;
- ✓ **Article 14 of RTS 13** relating in particular to the requirement for APAs to publish post-trade information in a machine-readable way;
- ✓ **Articles 18 and 19 of RTS 13** relating to the details to be published by the APA;
- ✓ **Article L. 549-11 of the MFC<sup>18</sup>** relating in particular to the obligation for APAs to have policies and mechanisms enabling them to make post-trade information public within time limits as close to real time as technical facilities will allow;

<sup>16</sup> Article repealed since 1 January 2022 by the DADUE Law and superseded by a new Article 27(8), paragraph 5 of MiFIR introduced by Regulation 2019/2175.

<sup>17</sup> Article repealed since 1 January 2022 by the DADUE Law and superseded by a new Article 27(8), paragraph 2 of MiFIR introduced by Regulation 2019/2175.

<sup>18</sup> Article repealed since 1 January 2022 by the DADUE Law and superseded by a new Article 27(8) of MiFIR introduced by Regulation 2019/2175.

- ✓ **Article L. 549-13 of the MFC<sup>19</sup>** relating in particular to the obligation for APAs to have reliable security mechanisms ensuring the security of information transfer facilities, reducing the risk of damage to data and of unauthorised access, and preventing information leaks prior to publication;
- ✓ **Article L. 549-14 of the MFC<sup>20</sup>** concerning the obligation for APAs to establish systems capable of effectively checking the exhaustiveness of transaction reporting, identifying obvious omissions and errors and requesting that the reports be sent again if necessary;
- ✓ **Article D. 549-4 of the MFC<sup>21</sup>** on the minimum information to be published by an APA;
- ✓ **Article 315-7 of the AMF General Regulation** (hereinafter "**AMF GR**") relating to the authorisation granted by the AMF to ISPs to defer the publication of transactions concerning the financial instruments mentioned in Article 21(1) of MiFIR in the cases stipulated in (4) of said Article;
- ✓ **Article 315-26 of the AMF GR** relating to the authorisation granted by the AMF to systematic internalisers to defer the publication of transactions concerning the financial instruments mentioned in Article 21(1) of MiFIR in the cases stipulated in (4) of said Article;
- ✓ **Articles 532-3 and 532-4 of the AMF GR** concerning the derogations to transparency principles that may be granted to OTFs by the AMF; and
- ✓ **ESMA "Questions and Answers On MiFID II and MiFIR transparency topics"**, ESMA70-872942901-35, updated on 30 September 2021, in particular parts "*1 Introduction*", "*2 General Q&As on transparency topics*", "*4 Non-equity transparency*", "*7 The systematic internaliser regime*" and "*8 Data reporting services providers*".

#### **Verification of the compliance control system**

- ✓ **Article 22 of Delegated Regulation (EU) 2017/565 of 25 April 2016** concerning in particular the requirement that they establish and maintain an effective compliance function which operates independently and the requirement that they monitor the adequacy and effectiveness of the measures put in place, and the actions taken to address any deficiencies;
- ✓ **Article L. 533-10 II 1° of the MFC** relating to the obligation for ISPs to establish rules and procedures enabling them to ensure compliance with the measures applicable to them; and
- ✓ **Article 312-1 of the AMF GR** relating in particular to the requirement that ISPs implement the compliance function provided for in Article 22 of Delegated Regulation 2017/565 of 25 April 2016.

### **3. OBSERVATIONS AND ANALYSES**

Firstly, it should be emphasised that, although the ISPs in the sample group have a procedural corpus and comitology relating to post-trade transparency, certain choices made by these ISPs are liable to make correct and exhaustive publication of the transactions subject thereto more complex. By way of illustration, not performing an ex-post check on the existence of effective publication on their venue or on the APA website is a bad practice. Similarly, not having documents that can set out formally in a clear and detailed manner the breakdown of tasks between the ISP and APA weakens the overall governance arrangements for the publication of transactions in the ISPs in the sample group.

The findings which are set out in this summary call for a strengthening and an improvement of the operational scope of the systems in place on the following topics: *i) the exhaustive submission of transactions to the APA or their satisfactory and exhaustive publication in the case of ISPs operating an OTF, ii) the submission and publication of transactions subject to publication within the allotted time limits, whether or not they are eligible for deferred*

<sup>19</sup> Article repealed since 1 January 2022 by the DADUE Law and superseded by a new Article 27(8), paragraph 4 of MiFIR introduced by Regulation 2019/2175.

<sup>20</sup> Article repealed since 1 January 2022 by the DADUE Law and superseded by a new Article 27(8), paragraph 5 of MiFIR introduced by Regulation 2019/2175.

<sup>21</sup> Article repealed since 1 January 2022 by the DADUE Law and superseded by a new Article 27(8), paragraph 2 of MiFIR introduced by Regulation 2019/2175.

publication, iii) the quality of data submitted to the APA with a view to their publication or published in the case of ISPs operating an OTF and iv) the establishment of a compliance function effectively managing the governance arrangements for the publication of transactions.

### 3.1. GOVERNANCE ARRANGEMENTS FOR THE PUBLICATION OF TRANSACTIONS

#### 3.1.1. Description of the bond business and trading venues

With regard to the scope of the inspection task force's analyses, they concerned fixed-income securities exclusively. The two types of bonds most heavily traded are sovereign and corporate debt instruments. The two ISPs operating an organised trading facility perform trading in fixed-income securities both on their trading venue and over the counter. The other three ISPs trade fixed-income securities over the counter exclusively, as a systematic internaliser.

The number of bond transactions and the volume traded, as reported by the firms and for all execution venues combined, were as follows:

**Table 2** - Proportion of the number of traded bond transactions for which transparency is required<sup>22</sup>

Proportion of bond transactions for which transparency is required				
	2018 (from 03/01 to 31/12)	2019	2020	2021 (from 01 to 31/01)
ISP A	39.0%	43.0%	39.0%	27.0%
ISP B	42.0%	39.0%	39.0%	52.0%
ISP C	/	15.3%	11.8%	36.2%
ISP D	78.6%	77.7%	74.9%	66.1%
ISP E	82.0%	85.0%	83.0%	99.0%

**Table 3** - Proportion of the volume of traded bond transactions for which transparency is required<sup>23</sup>

Proportion of the traded bond volume for which transparency is required				
	2018 (from 03/01 to 31/12)	2019	2020	2021 (from 01 to 31/01)
ISP A	50.0%	55.0%	41.0%	32.0%
ISP B	72.0%	71.0%	68.0%	70.0%
ISP C	/	23.2%	17.5%	34.9%
ISP D	90.1%	82.9%	68.4%	51.5%
ISP E	92.0%	93.0%	89.0%	99.0%

<sup>22</sup> The volumes shown are based on the firms' reports, although the inspection task force was unable to verify the scope adopted for the calculation methodology. Different approaches may therefore have been adopted by the firms.

<sup>23</sup> The volumes shown are based on the firms' reports, although the inspection task force was unable to verify the scope adopted for the calculation methodology. Different approaches may therefore have been adopted by the firms.

### 3.1.2. Organisation and personnel

Regarding human resources, four ISPs have full-time personnel assigned specifically to the subject of post-trade transparency. The number of personnel varies depending on the ISP and depends on the size of the firm (between one and eight full-time personnel). The last ISP has no personnel specifically assigned to the topic inspected: two middle-office employees and 34 front-office employees are responsible for data entry and validation of investments.

