Basic information

2020/0152(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Markets in financial instruments Amending Directive 2014/65 2011/0298(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 **Legislative priorities** Joint Declaration 2021 The EU's response to the Covid-19 pandemic	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	FERBER Markus (EPP)	07/09/2020
	Shadow rapporteur HEINÄLUOMA Eero (S&D) YON-COURTIN Stéphanie (Renew) URTASUN Ernest (Greens/EFA) EPPINK Derk Jan (ECR) KRAH Maximilian (ID) GUSMÃO José (GUE/NGL)	

Committee for opinion	Rapporteur for opinion	Appointed
DEVE Development	The committee decided not to give an opinion.	
ITRE Industry, Research and Energy	The committee decided not to give an opinion.	

Council of the European Union

European Commission	Commission DG	Commissioner
	Financial Stability, Financial Services and Capital Markets Union	MCGUINNESS Mairead

Key events

Date	Event	Reference	Summary
24/07/2020	Legislative proposal published	COM(2020)0280	Summary
14/09/2020	Committee referral announced in Parliament, 1st reading		
28/10/2020	Vote in committee, 1st reading		
28/10/2020	Rejection by committee to open interinstitutional negotiations with report adopted in committee		
03/11/2020	Committee report tabled for plenary, 1st reading	A9-0208/2020	
23/11/2020	Debate in Parliament		
25/11/2020	Decision by Parliament, 1st reading	T9-0317/2020	Summary
25/11/2020	Matter referred back to the committee responsible for interinstitutional negotiations		
14/01/2021	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE663.034	
10/02/2021	Debate in Parliament		
11/02/2021	Decision by Parliament, 1st reading	T9-0046/2021	Summary
11/02/2021	Results of vote in Parliament		
11/02/2021	Act adopted by Council after Parliament's 1st reading		
16/02/2021	Final act signed		
16/02/2021	End of procedure in Parliament		
26/02/2021	Final act published in Official Journal		

Technical information

Procedure reference	2020/0152(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Amending Directive 2014/65 2011/0298(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 053-p1
Stage reached in procedure	Procedure completed
Committee dossier	ECON/9/03676

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE657.375	18/09/2020	
Amendments tabled in committee		PE658.929	14/10/2020	
Committee report tabled for plenary, 1st reading/single reading		A9-0208/2020	03/11/2020	
Text adopted by Parliament, partial vote at 1st reading /single reading		T9-0317/2020	25/11/2020	Summary
Text agreed during interinstitutional negotiations		PE663.034	16/12/2020	
Text adopted by Parliament, 1st reading/single reading		T9-0046/2021	11/02/2021	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00071/2020/LEX	16/02/2021	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2020)0280	24/07/2020	Summary
Document attached to the procedure	SWD(2020)0120	27/07/2020	
Commission response to text adopted in plenary	SP(2021)133	23/03/2021	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	ES_PARLIAMENT	COM(2020)0280	23/10/2020	
Contribution	PT_PARLIAMENT	COM(2020)0280	28/10/2020	
Contribution	IT_CHAMBER	COM(2020)0280	08/03/2021	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES3577/2020	29/10/2020	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act
Directive 2021/0338 OJ L 068 26.02.2021, p. 0014

Markets in financial instruments

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

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

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

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

Purpose of the amendments

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

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

Exemption from product governance requirements

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

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

Assessing the ancillary nature of a trading activity

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

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

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

Research services of investors

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

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

Review

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

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

Markets in financial instruments

2020/0152(COD) - 25/11/2020 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament adopted by 361 votes to 156, with 179 abstentions, amendments to the proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU as regards information requirements, product governance and position limits to help the recovery from the COVID-19 pandemic.

The matter was referred back to the committee responsible for inter-institutional negotiations.

As a reminder, the main aim of the proposal is to make targeted adjustments to the requirements of the Markets in Financial Instruments Directive (MIFID II) to facilitate the economic recovery post COVID-19 pandemic.

The main amendments adopted in plenary concern the following points:

Aim of the amendments

Members stressed that the changes introduced should remove unnecessary red tape and provide for temporary exceptions that are considered effective in alleviating economic hardship.

The amendments should avoid making changes that result in more burdens on the sector and leave complex legislative questions to be settled during the planned review of MIFID II.

To better enhance investor protection, Parliament stressed that it is critical that the debt level of retail investors is taken into account in the suitability assessment, in particular given the rising level of consumer debt due to the COVID-19 pandemic.

