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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.**

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?	Assosim agrees with the proposed exemptions.
	2) Is it appropriate to include emission allowances and structured deposits and have they been included in an appropriate way?	Assosim agrees with the inclusion of emission allowances and structured deposits into the financial instrument category. It is our opinion they have been regulated in an appropriate way.
	3) Are any further adjustments needed to reflect the inclusion of custody and safekeeping as a core service?	We do not agree with the inclusion of custody and safekeeping as a core service. We would rather support keeping for them the status of ancillary services. Furthermore, we are in favour of an ad hoc regulation that guarantees an harmonised regulatory environment. On this regard, the SLD can properly address the

		matter. Moreover, it is worth considering that this proposal was not subject of consultation and was not sufficiently motivated by the Commission. Consequently, it is really complex to achieve an accurate evaluation.
	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?	Assosim deems appropriate to regulate third country access to EU markets.
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?	We think that no change is needed.
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?	On the one hand, Assosim shares the intention to regulate phenomena today not covered by MiFID; on the other hand, we believe that the new category, namely OTF, has poor distinguishing features in comparison with the other existing categories. Furthermore, one important aspect should be considered: for MTFs, offering other investment services is a pure possibility; indeed, we can have an MTF management company that offers exclusively the "management of multilateral trading systems" investment service; something different happens for OTFs that always offer also the "execution of orders" investment service. To this regard, Assosim points out that the discretionary ability is exploited by the intermediary with reference to the order execution service, making the OTF operation instrumental to the first investment service.

		Consequently, the discretionary ability cannot be considered a feature of the new trading venue, being a characteristic of the order execution service. To conclude, we support the idea of regulating phenomena like broker crossing networks (BCNs), but it is our belief that is the MTFs definition that should be modified so as to include also BCNs activity, rather than creating a (new) third category (please, see also answer no. 7). If the proposed approach was maintained, the text of the rules ought to be further qualified so as to have the above mentioned discretionary rule explicitly declined into the OTF management firms' execution policy.
	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?	Assosim supports OTC trading to be defined as a residual category. Nevertheless, we think that systematic internalisers should not be considered mere OTC transactions, taking into account the elements of "organisation" and "activity run on a systematic basis". We think that the new regulatory approach will attract crossing network and OTC standardised and liquid derivatives into the MiFID framework.
	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?	Assosim believes that the definition of high frequency trading ("*a specific subset of algorithmic trading where a trading system analyses data or signals the market at high speed and then sends or updates large numbers of orders within a very short time period in response to that analysis*") needs to be revised delimiting its perimeter; otherwise it might cover almost the entire trading activity done through electronic systems. In addition, we are very concerned about the obligation set for algorithmic trading: we refer to the obligation to "provide liquidity 1) on a regular and on-going basis" and 2) "regardless

		of prevailing market conditions". On this matter, it is worth considering that in particular cases (*e.g.* high volatility) even the rules and regulations of the most important markets provide exemptions for market makers. Therefore, we find difficult to understand why algorithmic traders have instead to burden such obligation (*provide liquidity regardless of prevailing market conditions*). Secondly, it ought to be noted that the definition of algorithmic trading ("*algorithmic trading" means trading in financial instruments where a computer algorithm automatically determines from individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited or no human intervention*") is so broad to cover the trading activity of on-line retail clients too. We believe it is not reasonable to set such obligations for retail clients. Thirdly, Assosim does not consider appropriate to set an obligation for algorithmic traders to send, at least yearly, a description of the model strategy and of the underlined parameters to the relevant Authority. Lastly, we think that the proposed regulatory framework would generate additional and overlapping controls on *algo*/high frequency trading by: 1) Authorities, 2) trading venue management companies and 3) intermediaries through which orders are executed. This would clearly generate inefficiencies and additional costs both for intermediaries and the system as a whole (please, see also answer no. 9).
	9) How appropriately do the requirements on resilience,	We sustain the proposal, but we do underline that control

	contingency arrangements and business continuity arrangements in Directive Articles 18, 19, 20 and 51 address the risks involved?	duplication has to be avoided: it would generate additional costs and slacken the operational activity (please, see also answer no. 8).
	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?	Assosim considers appropriate the proposal and highlights the fact that in Italy such regime is already effective.
	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?	Assosim believes that the obligation to trade on venues liquid and standardised derivatives is not in line with the competitive environment created by MiFID and may generate additional costs and practical complexities.
	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?	Assosim agrees with the proposal.
	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?	Assosim supports the proposal.
	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	It is worth considering that in most cases the commodity market participants are non-financial entities. Consequently, the introduction of position limits could slacken the market development and condition the price formation, worsening the possibility to hedge the commodity risk.

	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?	With reference to the advice service, we are not against a provision that differentiates independent advice from the general category. We think it could be an incentive to better qualify the service and to improve the advice offer. As regards the inducement ban, the application of the conflict of interest policy, the suitability test and the execution or transmission policies should allow intermediary to act in the best interest of the client, even when it receives inducements. We therefore do not support the proposal to ban inducements for portfolio management and investment advice. We believe that the current regulatory framework is already extremely stringent and effective. Banning inducements even when it is possible to demonstrate that they enhance the quality of the service and do not impair the duty to act in the best interest of the client would be detrimental for both intermediaries and clients.
	16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?	We support the proposed text of article 25.
	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?	We agree with the proposed text.
	18) Are the protections available to eligible counterparties,	We do not agree with the proposal to apply pre-contractual

	professional clients and retail clients appropriately differentiated?	information obligation to qualified counterparties as for article 30 (previously 24). On the one hand, the present client classification system has shown to work properly and consistently; on the other hand, the application of pre-contractual information obligation to qualified counterparties does not seem to answer to any concrete need of protection. Indeed, qualified counterparties professional activity and expertise justify the not applicability of the rules of conduct. Therefore, it is our view that such obligation does only cause additional costs for the financial industry and, in particular, for the qualified counterparties themselves, which are, at the same time, suppliers and users of the relevant financial services.
	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?	In principle, we agree with the proposal but a definitive assessment needs the adoption of the relevant implementing measures.
	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	In principle, we agree with the proposal but a definitive assessment needs the adoption of the relevant implementing measures. We underline the need for a close calibration of the transparency requirement depending on the type of product, size of transaction, etc..

	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?	See answer no. 21).
	23) Are the envisaged waivers from pre-trade transparency requirements for trading venues appropriate and why?	We think that the proposal can favour a more consistent application of waivers in EU and therefore safeguard the level playing field.
	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)?	We agree with the proposed text.
	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?	We think that no change is needed.
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?	Assosim thinks ESMA should carry out impact assessments and public consultations to achieve the best result in terms of costs and benefits.
	27) Are any changes needed to the proposal to ensure that	We think that no change is needed.

	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?	EMIR, MAD, CSD Directive, structured UCITS, PRIPs
	29) Which, if any, interactions with similar requirements in major jurisdictions outside the EU need to be borne in mind and why?	American Dodd Frank Act.
	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?	It seems to be appropriate.

Detailed comments on specific articles of the draft Directive	
Article number	**Comments**
Article ... :	
Article ... :	
Article ... :	

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