With regard to the five firms in the sample group, all or at least part of the system put in place for post-trade transparency is managed by in-house teams located outside France:

- to perform certain "level 1" checks, two ISPs use teams located outside France and reporting to the same entity in France;
- the other three ISPs have delegated all or part of the management of this topic to foreign entities belonging to their respective groups.

The inspection task force noted that, for several ISPs, this organisation resulted in insufficient continuity of technical competencies in the teams located in France, especially for the compliance function. As an illustration, one ISP, whose information system used for post-trade transparency is deployed by an IT services company based outside France, obtained a document describing the tasks incumbent on the APA for the first time during the inspection. Also, the inspection task force noted that, for four ISPs, the system put in place, whether technical or organisational such as comitology, was common to different transparency and regulatory reporting regimes. The inspection task force noted that, for these firms, the application of these systems to post-trade transparency was insufficient and had generally been performed with a time lag.

**Bad practice:**

- When the system put in place for post-trade transparency partly involves teams located outside France (even outside the European Union), not ensuring sufficient continuity of technical competencies in the teams located in France, especially for the compliance function (four ISPs).

### 3.1.3. Tools involved

The five ISPs in the sample group have a technical infrastructure deployed for the publication of transactions, often through pooling of these tools that are used in other regulatory reporting systems, which is a good practice. These tools can route information relating to transactions from the front-office tools, even sending trade reports to the APA or enabling the publication of transactions by the ISPs. For four firms, these tools are managed internally by technical teams located outside France.

A distinction is made between tools that collect the information necessary for transactions such as the transaction data entry tools used by the front office, tools collecting certain data coming from outside service providers (for example bond liquidity, etc.) and the tools processing this information in order to i) determine the financial instruments' eligibility for post-trade transparency, i.e. the acceptability of these financial instruments on a trading venue, ii) determine transactions' eligibility for publication, especially with regard to the exemptions provided for by the regulations, and iii) produce trade reports. These reports are then either published directly by the ISP on its trading venue in the case of one of the ISPs in the sample group, or sent to the APA for publication on its dedicated website. More precisely:

- Two ISPs have a specific tool that can deal with errors and/or inconsistencies detected in the trade reports, whether they were detected internally before sending the trade reports to the APA, or by the APA itself after sending of the reports. In the latter case, the APA must send a message to the ISP informing it of the error or inconsistency detected so that the latter may correct it and return the amended trade report to the APA. The APA may also send a rejection message to the ISP, thereby informing it that the transaction will not be published (e.g. because of the transaction's non-eligibility for publication);
- Two other ISPs monitor these errors and/or inconsistencies in one of the tools of the technical infrastructure used for the publication of transactions, although this tool is not dedicated exclusively to this function;
- The last ISP can only monitor these messages from the "GUI",<sup>24</sup> the interface made available to it by the APA.

These tools also allow four ISPs to perform certain automated checks, materialised by performance indicators designed to supervise statistical data and monitor any incidents, which is a good practice. These checks concern in particular the fraction of transactions for which errors have been detected and the fraction of transactions for which the deadline for sending the trade reports to the APA has been complied with. The last ISP told the inspection task force that it had no performance indicator. It is noted, however, that, in the case of one ISP, the performance of systematic, automated "level 1" checks takes place only when the transactions are executed over the counter and published via an APA. The transactions published on its OTF therefore do not undergo such verifications.

**Good practices:**

- Using certain tools that are also used in other regulatory reporting systems, allowing the optimisation of human and technical resources (two ISPs).
- Performing automated checks and establishing performance indicators designed to manage statistical data and to monitor any incidents (four ISPs).

#### 3.1.4. Comitology and procedures

The five firms in the sample group have procedures dedicated to the topic of post-trade transparency, of varying robustness depending on the ISP. One ISP in particular has a procedural corpus that is not very substantial with regard to the topic mentioned above. The inspection task force noted that these procedures recap the main regulatory requirements relating to the publication of transactions and specify their operational and technical aspects. Four ISPs do not mention in their procedural corpus the deferrals that they use, which is a bad practice.

As regards comitology, the inspection task force noted, as a good practice, the fact that four ISPs have established committees including the handling of post-trade transparency subjects. Of these, three ISPs have a common committee for various regulatory reporting regimes on the basis of MiFID II. These committees hold meetings at twice-monthly, monthly or quarterly frequencies and aim, in particular, to monitor:

- the production of performance indicators and the result of "level 1" checks;
- any incidents that have occurred;
- remedial action underway; and
- the main changes relating to post-trade transparency.

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<sup>24</sup> Graphical User Interface.

One of the ISPs has a specific post-trade transparency committee for fixed-income securities. This committee is responsible for identifying errors and sending detected errors to the technical teams for resolution at a variable frequency.

Lastly, all the ISPs have established a system for incident escalation and reporting, particularly during the aforementioned committee meetings. However, the inspection task force noted that for one of the ISPs in the sample group, no incident monitoring had been performed between January 2018 and September 2019. The inspection task force also noted that for four ISPs, an incident escalation process had also been agreed on and contractualised in the agreements entered into with the APA.

**Good practice:**

- Establishing a comitology dedicated to the topic of post-trade transparency, making it possible in particular to monitor any incidents (four ISPs).

**Bad practice:**

- Not mentioning in the procedural corpus the deferrals used by the ISP (four ISPs).

### 3.1.5. Publication methodology

Article 21 of MIFIR introduces a requirement for the publication of transactions executed notably on bonds by investment firms, including systematic internalisers, that conclude these transactions on own account or on behalf of clients. It is also specified that "*each individual transaction shall be made public once through a single APA*". The five ISPs trade transactions over the counter, three of them as a systematic internaliser, and are therefore subject to this obligation. The inspection task force noted that, over the fixed-income scope, these three firms use the same APA for the publication of transactions.

Article 10 of MiFIR, for its part, lays down an obligation of publication of transactions for market operators and investment firms operating a trading venue. Two ISPs in the sample group operate an OTF and are therefore required to publish the transactions executed on their venues. However, these two ISPs do not adopt the same publication process:

- The first ISP publishes on its trading venue the transactions traded thereon and publishes via an APA the transactions executed over the counter;
- The second ISP publishes via an APA all the transactions that it trades, irrespective of the execution venue of said transactions (i.e. on its trading venue or over the counter).

The inspection task force also noted that four ISPs did not make available to the public the link providing access to the publications presented by the APA on their website, which is a bad practice.

No article stipulates or prohibits the possibility for an ISP operating an organised trading facility to use an APA for publication of the transactions executed. However, the use of an APA by an ISP operating a trading venue for the publication of transactions does not limit their liability with regard to their post-trade transparency obligations. In such a case, the use of an APA by an ISP operating an organised trading facility is regarded as an outsourced service.

**Bad practice:**

- Not making publicly available, on the ISP's website, the link providing access to the publications made on its behalf by the APA (four ISPs).

### 3.1.6. Use of deferred publications

Article 11 (1) of MiFIR provides that "*competent authorities shall be able to authorise market operators and investment firms operating a trading venue to provide for deferred publication of the details of transactions based on the size or type of the transaction*" and lists the transactions concerned in this respect. Article 21 (4) of the aforementioned Regulation, for its part, provides for such an authorisation for systematic internalisers and investment firms trading OTC instruments, referring to Article 11 mentioned above. The use of deferred publication is optional.

