

# EUROPEAN PARLIAMENT

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*Committee on Economic and Monetary Affairs*

5 February 2004

PE 333.090/22-90

## AMENDMENTS 22-90

### Draft recommendation for second reading

(PE 333.090)

**Theresa Villiers**

on the Council common position for adopting a European Parliament and Council directive on markets in financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC

Council common position (13421/3/2003 – C5-0015/2004 – 2002/0269(COD))

Council common position

Amendments by Parliament

Amendment by Othmar Karas

Amendment 22

Recital 4

(4) It is appropriate to include in the list of financial instruments commodity derivatives which are constituted and traded in such a way as to give rise to regulatory issues comparable to traditional financial instruments such as futures, options, swaps and any other derivative contract relating to commodities that can be settled in cash or that is physically settled provided that it is traded on a regulated market or a Multilateral Trading Facility (MTF).

It is appropriate to include in the list of financial instruments commodity derivatives which, ***not being physical spot or forward commodity contracts***, are constituted and traded in such a way as to give rise to regulatory issues comparable to traditional financial instruments such as futures, options, swaps and any other derivative contract relating to commodities that can be settled in cash or that is physically settled provided that it is traded on a regulated market or a Multilateral Trading Facility (MTF).

Or. de

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### *Justification*

*Reinstates Amendment 1 adopted on first reading. As section C (4) of Annex I of the proposal includes "Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivatives instruments, financial indices or financial measures ", it is important that the scope of instruments covered by the directive is clarified in Recital 4 in order to avoid the ambiguous inclusion of physical dealings.*

### Amendment by Giorgos Katiforis

#### Amendment 23 Recital 4

(4) It is appropriate to include in the list of financial instruments commodity derivatives which are constituted and traded in such a way as to give rise to regulatory issues comparable to traditional financial instruments ***such as futures, options, swaps, and any other derivative contract relating to commodities that can be settled in cash or that is physically settled provided that it is traded on a regulated markets or a Multilateral Trading Facility.***

(4) It is appropriate to include in the list of financial instruments ***certain*** commodity ***and other*** derivatives which are constituted and traded in such a way as to give rise to regulatory issues comparable to traditional financial instruments.

Or. en

### *Justification*

*See justification to Amendment to Annex I.*

### Amendment by Olle Schmidt

#### Amendment 24 Recital 4

(4) It is appropriate to include in the list of financial instruments commodity derivatives which are constituted and traded in such a way as to give rise to regulatory issues comparable to traditional financial instruments ***such as futures, options, swaps, and any other derivative contract relating to commodities that can be settled in cash***

(4) It is appropriate to include in the list of financial instruments ***certain*** commodity ***and other*** derivatives which are constituted and traded in such a way as to give rise to regulatory issues comparable to traditional financial instruments.

***or that is physically settled provided that it is traded on a regulated markets or a Multilateral Trading Facility.***

Or. en

*Justification*

*The recital is consistent with the proposed amendments related to Annex I of the Directive. The Directive should also have the flexibility to cover the full range of new classes of derivative contracts, as they emerge.*

Amendment by Olle Schmidt

Amendment 25  
Recital 8

(8) Persons ***administrating*** their own assets and undertakings, who do not provide investment services and/or perform investment activities other than dealing on own account ***and who cannot be categorised as*** market makers or ***as dealing*** on own account outside a regulated market or an MTF on an organised, regular and systematic basis, should not be covered by the scope of this Directive.

(8) Persons ***administering*** their own assets and undertakings, who do not provide investment services and/or perform investment activities other than dealing on own account ***unless they are*** market makers or ***they hold themselves out to the public on a continuous basis as providing a facility within which they will*** deal on own account outside a regulated market or an MTF on an organised, regular and systematic basis, should not be covered by the scope of this Directive.

Or. en

*Justification*

*The Council common position would adversely affect the activity of many professional investors who are dealing on own account and who are not providing a service to third parties, by imposing authorisation requirements on them. Therefore, it is essential to broaden this exemption to make it available to investors who are not market makers or who do not hold themselves out to the public, on a continuous basis, as providing a facility within which they will deal for own account on an organised, regular and systematic basis. Unless an investor does this should not be treated as requiring authorisation.*

Amendment by Olle Schmidt

Amendment 26  
Recital 16

(16) In order to benefit from the exemptions from this Directive the person concerned should comply on a continuous basis with the conditions laid down for such exemptions. In particular, if a person provides investment services or performs investment activities and is exempted from this Directive because such services or activities are ancillary to his **main** business, **when considered on a group basis**, he should no longer be covered by the exemption related to ancillary services where the provision of those services or activities ceases to be ancillary to his **main** business.

(16) In order to benefit from the exemptions from this Directive the person concerned should comply on a continuous basis with the conditions laid down for such exemptions. In particular, if a person provides investment services or performs investment activities and is exempted from this Directive because such services or activities are ancillary to his business he should no longer be covered by the exemption related to ancillary services where the provision of those services or activities ceases to be ancillary to his business.

Or. en

*Justification*

*The common position would place subsidiaries within banking groups at a competitive disadvantage and would violate the principle that the same regulatory framework should apply to the same activities. It would adversely affect entities within financial groups that engage in other, non-financial activities. It would also have an effect on the ability of bank or investment firm owned private equity firms to invest in ordinary commercial business and will produce many of the same arbitrary results referred to in the discussion of the proposed amendments to article 2.1(k).*

Amendment by Olle Schmidt

Amendment 27  
Recital 24

(24) Since the scope of prudential regulation should be limited to those entities which, by virtue of running a trading book on a professional basis, represent a source of counterparty risk to other market participants, entities which deal on own account in financial instruments, including those commodity derivatives covered by this Directive, as well as those that provide

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(24) Since the scope of prudential regulation should be limited to those entities which, by virtue of running a trading book on a professional basis, represent a source of counterparty risk to other market participants, entities which deal on own account in financial instruments, including those commodity derivatives covered by this Directive, **as an ancillary activity to a**

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investment services in commodity derivatives to the clients of *their main business on an ancillary basis to their main business when considered on a group basis*, provided that this *main* business is not the provision of investment services within the meaning of this Directive, should be excluded from the scope of this Directive.

*business of theirs or of another undertaking in the same group*, as well as those that provide investment services in commodity derivatives to the clients of a business *of theirs or of another undertaking in the same group as an ancillary activity to that business*, provided that this business is not the provision of investment services within the meaning of this Directive, should be excluded from the scope of this Directive.

Or. en

### *Justification*

*The common position would place subsidiaries within banking groups at a competitive disadvantage and would violate the principle that the same regulatory framework should apply to the same activities. It would adversely affect entities within financial groups that engage in other, non-financial activities. It would also have an effect on the ability of bank or investment firm owned private equity firms to invest in ordinary commercial business and will produce many of the same arbitrary results referred to in the discussion of the proposed amendments to article 2.1(k).*

Amendment by Olle Schmidt, Peter William Skinner

### Amendment 28 Recital 31

(31) By way of derogation from the principle of home country authorisation, supervision and enforcement of obligations in respect of the operation of branches, it is appropriate for the competent authority of the host Member State to assume responsibility for enforcing certain obligations laid down in Articles 19, 21, 22, 25, 27 and 28 in relation to business conducted through a branch within the territory where the branch is located, since that authority is closest to the branch, and is better placed to detect and intervene in respect of infringements of rules governing the operation of the branch.

(31) By way of derogation from the principle of home country authorisation, supervision and enforcement of obligations in respect of the operation of branches, it is appropriate for the competent authority of the host Member State to assume responsibility for enforcing certain obligations laid down in Articles 19, 21, 22, 25, 27 and 28 in relation to business conducted through a branch within *or from* the territory where the branch is located, since that authority is closest to the branch, and is better placed to detect and intervene in respect of infringements of rules governing the operation of the branch.

*In cases where the investment firm has several places of business, it is important to determine from which place of business the*

*service concerned is provided. In cases where it is difficult to determine from which of several places of business a given service is provided, this is the place where the investment firm has the centre of its activities relating to this particular service.*

Or. en

*Justification*

*The amendment is necessary to ensure that regulatory responsibility for services provided through branches is properly allocated to the place of business from which a particular service is provided, and in cases of doubt, or if a branch was artificially established solely to evade home State regulation, to allocate responsibility to the competent authority where the centre of activity relating to the service is located.*

Amendment by Christopher Huhne

Amendment 29  
Recital 39

***(39) For the purposes of this Directive eligible counterparties should be considered as acting as clients.***

***Deleted***

Or. en

*Justification*

*This recital contradicts Article 24.2, second paragraph, which states that eligible counterparties can request client treatment.*

Amendment by Pervenche Berès

Amendment 30  
Recital 43

(43) With the two-fold aim of protecting investors and ensuring the smooth operation of securities markets, it is necessary to ensure that transparency of transactions is achieved and that the rules laid down for that purpose apply to investment firms when they

