



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Economic and Monetary Affairs

2011/0298(COD)

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*****I**

DRAFT REPORT

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)
(COM(2011)0656 – C7-0382/2011 – 2011/0298(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Markus Ferber

(Recast – Rule 87 of the Rules of Procedure)

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United in diversity

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Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT 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)
(COM(2011)0656 – C7-0382/2011 – 2011/0298(COD))**

(Ordinary legislative procedure – recast)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0656),
 - having regard to Article 294(2) and Article 53(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0382/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts¹,
 - having regard to the letter of 1 March 2012 from the Committee on Legal Affairs to the Committee on Economic and Monetary Affairs in accordance with Rule 87(3) of its Rules of Procedure,
 - having regard to Rules 87 and 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on Development and the Committee on Industry, Research and Energy (A7-0000/2012),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal or in the opinion of the Consultative Working Party and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance,
1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

¹ OJ C 77, 28.3.2002, p. 1.

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1
Proposal for a directive
Recital 4

Text proposed by the Commission

(4) The financial crisis has exposed weaknesses in the functioning and in the transparency of financial markets. The evolution of financial markets have exposed the need to strengthen the framework for the regulation of markets in financial instruments in order to increase transparency, better protect investors, reinforce confidence, reduce unregulated areas, ensure that supervisors are granted adequate powers to fulfil their tasks.

Amendment

(4) The financial crisis has exposed weaknesses in the functioning and in the transparency of financial markets. The evolution of financial markets have 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, reduce unregulated areas, ensure that supervisors are granted adequate powers to fulfil their tasks.

Or. en

Amendment 2
Proposal for a directive
Recital 5

Text proposed by the Commission

(5) There is agreement among regulatory bodies at international level that weaknesses in corporate governance in a number of financial institutions, including the absence of effective checks and balances within them, have been a contributory factor to the financial crisis. Excessive and imprudent risk taking may lead to the failure of individual financial institutions and systemic problems in Member States and globally. Incorrect conduct of firms providing services to clients may lead to investor detriment and loss of investor confidence. In order to address the potentially detrimental effect of these weaknesses in corporate governance arrangements, the provisions of this

Amendment

(5) There is agreement among regulatory bodies at international level that weaknesses in corporate governance in a number of financial institutions, including the absence of effective checks and balances within them, have been a contributory factor to the financial crisis. Excessive and imprudent risk taking may lead to the failure of individual financial institutions and systemic problems in Member States and globally. Incorrect conduct of firms providing services to clients may lead to investor detriment and loss of investor confidence. In order to address the potentially detrimental effect of these weaknesses in corporate governance arrangements, the provisions of this

Directive should be supplemented by more detailed principles and minimum standards. These principles and standards should apply taking into account the nature, scale and complexity of investment firms.

Directive should be supplemented by more detailed principles and minimum standards. These principles and standards should apply taking into account the nature, scale and complexity of investment firms. ***The measures involved should include limits on the number of directorships that directors of financial institutions should hold. Those measures should be applied in a way which takes account of the demands of effectively managing such institutions, while also allowing, where appropriate, the directors of such firms to continue in particular to act as directors of not-for-profit organisations in accordance with corporate social responsibility.***

Or. en

Amendment 3
Proposal for a directive
Recital 7

Text proposed by the Commission

(7) In the light of the above, Directive 2004/39/EC is now partly recast as this new Directive and partly replaced by Regulation (EU) No .../... (MiFIR). Together, both legal instruments should form the legal framework governing the requirements applicable to investment firms, regulated markets, data reporting services providers and third country ***firms*** providing investment services or activities in the Union. This Directive should therefore be read together with the Regulation. This Directive should contain 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

Amendment

(7) In the light of the above, Directive 2004/39/EC is now partly recast as this new Directive and partly replaced by Regulation (EU) No .../... (MiFIR). Together, both legal instruments should form the legal framework governing the requirements applicable to investment firms, regulated markets, data reporting services providers and third country ***financial institutions*** providing investment services or activities in the Union. This Directive should therefore be read together with the Regulation. This Directive should contain 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, the sanctioning regime. Since the main objective and subject-matter of this proposal is to harmonise national provisions concerning the mentioned areas, the proposal should be based on Article 53(1) TFEU. The form of a Directive is appropriate in order to enable the implementing provisions in the areas covered by this Directive, when necessary, to be adjusted to any existing specificities of the particular market and legal system in each Member State.

supervisory authorities of home and host Member States, the sanctioning regime. Since the main objective and subject-matter of this proposal is to harmonise national provisions concerning the mentioned areas, the proposal should be based on Article 53(1) TFEU. The form of a Directive is appropriate in order to enable the implementing provisions in the areas covered by this Directive, when necessary, to be adjusted to any existing specificities of the particular market and legal system in each Member State.

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Or. en

Amendment 4
Proposal for a directive
Recital 14

Text proposed by the Commission

(14) Persons administering their own assets and undertakings, who do not provide investment services and/or perform investment activities other than dealing on own account should not be covered by the scope of this Directive unless they are market makers, members or participants of a regulated market or MTF or they execute orders from clients by dealing on own account. By way of exception, persons who deal on own account in financial instruments as members or participants of a regulated market or MTF, including as market makers in relation to commodity derivatives, emission allowances, or derivatives thereof, as an ancillary activity to their main business, which on a group basis is neither the provision of investment services within the meaning of this Directive nor of banking services within

Amendment

(14) Persons administering their own assets and undertakings, who do not provide investment services and/or perform investment activities other than dealing on own account should not be covered by the scope of this Directive unless they are market makers, members or participants of a regulated market or MTF or they execute orders from clients by dealing on own account. By way of exception, persons who deal on own account in financial instruments as members or participants of a regulated market or MTF, including as market makers in relation to commodity derivatives, emission allowances, or derivatives thereof, as an ancillary activity to their main business, which on a group basis is neither the provision of investment services within the meaning of this Directive nor of banking services within

the meaning of Directive 2006/48/EC, should not be covered by the scope of this Directive. Technical criteria for when an activity is ancillary to such a main business should be clarified in *delegated acts*. Dealing on own account by executing client orders should include firms executing orders from different clients by matching them on a matched principal basis (back to back trading), which should be regarded as acting as principals and should be subject to the provisions of this Directive covering both the execution of orders on behalf of clients and dealing on own account. The execution of orders in financial instruments as an ancillary activity between two persons whose main business, on a group basis, is neither the provision of investment services within the meaning of this Directive nor of banking services within the meaning of Directive 2006/48/EC should not be considered as dealing on own account by executing client orders.

the meaning of Directive 2006/48/EC *of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions*¹, should not be covered by the scope of this Directive. Technical criteria for when an activity is ancillary to such a main business should be clarified in *regulatory technical standards, taking into account the criteria specified in this Directive*. Dealing on own account by executing client orders should include firms executing orders from different clients by matching them on a matched principal basis (back to back trading), which should be regarded as acting as principals and should be subject to the provisions of this Directive covering both the execution of orders on behalf of clients and dealing on own account. The execution of orders in financial instruments as an ancillary activity between two persons whose main business, on a group basis, is neither the provision of investment services within the meaning of this Directive nor of banking services within the meaning of Directive 2006/48/EC should not be considered as dealing on own account by executing client orders.

¹ *OJ L 177, 30.6.2006, p. 1.*

Or. en

Amendment 5
Proposal for a directive
Recital 41

Text proposed by the Commission

(41) Member States should ensure the respect of the right to the protection of personal data in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on

Amendment

deleted

the protection of individuals with regard to the processing of personal data and of the free movement of such data and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) which govern the processing of personal data carried out in application of this Directive. Processing of personal data by ESMA in the application of this Directive is subject to Regulation (EU) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data .

Or. en

Amendment 6
Proposal for a directive
Recital 42

Text proposed by the Commission

(42) Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive allows Member States to require, in the context of organisational requirements for investment firms, the recording of telephone conversations or electronic communications involving client orders. Recording of telephone conversations or electronic communications involving client orders is compatible with the Charter of

Amendment

(42) Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive allows Member States to require, in the context of organisational requirements for investment firms, the recording of telephone conversations or electronic communications involving client orders. Recording of telephone conversations or electronic communications involving client orders is compatible with the Charter of

Fundamental Rights of the European Union and is justified in order to *strengthen* investor protection, to improve market surveillance and increase legal certainty in the interest of investment firms and their clients. The importance of such records is also mentioned in the technical advice to the European Commission, released by the Committee of European Securities Regulators on 29 July 2010. For these reasons, it is appropriate to provide in this Directive for the principles of a general regime concerning the recording of telephone conversations or electronic communications involving client orders.