This authorisation is detailed for these various trading venues in Article 8 of RTS 2. There are four non-cumulative criteria that can lead to the issue of such an authorisation<sup>25</sup>:

- "*the transaction is large in scale compared with the normal market size [...]*" ("LRGS" flag);
- "*the transaction is in a financial instrument or a class of financial instruments for which there is not a liquid market [...]*" ("ILQD");
- "*the transaction is executed between an investment firm dealing on own account other than on a matched principal basis [...] and another counterparty and is above a size specific to the instrument [...]*" ("SIZE"); and
- "*the transaction is a package transaction which meets one of the following criteria [...] [the transaction or one or more of its components meeting the aforementioned criteria]*" ("TPAC").

The principle governing the use of these deferrals, as expressed in Article 8 (2) of RTS 2, is based on the publication of all the information on the transaction upon expiry of the deferral period. Details of the information to be published are given in Tables 1 and 2 of Annex II of RTS 2, according to the flags detailed in Table 3 of Annex II.

Regarding the deferral period, Article 8 (1) of RTS 2 lays down the principle of publication of the transaction "*no later than 19.00 local time on the second working day after the date of the transaction*". This principle is that prevailing for deferrals based on the first three points listed above (large in scale compared with the normal market size, absence of a liquid market, above a size specific to the instrument). In the remainder of this summary, these deferrals will be referred to as "standard deferrals". However, in the case of an authorisation of deferred publication, the competent authorities may authorise various measures, as explained in articles 11 (3) of MiFIR and 11 (1) of RTS 2:

- "*request the publication of limited details of a transaction or [...] details of several transactions in an aggregated form, or a combination thereof, during the time period of deferral*" ("LMTF" and "DATF");
- "*allow the omission of the publication of the volume of an individual transaction during an extended time period of deferral*" ("VOLO");
- regarding non-equity instruments that are not sovereign debt, "*allow the publication of several transactions in an aggregated form during an extended time period of deferral*" ("FWAF"); and

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<sup>25</sup> Note that the various criteria are specified in the subsequent articles.

- regarding sovereign debt instruments, "allow the publication of several transactions in an aggregated form for an indefinite period of time" ("IDAF").

Article 11 (1) of RTS 2 specifies the publication time limits concerning the various measures mentioned above. Deferrals corresponding to the measures listed above will be called "supplementary deferrals" in the remainder of this summary.

It should be mentioned that the AMF has expressed the authorisation granted to ISPs to provide for the deferred publication of the details of transactions, in the following articles:

- regarding OTFs, Article 532-4 of the AMF GR. It is specified in particular that "*the market rules stipulate the conditions under which the operator of the system may be waived from the obligation to make public the above-mentioned information*". Thus, the three possible deferrals must be shown in the rules of the OTF, which is subject to a formal approval by the AMF in accordance with Article L. 425-2 of the MFC;
- regarding systematic internalisers, Article 315-26 of the AMF GR; and
- regarding OTC transactions, Article 315-7 of the AMF GR.

**Regarding the period under review, the articles based on which the AMF authorises ISPs to defer the publication of transactions contain no restriction on the nature of the deferrals in question nor on their conditions. Accordingly, the publication procedures are left to the discretion of the ISPs.**

Whereas the standard deferrals provided for in Articles 11 (1) of MiFIR and 8 of RTS 2 systematically imply a publication of the transaction taking place before 19.00 on D+2, the supplementary deferrals provided for in Articles 11 (3) of MiFIR and 11 of RTS 2 imply a publication taking place after periods of time that vary depending on the type of supplementary deferral. Some examples are given below:<sup>26</sup>

Table 4 - Examples of supplementary deferrals provided for by the regulations:

Type of deferral - associated flag		
Standard deferrals - ILQD- LIS - SSTI	Articles 11 (1) of MiFIR and 8 (1) of RTS 2	D+2 before 19.00
"Volume omission" supplementary deferral - VOLO	Articles 11 (3) b) of MiFIR and 11 (1) b) of RTS 2	Partial publication before 19.00 on D+2 and full publication four weeks after the transaction
Supplementary deferral - IDAF	Articles 11 (3) d) of MiFIR and 11 (1) d) of RTS 2	Partial publication on the following Tuesday before 9.00 am of the aggregation of several transactions executed in a given calendar week

The inspection task force noted that the five ISPs in the sample group used deferred publications. However, it is noted that they do not apply the same deferrals.

Regarding the calculation of deferrals, the inspection task force noted that, for OTC transactions, the APA was responsible for calculating the deferrals applicable to the transactions for the five ISPs in the sample group. It is

<sup>26</sup> Refer to the table entitled "Scheme of non-equity post-trade publication" appearing on pages 17 and 18 of the ESMA Q&A "On MiFID II and MiFIR transparency topics" for more examples and fuller details.

noted, however, that for one of the ISPs in the sample group, the party responsible for performing calculation of the deferrals applicable for a given transaction depends on the execution venue of that transaction:

- In the case of transactions executed on its trading venue and published by the ISP, any standard and supplementary deferrals are calculated by the ISP; and
- In the case of transactions traded over the counter and published by an APA, the standard and supplementary deferrals are determined by the APA.

The inspection task force noted that no ISP performed an ex-post check on the service provided by the APA regarding the calculation and application of deferrals. **This lack of checks on compliance with the time limits for publication by the APA, particularly with regard to deferrals, would not be in compliance with ESMA's recommendations in its Q&A.**<sup>27</sup>

### 3.1.7. Breakdown of tasks between the ISPs and the APA

Firstly, the inspection task force noted disparities in the analysis of the agreements entered into between the firms and the APAs, particularly with regard to the volume of documents available. This disparity is also apparent between the three firms using the same APA on the fixed-income scope.

The contractual documents list the obligations of the stakeholders supplemented by appendices specifying the procedures for sending trade reports to the APA (mainly concerning the content and format of the information). For two ISPs, these documents also present exhaustively the options proposed by the APA and selected by these firms. However, analysis shows that, for four ISPs, these documents do not explicitly specify the regulatory requirements incumbent on the various stakeholders for the publication of transactions, which is a bad practice. Lastly, four ISPs had instructive documentation detailing the management rules applied by the APA and describing the interfaces made available to them, which is a good practice.

For three ISPs, the documents available provide for arrangements governing in particular:

- the management of incomplete and/or erroneous information;
- the format and time stamping of the information to be published; and
- the format and time limit for the publication of trade reports.

Including, in the agreements entered into with the APA, arrangements with a view to the management of incomplete and/or erroneous information and the format and time stamping of information to be published is a good practice for these three ISPs.

For another ISP, however, which uses an APA for the publication of transactions executed both on its OTF and over the counter, the agreements entered into with the APA:

- stipulate measures governing the format and time limit for the publication of trade reports;
- do not cover the management of incomplete and/or erroneous information and the format and time stamping of information to be published; and

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<sup>27</sup> ESMA, Q&A "On MiFID II and MiFIR transparency topics", "8 Data reporting services providers" which states that "According to Articles 7 and 20 (equity instruments) and 11 and 21 (non-equity instruments) of MiFIR, NCAs may authorise market operators and investment firms to provide for a deferred publication of certain transactions. Since the authorisation for granting the deferred publication is addressed to market operators and investment firms, it is the investment firm's responsibility to ensure that the APA is informed thereof and publishes the information no later than after the lapse of the deferral. [...]".

- govern the OTC and OTF activities indiscriminately, despite differences due to the ISP's responsibility in the publication of transactions.

