



EUROPEAN PARLIAMENT

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Committee on Economic and Monetary Affairs

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2011/0296(COD)

27.3.2012

**\*\*\*I**

## **DRAFT REPORT**

on the proposal for a regulation of the European Parliament and of the Council on markets in financial instruments and amending Regulation [EMIR] on OTC derivatives, central counterparties and trade repositories (COM(2011)0652 – C7-0359/2011 – 2011/0296(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Markus Ferber

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council on markets in financial instruments and amending Regulation [EMIR] on OTC derivatives, central counterparties and trade repositories  
(COM(2011)0652 – C7-0359/2011 – 2011/0296(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0652),
  - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0359/2011),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of 22 February 2012<sup>1</sup>,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on Development and the Committee on Industry, Research and Energy (A7-0000/2012),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>1</sup> Not yet published in the Official Journal.

**Amendment 1**  
**Proposal for a regulation**  
**Recital 7**

*Text proposed by the Commission*

(7) In order to make European markets more transparent and to level the playing field between various venues offering trading services it is necessary to introduce a new category of organised trading facility (OTF). This new category is broadly defined so that now and in the future it should be able to capture all types of organised execution and arranging of trading which do not correspond to the functionalities or regulatory specifications of existing venues. Consequently appropriate organisational requirements and transparency rules which support efficient price discovery need to be applied. The new category includes broker crossing systems, which can be described as internal electronic matching systems operated by an investment firm which execute client orders against other client orders. The new category also encompasses systems eligible for trading clearing-eligible and sufficiently liquid derivatives. It shall not include facilities where there is no genuine trade execution or arranging taking place in the system, such as bulletin boards used for advertising buying and selling interests, other entities aggregating or pooling potential buying or selling interests, or electronic post-trade confirmation services.

*Amendment*

(7) In order to make European markets more transparent and to level the playing field between various venues offering trading services it is necessary to introduce a new category of organised trading facility (OTF) **for bonds, structured finance products, emissions allowances and derivatives**. This new category is broadly defined so that now and in the future it should be able to capture all types of organised execution and arranging of trading which do not correspond to the functionalities or regulatory specifications of existing venues. Consequently appropriate organisational requirements and transparency rules which support efficient price discovery need to be applied. The new category includes broker crossing systems, which can be described as internal electronic matching systems operated by an investment firm which execute client orders against other client orders. The new category also encompasses systems eligible for trading clearing-eligible and sufficiently liquid derivatives. It shall not include facilities where there is no genuine trade execution or arranging taking place in the system, such as bulletin boards used for advertising buying and selling interests, other entities aggregating or pooling potential buying or selling interests, or electronic post-trade confirmation services.

Or. en

**Amendment 2**  
**Proposal for a regulation**  
**Recital 12**

*Text proposed by the Commission*

(12) The financial crisis exposed specific weaknesses in the way information on trading opportunities and prices in financial instruments other than shares is available to market participants, namely in terms of timing, granularity, equal access, and reliability. Pre- and post-trade transparency requirements taking account of the different characteristics and market structures of specific types of instruments other than shares should thus be introduced. In order to provide a sound transparency framework for all relevant instruments, these should apply to bonds and structured finance products with a prospectus or which are admitted to trading either on a regulated market or are traded on a multilateral trading facility (MTF) or an *organised trading facility* (OTF), to derivatives which are traded or admitted to trading on regulated markets, MTFs and OTFs or considered eligible for central clearing, as well as, in the case of post-trade transparency, to derivatives reported to trade repositories. Therefore only those financial instruments ***traded purely OTC*** which ***are deemed particularly illiquid or*** are bespoke in their design would be outside the scope of the transparency obligations.

*Amendment*

(12) The financial crisis exposed specific weaknesses in the way information on trading opportunities and prices in financial instruments other than shares is available to market participants, namely in terms of timing, granularity, equal access, and reliability. Pre- and post-trade transparency requirements taking account of the different characteristics and market structures of specific types of instruments other than shares should thus be introduced. In order to provide a sound transparency framework for all relevant instruments, these should apply to bonds and structured finance products with a prospectus or which are admitted to trading either on a regulated market or are traded on a multilateral trading facility (MTF) or an OTF, to derivatives which are traded or admitted to trading on regulated markets, MTFs and OTFs or considered eligible for central clearing, as well as, in the case of post-trade transparency, to derivatives reported to trade repositories. Therefore only those financial instruments which are bespoke in their design would be outside the scope of the transparency obligations.

Or. en

**Amendment 3**  
**Proposal for a regulation**  
**Recital 16**

*Text proposed by the Commission*

(16) An investment firm executing client

*Amendment*

(16) An investment firm executing client

orders against own proprietary capital should be deemed a systematic internaliser, unless the transactions are carried out outside regulated markets, MTFs and OTFs on an ***occasional***, ad hoc and irregular basis. Systematic internalisers should be defined as investment firms which, on an organised, ***frequent*** and systematic basis, deal on own account by executing client orders outside a regulated market, an MTF or an OTF. In order to ensure the objective and effective application of this definition to investment firms, any bilateral trading carried out with clients should be relevant and quantitative criteria ***should*** complement the qualitative criteria for the identification of investment firms required to register as systematic internalisers, laid down in Article 21 of Commission Regulation No 1287/2006 implementing Directive 2004/39/EC. While an OTF is any system or facility in which multiple third party buying and selling interests interact in the system, a systematic internaliser should not be allowed to bring together third party buying and selling interests.

orders against own proprietary capital should be deemed a systematic internaliser, unless the transactions are carried out outside regulated markets, MTFs and OTFs on an ad hoc and irregular basis. Systematic internalisers should be defined as investment firms which, on an organised and systematic basis, deal on own account by executing client orders outside a regulated market, an MTF or an OTF. In order to ensure the objective and effective application of this definition to investment firms, any bilateral trading carried out with clients should be relevant and quantitative criteria ***could*** complement the qualitative criteria for the identification of investment firms required to register as systematic internalisers, laid down in Article 21 of Commission Regulation No 1287/2006 implementing Directive 2004/39/EC. While an OTF is any system or facility in which multiple third party buying and selling interests interact in the system, a systematic internaliser should not be allowed to bring together third party buying and selling interests.

Or. en

**Amendment 4**  
**Proposal for a regulation**  
**Recital 18**

*Text proposed by the Commission*

(18) It is not the intention of this Regulation to require the application of pre-trade transparency rules to transactions ***carried out on an OTC basis***, the characteristics of which include that ***they are ad-hoc and irregular and are carried out with*** wholesale counterparties ***and are part of a business relationship which is itself characterised by dealings above standard market size, and where the deals***

*Amendment*

(18) It is ***appropriate to ensure that as much trading as possible which occurs outside regulated execution venues takes place in organised systems to which appropriate transparency requirements apply***. It is not the intention of this Regulation to require the application of pre-trade transparency rules to ***OTC*** transactions ***involving primary issuance***, the characteristics of which include that ***the***

*are carried out outside the systems usually used by the firm concerned for its business as a systematic internaliser.*

*instruments are bespoke and designed for the specific requirements of wholesale financial or non-financial counterparties.*

Or. en

**Amendment 5**  
**Proposal for a regulation**  
**Recital 23 a (new)**

*Text proposed by the Commission*

*Amendment*

*(23a) ESMA should monitor the investment products, including structured deposits and financial instruments which are marketed, distributed or sold in the Union and should be able to investigate new investment products or financial instruments before they are marketed, distributed or sold in the Union, in cooperation with the competent authorities. ESMA should be empowered to prohibit temporarily or to restrict the marketing, distribution or sale in the Union of certain investment products or financial instruments, or a type of financial activity or practice, provided certain conditions specified in this Regulation are fulfilled. ESMA should also be able to impose such prohibitions or restrictions on a precautionary basis before an investment product or financial instrument has been marketed or sold to clients, provided certain conditions specified in this Regulation are fulfilled.*

Or. en

**Amendment 6**  
**Proposal for a regulation**  
**Recital 24**

*Text proposed by the Commission*

(24) Competent authorities' powers should be complemented with an explicit mechanism for prohibiting or restricting the marketing, distribution and sale of any financial instrument giving rise to serious concerns regarding investor protection, orderly functioning and integrity of financial markets, or the stability of the whole or part of the financial system, together with appropriate coordination and contingency powers for ESMA. The exercise of such powers should be subject to the need to fulfil a number of specific conditions.

