

**Question for written answer E-010282/2011
to the Commission
Rule 117
Philippe Lamberts (Verts/ALE)**

Subject: Swaps marketing in Spain

From 2005 onwards, and particularly between 2007 and 2008, the commercial departments of Spanish banks and savings banks began offering swaps to consumers, self-employed people and small businesses. These types of contract were authorised by the Spanish authorities in the 1990s for transactions with major companies. However, from 2005 onwards Spanish banks moved away from this practice towards the mass sale of swaps to ordinary consumers and small and medium-sized businesses. The ombudsman noted in his 2009 annual report that he had detected malpractice in relation to the matter and that the response by the Bank of Spain's complaints service had been inadequate and contradictory. It is true to say that when responding to complaints, the Bank of Spain never considers whether or not clients have any previous experience of this type of product or their ability to understand and take on the risks involved. This situation has led to thousands of affected clients taking legal action to have their swaps contracts declared void. Although a considerable majority of court rulings have found these contracts to be invalid under the regulation transposing the Directive on markets in financial instruments (MiFID), some courts fail to consider this regulation and find the contracts valid.

Does the Commission consider that one of the requirements of MiFID should be that financial bodies wishing to market swaps to their clients must first evaluate their experience and financial knowledge, in cases where clients are taking on variable interest loans (interest rate swaps), where they could be exposed to inflation (inflation swaps) or where the client's business is road transport (oil or oil derivatives price swaps)?

If so, does the above regulation prevent the marketing of swaps to people who have no financial experience or specific knowledge of this type of instrument?

Does the Commission consider it correct practice to sidestep the MiFID rules, when financial swaps are marketed on the basis of spurious links to any form of financial loan contract, even when the contract in question is not subject to European legislation along the lines of MiFID, as is the case with home equity loans and credit lines to self-employed people and small businesses?

Does the Commission consider that the indiscriminate sale of swaps to consumers, workers and SMEs who have never previously encountered them, without taking into account their unfamiliarity with the mechanism and the risks involved, amounts to an infringement of the MiFID directive?