## Basic information

| | |
|---|---|
| **2011/0296(COD)**<br><br>COD - Ordinary legislative procedure (ex-codecision procedure)<br>Regulation | Procedure completed |
| Markets in financial instruments; OTC derivatives, central counterparties and trade repositories<br><br>Amending Regulation (EU) No 648/2012, Regulation 'EMIR' 2010/0250 (COD)<br>See also 2011/0298(COD)<br>Amended by 2016/0034(COD)<br>Amended by 2017/0230(COD)<br>Amended by 2017/0359(COD)<br>Amended by 2020/0266(COD)<br>Amended by 2021/0385(COD)<br>Amended by 2022/0411(COD)<br><br>**Subject**<br><br>2.50.03 Securities and financial markets, stock exchange, CIUTS, investments<br>2.50.08 Financial services, financial reporting and auditing<br>2.50.10 Financial supervision | |

## Key players

European Parliament

| Committee responsible | Rapporteur | Appointed |
|---|---|---|
| ECON Economic and Monetary Affairs | FERBER Markus (PPE) | 21/09/2010 |
| | Shadow rapporteur<br>GOEBBELS Robert (S&D)<br>SCHMIDT Olle (ALDE)<br>GIEGOLD Sven (Verts/ALE)<br>SWINBURNE Kay (ECR)<br>KLUTE Jürgen (GUE/NGL) | |

| Committee for opinion | Rapporteur for opinion | Appointed |
|---|---|---|
| DEVE Development | JOLY Eva (Verts/ALE) | 07/11/2011 |
| BUDG Budgets | The committee decided not to give an opinion. | |
| ITRE Industry, Research and Energy | KRAHMER Holger (ALDE) | 14/12/2011 |
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|---|---|---|---|
| | JURI Legal Affairs | The committee decided not to give an opinion. | |

Council of the European Union

| Council configuration | Meetings | Date |
|---|---|---|
| General Affairs | 3312 | 2014-05-13 |
| Economic and Financial Affairs ECOFIN | 3248 | 2013-06-21 |
| Economic and Financial Affairs ECOFIN | 3290 | 2014-01-28 |
| Economic and Financial Affairs ECOFIN | 3220 | 2013-02-12 |
| Economic and Financial Affairs ECOFIN | 3271 | 2013-11-15 |

European Commission

| Commission DG | Commissioner |
|---|---|
| Financial Stability, Financial Services and Capital Markets Union | BARNIER Michel |

European Economic and Social Committee

**Key events**

| Date | Event | Reference | Summary |
|---|---|---|---|
| 20/10/2011 | Legislative proposal published | COM(2011)0652 | Summary |
| 15/11/2011 | Committee referral announced in Parliament, 1st reading | | |
| 26/09/2012 | Vote in committee, 1st reading | | |
| 04/10/2012 | Committee report tabled for plenary, 1st reading | A7-0303/2012 | Summary |
| 25/10/2012 | Debate in Parliament | | |
| 26/10/2012 | Decision by Parliament, 1st reading | T7-0407/2012 | Summary |
| 26/10/2012 | Results of vote in Parliament | | |
| 12/02/2013 | Debate in Council | | |
| 21/06/2013 | Debate in Council | | |
| 15/11/2013 | Debate in Council | | |
| 28/01/2014 | Debate in Council | | |
| 15/04/2014 | Decision by Parliament, 1st reading | T7-0385/2014 | Summary |
| 15/04/2014 | Results of vote in Parliament | | |
| 13/05/2014 | Act adopted by Council after Parliament's 1st reading | | |
| 15/05/2014 | Final act signed | | |
| 15/05/2014 | End of procedure in Parliament | | |
| 12/06/2014 | Final act published in Official Journal | | |

## Technical information

| | |
|---|---|
| **Procedure reference** | 2011/0296(COD) |
| **Procedure type** | COD - Ordinary legislative procedure (ex-codecision procedure) |
| **Procedure subtype** | Legislation |
| **Legislative instrument** | Regulation |
| **Amendments and repeals** | Amending Regulation (EU) No 648/2012, Regulation 'EMIR' 2010/0250(COD)<br>See also 2011/0298(COD)<br>Amended by 2016/0034(COD)<br>Amended by 2017/0230(COD)<br>Amended by 2017/0359(COD)<br>Amended by 2020/0266(COD)<br>Amended by 2021/0385(COD)<br>Amended by 2022/0411(COD) |
| **Legal basis** | Treaty on the Functioning of the European Union TFEU 114-p1 |
| **Other legal basis** | Rules of Procedure EP 165 |
| **Mandatory consultation of other institutions** | European Economic and Social Committee |
| **Stage reached in procedure** | Procedure completed |
| **Committee dossier** | ECON/7/07585 |

## Documentation gateway

**European Parliament**

| Document type | Committee | Reference | Date | Summary |
|---|---|---|---|---|
| Committee draft report | | PE485.888 | 13/03/2012 | |
| Amendments tabled in committee | | PE489.477 | 11/05/2012 | |
| Amendments tabled in committee | | PE489.472 | 14/05/2012 | |
| Amendments tabled in committee | | PE489.478 | 14/05/2012 | |
| Committee opinion | ITRE | PE486.103 | 01/06/2012 | |
| Committee opinion | DEVE | PE489.531 | 20/06/2012 | |
| Committee report tabled for plenary, 1st reading/single reading | | A7-0303/2012 | 04/10/2012 | Summary |
| Text adopted by Parliament, partial vote at 1st reading /single reading | | T7-0407/2012 | 26/10/2012 | Summary |
| Text adopted by Parliament, 1st reading/single reading | | T7-0385/2014 | 15/04/2014 | Summary |

**Council of the EU**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Draft final act | 00022/2014/LEX | 15/05/2014 | |

**European Commission**

| Document type | Reference | Date | Summary |
|---|---|---|---|

| | | | |
|---|---|---|---|
| Legislative proposal | COM(2011)0652 | 20/10/2011 | Summary |
| Commission response to text adopted in plenary | SP(2014)471 | 09/07/2014 | |
| Follow-up document | COM(2017)0298 | 09/06/2017 | Summary |
| Follow-up document | COM(2017)0468 | 11/09/2017 | Summary |
| Follow-up document | COM(2019)0069 | 30/01/2019 | |

