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	**Fédération Européenne des Conseils et Intermédiaires Financiers** **www.fecif.eu**

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?	It is very appropriate from our members point of view. The EU is becoming an area of extreme regulation, there is a serious danger for EU operators to suffer from unfair competition and practices coming from third countries operators which are not subject to the same very strict regulation. At least the same principle as in Article 3 should apply imposing analogous conduct of business and authorisation and supervision regulation to that included in MiFID for EU operators.
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?	Appropriate differences of treatment must be considered to avoid that the new requirements which are very complex and designed to suit very large investment firms penalise independent operators and SME's which do not have the means to maintain such a very strict and costly governance at a time when margin are considerably reduced. The proposed text does not take into account the size of the investment firm and the extra cost involved by the implementation of such new requirements at a time of severe crisis.
	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?	The new requirements in Directive Article 24 on independent advice and portfolio management are sufficient to protect investors from conflicts of interest in the provision of such service when the investment firm is a SME - independent operator. They are certainly not sufficient in the case of a large financial conglomerate operating through several subsidiaries, a network of branches staffed by thousands of employees not subject to the same rules than an independent intermediary, and the Internet where there is no control.
	16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?	Same comment as above regarding the difference of treatment between the investment firm SME – independent operator and the large financial conglomerate, its subsidiaries, branches and Internet service.
	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?	The financial intermediaries have been excluded from the ESMA Securities and Markets Stakeholder Group contrary to the wishes of the EC and the European Parliament (Regulation 1095/2010). It means that the lack of involvement of the financial intermediaries in the permanent consultation process prevents a balanced and efficient implementation of regulation.
	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?	PRIP's and IMD2 are obviously connected.
	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**	
Recital n° 52 – Investment advice	**Text proposed by the Directive**	***Proposed amendment***
	(52) In order to give all relevant information to investors, it is appropriate to require investment firms providing investment advice to clarify the basis of the advice they provide, notably the range of products they consider in providing personal recommendations to clients, whether they provide investment advice on an independent basis and whether they provide the clients with the on-going assessment of the suitability of the financial instruments recommended to them. It is also appropriate to require investment firms to explain their clients the reasons of the advice provided to them. In order to further define the	*(52) In order to give all relevant information to investors, it is appropriate to require investment firms providing investment advice to clarify the basis of the advice they provide, notably the range of products they consider in providing personal recommendations to clients, whether they provide investment advice on an independent basis, and whether they provide the clients with the on-going assessment of the suitability of the financial instruments recommended to them.* ***It is also appropriate to require investments firms to clarify whether they provide generic advice about a type of financial instrument, as part of an investment portfolio***

	regulatory framework for the provision of investment advice, while at the same time leaving choice to investment firms and clients, it is appropriate to establish the conditions for the provisions of this service when firms inform clients that the service is provided on an independent basis. In order to strengthen the protection of investors and increase clarity to clients as to the service they receive, it is appropriate to further restrict the possibility for firms to accept or receive inducements from third parties, and particularly from issuers or product providers, when providing the service of investment advice on an independent basis and the service of portfolio management. In such cases, only limited nonmonetary benefits as training on the features of the products should be allowed subject to the condition that they do not impair the ability of investment firms to pursue the best interest of their clients, as further clarified in Directive 2006/73/EC.	***strategy.*** *It is also appropriate to require investment firms to explain their clients the reasons of the advice provided to them. In order to further define the regulatory framework for the provision of investment advice, while at the same time leaving choice to investment firms and clients, it is appropriate to establish the conditions for the provisions of this service when firms inform clients that the service is provided on an independent basis.* *In order to strengthen the protection of investors and increase clarity to clients as to the service they receive,* ~~*it is appropriate to further restrict the possibility for firms to accept or receive inducements from third parties, and particularly from issuers or product providers, when providing the service of investment advice on an independent basis and the service of portfolio management. In such cases, only limited nonmonetary benefits as training on the features of the products should be allowed subject to the condition that they do not impair the ability of investment firms to pursue the best interest of their clients, as further clarified in Directive 2006/73/EC.*~~ ***investment firms shall inform the clients about any inducement 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.***
	Justifications We welcome the principle that the rules ensuring investor's protection under Articles 24 and 25 of the Directive are to	

