

**Review of the Markets in Financial Instruments Directive**  
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**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](mailto:econ-secretariat@europarl.europa.eu) by **13 January 2012**.

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 need to secure hedging for non-financial firms. It is important that companies can use hedging as a risk mitigating tool and that there are no restrictions and unnecessary bureaucracy tied to that. Therefore, there should be a clearly worded exemption stating that <b>non-financial companies should be able to hedge their production or consumption without the unnecessary burdens of licensing.</b>
	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?	
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?	
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?	The idea with position limits is clear, but it is not compatible with the idea of open and free markets. Position limits should be in connection with the ability to carry risk and only the company itself can properly evaluate that. For non-financial companies who hedge their production or consumption in commodities, the volumes can become large especially when there is uncertainty about the volumes and there is a need to un-hedge and re-hedge several times before actual delivery. <b>Market Abuse Directive is in our view strong enough to prevent market abuse, therefore it should be left outside the scope of MiFID.</b> That is why we are against the idea of setting position limits.
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?	
<b>Detailed comments on specific articles of the draft Directive</b>		
<b>Article number</b>	<b>Comments</b>	
Article 1.(o)	<p>A more clear exemption added.</p> <p>(o) persons who exclusively deal on own account, as part of another non-financial corporate activity, or as part of a non-financial commodity-trading activity, to hedge the production/consumption/non-financial activities of the group to which the person belongs.</p>	
Article 59 :	<p>Position limits increases the administrative burden of all parties.</p> <p><i>Article 59</i></p> <p>To be deleted</p> <p><u>or</u></p> <p><i>Article 59</i></p>	

	<p><b>Position limits</b></p> <p>1. Member States shall ensure that regulated markets, operators of MTFs and OTFs which admit to trading or trade commodity derivatives apply limits on the number of contracts which any given market members or participants, <b>except non-financial members or participants acting to hedge the production of their respective groups</b>, can enter into over a specified period of time, or alternative arrangements with equivalent effect such as position management with automatic review thresholds, to be imposed in order to:</p> <p>(a) support liquidity;  (b) prevent market abuse;  (c) support orderly pricing and settlement conditions.</p> <p>The limits or arrangements shall be transparent and non-discriminatory, specifying the persons to whom they apply and any exemptions, and taking account of the nature and composition of market participants and of the use they make of the contracts admitted to trading. They shall specify clear quantitative thresholds such as the maximum number of contracts persons can enter, taking account of the characteristics of the underlying commodity market, including patterns of production, consumption and transportation to market.</p>
Article 60 :	<p><b>Position Reporting by Categories of Traders</b></p> <p>Positions and transactions reporting is included in several new directives and regulations, such as EMIR and REMIT. It is very important to secure that the reporting obligations are such that they can be handled by authorities, participants and marketplaces. <b>All the planned reporting through different channels on daily, weekly and even real-time basis will impose a heavy and costly administrative burden to various players without any proof of value added of such reporting.</b> It is important to secure that there is no double reporting and that the reporting is automated as far as possible, through market places.</p> <p><i>Article 60</i></p> <p><b>Position reporting by categories of traders</b></p> <p>1. Member States shall ensure that regulated markets, MTFs, and OTFs which admit to trading or trade commodity derivatives or emission allowances or derivatives thereof:</p> <p>(a) make public a weekly report with the aggregate positions held by the different categories of traders for the different financial</p>



	<p>instruments traded on their platforms in accordance with paragraph 3;</p> <p>(b) provide the competent authority with a complete breakdown of the positions of any or all market members or participants, including any positions held on behalf of their clients, <b>excluding positions reported (or to be reported) in accordance with European Market Infrastructure Regulation or Regulation on Energy Market Integrity and Transparency</b>, upon request</p> <p>The obligation laid down in point (a) shall only apply when both the number of traders and their open positions in a given financial instrument exceed minimum thresholds.</p> <p>2. In order to enable the publication mentioned in point (a) of paragraph 1, Member States shall require members and participants of regulated markets, MTFs and OTFs to report to the respective trading venue the details of their positions <del>in real-time-weekly</del>, including any positions held on behalf of their clients.</p>
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