**National parliaments**

| Document type | Parliament/Chamber | Reference | Date | Summary |
|---|---|---|---|---|
| Contribution | PT_PARLIAMENT | COM(2011)0652 | 09/01/2012 | |
| Contribution | IT_SENATE | COM(2011)0652 | 06/06/2012 | |
| Contribution | UK_HOUSE-OF-LORDS | COM(2011)0652 | 12/07/2012 | |
| Contribution | RO_CHAMBER | COM(2011)0652 | 07/11/2012 | |

**Other institutions and bodies**

| Institution/body | Document type | Reference | Date | Summary |
|---|---|---|---|---|
| EDPS | Document attached to the procedure | N7-0077/2012<br>OJ C 147 25.05.2012, p. 0001 | 10/02/2012 | Summary |
| EESC | Economic and Social Committee: opinion, report | CES0470/2012 | 22/02/2012 | |
| ECB | European Central Bank: opinion, guideline, report | CON/2012/0021<br>OJ C 161 07.06.2012, p. 0003 | 22/03/2012 | Summary |

**Additional information**

| Source | Document | Date |
|---|---|---|
| National parliaments | IPEX | |
| European Commission | EUR-Lex | |
| European Commission | EUR-Lex | |

**Final act**

Regulation 2014/0600
OJ L 173 12.06.2014, p. 0084 Summary

Corrigendum to final act 32014R0600R(05)
OJ L 187 12.07.2016, p. 0030

Corrigendum to final act 32014R0600R(01)
OJ L 341 27.11.2014, p. 0031

Corrigendum to final act 32014R0600R(08)
OJ L 278 27.10.2017, p. 0054

Corrigendum to final act 32014R0600R(03)
OJ L 270 15.10.2015, p. 0004

| Delegated acts | |
|---|---|
| **Reference** | **Subject** |
| 2016/2767(DEA) | Examen d'un acte délégué |
| 2017/2741(DEA) | Examen d'un acte délégué |
| 2016/2751(DEA) | Examen d'un acte délégué |
| 2016/2765(DEA) | Examen d'un acte délégué |
| 2017/2809(DEA) | Examen d'un acte délégué |
| 2019/2546(DEA) | Examen d'un acte délégué |
| 2019/2666(DEA) | Examen d'un acte délégué |
| 2016/2739(DEA) | Examen d'un acte délégué |
| 2016/2786(DEA) | Examen d'un acte délégué |
| 2016/2849(DEA) | Examen d'un acte délégué |
| 2016/2852(DEA) | Examen d'un acte délégué |
| 2016/2851(DEA) | Examen d'un acte délégué |
| 2016/2785(DEA) | Examen d'un acte délégué |
| 2016/2850(DEA) | Examen d'un acte délégué |
| 2016/2866(DEA) | Examen d'un acte délégué |
| 2017/2860(DEA) | Examen d'un acte délégué |
| 2017/2979(DEA) | Examen d'un acte délégué |
| 2016/2801(DEA) | Examen d'un acte délégué |
| 2016/2802(DEA) | Examen d'un acte délégué |
| 2016/2812(DEA) | Examen d'un acte délégué |
| 2018/2983(DEA) | Examen d'un acte délégué |
| 2022/2531(DEA) | Examen d'un acte délégué |
| 2020/2939(DEA) | Examen d'un acte délégué |
| 2022/2557(DEA) | Examen d'un acte délégué |
| 2022/2507(DEA) | Examen d'un acte délégué |
| 2022/2596(DEA) | Examen d'un acte délégué |
| 2021/3054(DEA) | Examen d'un acte délégué |
| 2023/2529(DEA) | Examen d'un acte délégué |
| 2025/2534(DEA) | Examen d'un acte délégué |
| 2025/2714(DEA) | Examen d'un acte délégué |

| | |
|---|---|
| 2025/2765(DEA) | Examen d'un acte délégué |
| 2025/2773(DEA) | Examen d'un acte délégué |
| 2023/2530(DEA) | Examen d'un acte délégué |
| 2025/2712(DEA) | Examen d'un acte délégué |
| 2025/2762(DEA) | Examen d'un acte délégué |
| 2025/2761(DEA) | Examen d'un acte délégué |
| 2025/3000(DEA) | Examen d'un acte délégué |
| 2026/2628(DEA) | Examen d'un acte délégué |
| | |

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

2011/0296(COD) - 22/03/2012

**OPINION OF THE EUROPEAN CENTRAL BANK**

The ECB's opinion is given in response to requests from the Council of the European Union for opinions on the following :

- a proposal for a directive on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council;
- this proposal for a regulation on markets in financial instruments and amending Regulation (EMIR) on OTC derivatives, central counterparties and trade repositories;
- a proposal for a directive on criminal sanctions for insider dealing and market manipulation; and
- a proposal for a regulation on insider dealing and market manipulation (market abuse)

**The ECB supports the proposed measures** to improve the regulation of markets in financial instruments as an important step towards strengthening the protection of investors and creating a sounder and safer financial system in the European Union. It makes the following general observations:

**Single European rulebook in the financial sector and ECB's advisory role:** the ECB strongly supports the development of a single European rulebook for all financial institutions. It recommends ensuring that only framework principles reflecting basic political choices and substantive matters remain subject to the ordinary legislative procedure and that technical rules should be adopted as delegated or implementing acts as appropriate through the prior development of draft regulatory or draft implementing

standards by the European Supervisory Authorities (ESAs).

The ECB expects to be consulted as appropriate in due time on these proposed Union acts. Additionally, it recommends ensuring cross-sectoral consistency of Union financial services legislation.

**Powers of competent authorities, role of ESMA and of macro-prudential authorities**: the ECB welcomes that the proposed framework strengthens and aligns the powers of the authorities supervising investment firms and markets in financial instruments as well as the exercise of their investigatory powers, putting special emphasis on cross-border cooperation.

It supports the strong role of the European Securities and Market Authority (ESMA) in the proposed framework and notably with regard to the facilitation and coordination function and the development of technical standards. It recoomends:

- further improvements in the cooperation and exchange of information within the European System of Financial Supervision and between supervisory authorities and ESCB central banks, including the ECB, when this information is relevant for the performance of their respective tasks;
- setting up and enhancing adequate cooperation procedures with macro-prudential authorities where threats to the stability of financial system have to be assessed. This might imply cooperation between competent authorities and the national macro-prudential authorities or, in other instances, cooperation by ESMA with the European Systemic Risk Board (ESRB).

Moreover, to ensure transparency and consistency of the administrative sanctions adopted within the Union, Member States should notify the Commission and ESMA of the applicable national rules and any subsequent amendments to them.