Fundamental Rights of the European Union and is justified in order to *strengthen* investor protection, to improve market surveillance and increase legal certainty in the interest of investment firms and their clients. The importance of such records is also mentioned in the technical advice to the European Commission, released by the Committee of European Securities Regulators on 29 July 2010. For these reasons, it is appropriate to provide in this Directive for the principles of a general regime concerning the recording of telephone conversations or electronic communications involving client orders, ***or adequate documentation of the content of such telephone conversations or electronic communications, for example in the form of minutes.***

Or. en

Amendment 7
Proposal for a directive
Recital 43

Text proposed by the Commission

(43) Member States should ensure the right to the protection of personal data in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and of the free movement of such data and Directive 2002/58/EC. This protection should notably extend to telephone and electronic recording ***as required under Article 13.***

Amendment

(43) Member States should ensure the ***respect of the*** right to the protection of personal data in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and of the free movement of such data¹ and Directive 2002/58/EC ***of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector² (Directive on privacy and electronic communications) which govern the processing of personal data carried out in application of this Directive.*** This protection should notably extend to

telephone and electronic recording.
Processing of personal data by the European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council³ in the application of this Directive is subject to Regulation (EU) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁴.

¹ OJ L 281, 23.11.1995, p. 31.

² OJ L 201, 31.7.2002, p. 37.

³ OJ L 331, 15.12.2010, p. 84.

⁴ OJ L 8, 12.1.2001, p. 1.

Or. en

Amendment 8
Proposal for a directive
Recital 44

Text proposed by the Commission

(44) The use of trading technology has evolved significantly in the past decade and is now extensively used by market participants. Many market participants now make use of algorithmic trading where a computer algorithm automatically determines aspects of an order with minimal or no human intervention. A specific subset of algorithmic trading is high frequency 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. High frequency trading is

Amendment

(44) The use of trading technology has evolved significantly in the past decade and is now extensively used by market participants. Many market participants now make use of algorithmic trading where a computer algorithm automatically determines aspects of an order with minimal or no human intervention. A specific subset of algorithmic trading is high frequency 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

typically done by the traders using their own capital to trade and rather than being a strategy in itself *is usually* the use of sophisticated technology to implement more traditional trading strategies such as market making or arbitrage.

to that analysis. High frequency trading is typically done by the traders using their own capital to trade and rather than being a strategy in itself *can often involve* the use of sophisticated technology to implement more traditional trading strategies such as market making or arbitrage.

Or. en

Amendment 9
Proposal for a directive
Recital 46

Text proposed by the Commission

(46) The use of trading technology has increased the speed, capacity and complexity of how investors trade. It has also enabled market participants to facilitate direct access by their clients to markets through the use of their trading facilities, through direct electronic access or sponsored and direct market access. Trading technology has provided benefits to the market and market participants generally such as wider participation in markets, increased liquidity, narrower spreads, reduced short term volatility and the means to obtain better execution of orders for clients. Yet, this trading technology also gives rise to a number of potential risks such as an increased risk of the overloading of the systems of trading venues due to large volumes of orders, risks of algorithmic trading generating duplicative or erroneous orders or otherwise malfunctioning in a way that may create a disorderly market. In addition there is the risk of algorithmic trading systems overreacting to other market events which can exacerbate volatility if there is a pre-existing market problem. Finally, algorithmic trading or high frequency can lend itself to certain forms

Amendment

(46) The use of *high-frequency* trading technology has increased the speed, capacity and complexity of how investors trade. It has also enabled market participants to facilitate direct access by their clients to markets through the use of their trading facilities, through direct electronic access or sponsored and direct market access. Trading technology has provided benefits to the market and market participants generally such as wider participation in markets, increased liquidity, narrower spreads, reduced short term volatility and the means to obtain better execution of orders for clients. Yet, this *high-frequency* trading technology also gives rise to a number of potential risks such as an increased risk of the overloading of the systems of trading venues due to large volumes of orders, risks of algorithmic trading generating duplicative or erroneous orders or otherwise malfunctioning in a way that may create a disorderly market. In addition there is the risk of algorithmic trading systems overreacting to other market events which can exacerbate volatility if there is a pre-existing market problem. Finally, algorithmic trading or high frequency *trading* can lend itself to certain

of abusive behaviour if misused.

forms of abusive behaviour if misused.

Or. en

Amendment 10
Proposal for a directive
Recital 47

Text proposed by the Commission

(47) These potential risks from increased use of technology are best mitigated by a combination of specific risk controls directed at firms who engage in algorithmic or high frequency trading and other measures directed at operators of trading venues that are accessed by such firms. It is desirable to ensure that all high frequency trading firms be authorised when they are a direct member of a trading venue. This should ensure they are subject to organisational requirements under the Directive and are properly supervised.

Amendment

(47) These potential risks from increased use of technology are best mitigated by a combination of specific risk controls directed at firms who engage in algorithmic or high frequency trading and other measures directed at operators of ***all*** trading venues that are accessed by such firms. It is desirable to ensure that all high frequency trading firms be authorised when they are a direct member of a trading venue. This should ensure they are subject to organisational requirements under the Directive and are properly supervised. ***It is also appropriate to end the practice of direct electronic 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.***

Or. en

Amendment 11
Proposal for a directive
Recital 48

Text proposed by the Commission

(48) Both firms and trading venues should ensure robust measures are in place to ensure that automated trading does not create a disorderly market and cannot be

Amendment

(48) 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

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 circuit breakers are in place to temporarily halt trading if there are sudden unexpected price movements.

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 circuit breakers are in place to temporarily halt trading if there are sudden unexpected price movements.

Or. en

Amendment 12
Proposal for a directive
Recital 48 a (new)

Text proposed by the Commission

Amendment

(48a) It is also necessary to ensure that the fee structures of trading venues are transparent, non-discriminatory and fair and that they are not structured in such a way as to promote disorderly market conditions. It is therefore appropriate to ensure that higher fees apply to practices such as the cancellation of high volumes or proportions of orders which could create such disorderly conditions.

Or. en

Amendment 13
Proposal for a directive
Recital 49

Text proposed by the Commission

Amendment

(49) In addition to measures relating to algorithmic and high frequency trading it is appropriate to include controls relating to investment firms providing direct electronic access to markets for clients as electronic trading can be carried out via a firm providing electronic market access and many similar risks. It is also appropriate that firms providing direct

deleted

electronic access ensure that persons using this service are properly qualified and that risk controls are imposed on the use of the service. It is appropriate that detailed organisational requirements regarding these new forms of trading should be prescribed in more detail in delegated acts. This should ensure that requirements may be amended where necessary to deal with further innovation and developments in this area.

Or. en

Amendment 14
Proposal for a directive
Recital 49 a (new)

Text proposed by the Commission

Amendment

(49a) High-frequency trading is facilitated by the co-location of market participants' facilities in close physical proximity to a trading venue's matching engine. To ensure orderly and fair trading conditions it is essential to require trading venues to provide such co-location services on a non-discriminatory, fair and transparent basis.

Or. en

Amendment 15
Proposal for a directive
Recital 51 a (new)

Text proposed by the Commission

Amendment

(51a) In particular, Member States should ensure that where investment firms design investment products or structured deposits for sale to professional or retail clients those products are designed to meet the needs of an identified target market

within the relevant category of clients. Moreover, Member States should ensure that the investment firm takes reasonable steps to ensure that the investment product is marketed and distributed to clients within the target group.

