

Markets in financial instruments

2020/0152(COD) - 11/02/2021 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 339 votes to 294, with 57 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council amending Directive 2014/65/EU as regards information requirements, product governance and position limits to help the recovery from the COVID-19 pandemic.

As a reminder, the main aim of the proposal is to make targeted changes to the regulatory requirements imposed by the Markets in Financial Instruments Directive (MIFID II) in order to support the recovery from the COVID-19 pandemic.

Parliament adopted its position at first reading in accordance with the ordinary legislative procedure by amending the Commission proposal as follows:

Purpose of the amendments

It is clarified that the general aim of the limited targeted changes to existing EU financial services law is to remove unnecessary red tape and to introduce calibrated measures that are deemed effective in alleviating economic hardship. These amendments aim to avoid introducing changes that would lead to more administrative burdens for the sector and leaving aside complex legislative issues that will be resolved in the planned review of the MiFID II Directive.

Further efforts to reduce regulatory complexity and investment firms' compliance costs and to eliminate distortions of competition could be considered, provided that sufficient account is taken of investor protection at the same time.

Exemption from product governance requirements

The issuance of bonds is crucial to raise capital and to overcome the COVID-19 crisis. Bonds with no other embedded derivative than a make-whole clause are generally considered safe and simple products that are eligible for retail clients.

Under the amended text, an investment firm should be exempted from the product governance requirements, where the investment service it provides relates to bonds with no other embedded derivative than a make-whole clause or where the financial instruments are marketed or distributed exclusively to eligible counterparties.

Assessing the ancillary nature of a trading activity

Currently, persons applying for the ancillary activity exemption are required to notify annually the relevant competent authority that they make use of that exemption and to provide the necessary elements to satisfy the two quantitative tests that determine whether their trading activity is ancillary to their main business.

The amendments clarify that in order to establish when an activity is considered ancillary, competent authorities could rely on a combination of quantitative and qualitative elements, subject to compliance with clearly defined conditions.

The Commission should be empowered (i) to provide guidance on the circumstances under which national authorities may apply an approach combining quantitative and qualitative threshold criteria, and (ii) to develop, by 31 July 2021 at the latest, a delegated act specifying the criteria for establishing when an activity is to be considered as ancillary to the main business at group level.

Research services of investors

Research on small and middle-capitalisation issuers is essential to help issuers to connect with investors. This research increases the visibility of issuers and thus ensures a sufficient level of investment and liquidity.

The amending directive provides that research increases the visibility of issuers and thus ensures a sufficient level of investment and liquidity. Investment firms should be allowed to pay jointly for the provision of research and for the provision of execution services provided certain conditions are met. One of the conditions should be that the research is provided on issuers whose market capitalisation did not exceed EUR 1 billion, as expressed by the end-year quotes, for the 36 months preceding the provision of the research.

Review

By 31 July 2021, and based on the outcome of a public consultation, the Commission should review, inter alia, (i) the operation of the structure of the securities markets, reflecting the new economic reality after 2020, data and data quality issues related to market structure, and the transparency rules, including issues related to third countries, (ii) the rules on research, (iii) the rules on all forms of payments to advisers and their level of professional qualification, (iv) product governance, (v) loss reporting and (vi) client categorisation. If appropriate, the Commission should submit a legislative proposal to the European Parliament and to the Council.

In order to ensure that the objectives pursued by the amendments to Directives 2013/36/EU and (EU) 2019/878 are met, and in particular to avoid any disruptive effects for Member States, it is foreseen that these amendments should become applicable from 28 December 2020.