

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	Rolls-Royce plc
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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?	It is unclear whether the broad definition of “Organised Trading Facility” might include electronic platforms such as FXall, 360T and Currenex. These electronic platforms are used by the majority of non-financial end users (corporates) as an effective way to request quotes for OTC derivative transactions from a

		number of financial counterparties at the same time, hence providing competitive price tension and a simple and efficient method of transacting. The electronic platforms are not trading venues, rather they are simply an electronic method of requesting a quotation on a specific transaction. The use of these platforms should be excluded from the scope of MIFID/MIFIR.
	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?	<p>Our perception is that a key aim of MiFID and MiFIR is to push the bulk of financial transactions onto exchanges, MTFs or OTFs so that the various regulatory disciplines on conduct and standards can more easily be enforced.</p> <p>However, for most non-financial end users, the ability to deal directly with a financial counterparty dealing as principal on their own account in a transaction tailored to the needs of the end user is critical. By making eligible platforms the prime focus of the regulation and then requiring suitably developed derivatives be traded solely on eligible platforms for both financial and non-financial counterparties exceeding the clearing threshold in EMIR, our concern is that liquidity in the OTC derivatives market will be reduced significantly, leading to a deterioration in the quality of service, liquidity and price competitiveness for non-financial end users.</p>
	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?	Article 24 of the regulation exempts non-financial companies below the EMIR clearing threshold from being forced to trade on RMs, MTFs or OTFs. This is a welcome exemption as it is critical that non-financial end users are able to access OTC derivatives that are tailored to meet their specific requirements.
	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?	
	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?	<p>Non-financial end users will be affected by the transparency requirements if the electronic trading platforms that are used to trade OTC derivatives (such as FXall, 360T etc) are defined as an MTF or OTF.</p> <p>The transparency obligations are drafted with an “order book” mechanism in mind. The majority of non-financial end users (corporates) trade OTC derivatives by requesting quotes for the specific trade that is required, either over an electronic trading platform such as FXall or via telephone. It is not clear what the transparency requirements are in this scenario.</p> <p>Publishing details of transactions between a financial counterparty and a non-financial counterparty for an uncleared OTC trade will not provide meaningful information to the market as the trade price will have a credit charge built into it which will be dependent on the specific portfolio of trades between the two counterparties. It would seem sensible to exempt non-financial counterparties from the transparency</p>

		<p>requirements.</p> <p>Non-financial end users already have a significant amount of information available that enables them to evaluate pricing – such as electronic trading systems and other information systems such as Bloomberg and Reuters. Further transparency may be unnecessary.</p>
	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?	<p>The key requirement for non financial end users is that further regulation should not undermine the exemption from mandatory clearing as defined in EMIR Article 7.</p> <p>Specifically, we would like to see the preservation of non-cleared OTC derivatives transactions to enable effective hedging of market risks that arise from commercial operations, regardless of whether such transactions would be eligible for clearing and capable of being transferred to an exchange.</p>
	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		
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