(43) With the two-fold aim of protecting investors and ensuring the smooth operation of securities markets, it is necessary to ensure that transparency of transactions is achieved and that the rules laid down for that purpose apply to investment firms when they

operate on the markets. In order to enable investors or market participants to assess at any time the terms of a transaction in shares that they are considering and to verify afterwards the conditions in which it was carried out, common rules should be established for the publication of details of completed transactions in shares and for the disclosure of details of current opportunities to trade in shares. These rules are needed to ensure the effective integration of Member State equity markets, to promote the efficiency of the overall price formation process for equity instruments, and to assist the effective operation of "best execution" obligations. These considerations require a comprehensive transparency regime applicable to all transactions in shares irrespective of their execution by an investment firm on a bilateral basis or through regulated markets or MTFs.;

operate on the markets. In order to enable investors or market participants to assess at any time the terms of a transaction in shares that they are considering and to verify afterwards the conditions in which it was carried out, common rules should be established for the publication of details of completed transactions in shares and for the disclosure of details of current opportunities to trade in shares. These rules are needed to ensure the effective integration of Member State equity markets, to promote the efficiency of the overall price formation process for equity instruments, and to assist the effective operation of "best execution" obligations. These considerations require a comprehensive transparency regime applicable to all transactions in shares irrespective of their execution by an investment firm on a bilateral basis or through regulated markets or MTFs. ***The obligations for investment firms under this Directive to quote a bid and offer price and to execute an order at the quoted price should not prevent an investment firm from routing an order to another execution venue when such internalisation could prevent the firm from complying with best execution obligations.***

Or. en

#### *Justification*

*This amendment gives interesting details when the text of the common position does not provide any legal certainty on the possibility for investment firms to rout an order to another execution venue.*

Amendment by Othmar Karas, Alexander Radwan

Amendment 31  
Recital 49

***(49) Systematic internalisers might decide to give access to their quotes only to retail clients, only to professional clients, or to***

***Deleted***

***both. They should not be allowed to discriminate within those categories of clients.***

Or. en

*Justification*

*The suggested amendment brings the text in line with the outcome of Parliament's first reading.*

Amendment by Olle Schmidt

Amendment 32

Article 2, paragraph 1, point d)

d) persons which do not provide any investment services or activities other than dealing on own account ***and which cannot be categorised as*** market makers or ***as dealing*** on own account outside a regulated market or an MTF on an organised, regular and systematic basis;

d) persons which do not provide any investment services or activities other than dealing on own account ***unless they are*** market makers or ***they hold themselves out to the public on a continuous basis as providing a facility within which they will deal*** on own account outside a regulated market or an MTF on an organised, regular and systematic basis;

Or. en

*Justification*

*The Council common position would adversely affect the activity of many professional investors who are dealing on own account and who are not providing a service to third parties, by imposing authorisation requirements on them. Therefore, it is essential to broaden this exemption to make it available to investors who are not market makers or who do not hold themselves out to the public, on a continuous basis, as providing a facility within which they will deal for own account on an organised, regular and systematic basis. Unless an investor does this should not be treated as requiring authorisation.*

Amendment by Olle Schmidt

Amendment 33

Article 2, paragraph 1, point i)

(i) persons dealing on own account in

(i) persons dealing on own account in



financial instruments, or providing investment services in commodity derivatives to the clients of *their main* business, provided ***this is an ancillary activity to their main business, when considered on a group basis, and*** that *main* business is not the provision of investment services within the meaning of this Directive or banking services under Directive 2000/12/EC;

financial instruments ***as an ancillary activity to a business of theirs or of another undertaking in the same group***, or providing investment services in commodity derivatives to the clients of ***a business of theirs or of another undertaking in the same group as an ancillary activity to that business***, provided that business is not the provision of investment services within the meaning of this Directive or banking services under Directive 2000/12/EC;

Or. en

#### *Justification*

*The common position would place subsidiaries within banking groups at a competitive disadvantage and would violate the principle that the same regulatory framework should apply to the same activities. It would adversely affect entities within financial groups that engage in other, non-financial activities. It would also have an effect on the ability of bank or investment firm owned private equity firms to invest in ordinary commercial business and will produce many of the same arbitrary results referred to in the discussion of the proposed amendments to article 2.1(k).*

Amendment by Olle Schmidt

Amendment 34  
Article 2, paragraph 1, point k)

k) persons whose main business consists of dealing on own account in commodities and/or commodity derivatives. ***This exception shall not apply where the persons that deal on own account in commodities and/or commodity derivatives are part of a group the main business of which is the provision of other investment services;***

k) persons whose main business consists of dealing on own account in commodities and/or commodity derivatives;

Or. en

#### *Justification*

*The Council's common position discriminates against commodity dealers who are part of a group of companies whose main activity is investment services. The Council's common position would produce unequal treatment of different commodity dealers who are carrying*

*the same business and would produce competitive distortions. It is therefore very important that the same licensing regime apply to all specialised commodity dealers based on the nature of the entity's own business. The cross group risk in financial groups is adequately addressed through the consolidated supervision requirements of the Capital Adequacy Directive and the Financial Groups Directive.*

Amendment by Christopher Huhne

Amendment 35

Article 4, paragraph 1, point 5)

5) "Execution of orders on behalf of clients" means acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients;

5) "Execution of orders on behalf of clients" means acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients, ***including situations where an investment firm enters into transactions solely for the purpose of matching transactions between clients, or where by virtue of the rules of the regulated market, a multilateral trading facility or comparable third country system on which it executes such client orders, it is regarded as acting as principal;***

Or. en

*Justification*

*The amendment is important because of the directive's read-across to the proposed Basel II/CAD3 framework. Without such amendment "matched principal brokers" risk being inappropriately classified under the Commission's forthcoming Basel II/CAD3 framework and therefore risk being subject to crippling and inappropriate additional regulatory capital requirements.*

Amendment by Jean-Louis Bourlanges

Amendment 36

Article 4, paragraph 1, point 7)

7) "Systematic ***internaliser***" means ***an investment firm which, on an organised, regular, and systematic basis, deals on own account by executing client orders*** outside a regulated market or an MTF;

7) "Systematic ***internalisation***" means ***the execution***, on a systematic and regular basis, ***of:***  
***(1) orders up to a significant market size, relevant for the liquidity and the price***

*formation process on the overall market for a given share, undertaken by any type of clients or counterparties,*

*(2) in shares admitted to or included in trading on a regulated market,*

*(3) on own account or by means of matching with other client orders,*

*(4) within a system, a component of which is primarily aimed at facilitating the activities set out in points (1) to (3),*

*(5) outside a regulated market or an MTF.*

*Where executions in several securities are part of one transaction (such as a portfolio transaction), the size of the total transaction shall determine whether the transaction was of a standard market size;*

Or. en

#### *Justification*

*An activity-oriented approach is more logical than an actor-oriented approach.*

*Secondly, the definition of market size gains in clarity if it includes a reference to the twin criteria of liquidity and price formation.*

Amendment by Pervenche Berès

Amendment 37

Article 4, paragraph 1, point 7)

7) Systematic ***internaliser*** means ***an investment firm which*** on an organised, regular, and systematic basis deals on own account ***by executing client orders*** outside a regulated market or an MTF;

7) Systematic ***internalisation*** means ***dealing*** on own account by executing ***client or counterparty*** orders, outside a regulated market or an MTF, on an organised, regular and systematic basis;

Or. en

#### *Justification*

*The Council text proposes a definition of “systematic internaliser”. Such an approach is*

*inappropriate as an investment firm internalising orders on a single security would qualify as a systematic internaliser and would thus be subject to pre-trade transparency on all the securities it trades. The right approach is to define the activity of systematic internalisation so that in the above example, an investment firm could qualify as internalising orders on a particular security (and therefore be subject to pre-trade transparency with respect to that security) and nonetheless trade without being subject to pre-trade transparency on the securities it does not internalise. This amendment is in line with the amendments 7 and 15 of the rapporteur.*

Amendment by Philippe A.R. Herzog

Amendment 38  
Article 4, paragraph 1, point 7)

7) "Systematic ***internaliser***" means ***an investment firm which***, on an organised, regular, and systematic basis, ***deals*** on own account by executing client orders outside a regulated market or an MTF;

7) "Systematic ***internalisation***" means ***dealing*** on own account by executing client or ***counterparty*** orders, outside a regulated market or an MTF, on an organised, regular and systematic basis;

Or. en

#### *Justification*

*It is more appropriate to capture the internalisation activity rather than the full business of a firm, which, among other businesses, practices internalisation. The inclusion of 'counterparty' is consistent with the approach adopted by Parliament in its first reading.*

Amendment by Olle Schmidt

Amendment 39  
Article 4, paragraph 1, point 8)

8) "Market maker" means a person who holds himself out on the financial markets as being willing to deal on own account by buying and selling financial instruments against his proprietary capital;

8) "Market maker" means a person who holds himself out on the financial markets ***on a continuous basis*** as being willing to deal on own account by buying and selling financial instruments against his proprietary capital ***at prices defined by him***;

Or. en

#### *Justification*

*This definition is important because professional investors should not be treated as "market*

*makers" if their activities lack the two essential elements of, first, continuity in the way that they hold themselves out on financial markets and, secondly, the willingness to trade on the basis of their own (two way) prices. Unless this definition is amended, there is a risk that many professional investors would be wrongly labelled as "market makers" and subjected to authorisation requirements, even though they are users of markets and are not in any sense intermediaries in those markets.*

Amendment by Astrid Lulling, Bert Doorn

Amendment 40  
Article 19, paragraph 5

<b><i>5. Member States shall ensure that investment firms, when providing investment services other than those referred to in paragraph 4, ask the client or potential client to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the investment firm to assess whether the investment service or product envisaged is appropriate for the client.</i></b>	<b><i>Deleted</i></b>
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***In case the investment firm considers, on the basis of the information received under the previous subparagraph, that the product or service is not appropriate to the client or potential client, the investment firm shall warn the client or potential client. This warning may be provided in a standardised format.***

***In cases where the client or potential client elects not to provide the information referred to under the first subparagraph, or where he provides insufficient information regarding his knowledge and experience, the investment firm shall warn the client or potential client that such a decision will not allow the firm to determine whether the service or product envisaged is appropriate for him. This warning may be provided in a standardised format.***

Or. en

### *Justification*

*In line with the European Parliament's First Reading which provided only a distinction between advisory and non-advisory/execution-only services. It is not in line with the Lamfalussy principles to provide such level of detail in a level 1 Directive.*

Amendment by Ieke van den Burg, Peter William Skinner

#### Amendment 41

#### Article 19, paragraph 5

5. Member States shall ensure that investment firms, when providing investment services other than those referred to in paragraph 4, ask the client or potential client to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the investment firm to ***assess whether the investment service or product envisaged is appropriate for the client.***

In case the investment firm considers, on the basis of the information received under the previous subparagraph, that the product or service ***is not*** appropriate to the client ***or potential client***, the investment firm shall warn the client ***or potential client***. This warning may be provided in a standardised format.

