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.

→ Responses from Credit Agricole Group

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?	Custody and safekeeping are already regulated by the UCITS and AIFMD regimes, and will be further addressed in detail in the forthcoming UCITS V directive. Therefore to ensure legal clarity and certainty, these functions should not be included in the scope of MiFID 2 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?	It is appropriate to regulate third country access to EU markets. Third country access should be provided on a mutual recognition basis, built on a strengthened equivalence regime so that EU institutions could also access third country markets.

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?	- CA would like to suggest that **banks, which already comply with the CRD4** requirements on corporate governance and remuneration, **be exempted from the MiFID2 corporate governance requirements** so as to avoid unnecessary and inefficient duplication of the rules; - In any event, it is essential to ensure **consistency across the different EU initiatives** touching upon corporate governance so as to achieve legal certainty. MIFID2 rules should therefore be strictly aligned with the CRD 4 requirements and other EU legislative texts like AIFMD. National legislations and international principles should also be taken into account; - Corporate governance rules should remain, wherever possible, **principle-based, balanced and adequately flexible** (comply or explain principle) to reflect the different national legal structures and business models. Thus within cooperative structures, CA believes that it would be appropriate that the requirements apply at the central body level only; - The **principle of proportionality** should be applied so that banks can apply the proposed new measures according to their legal form, structure, size, nature, activities, markets, international or national focus, and complexity. Please go to the 2nd part of the questionnaire for CA's detailed comments and suggestions on Article 9 of the Directive.
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?	Regarding the proposed interdiction for an OTF operator to trade against his own proprietary capital, CA considers that a distinction should be introduced between bonds & derivatives, and equity markets so that **dealing on own account is authorized in the bonds and derivatives market.** Allowing investors to interact with proprietary capital of the platform operator helps providing liquidity to the system while the proposed prohibition would restrict the range of available venues for trading in OTC derivatives and make it more difficult, slower, and more costly for investors to obtain execution. Indeed, particularly for OTC derivatives, investment firms' capital facilitates client business, given the infrequency of trading, relatively small number of market participants, and degree of customization. In addition, CA wishes to highlight that such an interdiction would be **more restrictive than what is provided by the Dodd-Frank Act in the US and could therefore negatively impact the liquidity of EU non-equity markets.** **Potential conflicts of interest between clients and the OTF operator should be addressed by means of appropriate management and disclosure under MiFID conflict of interest and best execution rules**. CA would suggest introducing a requirement of identification (whether it is a transaction for own account or for a third party) and a resolution process for potential conflict of interests. Such an alternative would not only be less penalizing for non-equity market operators but also help achieve the Commission's

		objective (to avoid conflicts of interests and maintain liquidity) and align requirements for OTFs with those for regulated markets and MTFs. Removing the restriction on an OTF operator executing client orders against his propriety capital would furthermore encourage more investment firms to establish OTFs, which would increase competition for client business. It would also help Europe to deliver on the G20 commitment to exchange and electronic trading, where appropriate, of standardized derivatives. On the boundary between OTFs and the SI regime, greater clarity should be provided in respect of the boundary between SIs and 'pure OTC' business, the latter being limited to transactions that occur on an occasional, ad hoc and irregular basis.
	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?	An OTF regime where the OTF operator could trade against his own capital would help encourage the channelling of OTC derivatives onto organised venues notably because single-dealer platforms would be covered by the OTF regime. Whether in practice contracts are executed on OTFs or MTFs will depend on the style of execution, e.g. voice-brokered, electronic, or Request-For-Quote systems. We don't see any material difference between OTFs and MTFs in terms of the way they are to be regulated – the distinctions that exist relate to style of execution, not the level of regulation.
	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 think that these requirements should distinguish between algorithmic trading and high frequency trading (HFT). On the one hand, most algorithms can be very helpful in that they bring liquidity to markets whereas, on the other hand, HFT may introduce technological risks, allow market abuses and force many investors out of financial markets without necessarily providing useful liquidity to the market. Market integrity should be ensured and preserved, and possible market abuse should be under high regulatory scrutiny. Furthermore, CA does not support co-location, which, in our view, is comparable to insider information. Finally, we consider that it would be more appropriate that the organisational requirements of Article 17 for firms performing algo-trading be developed by ESMA technical standards than by delegated acts to the Commission.