	be equally applicable to natural persons and legal entities, acting in accordance with the optional exemption in Article 3. However, significant concerns remain with the definition of Article 24, paragraph 5, based on the recital 52. The fundamental aspect of the advice is not only the assessment of a sufficiently large number of financial instruments from different suppliers, but rather, the quality of the service rendered. Even if an intermediary does not have a huge range of products at its disposal, it may still be perfectly capable of satisfying the customer's requirements by means of suitable recommendations, to be followed up by continuous assistance and monitoring to respond to the real needs of the clients. The continuous assistance and monitoring also justifies the receipt of inducements, as already recognized by MiFID Level 2 Directive 2006/73/EC of the Commission. According to the new rules independent investment advice will only be offered to the person who is willing and able to pay a fee. Members of the lower and middle-income groups especially, could be excluded from independent investment advice. The mere fact that a fee is collected from a client for an advice does not guarantee activities of a high quality service. Even with fee-based advice, conflicts of interest can arise due to fact that advisor can charge an hourly rate for its service. In the area of investment advice, we are convinced that payments on a commission basis are in the interest of the clients. The sustainable and long lasting client's care of those who rely on commission payments is a key success factor. In the long term, an intermediary can only secure its income by offering products and/o services that meet the client's interest and are thus protected from a reverse transaction. Furthermore, only a sustained relationship with satisfied customers leads to the possibility of completing subsequent transactions. In order to pursue the best interest of the clients inducements must be aimed at strengthening substantially and constantly over time the quality of the investment advice provided to the clients and they should be appropriated to fulfil statutory duties such as compliance, risk management, internal audit, participation to an investor-compensation scheme, payment of the fees levied by the regulators, administrative and secretarial services for clients, ongoing education and training of staff and sales-team.

Article 3. Paragraph 1, last en-dash (i) - Optional exemptions	**Text proposed by the Directive**	***Proposed amendment***
	(i) conditions and procedures for authorization and on-going supervision as established in Article 5 (1) and (3), Articles 7, 8, 9, 10, 21 and 22;	(i) conditions and procedures for authorization and on-going supervision as established in Article 5 (1) and (3), Articles ~~7~~, 8 **(b) to (e) and** 9~~, 10, 21 and 22~~;
	Justification Under Article 3 (Optional exceptions) the revised Directive provides adjustments, which will strengthen investor protection.In accordance with recital 27, even though exempt, natural persons or legal entities should at least in some areas fulfil the main requirements of the directive. We welcome this requirement; however we have concerns regarding the revision of Article 3. paragraph 1, last en-dash (i) points out that the procedure for the approval and ongoing supervision, under the optional exemption, Articles 7, 8, 9, 10, 21 and 22 of the Directive should apply to natural persons and legal entities accordingly. Even though this is only an adjustment, the reference to the Articles 7 to 10 does not correspond with the activity of a single self employed intermediary in some Member States for instance. The reference to Article 7 should be omitted, since a business plan concerns of a small companies, the content of the counselling and referral of clients on financial instruments, is exaggerated. The reference to Article 8 should only refer to lit (b) to (e), since a withdrawal of the authorization if the work was not pursued in the last 6 months is excessive for small companies. Especially in the case of one-person business illness is often subject to a longer absence. A withdrawal of the authorization would make it unnecessarily harder for entrepreneurs to return to the uncertainties of the consulting work. The reference to Article 9 is one the whole satisfactory, but is clear that one-person company will not have a board (management body). It is surprising to what extend the Directive has been written in such a way to penalize SME's and independent operators at a time when the EC advocates the development of SME's business as a solution to the crisis. There is a contradiction between the intentions stated publicly by the EC and the heavy regulatory environment created by the same EC. Clearly this Directive has been written to favour the position of the large operator at the expenses of the independent operators and/or SME's.	