*Amendment*

(24) **Competent authorities should monitor investment products, including structured deposits, and financial instruments which are marketed, distributed or sold in or from the Member State concerned.** Competent authorities' powers should be complemented with an explicit mechanism for prohibiting or restricting the marketing, distribution and sale of any **investment product or** financial instrument giving rise to serious concerns regarding investor protection, orderly functioning and integrity of financial markets, or the stability of the whole or part of the financial system, together with appropriate coordination and contingency powers for ESMA. The exercise of such powers should be subject to the need to fulfil a number of specific conditions. **Where those conditions are met, the competent authority should be able to impose a prohibition or restriction on a precautionary basis before an investment product or financial instrument has been marketed, distributed or sold to clients.**

Or. en

**Amendment 7**

**Proposal for a regulation  
Recital 33**

*Text proposed by the Commission*

(33) Trading venues should also be required to provide access including data feeds on a transparent and non-discriminatory basis to CCPs that wish to clear transactions executed on the trading venue. Licensing and access to information about indices and other benchmarks that are used to determine the value of financial

*Amendment*

(33) Trading venues should also be required to provide access including data feeds on a transparent and non-discriminatory basis to CCPs that wish to clear transactions executed on the trading venue. **The right of access of a CCP to a trading venue should allow for arrangements whereby multiple CCPs are**

instruments should also be provided to CCPs and other trading venues on a non-discriminatory basis. The removal of barriers and discriminatory practices is intended to increase competition for clearing and trading of financial instruments in order to lower investment and borrowing costs, eliminate inefficiencies and foster innovation in Union markets. The Commission should continue to closely monitor the evolution of post-trade infrastructure and should, where necessary, intervene in order to prevent competitive distortions from occurring in the internal market.

*using trade feeds of the same trading venue. However, this should not lead to interoperability for derivatives clearing or create liquidity fragmentation.* Licensing and access to information about indices and other benchmarks that are used to determine the value of financial instruments should also be provided to CCPs and other trading venues on a non-discriminatory basis. The removal of barriers and discriminatory practices is intended to increase competition for clearing and trading of financial instruments in order to lower investment and borrowing costs, eliminate inefficiencies and foster innovation in Union markets. The Commission should continue to closely monitor the evolution of post-trade infrastructure and should, where necessary, intervene in order to prevent competitive distortions from occurring in the internal market.

Or. en

**Amendment 8**  
**Proposal for a regulation**  
**Recital 38**

*Text proposed by the Commission*

(38) The **Commission should be empowered** to adopt delegated acts in accordance with Article 290 of the Treaty. **In particular, the delegated acts should be adopted** in respect of **specific details concerning** definitions; the precise characteristics of trade transparency requirements; detailed conditions for waivers from pre-trade transparency; deferred post-trade publication arrangements; criteria for the application of the pre-trade transparency obligations for systematic internalisers, specific cost-related provisions related to the availability of market data; the criteria for granting or

*Amendment*

(38) The **power** to adopt delegated acts in accordance with Article 290 **TFEU** should be **delegated to the Commission** in respect of **the specification of certain** definitions; the precise characteristics of trade transparency requirements; detailed conditions for waivers from pre-trade transparency; deferred post-trade publication arrangements; criteria for the application of the pre-trade transparency obligations for systematic internalisers, specific cost-related provisions related to the availability of market data; the criteria for granting or refusing access between trading venues and CCPs; and the further

refusing access between trading venues and CCPs; and the further determination of conditions under which threats to investor protection, the orderly functioning and integrity of financial markets, or the stability of the whole or part of the financial system of the Union may warrant ESMA action.

determination of conditions under which threats to investor protection, the orderly functioning and integrity of financial markets, or the stability of the whole or part of the financial system of the Union may warrant ESMA action. ***It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.***

Or. en

**Amendment 9**  
**Proposal for a regulation**  
**Recital 39**

*Text proposed by the Commission*

(39) **The** implementing powers **relating** to the adoption of the equivalence decision concerning third country legal and supervisory frameworks for the provision of services by third country firms should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

*Amendment*

(39) **In order to ensure uniform conditions for the implementation of this Regulation**, implementing powers **should be conferred on the Commission. Those powers should relate** to the adoption of the equivalence decision concerning third country legal and supervisory frameworks for the provision of services by third country firms **and they** should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

Or. en

**Amendment 10**  
**Proposal for a regulation**  
**Recital 42**

*Text proposed by the Commission*

(42) The Commission should adopt the draft regulatory technical standards developed by ESMA according to Article 23 regarding the content and specifications of transaction reports, Article 26 regarding the liquidity criteria for derivatives to be considered subject to an obligation to trade on organised trading venues, and Article 36 concerning the information that the applicant third country firm shall provide to ESMA in its application for registration by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No **1093/2010**.

*Amendment*

(42) The Commission should adopt the draft regulatory technical standards developed by ESMA according to Article 23 regarding the content and specifications of transaction reports, ***specifying the types of derivative contracts which have a direct, substantial and foreseeable effect within the Union, specifying whether a class of derivatives declared subject to the clearing obligation under Regulation (EU) No .../... [EMIR] or a relevant subset thereof should be traded only on organised trading venues***, Article 26 regarding the liquidity criteria for derivatives to be considered subject to an obligation to trade on organised trading venues, and Article 36 concerning the information that the applicant third country firm shall provide to ESMA in its application for registration. ***The Commission should adopt those draft regulatory technical standards*** by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No **1095/2010**.

Or. en

**Amendment 11**  
**Proposal for a regulation**  
**Recital 43**

*Text proposed by the Commission*

***(43) The Commission should also be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010. ESMA***

*Amendment*

***deleted***

*should be entrusted with drafting implementing technical standards for submission to the Commission with regard to Article 26 specifying whether a class of derivatives declared subject to the clearing obligation under Regulation [ ] (EMIR) or a relevant subset thereof should only be traded on organised trading venues.*

Or. en

**Amendment 12**  
**Proposal for a regulation**  
**Article 1 – paragraph 1 – point e**

*Text proposed by the Commission*

(e) product intervention powers of competent authorities and ESMA **and powers of ESMA on position management and position limits**;

*Amendment*

(e) product intervention powers of competent authorities and ESMA;

Or. en

**Amendment 13**  
**Proposal for a regulation**  
**Article 1 – paragraph 2**

*Text proposed by the Commission*

2. This Regulation applies to investment firms, **credit institutions** authorised under Directive [new MiFID] when providing one or more investment services and/or performing investment activities and regulated markets.

*Amendment*

2. This Regulation applies to **credit institutions and** investment firms authorised under Directive .../.../EU [new MiFID] when **the credit institution or investment firm is** providing one or more investment services and/or performing investment activities and **to** regulated markets.

Or. en

**Amendment 14**  
**Proposal for a regulation**  
**Article 2 – paragraph 1 – point 3**

*Text proposed by the Commission*

(3) ‘systematic internaliser’ means an investment firm which, on an organised, **frequent** and systematic basis, deals on own account by executing client orders outside a regulated market or an MTF or an OTF;

*Amendment*

(3) ‘systematic internaliser’ means an investment firm which, on an organised and systematic basis, deals on own account by executing client orders outside a regulated market or an MTF or an OTF **in a bilateral system**;

Or. en

**Amendment 15**  
**Proposal for a regulation**  
**Article 2 – paragraph 1 – point 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**(3a) 'bilateral system' means a system that brings together or facilitates the bringing together of buying and selling interests in financial instruments whereby the investment firm operating the system deals on own account by executing client orders within the system;**

Or. en

**Amendment 16**  
**Proposal for a regulation**  
**Article 2 – paragraph 1 – point 7**

*Text proposed by the Commission*

(7) ‘organised trading facility (OTF)’ means **any** system or facility, which is not a regulated market or MTF, operated by an investment firm or a market operator, in which multiple third-party buying and selling interests in **financial instruments** are able to interact in the system in a way

*Amendment*

(7) ‘organised trading facility (OTF)’ means **a multilateral** system or facility, which is not a regulated market or MTF, operated by an investment firm or a market operator, in which multiple third-party buying and selling interests in **bonds, structured finance products, emission**

that results in a contract in accordance with the provisions of Title II of Directive [new MiFID];

*allowances or derivatives* are able to interact in the system in a way that results in a contract in accordance with the provisions of Title II of Directive .../.../EU [new MiFID];

Or. en

**Amendment 17**  
**Proposal for a regulation**  
**Article 2 – paragraph 1 – point 7 a (new)**

*Text proposed by the Commission*

*Amendment*

*(7a) 'multilateral system' means a system that brings together or facilitates the bringing together of buying and selling interests in financial instruments, irrespective of the actual number of orders that are executed in the resulting transactions;*

Or. en

**Amendment 18**  
**Proposal for a regulation**  
**Article 2 – paragraph 1 – point 17**

*Text proposed by the Commission*

*Amendment*

(17) 'competent authority' means the authority, designated by each Member State in accordance with **Article 48** of Directive [new MiFID], unless otherwise specified in that Directive;

(17) 'competent authority' means the authority, designated by each Member State in accordance with **Article 69** of Directive .../.../EU [new MiFID], unless otherwise specified in that Directive;

Or. en

**Amendment 19**  
**Proposal for a regulation**  
**Article 2 – paragraph 1 – point 19**

*Text proposed by the Commission*

(19) ‘consolidated tape provider (CTP)’ means a person authorised under the provisions established in Directive [new MiFID] to provide the service of collecting trade reports for financial instruments listed in Articles [5, 6, 11 and 12] of this Regulation from regulated markets, MTFs, OTFs and APAs and consolidating them into a continuous electronic live data stream providing real-time price and volume data per financial instrument;