In cases where the client or potential client elects not to provide the information referred to under the first subparagraph, or where he provides insufficient information regarding his knowledge and experience, the investment firm shall warn the client or potential client that such a decision will not allow the firm to determine whether the service or product envisaged is appropriate for him. This warning may be provided in a standardised format.

5. Member States shall ensure that investment firms, when providing investment services other than those referred to in paragraph 4 ***and 6***, ask the client or potential client to provide information regarding his Knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded, ***at the latest before the client may start to use the specific type of product or service***, so as to enable the investment firm to ***assist the client or potential client to decide whether the product or service is appropriate for him.***

In case the investment firm considers, on the basis of the information received under the previous sub-paragraph, that the product or service ***may not be*** appropriate for the client, the investment firm shall warn the client ***at the latest before the client may start to use the product or service.*** This warning may be provided in a standardised format.

In cases where the client or potential client elects not to provide the information referred to in the first sub-paragraph, or where he provides insufficient information regarding his knowledge and experience, the investment firm shall warn the client or potential client that such a decision ***may affect*** whether the service or product ***provided*** is appropriate for him. This warning may be provided in a standardised format.

### Justification

*This Article constitutes the Council's recognition of a 'light touch' sales regime but as currently drafted it is unclear how far this could be distinguished from full advice Article 19 (4).*

*In providing a light touch sales regime, the consumer is encouraged to focus on the risks associated with buying a particular product or service. The impetus behind a light touch sales regime is to simplify current sales practices, to reduce costs to the consumer and to encourage them to make active choices about the products or services offered, so that they, in turn will be more alert to any potential risks involved in buying a particular investment product or service.*

*It is also important from an investor's protection point of view to establish that the information needs to be provided at the latest before the product/service is being offered.*

Amendment by Astrid Lulling, Bert Doorn, Piia-Noora Kauppi

### Amendment 42 Article 19, paragraph 6

6. Member States shall allow investment firms when providing investment services that only consist of execution and/or the reception and transmission of client orders with or without ancillary services to provide those investment services to their clients without the need to obtain the information or make the determination provided for in **paragraph 5** where all the following conditions are met:

– ***the above services relate to shares admitted to trading on a regulated market, money market instruments, bonds or other forms of securitised debt (excluding those bonds or securitised debt that embed a derivative), UCITS and other non-complex financial instruments,***

– ***the service is provided at the initiative of the client or potential client,***

– the client or potential client has been clearly informed that in the provision of this

6. Member States shall allow investment firms when providing investment services that only consist of execution and/or the reception and transmission of client orders with or without ancillary services to provide those investment services to their clients without the need to obtain the information or make the determination provided for in **paragraph 4** where all the following conditions are met:

– the client or potential client has been clearly informed that in the provision of this service the investment firm is not required to assess the suitability of the instrument or service provided or offered and that therefore he does not benefit from the corresponding protection of the relevant conduct of business rules; this warning may be provided in a standardised format,

– the investment firm complies with its obligations under Article 18.

service the investment firm is not required to assess the suitability of the instrument or service provided or offered and that therefore he does not benefit from the corresponding protection of the relevant conduct of business rules; this warning may be provided in a standardised format,

– the investment firm complies with its obligations under Article 18.

Or. en

### *Justification*

*The European Parliament First Reading's approach to execution-only did not include any restriction in relation to the scope of instruments. The only restriction that the European Parliament envisaged was to make clear that no advice was being provided. This restriction is in line with the proposed amendment.*

Amendment by Christopher Huhne

### Amendment 43 Article 19, paragraph 6

6. Member States shall allow investment firms when providing investment services that only consist of execution and/or the reception and transmission of client orders with or without ancillary services to provide those investment services to their clients without the need to obtain the information or make the determination provided for in paragraph 5 where all the following conditions are met:

– the above services relate to shares admitted to trading on a regulated market, money market instruments, bonds or other forms of securitised debt (*excluding those bonds or securitised debt that embed a derivative*), UCITS and other non-complex financial instruments,

– *the service is provided at the initiative of the client or potential client,*

6. Member States shall allow investment firms when providing investment services that only consist of execution and/or the reception and transmission of client orders with or without ancillary services to provide those investment services to their clients without the need to obtain the information or make the determination provided for in paragraph 5 where all the following conditions are met:

– the above services relate to shares admitted to trading on a regulated market *or admitted to official listing on a stock exchange in a non-member State or dealt in on another regulated market in a non-member State which operates regularly and is recognised and open to the public provided that the choice of stock exchange or market has been approved by the competent authorities or is provided for in*



- the client or potential client has been clearly informed that in the provision of this service the investment firm is not required to assess the suitability of the instrument or service provided or offered and that therefore he does not benefit from the corresponding protection of the relevant conduct of business rules; this warning may be provided in a standardised format,
- the investment firm complies with its obligations under Article 18.

*law*, bonds or other forms of securitised debt, money market instruments, UCITS, ***other securities subject to a prospectus requirement under Directive 2003/71/EC*** and other non-complex financial instruments,

- the client or potential client has been clearly informed that in the provision of this service the investment firm is not required to assess the suitability of the instrument or service provided or offered and that therefore he does not benefit from the corresponding protection of the relevant conduct of business rules; this warning may be provided in a standardised format,
- the investment firm complies with its obligations under Article 18.

Or. en

#### *Justification*

*Clients of execution-only services should not be unduly restricted on the choice of instruments. Firstly, shares admitted to trading on a regulated market outside the EU should also be covered under the scope. The formulation used is the one from the UCITS Directive. Secondly, securities that will be covered under the EU Prospectus Directive and will thus require a prospectus approved by an EU regulator should provide sufficient safeguards to cover those instruments also under the scope of execution-only services.*

Amendment by Alexander Radwan, Othmar Karas

#### Amendment 44

##### Article 19, paragraph 10, subparagraph 1

In order to ensure the necessary protection of investors and the ***uniform*** application of paragraphs 1 to 8, the Commission shall adopt, in accordance with the procedure referred to in Article 64 (2), implementing measures to ensure that investment firms comply with the principles set out therein when providing investment or ancillary services to their clients.

In order to ensure the necessary protection of investors and the ***consistent*** application of paragraphs 1 to 8, the Commission shall adopt, in accordance with the procedure referred to in Article 64 (2), implementing measures to ensure that investment firms comply with the principles set out therein when providing investment or ancillary services to their clients.

*Justification*

*This amendment maintains Parliament's position from the first reading. The wording "uniform application" suggests that every detail of regulatory protection has to be harmonised.*

Amendment by Astrid Lulling, Bert Doorn, Piia-Noora Kauppi

Amendment 45

Article 21, paragraph 1

1. Member States shall require that investment firms take all reasonable steps to obtain, when executing orders, the best **possible** result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. Nevertheless, whenever there is a specific instruction from the client the investment firm shall execute the order following the specific instruction.

1. Member States shall require that investment firms take all reasonable steps to obtain, when executing orders, the best result **reasonably achievable** for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. Nevertheless, whenever there is a specific instruction from the client the investment firm shall execute the order following the specific instruction.

***In the case of professional clients who have retained discretion over the manner and market of execution, the investment firm's best-execution duty shall consist only of a need to follow the client's instructions.***

*Justification*

*Parliament First Reading amendment is clearer in terms of the obligations and duties of the intermediary vis-à-vis the client, and is in particular clear in terms of the reasonability test, which is implicit but not well formulated in the Council version. Furthermore, as Parliament's agreed, there is a need to make a differentiation between professional and non-professional clients.*

Amendment by Astrid Lulling, Bert Doorn, Piia-Noora Kauppi

Amendment 46

Article 21, paragraph 2

2. Member States shall require investment firms to establish and implement effective arrangements for complying with paragraph 1. In particular Member States shall require investment firms to establish and implement an order execution policy to allow them to obtain, for their client orders, the best result in accordance with paragraph 1.