	9) How appropriately do the requirements on resilience, contingency arrangements and business continuity arrangements in Directive Articles 17, 19, 20 and 51 address the risks involved?	In our view, these requirements are insufficient to address the risks involved in HFT. Volumes generated by HFT can be such that ex-post supervision becomes increasingly difficult. Control measures therefore needs to be more specific than those proposed by the Commission. We think that the following provisions should be introduced: • Set a minimum ratio of e.g. 50% between executed transactions and total orders; • Impose a minimum latency period in the order book; • Give ESMA the power to determine and monitor a minimum tick size.
	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?	CA proposes to distinguish between the recording of the execution of client orders and the recording of trades on own account: - Regarding the execution of client orders, **clarification is necessary** concerning the practical implementation of the requirement to record telephone conversations involving *at least* reception and transmission of orders - RTO (i.e. not in the context of investment advice). In retail banking, that would imply recording each and every conversation, just in case the client places an order in the middle of a conversation about something else, e.g. getting another credit card. However, order recording practices have changed a lot over time and 90% of orders are now placed electronically instead of through an RTO-type of conversation. In the remaining rare cases, the client must have signed a slip for an order for sale or purchase before his order can be recorded electronically. - Regarding recording trades on own account, **the current regulatory requirements to protect against market abuse are sufficient**. In our view, adding the requirement to record trades on own account would have no added value in terms of safety. On the time period for record keeping, the requirement in Regulation art. 22(1) to keep records of relevant transactions data for five years is not consistent with the requirement in Directive art. 16(7) to keep records of telephone conversations and electronic communications for **three years** (a type of record which, we assume, is included in the concept of "relevant transactions data" of the Regulation). Telephone conversations or electronic communications should be explicitly dealt with in art. 22 of the Regulation, which should exempt them from a 5-year record duration. In our experience (the statute of limitation for market abuse being three years in France), a three-year record duration has indeed proved appropriate for these communications. Finally, we regret that this issue has not been subject to maximum harmonisation. The current variety of national requirements across EEA Member States indeed creates inconsistencies within cross-border firms and among regulators that is not easily

		understandable by clients and is inefficient for the firm's management (for instance the recording duration for a branch's communications is set following its parent home state's rules, which may differ from the ones of the Member State in which the branch is active). Against this background, **the relevance and added value of the proposed requirements are highly questionable.**

	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 fully endorse the response provided by ISDA: To the extent that the trading obligation is intended to increase transparency, we believe that **far greater benefit will be derived from appropriate pre- and post-trade reporting to trade repositories and to the market than from the trading obligation**. Indeed, **only a limited number of OTC derivatives contracts will be sufficiently liquid for trading on an organised platform**, due to the fact that these products are tailored to the clients' needs and because of the limited participation in OTC derivatives markets. Liquidity can also vary over time, meaning that the assessment of liquidity must be dynamic in nature. In determining which contracts are 'sufficiently liquid', ESMA should be mandated to take account of the fact that liquidity can vary over time, meaning that the assessment of liquidity must be dynamic in nature and contracts should be liquid in a range of conceivable market stress scenarios. We also believe that **MiFIR should acknowledge the risks associated with applying the trading obligation to inappropriate contracts to ensure that only suitable contracts are caught**. We **support the fact that the trading obligation does not apply to transactions that are exempted from the clearing obligation under EMIR**. This will help ensure that the needs of end users are suitably accommodated. We also note the **practical challenge associated with applying the trading obligation in the case of non-financial counterparties** – this is dependent on whether a non-financial counterparty has exceeded the clearing threshold, and a firms' activity may fluctuate above and below the threshold over time. Finally, we also encourage **European policymakers to maintain a close dialogue with other jurisdictions on this issue, given the wider G20 efforts** to move standardised OTC derivatives contracts to exchanges and electronic venues, where appropriate. While there are some parallels between the OTF concept and the US Swap Execution Facility, **the European architecture for derivatives trading – also including SIs, regulated markets and MTFs – will be quite complex, making it more challenging to ensure that there is a level playing field across jurisdictions**.
	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	CA supports the proposals on non-discriminatory access.

