

DERIVATIVES TRADING OBLIGATION (DTO)

EUROPEAN COMMISSION'S CONSULTATION ON THE IMPLEMENTING ACT FOR TARGETED SUSPENSION

AMAFI's answer

AMAFI is the trade association representing financial markets' participants of the sell-side industry located in France. It has a wide and diverse membership of more than 170 global and local institutions notably investment firms, credit institutions, broker-dealers, exchanges and private banks. They operate in all market segments, such as equities, bonds and derivatives including commodities derivatives. AMAFI represents and supports its members at national, European and international levels, from the drafting of the legislation to its implementation. Through our work, we seek to promote a regulatory framework that enables the development of sound, efficient and competitive capital markets for the benefit of investors, businesses and the economy in general.

AMAFI welcomes the publication of the draft implementing act providing a targeted suspension of the Derivatives Trading Obligation (DTO) for certain financial counterparties, under clearly defined conditions and in situations involving transactions with non-EU clients.

We look forward to its entry into force considering that, post-Brexit, the uncoordinated application from 1st January 2021 onwards of the EU and UK DTOs has led to significant upheavals in the liquidity of instruments subject to the trading obligations, affecting both the inter-dealer (D2D) and the dealer-to-client (D2C) markets. EU financial institutions, being also subject to the European obligation to trade the most liquid derivatives on an EU trading venue (or an equivalent third-country venue), are indeed effectively compelled, in the absence of mutual recognition between UK and EU, to execute their transactions with UK counterparties on US platforms, which are the only venues recognised as equivalent by both jurisdictions. As a result, the market share of European institutions operating in the United Kingdom has steadily fallen, contributing to a decline in their global competitiveness when transacting with non-EU clients, who were disincentivised to trade with them.

More broadly, this highlights a wider concern related to EU rules having extraterritorial effects, affecting activities, clients, and transactions occurring wholly outside the EU by:

- Creating legal and operational conflict with third country frameworks.
- Imposing duplicative or contradictory obligations on EU authorised firms servicing non-EU clients.
- Reducing international competitiveness of EU firms relative to non-EU peers.

- Discouraging non-EU clients from engaging with EU entities, limiting the EU's own international influence.

Such extraterritorial outreach of EU legislation is particularly true with regards to investor protection and market integrity rules, which puts EU firms operating in a third country at a structural competitive disadvantage vis-à-vis financial institutions bound by local regulation.

EU market participants should be able to apply local rules when they operate outside the Union with non-EU clients. The Market Integration and Supervision Package (MISP) should be an opportunity to clarify this principle in MiFID II/MiFIR, consistent with the EU Treaties and the legal acts adopted on their basis, which apply within the territory of the Member States, subject only to the specific extensions and derogations expressly provided for therein ([*Treaty of the European Union, Art. 52, Treaty on the Functioning of the European Union, Article 355*](#)).