*Amendment*

(19) ‘consolidated tape provider (CTP)’ means a person authorised under the provisions established in Directive .../.../EU [new MiFID] to provide the service of collecting trade reports for financial instruments listed in Articles 5, 6, 11 and 12 of this Regulation from regulated markets, MTFs, OTFs and **Approved Publication Arrangements (APAs)** and consolidating them into a continuous electronic live data stream providing real-time **and, where provided for in Article 66(1) and (2) of Directive .../.../EU [new MiFID], delayed** price and volume data per financial instrument;

Or. en

**Amendment 20**  
**Proposal for a regulation**  
**Article 2 – paragraph 1 – point 21**

*Text proposed by the Commission*

(21) ‘management body’ means the governing body of a data reporting services provider, comprising the supervisory and the managerial functions, which has the ultimate decision-making authority and is empowered to set the **entity's** strategy, objectives and overall direction. *The management body shall include* persons who effectively direct the business of the entity;

*Amendment*

(21) ‘management body’ means the governing body **of an investment firm, market operator or** data reporting services provider, comprising the supervisory and the managerial functions, which has the ultimate decision-making authority and is empowered to set the **investment firm's, the market operator's or the data services provider's** strategy, objectives and overall direction, *including* persons who effectively direct the business of the entity;

Or. en

**Amendment 21**  
**Proposal for a regulation**  
**Article 2 – paragraph 1 – point 22**

*Text proposed by the Commission*

*Amendment*

**(22) ‘supervisory function’ means the management body acting in its supervisory function of overseeing and monitoring management decision-making;**

**deleted**

Or. en

**Amendment 22  
Proposal for a regulation  
Article 2 – paragraph 1 – point 23**

*Text proposed by the Commission*

*Amendment*

**(23) ‘senior management’ means those individuals who exercise executive functions within a data reporting services provider and who are responsible and accountable for the day-to-day management.**

**deleted**

Or. en

**Amendment 23**

**Proposal for a regulation  
Article 2 – paragraph 1 – point 26 a (new)**

*Text proposed by the Commission*

*Amendment*

**(26a) ‘interoperability arrangement’ means an interoperability arrangement within the meaning of point (9) of Article 2(1) of Regulation (EU) No .../... [EMIR].**

Or. en

**Amendment 24**  
**Proposal for a regulation**  
**Article 2 – paragraph 1 – point 27**

*Text proposed by the Commission*

(27) 'investment services and activities' means *the* services and activities *defined in Article 4(1)(2)* of Directive [new MiFID].

*Amendment*

(27) 'investment services and activities' means services and activities *within the meaning of point (1) of Article 4(2)* of Directive .../.../EU [new MiFID];

Or. en

**Amendment 25**  
**Proposal for a regulation**  
**Article 2 – paragraph 1 – point 29**

*Text proposed by the Commission*

(29) 'wholesale energy product' means *those* contracts and derivatives *defined in Article 2(4)* of Regulation [REMIT].

*Amendment*

(29) 'wholesale energy product' means contracts and derivatives *within the meaning of Article 2(4) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency*<sup>1</sup>;

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<sup>1</sup> OJ L 326, 8.12.2011, p. 1.

Or. en

**Amendment 26**  
**Proposal for a regulation**  
**Article 2 – paragraph 2**

*Text proposed by the Commission*

2. The definitions provided in *paragraph 1 also apply to* Directive [new MiFID].

*Amendment*

2. The definitions provided in *Article 4(1) of Directive .../.../EU [new MiFID] also apply to this Regulation.*

Or. en

**Amendment 27**  
**Proposal for a regulation**  
**Article 2 – paragraph 3**

*Text proposed by the Commission*

3. The Commission **may** adopt, *by means of* delegated acts in accordance with Article 41, *measures* specifying *some* technical elements of the definitions laid down in paragraph 1 to adjust them to market development.

*Amendment*

3. The Commission **shall be empowered to** adopt delegated acts in accordance with Article 41 specifying *certain* technical elements of the definitions laid down in ***points (3), (3a), (7), (7a), (10) to (16), (18) to (26a), (28) and (29) of paragraph 1 of this Article*** to adjust them to market development.

Or. en

**Amendment 28**  
**Proposal for a regulation**  
**Article 3 – paragraph 1**

*Text proposed by the Commission*

1. Regulated markets and investment firms and market operators operating an MTF **or an OTF** shall make public current bid and offer prices and the depth of trading interests at those prices which are advertised through their systems for shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments admitted to trading or which are traded on an MTF **or an OTF**. This requirement shall also apply to actionable indications of interests. Regulated markets and investment firms and market operators operating an MTF **or an OTF** shall make this information available to the public on a continuous basis during normal trading hours.

*Amendment*

1. Regulated markets and investment firms and market operators operating an MTF shall make public current bid and offer prices and the depth of trading interests at those prices which are advertised through their systems for shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments admitted to trading or which are traded on an MTF. This requirement shall also apply to actionable indications of interests. Regulated markets and investment firms and market operators operating an MTF shall make this information available to the public on a continuous basis during normal trading hours.

Or. en

**Amendment 29**  
**Proposal for a regulation**  
**Article 3 – paragraph 2**

*Text proposed by the Commission*

2. Regulated markets and investment firms and market operators operating an MTF *or an OTF* shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information under the first paragraph to investment firms which are obliged to publish their quotes in shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments pursuant to Article 13.

*Amendment*

2. Regulated markets and investment firms and market operators operating an MTF shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information under the first paragraph to investment firms which are obliged to publish their quotes in shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments pursuant to Article 13.

Or. en

**Amendment 30**  
**Proposal for a regulation**  
**Article 4 – paragraph 1**

*Text proposed by the Commission*

1. Competent authorities shall be able to waive the obligation for regulated markets and investment firms and market operators operating an MTF *or an OTF* to make public the information referred to in Article 3(1) based on the market model or the type and size of orders in the cases defined in accordance with paragraph 3. In particular, the competent authorities shall be able to waive the obligation in respect of orders that are large in scale compared with normal market size for the share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument or type of share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument in question.

*Amendment*

1. Competent authorities shall be able to waive the obligation for regulated markets and investment firms and market operators operating an MTF to make public the information referred to in Article 3(1) based on the market model or the type and size of orders in the cases defined in accordance with paragraph 3. In particular, the competent authorities shall be able to waive the obligation in respect of orders that are large in scale compared with normal market size for the share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument or type of share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument in question.

**Amendment 31**  
**Proposal for a regulation**  
**Article 5 – paragraph 1**

*Text proposed by the Commission*

1. Regulated markets and investment firms and market operators operating an MTF **or an OTF** shall make public the price, volume and time of the transactions executed in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments admitted to trading or which are traded on an MTF **or an OTF**. Regulated markets and investment firms and market operators operating an MTF **or an OTF** shall make details of all such transactions public as close to real-time as is technically possible.

*Amendment*

1. Regulated markets and investment firms and market operators operating an MTF shall make public the price, volume and time of the transactions executed in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments admitted to trading or which are traded on an MTF. Regulated markets and investment firms and market operators operating an MTF shall make details of all such transactions public as close to real-time as is technically possible.

**Amendment 32**  
**Proposal for a regulation**  
**Article 5 – paragraph 2**

*Text proposed by the Commission*

2. Regulated markets and investment firms and market operators operating an MTF **or an OTF** shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information under paragraph 1 to investment firms which are obliged to publish the details of their transactions in shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments pursuant to Article 19.

*Amendment*

2. Regulated markets and investment firms and market operators operating an MTF shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information under paragraph 1 to investment firms which are obliged to publish the details of their transactions in shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments pursuant to Article 19.

**Amendment 33**  
**Proposal for a regulation**  
**Article 6 – paragraph 1**

*Text proposed by the Commission*

1. Competent authorities shall be able to authorise regulated markets to provide for deferred publication of the details of transactions based on their type or size. In particular, the competent authorities may authorise the deferred publication in respect of transactions that are large in scale compared with the normal market size for that share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument or that class of share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument. Regulated markets and investment firms and market operators operating an MTF *or an OTF* shall obtain the competent authority's prior approval of proposed arrangements for deferred trade-publication, and shall clearly disclose these arrangements to market participants and the public. ESMA shall monitor the application of these arrangements for deferred trade-publication and shall submit an annual report to the Commission on how they are applied in practice.

*Amendment*

1. Competent authorities shall be able to authorise regulated markets to provide for deferred publication of the details of transactions based on their type or size. In particular, the competent authorities may authorise the deferred publication in respect of transactions that are large in scale compared with the normal market size for that share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument or that class of share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument. Regulated markets and investment firms and market operators operating an MTF shall obtain the competent authority's prior approval of proposed arrangements for deferred trade-publication, and shall clearly disclose these arrangements to market participants and the public. ESMA shall monitor the application of these arrangements for deferred trade-publication and shall submit an annual report to the Commission on how they are applied in practice.