Finally, in the agreements entered into with the APA, one last ISP does not have indications concerning the management of incomplete and/or erroneous information and the format and time stamping of information to be published.

Regarding the breakdown of tasks between the ISPs and the APAs, this is performed on several levels:

- first, for determining the eligibility of the financial instrument and transactions for publication;
- for eligibility and calculation of the applicable deferrals (determination of deferral conditions);
- for verification of the flags and information present in the trade reports; and
- for publication and application of the deferrals where relevant.

In practice, the breakdown of tasks between the APAs and the ISPs in the SPOT inspection sample group can be summarised as follows:

Table 5 - Breakdown of tasks between APAs and ISPs

	Determining the financial instrument's eligibility for publication	Determining the transaction's eligibility for publication	Determining the deferral conditions applicable to transactions	Determining the party responsible for publication
<b>ISP A</b>	ISP and APA	ISP	APA	APA
<b>ISP B</b>	ISP	ISP	APA	N/A
<b>ISP C</b>	ISP	ISP	APA	ISP
<b>ISP D</b>	ISP	ISP	<b>OTF:</b> ISP for standard deferrals / APA for supplementary deferrals <b>OTC:</b> APA	<b>OTF:</b> N/A <b>OTC:</b> ISP
<b>ISP E</b>	APA	APA	APA	APA

Regarding the procedures for transmission of information between the APAs and ISPs, the five ISPs on the sample group have access to the API interface<sup>28</sup> allowing access to the APA data in a machine-readable format, whereas only four ISPs in the sample group have additional access to the "GUI" administrative platform allowing information relating to the transactions to be viewed in a human-readable format.

Regarding the information present in the trade reports, Article 10 of Delegated Regulation (EU) 2017/571 accordingly specifies that "APAs [...] shall set up and maintain appropriate arrangements to ensure that they accurately publish the trade reports received from investment firms [...]".

The management of erroneous and/or incomplete information is above all the responsibility of the APA. Article 10 (4) and (6) of Delegated Regulation (EU) 2017/571 stipulates that APAs shall confirm the receipt of a trade report to the reporting investment firm and that "where an APA determines that a trade report it receives is incomplete or contains information that is likely to be erroneous, it shall not publish that trade report and shall promptly alert the investment firm submitting the trade report". Thus, it is stipulated that the ISP receives email messages from

<sup>28</sup> Application Programming Interface.

the APAs to inform them i) of receipt of the trade reports, ii) of any error or incomplete information contained in the trade reports and iii) of the publication of transactions. These email messages make it possible to trace sending of the reports to the APA and the correct publication of transactions, and thereby constitute an audit trail for the ISPs.

One of the ISPs told the inspection task force that it does not perform verifications from the GUI platform but only processes the email messages received by the APA. More generally, the five firms stated that they perform no check on the existence of effective publication on their venue or on the APA website, which is a bad practice.

**Good practices:**

- Having instructive documentation describing in detail the management rules applied by the APA and presenting the interfaces made available to them (four ISPs).
- Including, in the agreements entered into with the APA, arrangements with a view to the management of incomplete and/or erroneous information and the format and time stamping of information to be published (three ISPs).

**Bad practices:**

- Not specifying explicitly, in the agreements entered into between the APAs and ISPs, the regulatory requirements incumbent on the various stakeholders for the post-trade publication of transactions (e.g. the ISP's sending to the APA of trade reports within a time limit allowing publication of this information within the regulatory time limits by the APA or the publication of the information by the APA within the regulatory time limits) (four ISPs).
- Not checking on the existence of effective publication on their venue or on the APA website (five ISPs).

### 3.2. ACCESSIBILITY, EXHAUSTIVENESS AND QUALITY OF DATA

Articles 10 and 21 of MiFIR lay down an obligation of post-trade transparency for investment firms operating a trading venue or trading outside the rules of such a venue. This obligation is replicated and specified in Article 7 of RTS 2, which stipulates that "*investment firms trading outside the rules of a trading venue and market operators and investment firms operating a trading venue shall make public by reference to each transaction the details set out in Tables 1 and 2 of Annex II and use each applicable flag listed in Table 3 of Annex II*".

As a reminder, the inspection task force analysed a sample for each firm consisting of transactions coming from two different sources:

- 36 to 51 transactions selected by the AMF throughout the year 2020, based on RDT; and
- 50 transactions selected by the inspection task force during November 2020, based on excerpts forwarded by the ISPs.<sup>29</sup>

#### 3.2.1. Existence of publication of transactions subject to such a requirement

For each firm, the inspection task force checked the existence of a publication of transactions subject to such a requirement. This information was reported on a declarative basis and then verified by obtaining evidence testifying to such a publication.

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<sup>29</sup> The inspection task force first provided a blank Excel template to be filled in by the firm in order to collect several items of information for selection of the transactions for this sample.

**Table 6** - Presentation of the inspection sample

	Operation of an OTF	Number of transactions analysed
ISP A	-	88
ISP B	-	101
ISP C	-	92
ISP D	X	86
ISP E	X	89

The nature of the evidence varies depending on the firm:

- Two ISPs sent an Excel file coming from the APA;
- Three ISPs forwarded a screen shot of the APA interface;
- One ISP sent a screen shot coming from its internal tool; and
- One ISP sent an Excel file retrieved from its own trading venue.

Note that some firms sent several items of evidence for a given transaction. The inspection task force noted that no publication sustained a loss of its audit trail.

### 3.2.1.1. *Publication of transactions subject to publication*

Firstly, the number of published transactions as a percentage of transactions subject to publication is as follows:

**Table 7** - Publication of transactions subject to the publication requirement

	Number of transactions subject to publication	Number of transactions not published	Percentage of transactions published
ISP A	79	8	89.9%
ISP B	65	5	92.3%
ISP C	70	0	100.0%
ISP D	70	0	100.0%
ISP E	81	39	51.9%

Regarding the three ISPs concerned by an absence of publication of several transactions subject to this requirement, the inspection task force analysed the explanations put forward by the firms. As a reminder, four ISPs in the sample group use an APA to perform publication, while a fifth ISP uses both an APA for OTC transactions and its own publication platform for transactions executed on its OTF. A distinction should therefore be made between several possible cases:

- In the case of one ISP, 29 transactions (executed on the OTF or coming within an OTC activity) were submitted to the APA without leading to a publication while 10 other transactions were not received by the APA (without any new submission by the ISP to the APA despite the presence of a warning notice in the latter's interface);

- In the case of one ISP (OTC activity), the absence of publication of five transactions can be explained by a mistaken exclusion from the scope of publication by the firm, or by the existence of a rejection produced by the APA (the errors had been detected and taken into account in an action plan leading to re-submission of the transactions to the APA); and
- In the case of one ISP (OTC activity), the absence of publication of eight transactions is due to a rejection of the transaction by the APA due to the transmission of erroneous information by the ISP. **Despite the information provided by the APA regarding the rejection of a transaction and the reason for it, the ISP specified that it did not resubmit the rejected transactions.**

The inspection task force noted, for example, that one ISP had not sent certain transactions to the APA and had thereby failed in its obligation to publish the transactions executed on its OTF, infringing the provisions of Article 10 (1) of MiFIR and Article 7 (1) of RTS 2.

Moreover, having knowledge of the absence of publication of certain OTC transactions rejected by the APA due to erroneous information, and by not resubmitting to the APA corrected post-trade information, two ISPs would not permit the publication of said transactions, infringing the provisions mentioned above.