	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?	- CA considers that the new requirements in Directive Article 24 are sufficient to protect investors **against conflicts of interests**. CA believes that different structures of provision of financial advice should be allowed to co-exist. This is a key consideration. No structure should a priori be assumed to be more appropriate than another one regarding the quality of the advice. The marketing of financial instruments has traditionally been domestic and addresses national behavioural patterns of investors. - The requirement to provide an **on-going assessment of the suitability** of the financial instruments recommended to clients (Art. 24(3)) would be **very difficult to implement, mostly in retail banking** due to the heavy formalism it would entail. **CA therefore proposes to limit this requirement to important transactions** e.g. starting from a specific threshold (capital or transaction).
	16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?	- **CA can accept the exclusion of structured UCITS from the execution-only regime** in order to make sure due consideration is taking place before investing over a long period. - **However this exclusion leads to categorizing structured UCITS as "complex" products, which CA does not support for the following reasons**: • In our view, the investor does not need to understand the underlying structuring technique of a product to be able to understand the risks and the expected returns it entails, which are the most important information for him/her; • After the firm has drafted the prospectus clearly describing the guarantee, formula and probable pay off of the fund, it is the role of the regulator to verify the quality of the structuration itself ; • we are so far not aware of any detriment arising from the sale of these instruments to retail consumers or of any market evidence of failure of these products, to the contrary:

		• structured UCITS for retail customers offer a guarantee of at least 90% of the invested capital to maturity, which has allowed coming safely through the 2008 and 2011 financial crises; • such fund structures can actually deliver less risky outcomes for investors, better matching their needs and profiles; • the term "complex" would deter retail banks from buying these products thus depriving retail consumers thereof. CA therefore considers that an **automatic classification of structured UCITS as "complex" would be unjustified** and have severe marketing consequences on the UCITS brand; **structured UCITS should remain classified as non-complex 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?	**CA is not convinced of the necessity of the requirement to explain *"clearly, in sufficient details and in a way that can be easily understood by clients".*** Experience has shown that clients already feel overwhelmed by information and are not requesting additional information. Furthermore, this measure would not be easy to implement in practice. In the absence of clear evidence of market and/or regulatory failure, CA considers that one should refrain from introducing additional requirements. Accordingly, all the proposed amendments to Article 27 (highlighted in the Commission's text) should be removed. The Commission furthermore proposes to specify the nature and extent of information to be provided to clients by delegated acts (Art. 27(7)). CA believes that technical standards by ESMA would be more appropriate and should instead be provided.
	18) Are the protections available to eligible counterparties, professional clients and retail clients appropriately differentiated?	The different protection regimes have worked well in practice. **The relevance of introducing a requirement to apply the code of conduct to eligible counterparties is therefore unclear**, all the more so as it does not address any identified gap in MiFID1. As a reminder, eligible counterparties which wish to receive additional protection **already may opt in the professional** or even non-professional client's category.
	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?	CA believes that **a distinction needs to be made as regards ESMA intervention powers**: - Regarding retail markets, CA believes that national regulators should keep their powers considering their proximity and in-depth knowledge of these markets and their respective risk profile). Coordination by ESMA is however necessary to avoid regulatory arbitrage and competition distortions; - Regarding corporate markets and professional clients, which typically operate on a cross-border basis, CA supports the strengthening of ESMA powers, as proposed by the Commission. CA also believes that ESMA should have the means to fulfil its role (financial resources and adequate staff). The comply-or-explain procedure proposed in Regulation Art. 33 is not