**Amendment 34**  
**Proposal for a regulation**  
**Article 6 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) the details that need to be specified by regulated markets, investment firms,

*Amendment*

(a) the details that need to be specified by regulated markets, investment firms,

including systematic internalisers and investment firms and regulated markets operating a MTF *or an OTF* in the information to be made available to the public for each class of financial instrument concerned;

including systematic internalisers and investment firms and regulated markets operating a MTF in the information to be made available to the public for each class of financial instrument concerned;

Or. en

**Amendment 35**  
**Proposal for a regulation**  
**Article 6 – paragraph 2 – point b**

*Text proposed by the Commission*

(b) the conditions for authorising a regulated market, an investment firm, including a systematic internaliser or an investment firm or market operator operating an MTF *or an OTF* for a deferred publication of trades and the criteria to be applied when deciding the transactions for which, due to their size or the type of share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument involved, deferred publication is allowed for each class of financial instrument concerned.

*Amendment*

(b) the conditions for authorising a regulated market, an investment firm, including a systematic internaliser or an investment firm or market operator operating an MTF for a deferred publication of trades and the criteria to be applied when deciding the transactions for which, due to their size or the type of share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument involved, deferred publication is allowed for each class of financial instrument concerned.

Or. en

**Amendment 36**  
**Proposal for a regulation**  
**Article 8 – paragraph 1**

*Text proposed by the Commission*

1. Competent authorities shall be able to waive the obligation for regulated markets and investment firms and market operators operating an MTF *or an OTF* to make public the information referred to in Article 7(1) for specific sets of products based on the market model, the specific

*Amendment*

1. Competent authorities shall be able to waive the obligation for regulated markets and investment firms and market operators operating an MTF to make public the information referred to in Article 7(1) for specific sets of products based on the market model, the specific characteristics

characteristics of trading activity in a product and the liquidity in the cases defined in accordance with paragraph 4.

of trading activity in a product and the liquidity in the cases defined in accordance with paragraph 4.

Or. en

**Amendment 37**  
**Proposal for a regulation**  
**Article 8 – paragraph 2**

*Text proposed by the Commission*

2. Competent authorities shall be able to waive the obligation for regulated markets and investment firms and market operators operating an MTF *or an OTF* to make public the information referred to in *paragraph 1 of Article 7* based on the type and size of orders and method of trading in accordance with paragraph 4. In particular, the competent authorities shall be able to waive the obligation in respect of orders that are large in scale compared with normal market size for the bond, structured finance product, emission allowance or derivative or type of bond, structured finance product, emission allowance or derivative in question.

*Amendment*

2. Competent authorities shall be able to waive the obligation for regulated markets and investment firms and market operators operating an MTF to make public the information referred to in *Article 7(1)* based on the type and size of orders and method of trading in accordance with paragraph 4. In particular, the competent authorities shall be able to waive the obligation in respect of orders that are large in scale compared with normal market size for the bond, structured finance product, emission allowance or derivative or type of bond, structured finance product, emission allowance or derivative in question.

Or. en

**Amendment 38**  
**Proposal for a regulation**  
**Article 8 – paragraph 4 – point b – point i**

*Text proposed by the Commission*

*(i) the market model;*

*Amendment*

*deleted*

Or. en

**Amendment 39**  
**Proposal for a regulation**  
**Article 8 – paragraph 4 – point b – point ii**

*Text proposed by the Commission*

*Amendment*

**(ii) the specific characteristics of trading activity in a product;**

**deleted**

Or. en

**Amendment**  
**Proposal for a regulation**  
**Article 8 – paragraph 4 – point b – point iv**

*Text proposed by the Commission*

*Amendment*

(iv) the size **or type** of orders and the size and type of an issue of a financial instrument.

(iv) the size of orders and the size and type of an issue of a financial instrument.

Or. en

**Amendment 41**  
**Proposal for a regulation**  
**Article 10 – paragraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

(b) the conditions for authorising for each class of financial instrument concerned a deferred publication of trades for a regulated market, an investment firm, including a systematic internaliser or an investment firm or market operator operating an MTF or an OTF and the criteria to be applied when deciding the transactions for which, due to their size or the type of bond, structured finance product, emission allowance or derivative involved, deferred publication **and/or the omission of the volume of the transaction** is allowed.

(b) the conditions for authorising for each class of financial instrument concerned a deferred publication of trades for a regulated market, an investment firm, including a systematic internaliser or an investment firm or market operator operating an MTF or an OTF and the criteria to be applied when deciding the transactions for which, due to their size or the type of bond, structured finance product, emission allowance or derivative involved deferred publication is allowed.

**Amendment 42**  
**Proposal for a regulation**  
**Article 11 – paragraph 1**

*Text proposed by the Commission*

1. Regulated markets and market operators and investment firms operating MTFs and OTFs shall make the information published in accordance with Articles 3 to 10 available to the public by offering pre- and post-trade transparency data separately.

*Amendment*

1. Regulated markets and market operators and investment firms operating MTFs and, **where applicable**, OTFs shall make the information published in accordance with Articles 3 to 10 available to the public by offering pre- and post-trade transparency data separately.

**Amendment 43**  
**Proposal for a regulation**  
**Article 12 – paragraph 1**

*Text proposed by the Commission*

1. Regulated markets, MTFs and OTFs shall make the information published in accordance with Articles 3 to 10 available to the public on a reasonable commercial basis. The information shall be made available free of charge 15 minutes after the publication of a transaction.

*Amendment*

1. Regulated markets, MTFs and, **where applicable**, OTFs shall make the information published in accordance with Articles 3 to 10 available to the public on a reasonable commercial basis. The information shall be made available free of charge 15 minutes after the publication of a transaction.

**Amendment 44**  
**Proposal for a regulation**  
**Article -13 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article -13a**

***Obligation to trade OTC through  
systematic internalisers***

***1. All transactions in shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments which are not intragroup transactions as referred to in Article 2a of Regulation (EU) No .../... [EMIR] and which are not concluded on a regulated market or MTF shall be concluded through a systematic internaliser unless the transaction involves the primary issuance of the instrument.***

***2. All transactions in bonds, structured finance products admitted to trading on a regulated market or for which a prospectus has been published, emission allowances and derivatives which are eligible for clearing or which are admitted to trading on a regulated market or are traded on an MTF or an OTF and which are not subject to the trading obligation under Article 26, which are not concluded on a regulated market, MTF, OTF or third-country trading venue assessed as equivalent in accordance with Article 26(4), shall be concluded through a systematic internaliser unless the transaction involves the primary issuance of the instrument.***

Or. en

**Amendment 45  
Proposal for a regulation  
Article 13 – paragraph 1**

*Text proposed by the Commission*

1. Systematic internalisers in shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments shall publish a firm quote in those shares, depositary receipts, exchange-traded funds, certificates and

*Amendment*

1. Systematic internalisers in shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments shall publish a firm quote in those shares, depositary receipts, exchange-traded funds, certificates and

other similar financial instruments admitted to trading on a regulated market or traded on an MTF *or an OTF* for which they are systematic internalisers and for which there is a liquid market. In the case of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments for which there is not a liquid market, systematic internalisers shall disclose quotes to their clients on request.

other similar financial instruments admitted to trading on a regulated market or traded on an MTF for which they are systematic internalisers and for which there is a liquid market. In the case of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments for which there is not a liquid market, systematic internalisers shall disclose quotes to their clients on request.

Or. en

**Amendment 46**  
**Proposal for a regulation**  
**Article 13 – paragraph 6**

*Text proposed by the Commission*

6. The competent authority of the most relevant market in terms of liquidity as defined in Article 23 for each share, depositary receipt, exchange-traded fund, certificate and other similar financial instrument shall determine at least annually, on the basis of the arithmetic average value of the orders executed in the market in respect of that financial instrument, the class to which it belongs. This information shall be made public to all market participants.

