Basic information

2011/0298(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Markets in financial instruments. Recast Amending Directive 2002/92/EC 2000/0213(COD) Amending Directive 2011/61/EU 2009/0064(COD) Amended by 2012/0029(COD) Amended by 2016/0033(COD) Amended by 2017/0231(COD) Amended by 2017/0358(COD) Amended by 2018/0047(COD) Amended by 2020/0152(COD) Amended by 2020/0268(COD) Amended by 2021/0384(COD) Amended by 2022/0405(COD) See also 2011/0296(COD) **Subject** 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 2.50.08 Financial services, financial reporting and auditing 2.50.10 Financial supervision	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	FERBER Markus (PPE)	10/05/2011
	Shadow rapporteur GOEBBELS Robert (S&D) SCHMIDT Olle (ALDE) GIEGOLD Sven (Verts /ALE) SWINBURNE Kay (ECR) KLUTE Jürgen (GUE/NGL)	

Committee for opinion	Rapporteur for opinion	Appointed
DEVE Development	JOLY Eva (Verts/ALE)	05/12/2011
ITRE Industry, Research and Energy	KRAHMER Holger (ALDE)	19/12/2011
JURI Legal Affairs		

Council of the European Union	

Council configuration	Meetings	Date
General Affairs	3313	2014-05-13
Economic and Financial Affairs ECOFIN	3290	2014-01-28
Economic and Financial Affairs ECOFIN	3248	2013-06-21
Economic and Financial Affairs ECOFIN	3271	2013-11-15

European Commission

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

Key events

Date	Event	Reference	Summary
20/10/2011	Legislative proposal published	COM(2011)0656	Summary
15/11/2011	Committee referral announced in Parliament, 1st reading		
26/09/2012	Vote in committee, 1st reading		
05/10/2012	Committee report tabled for plenary, 1st reading	A7-0306/2012	Summary
25/10/2012	Debate in Parliament		
26/10/2012	Decision by Parliament, 1st reading	T7-0406/2012	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	T7-0386/2014	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	2011/0298(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)

Procedure subtype	Recast
Legislative instrument	Directive
Amendments and repeals	Amending Directive 2002/92/EC 2000/0213(COD) Amending Directive 2011/61/EU 2009/0064(COD) Amended by 2012/0029(COD) Amended by 2016/0033(COD) Amended by 2017/0231(COD) Amended by 2017/0358(COD) Amended by 2018/0047(COD) Amended by 2020/0152(COD) Amended by 2020/0268(COD) Amended by 2021/0384(COD) Amended by 2022/0405(COD) See also 2011/0296(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 053-p1
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/07644

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE485.882	16/03/2012	
Amendments tabled in committee		PE489.423	15/05/2012	
Amendments tabled in committee		PE489.463	15/05/2012	
Amendments tabled in committee		PE489.464	15/05/2012	
Amendments tabled in committee		PE489.465	15/05/2012	
Amendments tabled in committee		PE489.466	15/05/2012	
Committee opinion	ITRE	PE486.104	04/06/2012	
Committee opinion	DEVE	PE489.528	20/06/2012	
Committee report tabled for plenary, 1st reading/single reading		A7-0306/2012	05/10/2012	Summary
Text adopted by Parliament, partial vote at 1st reading /single reading		T7-0406/2012	26/10/2012	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0386/2014	15/04/2014	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00023/2014/LEX	15/05/2014	

European Commission

Document type	Reference	Date	Summary

Legislative proposal	COM(2011)0656	20/10/2011	Summary
Document attached to the procedure	SEC(2011)1226	20/10/2011	
Document attached to the procedure	SEC(2011)1227	20/10/2011	
Commission response to text adopted in plenary	SP(2014)471	09/07/2014	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2011)0656	09/01/2012	
Contribution	DE_BUNDESRAT	COM(2011)0656	14/02/2012	
Contribution	IT_SENATE	COM(2011)0656	06/06/2012	
Contribution	RO_CHAMBER	COM(2011)0656	07/11/2012	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EDPS	Document attached to the procedure	N7-0077/2012 OJ C 147 25.05.2012, p. 0001	10/02/2012	Summary
ECB	European Central Bank: opinion, guideline, report	CON/2012/0021 OJ C 161 07.06.2012, p. 0003	22/03/2012	Summary
EESC	Economic and Social Committee: opinion, report	CES1038/2012	25/04/2012	

