

Markets in financial instruments; OTC derivatives, central counterparties and trade repositories

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The European Parliament adopted by 581 votes to 26 with 29 abstentions, a legislative resolution on the proposal for a Regulation of the European Parliament and of the Council on markets in financial instruments and amending Regulation [EMIR] on OTC derivatives, central counterparties and trade repositories.

The report had been sent back to committee during the plenary session of 26 October 2012.

Parliament adopted its position at first reading under the ordinary legislative procedure. The amendments adopted in plenary were the result of a compromise between Parliament and Council. They amend the Commission's proposal as follows:

Objectives: the financial crisis had exposed weaknesses in the transparency of financial markets which could contribute to harmful socio-economic effects. The new rules established **uniform requirements for financial instruments** in relation to the following:

- disclosure of trade data to the public;
- reporting of transactions to the competent authorities;
- trading of derivatives on organised venues;
- non-discriminatory access to clearing and non-discriminatory access to trading in benchmarks;
- product intervention powers on position management controls and position limits;
- provision of investment services or activities by third-country firms.

It was recalled that the new legislation was made up of two separate legal instruments: this regulation and the [directive on markets in financial instruments](#). Together, both legal instruments should form the legal framework governing the requirements applicable to investment firms, regulated markets and data reporting services providers.

Market structure and transparency: under Directive 2004/39/EC, some trading systems developed which were not adequately captured by the regulatory regime. The new rules would ensure that any trading system in financial instruments were **properly regulated and authorised under an organised venue**.

In order to make Union financial markets more transparent, Parliament and Council agreed to introduce a new trading venue category of **organised trading facility** (OTF) for bonds, structured finance products, emissions allowances and derivatives and to ensure that it was appropriately regulated and applied non-discriminatory rules regarding access to the facility. That new category OTF would complement the existing types of trading venues.

While regulated markets and MTFs had non-discretionary rules for the execution of transactions, the operator of an OTF should carry out order execution on a discretionary basis subject, where applicable, to the pre-transparency requirements and best execution obligations.

Protection of investors: the new regime introduced an explicit mechanism for prohibiting or restricting the marketing, distribution and sale of any financial instrument or structured deposit giving rise to serious concerns regarding investor protection, orderly functioning and integrity of financial markets, or commodities markets, or the stability of the whole or part of the financial system.

In order to limit speculation on commodity markets, the amended text provided that measures might be taken in order to enable action to counteract possible negative externalities on commodities markets from activities on financial markets. This was true, in particular, for agricultural commodity markets the purpose of which is to ensure a secure supply of food for the population.

Details of transactions in financial instruments: these should be reported to competent authorities to enable them to detect and investigate potential cases of market abuse, to monitor the fair and orderly functioning of markets, as well as the activities of investment firms. The obligation should apply whether or not such transactions in any of those financial instruments were carried out on a trading venue. The reports should use a legal entity identifier in line with the G-20 commitments.

Third country firms: the new regime should harmonise the existing fragmented framework, ensure certainty and uniform treatment of third-country firms accessing the Union, ensure that an assessment of **effective equivalence in relation to the prudential and business conduct** framework of third countries, and should provide for a comparable level of protection to clients in the Union receiving services by third-country firms.

In applying the regime the Commission and Member States should prioritise the areas covered by the G-20 commitments and agreements with the Union's largest trading partners. They must also ensure that the application of third-country requirements: (i) did not prevent Union investors and issuers from investing in or obtaining funding from third countries or (ii) prevent third-country investors and issuers from investing, raising capital or obtaining other financial services in Union markets unless that is necessary for objective and evidence-based prudential reasons.