

## **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](mailto:econ-secretariat@europarl.europa.eu) by **13 January 2012**.

Name of the person/organisation responding to the questionnaire	<p>The ICMA Asset Management and Investors Council (AMIC) was established in March 2008 to represent the buy-side members of the ICMA membership. ICMA is one of the few trade associations with a European focus having both buy-side and sell-side representation.</p> <p>Taking into consideration the changes that have occurred in the industry, the AMIC composition embraces the diversification and the current dynamics of the industry – taking the asset management representation to a broader and global level.</p>
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<b>Theme</b>	<b>Question</b>	<b>Answers</b>
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?	
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,	

	<p>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?</p>	
Investor protection	<p>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?</p>	<p>AMIC members believe that it is important that investors' rights are protected; and to keep informing clients about grounds for advice. To that extent it is essential to work towards restoring trust in financial markets, an indispensable element for the success of long-term savings and the financing of the economy. It is worth noting that firms already manage conflicts of interest, under MIFID obligations.</p> <p>Our members believe that an outright ban on inducements for portfolio managers is inappropriate. It will endanger open-architecture models and multi-brand access by investors which will be detrimental to their long-term savings. Such a ban may also create unintended consequences and will distort the level-playing field between investment products from the asset management industry and products from other industries, such as insurance companies. Harmonisation of the retail regulatory framework and a level playing field applicable to all retail products (whether, for instance established on a fund or an insurance basis) should remain an objective. Moreover it may reduce the offering of advised services as only the top end clients will be willing to pay for advice, and many will choose to opt for execution only services instead, to save cost, at a risk.</p>

		<p>The existing MiFID rules on inducements, as well as national regulatory developments such as the RDR, provide sufficient safeguards as all investment advisors are already under the obligation to recommend products that are suitable and appropriate to clients, and to disclose inducements. Any concerns around conflicts of interest would be better addressed by requiring firms to be transparent as regards the offering of inducement-based services towards clients.</p> <p>The cross selling proposals are not clearly defined and may adversely (and detrimentally) impact the Research industry.</p>
	16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?	<p>The use of a wider range of investment strategies within UCITs is often aimed at reducing volatility and risk. Complex inputs do not have to lead to complex outcomes. However the more complex the design, the greater the focus should be towards quality of disclosure and transparency to ensure investors understand potential outcomes.</p> <p>Aspects of the proposal may have adverse impact on the range of investment products available to clients. AMIC members raised concerns about the exclusion of certain securities that “incorporate a structure which makes it difficult for the client to understand the risk involved”. The ‘difficult to understand’ criterion is too subjective to be an appropriate obligation to impose on firms. Moreover most of the debate is in fact a UCITs Directive question, and should not be impacted by MiFID.</p> <p>AMIC members would like to ensure that a wide range of</p>

		investment products remain accessible to the retail market. The current drafting may make the selling of some products – that are perfectly appropriate and suitable to clients – too difficult. Asset managers may end up only serving investors that have the means to pay for advice. And the retail market may primarily be offered deposit accounts as investment opportunities.
	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 ... :		
Article ... :		
Article ... :		
<b>Detailed comments on specific articles of the draft Regulation</b>		



Article number	Comments
Article ... :	
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