Additional information

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

Final act

Corrigendum to final act 32014L0065R(01)
OJ L 341 27.11.2014, p. 0032

Corrigendum to final act 32014L0065R(04)
OJ L 292 10.11.2015, p. 0013

Corrigendum to final act 32014L0065R(09)
OJ L 064 10.03.2017, p. 0116

Directive 2014/0065
OJ L 173 12.06.2014, p. 0349 Summary

Corrigendum to final act 32014L0065R(07)
OJ L 273 08.10.2016, p. 0035

Corrigendum to final act 32014L0065R(05)
OJ L 099 15.04.2016, p. 0034

Corrigendum to final act 32014L0065R(06)
OJ L 188 13.07.2016, p. 0028

Delegated acts

Reference	Subject
2016/2654(DEA)	Examination of delegated act
2016/2679(DEA)	Examination of delegated act
2016/2766(DEA)	Examination of delegated act
2016/2775(DEA)	Examination of delegated act
2016/2745(DEA)	Examination of delegated act
2016/2746(DEA)	Examination of delegated act
2016/2752(DEA)	Examination of delegated act
2016/2778(DEA)	Examination of delegated act
2016/3016(DEA)	Examination of delegated act
2017/2864(DEA)	Examination of delegated act
2016/2776(DEA)	Examination of delegated act
2016/2779(DEA)	Examination of delegated act
2016/2848(DEA)	Examination of delegated act
2016/3017(DEA)	Examination of delegated act
2016/2845(DEA)	Examination of delegated act
2016/2846(DEA)	Examination of delegated act
2016/2847(DEA)	Examination of delegated act
2016/2738(DEA)	Examination of delegated act
2016/2784(DEA)	Examination of delegated act
2016/2867(DEA)	Examination of delegated act
2017/2814(DEA)	Examination of delegated act
2016/2810(DEA)	Examination of delegated act
2019/2579(DEA)	Examination of delegated act
2022/2610(DEA)	Examination of delegated act
2021/2638(DEA)	Examination of delegated act
2021/2826(DEA)	Examination of delegated act
2020/2927(DEA)	Examination of delegated act
2021/2651(DEA)	Examination of delegated act
2021/2652(DEA)	Examination of delegated act

2023/2545(DEA)	Examination of delegated act
2025/2920(DEA)	Examination of delegated act
2022/2640(DEA)	Examination of delegated act
2022/2802(DEA)	Examination of delegated act
2026/2632(DEA)	Examination of delegated act
2026/2683(DEA)	Examination of delegated act
2026/2920(DEA)	Examination of delegated act
2026/2748(DEA)	Examination of delegated act

Markets in financial instruments. Recast

2011/0298(COD) - 05/10/2012 - 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 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 (recast).

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:

Strengthening the regulatory framework: the text underlines that the evolution of financial markets has exposed the need to strengthen the framework for the regulation of markets in financial instruments**, including where trading in such markets takes place over the counter**. It is necessary in particular to ensure that new organised trading systems (which have emerged alongside regulated markets)do not benefit from **regulatory loopholes**. All trading venues, namely regulated markets, multilateral trading facilities (MTFs), and organised trading facilities (OTFs), should lay down **transparent rules**.

Investments under insurance contracts: investments are often sold to clients in the form of insurance contracts as an alternative to or substitute for financial instruments regulated under this Directive. To deliver **consistent protection for retail clients**, it is important that investments under insurance contracts are subject to the same conduct of business standards, in particular those relating to managing conflicts of interest, restrictions on inducements, and rules on ensuring the suitability of advice or appropriateness of non-advised sales.

The **investor protection and conflicts of interest requirements** in this Directive should therefore be applied equally to those investments packaged under insurance contracts and coordination should be ensured between this Directive and other relevant law including Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation.

Conflicts of interest: to prevent conflicts of interest an executive member of the management body of investment firms should not also be an executive member of the management body of a trading venue but could be a non-executive member of such a management body, for example in order to provide user participation in decision-making.

Where practiced, employee representation in the management body should also be seen as a positive way of enhancing diversity, by adding a key perspective and genuine knowledge of the internal workings of the institution. Furthermore mechanisms are needed to ensure that members of management bodies can be held accountable in case of severe mis-management.