Assessing the ancillary nature of a trading activity

The amendments clarify that quantitative tests should remain the basic rule regarding the exemption for ancillary activities. Alternatively, national supervisory authorities should be able to be authorised to rely on qualitative elements, subject to clearly defined conditions.

The European Securities and Markets Authority (ESMA) would be empowered to provide guidance on the circumstances under which national authorities could apply a qualitative approach and to develop draft technical regulatory standards on qualitative criteria.

Investment research services

Member States would be required to ensure that investment firms can pay jointly for the provision of execution services and the provision of investment research services, provided that a number of conditions are met.

Members clarified the definition of ‘investment research’, i.e. research material or services enabling an opinion to be formed on financial instruments, assets or issuers in this sector or in a given market.

Loss reporting thresholds

Investment firms providing the service of portfolio management or holding the account of a retail client including positions in leveraged financial instruments or contingent liability transactions shall inform the client, where the initial value of any instrument depreciates by 10 %.

Review clause

By 31 July 2021 at the latest, after consulting ESMA, the Commission should present a proposal for a review of Directive 2014/65/EU and Regulation (EU) No 600/2014. The review should be broad and should take into account issues such as those related to market structure, data, trading and post trading, research rules, rules on payment of inducements to advisors, level of professional qualifications of advisers in Europe, client categorisation and Brexit.

Markets in financial instruments

2020/0152(COD) - 24/07/2020 - Legislative proposal

PURPOSE: to make targeted adjustments to the requirements of the Markets in Financial Instruments Directive (MIFID II) to facilitate the economic recovery post COVID-19 pandemic.

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

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: Directive 2014/65/EU on markets in financial instruments (MiFID II) lays down rules for investment firms operating in EU financial markets. These rules determine how investment firms should interact with investors and how they should organise the trading venues.

The rules on investment services have an important role to play in promoting the recapitalisation of European firms in the aftermath of the crisis. In the light of the current COVID-19 pandemic, formal burdens that are not strictly necessary should be removed. The Commission therefore strives to recalibrate investor protection requirements to strike the right balance between a sufficient level of transparency for the client, the highest standards of protection and acceptable compliance costs for firms.

This legislative proposal amending MiFID II is part of a set of measures to facilitate the economic recovery post-COVID-19 pandemic, which includes also legislative proposals amending the Prospectus Regulation the Securitisation Regulation and the Capital Requirements Regulation.

CONTENT: the proposal primarily aims at providing, for exceptional reasons in the context of the current COVID-19 pandemic, for a streamlined application of the regulatory requirements, keeping high safeguards for retail clients while allowing for more flexibility for wholesale clients and ensures that fully functioning commodity markets can play their important role in the recovery of EU economies.

This legislative proposal also aims to complement the objectives of the Capital Markets Union to diversify market-based sources of financing for European companies and facilitate cross-border investments.

Amendments to information requirements

The changes to the current regime provide a precise calibration of the rules applicable to retail clients, professional customers and eligible counterparties. The majority of the proposed changes shall consist of relief for professional clients and eligible counterparties, namely:

- the phasing out of paper-based default method: documents shall be provided in electronic format. However, retail clients may opt-in to paper based information;

- as regards the indication of costs and charges, the introduction of an exemption for eligible counterparties and professional clients for services other than investment advice and portfolio management. In addition, in case of distance communication all clients using all services shall be able, under certain conditions, to receive costs and charges information just after the transaction;

- lighter ex-post reporting obligations: these reports shall no longer apply in respect of eligible counterparties; professional clients shall be able to choose whether or not to receive them;

- the temporary suspension of best execution reporting;

- the waiver by professional investors of cost-benefit analysis in the event of a change of product during the course of the relationship;

- the lifting of the product governance requirements for simple corporate bonds with make-whole clauses (which are investor-protective features). The aim of this exemption is to make more plain vanilla corporate bonds available to retail investors.

Measures affecting energy derivatives markets

The proposal introduces changes to the regime applicable to commodities with a view to enabling businesses in the real economy to cope with market volatility, while at the same time allowing the emergence of new commodity contracts, which is also important for promoting the international role of the euro.

The proposed amendments recalibrate precisely the position limit regime and the scope of the hedging exemption. They shall not concern agricultural commodities, in particular products for human consumption.