Or. en

Amendment 16
Proposal for a directive
Recital 52

Text proposed by the Commission

(52) In order to give all relevant information to investors, it is appropriate to require investment firms providing investment advice to clarify the basis of the advice they provide, notably the range of products they consider in providing personal recommendations to clients, whether *they provide* investment advice *on an independent basis* and whether *they* provide the clients with the *on-going* assessment of the suitability of the financial instruments recommended to them. It is also appropriate to require investment firms to explain their clients the reasons of the advice provided to them. In order to further define the regulatory framework for the provision of investment advice, while at the same time leaving choice to investment firms and clients, it is appropriate to establish the conditions for the provisions of this service when firms inform clients that the *service* is provided *on an independent basis. In order to strengthen the protection of investors and increase clarity to clients as to the service they receive, it is appropriate to further restrict the possibility for firms to accept or receive inducements from third parties, and particularly from issuers or product providers, when providing the service of investment advice on an independent*

Amendment

(52) In order to give all relevant information to investors, it is appropriate to require investment firms providing investment advice to clarify the basis of the advice they provide, notably the range of products they consider in providing personal recommendations to clients, 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. It is also appropriate to require investment firms to explain their clients the reasons of the advice provided to them. In order to further define the regulatory framework for the provision of investment advice, while at the same time leaving choice to investment firms and clients, it is appropriate to establish the conditions for the provisions of this service when firms inform clients that the *advice* is provided *in conjunction with the acceptance or receipt of third-party inducements. When* providing portfolio management, the *investment firm* should, *prior to the agreement, inform the client about the expected scale of inducements, and periodic reports should*

basis and the service of portfolio management. In such cases, only limited non-monetary benefits as training on the features of the products should be allowed subject to the condition that they do not impair the ability of investment firms to pursue the best interest of their clients, as further clarified in Directive 2006/73/EC.

disclose all inducements paid or received.

Or. en

Amendment 17
Proposal for a directive
Recital 60

Text proposed by the Commission

(60) Information provided by investment firms to clients in relation to their order execution policies often are generic and standard and do not allow clients to understand how an order will be executed and to verify firms' compliance with their obligation to execute orders on term most favourable to their clients. In order to enhance investor protection it is appropriate to specify the principles concerning the information given by investment firms to their clients on the order execution policies and to require firms to make public, on an annual basis, for each class of financial instruments, the top five execution venues where they executed client orders in the preceding year.

Amendment

(60) Information provided by investment firms to clients in relation to their order execution policies often are generic and standard and do not allow clients to understand how an order will be executed and to verify firms' compliance with their obligation to execute orders on term most favourable to their clients. In order to enhance investor protection it is appropriate to specify the principles concerning the information given by investment firms to their clients on the order execution policies and to require firms to make public, on an annual basis, for each class of financial instruments, the top five execution venues where they executed client orders in the preceding year ***and to take account of that information and information published by trading venues on execution quality in their policies on best execution.***

Or. en

Amendment 18
Proposal for a directive
Recital 67

Text proposed by the Commission

(67) The financial crisis has shown limits in the ability of non-retail clients to appreciate the risk of their investments. While it should be confirmed that conduct of business rules should be enforced in respect of those investors most in need of protection, it is appropriate to better calibrate the requirements applicable to different categories of clients. To this extent, it is appropriate to extend some information and reporting requirements to the relationship with eligible counterparties. In particular, the relevant requirements should relate to the safeguarding of client financial instruments and monies as well as information and reporting requirements concerning more complex financial instruments and transaction. In order to better *define* the **classification** of municipalities and local public authorities, it is appropriate to clearly exclude them from the list of eligible counterparties and of clients who are considered to be professionals while still allowing these clients to ask a treatment as professional clients on request.

Amendment

(67) The financial crisis has shown limits in the ability of non-retail clients to appreciate the risk of their investments. While it should be confirmed that conduct of business rules should be enforced in respect of those investors most in need of protection, it is appropriate to better calibrate the requirements applicable to different categories of clients. To this extent, it is appropriate to extend some information and reporting requirements to the relationship with eligible counterparties. In particular, the relevant requirements should relate to the safeguarding of client financial instruments and monies as well as information and reporting requirements concerning more complex financial instruments and transaction. In order to better *reflect* the **functions** of municipalities and local public authorities, ***which should not be making a business out of speculative instruments***, it is appropriate to clearly exclude them from the list of eligible counterparties and of clients who are considered to be professionals while still allowing these clients to ask a treatment as professional clients on request.

Or. en

Amendment 19
Proposal for a directive
Recital 69

Text proposed by the Commission

(69) Member States shall protect the right to privacy of natural persons with respect to the processing of personal data in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of

Amendment

deleted

individuals with regard to the processing of personal data and of the free movement of such data.

Or. en

Amendment 20
Proposal for a directive
Recital 73

Text proposed by the Commission

(73) The provision of services to retail clients should always require the establishment of a branch in the Union. The establishment of the branch shall be subject to authorisation and supervision in the Union. Proper cooperation arrangements should be in place between the competent authority concerned and the competent authority in the third country. Sufficient initial capital should be at free disposal of the branch. Once authorised the branch should be subject to supervision in the Member State where the branch is established; the third country firm should be able to provide services in other Member States through the authorised and supervised branch, subject to a notification procedure. The provision of services without branches should be limited to eligible counterparties. It should be subject to registration by ESMA and to supervision in the third country. Proper cooperation arrangements should be in place between ESMA and the competent authorities in the third country.

Amendment

(73) The provision of services to retail clients ***or to clients who have chosen to waive certain protections in order to be treated as professional clients*** should always require the establishment of a branch in the Union. The establishment of the branch shall be subject to authorisation and supervision in the Union. Proper cooperation arrangements should be in place between the competent authority concerned and the competent authority in the third country. Sufficient initial capital should be at free disposal of the branch. Once authorised the branch should be subject to supervision in the Member State where the branch is established; the third country firm should be able to provide services in other Member States through the authorised and supervised branch, subject to a notification procedure. The provision of services without branches should be limited to eligible counterparties. It should be subject to registration by ESMA and to supervision in the third country. Proper cooperation arrangements should be in place between ESMA and the competent authorities in the third country.

Or. en

Amendment 21
Proposal for a directive
Recital 78

Text proposed by the Commission

(78) The introduction of a commercial solution for a consolidated tape for equities should contribute to creating a more integrated European market and make it easier for market participants to gain access to a consolidated view of trade transparency information that is available. The envisaged solution is based on an authorisation of providers working along pre-defined and supervised parameters which are in competition with each other in order to achieve technically highly sophisticated and innovative solutions, serving the market to the greatest extent possible.

Amendment

(78) Now that a market structure is in place which allows for competition between multiple trading venues it is essential that an effective consolidated tape is in operation as soon as possible.
The introduction of a commercial solution for a consolidated tape for equities should contribute to creating a more integrated European market and make it easier for market participants to gain access to a consolidated view of trade transparency information that is available. The envisaged solution is based on an authorisation of providers working along pre-defined and supervised parameters which are in competition with each other in order to achieve technically highly sophisticated and innovative solutions, serving the market to the greatest extent possible. ***In order to facilitate the early development of a viable consolidated tape, the Commission should adopt delegated acts specifying certain details concerning the information obligation on consolidated tape providers (CTPs) as soon as possible.***

Or. en

Amendment 22
Proposal for a directive
Recital 85

Text proposed by the Commission

(85) Explicit powers should be granted to competent authorities to limit the ability of any person or class of persons from entering into a derivative contract in relation to a commodity. The application of

Amendment

(85) Explicit powers should be granted to competent authorities to limit the ability of any person or class of persons from entering into a derivative contract in relation to a commodity. The application of

a limit should be possible both in the case of individual transactions and positions built up over time. In the latter case in particular, the competent authority should ensure that these position limits are non-discriminatory, clearly spelled out, take due account of the specificity of the market in question, and are necessary to secure the integrity and orderly functioning of the market.

a limit should be possible both in the case of individual transactions and positions built up over time. In the latter case in particular, the competent authority should ensure that these position limits are non-discriminatory, clearly spelled out, take due account of the specificity of the market in question, and are necessary to secure the integrity and orderly functioning of the market. ***In particular, the limits should differentiate between positions which objectively reduce risks directly relating to commercial activities in relation to the commodity and other positions.***

Or. en

Amendment 23
Proposal for a directive
Recital 86

Text proposed by the Commission

(86) All venues which offer trading in commodity derivatives should have in place appropriate limits ***or suitable alternative arrangements*** designed to support liquidity, prevent market abuse, and ensure the orderly pricing and settlement conditions. ESMA should maintain and publish a list containing summaries of all such measures in force. These limits ***or arrangements*** should be applied in a consistent manner and take account of the specific characteristics of the market in question. They should be clearly spelled out as regards to whom they apply and any exemptions thereto, as well as to the relevant quantitative thresholds which constitute the limits or which may trigger other obligations. The Commission should be empowered to adopt ***delegated acts***, including with a view to avoiding any divergent effects of the limits ***or arrangements*** applicable to comparable

Amendment

(86) All venues which offer trading in commodity derivatives should have in place appropriate limits designed to support liquidity, prevent market abuse, and ensure the orderly pricing and settlement conditions. ESMA should maintain and publish a list containing summaries of all such measures in force. These limits should be applied in a consistent manner and take account of the specific characteristics of the market in question. They should be clearly spelled out as regards to whom they apply and any exemptions thereto, as well as to the relevant quantitative thresholds which constitute the limits or which may trigger other obligations. The Commission should be empowered to adopt ***regulatory technical standards***, including with a view to avoiding any divergent effects of the limits applicable to comparable contracts on different venues.

contracts on different venues.