2. Member States shall require investment firms to establish and implement effective arrangements for complying with paragraph 1. In particular Member States shall require investment firms to establish and implement an order execution policy to allow them to obtain, for their client orders, the best result ***reasonably achievable*** in accordance with paragraph 1.

Or. en

### *Justification*

*Consistent with previous amendment.*

Amendment by Piia-Noora Kauppi

### Amendment 47 Article 21, paragraph 3

3. The order execution policy shall include, ***in respect of each class of instruments***, information on the different venues where the investment firm executes its client orders and the factors affecting the choice of execution venue. It shall at least include those venues that enable the investment firm to obtain on a consistent basis the best ***possible*** result for the execution of client orders.

Member States shall require that investment firms provide appropriate information to their clients on their order execution policy. ***Member States shall require that investment firms obtain the prior consent of their clients to the execution policy.***

Member States shall require that, where the order execution policy provides for the possibility that client orders may be executed outside a regulated market or an MTF, the investment firm ***shall, in particular, inform their clients or potential clients about this possibility. Member States***

3. The order execution policy shall include information on the different venues where the investment firm executes its client orders and the factors affecting the choice of execution venue. It shall at least include those venues that enable the investment firm to obtain on a consistent basis the best result ***reasonably achievable*** for the execution of client orders.

Member States shall require that investment firms provide appropriate information to their clients on their order execution policy.

Member States shall require that, where the order execution policy provides for the possibility that client orders may be executed outside a regulated market or an MTF, the investment firm obtain the consent of their clients before proceeding to execute their orders outside a regulated market of an MTF. Investment firms may obtain this consent either in the form of a general agreement or in respect of individual transactions.

*shall require that investment firms* obtain the *prior express* consent of their clients before proceeding to execute their orders outside a regulated market of an MTF. Investment firms may obtain this consent either in the form of a general agreement or in respect of individual transactions.

Or. en

#### *Justification*

*The wording of the first paragraph should be modified in line with the first reading of the Parliament.*

*Deleting “in respect of each class of instruments” allows the firm to formulate its execution policy in the level of detail best suited to its investors.*

*Furthermore, there should be no general requirement to obtain consent to the execution policy; as in the Parliament’s First Reading Opinion, the consent requirement should be focused on the cases where orders are executed outside the regulated markets.*

*Finally, the third subparagraph as it stands would force the intermediary to inform the client of an element of its execution policy twice: The fact that the order may be executed outside a regulated market will be in the execution policy, which will be disclosed to the client, so there is no reason why the firm should have to state again what is already said in the execution policy. In addition to an unnecessary cost for the client, this might also create a prejudice against alternative execution venues. Also, requiring prior express consent is not in line with the Parliament’s First Reading amendment which only required consent. Prior express consent will entail unnecessary costs for firms since they will require a specific paper mailing to be returned with the signature of the client. If the client does not return the signed letter back, the firm will not be able to execute orders of the client and will thus breach its best execution obligations.*

Amendment by Astrid Lulling, Bert Doorn

#### Amendment 48 Article 21, paragraph 3

3. The order execution policy shall include, ***in respect of each class of instruments***, information on the different venues where the investment firm executes its client orders and the factors affecting the choice of execution venue. It shall at least include those venues that enable the investment firm to obtain on a consistent basis the best

3. The order execution policy shall include information on the different venues where the investment firm executes its client orders and the factors affecting the choice of execution venue. It shall at least include those venues that enable the investment firm to obtain on a consistent basis the best possible result for the execution of client

possible result for the execution of client orders.

Member States shall require that investment firms provide appropriate information to their clients on their order execution policy.

***Member States shall require that investment firms obtain the prior consent of their clients to the execution policy.***

Member States shall require that, where the order execution policy provides for the possibility that client orders may be executed outside a regulated market or an MTF, the investment firm ***shall, in particular, inform their clients or potential clients about this possibility.*** Member States shall require that investment firms obtain the ***prior express*** consent of their clients before proceeding to execute their orders outside a regulated market of an MTF. Investment firms may obtain this consent either in the form of a general agreement or in respect of individual transactions.

orders.

Member States shall require that investment firms provide appropriate information to their clients on their order execution policy.

Member States shall require that, where the order execution policy provides for the possibility that client orders may be executed outside a regulated market or an MTF, the investment firm obtain the consent of their clients before proceeding to execute their orders outside a regulated market of an MTF. Investment firms may obtain this consent either in the form of a general agreement or in respect of individual transactions.

Or. en

### *Justification*

*Deleting “in respect of each class of instruments” allows the firm to formulate its execution policy in the level of detail best suited to its investors.*

*Furthermore, there should be no general requirement to obtain consent to the execution policy; as in the Parliament’s First Reading Opinion, the consent requirement should be focused on the cases where orders are executed outside the regulated markets.*

*Finally, the third subparagraph as it stands would force the intermediary to inform the client of an element of its execution policy twice: The fact that the order may be executed outside a regulated market will be in the execution policy, which will be disclosed to the client, so there is no reason why the firm should have to state again what is already said in the execution policy. In addition to an unnecessary cost for the client, this might also create a prejudice against alternative execution venues. Also, requiring prior express consent is not in line with the Parliament’s First Reading amendment which only required consent. Prior express consent will entail unnecessary costs for firms since they will require a specific paper mailing to be returned with the signature of the client. If the client does not return the signed letter back, the firm will not be able to execute orders of the client and will thus breach its best execution obligations.*

Amendment by Astrid Lulling, Bert Doorn, Piia-Noora Kauppi

Amendment 49  
Article 21, paragraph 4

4. Member States shall require investment firms to monitor the effectiveness of their order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, they shall assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best **possible** result for the client or whether they need to make changes to their execution arrangements. Member States shall require investment firms to notify clients of any material changes to their **order execution arrangements or** execution policy.

4. Member States shall require investment firms to monitor the effectiveness of their order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, they shall assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best result **reasonably achievable** for the client or whether they need to make changes to their execution arrangements. Member States shall require investment firms to notify clients of any material changes to their execution policy.

Or. en

*Justification*

*The first amendment is in line with previous amendments in relation to best reasonably achievable results. The second amendment is in line with the Parliament's First Reading which required notification of changes to the execution policy but not to execution arrangements.*

Amendment by Astrid Lulling, Bert Doorn, Piia-Noora Kauppi

Amendment 50  
Article 21, paragraph 5

5. Member States shall require investment firms to be able to **demonstrate** to their clients, at their request, that they have executed their orders in accordance with the firm's execution policy.

5. Member States shall require investment firms to be able to **explain** to their clients, at their request, that they have executed their orders in accordance with the firm's execution policy. **Clients should be able to demonstrate that their requests are justified in relation to their material interests at stake.**

Or. en

### *Justification*

*The obligation imposed on investment firms can be clearly abused by clients unless there are some limitations such as a clear justification on the material interests at stake.*

Amendment by Astrid Lulling, Bert Doorn, Piia-Noora Kauppi

#### Amendment 51 Article 21, paragraph 6

6. In order to ensure the protection necessary for investors, the fair and orderly functioning of markets, and to ensure the uniform application of paragraphs 1, 3 and 4, the Commission shall, in accordance with the procedure referred to in Article 64(2), adopt implementing measures

concerning:

(a) ***the criteria for determining the relative importance of*** the different factors that, pursuant to paragraph 1, may be taken into account for determining the best ***possible*** result taking into account the size and type of order and the retail or professional nature of the client;

(b) factors that may be taken into account by an investment firm when reviewing its execution arrangements and the circumstances under which changes to such arrangements may be appropriate. In particular, the factors for determining which venues enable investment firms to obtain on a consistent basis the best possible result for executing the client orders;

(c) ***the nature and extent of the information to be provided to clients on their execution policies, pursuant to paragraph 3.***

6. In order to ensure the protection necessary for investors, the fair and orderly functioning of markets, and to ensure the uniform application of paragraphs 1, 3 and 4, the Commission shall, in accordance with the procedure referred to in Article 64(2), adopt implementing measures

concerning:

(a) the different factors that, pursuant to paragraph 1, may be taken into account for determining the best ***reasonably achievable*** result taking into account the size and type of order and the retail or professional nature of the client;

(b) factors that may be taken into account by an investment firm when reviewing its execution arrangements and the circumstances under which changes to such arrangements may be appropriate. In particular, the factors for determining which venues enable investment firms to obtain on a consistent basis the best ***reasonably achievable*** result for executing the client orders;

Or. en

### *Justification*

*There is no reason why the Commission should adopt an implementing measure to identify “the criteria for determining the relative importance of the different factors” nor the extent of*

*information on execution policies. This is clearly an excess of comitology.*

*The other amendments are consistent with previous amendments.*

Amendment by Theresa Villiers

Amendment 52

Article 24, paragraph 5, point b)

***(b) the procedures for obtaining the express confirmation from prospective counterparties under paragraph 3;***

***Deleted***

Or. en

*Justification*

*This deletion is proposed in order to ensure consistency with the deletion of part of Article 24.3 in Amendment 12 of the Draft Report, relating to express confirmation.*

Amendment by Alexander Radwan, Othmar Karas

Amendment 53

Article 25, paragraph 5

5. Member States shall provide for the reports to be made to the competent authority either by the investment firm itself, or by a trade-matching or reporting system approved by the competent authority or by the regulated market or MTF through whose systems the transaction was completed. In cases where transactions are reported directly to the competent authority by a regulated market, an MTF, or a trade-matching or reporting system approved by the competent authority, the obligation on the investment firm laid down in paragraph 3 may be waived.

