

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

2011/0296(COD) - 15/05/2014 - Final act

PURPOSE: to update the current rules on markets in financial instruments with a view to creating an integrated financial market where the investors enjoy enough protection and the efficiency and integrity of the market are preserved.

LEGISLATIVE ACT: Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012.

CONTENT: the financial crisis of 2008 has exposed weaknesses in the rules relating to instruments other than shares, which are mainly traded among professional investors.

With the [Directive 2014/65/EU markets in financial instruments](#) (MiFID II), **Regulation MiFIR aims to set up a new framework establishing uniform requirements relating to financial instruments** in relation to: i) disclosure of trade data, ii) reporting of transactions to the competent authorities, iii) trading of derivatives and shares on organised venues, iv) non-discriminatory access to CCPs, to trading venues and benchmarks, v) product intervention powers and powers on position management and position limits, vi) provision of investment services or activities by third-country firms.

The main elements of the new Regulation are the following:

Market structure and transparency: the new rules are intended to ensure that trading in financial instruments is carried out, as far as possible, on **organised and appropriately regulated venues**, in a totally transparent manner, both before and after the negotiation.

The Regulation introduced a **new trading venue category** of organised trading facility (**OTF – organised trading facility**) for bonds, structured finance products, emissions allowances and derivatives. This new category should be appropriately regulated and complement the existing types of trading venues.

All trading platforms, that is, regulated markets, the systems of multilateral trading (*multilateral trading facilities* - MTF) as well as the new systems of organised trading facility (OTF) should apply **transparent and non-discriminatory access rules**.

Appropriately **calibrated** transparency requirements therefore need to apply to all types of trading venues, and to all financial instruments traded thereon.

Access to central counterparties (CCPs): rules for accessing CCPs under transparent and non-discriminatory conditions are also introduced. CCPs should accept to clear transactions executed in different trading venues, to the extent that those venues comply with the operational and technical requirements established by the CCP, including the risk management **requirements**.

Waivers and Volume Cap Mechanism: the competent authorities may, in certain cases, be able to waive the obligation for market operators and investment firms operating a trading venue to make public the pre-transparency requirements. In order to **ensure that the use of the waivers provided for does not unduly harm price formation**, trading under those waivers is restricted as follows:

- the percentage of trading in a financial instrument carried out on a trading venue under those waivers should be **limited to 4% of the total volume of trading** in that financial instrument on all trading venues across the Union over the previous 12 months;
- overall Union trading in a financial instrument carried out under those waivers shall be **limited to 8% of the total volume of trading** in that financial instrument on all trading venues across the Union over the previous 12 months.

Trading obligation: to ensure more trading takes place on regulated trading venues and systematic internalisers, the Regulation introduces, so far as investment companies are concerned, a trading obligation for shares admitted to trading on a regulated market or traded on a trading venue.

Statement on transactions in financial instruments: these transactions 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.

Investment firms shall keep at the disposal of the competent authority, **for five years**, the relevant data relating to all orders and all transactions in financial instruments which they have carried out, whether on own account or on behalf of a client.

Investor protection and integrity of financial markets: the new regime introduces 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.

So as to **limit speculation on commodity derivatives**, the Regulation provides that measures to be taken to counteract possible negative externalities on commodities markets from activities on financial markets. This is true, in particular, for agricultural commodity markets the purpose of which is to ensure a secure supply of food for the population. In those cases, the measures should be coordinated with the authorities competent for the commodity markets concerned.

The European Securities and Markets Authority (ESMA) should be able to request information from any person regarding their position in relation to a derivative contract, to request that position to be reduced, as well as to limit the ability of persons to undertake individual transactions in relation to commodity derivatives.

Provision of services by third-country firms: in harmonising the current rules, the new regime guarantees certainty and uniform treatment of third-country firms accessing the Union. It ensures that an **assessment of effective equivalence has been carried out by the Commission** 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.

The Commission should ensure that the application of third-country requirements i) does 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.

ENTRY INTO FORCE: 02.07.2014. The Regulation applies from 03.01.2017.

DELEGATED ACTS: the Commission may adopt delegated acts in order to achieve the objectives of the Regulation. The power to adopt delegated acts shall be conferred on the Commission for an unlimited

period **from 2 July 2014**. The European Parliament or the Council may object to a delegated act within a period of **three months** from the date of notification (this period can be extended for three months). If the European Parliament or the Council make objections, the delegated act will not enter into force.