		sufficient to ensure harmonisation across the EU.
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?	**CA agrees with the need to increase transparency on non-equity markets**. **However**, non-equity markets behave very differently from equity markets, in terms of volume, variety of products and size of transactions. Calibration of pre-trade transparency rules should therefore depend on the characteristics of the product, the investor base and the market in which it is traded. In our view, **there is no single "correct" level of transparency, so a flexible approach is needed**, as levels of liquidity vary over time. Purely and simply extending the rules already applicable to equity to non-equity would likely result in an important decrease of liquidity in those markets. We would furthermore refer to the detailed responses of ISDA and AFME, which we agree with. CA agrees that provisions on pre-trade transparency be detailed at Level 2. However we believe that it would be most sensible for these measures to take the form of technical standards - to be designed by ESMA - rather than delegated acts of the Commission.
	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)?	CA supports the response of AFME: the European Commission anticipates that multiple providers would be able to register to provide a consolidated tape in Europe. Whilst we support the European Commission objective of creating competitive pressures on European consolidated tape provision, we believe that multiple operators may make it more difficult to deliver the other elements of the consolidated tape, including price control and the concept of a single official tape of record. We therefore propose that a single provider should be appointed for the EU/EEA, subject to a tender process every 3 years. It is important to ensure that a consolidated tape provider

		would be established in Europe to guarantee access to data for both the regulators and the industry.
	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?	In our view, simply extending post-trade transparency rules for equity to non-equity markets, as proposed, would not be efficient as it would **be ill-adapted to non-equity, especially bond markets and commodities**, where the quantity of tradable assets is much higher and where many factors tend to influence the market (liquidity, rating, maturity…). There is indeed a significant **interaction between trade size, bond liquidity, the potential for market movements and even poor execution and market instability** from early publication of illiquid trades. Therefore, it is necessary to **carefully calibrate the trade reporting delays, so as to protect investors and contribute to market efficiency.** → As an alternative to the Commission's proposal, CA would suggest **three improvements to achieve these objectives of investors' protection and market efficiency**: **(i)** require post-trade disclosure of transactions' size as compared to the outstanding amount of the corresponding bond issues (which is a more precise measure than the average daily volume); **(ii)** introduce a longer time limit for reporting non-equity transactions (e.g. close of business and three working days); **(iii)** make sure this reporting only takes place once the transaction as a whole has been executed. The details of this reporting framework should be elaborated by ESMA by means of regulatory technical standards.
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?	Some technical issues would be **more appropriately dealt with by technical standards from ESMA** than delegated acts from the Commission. These would include: - the calibration of pre-trade transparency requirements for each type of assets (Regulation Art. 8 and 18); - the calibration of post-trade transparency requirements for non-equity and commodities products (Regulation art. 20); - the specification of the organisational requirements, incl. recording of transactions and transfer of title as collateral (Directive art. 16); - the organisational requirements for firms performing algo-trading (Directive art. 17); - Measures to ensure that firms comply with the rules on investment advice (Directive art. 24) – the Commission is not financial institutions' supervisory authority; - the nature and extent of information to be provided to clients under best execution rules (Directive art. 27).
	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?	A number of specific provisions cut across existing or recently proposed Directives, such as provisions on sanctions and corporate governance in both CRDIV and MiFID, and third country proposals in MiFID/MiFIR, AIFMD and EMIR. CA would also like to draw the EP attention on the interactions between MiFID2/MiFIR, and the forthcoming PRIPs and IMD (*both expected early 2012*): - ***PRIPs***: article 1 of MiFID2 extends the requirements on investors' protection to certain PRIPs (structured deposits). The **definition of the scope of PRIPs** should therefore be carefully monitored. Likewise, the **specifications of the KIID that may apply to structured UCITS** should be considered. - ***IMD*****:** it will be important to ensure a **level playing field regarding the provisions on investors' protection and conduct of business** (remuneration and conflicts of interests).
	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?	Whilst we understand the desire of the European Commission to harmonise sanctions regimes across the EU and across sectors, we have various concerns with the current proposal. In particular, the new sanction regime does not meet two essential principles of the EU Treaty, namely **subsidiarity and proportionality (Art. 5.3 of TFEU):** - *Subsidiarity****:*** in our view, there is no reason for the EU to have the powers to define –via ESMA guidelines- the level of administrative pecuniary sanctions (Art. 76 of MiFID2). It is a fundamental principle that the courts are free to set pecuniary sanctions, with the framework of national law and according to case law. Such provisions should therefore be left to national authorities and courts. Furthermore, we note that ESMA is mainly composed of national supervisory authorities acting without superior political guidance and control. - *Proportionality:* In accordance with the principle of proportionality, the European Court of Justice has consistently held that the acts adopted by EU institutions must not exceed the limits of what is appropriate and necessary in order to attain the legitimate objectives pursued by the legislation in question and that where there is a choice between several appropriate measures, recourse must be had to the least onerous. The proposal to impose an administrative pecuniary sanction of up to 10% of the total turnover of the legal person in the preceding business year seems totally disproportionate and it exceeds what is appropriate and necessary in order to attain the objectives. Indeed, in France, where the maximum amount of pecuniary sanctions for a legal person has been set at EUR 100