5. Member States shall provide for the reports to be made to the competent authority either by the investment firm itself, ***a third party acting on its behalf*** or by a trade-matching or reporting system approved by the competent authority or by the regulated market or MTF through whose systems the transaction was completed. In cases where transactions are reported directly to the competent authority by a regulated market, an MTF, or a trade-matching or reporting system approved by the competent authority, the obligation on the investment firm laid down in paragraph 3 may be waived.

Or. en



### *Justification*

*Many investment firms report transactions through a suitable third party (e.g. a parent company or a transaction bank). For reasons of clarification such an option should be explicitly permitted at level 1 of the Directive as provided for in the EP's first reading.*

Amendment by Pervenche Berès

#### Amendment 54

#### Article 27, paragraph 1

1. Member States shall require **systematic internalisers** to publish a firm quote in those shares, admitted to trading on a regulated market and for which they want to trade.

The quote shall include a firm bid and/or offer **price or** prices as well **as the size or sizes attached to those price or prices**. It shall also reflect the prevailing market conditions for that share.

***The obligation referred to in the first subparagraph shall not apply to transactions of a size which is large in scale compared to the normal market size.***

In case of shares for which there is not a liquid market, **systematic internalisers** shall disclose quotes to their clients on request.

1. Member States shall require **investment firms which practice systematic internalisation of orders for shares admitted to trading on a regulated market up to a size that is large in scale compared to the average market size**, to publish a firm quote in those shares admitted to trading on a regulated market and for which they want to trade.

The quote shall include a firm bid and offer price **and, on each side of the quote, a displayed quantity of shares which shall correspond to the average size of orders customarily executed within its systematic internalisation activity by the investment firm which publishes the quote. The quote shall be valid for orders up to and including the displayed quantity of shares.** ***The quote*** shall reflect prevailing market conditions for that share.

In case of shares for which there is not a liquid market, **investment firms which practice systematic internalisation** in those shares shall disclose quotes to their clients **or counterparties** on request.

Or. en

### *Justification*

*An efficient price formation process results from the confrontation of all trading interests in*

*the market. In order to achieve such a confrontation, market players that gather important trading flows (and therefore collect information from the market) should communicate their trading interests to the market (and therefore give information to the market). Pre-trade transparency should therefore apply to orders that most actively participate in the price formation process. This is why the present amendment defines the scope of pre-trade transparency with respect to that objective.*

*Similarly, in order to fulfil its goal, pre-trade transparency should impose that investment firms which practice systematic internalisation publish quotes that reflect the reality of the flows they internalise. This is why the present amendment proposes that investment firms that practice systematic internalisation publish quotes on volumes that correspond to their average trading activity.*

Amendment by Philippe A.R. Herzog

Amendment 55

Article 27, paragraph 1

1. Member States shall require systematic ***internalisers*** to publish a firm quote in those shares admitted to trading on a regulated market and for which they want to trade.

The quote shall include a firm bid and/or offer price ***or prices as well as the size or sizes attached to those price or prices. It*** shall ***also*** reflect the prevailing market conditions for that share.

***The obligation referred to in the first subparagraph shall not apply to transactions of a size which is large in scale compared to the normal market size.***

In case of shares for which there is not a liquid market, systematic ***internalisers*** shall disclose quotes to their clients on request.

1. Members States shall require ***investment firms which practice*** systematic ***internalisation of orders for shares up to and including a relevant market size***, to publish a firm quote in those shares admitted to trading on a regulated market and for which they want to trade. ***A relevant market size is a size which is representative for the liquidity and the price formation on the overall market for a given share.***

The quote shall include a firm bid and offer price ***and, on each side of a quote, a displayed quantity of shares which shall correspond to a relevant market quotation size. The quote shall be valid for orders up to and including the displayed quantity of shares which shall correspond to a relevant market quotation size. A relevant market quotation size is a size which is representative for the liquidity and the price formation on the overall market for a given share. The quote*** shall reflect prevailing market conditions for that share”.

In case of shares for which there is not a liquid market, ***investment firms which practice systematic internalisation in those***

*shares shall disclose quotes to their clients or counterparties on request.*

Or. en

### *Justification*

*Pre-trade transparency should apply to orders that contribute the most to liquidity and to price formation.*

Amendment by Jean-Louis Bourlanges

Amendment 56  
Article 27, paragraph 2

***2. Systematic internalisers shall make public their quotes on a regular and continuous basis during normal trading hours. They shall be entitled to update their quotes. They shall also be allowed, under exceptional market conditions, to withdraw their quotes.***

*The quote shall be made public in a manner which is easily accessible to other market participants on a reasonable commercial basis.*

*Systematic internalisers shall execute the orders they receive from their **retail** clients at the quoted prices.*

*Systematic internalisers shall execute the orders they receive from their professional clients at the quoted price. However, they may execute those orders at a better price in justified cases provided that this price falls within a public range close to market conditions and provided that the orders are of a size bigger than the size customarily undertaken by a retail investor.*

*Furthermore, systematic internalisers may execute orders they receive from their professional clients at prices different than their quoted ones without having to comply with the conditions established in the*

***2. Member States shall ensure that the bid and offer quotes required under paragraph 1 are made public in a manner which is easily accessible to other market participants on reasonable commercial terms, on a regular and continuous basis during normal trading hours.***

*Investment firms which practise systematic internalisation shall execute the orders they receive from their clients **and counterparties** at the quoted prices, **provided execution at such prices complies with the best execution obligation.***

*As regard orders substantially larger than the significant market size quoted internalisers shall execute them at the quotation price for the quotation quantity and may execute the rest of the order at a different price in justified conditions, provided the execution at such prices comply with the best execution obligation. In that case, the execution price must fall within a range previously specified by the investment firm in a policy statement communicated to the competent authority.*

*Investment firms may refuse to execute the orders of a systematic internalisation client where justified by legitimate commercial*

*fourth subparagraph, in respect of transactions where execution in several securities is part of one transaction or in respect of orders that are subject to conditions other than price.*

*considerations such as the investor credit status, the counterparty risk and the final settlement of the transaction.*

*The competent authorities :*

*(a) verify whether investment firms fulfil the criteria laid down in Article 4(1)(7)*

*(b) ensure that investment firms regularly update the bid and offer prices published in accordance with paragraph 1 and maintain prices which are generally representative of overall market conditions.*

Or. en

#### *Justification*

*Pre-trade transparency should apply to the orders which make the greatest contribution to market liquidity and price formation.*

Amendment by Philippe A.R. Herzog

#### Amendment 57 Article 27, paragraph 2

2. Systematic ***internalisers*** shall make public their quotes on a regular and continuous basis during normal trading hours. They shall be entitled to update their quotes. They shall also be allowed, under exceptional market conditions, to withdraw their quotes.

The quote shall be made public in a manner which is easily accessible to other market participants on a reasonable commercial basis.

***Systematic internalisers*** shall execute the orders they receive from their retail clients at the quoted prices.

***Systematic internalisers*** shall execute the orders they receive from their professional clients at the quoted price. However, they

2. ***Investment firms which practice*** systematic ***internalisation*** shall make public their quotes on a regular and continuous basis during normal trading hours. They shall be entitled to update their quotes. They shall also be allowed, under exceptional market conditions, to withdraw their quotes.

The quote shall be made public in a manner which is easily accessible to other market participants on a reasonable commercial basis.

***Investment firms which practice systematic internalisation*** shall execute the orders they receive from their retail clients at the quoted prices.

may execute those orders at a better price in justified cases provided that this price falls within a public range close to market conditions and provided that the orders are of a size ***bigger than the size customarily undertaken by a retail investor.***

Furthermore, systematic internalisers may execute orders they receive from their professional clients at prices different than their quoted ones without having to comply with the conditions established in the fourth subparagraph, in respect of transactions ***where execution in several securities is part of one transaction or in respect of orders that are subject to conditions other than price.***

***Investment firms which practice systematic internalisation*** shall execute the orders they receive from their professional clients and counterparties at the quoted prices.

However, they may execute those orders at a better price in justified cases provided that this price falls within a public range close to market conditions and provided that the orders are of a size ***significantly larger than the relevant market quotation size.***

Furthermore, systematic internalisers may execute orders they receive from their professional clients at prices different than their quoted ones without having to comply with the conditions established in the fourth subparagraph, in respect of transactions where execution in several securities is part of one transaction.

Or. en

### *Justification*

*The amendments take on board the changes which are necessary to ensure consistency with the amended articles 4.1.7 and 27.1.*

Amendment by Pervenche Berès

Amendment 58  
Article 27, paragraph 2

2. ***Systematic internalisers*** shall make public their quotes on a regular and continuous basis during normal trading hours. They shall be entitled to update their quotes. They shall also be allowed, under exceptional market conditions, to withdraw their quotes.

The quote shall be made public in a manner which is easily accessible to other market participants on a reasonable commercial basis.

2. ***Investment firms which practice systematic internalisation*** shall make public their quotes on a regular and continuous basis during normal trading hours. They shall be entitled to update their quotes. They shall also be allowed, under exceptional market conditions, to withdraw their quotes.

