

Review of the Markets in Financial Instruments Directive

Questionnaire on MiFID/MiFIR 2 by Markus Ferber MEP

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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**.

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?	The mentioned exemptions are appropriate. Customers should always be provided with qualified and objective advice in the situation of purchase of an investment product no matter the nature or size of the provider. This is important not least in light of the increasing complexity of investment products in recent years.
	2) Is it appropriate to include emission allowances and structured deposits and have they been included in an	Yes it's appropriate, but it would be more prudent if all products covered, including insurance products linked to investment

	appropriate way?	products or financing pension schemes or spot currency exchange deal too.
	3) Are any further adjustments needed to reflect the inclusion of custody and safekeeping as a core service?	No further adjustments suggested.
	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?	<p>Yes, it's appropriate to regulate third country access to EU markets, because it creates a harmonised framework for granting access to EU markets for firms and market operators based in third countries in order to overcome the current fragmentation into national third country regimes and to ensure a level playing field for all financial services actors in the EU territory.</p> <p>Followed principles: establishment of a branch (physical presence); branch would be subject to EU authorised requirements.</p> <p>If there is any AML related cases against the third countries (embargoes), or the third countries' firms it should be published or inform the related parties, because of the potential compliance risks.</p>
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?	We prefer to enhance deeply internal control functions within corporate governance for investment firms which include the risk control function, the compliance function and the internal audit function. It would be recommended if these functions get clear and detailed description (minimum recommended recourses) about its role, responsibility and position. Sometimes the functions run parallel-without cooperative coordination- and there is no such power within corporate governance of investments firms. If the mentioned internal control functions will be really independent it can

		<p>prevent local crisis (lack of management responsible attitude) and it aimed at establishing a safer, sounder, more transparent and more responsible financial system working within corporate governance.</p> <p>At present these functions are independent in name only.</p>
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?	Yes it's defined appropriately
	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?	We do not have comment
	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?	We do not have comment
	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?	We do not have comment.
	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?	It does depend on the costs, but we believe that this should significantly improve the quality of OTC data and consequently facilitate its consolidation.

	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?	We do not have comment
	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?	We don't think so, that SME gain a better access to capital market through the introduction of an MTF SME growth market. If the costs don't increasing, they won't interest it.
	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?	We do not have comment.
	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?	We do not have comment.
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?	The new requirements are not enough sufficient. If still there is a sales target for the employees, doesn't matter how regulate the definition of advice. The proposal doesn't help improving the information to clients in relation to the services provided to them and to the execution of their orders.

		It must also be recognised that such a profound advisory service requires time for the employees to carry out their work properly. The number of clients should reflect the amount of time an effort spent on each client.
	16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?	That would be the best if the issuers need to determine its product complexity. By the way, we prefer to abolish the execution only scheme. This will eliminate any uncertainty of which products can be considered non-complex products. Furthermore, investment products are intrinsically complex due to the risk dimension, and retail investors should always be sure to receive proper advice on all types of investment products.
	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?	We do not have comment.
	18) Are the protections available to eligible counterparties, professional clients and retail clients appropriately differentiated?	Yes, namely the protection is available differentially.
	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?	Yes, further adjustments needed, regarding the inducements topic. There should be clear, strict and unhidden
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?	No any adjustments needed.

	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?	No any changes needed. Regarding the instruments, the highest priority for the introduction of pre-trade transparency requirements are the derivatives and own account in financial instruments.
	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?	We do not have comment.
	23) Are the envisaged waivers from pre-trade transparency requirements for trading venues appropriate and why?	We do not have comment.
	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)?	We do not have comment.
	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?	We do not have comment.

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?	Wide range based consultations with the professionals take into account the past occurrences and strict and practically applied implementation.
	27) Are any changes needed to the proposal to ensure that competent authorities can supervise the requirements effectively, efficiently and proportionately?	No any changes needed.
	28) What are the key interactions with other EU financial services legislation that need to be considered in developing MiFID/MiFIR 2?	No different implementation possible.
	29) Which, if any, interactions with similar requirements in major jurisdictions outside the EU need to be borne in mind and why?	We don't have comment.
	30) Is the sanctions regime foreseen in Articles 73-78 of the Directive effective, proportionate and dissuasive?	We don't have comment.
	31) Is there an appropriate balance between Level 1 and Level 2 measures within MIFID/MIFIR 2?	Yes there is an appropriate balance regarding the mentioned one.
Detailed comments on specific articles of the draft Directive		
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