

**Question for written answer P-005263/2012  
to the Commission**  
Rule 117  
**Gerard Batten (EFD)**

Subject: Article 4 of the MiFID Implementing Directive 2006 and the MiFID Review 2012

Article 4 of Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms states that 'Member States may retain or impose requirements additional to those in this Directive only in those exceptional cases where such requirements are objectively justified and proportionate so as to address specific risks to investor protection or to market integrity that are not adequately addressed by this Directive, and provided that' at least one of a number of additional conditions is met.

Member States are required to notify the Commission at least one month in advance of their intention to impose any such requirement. Contrary to the original intent that this Article be used rarely, if at all, as expressed by the terms 'exceptional cases', it has been used by a number of regulatory authorities in different Member States since Directives 2004/39/EC and 2006/73/EC entered into force to justify gold-plating of the Directives for their own purposes. Of these, the UK FSA has been by far the largest user, often imposing an extra burden on the financial services sector in the UK and giving justifications in their notifications to the European Commission that do not always seem to make the 'exceptional... objectively justified and proportionate' case that is required.

In the Commission's proposal for a Directive on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (Recast), and in the European Parliament's draft response to this proposal, there is no reference to any provision of the kind that appears in Article 4 of implementing Directive 2006/73/EC.

- Given that the entire Directive is to be recast and repealed, can the Commission confirm that there is no intention to grandfather in the provisions of Article 4 when the implementing Directive to the recast Directive is negotiated?
- Will this, together with the role of ESMA in writing and enforcing legally binding European-wide technical standards to ensure consistent implementation of regulations across the EU, mean that national supervisory authorities will no longer be able to produce at will rules that are super-equivalent to the standards in the Directive to the detriment of businesses in their own Member States?