		million, the proposed ceiling would represent a significant increase of +/- 25 times the sanction's amount, even though that EUR 100 million maximum amount already is the highest amount in the EU. In addition, the US SEC is expected to request an increase of sanctions' amount to reach USD 1 million for natural persons and USD 10 million for legal persons. These maximum levels would remain sensibly lower than the amount applicable in France. Finally, linking the level of pecuniary sanction to the total turnover is sensible for competition law infringements, as those breaches directly impact the generated turnover. However, in cases of breaches of MiFID provisions, such link to the turnover is not justified since it is not directly impacted by infringements. Against this background, CA considers that there is a lack of justification by the Commission as to why such high level of sanction would be necessary and why this amount specifically. We think that **MiFID provisions on sanctions should remain policy principles**. As an alternative, we believe that the maximum sanction's amount should not go beyond EUR 100 million, like in France, which currently is by far the highest sanction level in place across the EU and in the US.
	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**
Article 1 (3): scope	The Commission proposes to enlarge the scope of the Directive so that it also covers "deposits other than those with a rate of return which is determined in relation to an interest rate". These products, which include regulated savings products such as Livret A savings account in France, already are adequately regulated by national legislation. We therefore consider that it would be unnecessary to include them in the MiFID regime.
Article 9 : Corporate governance	- **Paragraph 1 – combination of mandates**: We agree with the proposal regarding time commitment of board members and the limitations to combination of mandates. We further appreciate that mandates "within the same group" should only count as one mandate. However, as it currently stands, the notion of "group" does not necessarily apply to a network of affiliated entities, linked by a central body, within a cooperative structure. An amendment is therefore necessary to legally ensure that non-consolidated cooperative groups can also benefit from the rule regarding the combination of mandates "within the same group". This can be achieved by adding, in Article 9(1)(a), a reference to two CRR1 provisions: • Article 108(6) CRR1 applies to a group of credit institutions (e.g. central body, affiliated entities and operational subsidiaries) within which a 0% risk-weight may be applied to intra-group exposures. • Article 108(7) CRR1 applies to central bodies and affiliated entities which are members of the same institutional protection schemes. - **Paragraph 3 – boards' composition**: Whilst we fully agree that the principle of diversity should be a key element in the selection of members of the management body, this notion does not need in our view to be outlined in detail and subject to prescriptive rules or quotas. The principle of diversity requires a level of flexibility in order to adapt to national specificities: the concept and definition of diversity typically depends on differing national circumstances, for example labor, corporate or social regulations. Moreover, Member States are best placed to decide how best to achieve the directive's objectives when transposing the legislation into national law and to tailor the rules to existing corporate governance practices. [We recommend keeping