Article 3. Paragraph 1 at the end (new) - Optional exemptions	**Text proposed by the Directive**	***Proposed amendment***
	Member States shall require persons excluded from the scope of this Directive under paragraph 1 to be covered under an investor-compensation scheme recognized in accordance with Directive 97/9/EC or under a system ensuring equivalent protection to their clients.	Member States shall require persons excluded from the scope of this Directive under paragraph 1**, to hold professional indemnity insurance covering the whole territory of the Community or some other comparable guarantee against liability arising from professional negligence, for at least EUR 1.000.000 per claim and an aggregate of EUR 1.500.000 per year.** ~~to be covered under an investor-compensation scheme recognized in accordance with Directive 97/9/EC~~.
	Justification The compulsory participation in an investor-compensation scheme is rejected on grounds of principle. Companies, which are not allowed to keep any customers' money and therefore excluded from the scope of this Directive under paragraph 1, should not be forced into an investor-compensation scheme. The investor-compensation scheme has the objective of strengthening the confidence in the financial system. Those companies that actually have a license to hold client funds earn this trust. Other companies cannot enjoy that confidence. Companies, which may not hold clients money and participate in the investor-compensation scheme may entice investors to carelessly entrust their money. This will only lead to reckless customer decisions. An obligation to make contributions to an investor compensation scheme favours companies that are allowed to hold client funds, massively in comparison to companies who are not. Companies are allowed to hold client funds and finance the investor compensation scheme by yield from deposit fees but companies that are not allowed to hold clients fund must cross-subsidize the investor compensation scheme from other business activities. This will lead to notable competitive distortion. For that reason the creation of an additional investor compensation scheme as stated in paragraph 1 is not essential and such a system, which to provide customers with equivalent protection can be completed in the form of a	

	pecuniary damage liability insurance (as part of a professional indemnity insurance), which is currently in place.	
Article 5. Paragraph 5 - Requirement for authorisation	**Text proposed by the Directive**	***Proposed amendment***
	~~5. In the case of investment firms which provide only investment advice or the service of reception and transmission of orders under the conditions established in Article 3, Member States may allow the competent authority to delegate administrative, preparatory or ancillary tasks related to the granting of an authorization, in accordance with the conditions laid down in Article 48.~~	***5. In the case of investment firms which provide only investment advice or the service of reception and transmission of orders under the conditions established in Article 3, Member States may allow the competent authority to delegate administrative, preparatory or ancillary tasks related to the granting of an authorization, in accordance with the conditions laid down in Article 48.***
	Justification We are in favour of maintaining the existing proposal. Regulation can be centralised or delegated; but if both are applied the system is more effective. Co-regulation appears to be the more adequate solution regarding responsibility issues (shared). Also, delegation allows professional to be directly in contact with their regulator on a daily basis whereas with no delegation the central regulator may not be aware of issue in the appropriate delay.	

Article 9. Paragraph 1 – Management body	***Text proposed by the Directive***	***Proposed amendment***
	… Member States shall ensure that members of the management body shall, in particular, fulfil the following requirements: (a) Members of the management body shall commit sufficient time to perform their functions in the investment firm. They shall not combine at the same time more than one of the following combinations: (i) one executive directorship with two non-executive directorships (ii) four non-executive directorships. Executive or non-executive directorships held within the same group shall be considered as one single directorship. Competent authorities may authorise a member of the management body of an investment firm to combine more directorships than allowed under the previous subparagraph, taking into account individual circumstances and the nature, scale and complexity of the investment firm's activities.	***Deletion***
	Justification National authorities, regarding their own market and laws, should be in charge of this kind of explanations. In relation to that, it is not necessary to have this paragraph in the Directive but should be part of a technical regulations made by national authorities.	

Article 9. Paragraph 2 – Management body	***Text proposed by the Directive***	***Proposed amendment***
	2. Member States shall require investment firms, where appropriate and proportionate in view of the nature, scale and complexity of their business, to establish a nomination committee to assess compliance with the first paragraph and to make recommendations, when needed, on the basis of their assessment. The nomination committee shall be composed of members of the management body who do not perform any executive function in the institution concerned. Where, under national law, the management body does not have any competence in the process of appointment of its members, this paragraph shall not apply.	***Deletion***
	Justification For small and medium size investment firms it would be very difficult to apply these rules. They do not have structure and organisation to comply with the content of this paragraph.	