Or. en

Amendment 24
Proposal for a directive
Recital 86 a (new)

Text proposed by the Commission

Amendment

(86a) Member States should require regulated markets, and operators of Multilateral Trading Facilities (MTFs) and Organised Trading Facilities (OTFs) which admit to trading or trade commodity derivatives to apply in addition to ex ante position limits such other controls on positions as are necessary to ensure the orderly operation of markets and in particular to reduce the potential for manipulation of the market for the derivative or the underlying by holders of large positions and to ensure that market participants have the necessary arrangements in place to physically settle the contract where necessary. Those controls should include the possibility for the trading venue to require members or participants to terminate or reduce a position.

Or. en

Amendment 25
Proposal for a directive
Recital 105

Text proposed by the Commission

Amendment

(105) The European Parliament should be given a period of three months from the first transmission of draft amendments and implementing measures to allow it to examine them and to give its opinion.

deleted

However, in urgent and duly justified cases, it should be possible to shorten that period. If, within that period, a resolution is adopted by the European Parliament, the Commission should re-examine the draft amendments or measures.

Or. en

Amendment 26
Proposal for a directive
Recital 106

Text proposed by the Commission

(106) *In order to attain the objectives set out in this Directive, the* power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of details concerning exemptions, the *clarification* of definitions, the criteria for the assessment of proposed acquisitions of an investment firm, the organisational requirements for investment firms, the management of conflicts of interest, conduct of business obligations in the provision of investment services, the execution of orders on terms most favourable to the client, the handling of client orders, the transactions with eligible counterparties, the SME growth markets, the conditions for the assessment of initial capital of third country *firms*, measures concerning systems resilience, circuit breakers and electronic trading, the admission of financial instruments to trading, the suspension and removal of financial *instruments* from trading, the thresholds for position reporting held by categories of traders, the cooperation between competent authorities. It is of particular importance that the Commission *carries* out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts,

Amendment

(106) *The* power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of details concerning exemptions, the *specification* of *certain* definitions, the criteria for the assessment of proposed acquisitions of an investment firm, the organisational requirements for investment firms, the management of conflicts of interest, conduct of business obligations in the provision of investment services, the execution of orders on terms most favourable to the client, the handling of client orders, the transactions with eligible counterparties, the SME growth markets, the conditions for the assessment of initial capital of third country *financial institutions*, measures concerning systems resilience, circuit breakers and electronic trading, the admission of financial instruments to trading, the suspension and removal of financial *instruments* from trading, the thresholds for position reporting held by categories of traders, the *clarification of what constitutes a reasonable commercial basis for an Approved Publication Arrangement (APA) to make information public, for CTPs to provide access to data streams and for an Approved Reporting Mechanism (ARM) to report information,*

should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

the clarification of details of the information obligation on CTP, the cooperation between competent authorities. It is of particular importance that the Commission *carry* out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

Or. en

Amendment 27
Proposal for a directive
Recital 107

Text proposed by the Commission

(107) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. These powers relate to the adoption of the equivalence decision concerning third country legal and supervisory framework for the provision of services by third country *firms and the sending of positions reports by categories of traders to ESMA* and they should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

Amendment

(107) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. These powers *should* relate to the adoption of the equivalence decision concerning third country legal and supervisory framework for the provision of services by third country *financial institutions* and they should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers¹.

¹ OJ L 55, 28.2.2011, p. 13.

Or. en

Amendment 28
Proposal for a directive
Recital 109

Text proposed by the Commission

(109) The Commission should adopt the draft regulatory technical standards developed by ESMA in Article 7 regarding procedures for granting and refusing requests for authorisation of investment firms, Articles 9 and 48 regarding requirements for management bodies, Article 12 regarding acquisition of qualifying holding, Article 27 regarding obligation to execute orders on terms most favourable to clients, Articles 34 and 54 regarding cooperation and exchange of information, Article 36 regarding freedom to provide investment services and activities, Article 37 regarding establishment of a branch, Article 44 regarding provision of services by third country firms, Article 63 regarding procedures for granting and refusing requests for authorisation of data reporting services providers, Articles 66 and 67 regarding organisational requirements for APAs and CTPs and Article 84 regarding cooperation among competent authorities. The Commission should adopt these draft regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No **1093/2010**.

Amendment

(109) The Commission should adopt the draft regulatory technical standards developed by ESMA ***specifying the criteria for determining whether an activity is ancillary to the main business,*** in Article 7 regarding procedures for granting and refusing requests for authorisation of investment firms, Articles 9 and 48 regarding requirements for management bodies, Article 12 regarding acquisition of qualifying holding, Article 27 regarding obligation to execute orders on terms most favourable to clients, Articles 34 and 54 regarding cooperation and exchange of information, Article 36 regarding freedom to provide investment services and activities, Article 37 regarding establishment of a branch, Article 44 regarding provision of services by third country firms, ***regarding the limits on the number of contracts which any person can enter into over a specified period of time,*** Article 63 regarding procedures for granting and refusing requests for authorisation of data reporting services providers, Articles 66 and 67 regarding organisational requirements for APAs and CTPs and Article 84 regarding cooperation among competent authorities. The Commission should adopt these draft regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No **1095/2010**.

Or. en

Amendment 29
Proposal for a directive
Recital 110

Text proposed by the Commission

(110) The Commission should also be empowered to adopt implementing technical standards by *means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010*. ESMA *should be entrusted with drafting implementing technical standards for submission to the Commission with regard to Article 7* regarding procedures for granting and refusing requests for authorisation of investment firms, Article 12 regarding acquisition of qualifying holding, Article 18 regarding trading process on finalisation of transactions in MTFs and OTFs, Articles 32, 33 and 53 regarding suspension and removal of instruments from trading, Article 36 regarding freedom to provide investment services and activities, Article 37 regarding establishment of a branch, Article 44 regarding provision of services by third country firms, Article 60 regarding position reporting by categories of traders, Article 78 regarding submission of information to ESMA, Article 83 regarding obligation to cooperate, Article 84 regarding cooperation among competent authorities, Article 85 regarding exchange of information and Article 88 regarding consultation prior to authorisation.

Amendment

(110) The Commission should also be empowered to adopt ***draft*** implementing technical standards ***developed*** by ESMA regarding procedures for granting and refusing requests for authorisation of investment firms, Article 12 regarding acquisition of qualifying holding, Article 18 regarding trading process on finalisation of transactions in MTFs and OTFs, Articles 32, 33 and 53 regarding suspension and removal of instruments from trading, Article 36 regarding freedom to provide investment services and activities, Article 37 regarding establishment of a branch, Article 44 regarding provision of services by third country firms, Article 60 regarding position reporting by categories of traders, Article 78 regarding submission of information to ESMA, Article 83 regarding obligation to cooperate, Article 84 regarding cooperation among competent authorities, Article 85 regarding exchange of information and Article 88 regarding consultation prior to authorisation. ***The Commission should adopt those draft implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No. 1095/2010.***

Or. en

Amendment 30
Proposal for a directive
Article 1 – paragraph 1

Text proposed by the Commission

1. This Directive shall apply to investment firms, regulated markets, data reporting service providers and third country ***firms***

Amendment

1. This Directive shall apply to investment firms, regulated markets, data reporting service providers and third country

providing investment services or activities in the Union.

financial institutions providing investment services or activities in the ***European*** Union.