**Regulatory infringements:**

- Failure to publish post-trade information relating to certain transactions executed on an OTF, making it impossible to comply with post-trade transparency requirements, infringing the provisions of Article 10 (1) of MiFIR and Article 7 (1) of RTS 2 (one ISP).
- Failure to send certain OTC transactions to the APA, making it impossible to comply with post-trade transparency requirements, infringing the provisions of Article 21 (1) of MiFIR and Article 7 (1) of RTS 2 (one ISP).
- Failure to resubmit to the APA corrected post-trade information having a knowledge of the absence of publication for certain transactions rejected by the APA due to erroneous information, infringing Article 21 (1) of MiFIR (two ISPs).

*3.2.1.2. Transactions not eligible for publication*

The inspection task force analysed for the ISPs in the sample group a sample of five transactions designated by those firms as being not eligible for publication. In particular, the inspection task force carefully studied the evidence submitted in support of the firm's declarations. The results showed that certain transactions:

- were to undergo publication by the counterparty;
- corresponded to regulatory exemptions, as provided for by RTS 2 (for example: transaction with a central bank, on the primary market, intra-group, etc.); and
- concerned a financial instrument not admitted to trading on a regulated market or traded on a trading venue ("*Admitted to be traded on a trading venue*") (hereinafter "**ToTV**").

In the case of three ISPs, the inspection task force did not note any transactions that ought to have undergone publication, according to the eligibility criteria.

For another ISP, it appears that a transaction identified as "internal" had in fact as counterparty an outside firm, this confusion being caused by an LEI error in the ISP's client reference data. **Based on client reference data**

containing at least one incorrect LEI to determine the eligibility for publication of its transactions, the ISP did not send to the APA at least one transaction which was therefore not published, which is not in compliance with the provisions of Article 21 (1) of MiFIR.

Moreover, for one last ISP, the inspection task force noted the existence of an incorrect MIC code ("XXXX") for several transactions, preventing their submission to the APA or to the ISP's trading venue for the OTF activity and their possible publication, infringing Articles 10 and 21 (1) of MiFIR.

**Regulatory infringements:**

- Failure to send to the APA certain transactions based on client reference data containing at least one incorrect LEI to determine the eligibility for publication of the transactions, infringing the provisions of Article 21 (1) of MiFIR (one ISP).
- Failure to submit to the APA, or to the ISP's trading venue for the OTF activity, certain transactions due to an incorrect MIC code preventing their possible publication, infringing the provisions mentioned above and Article 10 of MiFIR (one ISP).

**3.2.2. Time limits for publication of transactions**

Article 7 (4) of RTS 2 stipulates that "post-trade information shall be made available as close to real time as is technically possible and in any case: a) for the first three years of application of Regulation (EU) No 600/2014, within 15 minutes after the execution of the relevant transaction; and b) thereafter, within 5 minutes after the execution of the relevant transaction". It should be specified that the selected transactions were executed in 2020, or less than three years after the entry into force of MiFIR. However, in the event of eligibility for deferred publication, the publication time limits vary depending on the applicable flags as detailed in Annex II of RTS 2.

The inspection task force analysed the dates of execution, of submission to the APA (where the latter is used) and of publication of transactions. The volume of transactions concerned is as follows:

Table 8 - Breakdown of transactions by ISP according to the conditions of publication

	Number of transactions published (if subject to publication)	Number of transactions published "in real time"	Number of transactions benefiting from deferred publication
ISP A	71	26	45
ISP B	60	25	35
ISP C	70	13	57
ISP D	70	54	16
ISP E	42	8	34

**3.2.2.1. Transactions published "in real time"**

Of the five ISPs in the sample group, none published all the transactions analysed within the allotted time limits. A distinction can be made between several cases:

- In the case of transactions executed on the OTF of one ISP and published on the same venue, it appears that the regulatory time limits were not complied with for 57% of transactions. The maximum time limit observed was more than 16 hours. **This ISP therefore did not make available within 15 minutes following**

**execution of the transaction required post-trade information concerning certain transactions executed on its OTF and therefore did not comply with the provisions of Article 7 (4) a) of RTS 2;**

- In the case of transactions executed on the OTF of another ISP and published by an APA, we found that 66.7% of the transactions were not published within the required time limits. These transactions were published between 74 and 177 minutes after their execution. Now, **while publication via an APA for transactions executed on a trading venue operated by an investment firm is possible, the latter is responsible for their publication and may not be relieved of its responsibility. This ISP therefore did not comply with the aforementioned regulatory provisions;**
- In the case of OTC transactions published by an APA, a distinction should be made between two situations:
  - certain transactions executed by two ISPs were not published within the regulatory time limits but were nevertheless submitted to the APA within a period less than the allotted time. **These ISPs could therefore not be held liable in the absence of a regulatory infringement that might be attributed to them;** and
  - certain transactions executed by two ISPs were not published within the regulatory time limits and were also submitted to the APA after more than 15 minutes (68% of transactions for the first ISP and 23% for the second ISP). **These ISPs therefore did not submit to the APA certain transactions within a time limit enabling it to ensure publication in accordance with the applicable requirements and thus breached their obligation of publication, infringing the aforementioned articles.**

**Regulatory infringements:**

- Failure to make available within 15 minutes following execution of the transaction required post-trade information concerning certain transactions executed on the OTF, infringing the provisions of Article 7 (4) a) of RTS 2 applicable at that date (two ISPs).
- Failure to submit to the APA certain transactions within a time limit enabling it to ensure their publication in accordance with the regulatory requirements, infringing the aforementioned articles (two ISPs).

**3.2.2.2. Transactions that benefited from a deferral**

In the sample of transactions analysed, the inspection task force noted that all the ISPs in the sample group had used deferrals, and this for all their transactions eligible for deferral.

Furthermore, the inspection task force noted the use of deferred publication by one ISP when the transaction was not eligible. For this ISP (in the case of an OTC transaction), the error was due to the APA and is in the process of resolution.

In the same way as for publications executed "in real time", for a sample of five transactions for each ISP that benefited from deferred publication the inspection task force analysed the time limits applied according to their nature. This showed that only two ISPs had published all the analysed transactions within the allotted time limits. In the case of the other three ISPs, a distinction can be made between several situations:

- In the case of transactions executed on the OTF of one ISP and published on its own trading venue, it appears that the regulatory time limits were complied with for none of the transactions in question. Two transactions required publication "no later than 19.00 local time on the second working day after the date of the transaction" but were published one month or six days later. For three transactions, a supplementary deferral was applied relating to sovereign bond transactions, permitting their publication in aggregate form. However, the publications took place on Tuesday of the week following receipt of the second transaction, 10, 14 and 22 minutes respectively after 9.00 am, infringing the applicable requirements. **Accordingly, this ISP did not comply with the regulatory publication time limit authorised for deferred publication of five transactions executed on its OTF, infringing the provisions of Article 8 (1) of RTS 2;**
- In the case of transactions executed on the OTF of one ISP and published by an APA, we found that one transaction was not published within the required time limits. For a transaction executed on a Friday and subject to publication "no later than 19.00 local time on the second working day after the date of the transaction", it was noted that publication had been performed on the following Tuesday, whereas it ought to have taken place on Monday, and this because of late validation. **Accordingly, this ISP did not comply with the regulatory publication time limit authorised for deferred publication of a transaction executed on its OTF, infringing the provisions of Article 8 (1) of RTS 2; and**
- In the case of transactions executed over the counter by one ISP and published by an APA, we found that the regulatory time limits were not complied with for three transactions. One of these transactions was executed on a Thursday and was published partially before 19.00 on the following Monday, i.e. two open days after its execution date and not two working days (which ought to have led to a publication on Saturday). Moreover, for two other transactions, publication on D+2 took place one minute and 50 seconds and two minutes and two seconds respectively after 19.00 on the second working day after the date of the transaction. **Accordingly, this ISP did not comply with the regulatory publication time limit authorised for deferred publication of three transactions, infringing the provisions of Article 8 (1) of RTS 2, in light of the ESMA Q&A "On MiFID II and MiFIR transparency topics".<sup>30</sup>**

