

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	 ADDENDUM TO the UniCredit Reply sent out on 13 January 2012. Global Regulatory Counsel – Antonio La Rocca, Francesco Martiniello (Main Contributors) Regulatory Affairs – Sergio Lugaresi, Riccardo Brogi, Marco Laganà, Andrea Mantovani (Contributors and Coordination Team) Corporate Investment Banking: Christian Aufhauser, Joern Ebernman, Franz Grillmeier (Contributors)
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Theme	Question	Answers
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	From a general perspective, UniCredit remarks the importance to take into consideration the business model of the intermediaries (in terms of services provided, activities performed, business volumes and target clients and territories). For instance, in the

	<p>proportionate and effective, and why?</p>	<p>case of a small local bank, putting in place a policy intended to promote geographical diversity, this doesn't make sense.</p> <p>We highlight that similar rules will be issued in the near future by the EBA as part of the new directive on capital adequacy of credit institutions and investment firms (i.e. CRD IV). In this respect, therefore, a provision for coordination between the two Directives would be appropriate.</p> <p>UniCredit regards advisable that rules provided by MIFID on corporate governance are consistent with those set forth in other provisions for other financial market players (<i>e.g.</i> management or investment companies, insurance companies) so as to lead to a more harmonized European framework on this matter.</p> <p>More specifically, with regard to Art. 9 of the proposed Directive, we propose the following considerations:</p> <p>1) Paragraph 1, letter C, recites as follows: "Each member of the management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management"; paragraph 6, letter d): "the management body shall provide effective oversight of senior management"; paragraph 6, last sentence: "Members of the management body in its supervisory function shall have adequate access to information and documents which are needed to oversee and monitor management decision making"</p> <p>We share the approach of new article 9 subject to the monitoring activities being carried out by the board members jointly (as a</p>
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		<p>board) and not individually.</p> <p>The provision in question would not be acceptable where – see surveillance and monitoring of management's decision making process - it meant duty of control on senior management to be made directly by the board instead of by its delegated members.</p> <p>2) Paragraph 1, letter c) recites as follows: “Member States shall require investment firms to devote adequate resources to the induction and training of members of the management body”.</p> <p>It appears to us that:</p> <ul style="list-style-type: none"> - on one hand such provision is not consistent with MiFID still requiring for members of the board to have, at the time of their appointment, knowledge, skills and experience necessary to perform their duties; - on the other hand, such provision seems to be disproportionate to the average expiry term of the board members' mandate and should require investment firms to provide board members' with update training rather than education's. <p>3) Paragraph 7 recites as follows: “The competent authority shall refuse authorisation if it is not satisfied that the persons who will effectively direct the business of the investment firm are of sufficiently good repute or sufficiently experienced”.</p> <p>We share this view subject to sufficient good repute or experience being based upon specific and defined criteria.</p>
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