**Review of Directive 2004/39/EC**: the ECB makes the following observations:

*-Developments in market structure*: the ECB supports the Commission's proposals aimed at upgrading the market structure framework in the light of financial innovation and the latest technological developments, and notably the intro-duction of regulatory proposals on a new trading platform, i.e. the organised trading facility (OTF), which would extend the scope of the Union regulatory framework.

*-Transparency requirements and data consolidation*: the proposed MiFID and the proposed MiFIR introduce provisions aiming to enhance the data consolidation for transparency information. According to these provisions, 'consolidated tape providers' (CTPs) will collect information from trading venues and, for the trades executed outside trading venues, from investment firms via approved publication arrangements.

The ECB considers that proper transparency can only be appropriately ensured with the establishment of one single CTP. It considers that experience since the transposition of Directive 2004/39/EC has shown a market failure in data consolidation that would justify legislative proposals already at this stage to address these issues.

*-Transaction reporting:* the ECB stresses the importance of ensuring that transaction reporting information can be easily accessed in a single system at European level appointed by ESMA, as soon as possible rather than following a possible review of the proposed MiFIR within two years of its entry into force.

*-Exemptions for central bank transactions from disclosure and reporting obligations*: the ECB would strongly recommend exempting ESCB central banks transactions from the transparency requirements. Transactions where an ESCB central bank is a counterparty should be exempt also from reporting obligations.

*-Small and medium-sized enterprise markets*: given the difficulties recently encountered by many SMEs in accessing finance, and assuming that such difficulties will arise again at times of market stress, the establishment of a trading venue specialising in SME issues is certainly timely.

*-Trading of standardised OTC derivatives*: the ECB supports the provisions underpinning the requirement that eligible OTC derivatives should be traded on regulated markets, MTFs and OTFs and entrusting ESMA with the identification of the precise scope of such trading obligation taking into account the liquidity. It notes that such an approach may need to be complemented to address the Financial Stability Board recommendation and considers that regular monitoring of the trading of non-standardised contracts outside a regulated market, an MTF or OTF should be carried out at Union level.

*-Enhanced requirements for algorithmic trading, including high-frequency trading:*

- the ECB is of the view that the regulatory framework should clarify that all entities engaged in AT on a professional basis should be considered within the definition of investment firms and thus fall under the scope of the MiFID and be subject to supervision and monitoring of their activities by competent authorities;

- to facilitate cross-market surveillance and to prevent and detect market abuse, the ECB is of the view that such unique identifiers should be developed for the identification of trades generated by any AT within and across trading platforms;

- whilst the ECB considers that the Commission should be empowered to set a maximum ratio of unexecuted orders to transactions, the ECB is of the view that the setting of a minimum ratio of unexecuted orders to transactions is not necessary.

*-Position limits and reporting on commodity derivatives*: the ECB stresses the importance of properly addressing the risk of regulatory arbitrage and distortion of competition not only across Member States but also vis-à-vis other major financial centres. Reaching a common approach in this area is therefore of paramount importance. This may be achieved by providing a role for ESMA both in the elaboration of common principles at Union level and in the coordination of the measures taken by national competent authorities.

In addition, while the ECB supports the adoption of limits to position taking, there are some aspects that require further clarification. This applies in particular to the definition of an appropriate threshold, the period over which these limits should be applied and the use by market participants of the derivative contracts.

*-Investor protection and supervisory framework*: the ECB welcomes the empowerment of ESMA to temporarily prohibit or restrict the marketing, distribution or sale of certain financial instruments or a type of financial activity or practice. It recommends ensuring proper coordination with the ESRB on these aspects. The ECB:

- underlines the necessity of: (i) clarifying the definition of 'structured deposits'; (ii) specifying the consumer protection regime applicable to the financial products; and (iii) ensuring a consistent approach across the different Union legislative initiatives, such as the review of Directive 94 /19/EC on deposit-guarantee schemes and the ongoing work on packaged retail investment products on those aspects;

- highlights the importance of designing and implementing to the extent possible in close cooperation among the ESAs the regulatory and supervisory frameworks related to investor protection, in the area, for instance, of cross-selling practices;

- considers it might be useful to request Member States to establish criteria clarifying which categories of entities could be eligible for treatment as professional clients. ESMA could also be invited to provide guidance in this field.

*-Third country firms:* the ECB notes that ensuring an equal level of investors' protection and equal regulatory standards for the activities of third country firms compared to EU/EEA firms is of crucial relevance and necessary to avoid any market distortion.

It considers that, to ensure that retail investors would effectively receive the same degree of protection, the cooperation arrangements with the third country should ensure that the requirement for sufficient initial capital would effectively protect investors, given that only the third country firm, and not the branch, is the bearer of rights and obligations and this is ultimately responsible vis-à-vis the investors.

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

2011/0296(COD) - 10/02/2012

**OPINION OF THE EUROPEAN DATA PROTECTION SUPERVISOR** on the Commission proposals for a a directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council, and for a Regulation of the European Parliament and of the Council on markets in financial instruments and amending Regulation on OTC derivatives, central counterparties and trade repositories.

The EDPS was informally consulted prior to the adoption of the proposals. He notes that several of his comments have been taken into account in the proposals.

**Several aspects of the proposals** have an impact on the rights of individuals relating to the processing of their personal data. These are: 1) obligations to keep records and transaction reporting; 2) powers of competent authorities (including power to inspect and power to require telephone and data traffic); 3) publication of sanctions; 4) reporting of violations, and in particular provisions on whistle-blowing; 5) cooperation between competent authorities of Member States and the ESMA.

**The EDPS makes the following recommendations:**

**Applicability of data protection legislation**: insert a substantive provision in the proposals with the following wording: 'With regards to the processing of personal data carried out by Member States within the framework of this Regulation, competent authorities shall apply the provisions of national rules implementing Directive 95/46/EC. With regards to the processing of personal data carried out by ESMA within the framework of this Regulation, ESMA shall comply with the provisions of Regulation (EC) No 45/2001'.

**Obligation to keep records and transaction reporting:** replace in Article 22 of the proposed Regulation the minimum retention period of 5 years with a maximum retention period. The chosen period should be necessary and proportionate for the purpose for which data have been collected.

**Duty to record telephone conversation or electronic communications**: specify in Article 16.7 of the proposed Directive (i) the purpose of the recording of telephone conversations and electronic communications and (ii) to what kind of telephone conversations and electronic communications it is referred toas well as the categories of data related to the conversations and communications will be recorded. Personal data must adequate, relevant and not excessive in relation to the purposes for which they are collected. The EDPS invites the legislator thoroughly to evaluate which retention period is necessary for the purpose of the recording of telephone conversations and electronic communications within the specific scope of the proposal.