Algorithmic trading and high-frequency trading: members strongly support the Commission proposals on regulatory scrutiny of algorithmic trading where a trading system analyses data or signals from the market at high speed, typically in milliseconds or microseconds,and then sends or updates large numbers of orders within a very short time period in response to that analysis. Both firms and trading venues should ensure **robust measures** are in place to ensure that high-frequency and automated trading does not create a disorderly market and cannot be used for abusive purposes.

All orders should be subject to appropriate risk controls at source. In addition, it is proposed to **end the practice of sponsored and naked access** to avoid the risk that firms with insufficient controls in place create disorderly market conditions and to ensure that market participants can be identified and held accountable for any disorderly conditions for which they are responsible. It is also necessary to be able to clearly identify order flows coming from high-frequency trading.

ESMA should also continue to monitor developments in technology and in methods used to access trading venues and should continue to prepare guidelines to ensure that the requirements of this Directive can continue to be effectively applied in the light of new practices.

Fee structures of trading venues: these should be **transparent, non-discriminatory and fair** and should not be structured in such a way as to promote disorderly market conditions. Trading venue fee structures should incentivise a lower ratio of system messages to executed trades with higher fees applying to practices such as the cancellation of high volumes or proportions of orders which could create such disorderly conditions.

Ensuring appropriate investor protection:Member States should ensure that:

- investment products or structured deposits for sale to professional or retail clients designed by investment firms **should meet the needs and characteristics of an identified target market** within the relevant category of clients;

- the investment firm should take reasonable steps to ensure that the investment product is marketed and distributed to clients within the target group.

Producers should also **periodically review the performance of their products**, to assess whether the products have performed in accordance with their design and to establish whether their target market for the product remains correct.

Investment firms providing investment advice should:

- clarify the basis of the advice they provide, in particular the range of products they consider in providing personal recommendations to clients, **the cost of the advice** or, where the cost of fees and inducements cannot be ascertained prior to the provision of the advice, the manner in which the cost will be calculated;

- indicate whether the investment advice is provided in conjunction with the acceptance or receipt of third-party inducements and whether the investment firmsprovide the clients with the periodic assessment of the suitability of the financial instruments recommended to them.

Consumer protection: the objective is to ensure investment firms do not **remunerate or assess the performance of their own staff** in a way that conflicts with the firm's duty to act in the best interests of their clients.

Remuneration of staff selling or advising on investments should therefore not be solely dependent on sales targets or the profit to the firm from a specific financial instrument as this would create incentives to deliver information which is not fair, clear and not misleading and to make recommendations which are not in the best interests of clients.

Given the complexity of investment products and the continuous innovation in their design, it is also important to ensure that staff who advise on or sell investment products to retail clients possess an appropriate level of knowledge and competence in relation to the products offered. Investment firms need to allow their staff sufficient time and resources to achieve this knowledge and competence and to apply it in providing services to clients.

Third countries: it is necessary to introduce a **common regulatory framework** at European Union level for third-country firms, including both investment firms and market operators. In order to provide a basis for third-country firms to benefit from a passport enabling them to provide investment services and carry out investment activities throughout the EU, the regime should i) harmonise the existing fragmented framework, ii) ensure certainty and uniform treatment of third-country firms accessing the European Union, iii) ensure that an effectiveequivalence assessment is carried out by the Commission, prioritising the assessment of the EU's largest trading partners and areas within the scope of the G20 programme, in relation to the regulatory and supervisory framework of third countries and iv) should provide for a comparable level of protections to investors in the EU receiving services providedby third-country firms.

Markets in financial instruments. Recast

2011/0298(COD) - 26/10/2012 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament adopted by 495 votes to 15, with 19 abstentions, **amendments** to the proposal for 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 (recast).

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:

Strengthening the regulatory framework: the text underlines that the evolution of financial markets has exposed the need to strengthen the framework for the regulation of markets in financial instruments, including where trading in such markets takes place over the counter, in order to increase transparency, better protect investors, reinforce confidence and **address unregulated areas**. Members want to ensure that new organised trading systems (which have emerged alongside regulated markets) do not benefit from **regulatory loopholes**.

All trading venues, namely regulated markets, multilateral trading facilities (MTFs), and organised trading facilities (OTFs), should lay down **transparent rules**. In this context, trading venues should be able to allow users to specify the type of order flow that their orders interact with prior to their orders entering the system provided this is done in an open and transparent manner and does not involve discrimination by the platform operator.

