

## **Review of the Markets in Financial Instruments Directive**

### **Questionnaire on MiFID/MiFIR 2 by Markus Ferber MEP**

#### **Answers of Wirtschaftsvereinigung Stahl**

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**.

<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?	Financial companies and non-financial companies must be clearly differentiated from one another. A main purpose of the directive is to restrain speculative effects on the raw material markets in order to improve the framework conditions for covering industrial raw material requirements. Therefore, the activities of financial companies concerning commodity derivatives should be subject to the scope Directive. On the other hand, derivative business by industrial companies has to be exempted from the regulation. Their hedging activities have nothing to do with speculation, but are intended to secure their physical requirements.

		To include them into the directive would therefore be counterproductive.
	2) Is it appropriate to include emission allowances and structured deposits and have they been included in an appropriate way?	Emissions allowances should be generally excluded. Industrial companies that are obliged to act under the emissions trading systems would face unproportional administrative burdens on an area that is not the core of their business. .
	3) Are any further adjustments needed to reflect the inclusion of custody and safekeeping as a core service?	Not applicable
	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?	Not applicable
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?	Not applicable
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?	Not applicable
	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?	Not applicable

	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?	Not applicable
	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?	Not applicable
	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?	Not applicable
	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?	Not applicable
	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?	Not applicable
	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?	Not applicable

	<p>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?</p>	<p>From the view of the steel industry, imposing Position Limits with respect to commodity derivatives represents an essential instrument to control the influence of financial speculation on the raw material markets.</p> <p>Therefore, we support the proposal of the Commission to place the responsible national and European authorities in a position to demand a reduction in derivative instruments and also define upper limits for derivatives in advance to protect the functioning of the markets (Art 72 of the directive, Art. 35 of the regulation). However, in our view, it should be in the responsibility of the national and European authorities only to decide on this position-management and not in the responsibility of the operators of trading platforms. To ensure consistency with the regulation under EMIR, non-financial companies should be exempted from these position limits.</p> <p>In fact, the consequences of excessive influence of financial speculation are today visible in the markets of certain alloying metals traded at the LME used in the steel industry. The sometimes extreme price fluctuations no longer have any relationship to the fundamental data. In future, there is an apparent risk that also the bulk natural raw materials of the steel industry – iron ore and coking coal – could be threatened by comparable developments. While a sufficient range of hedging instruments is also indispensable for the steel industry in order to protect against currency, interest or raw material price risks, excessive speculation has to be tackled. The raw material markets exist to supply real</p>
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		industrial needs. This economic function may not be allowed to be overshadowed and distorted by the irrelevant motive of financial speculation.
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?	Not applicable
	16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?	Not applicable
	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?	Not applicable
	18) Are the protections available to eligible counterparties, professional clients and retail clients appropriately differentiated?	Not applicable
	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?	Not applicable
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	Not applicable

	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?	Not applicable
	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?	Not applicable
	23) Are the envisaged waivers from pre-trade transparency requirements for trading venues appropriate and why?	Not applicable
	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)?	Not applicable
	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	Not applicable

	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?	Not applicable
	27) Are any changes needed to the proposal to ensure that competent authorities can supervise the requirements effectively, efficiently and proportionately?	Not applicable
	28) What are the key interactions with other EU financial services legislation that need to be considered in developing MiFID/MiFIR 2?	Not applicable
	29) Which, if any, interactions with similar requirements in major jurisdictions outside the EU need to be borne in mind and why?	The Commodities Futures Trading Commission in the USA also wants to introduce position limits for raw material derivatives. Intensive discussions should be carried out here.
	30) Is the sanctions regime foreseen in Articles 73-78 of the Directive effective, proportionate and dissuasive?	Not applicable
	31) Is there an appropriate balance between Level 1 and Level 2 measures within MiFID/MiFIR 2?	Not applicable
<b>Detailed comments on specific articles of the draft Directive</b>		
<b>Article</b>	<b>Comments</b>	

<b>number</b>	
Article ... :	
Article ... :	