**Powers of competent authorities:**

- clarify in Article 71.2(c) of the proposed Directive that the inspection power is limited to the premises of investment firms and does not cover private premises;
- introduce in Article 71.2(d) concerning the power to require telephone and traffic data, the prior judicial authorisation as a general requirement and the requirement of a formal decision specifying: (i) the legal basis (ii) the purpose of the request (iii) what information is required (iv) the time-limit within which the information is to be provided and (v) the right of the addressee to have the decision reviewed by the Court of Justice;
- clarify to what telephone and traffic data records Article 71.2(d) is referring.

**Publication of sanctions or other measures:** in light of doubts expressed in the Opinion, assess the necessity and proportionality of the proposed system of mandatory publication of sanctions. Subject to the outcome of the necessity and proportionality test, in any event provide for adequate safeguards to ensure respect of the presumption of innocence, the right of the persons concerned to object, the security/accuracy of the data and their deletion after an adequate period of time.

**Reporting of breaches**: with regard to Article 77.1

- add in letter b) a provision saying that: 'the identity of these persons should be guaranteed at all stages of the procedure, unless its disclosure is required by national law in the context of further investigation or subsequent judicial proceedings';
- add a letter d) requiring Member States to put in place 'appropriate procedures to ensure the right of the accused person of defence and to be heard before the adoption of a decision concerning him and the right to seek effective judicial remedy against any decision or measure concerning him';
- remove 'the principles laid down' from letter c) of the provision to make the reference to the Directive more comprehensive and binding.

**Information exchanges with third countries:** in view of the risks concerned in such transfers the EDPS recommends adding specific safeguards such as the case-by-case assessment, the assurance of the necessity of the transfer, the requirement for prior express authorisation of the competent authority to a further transfer of data to and by a third country and the existence of an adequate level of protection of personal data in the third country receiving the personal data.

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

2011/0296(COD) - 20/10/2011 - Legislative proposal

PURPOSE: to adopt new rules for more sound, transparent and efficient EU financial markets (over the counter 'OTC' derivatives, central counterparties and trade repositories).

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: **the Markets in Financial Instruments Directive (MiFID) (Directive 2004/39/EC)**, in force since November 2007, is a core pillar in EU financial market integration. It establishes a regulatory framework for the provision of investment services in financial instruments (such as brokerage, advice, dealing, portfolio management, underwriting etc.) by banks and investment firms and for the operation of regulated markets by market operators. It also establishes the powers and duties of national competent authorities in relation to these activities.

**The result after 3.5 years in force** is more competition between venues in the trading of financial instruments, and more choice for investors in terms of service providers and available financial instruments, progress which has been compounded by technological advances. Overall, transaction costs have decreased and integration has increased.

However, **some problems have surfaced**:

- the benefits from this increased competition have not flowed equally to all market participants and have not always been passed on to the end investors, retail or wholesale;
- the market fragmentation implied by competition has also made the trading environment more complex;
- market and technological developments have outpaced various provisions in MiFID;
- the financial crisis has exposed weaknesses in the regulation of instruments other than shares, traded mostly between professional investors.

In line with the recommendations from the de Larosière group and the conclusions of the ECOFIN Council of June 2009, **the revision of MiFID therefore constitutes an integral part of the reforms aimed at establishing a safer, sounder, more transparent and more responsible financial system**. It is also an **essential vehicle for delivering on the G20commitment** to tackle less regulated and more opaque parts of the financial system, and improve the organisation, transparency and oversight of various market segments, especially in those instruments traded mostly over the counter (OTC), complementing the legislative proposal on OTC derivatives, central counterparties and trade repositories.

The proposal amending MiFID is **divided in two**:

- **this draft Regulation** on markets in financial instruments and amending Regulation [EMIR] on OTC derivatives, central counterparties and trade repositories;
- the proposed Directive on markets in financial instruments, repealing Directive 2004/39/EC of the European Parliament and of the Council.

IMPACT ASSESSMENT: policy options were assessed against different criteria: transparency of market operations for regulators and market participants, investor protection and confidence, level playing field for market venues and trading systems in the EU, and cost-effectiveness. Overall, the review of MiFID is estimated to generate one-off compliance costs of between **EUR 512 and EUR 732 million and ongoing costs of between EUR 312 and EUR 586 million**. This represents one-off and ongoing cost impacts of respectively 0.10% to 0.15% and 0.06% to 0.12% of total operating spending of the EU banking sector. This is far less than the costs imposed at the time of the introduction of MiFID.

LEGAL BASIS: Article 114 of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the proposed Regulation sets out requirements in relation to the disclosure of trade transparency data to the public and transaction data to competent authorities, removing barriers to non-discriminatory access to clearing facilities, the mandatory trading of derivatives on organised venues, specific supervisory actions regarding financial instruments and positions in derivatives, and the provision of services by third-country firms without a branch.

A central aim of the proposal is to **ensure that all organised trading is conducted on regulated trading venues**: regulated markets, multilateral trading facilities (MTFs) and organised trading facilities (OTFs). **Identical pre and post trade transparency requirements will apply to all of these venues**. The transparency requirements will be calibrated for different types of instruments, notably equity, bonds, and derivatives, and for different types of trading, notably order book and quote driven systems.

The main elements of the proposal are as follows:

- **Extension of transparency rules to equity like instruments and actionable indications of interests**: MiFID has established transparency rules, both pre and post trade that apply to shares admitted to trading on regulated markets, including when those shares are traded on an MTF or over the counter (OTC). The proposed provisions first extend the transparency rules applicable by these shares to equity like instruments such as depository receipts, exchange-traded funds, certificates and other similar financial instruments issues by companies. The extension of the transparency requirements will also cover actionable indications of interests (IOIs).
- **Increased consistency in the application of waivers to pre trade transparency for equities markets**: the proposed provisions will oblige the competent authorities to inform ESMA about the use of the waivers in their markets and ESMA will issue an opinion on the compatibility of the waiver with the requirements established in this Regulation and prospective delegated acts.