Investments under insurance contracts: investments are often sold to clients in the form of insurance contracts as an alternative to or substitute for financial instruments regulated under this Directive. To **deliver consistent protection for retail clients**, it is important that investments under insurance contracts are subject to the **same conduct of business standards**, in particular those relating to managing conflicts of interest, restrictions on inducements, and rules on ensuring the suitability of advice or appropriateness of non-advised sales.

The **investor protection and conflicts of interest requirements** in this Directive should therefore be applied equally to those investments packaged under insurance contracts and coordination should be ensured between this Directive and other relevant law including Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation.

Corporate governance: to prevent conflicts of interest an executive member of the management body of investment firms should not also be an executive member of the management body of a trading venue but could be a non-executive member of such a management body, for example in order to provide user participation in decision-making.

Where practiced, employee representation in the management body should also be seen as a positive way of enhancing diversity, by adding a key perspective and genuine knowledge of the internal workings of the institution. Furthermore mechanisms are needed to ensure that members of management bodies can be held accountable in case of severe mismanagement.

Algorithmic trading and high-frequency trading: Parliament strongly supports **the Commission proposals** on regulatory scrutiny of algorithmic trading where a trading system analyses data or signals from the market at high speed, typically in milliseconds or microseconds, and then sends or updates large numbers of orders within a very short time period in response to that analysis. Both firms and trading venues should ensure **robust measures are in place** to ensure that high-frequency and automated trading does not create a disorderly market and cannot be used for abusive purposes.

All orders should be subject to **appropriate risk controls at source**. In addition, it is proposed to **end the practice of sponsored and naked access to avoid the risk that firms with insufficient controls** in place create disorderly market conditions and to ensure that market participants can be identified and held accountable for any disorderly conditions for which they are responsible. It is also necessary to be able to clearly identify order flows coming from high-frequency trading.

ESMA should also continue to monitor developments in technology and in methods used to access trading venues and should continue to prepare guidelines to ensure that the requirements of this Directive can continue to be effectively applied in the light of new practices.

Fee structures of trading venues: these should be transparent, non-discriminatory and fair and should not be structured in such a way as to promote disorderly market conditions. Trading venue fee structures should incentivise a lower ratio of system messages to executed trades with higher fees applying to practices such as the cancellation of high volumes or proportions of orders which could create such disorderly conditions.

Ensuring appropriate investor protection: Member States should ensure that:

- investment products or structured deposits for sale to professional or retail clients designed by investment firms **should meet the needs and characteristics of an identified target market** within the relevant category of clients;
- the investment firm should take reasonable steps to ensure that the investment product is marketed and distributed to clients within the target group.

Producers should also **periodically review the performance of their products**, to assess whether the products have performed in accordance with their design and to establish whether their target market for the product remains correct.

Investment firms providing investment advice should:

- clarify the basis of the advice they provide, in particular the range of products they consider in providing personal recommendations to clients, the **cost of the advice** or, where the cost of fees and inducements cannot be ascertained prior to the provision of the advice, the manner in which the cost will be calculated;
- indicate whether the investment advice is provided **in conjunction with the acceptance or receipt of third-party inducements** and whether the investment firms provide the clients with the periodic assessment of the suitability of the financial instruments recommended to them.

When providing discretionary portfolio management, the investment firm should, prior to the agreement, inform the client about the expected scale of inducements, and periodic reports should disclose all inducements paid or received.

Consumer protection: the objective is to ensure investment firms do not remunerate or assess the performance of their own staff in a way that conflicts with the firm's duty to act in the best interests of their clients.

Remuneration of staff selling or advising on investments should therefore not be solely dependent on sales targets or the profit to the firm from a specific financial instrument as this would create incentives to deliver information which is not fair, clear and not misleading and to make recommendations which are not in the best interests of clients.

Given the complexity of investment products and the continuous innovation in their design, it is also important to ensure that staff who advise on or sell investment products to retail clients possess **an appropriate level of knowledge and competence in relation to the products offered**.

Third countries: Members stress the need to introduce a **common regulatory framework** at European Union level for third-country firms, including both investment firms and market operators.

In order to provide a basis for third-country firms to benefit from a passport enabling them to provide investment services and carry out investment activities throughout the EU, this regime should, among other things, **ensure that an effective equivalence assessment is carried out by the Commission in relation to the regulatory and supervisory framework of third countries,** prioritising the assessment of the EU's largest trading partners and areas within the scope of the G-20 programme.

