

Markets in financial instruments. Recast

2011/0298(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 (MiFID II).

LEGISLATIVE ACT: Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

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.

The new Directive amends and replaces Directive 2004/39/EC of the European Parliament and Council on markets in financial instruments ('MiFID').

With the [new Regulation \(MiFIR\)](#), it aims to overcome problems that emerged during the implementation of MiFID which, since 2007, has prevented Member States from requiring that negotiations take place on some exchanges.

The Directive **strengthens the framework for the regulation of markets in financial instruments**, including where trading in such markets takes place over-the-counter (OTC), in order to increase transparency, better protect investors, reinforce confidence, address unregulated areas, and ensure that supervisors are granted adequate powers to fulfil their tasks. It contains the provisions governing the authorisation of the business, the acquisition of qualifying holding, the exercise of the freedom of establishment and of the freedom to provide services, the operating conditions for investment firms to ensure investor protection, the powers of supervisory authorities of home and host Member States and the regime for imposing sanctions.

The main elements of the new Directive are the following:

Enhancing the regulatory framework: the Directive aims to move the negotiation organised financial instruments **towards multilateral and well-regulated trading platforms**. Strict transparency rules prohibit anonymous trading of shares and other equity instruments, which is an obstacle to a fair and efficient price formation. As a result, 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**.

Corporate governance: the Directive provides that Member States shall ensure that the management body of an investment firm defines, oversees and is accountable for the implementation of the governance arrangements that ensure **effective and prudent management** of the investment firm including the segregation of duties in the investment firm and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and the interest of clients.

Protection of investors: taking account of the increasing complexity of services and instruments, the Directive introduced a certain degree of harmonisation to offer investors a high level of protection across the Union. It also requires that investment firms should act in accordance with the **best interests of their clients**. Investment firms should accordingly understand the features of the financial instruments offered or recommended.

The investment firms which manufacture financial instruments should ensure that those products are manufactured to **meet the needs of an identified target market of end clients** within the relevant category of clients (retail customers, professionals and counterparties).

These companies are also required to inform customers about the fact that the **advice** is offered on an independent basis and the risks associated with the recommended products and investment strategies. When advice is provided on an independent basis **a sufficient range** of different product providers' products should be assessed prior to making a personal recommendation.

To **further protect consumers**, it is also appropriate to ensure that investment firms do not **remunerate or assess the performance of their own staff** in a way that conflicts with the firm's duty to act in the best interests of their clients, for example through remuneration, sales targets or otherwise which provide an incentive for recommending or selling a particular financial instrument.

Staff who advise on or sell investment products to retail clients possess an **appropriate level of knowledge and competence** in relation to the products offered. In addition, all information, including marketing communications, addressed by the investment firm to clients or potential clients should be **fair, clear and not misleading**.

Adaptation of the legislation to technological developments: the Directive regulates the risks arising from high frequency algorithmic trading where a trading system analyses data or signals from the market at high speed and then sends or updates large numbers of orders within a very short time period in response to that analysis.

Both investment firms and trading venues should ensure **robust measures** are in place to ensure that algorithmic trading or high-frequency algorithmic trading techniques do not create a disorderly market and cannot be used for abusive purposes. Trading venues should also ensure their trading systems are resilient and properly tested to deal with increased order flows or market stresses and that controls are in place, such as '**circuit breakers**', to temporarily halt trading or constrain it if there are sudden unexpected price movements.

Commodity derivatives: in order to prevent market abuses, the competent authorities, in line with the methodology for calculation determined by ESMA, establish and apply **position limits on the size of a net position** which a person can hold at all times in commodity derivatives traded on trading venues and economically equivalent OTC contracts.

With regard to the **energy derivative contracts** (petrol, charbon), a transition period is provided up to July 2020 for the application of the clearing obligation and the margining requirements established in the [Regulation \(EU\) No 648/2012](#). The Commission should, by 1 January 2018, prepare a report assessing the potential impact on energy prices and the functioning of the energy market of the expiry of the transitional period.

Cooperation: the Directive reinforces the measures concerning the exchange of information between national competent authorities as well as the reciprocal obligations of authorities for assistance and cooperation.

The competent authorities should provide each other with the relevant information for the exercise of their functions in order to **detect and to prevent offences** under the Directive.

Third country firms: the Directive creates a harmonised legal framework regulating the access of third country firms to the EU market. It provides that a Member State may require that a third-country firm intending to provide investment services or perform investment activities with or without any ancillary services to retail clients or to professional clients in its territory establish **a branch** in that Member State.

The branch shall acquire a prior authorisation by the competent authorities of that Member State in accordance with certain conditions. The requesting firm should be, among other, properly authorised, and paying due regard to any FATF recommendations in the context of anti-money laundering and countering the financing of terrorism.

ENTRY INTO FORCE: 02.07.2014.

TRANSPOSITION: 03.07.2016. The measures shall apply 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.