

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**.

Name of the person/ organisation responding to the questionnaire	COCERAL: <i>Comité du Commerce des céréales, aliments du bétail, oléagineux, huile d'olive, huiles et graisses et agrofournitures</i> Rue du Trone, 98 – 1050 Bruxelles. TEL. 0032.2.502.08.08 – FAX: +32.2.502.60.30 – e mail: secretariat@coceral.com ; www.coceral.com
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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?	COCERAL supports the provisions under Article 2 and in particular point (i) which exempt corporate end users that trade financial instruments for their own account or for their group companies and/or commodity derivatives for direct counterparts of their main physical commodity business on

		an ancillary basis, since those hedging practices do not pose any systemic risks.
	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?	Yes. The objective of the regulated third country access to EU markets should be to avoid unnecessary burden for operators by allowing mutual recognition with some flexibility in order to ensure a level playing field.
Organisation of markets and trading	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?	If OTCs are 'not suitably developed derivatives', then the EMIR obligation (to trade on regulated platforms and with clearing obligation, if exceeding the clearing threshold in EMIR) does not apply. In order to achieve adequate flexibility for the financial commodity markets, COCERAL supports the Commission proposal which identifies client specific, non-liquid, low-volume agricultural OTCs as not eligible for clearing or for trading on regulated trading platforms. These specific OTCs are important derivatives in providing hedging solutions, where commodity markets are not functional or accessible.
	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?	In line with Article 27, COCERAL calls ESMA to publish an exhaustive list of the OTCs that are subject to trading on regulated market venues (through technical standards, taking into account the liquidity of the specific instruments).
	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	We understand the rationale of article 59- position limits- of the MIFID proposal but would like to underline that the majority of factors behind price increases and volatility in the agricultural markets, which is one of the drivers raised as a justification for introduction of these provisions, are those related to the fundamentals of these markets (supply and demand factors). We think at the same time that the operation of agricultural futures commodity markets could be

	<p>approaches to protecting producers and consumers which could be considered as well or instead?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?</p>	<p>improved but we do not consider that they are fundamentally broken or out of control. Intervention from exchanges and regulators in these markets should be geared towards preventing market abuse and guaranteeing orderly pricing and settlement conditions, while at the same time guaranteeing the availability of adequate liquidity. Ensuring convergence between the futures and physical cash markets is also essential.</p> <p>Given that market situations can change very rapidly and in many different ways over a period of weeks or months during which commercial operators are exposed to price risk movements on physical goods, position management systems usually have more flexibility to cope with such situations than rigid position limits. Such systems also involve constant discussions between regulators, exchanges and market participants and help all involved to have a deep understanding of the market. Position management can help prevent market disturbances and market abuse. Given that the EU has limited experience in this area it would be appropriate to see how exchanges go ahead with position management (alternative arrangements with equivalent effect) in the first instance.</p> <p>The critical issue in this area is that limits should not inhibit the ability of commercial users to hedge real risks. Should that happen, the functioning of the real economy would be impaired as operators would be unable to lay off the amount of risk needed and they would be forced to reduce the size of their physical business with their ability to lay off risk. Hence, commercial users should be exempt from position limits.</p>
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Horizontal issues		
	28) What are the key interactions with other EU financial services legislation that need to be considered in developing MiFID/MiFIR 2?	MiFID/MiFIR need to fit seamlessly with EMIR and the MAR and MAD proposals as well as REMIT and CRD.
	29) Which, if any, interactions with similar requirements in major jurisdictions outside the EU need to be borne in mind and why?	In order to ensure the smooth functioning of markets and for compatibility of global operations, the category of traders should be kept in line with the definitions used in the USA commodity futures markets. Attention should be paid to the relations with third countries so that they work for global companies, regardless of where they are headquartered and regardless of where their raw materials come from. The important requirement is to avoid regulatory arbitrage.
	Detailed comments on specific articles of the draft Directive	
	Art 59	We would prefer under Article 59 point 1 to have an explicit support for convergence (the alignment of futures prices at time of delivery with the prices of the underlying physical cash commodity at the delivery point), as we consider convergence as an objective measurement of the well functioning of agricultural commodity futures markets.
	Art 60	The Commission proposal to introduce a position reporting obligation (for weekly publication) is welcomed in order to enhance transparency of trading activity in organized trading

		venues. Care should be exerted however, in order to protect the confidentiality.
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