Article 9. Paragraph 3 – Management body	***Text proposed by the Directive***	***Proposed amendment***
	3. Member States shall require investment firms to take into account diversity as one of the criteria for selection of members of the management body. In particular, taking into account the size of their management body, investment firms shall put in place a policy promoting gender, age, educational, professional and geographical diversity on the management body.	***Deletion***
	Justification Those provisions have already been entered into most EU Member States laws. MiFID would create interferences and legal problems and in addition it would create an additional administrative burden at regulatory level, implying additional staff crisis, unnecessary new costs for the regulators, etc.	

Article 21. Paragraph 3 - Regular review of conditions for initial authorization	**Text proposed by the Directive**	***Proposed amendment***
	~~3. In the case of investment firms which provide only investment advice, Member States may allow the competent authority to delegate administrative, preparatory or ancillary tasks related to the review of the conditions for initial authorization, in accordance with the conditions laid down in Article 48(2).~~	***3. In the case of investment firms which provide only investment advice, Member States may allow the competent authority to delegate administrative, preparatory or ancillary tasks related to the review of the conditions for initial authorization, in accordance with the conditions laid down in Article 48(2).***
	Justification We are in favour of maintaining the existing proposal. Regulation can be centralised or delegated; but if both are applied the system is more effective. Co-regulation appears to be the more adequate solution regarding responsibility issues (shared). Also, delegation allows professional to be directly in contact with their regulator on a daily basis whereas with no delegation the central regulator may not be aware of issue in the appropriate delay.	

Article 22. Paragraph 2 - General obligation in respect of on-going supervision	**Text proposed by the Directive**	***Proposed amendment***
	~~2. In the case of investment firms which provide only investment advice, Member States may allow the competent authority to delegate administrative, preparatory or ancillary tasks related to the regular monitoring of operational requirements, in accordance with the conditions laid down in Article 48(2).~~	***2. In the case of investment firms which provide only investment advice, Member States may allow the competent authority to delegate administrative, preparatory or ancillary tasks related to the regular monitoring of operational requirements, in accordance with the conditions laid down in Article 48(2).***
	Justification We are in favour of maintaining the existing proposal. Regulation can be centralised or delegated; but if both are applied the system is more effective. Co-regulation appears to be the more adequate solution regarding responsibility issues (shared). Also, delegation allows professional to be directly in contact with their regulator on a daily basis whereas with no delegation the central regulator may not be aware of issue in the appropriate delay.	

Article 24 - paragraph 5 - General principles and information to clients	**Text proposed by the Directive**	***Proposed amendment***
	5. When the investment firm informs the client that investment advice is provided on an independent basis, the firm: (i) shall assess a sufficiently large number of financial instruments available on the market. The financial instruments should be diversified with regard to their type and issuers or product providers and should not be limited to financial instruments issued or provided by entities having close links with the investment firm, (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.	*5. When the investment firm informs the client that investment advice is provided on an independent basis, the firm:* *(i) shall assess a sufficiently large number of financial instruments available on the market. The financial instruments should be diversified with regard to their type and issuers or product providers and should not be limited to financial instruments issued or provided by entities having close links with the investment firm;* *(ii) shall ~~not accept or receive fees, commissions or any monetary benefits~~* ***inform the client about any inducement*** *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.*
	Justification See justification recital 52 Furthermore, in order to pursue the best interest of the clients inducements are aimed at strengthening substantially and constantly over time the quality of the investment advice provided to the clients and they should be appropriated to fulfil statutory duties such as compliance, risk management, internal revision, membership of a investor-compensation scheme, participation to the fees charge by the regulators, ongoing administrative an secretarial services for clients, ongoing education and training of staff and sales-team.	