In the case of publications taking place within the allotted time limits, the inspection task force noted that there was sometimes a large time lag between execution of the transaction and its submission to the APA for two ISPs (between five and 65 hours). Regarding this, **ESMA recommends, however, that "The investment firm should report the transaction to the APA as soon as technically possible after the execution, regardless of the application of any deferrals".<sup>31</sup>**

#### **Regulatory infringements:**

- Failure to comply with the regulatory time limit for publication authorised for the deferred publication of certain transactions executed on the OTF, infringing the provisions of Article 8 (1) of RTS 2 (two ISPs).
- Failure to comply with the regulatory time limit for publication authorised for the deferred publication of certain transactions executed over the counter, infringing the provisions mentioned above (one ISP).

<sup>30</sup> ESMA70-872942901-35, Questions and Answers "On MiFID II and MiFIR transparency topics" (30/09/2021), "8 - Data reporting services providers, Question 1, Answer 1".

<sup>31</sup> ESMA70-872942901-35, Questions and Answers "On MiFID II and MiFIR transparency topics" (30/09/2021), "8 - Data reporting services providers, Question 1, Answer 1".

**Bad practice:**

- In the case of OTC transactions eligible for deferred publication, late submission of post-trade information to the APA, despite compliance with the regulatory time limits (two ISPs).

### 3.2.3. Quality of published information

For each ISP in the sample group, the inspection task force selected a sample of 10 transactions that had undergone publication to determine whether the post-trade information required for each of them had been published correctly, in light of Table 3 of Annex II of RTS 2. It should be mentioned that erroneous information was noted, covering the entire two samples formed. The scope of each observation will therefore be specified. For four ISPs, these analyses showed that:

- Concerning the "price notation"<sup>32</sup> field:
  - for one ISP (OTF activity), this field was displayed in a format not provided for by the regulations ("PER\_UNIT") for 80% of the total sample of transactions;
  - for another ISP (OTC activity), this field mistakenly displayed the "MONE" flag, due to a problem of configuration of an internal tool for 97.1% of the total sample of transactions; and
  - for one last ISP (OTF activity), this field was published in a format not provided for by the regulations ("*percentage*") for 70% of the sample of 10 transactions.
  
- Concerning the "execution venue" field:
  - for one ISP (OTC activity), this field was mistakenly set to the value "XOFF" for 17.1% of the total sample of transactions. Now, according to RTS 2, the MIC code 'XOFF' should be used "*for financial instruments admitted to trading or traded on a trading venue, where the transaction on that financial instrument is not executed on a trading venue or systematic internaliser or organised trading platform outside of the Union*". The firm mentioned problems relating to the internal tool used (values entered by default or configuration error) or its imprecise taxonomy of financial instruments;
  - for another ISP (OTC activity), this field was set to the value "XOFF" for 8.6% of the total sample of transactions whereas the firm had stated that it executed bond transactions only in the capacity of systematic internaliser. The firm mentioned the existence of errors concerning determination of the systematic internaliser status, reflected in the reference data used to determine the party responsible for publication; and
  - for one last ISP (OTF activity), this field was published for 30% of the sample of 10 transactions, even though the regulations do not require it. This highlighted an incorrect definition of management rules in the internal tools of this ISP.
  
- Concerning the "price currency" field: one ISP (OTF activity) published this field for 100% of the transactions for which the price was expressed as a percentage (of the total sample) whereas this information is required only "*if the price is expressed as a monetary value*";

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<sup>32</sup> The values that can be displayed with regard to this field are stipulated in the form of a restrictive list containing the following indications: "MONE" meaning "Monetary value", "PERC" meaning "Percentage", "YIEL" meaning "Yield" and "BAPO" meaning "Basis points".

- Concerning the "date and time of transaction execution" and "date and time of transaction publication" fields: the information entered by one ISP (OTF activity) and verifiable in the evidence did not comply with the format stipulated by the regulations for 60% of the sample of 10 transactions.<sup>33</sup>

**As a consequence, two ISPs sent to the APA erroneous information and two other ISPs made public erroneous information or information in a format not in compliance with the regulations concerning one to four fields mentioned above for several transactions. These four ISPs therefore did not allow the post-trade publication of information complying with the provisions of Article 7 (1) of RTS 2.**

More generally, concerning four ISPs in the sample group, the content of the "notional amount" and "quantity" fields was identical for 100% of published transactions.<sup>34</sup> However, the "quantity" field should refer to the "*number of units of the financial instrument [...]*" while the "notional amount" field should refer to the nominal amount. Moreover, it is stipulated that "*the information reported in this field shall be consistent with the value provided in field Price*".<sup>35</sup> It was found that the content of the "notional amount" field was not consistent with the "price" field for these ISPs. For the last ISP, the information shown in these two fields was different, but the ISP recognised that it had entered incorrect data due to an error of interpretation. The inspection task force noted differences of interpretation and difficulties in implementation of the provisions of RTS 2 relating to these fields. As a consequence:

- **as part of their OTC activity, three ISPs sent erroneous post-trade information to the APA concerning the "quantity" and the "notional amount", with regard to Article 7 (1) of RTS 2; and**
- **as part of their OTF activity, two ISPs made public erroneous information concerning the fields mentioned above, with regard to the aforementioned article.**

The inspection task force also analysed the duration of publication of transactions on the APA website or on the trading venue for the total sample of transactions. The results showed that three ISPs were unable to know the duration of publication of their transactions, including the transactions executed on the OTF of one of these ISPs, which is a bad practice. Regarding the other two ISPs in the sample group:

- for the first ISP, it appears that at least 27.1% of the transactions were published during less than 24 hours on the dedicated venue; and
- for the second ISP and with the exception of one transaction, the duration of publication of transactions was 24 hours and 15 minutes, which is a good practice. **Regarding this point the AMF agrees with the ESMA recommendations, considering that it is reasonable for the post-trade information to be available for at least 24 hours after publication, so that this information may be downloaded on an ad hoc basis or regularly.**<sup>36</sup>

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<sup>33</sup> The ISP was not able to send information in the published format for 60.5% of published transactions.

<sup>34</sup> The study published by the AMF in May 2020, entitled "*Review of bond transparency under MiFID II*" already mentioned a "*still moderate quality of data*", noting that "*there appears to be some confusion between the quantity of securities traded and the total nominal value of these transactions*" (page 9).

<sup>35</sup> Cf. Annex II, Table 2 of RTS 2 "*List of details for the purpose of post-trade transparency*".