Derivative contract in relation to a commodity: Parliament recommends that explicit powers should be granted to trading venues and to competent authorities **to limit the ability of any person or class of persons to enter into or hold a derivative contract in relation to a commodity**, based on technical standards determined by ESMA, and to otherwise manage positions in such a way as to promote integrity of the market for the derivative and the underlying commodity without unduly constraining liquidity. Such limits should not apply to positions which objectively reduce risks directly relating to commercial activities in relation to the commodity.

Development of a Union framework governing securities: with this aim, the Commission should put forward a proposal for a regulation on securities law further specifying the definition of safekeeping and administration of financial instruments and should also, in conjunction with ESMA, the European Supervisory Authority (European Banking Authority) and the European Systemic Risk Board promote work on standardisation of identifiers and

messaging so as **to enable near-real time transaction analysis and the identification of complex product structures**, such as those containing derivatives or repos.

Markets in financial instruments. Recast

2011/0298(COD) - 15/04/2014 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 574 votes to 23 with 34 abstentions, a legislative resolution on the proposal for 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 (recast)

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:

Strengthening the regulatory framework: the text underlines that the financial crisis has exposed the need to strengthen the framework for the regulation of markets in financial instruments, including where trading in such markets takes place over-the-counter (OTC), in order to increase transparency, better protect investors, reinforce confidence, **address unregulated areas**, and ensure that supervisors are granted adequate powers to fulfil their tasks.

Members want to ensure that new **organised trading systems** (which have emerged alongside regulated markets) do not benefit from regulatory loopholes.

Market structure and transparency: Parliament and Council agreed that all trading venues, namely regulated markets, multilateral trading facilities (MTFs), and OTFs, should lay down **transparent and non-discriminatory rules** governing access to the facility. A central counterparty (CCP) is not covered by the term Organised Trading Facility as defined in the Directive.

Governance: to ensure sound and prudent management of the firms, the management body of an investment firm, regulated markets and data reporting services providers should at all times commit sufficient time and possess adequate collective knowledge, skills and experience to be able to **understand the firm's activities including the main risks**. Diversity should be one of the criteria for the composition of management bodies.

Firms have a duty to take effective steps to identify and prevent or **manage conflicts of interest** and mitigate the potential impact of those risks as far as possible.

Algorithmic trading and high-frequency trading: Parliament wanted to **regulate algorithmic trading** where a trading system analyses data or signals from the market at high speed, typically in milliseconds or microseconds, and then sends or updates large numbers of orders within a very short time period in response to that analysis. Both firms and trading venues should ensure **robust measures** are in place to ensure that high-frequency and automated trading does not create a disorderly market and cannot be used for abusive purposes.

Trading venues should ensure their trading systems are resilient and properly tested to deal with increased order flows or market stresses and that **circuit breakers** are in place on trading venues to **temporarily halt trading or constrain it if there are sudden unexpected price movements**.

Members or participants must carry out appropriate testing of algorithms and all order generated by algorithmic trading should be **flagged** in order to permit the competent authorities to react efficiently and effectively against algorithmic trading strategies that behave in an abusive manner or pose risks to the orderly functioning of the market.

The Directive would **ban the provision of direct electronic access to markets** by investment firms for their clients where such access was not subject to proper systems and controls.

In order to ensure that market integrity was maintained in the light of technological developments in financial markets, **ESMA** should regularly seek input from national experts on developments relating to trading technology.

Fee structures of trading venues: these should be transparent, non-discriminatory and fair and should not be structured in such a way as to promote disorderly market conditions. Member States should allow for trading venues to adjust their fees for cancelled orders according to the length of time for which the order was maintained and to calibrate the fees to each financial instrument to which they applied.

Ensuring appropriate investor protection: Member States should ensure that investment firms acted in accordance with **the best interests of their clients** and were able to comply with their obligations under this Directive. They should accordingly understand the features of the financial instruments offered or recommended and establish and review effective policies and arrangements to **identify the category of clients to whom products and services were to be provided.**

Accordingly, investment firms which manufacture financial instruments must: (i) ensure that those products are manufactured to meet the needs of an **identified target market of end clients** within the relevant category of clients, (ii) take reasonable steps to ensure that the financial instruments were distributed to the identified target market and (iii) periodically review the identification of the target market of and the performance of the products they offered.

