FÉDÉRATION NATIONALE DU CRÉDIT AGRICOLE

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.

Fédération Nationale du Crédit Agricole (FNCA) is the body through which the Regional Banks of Crédit Agricole discuss policy, express their views and represent themselves. FNCA represents Crédit Agricole's Regional Banks and the Group with the respect to public authorities, trade associations and bodies with authority for co-operative and mutual banking.

FÉDÉRATION NATIONALE DU CRÉDIT AGRICOLE

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?	Regarding structured deposits, FNCA considers that the definition must be clarified in order not to include all kind of deposits which are not "with a rate of return which is determined in relation to an interest rate". Indeed, this sentence may lead to the understanding that only deposits whose rate of return is contractually linked to a benchmark (such as Euribor) would be exempted. But for many simple products, the rate of return is not systematically determined in relation to an interest rate. For example, in France, although Livret A is a very simple product without any risk for the customer, its rate of return is linked with inflation rate. Therefore, we would ask to clarify the definition of "deposits" in order to exclude all types of simple deposits from the scope of MIFID.
	3) Are any further adjustments needed to reflect the inclusion of custody and safekeeping as a core service?	FNCA considers that the notions of "custody" and "safekeeping" must be clarified. So far, it is unclear to us what additional responsibilities are connected to including custody and safekeeping as a core service under the scope of MIFID.
	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 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	FNCA does not see any link between corporate governance matters and the scope of MIFID. Therefore, we would like to suggest that banks, which already comply with CRDIV

	providers in Directive Article 65 to ensure that they are proportionate and effective, and why?	requirements on corporate governance and remuneration, be exempted from MIFID 2 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. MIFID 2 rules should therefore be strictly aligned with the CRD IV requirements.
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	FNCA is in favour of a distinction between the recording of trades on own account and for execution of clients orders.

	execution of client orders, and why?	Regarding own account trading, adding this requirements would have low added value in terms of safety and the recording of electronic communications would be very costly to implement. Regarding execution of client's orders, clarification is necessary concerning the practical implementation of the requirements. Although we are not opposed to the principle of these requirements, we believe that the expected benefits would not be proportional to the cost of their implementation and standardization. Concerning the time period for record retention, we would also like to highlight that the requirements in MIFIR art 22(1) (to keep records for five years) is not consistent with the requirement in MIFID art 16(7) (to keep records for three years). In any event, we suggest limiting the retention of records for a period of three years.
	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?	FNCA considers that the provisions are sufficient.

FÉDÉRATION NATIONALE DU CRÉDIT AGRICOLE

	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?	FNCA is in favour of an improvement of the investor protection, including requirements aiming at limiting conflicts of interest. Therefore, we agree with the Commission's intentions to disclose the client on how his investment advice is provided (independent basis, broad or restricted analysis of the market). Nevertheless, we cannot agree with some of the new requirements in Directive article 24. Indeed, it is impossible for a bank to provide the client with the on-going assessment of the suitability of the financial instruments recommended and such a requirement would be very difficult to implement (24-3). On the contrary, we do already assess the suitability of the financial instruments recommended to the clients at the moment of the sale. Regarding article 24-5, FNCA does not believe that there is a link between independent advice and the number of products assessed. Moreover, the number of financial instrument offered to the client does not constitute the quality of its advice. We do not think that investment firms shall offer competitor's products to give customer an independent advice. Therefore, considering that we are in favour of disclosing the client how his investment

		advice is provided, we would like to propose that investment firms declare to the client whether they receive (or not) inducements from a third party when selling the product. Concerning the requirement of periodic communication to clients (see articles 24-3 and 25-5), we do consider that such a requirement would be an administrative burden disproportionate compared to the expected benefits. Regarding portfolio management (see article 24-6), we do consider that the new requirements are sufficient to protect investors from conflicts of interest.
	16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?	Globally, the proposal in Directive Article 25 on which products are complex and which are non-complex is appropriate. Nevertheless, all structured UCITS are not complex, some of them presenting a guarantee of invested capital to maturity (art 25-3-a-iv). Therefore, we do consider that an automatic classification of structured UCITS as "complex" would not be justified. Moreover, we are in favour of a clarification about the sentence "makes it difficult for the client to understand the risk involved" (art 25-3-a-ii and 25-3-a-iii) which appears insufficiently clear and can lead to different interpretations.
	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?	Regarding article 27 in Directive, we do not support the requirement of new administrative information given to the clients who are already overwhelmed with mandatory information. Moreover, we do not see the benefit for accumulating information afterwards annually.
	18) Are the protections available to eligible counterparties, professional clients and retail clients appropriately differentiated?	The protections available to retail clients and professional clients seem to be appropriate. Nevertheless, regarding eligible counterparties, which are also investment firms, we do not

		understand the new requirements and do not agree on extending obligations and therefore are in favour of deletion of the new paragraph in article 30-1.
	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?	Regarding retail markets, FNCA considers that national regulators should keep their prerogatives considering their knowledge of markets. Nevertheless, we do consider that a strengthened coordination with ESMA is necessary, which will avoid regulatory arbitrage and competition distortions.
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?	FNCA believes that key interactions with CRDIV (regarding corporate governance issues) and PRIPS 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 16 (10)	It would be appreciable to have clarifications about the new proposed interdiction to use title transfer as collateral for retail clients. Indeed, we do not see the point of such an interdiction, considering the fact that regarding France's practices, no condemnable behaviour has been identified. Therefore, we would ask for the deletion of this paragraph.
Article 24 (7)	Regarding cross-selling practices, we would like clarifications explaining the goals of such new requirements which seem quiet inappropriate for retail markets.
Article 97 (1)	Regarding implementation period, we would like to highlight that some of the new requirements could be very difficult to implement and that some clarifications are still needed. Therefore we suggest that implementation period is long enough to enable the investment firms to correctly implement the new provisions and start only once the level 2 implementing measures have been decided.