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Or. en

Amendment 31
Proposal for a directive
Article 1 – paragraph 2 – point b

Text proposed by the Commission

(b) provision of investment services or activities by third country ***firms*** with the establishment of a branch;

Amendment

(b) provision of investment services or activities by third country ***financial institutions*** with the establishment of a branch;

Or. en

Amendment 32
Proposal for a directive
Article 2 – paragraph 1 – point d – paragraph 2

Text proposed by the Commission

This exemption does not apply to persons exempt under Article 2(1)(i) who deal on own account in financial instruments as members or participants of a regulated market or MTF, including as market makers in relation to commodity derivatives, emission allowances, or derivatives thereof;

Amendment

Persons who are exempt under point (i) do not also need to meet the conditions laid down in this point in order to be exempt;

Or. en

Amendment 33
Proposal for a directive
Article 2 – paragraph 1 – point g

Text proposed by the Commission

(g) the members of the European System of Central Banks and other national bodies performing similar functions in the Union, other public bodies charged with or intervening in the management of the public debt in the Union and international bodies of which **one** or more Member States are members;

Amendment

(g) the members of the European System of Central Banks and other national bodies performing similar functions in the Union, other public bodies charged with or intervening in the management of the public debt in the Union and international bodies of which **three** or more Member States are members **and which are charged with or intervening in the management of the public debt**;

Or. en

Amendment 34

Proposal for a directive

Article 2 – paragraph 1 – point i

Text proposed by the Commission

i) persons who:

– deal on own account in financial instruments, excluding persons who deal on own account by executing client orders,
or

– provide investment services, other than dealing on own account, exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings, or

– provide investment services, other than dealing on own account, in commodity derivatives or derivative contracts included in Annex I, Section C 10 or emission allowances or derivatives thereof to the clients of their main business,

provided that in all cases this is an ancillary activity to their main business, when considered on a group basis, and that main business is not the provision of investment services within the meaning of this Directive or banking services under

Amendment

i) persons who:

(i) deal on own account in financial instruments, excluding persons who deal on own account by executing client orders,

(ii) provide investment services, other than dealing on own account, exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings, or

(iii) provide investment services, other than dealing on own account, in commodity derivatives or derivative contracts included in Annex I, Section C 10 or emission allowances or derivatives thereof to the clients of their main business,

provided that in all cases:

Directive 2006/48/EC;

– this is an ancillary activity to their main business, when considered on a group basis, and that main business is not the provision of investment services within the meaning of this Directive or banking services under Directive 2006/48/EC,

– they report annually to the relevant competent authority the basis on which they consider that their activity under points (i), (ii) and (iii) is ancillary to their main business;

Or. en

Amendment 35

Proposal for a directive

Article 2 – paragraph 1 – point j

Text proposed by the Commission

Amendment

(j) persons providing investment advice in the course of providing another professional activity not covered by this Directive provided that the provision of such advice is not specifically remunerated;

deleted

Or. en

Amendment 36

Proposal for a directive

Article 2 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

3. The Commission shall adopt delegated acts in accordance with Article 94 concerning measures in respect of ***exemptions (c) and (i), to clarifying when an activity is to be considered as ancillary to the main business on a group level as well as for determining*** when an activity is

3. The Commission shall adopt delegated acts in accordance with Article 94 concerning measures in respect of ***exemption (c) to clarify*** when an activity is provided in an incidental manner.

provided in an incidental manner.

Or. en

Amendment 37
Proposal for a directive
Article 2 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

The criteria for determining whether an activity is ancillary to the main business shall take into account at least the following elements:

deleted

- the extent to which the activity is objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity,*
- the capital employed for carrying out the activity.*

Or. en

Amendment 38
Proposal for a directive
Article 2 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. ESMA shall develop draft regulatory technical standards to specify the criteria for determining whether an activity is ancillary to the main business, taking into account at least the following:

(a) the extent to which the activity is objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity;

(b) the need for ancillary activities to constitute a minority of activities at group level, and at an entity level unless services provided only to other members of the

same group;

(c) the level of trading undertaken or investment services provided relative to that undertaken by financial institutions undertaking the same activities or providing the same services;

ESMA shall submit those draft regulatory technical standards to the Commission by*

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

** OJ please insert date: 12 months after entry into force of this Directive.*

Or. en

Amendment 39
Proposal for a directive
Article 4 – paragraph 2 – point 12

Text proposed by the Commission

12) ‘Small and medium-sized enterprise’ for the purposes of this Directive, means a company that *had an average market capitalisation of less than EUR 100 000 000 on the basis of end-year quotes for the previous three calendar years*;

Amendment

12) ‘Small and medium-sized enterprise’ for the purposes of this Directive, means a company that *employs fewer than 250 persons, and either has an annual turnover not exceeding EUR 50 million, or an annual balance sheet total not exceeding EUR 43 million*;

Or. en

Amendment 40
Proposal for a directive
Article 4 – paragraph 2 – point 18

Text proposed by the Commission

18) ‘Competent authority’ means the authority, designated by each Member State in accordance with Article 48, unless otherwise specified in this Directive;

Amendment

18) ‘Competent authority’ means the authority, designated by each Member State in accordance with Article 69, unless otherwise specified in this Directive;

Or. en

Amendment 41
Proposal for a directive
Article 4 – paragraph 2 – point 27

Text proposed by the Commission

27) ‘Management body’ means the governing body of a firm, comprising the supervisory and the managerial functions, which has the ultimate decision-making authority and is empowered to set the firm's strategy, objectives and overall direction. Management body shall include persons who effectively direct the business of the firm

Amendment

27) ‘Management body’ means the governing body of a firm **or data services provider**, comprising the supervisory and the managerial functions, which has the ultimate decision-making authority and is empowered to set the firm's **or data services provider's** strategy, objectives and overall direction. Management body shall include persons who effectively direct the business of the firm;

Or. en

Amendment 42
Proposal for a directive
Article 4 – paragraph 2 – point 30

Text proposed by the Commission

30) ‘Algorithmic trading’ means trading in financial instruments where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited or no human intervention. This definition does not include any system that

Amendment

30) ‘Algorithmic trading’ means trading in financial instruments where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited or no human intervention. This definition does not include any system that

is only used for the purpose of routing orders to one or more trading venues or for the confirmation of orders;

is only used for the purpose of routing orders to one or more trading venues or for the confirmation of orders *or to execute client orders or to fulfil any legal obligation through the determination of a parameter of the order*;

Or. en

Amendment 43
Proposal for a directive
Article 4 – paragraph 2 – point 30 a (new)

Text proposed by the Commission

Amendment

(30a) 'High-frequency trading' means trading in financial instruments at speeds where the physical latency of the mechanism for transmitting, cancelling or modifying orders becomes the determining factor in the time taken to communicate the instruction to a trading venue or to execute a transaction;

Or. en

Amendment 44
Proposal for a directive
Article 4 – paragraph 2 – point 30 b (new)

Text proposed by the Commission

Amendment

(30b) 'High-frequency trading strategy' means a trading strategy for dealing on own-account in a financial instrument which involves high-frequency trading and has at least four of the following characteristics:

(i) it uses co-location facilities;

(ii) it relates to a daily portfolio turnover of at least 50 %;

(iii) the ratio of orders to trades exceeds

4:1;

(iv) the proportion of orders cancelled exceeds 20 %;

(v) the majority of positions taken are unwound within the same day;

(vi) over 50 % of the orders or transactions are made on trading venues offering discounts or rebates to orders which provide liquidity are eligible for such rebates;

Or. en

Amendment 45
Proposal for a directive
Article 4 – paragraph 3

Text proposed by the Commission

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to *1* --- specify some technical elements of the definitions laid down in paragraph 1 of this Article, to adjust them to market developments .

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to specify some technical elements of the definitions laid down in *points (3), (11), (12), (27), (28), (29), (30), (30a), (30b), (31), (32), (33)* of paragraph 1 of this Article, to adjust them to market developments.

