

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**.

Name of the person/ organisation responding to the questionnaire	Raiffeisen Kapitalanlagegesellschaft m. b. H. A-1010 Vienna, Schwarzenbergplatz 3
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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?	

	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?	
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?	<p>Proposal of the European Commission (Art. 24 para. 3, 5 and 6)</p> <p>If an investment firm provides investment advice on an independent basis, it shall not accept or receive inducements (fees, commissions or any monetary benefits) from third parties, and particularly from issuers or product providers. Also, when providing portfolio management the investment firm shall not accept or receive inducements.</p> <p>Problem</p> <p>Raiffeisen Capital Management agrees with the need to improve investor protection. However, we cannot agree on a ban for inducements, even if this ban is restricted to independent investment advice. This would lead to a pure fee-based advice which is (i) not in the interest of the investors and (ii) a barrier for competitive und dynamic markets for the following reasons:</p> <ul style="list-style-type: none"> • Investment decision is complex: The decision for the appropriate investment is very complex, investment advice is vital especially for retail clients. • Inducements favour small investors: In the case of provision-based advice the client does not pay ex-ante fees. Therefore, it is much more likely that the investor will seek for advice (even from different advisors) and the probability of suitable investment

		<p style="text-align: right;">1</p> <ul style="list-style-type: none"> • Less invested money: A fee-based system focus on wealthy investors and exclude retail investors (in particular small investors or savers) from access to any level of assistance in their search for an appropriate investment product. Thus, retail investors would invest less. This is not in line with the political goal to incentive private pensions schemes. • Importance of intermediaries: Another area of concern with the ban of inducements is that it completely ignores the value of financial intermediaries for both, the client receiving investment advice and the investment firm taking advantage of a wider distribution. Inducements are vital for financial intermediaries. • Distortion of competition: A ban of monetary inducements would favour large investment firms with their own in-house distribution units, because it is not necessary for them to pay inducements. • Unlevel Playing Field: A ban of inducements would result in grave competitive disadvantages for investment products compared to the distribution of insurance products and saving accounts. • Distortion of the Single Market: From our point of view, a restriction to pay remuneration for distribution services is in conflict with the concept of free, liberal markets and therefore in conflict with the EU Single Market. <p>Solution The investment firms should have the right to choose their own business model. Raiffeisen Capital Management promotes the</p>
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¹ *Franke/Funke/Gebken/Johanning*, Provisions- und Honorarberatung - Eine Bewertung der Anlageberatung vor dem Hintergrund des Anlegerschutzes und der Vermögensbildung in Deutschland, 4 (2011).

		<p>coexistence of fee-based and provision-based remuneration systems. A ban of inducements is inappropriate. However, investment firms should fully disclose to the client how their advice is financed. More strict regulations should be applied to disclose potential conflict of interest regarding inducements.</p> <p>With regard to portfolio management the client should be able to freely choose between a higher-priced and inducement-free portfolio management or a cheaper but “induced” portfolio management. The European Commission proposal should be modified accordingly.</p>
	<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>	<p>Proposal of the European Commission (Art. 25 para. 3) Article 25 para 3 (a) (iv) removes “structured” UCITS from the catalogue of non-complex products.</p> <p>Problem The loss of the non-complex status for structured UCITS would make them ineligible for “best execution” (e.g. fund trading platforms). This leads to higher distribution costs for investors who do not seek for investment advice.</p> <p>Solution All UCITS products are strictly regulated and provide a unique high degree of investor protection. UCITS are also by far the most transparent financial instrument and the recent introduction of the Key Investor Document (KID) makes them even easier to understand.</p> <p>The proposal of the European Commission to remove</p>

		“structured” UCITS from the catalogue of non-complex instruments needs to be deleted.
	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?	
Detailed comments on specific articles of the draft Directive		
Article number	Comments	
Article ... :		
Article ... :		
Article ... :		
Detailed comments on specific articles of the draft Regulation		
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