Review of the Markets in Financial Instruments Directive

Questionnaire on MiFID/MiFIR 2 by Markus Ferber MEP

The questionnaire takes as its starting point the Commission's proposals for MiFID/MiFIR 2 of 20 October 2011 (COM(2011)0652 and COM(2011)0656).

All interested stakeholders are invited to complete the questionnaire. You are invited to answer the following questions and to provide any detailed comments on specific Articles in the table below. Responses which are not provided in this format may not be reviewed.

Respondents to this questionnaire should be aware that responses may be published.

Please send your answers to econ-secretariat@europarl.europa.eu by 13 January 2012.

Response to question 15 from :

CARMIGNAC GESTION SA, société de gestion de portefeuille (agreement GP 92-08 du 13/03/1997)
24 place Vendôme – 75001 PARIS
Contact : Pascale GUILLIER, general secretary, +33 (0)1 42 86 31 10

About Carmignac Gestion

Founded in 1989 by Edouard Carmignac, Carmignac Gestion is one of the leading independent asset management companies in Europe today. Its share capital is entirely held by its management team and staff. In this way, the company's long-term viability is ensured by a stable shareholding structure, reflecting its spirit of independence. This fundamental value is of upmost importance to the company as it ensures the freedom required for successful and renown portfolio management.

With close to 50 billion EUR in assets, Carmignac Gestion has developed a comprehensive range of 18 funds across all asset classes - equities, bonds and multi-strategy, as well as mandate offering. Our funds are actively marketed in 11 European countries: France, Luxembourg, Switzerland, Belgium, Italy, Germany, Spain, Austria, The Netherlands, Sweden and United Kingdom. Within the context of its international development, Carmignac Gestion has a subsidiary in Luxembourg and two offices in Madrid and Milan, and recently registered its range of products for professional investors in Singapore.

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?	
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?	
	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? If not, what else is needed and why? Do the proposals fit appropriately with EMIR?	
	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?	
Investor protection	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?	Carmignac Gestion considers that the new requirements in Article 24 do not address satisfactorily investor protection with regards to conflict of interest in the provision of independent advice. First of all, the ban of inducements in the case of independent advice will at the same time put at risk open architecture and favour in house distribution networks. The result shall be a restricted offer of financial products to retail clients, who are not ready - or not able- to pay for advice. The ban of inducements would drastically reduce the number of independent financial advisers and consequently the access to a "non-banking" advice and "non-banking" products for clients. In addition, only wealthy customers would be able to bare the additional costs of advice. **We are of the view that the only way to prevent conflict of interests is an accrued transparency on the remuneration – whatever form may take this remuneration – received by the**

		not. Lastly, stigmatizing the independent advice by suggesting that there can be no conflict of interests in other distribution models or that the advice is free if the case of integrated distribution models appears misleading and conter-productive to the objects of investor protection.
	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?	
	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?	
	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?	
Detailed comments on specific articles of the draft Directive		
Article number	**Comments**	

	Please find below an amendement proposal to the article 24 par 5 of MIFID 2
Article 24 par 5 :	Proposed amendement : 1. When the investment firm provides investment advice, the firm: (i) shall disclose the list of the product providers, including those belonging to the same group, with which the investment firm may and does conduct business and/or from which the investment firm may or does receive fees, commissions or monetary benefits in relation to the provision of service to clients. The name of product providers disclosed shall specify whether it is a "home product provider" when the investment firm has capital interest in the product provider or "third party provider" when it has not. (ii) shall not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients whose name has not been disclosed as set out in (i)
Article … :	
Article … :	

Detailed comments on specific articles of the draft Regulation	
Article number	**Comments**
Article … :	
Article … :	
Article … :	