<sup>36</sup> ESMA70-872942901-35, Questions and Answers "On MiFID II and MiFIR transparency topics" (30/09/2021), "*2 General Q&As on transparency topics, Question 10, Answer 10*": "*Deleting data shortly after publication. The data made available free of charge should replicate the information published on a reasonable commercial basis but with a 15 minutes delay. ESMA is of the view that the information should be available for any party to initiate a retrieval of the data for a period of at least 24 hours from the publication. It is not reasonable to have the data available for a period that is not long enough for it to be downloaded reliably either on an ad-hoc or in a repeatable manner.*" Authoritative English translation.

Moreover, in the case of one ISP out of the total sample analysed,<sup>37</sup> several OTC transactions executed on the buy side were the subject of a publication. Publication of a transaction executed over the counter between two investment firms within the meaning of MiFID II is incumbent on the seller. To ensure that publication was incumbent on the counterparty, the inspection task force first checked that it involved an investment firm whose LEI indicated a location in the European Union. **Such publications create a risk of double publication and infringe the provisions stipulated in Articles 21 (2) of MiFIR and 7 (5), (6) and (7) of RTS 2, in light of the ESMA Q&A "On MiFID II and MiFIR transparency topics".**<sup>38</sup>

**Good practice:**

- Allowing investors to access the publication on a dedicated website during at least 24 hours (one ISP).

**Bad practice:**

- Not being able to know the duration of publication of the transaction on the APA website, including transactions executed on the OTF concerning one ISP (three ISPs).

**Regulatory infringements:**

- Sending erroneous information to the APA (two ISPs) or publication of erroneous information or information in a format not in compliance with the regulations (two other ISPs) concerning one to four fields required with regard to post-trade transparency for several transactions, infringing the provisions of Article 7 (1) of RTS 2.
- Sending of erroneous post-trade information to the APA concerning the "quantity" and the "notional amount" for transactions executed over the counter, infringing the provisions of Article 7 (1) of RTS 2 (three ISPs).
- Publication of erroneous post-trade information to the APA concerning the "quantity" and the "notional amount" for transactions executed on an OTF, infringing the aforementioned provisions (two ISPs).
- Publication of OTC transactions on the buy side for which the counterparty is an investment firm whose LEI is located in the European Union, creating a risk of double publication concerning several transactions, infringing the provisions stipulated in Articles 21 (2) of MiFIR and 7 (5), (6) and (7) of RTS 2, in light of the ESMA Q&A "On MiFID II and MiFIR transparency topics" (one ISP).

### 3.3. VERIFICATION OF THE COMPLIANCE SYSTEM

Article 22 (1) of Delegated Regulation (EU) 2017/565 stipulates that "*Investment firms shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the firm to comply with its obligations under Directive 2014/65/EU, as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the competent authorities to exercise their powers effectively under that Directive [...]*". Article L. 533-10 II 1° of the MFC stipulates, for its part, that ISPs "*[...] must put in place rules and procedures that ensure compliance with the provisions applicable to them [...]*". Lastly, Article 312-1 of the AMF GR stipulates that "*To ensure compliance with all of the professional obligations referred to in II*

<sup>37</sup> The study published by the AMF in May 2020, entitled "*Review of bond transparency under MiFID II*" had already noted the existence of "*double reports: the seller and the buyer report the same transaction. This requirement is normally imposed only on the seller, except if the buyer is acting in its capacity as SI or if the seller is not an investment company[...]*" (page 10).

<sup>38</sup> ESMA70-872942901-35, Questions and Answers "On MiFID II and MiFIR transparency topics" (30/09/2021), "2 General Q&As on transparency topics, question 3, answer 3".

of Article L. 621-15 of the [MFC], the [ISP] shall implement the compliance policy and the procedures relative to the responsibilities of the management body laid down in Articles 22 and 25 of Commission Delegated Regulation 2017/565 [...]".

The firms must therefore establish a compliance system designed to ensure compliance with their obligations relating to post-trade transparency. Therefore, a firm's compliance system cannot be based solely on verification of the performance of "level 1" checks performed by the operational teams, without including sufficiently robust "level 2" checks. While the topic is of a technical nature, implying that the firms should have a substantial first line of defence, the "level 2" checks nevertheless remain essential with a view to permanent control of the compliance system applicable to the topic of post-trade transparency.

### 3.3.1. Control plan

Four ISPs in the sample group have formally defined a control plan while the fifth had none. Although the four control plans included "level 1" checks on the topic inspected, the inspection task force noted that no "level 2" check was provided for in the control plans of two ISPs. **The absence of a control plan or the definition of an insufficiently substantiated control plan means that the firms cannot ensure compliance with all the obligations incumbent on them with regard to post-trade transparency (see paragraph 3.3.3).**

Four ISPs in the sample group also have a control scoring system. Moreover, these four ISPs require the definition of corrective measures above a certain score, which is a good practice. The conditions relating to the control plan of the ISPs in the sample group can be summarised as follows:

Table 9 - Presentation of the control organisation

	Control plan			Existence of a control scoring system	Definition of corrective measures based on a score
	Existence of a control plan	Including "level 1" checks	Including "level 2" checks		
ISP A	Yes	Yes	No	Yes	Yes
ISP B	Yes	Yes	Yes	Yes	Yes
ISP C	No	No	No	Yes	Yes
ISP D	Yes	Yes	No	Yes	Yes
ISP E	Yes	Yes	Yes	No	No

#### Good practice:

- Formally defining the implementation of corrective measures above a certain score assigned to the results of a check (four ISPs).

### 3.3.2. "Level 1" checks

The ISPs in the sample group have established "level 1" checks concerning both their OTC activity and their OTF activity for the two ISPs concerned. While several ISPs seem to have deployed similar "level 1" checks, their scope of implementation varies, however:

- Three ISPs check compliance with regulatory time limits ("timeliness"), consisting of calculating, based on messages sent by the APA, the time between execution of the transaction and receipt of the trade report

by the APA, without considering their eligibility for deferred publication or not. Two ISPs perform this check every day and the third ISP adopts a weekly frequency. One of these ISPs stated that it extended this check on the time between the execution of transactions and their publication by the APA, based on samples. These checks, making it possible to ensure that the trade reports have been received by the APA as quickly as is technically possible, contribute to publication of the transactions within the regulatory time limits. In this, all the checks on these time limits are a good practice.

- Four ISPs in the sample group have also established exhaustiveness and/or completeness checks, which is a good practice. However, this type of check does not cover the same scope of verification depending on the ISP. Specifically, the checks concern rejections of transactions by their internal tools prior to their submission to the APA, and rejections performed by the APA. Only three of these ISPs check the effective submission of executed transactions to their APA.
- Three ISPs also perform an accuracy check,<sup>39</sup> consisting of verifying the fields and flags filled in, which is a good practice. For one of these ISPs, on the other hand, the accuracy check is conducted on a sample and on an ad hoc basis (i.e. depending on the firm whenever an error is identified). It is therefore not a systematic check performed on correct filling in of all the fields required by RTS 2.

Moreover, another of these three ISPs provided for an accuracy check, which was not performed during the period from May to November 2020, without being covered by any traceability. Conversely, the fact, for the other four ISPs in the sample group, of performing all the planned checks on the topic, without restricting their scope in an untraced manner, is a good practice.

Lastly, four ISPs provide for no consistency check consisting of verifying that the values of the fields reported with regard to post-trade transparency and RDT are identical, which is a bad practice.