The quote shall be made public in a manner which is easily accessible to other market participants on a reasonable commercial basis.

*Systematic internalisers* shall execute the orders they receive from their retail clients at the quoted prices.

*Systematic internalisers* shall execute the orders they receive from their professional clients at the quoted price. However, they may execute those orders at a better price in justified cases provided that this price falls within a public range close to market conditions and provided that the orders are of a size bigger than the size customarily undertaken by a retail investor.

Furthermore, systematic internalisers may execute orders they receive from their professional clients at prices different than their quoted ones without having to comply with the conditions established in the fourth subparagraph, in respect of transactions where execution in several securities is part of one transaction ***or in respect of orders that are subject to conditions other than price.***

*Investment firms which practice systematic internalisation* shall execute the orders they receive from their retail clients at the quoted prices.

*Investment firms which practice systematic internalisation* shall execute the orders they receive from their professional clients ***and counterparties*** at the quoted prices.

However, they may execute those orders at a better price in justified cases provided that this price falls within a public range close to market conditions and provided that the orders are of a size bigger than the size customarily undertaken by a retail investor.

Furthermore, systematic internalisers may execute orders they receive from their professional clients at prices different than their quoted ones without having to comply with the conditions established in the fourth subparagraph, in respect of transactions where execution in several securities is part of one transaction.

Or. en

#### *Justification*

*For the market to benefit from an efficient price formation process, there should be a level playing field among all market participants with respect to information, access and execution when they deal with an investment firm which practice systematic internalisation. This is why article 27 should always refer to clients and counterparties and never to clients only.*

Amendment by Ieke van den Burg

Amendment 59  
Article 27, paragraph 2

***2. Systematic internalisers shall make public their quotes on a regular and continuous basis during normal trading hours. They shall be entitled to update their quotes. They shall also be allowed, under exceptional market conditions, to withdraw their quotes.***

***2. Member States shall ensure that the bid and offer prices required under paragraph 1 are made public in a manner which is easily accessible to other market participants on reasonable commercial terms, on a regular and continuous basis during normal trading hours.***

***The quote shall be made public in a manner which is easily accessible to other market participants on a reasonable commercial basis.***

***Systematic internalisers shall execute the orders they receive from their retail clients at the quoted prices.***

***Systematic internalisers shall execute the orders they receive from their professional clients at the quoted price. However, they may execute those orders at a better price in justified cases provided that this price falls within a public range close to market conditions and provided that the orders are of a size bigger than the size customarily undertaken by a retail investor.***

***Furthermore, systematic internalisers may execute orders they receive from their professional clients at prices different than their quoted ones without having to comply with the conditions established in the fourth subparagraph, in respect of transactions where execution in several securities is part of one transaction or in respect of orders that are subject to conditions other than price.***

***Investment firms which practise systematic internalisation shall execute the systematic internalisation orders they receive from their retail clients at the quoted prices, provided execution at such prices complies with the best execution obligation.***

***Investment firms which practise systematic internalisation may execute systematic internalisation orders from professional clients at a better price than that publicly announced, provided that the orders are of a size bigger than the size customary undertaken by a retail investor.***

***Investment firms may refuse to execute the orders of a systematic internalisation client where justified by legitimate commercial considerations such as the investor credit status, the counterparty risk and the final settlement of the transaction.***

***The competent authorities shall:***  
***(a) verify whether investment firms fulfil the criteria laid down in Article 4(1)(7)***  
***(b) monitor whether investment firms regularly update the bid and offer prices published in accordance with paragraph 1 and maintain prices which are generally representative of overall market conditions.***

Or. en

#### *Justification*

*This amendment is following the rapporteur's line except for the 3rd and 4th part here a 'merger' is proposed from the Council's position and the EP's position.*

Amendment by Jean-Louis Bourlanges

Amendment 60  
Article 27, paragraph 3

***3. Systematic internalisers shall be allowed to decide, on the basis of their commercial policy and in a non discriminatory way, the***

***3. Investment firms shall be allowed to decide, on the basis of their own commercial policies, which persons they***

***investors to whom they give access to their quotes.*** Investment firms may refuse to enter into or discontinue business relationships with investors on the basis of commercial considerations such as the investor credit status, the counterparty risk and the final settlement of the transaction.

***accept as clients or eligible counterparties and consequently with whom they deal on their prices quoted under paragraph 1. However, Member States shall require that the investment firms subject to the obligation under paragraph 1, which do not exercise their option under paragraph 4, point (d)(i) of providing their quotes through the facilities of a regulated market or MTF, have clear standards for governing access for new systematic internalisation clients or eligible counterparties, based on objective, non-discriminatory, commercial criteria.*** Investment firms may refuse to enter into or discontinue business relationships with investors on the basis of commercial considerations such as the investor credit status, the counterparty risk and the final settlement of the transaction.

Or. fr

#### *Justification*

*The terms of access for investment firms had been formulated on first reading. They should be reiterated here, while confirming that these provisions apply both to clients and to eligible counterparties.*

Amendment by Astrid Lulling, Bert Doorn

Amendment 61  
Article 27, paragraph 3

***3. Systematic internalisers shall be allowed to decide, on the basis of their commercial policy and in a non discriminatory way, the investors to whom they give access to their quotes.*** Investment firms may refuse to enter into or discontinue business relationships with investors on the basis of commercial considerations such as the investor credit status, the counterparty risk and the final settlement of the transaction.

***3. Investment firms are permitted to decide, on the basis of their own commercial policies the investors/clients to whom they give access to their quotation. However, Member States shall require that the investment firms subject to the obligation under paragraph 1 which do not exercise their option under paragraph 4, point (d)(i) of providing their quotes through the facilities of a regulated market or MTF have clear standards for governing access for new systematic internalisation clients,***



***based on objective, non discriminatory, commercial criteria.*** Investment firms may refuse to enter into or discontinue business relationships with investors on the basis of commercial considerations such as the investor credit status, the counterparty risk and the final settlement of the transaction.

Or. en

*Justification*

*A client excluded for the internalisation could be a posteriori excluded of all other services.*

Amendment by Pervenche Berès

Amendment 62  
Article 27, paragraph 3

3. ***Systematic internalisers*** shall be allowed to decide, on the basis of their commercial policy and in a non discriminatory way, the investors to whom they give access to their quotes. Investment firms may refuse to enter into or discontinue business relationships with investors on the basis of commercial considerations such as the investor credit status, the counterparty risk and the final settlement of the transaction.

3. ***Investment firms which practice systematic internalisation*** shall be allowed to decide, on the basis of their commercial policy and in a non discriminatory way, the investors to whom they give access to their quotes. Investment firms may refuse to enter into or discontinue business relationships with investors on the basis of commercial considerations such as the investor credit status, the counterparty risk and the final settlement of the transaction.

Or. en

*Justification*

*This amendment ensures that the wording of articles 27 paragraph 3 is in line with the other proposed amendments. Firms must have the freedom to opt for the regime applying to the treatment of non-professionals if they want a higher level of protection. Investment firms must inform them of that possibility*

Amendment by Philippe A.R. Herzog

Amendment 63  
Article 27, paragraph 3

3. **Systematic internalisers** shall be allowed to decide, on the basis of their commercial policy and in a non discriminatory way, the investors to whom they give access to their quotes. Investment firms may refuse to enter into or discontinue business relationships with investors on the basis of commercial considerations such as the investor credit status, the counterparty risk and the final settlement of the transaction.

3. **Investment firms which practice systematic internalisation** shall be allowed to decide, on the basis of their commercial policy and in a non discriminatory way, the investors to whom they give access to their quotes. Investment firms may refuse to enter into or discontinue business relationships with investors on the basis of commercial considerations such as the investor credit status, the counterparty risk and the final settlement of the transaction.

Or. en

*Justification*

*The amendments take on board the changes which are necessary to ensure consistency with the amended articles 4.1.7.*

Amendment by Pervenche Berès

Amendment 64  
Article 27, paragraph 4

4. In order to limit the risk of being exposed to multiple transactions from the same client systematic **internalisers** shall be allowed to limit in a non-discriminatory way the number of transactions from that same client which they undertake to enter at the published conditions.

4. In order to limit the risk of being exposed to multiple transactions from the same client **investment firms which practice systematic internalisation** shall be allowed to limit in a non-discriminatory way the number of transactions from that same client which they undertake to enter at the published conditions

Or. en

*Justification*

*This amendment ensures that the wording of articles 27 paragraph 3 is in line with the other proposed amendments. This amendment is in line with the amendment 7 of the rapporteur.*

Amendment by Philippe A.R. Herzog

Amendment 65  
Article 27, paragraph 4

4. In order to limit the risk of being exposed to multiple transactions **from the same client** systematic **internalisers** shall be allowed to limit **in a non-discriminatory way** the **number of** transactions **from that same client** which they **undertake to enter** at the published conditions.

4. In order to limit the risk of being exposed to multiple transactions from the same client **investment firms which practice systematic internalisation** shall be allowed to limit in a non-discriminatory way the number of transactions from that same client which they undertake to enter at the published conditions.