- **Extension of transparency rules to bonds, structured finance products and derivatives**: the proposal extends the principles of transparency rules up to now only applicable to equity markets to bonds, structured finance products, emission allowances and derivatives.
- **Increased and more efficient data consolidation**: the proposed provisions will contribute to reducing the cost of data by requesting trading venues, that is regulated markets, MTFs or OTFs to make post trade information available free of charge 15 minutes after the execution of the transaction, to offer pre- and post-trade data separately, and by giving the possibility to the Commission to clarify by delegated acts what constitutes a reasonable commercial basis. The proposal also requires investment firms to make public trades executed outside trading venues via Approved Publication Arrangements which will themselves be regulated in the Directive. This should significantly improve the quality of OTC data and consequently facilitate its consolidation.
- **Transparency for investment firms trading OTC including systematic internalisers**: the existing transparency rules for systematic internalisers will apply to shares and equity-like instruments, while new provisions would be introduced for bonds, structured finance products admitted to trading on a regulated market or for which a prospectus has been published, emission allowances and derivatives which are clearing-eligible or are admitted to trading on a regulated market or are traded on an MTF or an OTF.
- **Transaction reporting**: all transactions in financial instruments will need to be reported to competent authorities, except for transactions in financial instruments which are not traded in an organised way and are not susceptible to market abuse and cannot be used for abusive purposes. Competent authorities will have full access to records at all stages in the order execution process, from the initial decision to trade, through to its execution.
- **Trading of derivatives**: consistent with the requirements already proposed by the Commission (EMIR) to increase central clearing of OTC derivatives, the proposed provisions in this Regulation will require trading in suitably developed derivatives to occur only on eligible platforms, that is regulated markets, MTFs or OTFs. This obligation will be imposed on both financial and non financial counterparties exceeding the clearing threshold in EMIR.
- **Non-discriminatory clearing access**: the proposed provisions will prohibit discriminatory practices and prevent barriers that may prevent competition for the clearing of financial instruments.
- **Supervision of products and positions**: the proposed amendments will greatly increase the supervision of products and services by introducing the possibilities on the one hand, for competent authorities to set permanent bans on financial products or activities or practices with coordination by ESMA, and on the other hand, for ESMA to also temporarily ban products, practices and services. The proposed provisions in the Regulation introduce a role for ESMA to coordinate the measures taken at national level and specific powers to manage or limit positions for market participants.
- **Provision of investment services by third country firms without a branch**: the proposal creates a harmonised framework for granting access to EU markets for firms and market operators based in third countries in order to overcome the current fragmentation into national third country regimes and to ensure a level playing field for all financial services actors in the EU territory. The proposal introduces a regime based on a preliminary equivalence assessment of third country jurisdictions by the Commission. Third country firms from third countries for which an equivalence decision has been adopted would be able to request to provide services in the Union.

BUDGETARY IMPLICATIONS: the specific budget implications of the proposal relate to task allocated to ESMA. Total appropriations are estimated at **EUR 1 744 million from 2013 to 2015.**

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 TFEU.

# 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.

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

2011/0296(COD) - 09/06/2017 - Follow-up document

The Commission presents a report on the exemption for third-country central banks and other entities under Regulation (EU) No 600/2014 of the European Parliament and of the Council on the Markets in Financial Instruments Regulation (MiFIR).

The MiFIR Regulation and the Directive MiFID 2 introduce a market structure which aims to ensure that trading, wherever appropriate, takes place on regulated platforms and that trading is made transparent.

In this framework, MiFIR grants an exemption from pre- and post-trade transparency requirements with regard to non-equity financial instruments that benefits regulated markets, market operators and investment firms. Moreover, MIFIR empowers the Commission to extend the scope of this exemption to third-country central banks where the prerequisite conditions are fulfilled.

**Jurisdictions considered:** based on an external study carried out for the Commission, the report assesses the treatment of transactions by third-country central banks. It covers the following countries: **Australia, Brazil, Canada, Hong Kong SAR, India, Japan, Mexico, Singapore, the Republic of Korea, Switzerland, Turkey and the United States – and the Bank for International Settlements (BIS)**. According to the IMF, this group of countries covers almost 90% of the global financial system and 80% of global economic activity and includes the majority of the G20 countries and of members of the Financial Stability Board (FSB).

The relevant **criteria** for assessing the jurisdictions should be based on economic indicators, the size and degree of interconnection between countries' financial sector with that of the Union as well as the soundness of the legal environment that prevails in the third-country jurisdiction. Moreover, to be able to be eligible for the assessment on granting the exemption in MiFIR, a jurisdiction must not be included in the list of non-cooperative jurisdictions by the Financial Action Task Force (FATF).

In order to assess whether to grant an exemption to the central banks of third countries, it was necessary to analyse the rules on **regulatory disclosure of central banks transactions and the transparency** of the operational framework.

The Commission concludes the following:

- in light of their market and/or operational transparency frameworks, the above-mentioned jurisdictions have legal frameworks in place which allow for a **sufficient level of transparency**;
- the trading activity in the EU emanating from these jurisdictions is **substantial enough** to justify an extension to these jurisdictions of the exemption from pre- and post-trade transparency requirements;
- it was appropriate to grant the **exemption to the BIS** whose ability to carry out its important public interest functions and to assist the international central banking community should not be prejudiced.

On the basis of the information obtained, the Commission concludes that it is appropriate to grant an exemption from MiFIR pre- and post-trade transparency requirements in accordance with MIFIR to the third-country central banks assessed in the report.

This conclusion is without prejudice to possible changes in the future, having regard to new evidence submitted by central banks in third countries.

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

2011/0296(COD) - 04/10/2012 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted the report by MARKUS FERBER (EPP, DE) on the proposal for a Regulation of the European Parliament and of the Council on markets in financial instruments and amending Regulation [EMIR] on OTC derivatives, central counterparties and trade repositories.

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

**New category of organised trading facility:** to make European markets more transparent and efficient to level the playing field between various venues offering multilateral trading services it is necessary to introduce a new category of **organised trading facility (OTF)** for bonds, structured finance products, emissions allowances and derivatives and to ensure that it is appropriately regulated and applies non-discriminatory rules regarding access to the facility.

The operator of an OTF should be subject to requirements in relation to the **sound management of potential conflicts of interest and non-discriminatory execution** and should not be allowed to execute in the OTF any transaction between multiple third-party buying and selling interests including client orders brought together in the system against his own proprietary capital.

**Transparency obligations:** all organised trading should be conducted on regulated venues with maximal pre- and post-trade transparency. **Appropriately calibrated** transparency requirements should therefore apply to all types of trading venues, and to all financial instruments traded thereon.