- One ISP also has an additional "level 1" check aimed at analysing any major differences in the daily volumes of transactions sent to the APA. This check, carried out each day, makes it possible to detect any anomalies that could reveal errors in determining the transactions eligible for publication. On the other hand, the other four ISPs have not established such a check, which is a bad practice.
- Concerning the OTF activity specifically, the first ISP performs checks which are not systematic in nature. A single check was carried out, consisting of an ad hoc review of the transactions published on its OTF platform, during which a check was performed on the accuracy of the fields described in Table I of Annex 2 of RTS 2. The second ISP, which uses an APA for publication of all its eligible transactions, does not distinguish between the "level 1" checks applied to its OTF activity and its OTC activity.<sup>40</sup>

The "level 1" checks deployed by the ISPs in the sample group can be summarised as follows:

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<sup>39</sup> "Accuracy".

<sup>40</sup> Despite the formal definition of two separate check sheets, there is no difference in the nature and conditions of the checks.

**Table 10** - Presentation of "level 1" check points implemented by the ISPs

	Compliance with regulatory time limits	Exhaustiveness of publication of transactions subject to publication		Accuracy of published fields	Existence of a publication of transactions (APA website)
		Verification of submission of the transaction to the APA	Analysis of the APA's rejection messages		
<b>ISP A</b>	Yes <sup>41</sup>	Yes	Yes	No	No
<b>ISP B</b>	Yes	Yes	Yes	Yes	No
<b>ISP C</b>	Yes	No	Yes	Yes	No
<b>ISP D</b>	No (OTC and OTF)	Yes (OTC) / No (OTF)	Yes (OTC) / No (OTF)	No (OTC) / Yes (OTF)	No (OTC and OTF)
<b>ISP E</b>	No (OTC and OTF)	No (OTC and OTF)	No (OTC and OTF)	No (OTC and OTF)	No (OTC and OTF)

The inspection task force noted that the "level 1" control system of two firms was inadequate, either due to the lack of recurring check points on the transactions executed on its trading venue, or due to the existence of serious shortcomings with regard to formal definition and traceability, and the scope of control (see paragraph 3.3.3).

Moreover, in addition to the "standard" checks defined in "level 1" mentioned above and the "level 2" checks, one ISP in the sample group has a "test programme" allowing the implementation of checks dedicated to post-trade transparency. The management of this programme, linked by this ISP to control "level 1", is entrusted to an operational team based outside France, whose activity is supervised by the teams located in Paris. This is a periodic control programme, carried out every two months, having the general objective of evaluating and increasing the quality of regulatory reporting, in terms of completeness and accuracy of the data. Several automated and manual checks are accordingly carried out:

- two checks relate to the eligibility of transactions for publication, one manual on a sample and the other automated, to check that the rules on eligibility for publication are in compliance and to ensure that the eligibility of the financial instrument (ToTV) calculated by the ISP's internal tool is correct;
- one manual check on a sample concerns the accuracy of data and aims to ensure the quality of the data sent to the APA;
- one consistency check is linked to the accuracy check, aimed at ensuring that the values of the fields reported with regard to post-trade transparency and RDT are identical; and
- two consistency checks, performed over the scope of one day, are linked to the exhaustiveness check and involve checking that the transactions reported with regard to post-trade transparency have also been reported with regard to RDT (automated) and ensuring consistency between the data provided by the internal tools and the data published by the APA (manual).

The implementation of this "test programme", evaluating in particular the consistency of the data published with regard to post-trade transparency and RDT, can minimise the risks due to partial or erroneous publication. The failure to implement such a consistency check is therefore a bad practice.

<sup>41</sup> "Yes" entered for checks in the above table means that the checks are planned. However, it does not mean that those checks are sufficient and/or performed satisfactorily.

**Good practices:**

- Establishing a check on regulatory time limits making it possible to ensure that the trade reports have been received by the APA as quickly as possible, and contributing to publication of the transactions by the APA within the regulatory time limits (three ISPs).
- Performing all the planned checks on the topic, without restricting their scope in an untraced manner (four ISPs).
- Establishing exhaustiveness and/or completeness checks at frequent intervals, e.g. on a daily basis, designed in particular to identify internal errors (four ISPs).
- Establishing accuracy checks to ensure that the data sent to the APA are correct (three ISPs).
- Having a test programme allowing implementation of the specific post-trade transparency checks, in addition to the "standard" checks defined in "level 1" (one ISP).

**Bad practices:**

- Not establishing a check making it possible to detect major changes in the volume of transactions sent to the APA, so as to identify anomalies affecting the correct publication of transactions (four ISPs).
- Not performing a consistency check, consisting of verifying that the values of the fields reported with regard to post-trade transparency and RDT are identical (four ISPs).

### 3.3.3. "Level 2" checks

In order to assess the implementation by the ISPs in the sample group of "level 2" checks on the topic of post-trade transparency, the inspection task force analysed all the defined checks. In addition, the inspection task force obtained the results and the audit trails of the last two compliance checks.

Analysis of the "level 2" control systems of the ISPs in the sample group, conducted for the years 2019, 2020 and 2021, showed that they were mostly inadequate:

- Two ISPs performed no check on the topic;
- A third ISP mentioned a check point dedicated to market infrastructures and transparency. However, the check carried out in 2019 was limited to the frequency of holding meetings of the committees involved in the topic of post-trade transparency. This ISP also established an "independent test programme" but the annual check carried out on the basis of this programme had concluded that the checks on the topic in question were inadequate;
- A fourth ISP stated that it performed two checks dedicated specifically, one to its OTF activity and the other one to its OTC activity. The defined check points appeared identical. However, these checks were implemented after a time lag compared with the starting date of the firm's OTF and OTC activities, and the check sheets were not complied with, which led to an untraced reduction in the scope of performance of these checks; and
- One last ISP has two types of checks, one quarterly and recurrent, and the other "*periodic*" (i.e. whether or not it will be carried out is assessed each year by the firm in accordance with a risk-based approach). However, these "level 2" checks are in practice mainly limited to the verification of formal aspects relating to the conditions of design and performance of the "level 1" checks.

The "level 2" checks deployed by the ISPs in the sample group can be characterised as follows:

**Table 11** - Presentation of "level 2" checks by the ISPs

	Existence of "level 2" checks from 2019 to 2021	Number of "level 2" checks performed from 2019 to 2021	Checks limited to verification of formal aspects of "level 1"	Ad hoc nature of "level 2" checks	Compliance of the "level 2" control system with the MFC
ISP A	Yes <sup>42</sup>	2	No	Yes	No
ISP B	Yes	2	Yes	No	No
ISP C	No	0	/	/	No
ISP D	No	0	/	/	No
ISP E	Yes	2	No	No	No

**For the ISPs in the sample group as a whole, the nature and content of the due diligence performed cannot ensure compliance with all the arrangements applicable to them, to a varying degree, infringing the provisions of Article L. 533-10 II 1° of the MFC and Article 22 of Delegated Regulation (EU) 2017/565 of 25 April 2016 applicable to the ISPs on the topic inspected in light of Article 312-1 of the AMF GR.**

**Regulatory breach:**

- Failure to establish "level 2" checks or inadequacy of the checks deployed with regard to the scope of coverage of the bond post-trade transparency topic, infringing the provisions of Article L. 533-10 II 1° of the MFC and Article 22 of Delegated Regulation (EU) 2017/565 of 25 April 2016 in application of Article 312-1 of the AMF GR (five ISPs).

<sup>42</sup> "Yes" entered for checks in the above table means that the checks are planned. However, it does not mean that those checks are sufficient and/or performed satisfactorily.