When advice was provided on an independent basis a **sufficient range of different product providers' products** should be assessed prior to making a personal recommendation.

To further protect consumers, the new rules should ensure that investment firms did not **remunerate or assess the performance** of their own staff in a way that conflicts with the firm's duty to act in the best interests of their clients, for example through remuneration, sales targets or otherwise which provided an incentive for recommending or selling a particular financial instrument when another product may better meet the client's needs.

Staff who advised on or sell investment products to retail clients must possess an appropriate level of **knowledge and competence** in relation to the products offered.

The requirements of the Directive regarding investor protection also applied to **investment products in the form of insurance contracts** which were often sold to clients as an alternative to or substitute for financial instruments regulated under the Directive.

Derivative contract in relation to a commodity: in order to prevent market abuse, competent authorities must be able to **establish limits**, on the basis of a methodology determined by ESMA, on the positions any person can hold in a derivative contract in relation to a commodity at all times, including cornering the market, and to support orderly pricing and settlement conditions including the prevention of market distorting positions.

All venues which offer trading in commodity derivatives should have in place appropriate position management controls, providing the necessary powers at least to monitor and access information about commodity derivative positions, to require the reduction or termination of such positions and to require that liquidity is provided back on the market to mitigate the effects of a large or dominant position.

Firms from third countries: the amended text provided that a Member State may require that a third-country firm intending to provide investment services or perform investment activities to retail clients or to professional clients establish **a branch** in that Member State. The branch should acquire a prior authorisation by the competent authorities of that Member State in accordance with certain conditions.

The third-country firm requesting authorisation should, inter alia, pay due regard to any FATF recommendations in the context of anti-money laundering and countering the financing of terrorism.

Markets in financial instruments. Recast

2011/0298(COD) - 20/10/2011 - Legislative proposal

PURPOSE: to adopt new rules for more sound, transparent and efficient EU financial markets (recast of the Markets in Financial Instruments Directive (MiFID).

PROPOSED ACT: Directive 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 review of MiFID will contribute to establishing a single rulebook for EU financial markets, help further develop a level playing field for Member States and market participants, improve supervision and enforcement, reduce costs for market participants, and improve conditions of access and enhance the global competitiveness of the EU financial industry.

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

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

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 53(1) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the proposed Directive amends specific requirements regarding the provision of investment services, the scope of exemptions from the current Directive, organisational and conduct of business requirements for investment firms, organisational requirements for trading venues, the authorisation and ongoing obligations applicable to providers of data services, powers available to competent authorities, sanctions, and rules applicable to third-country firms operating via 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. Likewise, the requirements in terms of organisational aspects and market surveillance applicable to all three venues are nearly identical. This will ensure a level playing field where there are functionally similar activities bringing together third-party trading interests. Importantly however, 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 proposed Directive are as follows:

- **Extension of MiFID rules to like products and services**: the proposals extend MiFID requirements, and particularly conduct of business and conflicts of interest rules, to the advised and non-advised sale of structured deposits by credit institutions, specify that MiFID also applies to investment firms and credit institutions selling their own securities when not providing any advice, and require Member States to apply authorisation and conduct of business requirements analogous to MiFID in national legislation applicable to locally-based entities.
- **Revision of exemptions from MiFID**: the proposal therefore limits the exemptions more clearly to activities which are less central to MiFID and primarily proprietary or commercial in nature, or which do not constitute high-frequency trading.
- **Upgrades to the market structure framework**: the proposal creates a new category for organised trading facilities which do not correspond to any of the existing categories, underpinned by strong organisational requirements and identical transparency rules, and upgrade key requirements across all venues to account for the greater competition and cross-border trading generated together by technological advances and MiFID.
- **Improvements to corporate governance**: the proposals seek to ensure members of the management body possess the sufficient knowledge and skills and comprehend the risks associated with the activity of the firm in order to ensure the firm is managed in a sound and prudent way in the interests of investors and market integrity.
- **Enhanced organisational requirements to safeguard the efficient functioning and integrity of markets**: the proposals aim to bring all entities engaged in high-frequency trading into MiFID, require appropriate organisational safeguards from these firms and those offering market access to other high-frequency traders, and require venues to adopt appropriate risk controls to mitigate disorderly trading and ensure the resiliency of their platforms.
- **Enhancement of the investor protection framework**: the proposal strengthens the regulatory framework for the provision of investment advice and portfolio management and the possibility for investment firms to accept incentive by third parties (inducements) as well as it clarifies the conditions and arrangements under which investors are able to transact freely in the market in certain non-complex instruments with minimal duties or protections afforded on behalf of their investment firm. Furthermore, it reinforces the requirements concerning the handling of funds or instruments belonging to clients by investment firms and their agents and classifies as an investment service the safekeeping of financial instruments on behalf of clients. The proposal helps improving the information to clients in relation to the services provided to them and to the execution of their orders.
- **Heightened protection in the provision of investment services to non-retail clients**: the overarching high level principle to act honestly, fairly and professionally and the obligation to be fair, clear and not misleading should apply irrespective of client categorization. Finally, it is proposed that eligible counterparties benefit from better information and documentation for services provided.
- **New requirements for trading venues**: the proposal therefore introduces a requirement for trading venues to publish annual data on execution quality. Second, commodity derivative contracts traded on trading venues frequently attract the broadest participation by users and investors and can often serve as a benchmark price discovery venues feeding into, for example, retail energy and food prices. It is therefore proposed that all trading venues on which commodity derivative contracts are traded adopt appropriate limits or alternative arrangements to ensure the orderly functioning of the market.
- **An improved regime for SME markets**: it is proposed to create a new subcategory of markets known as SME growth markets. An operator of such a market (which are usually operated as MTFs) could elect to apply to have the MTF also registered as an SME growth market if it meets certain conditions.
- **Third country regime**: 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. It 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. Services provided to eligible counterparties would not require the establishment of a branch; third country firms could provide them subject to ESMA registration. They would be supervised in their country. Appropriate cooperation agreement between the supervisors in third countries and national competent authorities and ESMA would be necessary.
- **Increased and more efficient data consolidation**: the proposals improve the quality and consistency of data by requiring that all firms publish their trade reports through Approved Publication Arrangement (APA). The provisions set procedures for competent authority to authorise the APAs and set organisational requirements for the APAs.
- **Heightened powers over derivative-positions for competent authorities**: the regulators would be bestowed with explicit powers to demand information from any person regarding the positions held in the derivative instruments concerned as well as in emission allowances. The supervisory authorities would be able to intervene at any stage during the life of a derivative contract and take action that a position be reduced. This heightened position management would be complemented by the possibility to limit positions in an ex-ante, non-discriminatory fashion. All actions should be notified to ESMA.

- **Effective sanctions**: Member States should provide that appropriate administrative sanctions and measures can be applied to breaches of MiFID. To this end, the Directive will require them to comply with the following minimum rules. The maximum level of administrative pecuniary sanctions laid down in national legislation should exceed the benefits derived from the breach if they can be determined and, in any case, should not be lower than the level provided for by the Directive. Criminal sanctions are not covered by this proposal.
- **Emission allowances**: unlike trading in derivatives, spot secondary markets in EU emission allowances (EUAs) are largely unregulated. A range of fraudulent practices have occurred in spot markets which could undermine trust in the emissions trading scheme (ETS), set up by the EU ETS Directive. In parallel to measures within the EU ETS Directive to reinforce the system of EUA registries and conditions for opening an account to trade EUAs, the proposal would render the entire EUA market subject to financial market regulation. Both spot and derivative markets would be under a single supervisor. MiFID and the Directive 2003/6/EC on market abuse would apply, thereby comprehensively upgrading the security of the market without interfering with its purpose, which remains emissions reduction. Moreover, this will ensure coherence with the rules already applying to EUA derivatives and lead to greater security as banks and investment firms, entities obliged to monitor trading activity for fraud, abuse or money laundering, would assume a bigger role in vetting prospective spot traders.

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. Recast

2011/0298(COD) - 10/02/2012 - Document attached to the procedure

OPINION OF THE EUROPEAN DATA PROTECTION SUPERVISOR on the Commission proposals for 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. Recast

2011/0298(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 :

- **this proposal for a directive** on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council;
- a 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. Recast

2011/0298(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 (MiFID II).

LEGISLATIVE ACT: Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

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.

The new Directive amends and replaces Directive 2004/39/EC of the European Parliament and Council on markets in financial instruments ('MiFID').

With the new Regulation (MiFIR), it aims to overcome problems that emerged during the implementation of MiFID which, since 2007, has prevented Member States from requiring that negotiations take place on some exchanges.