Or. en

Amendment 46
Proposal for a directive
Article 7 – paragraph 4 – subparagraph 2

Text proposed by the Commission

ESMA shall submit those draft regulatory technical standards to the Commission by *[31 December 2016]*.

Amendment

ESMA shall submit those draft regulatory technical standards to the Commission by... *. .

** OJ please insert date: 18 months after*

entry into force of this Directive.

Or. en

Amendment 47
Proposal for a directive
Article 7 – paragraph 4 – subparagraph 3

Text proposed by the Commission

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with ***the procedure laid down in*** Articles 10 to 14 of Regulation (EU) No 1095/2010.

Amendment

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Or. en

Amendment 48
Proposal for a directive
Article 7 – paragraph 5 – subparagraph 2

Text proposed by the Commission

ESMA shall submit those draft implementing technical standards to the Commission by [***31 December 2016***].

Amendment

ESMA shall submit those draft implementing technical standards to the Commission by... *.

**** OJ please insert date: 18 months after entry into force of this Directive.***

Or. en

Amendment 49
Proposal for a directive
Article 9 – paragraph 4 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

ESMA shall submit those draft regulatory

technical standards to the Commission by*

** OJ please insert date: 12 months after entry into force of this Directive.*

Or. en

Amendment 50
Proposal for a directive
Article 9 – paragraph 4 – subparagraph 3

Text proposed by the Commission

ESMA shall submit those draft regulatory technical standards to the Commission by [31 December 2014].

Amendment

deleted

Or. en

Amendment 51
Proposal for a directive
Article 12 – paragraph 8 – subparagraph 3

Text proposed by the Commission

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with *the procedure laid down in* Articles 10 to 14 of Regulation (EU) No 1095/2010.

Amendment

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Or. en

Amendment 52
Proposal for a directive
Article 14 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

This Article shall not apply to structured deposits issued by credit institutions which are members of a deposit guarantee scheme recognised under Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes¹.

¹ *OJ L 135, 31.5.1994, p. 5.*

Or. en

Amendment 53
Proposal for a directive
Article 16 – paragraph 7 – subparagraph 1

Text proposed by the Commission

Records shall ***include the recording of telephone conversations or electronic communications involving***, at least, transactions concluded when dealing on own account and client orders when the services of reception and transmission of orders and execution of orders on behalf of clients are provided.

Amendment

The home Member States shall recognise as adequate records in relation to, at least, transactions concluded when dealing on own account and client orders when the services of reception and transmission of orders and execution of orders on behalf of clients are provided, ***either:***

(a) the recording of telephone conversations or electronic communications; or

(b) the adequate documentation of the content of such telephone conversations or electronic communications, for example in the form of minutes.

Or. en

Amendment 54
Proposal for a directive
Article 16 – paragraph 7 – subparagraph 2

Text proposed by the Commission

Records of telephone conversation or electronic communications recorded in accordance with sub-paragraph 1 shall be provided to the clients involved upon request and shall be kept for a period of three years.

Amendment

Member States shall require that such records are kept for a period of three years.

Or. en

Amendment 55
Proposal for a directive
Article 16 – paragraph 12

Text proposed by the Commission

12. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to 1 specify the concrete organisational requirements laid down in paragraphs 2 to 9 to be imposed on investment firms and on branches of third country ***firms*** authorised in accordance with *article* 43 performing different investment services and/or activities and ancillary services or combinations thereof.

Amendment

12. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to 1 specify the concrete organisational requirements laid down in paragraphs 2 to 9 to be imposed on investment firms and on branches of third country ***financial institutions*** authorised in accordance with *Article* 43 performing different investment services and/or activities and ancillary services or combinations thereof.

Or. en

Amendment 56
Proposal for a directive
Article 17 – title

Text proposed by the Commission

Algorithmic trading

Amendment

Algorithmic ***and high-frequency*** trading

Or. en

Amendment 57
Proposal for a directive
Article 17 – paragraph 1

Text proposed by the Commission

1. An investment firm that engages in algorithmic trading shall have in place effective systems and risk controls to ensure that its trading systems are resilient and have sufficient capacity, are subject to appropriate trading thresholds and limits and prevent the sending of erroneous orders or the system otherwise functioning in a way that may create or contribute to a disorderly market. Such a firm shall also have in place effective systems and risk controls to ensure the trading systems cannot be used for any purpose that is contrary to Regulation (EU) No [MAR] or to the rules of a trading venue to which it is connected. The firm shall have in place effective continuity **business** arrangements to deal with any unforeseen failure of its trading systems and shall ensure its systems are fully tested and properly monitored to ensure they meet the requirements in this paragraph.

Amendment

1. An investment firm that engages in algorithmic **or high-frequency** trading shall have in place effective systems and risk controls to ensure that its trading systems are resilient and have sufficient capacity, are subject to appropriate trading thresholds and limits and prevent the sending of erroneous orders or the system otherwise functioning in a way that may create or contribute to a disorderly market. Such a firm shall also have in place effective systems and risk controls to ensure the trading systems cannot be used for any purpose that is contrary to Regulation (EU) No .../... [MAR] or to the rules of a trading venue to which it is connected. The firm shall have in place effective **business** continuity arrangements to deal with any unforeseen failure of its trading systems and shall ensure its systems are fully tested and properly monitored to ensure they meet the requirements in this paragraph.

Or. en

Amendment 58
Proposal for a directive
Article 17 – paragraph 3

Text proposed by the Commission

3. **An algorithmic** trading strategy shall be in continuous operation during the trading hours of the trading venue to which it sends orders or through the systems of which it executes transactions. The trading parameters or limits of **an algorithmic** trading strategy shall ensure that the strategy posts firm quotes at competitive

Amendment

3. **Where an investment firm engages in a high-frequency trading strategy which meets the conditions of Article 4(30b)(vi) that strategy** shall be in continuous operation during the trading hours of the trading venue to which it sends orders or through the systems of which it executes transactions. The trading parameters or

prices with the result of providing liquidity on a regular and ongoing basis to these trading venues at all times, regardless of prevailing market conditions.

limits of ***such a high-frequency*** trading strategy shall ensure that the strategy posts firm quotes at competitive prices with the result of providing liquidity on a regular and ongoing basis to these trading venues at all times, regardless of prevailing market conditions.

Or. en

Amendment 59
Proposal for a directive
Article 17 – paragraph 4

Text proposed by the Commission

4. ***An investment firm that provides direct electronic access to a trading venue shall have in place effective systems and controls which ensure a proper assessment and review of the suitability of persons using the service, that persons using the service are prevented from exceeding appropriate pre set trading and credit thresholds, that trading by persons using the service is properly monitored and that appropriate risk controls prevent trading that may create risks to the investment firm itself or that could create or contribute to a disorderly market or be contrary to Regulation (EU) No [MAR] or the rules of the trading venue. The investment firm shall ensure that there is a binding written agreement between the firm and the person regarding the essential rights and obligations arising from the provision of the service and that under the agreement the firm retains responsibility for ensuring trading using that service complies with the requirements of this Directive, the Regulation (EU) No [MAR] and the rules of the trading venue.***

Amendment

4. ***Investment firms shall not provide*** direct electronic access to a trading venue.

Or. en

Amendment 60
Proposal for a directive
Article 18 – paragraph 8

Text proposed by the Commission

8. Member States shall require investment firms and market operators operating an MTF or an OTF to provide the competent authority with a detailed description of the functioning of the MTF or OTF. Every authorisation to an investment firm or market operator as an MTF and an OTF shall be notified to ESMA. ESMA shall establish a list of all MTFs and OTFs in the Union. The list shall contain information on the services an MTF or an OTF provides and entail the unique code identifying the MTF and the OTF for use in reports in accordance with Article 23 and Articles 5 and 9 of Regulation (EU) No .../... [MiFIR]. It shall be updated on a regular basis. ESMA shall publish and keep up-to-date that list on its website.

Amendment

7. Member States shall require investment firms and market operators operating an MTF or an OTF to provide the competent authority with a detailed description of the functioning of the MTF or OTF. Every authorisation to an investment firm or market operator as an MTF and an OTF shall be notified to ESMA. ESMA shall establish a list of all MTFs and OTFs in the Union. The list shall contain information on the services an MTF or an OTF provides and entail the unique code identifying the MTF and the OTF for use in reports in accordance with Article 23 and Articles 5 and 9 of Regulation (EU) No .../... [MiFIR]. It shall be updated on a regular basis. ESMA shall publish and keep up-to-date that list on its website.

