

## Review of the Markets in Financial Instruments Directive

### Questionnaire on MiFID/MiFIR 2 by Markus Ferber MEP

**Assoreti** – the National Association of Banks and Investment Firms that provide distribution and advising activities regarding financial, banking and insurance products and services – is pleased to participate in this consultation on the review of the MiFID and it is especially interested in Question 15 related to the investment advice service.

| Theme                | Question  | Answers |
|----------------------|---|---------|
| Scope                | 1) Are the exemptions proposed in Directive Articles 2 and 3 appropriate? Are there ways in which more could be done to exempt corporate end users?   |         |
|                      | 2) Is it appropriate to include emission allowances and structured deposits and have they been included in an appropriate way?  |         |
|                      | 3) Are any further adjustments needed to reflect the inclusion of custody and safekeeping as a core service?  |         |
|                      | 4) Is it appropriate to regulate third country access to EU markets and, if so, what principles should be followed and what precedents should inform the approach and why?  |         |
| Corporate governance | 5) What changes, if any, are needed to the new requirements on corporate governance for investment firms and trading venues in Directive Articles 9 and 48 and for data service providers in Directive Article 65 to ensure that they are proportionate and effective, and why? |         |



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| Organisation of markets and trading | 6) Is the Organised Trading Facility category appropriately defined and differentiated from other trading venues and from systematic internalisers in the proposal? If not, what changes are needed and why?      |  |
|                                     | 7) How should OTC trading be defined? Will the proposals, including the new OTF category, lead to the channelling of trades which are currently OTC onto organised venues and, if so, which type of venue?        |  |
|                                     | 8) How appropriately do the specific requirements related to algorithmic trading, direct electronic access and co-location in Directive Articles 17, 19, 20 and 51 address the risks involved?                    |  |
|                                     | 9) How appropriately do the requirements on resilience, contingency arrangements and business continuity arrangements in Directive Articles 18, 19, 20 and 51 address the risks involved?                         |  |
|                                     | 10) How appropriate are the requirements for investment firms to keep records of all trades on own account as well as for execution of client orders, and why?  |  |
|                                     | 11) What is your view of the requirement in Title V of the Regulation for specified derivatives to be traded on organised venues and are there any adjustments needed to make the requirement practical to apply? |  |
|                                     | 12) Will SME gain a better access to capital market through the introduction of an MTF SME growth market as foreseen in Article 35 of the Directive?  |  |



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|  | <p>13) Are the provisions on non-discriminatory access to market infrastructure and to benchmarks in Title VI sufficient to provide for effective competition between providers?<br/>If not, what else is needed and why? Do the proposals fit appropriately with EMIR?</p>   |  |
|  | <p>14) What is your view of the powers to impose position limits, alternative arrangements with equivalent effect or manage positions in relation to commodity derivatives or the underlying commodity? Are there any changes which could make the requirements easier to apply or less onerous in practice? Are there alternative approaches to protecting producers and consumers which could be considered as well or instead?</p> |  |



