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.**

FEEDBACK BY: FIBA-CISL (FEDERAZIONE ITALIANA BANCARI E ASSICURATIVI), ITALY

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?	Exemptions should be very limited and the definition of exemptions should be the clearest possible, in order to avoid any misunderstanding in the transposition of the new Directive at national level. The basic principle should be that the client is always the weakest part in the selling procedure (first of all retail clients, but also eligible counterparts and professional clients), so that exemptions should not be allowed every time a third client is involved. The Italian experience proves evidence of straining in bank selling procedures and behaviours with reference to insurance products, professional clients, local authorities and "execution only".
	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?	Regulate third country access to EU markets is highly appropriate. According to the principles of the maximum protection for any kind of client, "par condicio" for all market's competitors and in order to make it easier the whole monitoring procedures, the opening of a national branch should be made obligatory in any case.
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?	With deliberation of 4 May 2010, the Italian Authority for Listed Companies (CONSOB) ordered the five biggest banking groups (Unicredit, Intesa Sanpaolo, Mps, Banca Popolare of Verona, Bnl, representing half the national market) to convene their respective board of directors to review the internal selling procedures of financial products. CONSOB had proved that the commercial policies and internal incentive systems of the five banks were mainly focused on the quantity of products to be sold rather than on the interest of the clients, with the result that employees could be lead to sell financial products following budget criteria and irrespective of the adequacy of the operation for the client. This experience may also prove the existence of a cartel of banks to the detriment of clients' interests and the necessity of either stricter rules for corporate governance and wider sources of information on company behaviours. Therefore, the new Directive should provide for: - the need for external certification of expertise, - the incompatibility to be member of two or more boards of directors in financial companies (that are supposed to be competitors), - the representation of employees in the board of directors or - structured procedures for internal appropriate reporting on company behaviours

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?	It is highly appropriate to impose position limits to derivatives and commodity derivatives. Protection of producers and consumers is even more important since they may suffer serious consequences from financial speculative negotiations put in place by third subjects. Commodity derivative positions should be strictly limited to the case of coverage against fluctuations of exchange rates and market prices following a commercial negotiation.
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?	Art. 24 point 5 comma i): the criteria to define the appropriate range of financial products to be offered and/or compared are too weak and leave too much freedom of interpretation to the investment firm; comma ii): payments/benefits in kind should also be banned. Art. 24 point 6: payments/benefits in kind should also be banned.
	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?	In the Italian experience, there is evidence of commercial misconducts by the banks either at the beginning of the commercial procedure, when retail clients may be persuaded to be classified as “professional clients”, or in the course of it, when retail clients

		may be persuaded to ask for an "execution only" negotiation. On the one side, clients' profiling and classification shouldn't be subject to interpretation by the bank/investment firm (this means that there should be homogeneous fixed criteria and questionnaires), while on the other side, at least in the case of retail clients, automatic procedure blocks should be introduced (without the possibility to be forced by the sale employee), so that the most dangerous kinds of financial products cannot be sold to retail clients or specific products cannot be sold with the "execution only" procedure.
	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?	European Supervisory Authorities should have the chance to monitor the implementation of the MiFID/MiFIR 2 through the widest range of information sources. The Directive should provide for the creation of a European Observatory and/or specific structured procedures and channels for information and consultation of bank employees and clients.
	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?	Developing the MiFID/MiFIR 2 should take into consideration (and be consistent with) all other EU financial service legislation with a direct/indirect impact on company commercial policies and practices, eg PRIPS, UCITS, IMD and CRD III (with particular reference to remuneration policies).
	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?	The sanctions regime should be integrated providing for: - an appropriate (and sufficiently high) minimum amount of monetary administrative sanctions to be dissuasive, - more detailed criteria for publication of sanctions imposed - a higher frequency for member states to send information to AESFEM (more than once a year ex art. 78). As for the Italian experience (and many other countries, according to the result of APF-FIBA/CISL international project on the implementation of the MiFID), there is widespread evidence that bank sale employees experience very high commercial pressures (see also point 5) to sell financial products in order to reach the quantity targets set by the bank, with informal behaviours by hierarchic superiors to do that regardless of clients' interests. Therefore, the sanctions regime should formally and strictly consider the context of working conditions when eventually judging personal responsibilities of sale employees. Finally, monitoring of the concrete effectiveness of the sanctions regime should result in the chance to review/integrate this specific part of the Directive whenever it's deemed necessary.
	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 ... :	
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