

Markets in financial instruments

2002/0269(COD) - 08/12/2003 - Council position

The common position was adopted by qualified majority, Ireland, Luxembourg, Finland, Sweden and the United Kingdom voting against. The common position is broadly in line with the Commission's proposal as well as the European Parliament's opinion. The main elements of this common position are as follows: - on the issue of "internalisation" by banks and investment firms of client orders to buy and sell equities outside regulated markets, the Council has now agreed that it must be allowed in all Member States, whereas some countries do not currently allow it. However, the compromise text attaches conditions to prevent market distortion and ensure investors, particularly retail investors, are not sold short or overcharged through a lack of market transparency; - for deals up to a certain value - the Council has agreed on a threshold value somewhat higher than the Parliament's opinion - investment firms would need to reveal to the markets details of client orders and, if the firms are trading on their own account, some indication of the terms on which they themselves stand ready to buy or sell a specified share. For larger deals where it can be assumed professional investors are involved, these requirements would not apply, allowing prices to be fixed by a process of negotiation, which could continue ("price improvement") even after an initial quote. Firms would not be obliged to offer each quote to all their clients, professional and retail they would be able to decide on whom to give access to each specific quote, provided they do not discriminate between investors in the same category; - as far as ensuring retail investors are not sold inappropriate products, the Council's text clarifies and adds some nuances to the Commission's proposal and to the Parliament's opinion. It provides for a full suitability test to be applied when a firm is providing investment advice, no suitability test for execution-only business instigated by the customer and a "light" suitability test for circumstances in between. The Commission can support this solution. The Council's political agreement also reflects a compromise on when "home country" regulation should apply, in other words in which respects investment firms' activities should be regulated by the authorities in the Member State where they are principally based, and where there should be "host country" regulation" in the Member States where they operate.