

Amendments to the Markets in Financial Instruments Directive (MiFID 2)

2021/0384(COD) - 02/03/2023 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted the report by Danuta Maria HÜBNER (EPP, PL) on the proposal for a directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments.

The committee responsible recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the proposal as follows:

Systematic internaliser

The report seeks to amend Directive 2014/65/EU regarding a systematic internaliser. The Article provides that an investment firm should be considered to be a systematic internaliser only when it is deemed to perform its activities on an organised, frequent, systematic and substantial basis or when it chooses to opt-in under the systematic internaliser regime. The quantitative criteria, related to the transaction reporting role of systematic internalisers, have led to a significant increase in the number of systematic internalisers in the Union and in the regulatory burden both on ESMA, which is required to assess the quantitative criteria for investment firms that qualify as systematic internalisers, and on investment firms themselves. In particular, the regulatory burden disproportionately affects smaller investment firms, which would benefit from a lighter and more flexible regime. Directive 2014/65/EU should therefore **limit the systematic internaliser regime** to investment firms that meet the qualitative criteria or investment firms that choose to opt-in to the systematic internaliser regime.

Clarification of best execution

Directive 2014/65/EU contains an article on the obligation to execute orders on terms most favourable to the client ('best execution'). However, different interpretations of that article by national competent authorities have led to widely diverging application of best execution requirements and of market practice supervision. Therefore, the report proposes to **clarify best execution requirements** for professional clients. ESMA should develop **draft regulatory technical standards** on the criteria that should be taken into account for the purpose of defining and assessing the order execution policy.

Market volatility

Directive 2014/65/EU contains rules that require trading venues to implement mechanisms designed to limit excessive volatility in the markets, notably trading halts and price collars. However, the extreme circumstances that energy and commodity derivatives markets have experienced throughout the energy crisis of 2022 have led to a very low number of activations of those mechanisms and have shown that there is a lack of transparency around the activation of those mechanisms by the relevant trading venues in the Union.

The report calls for further information and more **transparency** on the circumstances that lead to trading being halted and on the main principles for establishing the technical parameters connected to the activation of those mechanisms. In addition, ESMA should consider to what extent the level of discretion left to trading venues regarding to the activation of those mechanisms should be reduced.

In addition, national competent authorities should carefully monitor the use of those mechanisms by trading venues and make use of their supervisory powers as appropriate.

Commodity derivatives markets

ESMA should consider that commodity derivatives markets play an important role in ensuring that market participants can properly risk manage the necessary investments for the energy transition. The report highlights the importance of setting the right parameters to ensure that the Union has competitive liquid commodity derivatives markets that ensure the strategic autonomy of the Union, while preventing market abuse and supporting orderly pricing and settlement conditions.