

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

2011/0296(COD) - 11/09/2017 - Follow-up document

The Commission presented a report on the need to temporarily exclude exchange-traded derivatives from the scope of Articles 35 and 36 of the Regulation (EU) No 600/2014 on markets in financial instruments (the MiFIR Regulation).

In accordance with the MiFIR Regulation, the Commission's report must be based on a risk assessment carried out by the European Securities and Markets Authority (ESMA) in consultation with the European Systemic Risk Board (ESRB) and shall take into account the risks resulting from open and non-discriminatory access provisions regarding exchange-traded derivatives to the overall stability and orderly functioning of the financial markets throughout the Union.

On July 2015, the Commission asked ESMA to carry out such a risk assessment. ESMA delivered its risk assessment 1 on 31 March 2016

As a reminder,

- **Article 35 of MiFIR** specifies that a central counterparty shall grant access to trading venues on a non-discriminatory and transparent basis to clear transactions regardless of the trading venue on which they are executed;
- **Article 36 of MiFIR** specifies that a trading venue shall, upon request, grant access to its trade feeds to central counterparties that wish to clear transactions on this trading venue on a non-discriminatory and transparent basis.

MiFIR anticipated however that under certain circumstances open access to central counterparties and trading venues **may raise risks**. In that context, Articles 35 and 36 of MiFIR establish the conditions under which access may be denied. The Regulation introduces specific provisions to adequately take into consideration the complexity of exchange-traded derivatives and the consequent challenges that open and non-discriminatory access may entail.

This report outlines a **number potential risks** and in particular risks in relation to:

- the concentration of the trading and the clearing activity in vertically integrated groups;
- the potential multiplication of interoperability arrangements that would substantially raise the level of complexity in the overall risk management of interoperable central counterparties.

Having examined these risks, **the Commission considers that the current regulatory framework in MiFIR and EMIR appropriately addresses the potential risks identified**. It justifies its point of view as follows:

central counterparties are regulated by the relevant competent authorities under EMIR which establishes organisational conduct of business, prudential standards and macroprudential rules for central counterparties;

MiFIR gives the possibility for central counterparties, trading venues and relevant authorities to deny access to the relevant infrastructure, as detailed in the regulatory technical standard on clearing access in respect of trading venues and central counterparties, should the central counterparty, the trading venue or the market be potentially put at risk.

On this basis, the Commission concludes that it is **not necessary to temporary exclude** exchange-traded derivatives from the scope of Articles 35 and 36 of MiFIR.