Or. en

### *Justification*

*The amendments take on board the changes which are necessary to ensure consistency with the amended article 4.1.7.*

Amendment by Philippe A.R. Herzog

### Amendment 66 Article 27, paragraph 5

5. In order to ensure the uniform application of paragraphs 1 to 4, in a manner which supports the efficient valuation of shares and maximises the possibility of investment firms of obtaining the best deal for their clients, the Commission shall, in accordance with the procedure referred to in Article 64(2), adopt implementing measures which:

(a) specify the criteria for application of paragraph 1 and, in particular, for determining **when a size of a transaction is large in scale compared to normal market size**, when a quote reflects current market conditions and when there is an illiquid market on specific shares;

(b) specify the criteria for application of paragraph 2, **with the exception of the fourth subparagraph and**, in particular, the means by which investment firms may comply with their obligation to make public their quotes, which shall include the following possibilities:

5. In order to ensure the uniform application of paragraphs 1 to 4 in a manner which supports the efficient valuation of shares and maximises the possibility of investment firms of obtaining the best deal for their clients, the Commission shall, in accordance with the procedure referred to in Article 64(2), adopt implementing measures which:

(a) specify the criteria for application of paragraph 1 and, in particular, for determining **what is a relevant market size and what is a relevant market quotation size in consideration for liquidity and price formation**, when a quote reflects current market conditions and when there is an illiquid market on specific shares;

(b) specify the criteria for application of paragraph 2, in particular, the means by which investment firms may comply with their obligation to make public their quotes, which shall include the following possibilities:

(i) through the facilities of any regulated market which has admitted the instrument in question to trading;

(ii) through the offices of a third party;

(iii) through proprietary arrangements;

(c) specify the criteria for application of paragraph 3;

(d) specify the criteria under which the quotes can be withdrawn;

***(e) by way of derogation from point (b), specify the criteria for determining what is a size customarily undertaken by a retail investor.***

(i) through the facilities of any regulated market which has admitted the instrument in question to trading;

(ii) through the offices of a third party;

(iii) through proprietary arrangements.

(c) specify the criteria for application of paragraph 3;

(d) specify the criteria under which the quotes can be withdrawn

Or. en

#### *Justification*

*The amendments take on board the changes, which are necessary to ensure consistency of the comitology provisions with the amended articles 4.17. and 27.*

Amendment by Pervenche Berès

Amendment 67

Article 27, paragraph 5, point a)

(a) specify the criteria for application of paragraph 1 and, in particular, for determining when a size of a transaction ***is*** large in scale compared ***to normal market size***, when a quote reflects current market conditions and when there is an illiquid market on specific shares;

(a) specify the criteria for application of paragraph 1 and, in particular, for determining when the size of a transaction is large in scale compared ***to the average market size***, when a quote reflects current market conditions and when there is an illiquid market on specific shares;

Or. en

#### *Justification*

*This amendment ensures that comitology measures are in line with the preceding amendments.*

Amendment by Pervenche Berès

Amendment 68

Article 27, paragraph 5, point b)

(b) specify the criteria for application of paragraph 2, ***with the exception of the fourth subparagraph and***, in particular, the means by which investment firms may comply with their obligation to make public their quotes, which shall include the following possibilities:

(b) specify the criteria for application of paragraph 2, in particular, the means by which investment firms may comply with their obligation to make public their quotes, which shall include the following possibilities:

Or. en

*Justification*

*This amendment ensures that comitology measures are in line with the preceding amendments.*

Amendment by Alexander Radwan, Othmar Karas

Amendment 69

Article 29, paragraph 2

2. Member States shall provide for the competent authorities to be able to waive the obligation for investment firms or market operators operating an MTF to make public the information referred to in paragraph 1 based on the market model or the type and size of orders. In particular, the competent authorities shall be able to waive the obligation in respect of transactions that are large in scale compared with normal market size for the share or type of share in question.

2. Member States shall provide for the competent authorities to be able to waive the obligation for investment firms or market operators operating an MTF to make public the information referred to in paragraph 1 based on the market model or the type and size of orders ***in the cases defined according to paragraph 3***. In particular, the competent authorities shall be able to waive the obligation in respect of transactions that are large in scale compared with normal market size for the share or type of share in question.

Or. en

*Justification*

*This amendment modifies the Council version in the sense of the EP's first reading. To ensure*

*a level playing field between different trading systems it is important that the exemptions from pre-trade transparency requirements for MTFs are defined in a uniform manner. This also holds for the amendment to article 44 (2).*

Amendment by Jean-Louis Bourlanges, Theresa Villiers

Amendment 70  
Article 31, paragraph 5

5. Member States shall, without further legal or administrative requirement, allow investment firms operating MTFs from other Member States to provide appropriate arrangements on their territory so as to facilitate access to and use of their systems by remote users or participants established in their territory.

5. Member States shall, without further legal or administrative requirement, allow investment firms **and market operators** operating MTFs from other Member States to provide appropriate arrangements on their territory so as to facilitate access to and use of their systems by remote users or participants established in their territory.

Or. fr

*Justification*

*As market operators are subject to the same obligations as investment firms, they should have the same right to provide appropriate arrangements for access and use by remote users.*

Amendment by Olle Schmidt, Peter William Skinner

Amendment 71  
Article 32, paragraph 7

7. The competent authority of the Member State in which the branch is located shall assume responsibility for ensuring that the services provided by the branch within its territory comply with the obligations laid down in Articles 19, 21, 22, 25, 27 and 28 and in measures adopted pursuant thereto.

The competent authority of the Member State in which the branch is located shall have the right to examine branch arrangements and to request such changes as are strictly needed to enable the competent authority to enforce the obligations under Articles 19, 21, 22, 25, 27 and 28 and

7. The competent authority of the Member State in which the branch is located shall assume responsibility for ensuring that the services provided by the branch within **or from** its territory comply with the obligations laid down in Articles 19, 21, 22, 25, 27 and 28 and in measures adopted pursuant thereto.

The competent authority of the Member State in which the branch is located shall have the right to examine branch arrangements and to request such changes as are strictly needed to enable the competent authority to enforce the obligations under

measures adopted pursuant thereto with respect to the services and/or activities provided by the branch within its territory.

Articles 19, 21, 22, 25, 27 and 28 and measures adopted pursuant thereto with respect to the services and/or activities provided by the branch within **or from** its territory.

Or. en

*Justification*

*The amendments to Article 32.7 and Recital 31 seek to ensure that branches and their clients are not subject to different rules depending on where the customer is located, that the Directive does not discriminate against the provision of services through branches, or put pressure on branches to establish themselves as subsidiaries, and that the Directive is consistent with the E-Commerce Directive 2000.*

Amendment by Pervenche Berès

Amendment 72  
Article 33 a (new)

***(33a) Central counterparty and clearing and settlement systems shall be defined in a legislative text concerning clearing and settlement systems.***

Or. fr

*Justification*

*In line with the Commission's communication (COM(2002)257) and Parliament's report A5-431/2002, adopted on 15 January 2003, a legislative proposal concerning clearing and settlement systems is needed to ensure genuine and fair competition between systems.*

Amendment by Christopher Huhne

Amendment 73  
Article 35, paragraph 2

2. The competent authority of investment firms and market operators operating an MTF may not oppose the use of central counterparty, clearing houses and/or settlement systems in another Member State

2. The competent authority of investment firms and market operators operating an MTF may not oppose the use of central counterparty, clearing houses and/or settlement systems in another Member State

except where this is demonstrably necessary in order to maintain the orderly functioning of that MTF **and taking into account the conditions for settlement systems established in Article 34(2).**

***In order to avoid undue duplication of control, the competent authority shall take into account the oversight/supervision already exercised by the national central banks as overseers of clearing and settlement systems or by other supervisory authorities with a competence in such systems.***

except where this is demonstrably necessary in order to maintain the orderly functioning of that MTF.

Or. en

#### *Justification*

*The object of this amendment is to prevent host regulatory authorities refusing access to clearing and settlement systems by foreign MTFs and regulated markets in order to protect their own markets. The deletion of the cross-reference to Article 34 (2) is due this paragraph only relating to regulated markets.*

Amendment by Othmar Karas, Alexander Radwan

#### Amendment 74 Article 44, paragraph 2

2. Member States shall provide that the competent authorities are to be able to waive the obligation for regulated markets to make public the information referred to in paragraph 1 based on the market model or the type and size of orders. In particular, the competent authorities shall be able to waive the obligation in respect of transactions that are large in scale compared with normal market size for the share or type of share in question.

2. Member States shall provide that the competent authorities are to be able to waive the obligation for regulated markets to make public the information referred to in paragraph 1 based on the market model or the type and size of orders ***in the cases defined according to paragraph 3.*** In particular, the competent authorities shall be able to waive the obligation in respect of transactions that are large in scale compared with normal market size for the share or type of share in question.