*Amendment*

6. The competent authority of the most relevant market in terms of liquidity as defined in Article 23 for each share, depositary receipt, exchange-traded fund, certificate and other similar financial instrument shall determine at least annually, on the basis of the arithmetic average value of the orders executed in the market in respect of that financial instrument, the class to which it belongs. This information shall be made public to all market participants ***and communicated to ESMA which shall publish the information on its website.***

Or. en

**Amendment 47**  
**Proposal for a regulation**  
**Article 18 – paragraph 1**

*Text proposed by the Commission*

1. Competent authorities and ESMA shall

*Amendment*

1. Competent authorities and ESMA shall

monitor the application of *this Article* regarding the sizes at which quotes are made available to clients of the investment firm and made available to other market participants relative to other trading activity of the firm, and the degree to which the quotes reflect prevailing market conditions in relation to transactions in the same or similar instruments taking place on regulated markets, MTFs, or OTFs. Within **2 years from the date of entry into force**, ESMA shall report to the Commission on the application of *this Article*. In case of significant quoting and trading activity just beyond the threshold mentioned in *paragraph 3 of Article 17* or outside prevailing market conditions, *they* shall report to the Commission before this deadline.

monitor the application of *Article 17* regarding the sizes at which quotes are made available to clients of the investment firm and made available to other market participants relative to other trading activity of the firm, and the degree to which the quotes reflect prevailing market conditions in relation to transactions in the same or similar instruments taking place on regulated markets, MTFs, or OTFs. Within ... \*, ESMA shall report to the Commission on the application of *Article 17*. In case of significant quoting and trading activity just beyond the threshold mentioned in *Article 17(3)* or outside prevailing market conditions, *ESMA* shall report to the Commission before this deadline.

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**\* OJ please insert date: 24 months after entry into force of this Regulation.**

Or. en

**Amendment 48**  
**Proposal for a regulation**  
**Article 19 – paragraph 1**

*Text proposed by the Commission*

1. Investment firms which, either on own account or on behalf of clients, conclude transactions in shares, depositary receipts, exchange-traded funds, certificates or other similar financial instruments admitted to trading on a regulated market or which are traded on an MTF *or an OTF*, shall make public the volume and price of those transactions and the time at which they were concluded. This information shall be made public through an APA.

*Amendment*

1. Investment firms which, either on own account or on behalf of clients, conclude transactions in shares, depositary receipts, exchange-traded funds, certificates or other similar financial instruments admitted to trading on a regulated market or which are traded on an MTF, shall make public the volume and price of those transactions and the time at which they were concluded. This information shall be made public through an APA.

Or. en

**Amendment 49**  
**Proposal for a regulation**  
**Article 19 – paragraph 2**

*Text proposed by the Commission*

2. The information which is made public in accordance with paragraph 1 and the time-limits within which it is published shall comply with the requirements adopted pursuant to Article 6. Where the measures adopted pursuant to Article 6 provide for deferred reporting for certain categories of transaction in shares, depositary receipts, exchange-traded funds, certificates or other similar financial instruments, this possibility shall also apply to those transactions when undertaken outside regulated markets, MTFs *or* OTFs.

*Amendment*

2. The information which is made public in accordance with paragraph 1 and the time-limits within which it is published shall comply with the requirements adopted pursuant to Article 6. Where the measures adopted pursuant to Article 6 provide for deferred reporting for certain categories of transaction in shares, depositary receipts, exchange-traded funds, certificates or other similar financial instruments, this possibility shall also apply to those transactions when undertaken outside regulated markets *or* MTFs.

Or. en

**Amendment 50**  
**Proposal for a regulation**  
**Article 23 – paragraph 2**

*Text proposed by the Commission*

2. The obligation laid down in paragraph 1 shall not apply to financial instruments which are not admitted to trading or traded on an MTF or an OTF, to financial instruments whose value does not depend on that of a financial instrument admitted to trading or traded on an MTF or an OTF, nor to financial instruments which do not or are not likely to have an effect on a financial instrument admitted to trading or traded on an MTF or an OTF.

*Amendment*

2. The obligation laid down in paragraph 1 shall not apply to financial instruments which are not admitted to trading *on a regulated market* or traded on an MTF or an OTF, to financial instruments whose value does not depend on that of a financial instrument admitted to trading *on a regulated market* or traded on an MTF or an OTF, nor to financial instruments which do not or are not likely to have an effect on a financial instrument admitted to trading or traded on an MTF or an OTF.

Or. en

**Amendment 51**  
**Proposal for a regulation**  
**Article 23 – paragraph 8 – subparagraph 2**

*Text proposed by the Commission*

ESMA shall submit those draft regulatory technical standards to the Commission by [...].

*Amendment*

ESMA shall submit those draft regulatory technical standards to the Commission by ...\*.

---

**\* OJ please insert date: 12 months after entry into force of this Regulation.**

Or. en

**Amendment 52**  
**Proposal for a regulation**  
**Article 23 – paragraph 9**

*Text proposed by the Commission*

9. ***Two years after entry into force of this Regulation***, ESMA shall report to the Commission on the functioning of this Article, including whether the content and format of transaction reports received and exchanged between competent authorities comprehensively enable to monitor the activities of investment firms in accordance with Article 21. The Commission may take steps to propose any changes, including providing for transactions to be transmitted to a system appointed by ESMA instead of to competent authorities, which allows relevant competent authorities to access all the information reported pursuant to this Article.

*Amendment*

9. ***By ...***\* ESMA shall report to the Commission on the functioning of this Article , including whether the content and format of transaction reports received and exchanged between competent authorities comprehensively enable to monitor the activities of investment firms in accordance with Article 21. The Commission may take steps to propose any changes, including providing for transactions to be transmitted to a system appointed by ESMA instead of to competent authorities, which allows relevant competent authorities to access all the information reported pursuant to this Article. ***The Commission shall forward ESMA's report to the European Parliament and to the Council.***

---

**\* OJ please insert date: 24 months after entry into force of this Regulation.**

Or. en

**Amendment 53**  
**Proposal for a regulation**  
**Article 24 – paragraph 4 – subparagraph 1**

*Text proposed by the Commission*

4. The Commission may, in accordance with the procedure referred to in **Article 42**, adopt decisions determining that the legal and supervisory framework of a third country ensures that a trading venue authorised in that third country complies with legally binding requirements which are equivalent to the requirements for the trading venues referred to in *subparagraphs (a) to (c)* of paragraph 1 resulting from this Regulation, Directive [new MiFID], and Regulation [new MAR], and which are subject to effective supervision and enforcement in that third country.

*Amendment*

4. The Commission may, in accordance with the **examination** procedure referred to in **Article 42(2)**, adopt decisions determining that the legal and supervisory framework of a third country ensures that a trading venue authorised in that third country complies with legally binding requirements which are equivalent to the requirements for the trading venues referred to in *points (a), (b) and (c)* of paragraph 1 **of this Article**, resulting from this Regulation, Directive .../.../EU [new MiFID], and Regulation (EU) No .../...[new MAR], and which are subject to effective supervision and enforcement in that third country.

Or. en

**Amendment 54**  
**Proposal for a regulation**  
**Article 24 – paragraph 5**

*Text proposed by the Commission*

5. **The Commission** shall **adopt by means of delegated acts in accordance with Article 41 measures** specifying the types of contracts referred to in paragraph 2 which have a direct, substantial and foreseeable effect within the Union and the cases where the trading obligation is necessary or appropriate to prevent the evasion of any provision of this Regulation.

*Amendment*

5. **ESMA** shall **develop draft regulatory technical standards** specifying the types of contracts referred to in paragraph 2 which have a direct, substantial and foreseeable effect within the Union and the cases where the trading obligation is necessary or appropriate to prevent the evasion of any provision of this Regulation.

**ESMA shall submit those draft regulatory technical standards to the Commission by**

... \*.

*Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.*

---

*\* OJ please insert date: 12 months after entry into force of this Regulation.*

Or. en

### **Amendment 55**

#### **Proposal for a regulation**

#### **Article 26 – paragraph 1 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

ESMA shall develop draft **implementing** technical standards to determine the following:

*Amendment*

ESMA shall develop draft **regulatory** technical standards to determine the following:

Or. en

### **Amendment 56**

#### **Proposal for a regulation**

#### **Article 26 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

ESMA shall submit the draft **implementing** technical standards referred to in the first subparagraph to the Commission within three months after the **implementing** technical standards in accordance with Article 4(3) of Regulation [ ] (EMIR) are adopted by the Commission.

*Amendment*

ESMA shall submit the draft **regulatory** technical standards referred to in the first subparagraph to the Commission within three months after the **regulatory** technical standards in accordance with Article 4(3) of Regulation (EU) No .../...[EMIR] are adopted by the Commission.

Or. en

**Amendment 57**  
**Proposal for a regulation**  
**Article 26 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

Power is conferred to the Commission to adopt the **implementing** technical standards referred to in the first subparagraph in accordance with **Article 15** of Regulation 1095/2010.

*Amendment*

Power is conferred to the Commission to adopt the **regulatory** technical standards referred to in the first subparagraph in accordance with **Articles 10 to 14** of Regulation **(EU) No** 1095/2010.

Or. en

**Amendment 58**  
**Proposal for a regulation**  
**Article 26 – paragraph 3 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

3. In developing the draft **implementing** technical standards, ESMA shall consider the class of derivatives or a relevant subset thereof as sufficiently liquid pursuant to the following criteria:

*Amendment*

3. In developing the draft **regulatory** technical standards, ESMA shall consider the class of derivatives or a relevant subset thereof as sufficiently liquid pursuant to the following criteria:

Or. en

**Amendment 59**  
**Proposal for a regulation**  
**Article 26 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

Before submitting the draft **implementing** technical standards to the Commission for adoption, ESMA shall conduct a public consultation and, where appropriate, may consult with the competent authorities of third countries.