Timely pre- and post-trade transparency requirements taking account of the different characteristics and market structures of specific types of instruments other than shares should thus be introduced and adapted as necessary so as to be workable for request-for-quote systems, whether automated or involving voice trading. Only those financial instruments which are bespoke in their design or insufficiently liquid would be outside the scope of the transparency obligations.

**Exclusions from the scope of the Regulation:** in the interests of legal certainty, the following exclusions are specified:

- While it is important to regulate currency derivatives including currency swaps which give rise to a cash settlement determined by reference to currencies in order to ensure transparency and market integrity spot currency transactions should not fall within the scope of this Regulation;
- It is likewise important to clarify that contracts of insurance in respect of activities of classes set out in Annex I to Directive 2009/138/ECon the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) are not derivatives for the purposes of this Regulation if entered into with a Union or third-country insurance or reinsurance undertaking.
- Furthermore, while risks arising from algorithmic trading should be regulated the use of algorithms in post-trade risk reduction services does not constitute algorithmic trading.

**Ensuring uniform applicable conditions between trading venues:** to this end, the **same pre- and post-trade transparency requirements** should apply to the different types of venues. The transparency requirements should be **proportionate and calibrated** for different types of instruments, including equities, bonds, and derivatives, taking into account the interests of investors and issuers, including government bond issuers, and market liquidity. The requirements should also be calibrated for different types of trading, including order-book and quote-driven systems such as request for quote as well as hybrid and voice broking systems, and take account of issuance, transaction size and characteristics of national markets.

**Systematic internalisers:** these are defined as investment firms which, on an organised regular and systematic basis, deal on own account by executing client orders bilaterally outside a regulated market, an MTF or an OTF.

In order to guarantee the quality of the price formation process, the Regulation **limits the circumstances in which OTC trading can be carried out outside a systematic internaliser**.

Systematic internalisers may decide to give access to their quotes only to their retail clients, only to their professional clients, or to both. They should not be allowed to discriminate within those categories of clients but should be entitled to take account of distinctions between clients, for example in relation to credit risk. Systematic internalisers are not obliged to publish firm quotes in relation to transactions in equity instruments above standard market size and in non-equity instruments above retail market size.

**Trading activities conducted outside regulated execution venues:** the Regulation should ensure that **as much trading as possible which occurs outside regulated execution venues takes place in organised systems to which appropriate transparency requirements apply** while ensuring that large scale and irregular transactions can be concluded.

This Regulation is not intended to prohibit or limit the use of bespoke derivative contracts or make them excessively costly for non-financial institutions. Therefore, the assessment of sufficient liquidity should take account of market characteristics at national level including elements such as the number and type of market participants in a given market, and of transaction characteristics, such as the size and frequency of transactions in that market. In addition, this Regulation is not intended to prevent the use of post-trade risk reduction services.

**Investor protection:** in order to ensure the orderly functioning and integrity of financial markets, investor protection and financial stability, it is necessary to provide a mechanism for monitoring of the design of investment products and for powers to prohibit or restrict the marketing, distribution and sale of any investment product or financial instrument giving rise to serious concerns regarding investor protection, the orderly functioning and integrity of financial markets.

Where certain conditions are met, the competent authority or, in exceptional cases, European Securities and Markets Authority (ESMA) should be able to impose a prohibition or restriction on a precautionary basis before an investment product or financial instrument has been marketed, distributed or sold to clients.

**Details of transactions:** the details of transactions in financial instruments should be reported to competent authorities through a system coordinated by ESMA, to enable them to detect and investigate potential cases of market abuse, to monitor the fair and orderly functioning of markets, as well as the activities of investment firms.

The reports should use a **legal entity identifier** in line with the G-20 commitments.

To enable oversight by all the relevant competent authorities, the Commission should also report on whether the content and format of the reports are sufficient to (i) detect market abuse; (ii) expose priorities for monitoring given the vast amount of data reported; (iii) indicate whether the identity of the decision-maker responsible for the use of an algorithm is needed; and (iv) define the specific arrangements needed to ensure robust reporting of securities lending and repurchase agreements.

Besides, the marking of short sales provides useful supplementary information to enable competent authorities to monitor levels of short selling.

**Third-country firms:** the new regime should (i) harmonize the existing fragmented framework; (ii) ensure certainty and uniform treatment of third-country firms accessing the Union; (iii) ensure that an assessment of effective equivalence has been carried out by the Commission in relation to the regulatory and supervisory framework of third countries; and (iv) provide for a comparable level of protections to clients in the Union receiving services by third-country firms and reciprocal access to third-country markets.

In applying this regime, the Commission and Member States should **prioritise the areas covered by the G-20 commitments and agreements with the Union's largest trading partners** and should have regard to the central role that the Union plays in worldwide financial markets and ensure that the application of third-country requirements: (i) does not prevent Union investors and issuers from investing in or obtaining funding from third countries or (ii) does not prevent third-country investors and issuers from investing, raising capital or obtaining other financial services in Union markets unless this is necessary for objective and evidence-based prudential reasons.

The provisions of this Regulation regulating the provision of services or undertaking of activities by third-country firms in the Union should not affect the possibility for persons established in the Union to receive investment services by a third-country firm in the Union at their own exclusive initiative or for Union investment firms or credit institutions to receive investment services or activities from a third-country firm or for a client to receive investment services from a third-country firm through the mediation of such a credit institution or investment firm.

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

2011/0296(COD) - 26/10/2012 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament adopted by 497 votes to 20, with 17 abstentions, **amendments** to the proposal for a Regulation of the European Parliament and of the Council on markets in financial instruments and amending Regulation [EMIR] on OTC derivatives, central counterparties and trade repositories.

**The matter was referred back to the committee responsible for reconsideration** and the vote was postponed until a subsequent plenary session.

The main amendments adopted by Parliament are the following:

**Scope:** the Regulation should apply to credit institutions authorised under Directive 2006/48/EC and investment firms authorised under the new MiFID Directive where the credit institution or investment firm is providing one or more investment services and/or performing investment activities, and to market operators.

**Organised trading facility** (OTF) means a multilateral system or facility, which is not a regulated market, a multilateral trading facility or a central counterparty, operated by an investment firm or a market operator, in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with the provisions of Title II of the new MIFID Directive.

This new category should be **appropriately regulated and apply non-discriminatory rules regarding access to the facility**. The operator of an OTF should be subject to requirements in relation to the **sound management of potential conflicts of interest** and non-discriminatory execution and should not be allowed to execute in the OTF any transaction between multiple third-party buying and selling interests including client orders brought together in the system against his own proprietary capital.