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| Investor protection | <p>15) Are the new requirements in Directive Article 24 on independent advice and on portfolio management sufficient to protect investors from conflicts of interest in the provision of such services?</p> | <p>Assoreti believes that the European Commission's Proposal (COM(2011)656 final) has reached an optimal balance between market demands and investor protection's needs. This Proposal focuses on two requirements – the assessment of a sufficiently large number of financial instruments available on the market and the prohibition of fees, commissions or any monetary benefits – which, properly, are not essential to the investment advice service but that, if met, will strengthen the independence. <i>Disclosure</i> – imposed on investment firms that shall specify the mode according to which the investment advice is provided – efficiently completes investor protection discipline and allows investors actually to choose between the various modes of the provision of investment advice service. Arguably, the investment advice provided according to the “independent” mode will be devoted to a narrow set of investors with larger portfolios and willing to pay an <i>ad hoc</i> fee. The investment advice provided according to the other modes – both in vertical integration or open architecture – will be <u>essential for retail clients, whose protection, in particular, the MiFID aims</u>. Also these latter modes of provision of investment advice service – <u>up to now the most widespread in the mutual investment fund market</u> – must be performed in a manner substantially independent, through the full and correct application of the existing provisions on <i>inducements</i> and conflict of interest, and are designed to achieve the best interest of the client through the <u>fundamental suitability test</u>. Particularly the suitability test must be carried out ensuring that personal recommendations: <i>i</i>) arisen solely from the comparative assessment of both the type of the financial instrument and the essential information about the client, and <i>ii</i>) are formulated only when, at the end of this process, the financial instruments are found to be suitable for him (this process is properly applied also to the provision of investment advice in the “independent” mode). In conclusion, Assoreti believes that the new Article 24 of MiFID, as laid down in the Proposal, adequately protects investors from conflicts of interest that may arise in the provision of investment advice service and should therefore be confirmed as it is, without any modifications.</p> |
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|              | 16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?  |  |
|              | 17) What if any changes are needed to the scope of the best execution requirements in Directive Article 27 or to the supporting requirements on execution quality to ensure that best execution is achieved for clients without undue cost?   |  |
|              | 18) Are the protections available to eligible counterparties, professional clients and retail clients appropriately differentiated?   |  |
|              | 19) Are any adjustments needed to the powers in the Regulation on product intervention to ensure appropriate protection of investors and market integrity without unduly damaging financial markets?  |  |
| Transparency | 20) Are any adjustments needed to the pre-trade transparency requirements for shares, depositary receipts, ETFs, certificates and similar in Regulation Articles 3, 4 and 13 to make them workable in practice? If so what changes are needed and why?  |  |
|              | 21) Are any changes needed to the pre-trade transparency requirements in Regulation Articles 7, 8, 17 for all organised trading venues for bonds, structured products, emission allowances and derivatives to ensure they are appropriate to the different instruments? Which instruments are the highest priority for the introduction of pre-trade transparency requirements and why? |  |



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|                   | 22) Are the pre-trade transparency requirements in Regulation Articles 7, 8 and 17 for trading venues for bonds, structured products, emission allowances and derivatives appropriate? How can there be appropriate calibration for each instrument? Will these proposals ensure the correct level of transparency? |  |
|                   | 23) Are the envisaged waivers from pre-trade transparency requirements for trading venues appropriate and why?  |  |
|                   | 24) What is your view on the data service provider provisions (Articles 61 - 68 in MiFID), Consolidated Tape Provider (CTPs), Approved Reporting Mechanism (ARMs), Authorised Publication Authorities (APAs)?   |  |
|                   | 25) What changes if any are needed to the post-trade transparency requirements by trading venues and investment firms to ensure that market participants can access timely, reliable information at reasonable cost, and that competent authorities receive the right data?   |  |
| Horizontal issues | 26) How could better use be made of the European Supervisory Authorities, including the Joint Committee, in developing and implementing MiFID/MiFIR 2?  |  |
|                   | 27) Are any changes needed to the proposal to ensure that competent authorities can supervise the requirements effectively, efficiently and proportionately?  |  |



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|   | 28) What are the key interactions with other EU financial services legislation that need to be considered in developing MiFID/MiFIR 2? |  |
|   | 29) Which, if any, interactions with similar requirements in major jurisdictions outside the EU need to be borne in mind and why?      |  |
|   | 30) Is the sanctions regime foreseen in Articles 73-78 of the Directive effective, proportionate and dissuasive?                       |  |
|   | 31) Is there an appropriate balance between Level 1 and Level 2 measures within MIFID/MIFIR 2?   |  |
| <b>Detailed comments on specific articles of the draft Directive</b>  |  |  |
| <b>Article number</b>   | <b>Comments</b>  |  |
| Article ... :   |  |  |
| Article ... :   |  |  |
| Article ... :   |  |  |
| <b>Detailed comments on specific articles of the draft Regulation</b> |  |  |
| <b>Article number</b>   | <b>Comments</b>  |  |
| Article ... :   |  |  |
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