*Amendment*

Before submitting the draft **regulatory** technical standards to the Commission for adoption, ESMA shall conduct a public consultation and, where appropriate, may consult with the competent authorities of third countries.

Or. en

**Amendment 60**  
**Proposal for a regulation**  
**Article 26 – paragraph 4 – subparagraph 2**

*Text proposed by the Commission*

Following **a** notification **by** ESMA, **the Commission may** publish a call for development of proposals for the trading of those derivatives on the venues referred to in Article 24(1).

*Amendment*

Following **the** notification **referred to in the first subparagraph**, ESMA **shall** publish a call for development of proposals for the trading of those derivatives on the venues referred to in Article 24(1).

Or. en

**Amendment 61**  
**Proposal for a regulation**  
**Article 26 – paragraph 5**

*Text proposed by the Commission*

5. ESMA shall in accordance with paragraph 1, submit to the Commission new draft **implementing** technical standards to amend, suspend or revoke existing **implementing** technical standards whenever there is a material change in the criteria set out in paragraph 2. Before doing so, ESMA may consult, where appropriate, the competent authorities of third countries. Power is conferred to the Commission to amend, suspend and revoke the existing **implementing** technical standards in accordance with **Article 15** of Regulation (EU) No 1095/2010.

*Amendment*

5. ESMA shall in accordance with paragraph 1, submit to the Commission new draft **regulatory** technical standards to amend, suspend or revoke existing **regulatory** technical standards whenever there is a material change in the criteria set out in paragraph 2. Before doing so, ESMA may consult, where appropriate, the competent authorities of third countries. Power is conferred to the Commission to amend, suspend and revoke the existing **regulatory** technical standards in accordance with **Articles 10 to 14** of Regulation (EU) No 1095/2010.

Or. en

**Amendment 62**  
**Proposal for a regulation**  
**Article 26 – paragraph 6**

*Text proposed by the Commission*

6. **Powers are delegated to the**

*Amendment*

6. **ESMA shall develop draft** regulatory

**Commission to adopt** regulatory technical standards specifying the criteria referred to in paragraph 2(b), **to be adopted in accordance with Articles 10 to 14 of Regulation EU 1095/2010**. ESMA shall submit drafts for those regulatory technical standards to the Commission by --/--/--.

technical standards specifying the criteria referred to in *point (b)* of paragraph 2.

ESMA shall submit those draft regulatory technical standards to the Commission by ...\*.

**Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.**

---

**\* OJ please insert date: 12 months after entry into force of this Regulation.**

Or. en

## Amendment 63

### Proposal for a regulation Article 29 – paragraph 4

*Text proposed by the Commission*

4. **The** competent authority of the trading venue may only deny a CCP access to a trading venue where such access would threaten the smooth or orderly functioning of markets.

*Amendment*

4. **For transferable securities and money market instruments, the** competent authority of the trading venue may only deny a CCP access to a trading venue where such access would threaten the smooth or orderly functioning of markets. **For other financial instruments, access of the CCP to a trading venue shall be granted only where such access would not require interoperability or threaten the smooth and orderly functioning of markets in particular due to liquidity fragmentation and the trading venue has put in place adequate mechanisms to prevent such fragmentation.**

If a competent authority denies access on that basis it shall issue its decision within two months following receipt of the request referred to in paragraph 2 and provide full reasons to the trading venue and the CCP including the evidence on which its decision is based.

**4a.** If a competent authority denies access on that basis it shall issue its decision within two months following receipt of the request referred to in paragraph 2 and provide full reasons to the trading venue and the CCP including the evidence on which its decision is based.

Or. en

## Amendment 64

### Proposal for a regulation Article 29 – paragraph 6 – point a

*Text proposed by the Commission*

(a) the conditions under which access could be denied by a trading venue, including conditions based on the volume of transactions, the number of users or other factors creating undue risks.

*Amendment*

(a) the conditions under which access could be denied by a trading venue **for transferable securities and money market instruments**, including conditions based on the volume of transactions, the number of users or other factors creating undue risks.

Or. en

## Amendment 65

### Proposal for a regulation Article 29 – paragraph 6 a (new)

*Text proposed by the Commission*

*Amendment*

**6a. ESMA shall develop draft regulatory technical standards to specify the notion of liquidity fragmentation. Those draft regulatory technical standards shall, where possible, reflect the regulatory technical standards adopted by the Commission in accordance with Article 5a of Regulation (EU) No .../... [EMIR].**

**ESMA shall submit those draft regulatory technical standards to the Commission by**

... \*.

*Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.*

---

*\* OJ please insert date: 12 months after entry into force of this Regulation.*

Or. en

**Amendment 66**  
**Proposal for a regulation**  
**Article 31 – paragraph -1 (new)**

*Text proposed by the Commission*

*Amendment*

*-1. In accordance with Article 9(2) of Regulation (EU) No 1095/2010, ESMA shall monitor the investment products, including structured deposits and financial instruments which are marketed, distributed or sold in the Union and may proactively investigate new investment products or financial instruments before they are marketed, distributed or sold in the Union in cooperation with the competent authorities.*

Or. en

**Amendment 67**  
**Proposal for a regulation**  
**Article 31 – paragraph 1 – subparagraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) the marketing, distribution or sale of certain financial instruments or financial

(a) the marketing, distribution or sale of certain *investment products, including structured deposits*, financial instruments

instruments with certain features; or

or financial instruments with certain features; or

Or. en

**Amendment 68**  
**Proposal for a regulation**  
**Article 31 – paragraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

(b) regulatory requirements under Union legislation that are applicable to the relevant financial instrument or activity do not address the threat;

(b) regulatory requirements under Union legislation that are applicable to the relevant ***investment product***, financial instrument or activity do not address the threat;

Or. en

**Amendment 69**  
**Proposal for a regulation**  
**Article 31 – paragraph 2 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Where the conditions set out in the first subparagraph are fulfilled, ESMA may impose the prohibition or restriction referred to in paragraph 1 on a precautionary basis before an investment product or financial instrument has been marketed or sold to clients.***

Or. en

**Amendment 70**  
**Proposal for a regulation**  
**Article 31 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. Before taking a decision under***

*paragraph 1, ESMA may give notice of its intention to prohibit or restrict an investment product or financial instrument unless certain changes are made to features of the investment product or financial instrument within a specified timescale.*

Or. en

**Amendment 71**  
**Proposal for a regulation**  
**Article 31 – paragraph 6**

*Text proposed by the Commission*

6. ESMA shall review a prohibition or restriction imposed under paragraph 1 at appropriate intervals and at least every three months. If the prohibition or restriction is not renewed after that **three month** period it shall expire.

*Amendment*

6. ESMA shall review a prohibition or restriction imposed under paragraph 1 at appropriate intervals and at least every three months. **Where the prohibition or restriction is imposed for reasons of investor protection, ESMA shall review the prohibition or restriction annually.** If the prohibition or restriction is not renewed after that **three-month or annual** period it shall expire.

Or. en

**Amendment 72**  
**Proposal for a regulation**  
**Article 31 – paragraph 8**

*Text proposed by the Commission*

8. The Commission shall adopt by means of delegated acts in accordance with Article 41 measures specifying criteria and factors to be taken into account by ESMA in determining when the threats to investor protection or to the orderly functioning and integrity of financial markets and to the stability of the whole or part of the financial system of the Union referred to *in*

*Amendment*

8. The Commission shall adopt by means of delegated acts in accordance with Article 41 measures specifying criteria and factors to be taken into account by ESMA in determining when the threats to investor protection or to the orderly functioning and integrity of financial markets and to the stability of the whole or part of the financial system of the Union referred to *in*

paragraph 2(a) arise.

point (a) of paragraph 2 arise. **Those delegated acts shall ensure that ESMA is able to act, where appropriate, on a precautionary basis and shall not be required to wait until the product or financial instrument has been marketed or the type of activity or practice has been undertaken before taking action.**

Or. en

**Amendment 73**  
**Proposal for a regulation**  
**Article 32 – paragraph -1 (new)**

*Text proposed by the Commission*

*Amendment*

**-1. Competent authorities shall monitor the investment products, including structured deposits and financial instruments which are marketed, distributed or sold in or from their Member State and may proactively investigate new investment products or financial instruments before they are marketed, distributed or sold in or from the Member State.**

Or. en

**Amendment 74**  
**Proposal for a regulation**  
**Article 32 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) the marketing, distribution or sale of certain financial instruments or financial instruments with certain features; or

(a) the marketing, distribution or sale of certain **investment products, including structured deposits**, financial instruments or financial instruments with certain features; or

Or. en

**Amendment 75**  
**Proposal for a regulation**  
**Article 32 – paragraph 2 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) a financial instrument or activity or practice gives rise to significant investor protection concerns or poses a serious threat to the orderly functioning and integrity of financial markets or the stability of whole or part of the financial system;