The Directive **strengthens the framework for the regulation of markets in financial instruments**, including where trading in such markets takes place over-the-counter (OTC), in order to increase transparency, better protect investors, reinforce confidence, address unregulated areas, and ensure that supervisors are granted adequate powers to fulfil their tasks. It contains the provisions governing the authorisation of the business, the acquisition of qualifying holding, the exercise of the freedom of establishment and of the freedom to provide services, the operating conditions for investment firms to ensure investor protection, the powers of supervisory authorities of home and host Member States and the regime for imposing sanctions.

The main elements of the new Directive are the following:

Enhancing the regulatory framework: the Directive aims to move the negotiation organised financial instruments **towards multilateral and well-regulated trading platforms**. Strict transparency rules prohibit anonymous trading of shares and other equity instruments, which is an obstacle to a fair and efficient price formation. As a result, 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**.

Corporate governance: the Directive provides that Member States shall ensure that the management body of an investment firm defines, oversees and is accountable for the implementation of the governance arrangements that ensure **effective and prudent management** of the investment firm including the segregation of duties in the investment firm and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and the interest of clients.

Protection of investors: taking account of the increasing complexity of services and instruments, the Directive introduced a certain degree of harmonisation to offer investors a high level of protection across the Union. It also requires that investment firms should act in accordance with the **best interests of their clients**. Investment firms should accordingly understand the features of the financial instruments offered or recommended.

The investment firms which manufacture financial instruments should ensure that those products are manufactured to **meet the needs of an identified target market of end clients** within the relevant category of clients (retail customers, professionals and counterparties).

These companies are also required to inform customers about the fact that the **advice** is offered on an independent basis and the risls associated with the recommended products and investment strategies. When advice is provided on an independent basis **a sufficient range** of different product providers' products should be assessed prior to making a personal recommendation.

To **further protect consumers**, it is also appropriate to ensure that investment firms do not **remunerate or assess the performance of their own staff** in a way that conflicts with the firm's duty to act in the best interests of their clients, for example through remuneration, sales targets or otherwise which provide an incentive for recommending or selling a particular financial instrument.

Staff who advise on or sell investment products to retail clients possess an **appropriate level of knowledge and competence** in relation to the products offered. In addition, all information, including marketing communications, addressed by the investment firm to clients or potential clients should be **fair, clear and not misleading**.

Adaptation of the legislation to technological developments: the Directive regulates the risks arising from high frequency algorithmic trading where a trading system analyses data or signals from the market at high speed and then sends or updates large numbers of orders within a very short time period in response to that analysis.

Both investment firms and trading venues should ensure **robust measures** are in place to ensure that algorithmic trading or high-frequency algorithmic trading techniques do not create a disorderly market and cannot be used for abusive purposes. Trading venues should also ensure their trading systems are resilient and properly tested to deal with increased order flows or market stresses and that controls are in place, such as '**circuit breakers**', to temporarily halt trading or constrain it if there are sudden unexpected price movements.

Commodity derivatives: in order to prevent market abuses, the competent authorities, in line with the methodology for calculation determined by ESMA, establish and apply **position limits on the size of a net position** which a person can hold at all times in commodity derivatives traded on trading venues and economically equivalent OTC contracts.

With regard to the **energy derivative contracts** (petrol, charbon), a transition period is provided up to July 2020 for the application of the clearing obligation and the margining requirements established in the Regulation (EU) No 648/2012. The Commission should, by 1 January 2018, prepare a report assessing the potential impact on energy prices and the functioning of the energy market of the expiry of the transitional period.

Cooperation: the Directive reinforces the measures concerning the exchange of information between national competent authorities as well as the reciprocal obligations of authorities for assistance and cooperation.

The competent authorities should provide each other with the relevant information for the exercise of their functions in order to **detect and to prevent offences** under the Directive.

Third country firms: the Directive creates a harmonised legal framework regulating the access of third country firms to the EU market. It provides that a Member State may require that a third-country firm intending to provide investment services or perform investment activities with or without any ancillary services to retail clients or to professional clients in its territory establish **a branch** in that Member State.

The branch shall acquire a prior authorisation by the competent authorities of that Member State in accordance with certain conditions. The requesting firm should be, among other, properly authorised, and paying due regard to any FATF recommendations in the context of anti-money laundering and countering the financing of terrorism.

ENTRY INTO FORCE: 02.07.2014.

TRANSPOSITION: 03.07.2016. The measures shall apply 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.