Or. en

Amendment 61
Proposal for a directive
Article 18 – paragraph 9 – subparagraph 1

Text proposed by the Commission

9. ESMA shall develop draft implementing technical standards to determine the content and format of the description and notification referred to in paragraph 8.

Amendment

8. ESMA shall develop draft implementing technical standards to determine the content and format of the description and notification referred to in paragraph 7.

Or. en

Amendment 62
Proposal for a directive
Article 18 – paragraph 9 – subparagraph 2

Text proposed by the Commission

ESMA shall submit those draft implementing technical standards to the Commission by **[31 December 2016]**.

Amendment

ESMA shall submit those draft implementing technical standards to the Commission by ... *.

**** OJ please insert date: 18 months after entry into force of this Directive.***

Or. en

Amendment 63
Proposal for a directive
Article 20 – paragraph 4

Text proposed by the Commission

4. Member States shall require that, where OTFs allow for or enable algorithmic trading to take place through their systems, they have in place effective systems, procedures and arrangements to comply with the conditions of Article 51.

Amendment

4. Member States shall require that, where OTFs allow for or enable algorithmic ***or high-frequency*** trading to take place through their systems, they have in place effective systems, procedures and arrangements to comply with the conditions of Article 51.

Or. en

Amendment 64
Proposal for a directive
Article 24 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall ensure that where investment firms design investment products or structured deposits for sale to professional or retail clients those

products are designed to meet the needs of an identified target market within the relevant category of clients and that the investment firm takes reasonable steps to ensure that the investment product is marketed and distributed to clients within the target group.

Or. en

Amendment 65

Proposal for a directive

Article 24 – paragraph 3 – subparagraph 1 – indent 1

Text proposed by the Commission

– the investment firm and its services;
when investment advice is provided, information shall specify whether the advice is provided ***on an independent basis*** and whether it is based on a broad or on a more restricted analysis of the market and shall indicate whether the investment firm will provide the client with ***the on-going*** assessment of the suitability of the financial instruments recommended to clients,

Amendment

– the investment firm and its services;
when investment advice is provided, information shall specify ***in advance*** whether the advice is provided ***in conjunction with the acceptance or receipt of third-party inducements*** and whether it is based on a broad or on a more restricted analysis of the market and shall indicate whether the investment firm will provide the client with ***a periodical*** assessment of the suitability of the financial instruments recommended to clients,

Or. en

Amendment 66

Proposal for a directive

Article 24 – paragraph 3 – subparagraph 1 – indent 2

Text proposed by the Commission

– financial instruments and proposed investment strategies; this should include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies,

Amendment

– ***product structures and the client categorisation of the intended target market***, financial instruments and proposed investment strategies; this should include appropriate guidance on and warnings of the risks associated with investments in those ***product structures***, instruments or in

respect of particular investment strategies,

Or. en

Amendment 67

Proposal for a directive

Article 24 – paragraph 3 – subparagraph 2

Text proposed by the Commission

The information referred to in the first subparagraph ***should*** be provided in a comprehensible form in such a manner that clients or potential clients are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis. This information may be provided in a standardised format.

Amendment

The information referred to in the first subparagraph ***shall*** be provided in a comprehensible form in such a manner that clients or potential clients are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis. This information may be provided in a standardised format.

Or. en

Amendment 68

Proposal for a directive

Article 24 – paragraph 5 – introductory part

Text proposed by the Commission

5. When the investment firm informs the client that investment advice is provided on an ***independent*** basis, the firm:

Amendment

5. When the investment firm informs the client that investment advice is provided on a ***fee-paying*** basis, the firm ***shall also inform the client whether the financial instruments recommended will be limited to financial instruments issued or provided by entities having close links with the investment firm.***

Or. en

Amendment 69
Proposal for a directive
Article 24 – paragraph 5 – point i

Text proposed by the Commission

Amendment

(i) shall assess a sufficiently large number of financial instruments available on the market. The financial instruments should be diversified with regard to their type and issuers or product providers and should not be limited to financial instruments issued or provided by entities having close links with the investment firm,

deleted

Or. en

Amendment 70
Proposal for a directive
Article 24 – paragraph 5 – point ii

Text proposed by the Commission

Amendment

(ii) shall not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

deleted

Or. en

Amendment 71
Proposal for a directive
Article 24 – paragraph 6

Text proposed by the Commission

Amendment

6. When providing portfolio management the investment firm shall *not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of*

6. When providing portfolio management the investment firm shall, *prior to the agreement, inform its client about the expected scale of inducements. The periodic report shall disclose all inducements paid or received in the*

the *service to clients*.

preceding period.

Or. en

Amendment 72

Proposal for a directive

Article 24 – paragraph 7 – subparagraph 1

Text proposed by the Commission

7. When an investment service is offered together with another service or product as part of a package or as a condition for the same agreement or package, the investment firm shall inform the client whether it is possible to buy the different components separately and shall provide for a separate evidence of the costs and charges of each component.

Amendment

7. When an investment service is offered **to a retail client** together with another service or product as part of a package or as a condition for the same agreement or package, the investment firm shall inform the client whether it is possible to buy the different components separately and shall provide for a separate evidence of the costs and charges of each component.

Or. en

Amendment 73

Proposal for a directive

Article 24 – paragraph 7 – subparagraph 2

Text proposed by the Commission

ESMA shall develop by **[/ at the latest**, and update periodically, guidelines for the assessment and the supervision of cross-selling practices indicating, in particular, situations in which cross-selling practices are not compliant with obligations in paragraph 1.

Amendment

ESMA shall develop by ...*, and update periodically, guidelines for the assessment and the supervision of cross-selling practices indicating, in particular, situations in which cross-selling practices are not compliant with obligations in paragraph 1.

*** OJ please insert date: 12 months after entry into force of this Directive.**

Or. en

Amendment 74
Proposal for a directive
Article 24 – paragraph 8 – introductory part

Text proposed by the Commission

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to ensure that investment firms comply with the principles set out ***therein*** when providing investment or ancillary services to their clients. Those delegated acts shall take into account:

Amendment

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to ensure that investment firms comply with the principles set out ***in this Article*** when providing investment or ancillary services to their clients. Those delegated acts shall take into account:

Or. en

Amendment 75
Proposal for a directive
Article 25 – paragraph 1

Text proposed by the Commission

1. When providing investment advice or portfolio management the investment firm shall obtain the necessary information regarding the client's or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, his financial situation and his investment objectives so as to enable the firm to recommend to the client or potential client the investment services and financial instruments that are suitable for him.

Amendment

1. When providing investment advice or portfolio management the investment firm shall obtain the necessary information regarding the client's or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, his financial situation, ***his risk tolerance*** and his investment objectives so as to enable the firm to recommend to the client or potential client the investment services and financial instruments that are suitable for him ***and, in particular, are in accordance with his risk tolerance.***

Or. en

Amendment 76
Proposal for a directive
Article 25 – paragraph 3 – subparagraph 1 – point a – introductory part

Text proposed by the Commission

a) the services ***referred*** to any of the following financial instruments:

Amendment

a) the services ***relate*** to any of the following financial instruments:

Or. en

Amendment 77
Proposal for a directive
Article 25 – paragraph 5

Text proposed by the Commission

5. The client must receive from the investment firm adequate reports on the service provided to its clients. These reports shall include periodic communications to clients, taking into account the type and the complexity of financial instruments involved and the nature of the service provided to the client and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client. When providing investment advice, the investment firm shall ***specify*** how the advice given meets the personal characteristics of the client.

Amendment

5. The client must receive from the investment firm adequate reports on the service provided to its clients. These reports shall include periodic communications to clients, taking into account the type and the complexity of financial instruments involved and the nature of the service provided to the client and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client. When providing investment advice ***to retail clients***, the investment firm shall ***provide the client with a record in a durable medium of specifying at least the client's objectives, the recommendation and*** how the advice given meets the personal characteristics of the client.