*Amendment*

(a) ***an investment product***, a financial instrument or activity or practice gives rise to significant investor protection concerns or poses a serious threat to the orderly functioning and integrity of financial markets or the stability of whole or part of the financial system;

Or. en

**Amendment 76**  
**Proposal for a regulation**  
**Article 32 – paragraph 2 – subparagraph 1 – point b**

*Text proposed by the Commission*

(b) existing regulatory requirements under Union legislation applicable to the financial instrument or activity or practice do not sufficiently address the risks referred to in *paragraph (a)* and the issue would not be better addressed by improved supervision or enforcement of existing requirements;

*Amendment*

(b) existing regulatory requirements under Union legislation applicable to the ***investment product***, financial instrument or activity or practice do not sufficiently address the risks referred to in *point (a)* and the issue would not be better addressed by improved supervision or enforcement of existing requirements;

Or. en

**Amendment 77**  
**Proposal for a regulation**  
**Article 32 – paragraph 2 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Where the conditions set out in the first subparagraph are fulfilled, the competent authority may impose a prohibition or***

*restriction on a precautionary basis before an investment product or financial instrument has been marketed, distributed or sold to clients.*

Or. en

**Amendment 78**  
**Proposal for a regulation**  
**Article 32 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*2a. Before imposing a prohibition or restriction under paragraph 1, the competent authority may give notice of its intention to prohibit or restrict an investment product or financial instrument unless certain changes are made to features of the investment product or financial instrument within a specified timescale.*

Or. en

**Amendment 79**  
**Proposal for a regulation**  
**Article 32 – paragraph 3 – introductory part**

*Text proposed by the Commission*

*Amendment*

3. The competent authority shall not **take action** under this Article unless, not less than one **month** before it takes the action, it has notified all other competent authorities and ESMA in writing of details of:

3. The competent authority shall not **impose a prohibition or restriction** under this Article unless, not less than one **week** before it takes the action, it has notified all other competent authorities and ESMA in writing of details of:

Or. en

**Amendment 80**  
**Proposal for a regulation**  
**Article 35 – paragraph 10**

*Text proposed by the Commission*

10. The Commission shall adopt by means of delegated acts in accordance with Article 41 measures specifying criteria and factors to be taken into account by ESMA in determining when a threat to the orderly functioning and integrity of financial markets including in relation to delivery arrangements for physical commodities, or the stability of the whole or part of the financial system in the Union referred to in *paragraph 2(a)* arise.

*Amendment*

10. The Commission shall adopt by means of delegated acts in accordance with Article 41 measures specifying criteria and factors to be taken into account by ESMA in determining when a threat to the orderly functioning and integrity of financial markets including in relation to delivery arrangements for physical commodities, or the stability of the whole or part of the financial system in the Union referred to in *point (a) of paragraph 2* arise. ***Those criteria and factors shall take into account the draft regulatory technical standards developed in accordance with Article 59(3) of Directive .../.../EU [new MiFID] and shall differentiate between situations where ESMA takes action because a competent authority has failed to act and those where ESMA addresses an additional risk which the competent authority is not able to address pursuant to point (i) of Article 71(2) and points (f) and (g) of Article 72(1) of Directive .../.../EU [new MiFID].***

Or. en

**Amendment 81**  
**Proposal for a regulation**  
**Article 36 – paragraph 1**

*Text proposed by the Commission*

1. A third country firm may provide the services listed in Article 30 of Directive [new MiFID] to eligible counterparties established in the Union without the establishment of a branch only where it is registered in the register of third country firms kept by ESMA in accordance with

*Amendment*

1. A third country firm may provide the services listed in Article 30 of Directive .../.../EU [new MiFID] to eligible counterparties ***and to professional clients within the meaning of Section I of Annex II of Directive .../.../EU [new MiFID]*** established in the Union without the

Article 37.

establishment of a branch only where it is registered in the register of third country firms kept by ESMA in accordance with Article 37.

Or. en

**Amendment 82**  
**Proposal for a regulation**  
**Article 36 – paragraph 6 – subparagraph 1**

*Text proposed by the Commission*

**6. Powers are delegated to the Commission to adopt** regulatory technical standards specifying the information that the applicant third country firm shall provide to ESMA in its application for registration in accordance with paragraph 3 and the format of information to be provided in accordance with paragraph 4.

*Amendment*

**6. ESMA shall develop draft** regulatory technical standards specifying the information that the applicant third country firm shall provide to ESMA in its application for registration in accordance with paragraph 3 and the format of information to be provided in accordance with paragraph 4.

Or. en

**Amendment 83**  
**Proposal for a regulation**  
**Article 36 – paragraph 6 – subparagraph 2**

*Text proposed by the Commission*

**The** regulatory technical standards referred to in the first subparagraph **shall be adopted** in accordance with **Article 10** to 14 of Regulation (EU) No 1095/2010.

*Amendment*

**ESMA shall submit those regulatory technical standards to the Commission by ... \*.**

**Power is delegated to the Commission to adopt** the regulatory technical standards referred to in the first subparagraph in accordance with **Articles 10** to 14 of Regulation (EU) No 1095/2010.

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**\* OJ please insert date: 12 months after entry into force of this Regulation.**

**Amendment 84**  
**Proposal for a regulation**  
**Article 36 – paragraph 6 – subparagraph 3**

*Text proposed by the Commission*

*ESMA shall submit a draft to the Commission for those regulatory technical standards by [].*

*Amendment*

*deleted*

**Amendment 85**  
**Proposal for a regulation**  
**Article 37 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

The Commission may adopt a decision in accordance with the procedure referred to in **Article 42** in relation to a third country if the legal and supervisory arrangements of that third country ensure that firms authorised in that third country comply with legally binding requirements which have equivalent effect to the requirements set out in Directive No [MiFID], in this Regulation and in Directive 2006/49/EC [*Capital Adequacy Directive*] and in their implementing measures and that third country provides for equivalent reciprocal recognition of the prudential framework applicable to investment firms authorised in accordance with this *directive*.

*Amendment*

The Commission may adopt a decision in accordance with the **examination** procedure referred to in **Article 42(2)** in relation to a third country if the legal and supervisory arrangements of that third country ensure that firms authorised in that third country comply with legally binding requirements which have equivalent effect to the requirements set out in Directive No .../.../EU [MiFID], in this Regulation and in Directive 2006/49/EC and in their implementing measures and that third country provides for equivalent reciprocal recognition of the prudential framework applicable to investment firms authorised in accordance with this *Directive*.

## Amendment 86

### Proposal for a regulation Article 40

#### *Text proposed by the Commission*

The Commission shall be empowered to adopt delegated acts in accordance with Article 41 concerning Articles 2(3), 4(3), 6(2), 8(4), 10(2), 11(2), 12(2), 13(7), 14(5), 14(6), 16(3), 18(2), 18(3), 19(3), 20(3), 28(6), 29(6), 30(3), 31(8), 32(6), 35(10) **and 45(2)**.

#### *Amendment*

The Commission shall be empowered to adopt delegated acts in accordance with Article 41 concerning *Article 2(3), Article 4(3), Article 6(2), Article 8(4), Article 10(2), Article 11(2), Article 12(2), Article 13(7), Article 14(5) and 14(6), Article 16(3), Article 18(2) and (3), Article 19(3), Article 20(3), Article 28(6), Article 29(6), Article 30(3), Article 31(8), Article 32(6) and Article 35(10)*.

Or. en

## Amendment 87

### Proposal for a regulation Article 41 – paragraph 2

#### *Text proposed by the Commission*

2. The *delegation of* power shall be conferred for an indeterminate period of time *from the date referred to in Article 41 paragraph 1*.

#### *Amendment*

2. The power **to adopt delegated acts referred to in Article 2(3), Article 4(3), Article 6(2), Article 8(4), Article 10(2), Article 11(2), Article 12(2), Article 13(7), Article 14(5) and 14(6), Article 16(3), Article 18(2) and 18(3), Article 19(3), Article 20(3), Article 28(6), Article 29(6), Article 30(3), Article 31(8), Article 32(6), and Article 35(10)** shall be conferred for an indeterminate period of time.

Or. en

## Amendment 88

### Proposal for a regulation Article 41 – paragraph 3

*Text proposed by the Commission*

3. The delegation of **powers** may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

*Amendment*

3. The delegation of **power referred to in Article 2(3), Article 4(3), Article 6(2), Article 8(4), Article 10(2), Article 11(2), Article 12(2), Article 13(7), Article 14(5) and 14(6), Article 16(3), Article 18(2) and 18(3), Article 19(3), Article 20(3), Article 28(6), Article 29(6), Article 30(3), Article 31(8), Article 32(6), and Article 35(10)** may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Or. en

**Amendment 89**  
**Proposal for a regulation**  
**Article 41 – paragraph 5**

*Text proposed by the Commission*

5. A delegated act shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **2 months** of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by **2 months** at the initiative of the European Parliament or the Council.