Article 24 – paragraph 6 - General principles and information to clients	**Text proposed by the Directive**	***Proposed amendment***
	6. When providing portfolio management the investment firm 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.	6. When providing portfolio management the investment firm shall **inform the client about its remuneration policy. In case of a fee-only regime it 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.
	Justification This already has become the most common way in private banking: at the beginning of the advisory process the bank clerk offers the client two ways: a) independent advice and on-going assessment of the suitability of the financial instruments recommended to him (= fee only). b) dependent advice and no on-going assessment of the suitability of the financial instruments recommended (= commission and inducements). By the way 80% of private banking customers voluntarily choose b) and accept commission and inducements. Only 20% decide for a) and pay fees. According to the latest survey available only 2 to 5% of EU intermediaries are remunerated on a fee-basis only.	

Article 37- paragraph 2 - Establishment of a branch	**Text proposed by the Directive**	***Proposed amendment***
	2. Member States shall require any investment firm wishing to establish a branch within the territory of another Member State first to notify the competent authority of its home Member State and to provide it with the following information: (a) the Member States within the territory of which it plans to establish a branch; (b) a programme of operations setting out inter alia the investment services and/or activities as well as the ancillary services to be offered and the organisational structure of the branch and indicating whether the branch intends to use tied agents and the identity of those tied agents; (c) the address in the host Member State from which documents may be obtained; (d) the names of those responsible for the management of the branch. Where an investment firm uses a tied agent established in a Member State outside its home Member State, such tied agent shall be assimilated to the branch and shall be subject to the provisions of this Directive relating to branches. *(…)*	*2. Member States shall require any investment firm wishing to establish a branch within the territory of another Member State first to notify the competent authority of its home Member State and to provide it with the following information:* *(a) the Member States within the territory of which it plans to establish a branch;* *(b) a programme of operations setting out inter alia the investment services and/or activities as well as the ancillary services to be offered and the organisational structure of the branch and indicating whether the branch intends to use tied agents and the identity of those tied agents;* *(c) the address in the host Member State from which documents may be obtained;* *(d) the names of those responsible for the management of the branch.* *Where an investment firm uses a tied agent established in a Member State outside its home Member State, such tied agent shall be assimilated to the branch and shall be subject to the provisions of this Directive relating to branches* ***only for the purposes of the rules of conduct and reporting procedures.*** *(…)*

	Justification In certain States, investment firms entitled to operate out of the office have an obligation to use tied agents. If a tied agent established in such a State, working on behalf of the EU investment firm, was considered a branch for all practical purposes and not only for the rules of conduct, and was classified as a dependency of the intermediary, rules concerning the off-site offer would not be applicable. In fact, the branch would be equivalent to dependence on the intermediary, and for the same reason the activities carried out there would not be considered off-site. As is known, the MIFID directive does not in itself regulate the offer outside, leaving the ability to specify national regulations to the individual Member States. Moreover, assimilation of the tied agent to a branch would imply considerable additional problems for the investment firm and the tied agent at various levels – organization and control issues, taxation, and etc.

Comment on the MFIDI Glossary

1. WHAT IS AN INTERMEDIARY?

There are within the EU four types of intermediaries providing mediation between investment firms and consumers (final retail customer).

The table below clarifies the status of each intermediary with its proper mode of remuneration.

Status	**Mode of remuneration**	
Tied agent	Salary and/or commission	Not independent
Multi tied agent	Commission	May be independent
Broker	Commission and/or fee	Independent
Consultant/Adviser	Fee only	Independent

2. INFORMATION TO BE PROVIDED BY THE INTERMEDIARY

Prior to any initial contact, and, if necessary, during the course of its mediation with the customer, an intermediary shall provide the customer with at least the following information:

(a) His identity and address;

(b) The register in which he has been included and the means for verifying that he has been registered;