Or. en



### *Justification*

*This amendment modifies the Council version in the sense of the EP's first reading. To ensure a level playing field between different trading systems it is important that the exemptions from pre-trade transparency requirements for regulated markets are defined in a uniform manner. This also holds for the amendment to article 29 (2).*

Amendment by Christopher Huhne

Amendment 75

Article 46, paragraph 2, subparagraph 2

***In order to avoid undue duplication of control, the competent authority shall take into account the oversight/supervision already exercised by the national central banks as overseers of clearing and settlement systems or by other supervisory authorities with competence in relation to such systems.***

***Deleted***

Or. en

### *Justification*

*The object of this amendment is to prevent host regulatory authorities refusing access to clearing and settlement systems by foreign MTFs and regulated markets in order to protect their own markets.*

Amendment by Othmar Karas, Alexander Radwan

Amendment 76

Article 56, paragraph 2

***2. When, taking into account the situation of the securities markets in the host Member State, the operations of a regulated market that has established arrangements in a host Member State have become of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State, the home and host competent authorities of the regulated market shall establish proportionate***

***Deleted***

*cooperation arrangements.*

Or. en

*Justification*

*The Council version frustrates the idea of home supervision of market participants in the integrated single market. The suggested version in the Parliament's first reading provides more flexibility in this respect.*

Amendment by Theresa Villiers

Amendment 77

Article 62, paragraph 3, subparagraph 2

If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the said regulated market or the MTF persists in acting in a manner that is clearly prejudicial to the interests of host Member State investors or the orderly functioning of markets, the competent authority of the host Member State, after informing the competent authority of the home Member State, ***shall take all the appropriate measures needed in order to protect investors and the proper functioning of the markets. This shall include the possibility of preventing the said regulated market or the MTF from making their arrangements available to remote members or participants established in the host Member State. The Commission shall be informed of such measures without delay.***

If, ***in exceptional circumstances***, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the said regulated market or the MTF persists in acting in a manner that is clearly prejudicial to the interests of host Member State investors or the orderly functioning of markets, the competent authority of the host Member State, after informing the competent authority of the home Member State, ***may take the alleged non compliance of the regulated market or MTF to the Commission for investigation.***

Or. en

*Justification*

*The ability of Member States to block the activities of a market authorised in another Member State undermines the attempt to create a single market. If a Member State has serious concerns over the activities of a regulated market authorised in another Member State, it should take its complaint to the Commission, not act unilaterally.*

Amendment by Jean-Louis Bourlanges

Amendment 78  
Article 65, paragraph 2 a (new)

***2a. The Commission shall see to the drawing up at European level of definitions of central counterparty and clearing and settlement systems.***

Or. fr

*Justification*

*Attention should be drawn to the contents of the report adopted by Parliament on 15 January 2003 on the Commission's communication on cross-border clearing and settlement, which explicitly called on the Commission to draw up a specific directive on the subject.*

Amendment by Giorgos Katiforis

Amendment 79  
Annex I, Section B, point 6 a (new)

***6a) Services and activities related to commodities***

Or. en

*Justification*

*Passported Firms should be able to provide services and activities related to commodities as an ancillary service to the passported business. Otherwise there would be barriers to business in the single market.*

Amendment by Olle Schmidt

Amendment 80  
Annex I, Section B, point 6 a (new)

***6a) Services and activities related to commodities.***

*Justification*

*If the Directive is to achieve its single market objectives it must at least ensure that passported investment firms do not encounter licensing obstacles to their cross-border business. Passported firms should be able to provide services and perform dealing activities related to commodities as an ancillary service to the passported business. Without this, there will still be barriers to business in the single market, because many Member states will still continue to retain licensing requirements on transactions in commodities.*

## Amendment by Giorgos Katiforis

Amendment 81  
Annex I, Section C, point 5)

5) Options, futures, swaps, and any other derivative contract relating to commodities that **can** be settled in cash;

5) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities, **or climatic variables, freight rates, emissions allowances or inflation rates or other official economic statistics**, that **must** be settled in cash **or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event)**;

*Justification*

*There is a market for cash settled derivatives related to new classes of underlying subject matter, such as weather, freight rates, emissions allowances and economic statistics. These classes of derivatives should be treated as financial instruments. This will ensure that investment firms have the benefit of the passport to offer these derivatives across Europe subject to the regulatory regime of the Directive.*

## Amendment by Olle Schmidt

Amendment 82  
Annex I, Section C, point 5)

5) Options, futures, swaps, and any other derivative contract relating to commodities

5) Options, futures, swaps, forward rate agreements and any other derivative

that **can** be settled in cash;

contracts relating to commodities that **must** be settled in cash **or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event)**;

Or. en

#### *Justification*

*The common position text suggests that a contract will be treated as a financial instrument within this category if there is simply the possibility of cash settlement. This could deter firms from using industry standard netting master agreements to manage their credit risks on physically settled transactions in commodities. Those contracts provide for the close and netting of individual transactions, on a default by one of the parties or other specified termination event, so that a single cash sum is payable by one or other of the parties. The possibility of this form of cash settlement should not itself be enough to bring the transaction within the scope of this provision.*

Amendment by Giorgos Katiforis

Amendment 83  
Annex I, Section C, point 6)

6) Options, futures, swaps, and any other derivative contract relating to commodities that can **only** be physically settled provided that they are traded on a regulated market and/or an MTF;

6) Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market and/or an MTF;

Or. en

#### *Justification*

*An exchange traded contract for physical settlement should still be a financial instrument even if in some circumstances there may be the possibility of settlement in cash.*

Amendment by Olle Schmidt

Amendment 84  
Annex I, Section C, point 6)

6) Options, futures, swaps, and any other derivative contract relating to commodities

6) Options, futures, swaps, and any other derivative contract relating to commodities

that can **only** be physically settled provided that they are traded on a regulated market and/or an MTF;

that can be physically settled provided that they are traded on a regulated market and/or an MTF;

Or. en

*Justification*

*An exchange traded contract for physical settlement should still be a financial instrument even if in some circumstances there may be the possibility of settlement in cash.*

Amendment by Olle Schmidt

Amendment 85

Annex I, Section C, point 6 a (new)

***6a) Other options, futures, swaps, forwards and any other derivative contracts relating to commodities, not being commodity contracts for spot delivery or commodity contracts for commercial purposes having a deferred delivery, which the Commission determines, acting in accordance with the procedure referred to in Article 64(2), have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded for commercial or investment purposes, are cleared and settled through recognised clearing houses or are subject to regular margin calls***

Or. en

*Justification*

*The Directive should provide flexibility to accommodate within it other classes of commodity derivatives which are determined to have the characteristics of other derivative financial instruments. However, the existence of any of these specified factors is not conclusive that the instrument should be treated as financial instrument. On the other hand, commodity contracts for spot delivery and commodity contracts for commercial purposes and for deferred delivery should not be treated as financial instruments where they are not traded on a regulated market or MTF.*

Amendment by Giorgos Katiforis

Amendment 86

Annex I, Section C, point 8 a (new)

***8a) Options, futures, swaps, forwards and any other derivative contracts, not otherwise mentioned in this Section C and not being commodity contracts for spot delivery or commodity contracts for commercial purposes having a deferred delivery, relating to commodities or other assets, rights, obligations, indices and measures, which the Commission determines, acting in accordance with the procedure referred to in Article 64(2), have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded for commercial or investment purposes, are cleared and settled through recognised clearing houses or are subject to regular margin calls***

Or. en

*Justification*

*The Directive should provide flexibility to accommodate within it other existing and future classes of derivatives which are determined to have the characteristics of other derivative financial instruments.*

Amendment by Olle Schmidt

Amendment 87

Annex I, Section C, point 8 a (new)

***8a) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event)***

*Justification*

*There is a market for cash settled derivatives related to new classes of underlying subject matter, such as weather, freight rates, emissions allowances and economic statistics. These classes of derivatives should be treated as financial instruments. This will ensure that investment firms have the benefit of the passport to offer these derivatives across Europe subject to the regulatory regime of the Directive.*

Amendment by Olle Schmidt

Amendment 88

Annex I, Section C, point 8 b (new)

***8b) Options, futures, swaps, and any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section C, which the Commission determines, acting in accordance with the procedure referred to in Article 64(2), have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded for commercial or investment purposes, are cleared and settled through recognised clearing houses or are subject to regular margin calls.***

Or. en

*Justification*

*The Directive should provide flexibility to accommodate within it other existing and future classes of derivatives which are determined to have the characteristics of other derivative financial instruments. In order to facilitate the decision as to whether a particular instrument should be treated as a financial instrument, it is important to identify factors that should be taken into account. However, the existence of any of these factors, in any particular case, is not conclusive that the instrument should be treated as a financial instrument .*

Amendment by Pervenche Berès

Amendment 89

Annex II, Section I, point (1)



(1) **Entities** which are required to be authorised or regulated to operate in the financial markets. The list below should be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a Directive, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by a non-Member State:

(1) **At their request, entities** which are required to be authorised or regulated to operate in the financial markets. The list below should be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a Directive, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by a non-Member State:

Or. fr

#### *Justification*

*Firms must have the freedom to opt for the regime applying to the treatment of non-professionals if they want a higher level of protection. Investment firms must inform them of that possibility.*

Amendment by Pervenche Berès

Amendment 90  
Annex II, Section I, point (2)

(2) **Large** undertakings meeting two of the following size requirements on a company basis:

- balance sheet total: **EUR 20 000 000**,
- net turnover: **EUR 40 000 000**,
- **own funds: EUR 2 000 000.**

(2) **At their request, large** undertakings meeting two of the following size requirements on a company basis:

- balance sheet total: **EUR 1 billion**,
- net turnover: **EUR 2 billion.**

***Investment firms must inform clients of the possibility of opting not to be treated as a professional and thus enjoying a higher level of protection.***

Or. fr

#### *Justification*

*Firms must have the freedom to opt for the regime applying to the treatment of non-professionals if they want a higher level of protection. Investment firms must inform them of that possibility.*