*Amendment*

5. A delegated act shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **three months** of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by **three months** at the initiative of the European Parliament or the Council.

Or. en

**Amendment 90**  
**Proposal for a regulation**  
**Article 42 – paragraph 1**

*Text proposed by the Commission*

1. ***For the adoption of implementing acts under Articles 24, 26 and 37, the*** Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

*Amendment*

1. ***The*** Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

Or. en

**Amendment 91**  
**Proposal for a regulation**  
**Article 42 – paragraph 2**

*Text proposed by the Commission*

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply, ***having regard to the provisions of Article 8 thereof.***

*Amendment*

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Or. en

**Amendment 92**  
**Proposal for a regulation**  
**Article 43 – paragraph 2**

*Text proposed by the Commission*

2. Before [2 years following application of MiFIR as specified in ***Article 41(2)***], the Commission, after consulting ESMA shall present a report to the Council and the Parliament on the functioning of ***Article 13***, including whether the content and format of transaction reports received and exchanged between competent

*Amendment*

2. Before ... \*, the Commission, after consulting ESMA shall present a report to the Council and the Parliament on the functioning of ***Article 23***, including whether the content and format of transaction reports received and exchanged between competent authorities comprehensively enable to monitor the

authorities comprehensively enable to monitor the activities of investment firms in accordance with **Article 13(1)**. The Commission may make any appropriate proposals, including providing for transactions to be reported to a system appointed by ESMA instead of to competent authorities, which allows relevant competent authorities to access all the information reported pursuant to this Article.

activities of investment firms in accordance with **Article 23(1)**. The Commission may make any appropriate proposals, including providing for transactions to be reported to a system appointed by ESMA instead of to competent authorities, which allows relevant competent authorities to access all the information reported pursuant to this Article.

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**\* OJ please insert date: 42 months after entry into force of this Regulation.**

Or. en

**Amendment 93**  
**Proposal for a regulation**  
**Article 45 – paragraph 1**

*Text proposed by the Commission*

1. **Existing third country firms** shall be able to **continue to** provide services and activities in Member States, in accordance with national regimes until **[4 years** after the **entry into force of this regulation]**.

*Amendment*

1. **Third-country financial institutions** shall be able to provide services and activities in Member States, in accordance with national regimes until **one year** after the **adoption by the Commission of a decision in relation to the relevant third country in accordance with Article 41(3) of Directive .../.../EU [new MiFID]**.

Or. en

**Amendment 94**  
**Proposal for a regulation**  
**Article 45 – paragraph 2**

*Text proposed by the Commission*

2. **The Commission may adopt by means of delegated acts in accordance with Article 41 measures specifying an**

*Amendment*

**deleted**

*extension to the period of application of paragraph 2, taking into account the equivalence decisions already adopted by the Commission in accordance with Article 37 and expected developments in the regulatory and supervisory framework of third countries.*

Or. en

**Amendment 95**  
**Proposal for a regulation**  
**Article 46 – paragraph 1**

*Text proposed by the Commission*

This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.

*Amendment*

This Regulation shall enter into force on the **twentieth** day following that of its publication in the Official Journal of the European Union.

Or. en

**Amendment 96**  
**Proposal for a regulation**  
**Article 46 – paragraph 2**

*Text proposed by the Commission*

This Regulation shall apply from **[24 months after the entry into force of this Regulation]**, except for Articles 2(3), 4(3), 6(2), 8(4), 10(2), 11(2), 12(2), 13(7), 14(5), 14(6), 16(3), 18(2), 18(3), 19(3), 20(3), 23(8), 24(5), 26, 28(6), 29(6), 30(3), 31, 32, 33, 34 and 35, which shall apply immediately following the entry into force of this Regulation.

*Amendment*

This Regulation shall apply from ... \*, except for Articles 2(3), 4(3), 6(2), 8(4), 10(2), 11(2), 12(2), 13(7), 14(5), 14(6), 16(3), 18(2), 18(3), 19(3), 20(3), 23(8), 24(5), 26, 28(6), 29(6), 30(3), 31, 32, 33, 34 and 35, which shall apply immediately following the entry into force of this Regulation.

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**\* OJ please insert date: 18 months after entry into force of this Regulation.**

Or. en



## EXPLANATORY STATEMENT

### Introduction

The review of the Markets in Financial Instruments Directive (MiFID) has to be seen in the context of EU's reaction to the financial crisis. MiFID I (2004/39/EC) was implemented on 1 November 2007, replacing the Investment Services Directive (ISD). It was supplemented by an implementing regulation (EC No. 1287/2006) and an implementing directive (2006/73/EC).

There are two main reasons why this review is taking place only five years after the implementation of MiFID I: the market situation has changed due to technical progress, new market participants and the development of more complex trading strategies. Moreover, in response to the financial crisis, MiFID needs to be reviewed in order to reduce systemic risk and to ensure financial markets stability as well as adequate investor protection. Therefore, on 20th October 2011 the European Commission proposed a regulation and a directive which together would replace Directive 2004/39/EC.

The European Parliament launched a consultation which gave all interested parties the chance to comment. The 193 responses were published on the Committee of Economic and Monetary Affairs of the European Parliament (ECON) homepage to be fully transparent. Furthermore, your rapporteur has presented three working documents to give an overview of MiFID I and to identify some key aspects of the Commission proposals.

As the MiFID review is an important step towards transparent and efficient financial markets in the European Union, your rapporteur welcomes the Commission proposals in general as this was one of the Parliament's key issues in its *resolution of 14 December 2010 on regulation of trading in financial instruments – 'dark pools' etc.* (2010/2075(INI)). In its resolution the Parliament called inter alia for a further investigation of high frequency trading and the appropriateness of existing transparency requirements for trading venues. Whilst welcoming the Commission's overall aim to guarantee that all organised trading is conducted on regulated trading venues your rapporteur regrets that the Commission did not take on board one of the main issues of the Parliament's resolution which was not to introduce a new category of trading venues but instead to adjust the requirements for the execution venues introduced in MiFID I: Regulated Markets (RM), Multilateral Trading Facilities (MTF) and Systemic Internalisers (SI).

### Position of your rapporteur

Your rapporteur supports the Commission's proposal to extend the **scope** of the MiFID rules, as he is in favour of closing all gaps in the regulatory framework in order not to have parts of the market left unregulated.

Whilst MiFID I differentiated between three categories of organised execution venues - as

mentioned above RMs, MTFs and SIs - the Commission is now introducing a fourth category called **Organised Trading Facilities (OTF)**. For all trading venues there are identical pre- and post-trade requirements and nearly identical requirements regarding organisational aspects and market surveillance. The main difference between RMs and MTFs on the one hand and OTFs on the other hand is that for OTFs there is a degree of discretion over how a transaction should be executed. Your rapporteur questions whether the creation of a new category is the right way to capture organised venues which are not caught by the already existing categories. In order not to create new loopholes he proposes to limit the OTF category to non-equities. Furthermore, your rapporteur proposes to define "bilateral" and "multilateral" system more clearly in order to achieve a precise distinction between bilateral and multilateral trading and to ensure that market participants are subject to the proper rules.

Your rapporteur notes the provisions on **access to market infrastructure**. He believes that such access could give rise to problems through liquidity fragmentation, or if interoperability were involved, and that supervisors therefore need to be able to intervene to prevent these problems materialising, as was recognised in EMIR.

Pursuant to the MiFIR proposal, requirements for **pre- and post-trade transparency** should be extended also to equity-like products and non-equities. As your rapporteur is in favour of measures which increase transparency he supports this approach and only adjusts the possibility for waivers for non-equities. The Commission's proposed obligations in relation to **transaction reporting** obligation to competent authorities include a new requirement for RMs, MTFs and OTFs to keep data on orders so that it is accessible to supervisors for at least 5 years. Your rapporteur welcomes these proposals.

According to the Commission, competent authorities could set **permanent bans or restrictions on financial products or activities or practices** coordinated by ESMA. Furthermore, **ESMA** can temporarily **ban or restrict products, practices and services**. Your rapporteur questions whether the possibility to ban products or services only ex-post is enough to ensure financial market stability or investor protection and therefore proposes two additions. First, ESMA or competent authorities should not only monitor financial instruments but additionally investment products which also include structured deposits. Second, in addition to the possibility to impose bans or restrictions on products which have already been marketed, ESMA or competent authorities should also be able to impose restrictions or prohibitions on a precautionary basis before an investment product or financial instrument is placed on the market. Furthermore, ESMA and competent authorities should give notice if they intend to ban an investment product or financial instrument on a precautionary basis so that changes to the respective instrument or product can be made within a certain time limit.

Finally, your rapporteur reduces the number of **delegated and implementing acts**, as he considers that the major political decisions have to be taken within the ordinary legislative procedure by Parliament and Council, and specifies the periods for ESMA to draft the **requested regulatory standards**.