

## Review of the Markets in Financial Instruments Directive

Wiener Börse AG

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

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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.**

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?	<p>If the legislator feels that the introduction of an OTF-category is inevitable – which we are sceptical about – one should consider the negative impact of discretionary execution which would be unique for OTFs because any other multilateral trading venue (RMs and MTFs) allow for non-discretionary execution only; if discretionary execution means discretion on an order by order basis we would suffer from a lack of predictability which clearly cannot be the intention for multilateral trading and makes OTFs less regulated than RMs and MTFs.</p> <p>Positive: no execution against own capital, same transparency requirements as RMs and MTFs</p>
	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>OTC trading should be defined in the main body text of the legislation (not just in recitals) that way:</p> <p>“‘Over the counter trading’ of financial instruments means the bilateral activity carried out by an investment firm</p>

		<p>which, on an ad-hoc, infrequent and irregular basis, deals on own account executing large orders of eligible counterparties.”</p> <p>The proposals for the new OTF category will not necessarily lead to the channelling of trades which are currently OTC onto organised venues.</p> <p>Banks running a hybrid platform (both multi- and bi-lateral trading) could argue that they don't fit into either the OTF or SI category, thus staying OTC and avoiding both OTF- and SI requirements. We would definitely end up in a non level playing field violating the general, functional approach of “same business-same rules”.</p> <p>Therefore, banks should be forced to split their business, channelling all multilateral trading onto a trading venue and executing all bilateral trading as an SI or otherwise OTC (if executed otherwise OTC, banks should explain why they are not acting or do not have to act as an SI).</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?	Quite a positive view.
	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?	Only because of introduction of an MTF SME growth market in the Directive SME will not automatically gain a better access to capital markets. Acceptance by all kind of market participants is necessary – e.g. without any analyst coverage investors' interest won't awake.
	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?	We would very much appreciate if you could pay special attention to the grouping of financial instruments into the equity instruments- and non-equity instruments category. We are not quite sure if certificates for example are best categorised in the equity instruments section as we rather

		see them in the non-equity instruments section.
	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?	Please refer to the answer to question 22. Therefore, basically there are no changes needed.
	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>Basically yes, they are appropriate and will ensure correct level of transparency.</p> <p>However, with regard to bonds and structured finance products (i.e. for example credit linked notes and asset backed securities) pre trade transparency could become relevant for Wiener Börse only in case of e.g. client orders; in case of quotes not so at the moment because the market model and specific characteristics of trading in such products do not provide for quoting by trading members.</p> <p>We would very much appreciate if you could pay special attention to the grouping of financial instruments into the equity instruments- and non-equity instruments category. We are not quite sure if certificates for example are best categorised in the equity instruments section as we rather see them in the non-equity instruments section.</p>
	23) Are the envisaged waivers from pre-trade transparency requirements for trading venues	Appropriate, basically yes, but a reliable answer is only possible when we know the specifying measures adopted

	appropriate and why?	by the Commission by means of delegated acts. Up to now, the picture is not complete yet. The MiFID Review should create a “level playing field” that does not give preferential treatment to any individual market participants. Waivers from pre-trade transparency should be kept to the minimum.
	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)?	WBAG supports the clauses on CTPs, ARMs and APAs, we understand that various details will be decided by ESMA at a later stage. Although in the field of CTPs and data service providers, a level playing field should be guaranteed.
	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?	The MiFID Review should create a “level playing field” that does not give preferential treatment to any individual market participants. To avoid distortion of competition all market players should need to adhere to the same access conditions and regulatory oversight.
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?	
<b>Detailed comments on specific articles of the draft Directive</b>		
<b>Article number</b>	<b>Comments</b>	
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<b>Detailed comments on specific articles of the draft Regulation</b>		
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