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).

The European Chemical Industry Response - *13 January 2012*

Cefic is the representative organisation of chemical companies and federations in Europe. The European chemicals industry is a key driver of economic development and wealth creation, providing modern products and materials enabling technical solutions in virtually all sectors of the economy. With a workforce of 1.2 million and sales of € 491 billion in 2010, it is one of the biggest industrial sectors and an important source of direct and indirect employment in many regions in the European Union.

Cefic supports the European Commission's objectives to improve carbon market oversight in view of next phase of the EU Emission Trading System (ETS).

The development of efficient rules for spot/forward and bilateral over-the-counter (OTC) transactions of ETS allowances ("carbon market") is crucial for the European chemical industry. In so far only derivatives were submitted to market oversight. As from 1 January 2013 chemical companies operating in the European Union will need to purchase permits if they want to continue operating, as only the 10% most efficient chemical plants will be exempted. Given that it will be an additional cost for companies, it is important that all carbon market operations are adequately regulated and effectively supervised to avoid speculation, market abuses and undesirable price volatility. By doing so it is important to take into account that chemical companies have to buy certificates or emission allowances just to produce, a contrast to the role of an intermediate or speculator.

These proposals broadly correspond to Cefic's objectives:

- A single, robust oversight for carbon markets (derivatives + spot/OTC) under the rules and principles of MiFID and other financial legislation with adaptations and exemptions taking into account the specificities of the markets and operators who are "compliant buyers";

- ESMA, the European Securities and Markets Authority, as supervisory authority.

However, regarding the qualification of Emission Allowances, Cefic opposed to their qualifying as Financial Instruments which is currently the case in the proposal - while done with exemptions and adaptations as not being of such nature per se. Would the qualification remain, it is important to include additional wording in the proposal as detailed in response to Q2.

Cefic appreciates that ECON and the Rapporteur produced this questionnaire which gives the opportunity to highlight the comments of the European chemical industry focussing on Q1 & Q2.

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 European chemical industry considers that the exemption included in Article 2,1 in favour of chemical companies for emission allowances is justified by the very nature of these allowances and the activities of chemical companies, who need to act on such market to be able to operate on their main business. Indeed, their activities on carbon market will be ancillary. However, there is a need to ensure that whatever way companies or groups of companies may be organised or grouped they will benefit from the exemption.
	2) Is it appropriate to include emission allowances and structured deposits and have they been included in an appropriate way?	Annex 1, Section C, of MiFID proposal includes Emission Allowances in the list of Financial Instruments. On the one hand it enables MAD and MAR to be "directly applicable" but, on the other hand, it may give the wrong impression that Emission Allowances are by nature Financial Instruments, which is not the case. An Emission Allowance is the right to emit a tonne of carbon in the course of an industrial or technical process. It is a tool conceived to ensure that the EU carbon emission reduction objectives are met. For chemical companies, the purpose of the transactions on the carbon market is not profit driven, but is mandatory operation to run their plants in accordance with the law. It is worth noting that Emission Allowances do not correspond to the definition of financial instrument given by the International Accounting Standards.

		The classification of Emission Allowances as Financial Instruments would: • Undermine their link with the ultimate purpose of the transactions on the market - the operation of plants. • Be detrimental to the international level playing field of European industrial companies since (i) ETS rules only apply within the European Union (indeed, at the moment there is no real equivalent to ETS among emission reducing systems worldwide), and (ii) the industrial and financial companies active on this market are in n asymmetric situation. As a consequence, should the qualification be maintained, there is a need to have additional wording in the proposals (as whereas and/or articles) to: • Underlined their specific nature. • Ensure that this qualification will not affect the implementation of ETS rules and more broadly of the EU environment and climate policy. • Avoid or neutralize any potential negative consequences such as taxes and accounting regime of the transactions of Emission Allowances. • Ensure that this classification will not entail unforeseeable consequences associated with the application of financial markets rules.
	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	5) What changes, if any, are needed to the new requirements on corporate	

governance	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?	
	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**
Article ... :	
Article ... :	
Article ... :	

Detailed comments on specific articles of the draft Regulation

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