(c) The procedures allowing customers and other interested parties to register complaints about intermediaries and, if

	appropriate, about the out-of-court complaint and redress procedure; **In addition, an intermediary shall inform the customer, concerning the service that is provided, whether:** (i) **he/she is independent** and gives advice based on an analysis of a sufficiently large number of products and/or services available on the market, to enable him to make a recommendation in accordance with professional criteria regarding which product and/or service would be adequate to meet the customer's needs; (ii) **he/she is not independent** and is under a contractual obligation to conduct mediation business exclusively with one or more product and/or service providers. In that case, he/she shall, at the customer's request provide the names of those products and/or service providers, or (iii) whether he/she has a holding, direct or indirect, **representing more than 10 % of the voting rights or of the capital in a given product and/or service provider**; (iv) Whether a given product and/or service provider, controls **more than 10 % of the voting rights or of the capital in the intermediary's business**. In those cases where information is to be provided solely at the customer's request, the customer shall be informed that he has the right to request such information. Prior to the conclusion of any specific contract, the intermediary shall at least specify, in particular on the basis of information provided by the customer, the demands and the needs of that customer as well as the underlying reasons for any advice given to the customer on a given product and/or service. These details shall be modulated according to the complexity of the product/service being proposed. **3. INFORMATION CONDITIONS** All information to be provided to customers in accordance with the above requirements shall be communicated: (a) On paper or on any other durable medium available and accessible to the customer;

	(b) In a clear and accurate manner, comprehensible to the customer; (c) In an official language of the Member State of the commitment or in any other language agreed by the parties. By way of derogation from paragraph (a), the information referred to may be provided orally where the customer requests it. In those cases, the information shall be provided to the customer in accordance with paragraph (a) immediately after the conclusion of the given contract. In the case of telephone selling, the prior information given to the customer shall be in accordance with Community rules applicable to the distance marketing of consumer financial services. Moreover, information shall be provided to the customer in accordance with paragraph (a) immediately after the conclusion of the given contract. **4. INDUCEMENTS** According to the EC glossary the definition of an inducement is: **"Inducement is** a general notion referring to various types of incentives provided to financial intermediaries in exchange for the promotion/sale of specific products to their clients." **But inducement IS NOT** just linked to the promotion of sale: inducement can take the form of training or other form of educational support, provision of software or computer backing, AML and other compliance functions, secretarial and other administrative assistance, etc. which all of them in turn will benefit the consumer.
ANNEX A – Overview about the European investment intermediary industry	

ANNEX A

The Financial Services industry within the EU, servicing more than 100,000,000 European consumers, represented in 2010:

1. 500,000 registered individual intermediaries (130,000 less than in previous years, as a result of the crisis as well as over-regulation, which forced many out of business)
2. 700,000 professionals (lawyers, accountants, etc.) providing financial advice as an ancillary activity
3. 2,000,000 back office staff (500,000 jobs have been lost since 2008 due to the crisis as well as the effect of over-regulation)

This is a large community operating across all of Europe. Approximately 20,000 legal entities and about 300,000 individuals are members of national professional associations:

Country	Number of intermediaries
Germany	300,000
Czech Republic	30,000
Great Britain	45,000
Italy	35,000
Austria	35,000
Spain	20,000
Switzerland	10,000
Belgium	9,000
France	3,000
Luxembourg	3,000
Greece	3,000
Baltic states	3,000
Netherlands	3,000
Poland	3,000
Scandinavian Countries	3,000
Others	30,000
Total	**535,000**

(Source: *FECIF White Book 2009*)

	NUMBER OF INTERMEDIARIES				POPULATION	
	Individual Intermediaries	Intermediary Companies	Distributors	Others (Lawyers, etc.)	Local	EU expatriates
UK	45,000	3,000	350	50,000	61,100,000	150,000
Benelux	15,000	1,500	200	5,000	27,700,000	100,000
France	3,000	800	150	20,000	62,400,000	820,000
Germany	300,000	7,000	500	200,000	82,060,000	425,000
Italy	35,000	4,000	300	45,000	60,100,000	125,000
Scandinavia	3,000	350	150	3,500	23,000,000	120,000
Spain	20,000	1,200	350	10,000	46,600,000	1,120,000

FEDERATION EUROPEENNE DES CONSEILS ET INTERMEDIAIRES FINANCIERS
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Switzerland	10,000	860	250	5,000	7,700,000	50,000

(Source: *FECIF White Book 2009*)

This community is made of:

1. Tied agents 31%
2. Multi-tied agents 46%
3. Brokers 15%
4. Consultants/Advisers 8%

The estimated breakdown between the types of intermediaries is as follows:

	Tied	Multi-tied	Brokers	Adv.
Germany	65%	25%	8%	2%
Great Britain	50%	35%	10%	5%
Italy	10%	75%	10%	5%
Spain	50%	35%	9%	1%
Switzerland	30%	40%	20%	10%
Austria	50%	35%	9%	1%
France	40%	35%	20%	5%
Luxembourg	10%	40%	30%	20%
Greece	60%	30%	9%	1%
Baltic states	60%	30%	9%	1%
Netherlands	20%	40%	30%	10%
Belgium	40%	30%	25%	5%
Poland	60%	30%	9%	1%
Scandinavian Countries	50%	30%	10%	10%
Ireland	20%	40%	30%	10%
Cyprus	20%	40%	30%	10%
Portugal	60%	30%	9%	1%
Czech Republic	20%	70%	7%	3%

(Source: *FECIF White Book 2009*)

The market share of intermediaries varies significantly between from one European country to another. For instance:

Country	Market share in %
United Kingdom	56%
Benelux	51%
Germany	36%
Scandinavian Countries	35%
Italy	34%
Spain	30%
Poland	25%
Czech Republic	20%
Switzerland	20%

(Source: *FECIF White Book 2009*)

What is an intermediary?

There are within the EU four types of intermediaries providing mediation between investment firms and consumers (final retail customer).

The table below clarifies the status of each intermediary with its proper mode of remuneration.

Status	**Mode of remuneration**	
Tied agent	Salary and/or commission	Not independent
Multi tied agent	Commission	May be independent
Broker	Commission and/or fee	Independent
Consultant/Adviser	Fee only	Independent

Regarding fee-only remuneration, the following once again illustrates the variation across Member States:

1. UK	7%
2. The Netherlands	4%
3. Germany, Benelux, Spain	2%

A survey carried in 2010 on 1,245 intermediaries and 3,124 consumers (existing and/or potential clients of intermediaries' members of FECIF) across ten EU Member States indicates that:

- 37% of the total number of consumers contacted prefer to deal through an intermediary because of the personal attention they received at the occasion of face-to-face meetings
- 30% trust dealing directly with an institution feeling secured by the size of the bank and/or the insurance company
- 18% prefer to rely on the assistance of a friend or a member of the family to provide advice
- 12% refer their queries to another professional (accountant, tax adviser, lawyer, etc.)
- 3% handle directly their affairs through the Internet

When questioned about the issues related to provision of information to existing and/or potential clients, the intermediaries identify the problems as follows:

What is/are the main problem(s) you are facing in your day-to-day business life?	**2008**	**2009**
Relationship with the product provider(s)	47%	41%
Relationship with the regulator	31%	35%
Relationship with the clients	12%	10%
Technology	6%	8%
Relationship with the employees	4%	6%
How would you describe the nature of the problem(s) you are facing?		

Poor service/Inefficient administration/Heavy handed bureaucracy	58%	56%
Incorrect legal information/Ignorance of EU rules-local rules	35%	34%
Products/services not in ad equation with clients' demands	7%	10%

(Source: *FECIF White Book 2009*)

Who are the customers of the European intermediaries?

NUMBER OF CONSUMERS BY VALUE OF SAVINGS/INVESTMENTS

	Less than €10k	€10k to €50k	€50k to 100k	€100k to €500k	€500k to €1mio	more than €1mio
UK	33%	25%	15%	10%	5%	2%
Benelux	25%	30%	30%	10%	3%	2%
France	30%	30%	20%	10%	3%	2%
Germany	25%	35%	25%	10%	3%	2%
Italy	30%	30%	25%	5%	6%	4%
Scandinavia	15%	25%	30%	25%	3%	2%
Spain	20%	30%	25%	15%	5%	5%
Switzerland	10%	25%	30%	25%	5%	5%

(Source: *FECIF White Book 2009*)

The consumers' main concerns are:

1. Security of investment 45%
2. Transmission to the heirs 32%
3. Return on investment 25%
4. Costs of investment 18%
5. Remuneration of the intermediary 5%