	only the first sentence in this paragraph.] **Paragraph 4 – technical standards**: [This paragraph should be deleted.] We fully share the view that the members of the management body should have adequate knowledge and skills in order to best perform their tasks. They should act with honesty, integrity and independence. We also agree with the fact that management body members should be composed in accordance with the principle of diversity. However, we consider that there should not be any further specification of these notions by means of technical standards and that EBA should not have any role to play in these matters. This contradicts the choice of a directive – which provides for a level of flexibility and the possibility to adapt the rules to national circumstances – rather than a regulation. We believe that the implementation and the enforcement of the directive's principles should be dealt with at national level and the subsidiarity principle should apply. Member States are best placed to decide how best to achieve the directive's objectives when transposing the legislation into national law, thus taking into account the specificities of national markets and tailoring the rules to existing corporate governance practices. Also, we strongly object to the fact that the Commission would be left alone to decide upon matters of fundamental importance.
Article 16(10) Title transfer collateral arrangements	CA is highly concerned by the proposed new interdiction to use title transfer as collateral for retail clients. Such interdiction would jeopardise useful legal mechanisms, for which no failure has, to our knowledge, been identified. Such type of collateral is useful because it allows quickly recovering the collateral in case of default, thus preserving the value of the collateralised assets. This interdiction would put into question the Deferred Settlement System (specific to France (any other jurisdiction?) which has proved useful to retail investors by allowing them to invest in eligible securities but, as its name indicates, to pay only at the end of the month. Furthermore, prohibiting title transfer collateral would create difficulties for margin calls by clearing houses. Finally, the scope of this requirement would be very large, as "retail clients" as defined by MiFID encompasses corporates. → CA would therefore suggest that: - it should be provided that, **upon client's request, such interdiction would not apply** i.e. that the client may allow the investment firm to make title transfer for collateral purposes; The **scope** of the interdiction should be **restricted to natural persons, with the exception of private banking**, for which this is a core activity.
Article 24(7) Packaged products	CA supports the objective of increased transparency towards clients. The proposed requirements however strongly need to be improved if they are to bring any added value. First of all, this measure is neither commented on in the recitals, nor in the explanatory memorandum of the proposal, making it quite difficult to understand what it is aiming to achieve. As currently drafted, it would cover a wide spectrum of activities and could therefore apply to products or activities that are irrelevant for investor protection. Notably, it would make no sense for it to apply to wholesale markets for which the logic of singling out components and costs is not relevant. For example, there is no logic for a firm providing reception and transmission of orders, execution of orders and carrying out the settlement to break down the overall cost as it is not realistic to imagine that a client could use a firm for reception and transmission of orders and another one for execution). Furthermore, it is imperative that the definition of the terms "products" and "services" (which we assume to be the MiFID definitions of "investment products" and "investment services") be clarified so as to provide a clear scope of application and legal certainty. Finally, when it comes to structured products, the proposed transparency requirements (costs of products and services + the costs and charges underlying the provision of those products and services) would be very burdensome to apply without any obvious benefit.

Detailed comments on specific articles of the draft Regulation	
Article number	**Comments**
Articles 21-23: Transaction reporting	As proposed, the provisions on transaction reporting need to be reviewed for the following reasons: - The **wide scope of information that should be reported** (par. 3) would lead to very cumbersome reporting processes for financial institutions; - the **exact nature of the data to report is unclear**, notably when there is a succession of investment service providers involved in the execution of the transactions; - The extension of the transaction reporting regime to all MIFID instruments would imply **very high application IT costs**. CA would therefore ask the co-legislators to **clarify what precisely would need to be reported and where exactly in the chain of intermediaries. This is central to having a transaction reporting regime that is efficient and brings added value. In the same vein, it is important to clarify the responsibilities of the respective intermediaries involved in the transaction's execution**. For instance, we consider that if reporting has to be made by the intermediary who executed the transaction, that intermediary should only be responsible for his own area of competence; if he was provided with wrong information (e.g. incorrect investor's name), it should not be his responsibility. CA **supports harmonisation of the reporting format and content across the EU** and the role given to ESMA in that respect. CA **welcomes the stated objective of avoiding double reporting of transactions** under MiFID and the reporting to trade repositories under EMIR (par. 6).