**Transparency obligations:** all organised trading should be conducted on regulated venues with maximal pre- and post-trade transparency. **Appropriately calibrated transparency requirements** should therefore apply to all types of trading venues, and to all financial instruments traded thereon.

Parliament favours the introduction of timely pre- and post-trade transparency requirements taking account of the different characteristics and market structures of specific types of instruments other than shares. These should be adapted as necessary so as to be workable for request-for-quote systems, whether automated or involving voice trading. Only those financial instruments which are bespoke in their design or insufficiently liquid would be outside the scope of the transparency obligations.

**Exclusions from the scope of the Regulation:** in the interests of legal certainty, the following exclusions are specified:

- While it is important to regulate currency derivatives including currency swaps which give rise to a cash settlement determined by reference to currencies in order to ensure transparency and market integrity spot currency transactions should not fall within the scope of this Regulation;

- It is likewise important to clarify that contracts of insurance in respect of activities of classes set out in Annex I to Directive 2009/138/ECon the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) are not derivatives for the purposes of this Regulation if entered into with a Union or third-country insurance or reinsurance undertaking.

- Furthermore, while risks arising from algorithmic trading should be regulated the use of algorithms in post-trade risk reduction services does not constitute algorithmic trading.

**Ensuring uniform applicable conditions between trading venues:** to this end, the same pre- and post-trade transparency requirements should apply to the different types of venues. The transparency requirements should be **proportionate and calibrated for different types of instruments**, including equities, bonds, and derivatives, taking into account the interests of investors and issuers, including government bond issuers, and market liquidity. The requirements should also be calibrated for different types of trading, including order-book and quote-driven systems such as request for quote as well as hybrid and voice broking systems, and take account of issuance, transaction size and characteristics of national markets.

**Systematic internalisers:** these are defined as investment firms which, on an organised regular and systematic basis, deal on own account by executing client orders bilaterally outside a regulated market, an MTF or an OTF.

In order to guarantee the quality of the price formation process, the Regulation **limits the circumstances in which OTC trading can be carried out outside a systematic internaliser**.

Systematic internalisers may decide to give access to their quotes only to their retail clients, only to their professional clients, or to both. They should not be allowed to discriminate within those categories of clients but should be entitled to take account of distinctions between clients, for example in relation to credit risk. Systematic internalisers are not obliged to publish firm quotes in relation to transactions in equity instruments above standard market size and in non-equity instruments above retail market size.

**Trading activities conducted outside regulated execution venues:** the Regulation should ensure that as much trading as possible which occurs outside regulated execution venues takes place in organised systems to which appropriate transparency requirements apply while ensuring that large scale and irregular transactions can be concluded.

**Market data:** these data should be easily and readily available to users. In this context, approved publication arrangements should be used to ensure the consistency and quality of such data and to enable the delivery of a consolidated tape for post-trade data.

**Investor protection:** in order to ensure the orderly functioning and integrity of financial markets, investor protection and financial stability, it is necessary to provide **a mechanism for monitoring of the design of investment products** and for powers to prohibit or restrict the marketing, distribution and sale of any investment product or financial instrument giving rise to serious concerns regarding investor protection, the orderly functioning and integrity of financial markets.

Where certain conditions are met, the competent authority or, in exceptional cases, **European Securities and Markets Authority (ESMA)** should be able to impose a prohibition or restriction on a precautionary basis before an investment product or financial instrument has been marketed, distributed or sold to clients.

**Details of transactions:** the details of transactions in financial instruments should be reported to competent authorities through a system coordinated by ESMA, to enable them to detect and investigate potential cases of market abuse, to monitor the fair and orderly functioning of markets, as well as the activities of investment firms.

The reports should use a **legal entity identifier in line with the G-20 commitments**.

To enable oversight by all the relevant competent authorities, the Commission should also report on whether the content and format of the reports are sufficient to (i) detect market abuse; (ii) expose priorities for monitoring given the vast amount of data reported; (iii) indicate whether the identity of the decision-maker responsible for the use of an algorithm is needed; and (iv) define the specific arrangements needed to ensure robust reporting of securities lending and repurchase agreements.

Besides, the text underlines that **the marking of short sales** provides useful supplementary information to enable competent authorities to monitor levels of short selling.

**Third-country firms:** the new regime should provide for a comparable level of protection to clients in the Union receiving services from third-country firms as well as **reciprocal access to third-country markets**.

In applying this regime, the Commission and Member States should prioritise the areas covered by the G-20 commitments and agreements with the Union's largest trading partners and should have regard to the central role that the Union plays in worldwide financial markets and ensure that the application of third-country requirements: (i) does not prevent Union investors and issuers from investing in or obtaining funding from third countries or (ii) does not prevent third-country investors and issuers from investing, raising capital or obtaining other financial services in Union markets unless this is necessary for objective and evidence-based prudential reasons.

The provisions of this Regulation regulating the provision of services or undertaking of activities by third-country firms in the Union should not affect the possibility for persons established in the Union to receive investment services by a third-country firm in the Union at their own exclusive initiative or for Union investment firms or credit institutions to receive investment services or activities from a third-country firm or for a client to receive investment services from a third-country firm through the mediation of such a credit institution or investment firm.

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

2011/0296(COD) - 15/04/2014 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 581 votes to 26 with 29 abstentions, a legislative resolution on the proposal for a Regulation of the European Parliament and of the Council on markets in financial instruments and amending Regulation [EMIR] on OTC derivatives, central counterparties and trade repositories.

The report had been sent back to committee during the plenary session of 26 October 2012.

Parliament adopted its position at first reading under the ordinary legislative procedure. The amendments adopted in plenary were the result of a compromise between Parliament and Council. They amend the Commission's proposal as follows:

**Objectives**: the financial crisis had exposed weaknesses in the transparency of financial markets which could contribute to harmful socio-economic effects. The new rules established **uniform requirements for financial instruments** in relation to the following:

- disclosure of trade data to the public;
- reporting of transactions to the competent authorities;
- trading of derivatives on organised venues;
- non-discriminatory access to clearing and non-discriminatory access to trading in benchmarks;
- product intervention powers on position management controls and position limits;
- provision of investment services or activities by third-country firms.

It was recalled that the new legislation was made up of two separate legal instruments: this regulation and the directive on markets in financial instruments. Together, both legal instruments should form the legal framework governing the requirements applicable to investment firms, regulated markets and data reporting services providers.

**Market structure and transparency**: under Directive 2004/39/EC, some trading systems developed which were not adequately captured by the regulatory regime. The new rules would ensure that any trading system in financial instruments were **properly regulated and authorised under an organised venue.**

In order to make Union financial markets more transparent, Parliament and Council agreed to introduce a new trading venue category of **organised trading facility** (OTF) for bonds, structured finance products, emissions allowances and derivatives and to ensure that it was appropriately regulated and applied non-discriminatory rules regarding access to the facility. That new category OTF would complement the existing types of trading venues.

While regulated markets and MTFs had non-discretionary rules for the execution of transactions, the operator of an OTF should carry out order execution on a discretionary basis subject, where applicable, to the pre-transparency requirements and best execution obligations.

**Protection of investors**: the new regime introduced an explicit mechanism for prohibiting or restricting the marketing, distribution and sale of any financial instrument or structured deposit giving rise to serious concerns regarding investor protection, orderly functioning and integrity of financial markets, or commodities markets, or the stability of the whole or part of the financial system.

**In order to limit speculation on commodity markets**, the amended text provided that measures might be taken in order to enable action to counteract possible negative externalities on commodities markets from activities on financial markets. This was true, in particular, for agricultural commodity markets the purpose of which is to ensure a secure supply of food for the population.

**Details of transactions in financial instruments**: these should be reported to competent authorities to enable them to detect and investigate potential cases of market abuse, to monitor the fair and orderly functioning of markets, as well as the activities of investment firms. The obligation should apply whether or not such transactions in any of those financial instruments were carried out on a trading venue. The reports should use a legal entity identifier in line with the G-20 commitments.

**Third country** firms: the new regime should harmonise the existing fragmented framework, ensure certainty and uniform treatment of third-country firms accessing the Union, ensure that an assessment of **effective equivalence in relation to the prudential and business conduct** framework of third countries, and should provide for a comparable level of protection to clients in the Union receiving services by third-country firms.

In applying the regime the Commission and Member States should prioritise the areas covered by the G-20 commitments and agreements with the Union's largest trading partners. They must also ensure that the application of third-country requirements: (i) did not prevent Union investors and issuers from investing in or obtaining funding from third countries or (ii) prevent third-country investors and issuers from investing, raising capital or obtaining other financial services in Union markets unless that is necessary for objective and evidence-based prudential reasons.

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

2011/0296(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.

LEGISLATIVE ACT: Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012.

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.

With the Directive 2014/65/EU markets in financial instruments (MiFID II), **Regulation MiFIR aims to set up a new framework establishing uniform requirements relating to financial instruments** in relation to: i) disclosure of trade data, ii) reporting of transactions to the competent authorities, iii) trading of derivatives and shares on organised venues, iv) non-discriminatory access to CCPs, to trading venues and benchmarks, v) product intervention powers and powers on position management and position limits, vi) provision of investment services or activities by third-country firms.

The main elements of the new Regulation are the following:

**Market structure and transparency**: the new rules are intended to ensure that trading in financial instruments is carried out, as far as possible, on **organised and appropriately regulated venues**, in a totally transparent manner, both before and after the negotiation.

The Regulation introduced a **new trading venue category** of organised trading facility (**OTF** – *organised trading facility*) for bonds, structured finance products, emissions allowances and derivatives. This new category should be appropriately regulated and complement the existing types of trading venues.

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**.

Appropriately **calibrated** transparency requirements therefore need to apply to all types of trading venues, and to all financial instruments traded thereon.

**Access to central counterparties (CCPs)**: rules for accessing CCPs under transparent and non-discriminatory conditions are also introduced. CCPs should accept to clear transactions executed in different trading venues, to the extent that those venues comply with the operational and technical requirements established by the CCP, including the risk management **requirements.**

**Waivers and Volume Cap Mechanism**: the competent authorities may, in certain cases, be able to waive the obligation for market operators and investment firms operating a trading venue to make public the pre-transparency requirements. In order to **ensure that the use of the waivers provided for does not unduly harm price formation**, trading under those waivers is restricted as follows:

- the percentage of trading in a financial instrument carried out on a trading venue under those waivers should be **limited to 4% of the total volume of trading** in that financial instrument on all trading venues across the Union over the previous 12 months;
- overall Union trading in a financial instrument carried out under those waivers shall be **limited to 8% of the total volume of trading** in that financial instrument on all trading venues across the Union over the previous 12 months.

**Trading obligation**: to ensure more trading takes place on regulated trading venues and systematic internalisers, the Regulation introduces, so far as investment companies are concerned, a trading obligation for shares admitted to trading on a regulated market or traded on a trading venue.

**Statement on transactions in financial instruments**: these transactions should be reported to competent authorities to enable them to detect and investigate potential cases of market abuse, to monitor the fair and orderly functioning of markets, as well as the activities of investment firms.

Investment firms shall keep at the disposal of the competent authority, **for five years**, the relevant data relating to all orders and all transactions in financial instruments which they have carried out, whether on own account or on behalf of a client.

**Investor protection and integrity of financial markets**: the new regime introduces an explicit mechanism for prohibiting or **restricting the marketing, distribution and sale** of any financial instrument or structured deposit giving rise to serious concerns regarding investor protection, orderly functioning and integrity of financial markets, or commodities markets, or the stability of the whole or part of the financial system.

So as to **limit speculation on commodity derivatives**, the Regulation provides that measures to be taken to counteract possible negative externalities on commodities markets from activities on financial markets. This is true, in particular, for agricultural commodity markets the purpose of which is to ensure a secure supply of food for the population. In those cases, the measures should be coordinated with the authorities competent for the commodity markets concerned.

**The European Securities and Markets Authority** (ESMA) should be able to request information from any person regarding their position in relation to a derivative contract, to request that position to be reduced, as well as to limit the ability of persons to undertake individual transactions in relation to commodity derivatives.

**Provision of services by third-country firms**: in harmonising the current rules, the new regime guarantees certainty and uniform treatment of third-country firms accessing the Union. It ensures that an **assessment of effective equivalence has been carried out by the Commission** in relation to the prudential and business conduct framework of third countries and should provide for a comparable level of protection to clients in the Union receiving services by third-country firms.

The Commission should ensure that the application of third-country requirements i) does not prevent Union investors and issuers from investing in or obtaining funding from third countries, or ii) prevent third-country investors and issuers from investing, raising capital or obtaining other financial services in Union markets unless that is necessary for objective and evidence-based prudential reasons.

ENTRY INTO FORCE: 02.07.2014. The Regulation applies 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.