Or. en

Amendment 78
Proposal for a directive
Article 25 – paragraph 7

Text proposed by the Commission

7. ESMA shall develop by ***[] at the latest***, and update periodically, guidelines for the assessment of financial instruments

Amendment

7. ESMA shall develop by ...*, and update periodically, guidelines for the assessment of financial instruments incorporating a

incorporating a structure which makes it difficult for the client to understand the risk involved in accordance with paragraph 3 (a).

structure which makes it difficult for the client to understand the risk involved in accordance with paragraph 3(a).

** OJ please insert date: 12 months after entry into force of this Directive.*

Or. en

Amendment 79
Proposal for a directive
Article 27 – paragraph 2

Text proposed by the Commission

2. Member States shall require that each execution venue makes available to the public, without any charges, data relating to the quality of execution of transactions on that venue on at least ***an annual*** basis. Periodic reports shall include details about price, speed of execution and likelihood of execution for individual financial instruments.

Amendment

2. Member States shall require that each execution venue makes available to the public, without any charges, data relating to the quality of execution of transactions on that venue on at least ***a quarterly*** basis. Periodic reports shall include details about price, speed of execution and likelihood of execution for individual financial instruments.

Or. en

Amendment 80
Proposal for a directive
Article 27 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States shall require investment firms to summarise and make public on a quarterly basis, for each class of financial instruments, the top five execution venues where they executed client orders in the preceding quarter.

Or. en

Amendment 81
Proposal for a directive
Article 27 – paragraph 5 – subparagraph 1

Text proposed by the Commission

5. Member States shall require investment firms to monitor the effectiveness of their order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, they shall assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best possible result for the client or whether they need to make changes to their execution arrangements. Member States shall require investment firms to notify clients of any material changes to their order execution arrangements or execution policy.

Amendment

5. Member States shall require investment firms to monitor the effectiveness of their order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, they shall assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best possible result for the client or whether they need to make changes to their execution arrangements. ***That assessment shall also consider what changes need to be made to the policy in the light of the information published under paragraphs 2 and 4a.*** Member States shall require investment firms to notify clients of any material changes to their order execution arrangements or execution policy.

Or. en

Amendment 82
Proposal for a directive
Article 27 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Member States shall require investment firms to summarize and make public on an annual basis, for each class of financial instruments, the top five execution venues where they executed client orders in the preceding year.

Amendment

deleted

Or. en

Amendment 83
Proposal for a directive
Article 27 – paragraph 8 – subparagraph 2

Text proposed by the Commission

ESMA shall submit those draft regulatory technical standards to the Commission by [XXX]

Amendment

ESMA shall submit those draft regulatory technical standards to the Commission by ...*.

**** OJ please insert date: 12 months after entry into force of this Directive.***

Or. en

Amendment 84
Proposal for a directive
Article 27 – paragraph 8 – subparagraph 3

Text proposed by the Commission

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with ***the procedure laid down in*** Articles 10 to 14 of Regulation (EU) No 1095/2010.

Amendment

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Or. en

Amendment 85
Proposal for a directive
Article 32 – title

Text proposed by the Commission

Suspension and removal of instruments from trading on an MTF

Amendment

Suspension and removal of instruments from trading on an MTF ***or OTF***

Or. en

Amendment 86
Proposal for a directive
Article 32 – paragraph 1

Text proposed by the Commission

1. Member States shall require that an investment firm or a market operator operating an MTF that suspends or removes from trading a financial instrument makes public this decision, communicates it to regulated markets, **other** MTFs and OTFs trading the same financial instrument and communicates relevant information to the competent authority. The competent authority shall inform the competent authorities of the other Member States. Member States shall require that other regulated markets, MTFs and OTFs trading the same financial instrument shall also suspend or remove that financial instrument from trading where the suspension or removal is due to the non-disclosure of information about the issuer or financial instrument except where this could cause significant damage to the investors' interests or the orderly functioning of the market. Member States shall require the other regulated markets, MTFs and OTFs to communicate their decision to their competent authority and all regulated markets, MTFs and OTFs trading the same financial instrument, including an explanation if the decision was not to suspend or remove the financial instrument from trading.

Amendment

1. Member States shall require that an investment firm or a market operator operating an MTF **or OTF** that suspends or removes from trading a financial instrument makes public this decision, communicates it to regulated markets, MTFs and OTFs trading the same financial instrument and communicates relevant information to the competent authority. The competent authority shall inform the competent authorities of the other Member States. Member States shall require that other regulated markets, MTFs and OTFs trading the same financial instrument shall also suspend or remove that financial instrument from trading **as soon as possible** where the suspension or removal is due to the non-disclosure of information about the issuer or financial instrument except where this could cause significant damage to the investors' interests or the orderly functioning of the market. Member States shall require the other regulated markets, MTFs and OTFs to communicate their decision to their competent authority and all regulated markets, MTFs and OTFs trading the same financial instrument, including an explanation if the decision was not to suspend or remove the financial instrument from trading.

Or. en

Amendment 87
Proposal for a directive
Article 32 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

ESMA shall submit those draft

*implementing technical standards to the Commission by ... *..*

** OJ please insert date: 12 months after entry into force of this Directive.*

Or. en

Amendment 88
Proposal for a directive
Article 32 – paragraph 2 – subparagraph 3

Text proposed by the Commission

ESMA shall submit those draft implementing technical standards to the Commission by [XXX].

Amendment

deleted

Or. en

Amendment 89
Proposal for a directive
Article 32 – paragraph 3

Text proposed by the Commission

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 to list the specific situations constituting significant damage to the investors' interests and the orderly functioning of the internal market referred to in paragraphs 1 and 2 and to determine issues relating to the non-disclosure of information about the issuer or financial instrument as referred to in paragraph 1.

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 to list the specific situations constituting significant damage to the investors' interests, *to specify the notion of "as soon as possible"* and the orderly functioning of the internal market referred to in paragraphs 1 and 2 and to determine issues relating to the non-disclosure of information about the issuer or financial instrument as referred to in paragraph 1, *including the necessary procedure for lifting the suspension of trading in a financial instrument.*

Or. en

Amendment 90
Proposal for a directive
Article 33

Text proposed by the Commission

Amendment

Article 33

deleted

***Suspension and removal of instruments
from trading on an OTF***

1. Member States shall require that an investment firm or a market operator operating an OTF that suspends or removes from trading a financial instrument makes public this decision, communicates it to regulated markets, MTFs and other OTFs trading the same financial instrument and communicates relevant information to the competent authority. The competent authority shall inform the competent authorities of the other Member States.

2. ESMA shall develop draft implementing technical standards determining format and timing of the communications and the publication referred to in paragraph 1.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

ESMA shall submit those draft implementing technical standards to the Commission by [XXX].

Or. en

Amendment 91
Proposal for a directive
Article 34 – paragraph 2 – subparagraph 2

Text proposed by the Commission

ESMA shall submit those draft regulatory technical standards to the Commission by **[XXX]**.

Amendment

ESMA shall submit those draft regulatory technical standards to the Commission by ...*.

**** OJ please insert date: 12 months after entry into force of this Directive.***

Or. en

Amendment 92
Proposal for a directive
Article 36 – paragraph 8 – subparagraph 2

Text proposed by the Commission

ESMA shall submit those draft regulatory technical standards to the Commission by **[31 December 2016]**.

Amendment

ESMA shall submit those draft regulatory technical standards to the Commission by ...*.

**** OJ please insert date: 18 months after entry into force of this Directive.***

Or. en

Amendment 93
Proposal for a directive
Article 36 – paragraph 8 – subparagraph 3

Text proposed by the Commission

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with ***the procedure laid down in*** Articles 10 to 14 of Regulation (EU) No 1095/2010.

Amendment

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Or. en

Amendment 94
Proposal for a directive
Article 37 – paragraph 11 – subparagraph 1

Text proposed by the Commission

ESMA shall submit those draft regulatory technical standards to the Commission by *[31 December 2016]*.

Amendment

ESMA shall submit those draft regulatory technical standards to the Commission by ...*.

** OJ please insert date: 18 months after entry into force of this Directive.*

Or. en

Amendment 95
Proposal for a directive
Chapter IV – title

Text proposed by the Commission

Provision of services by third country *firms*

Amendment

Provision of services by third country *financial institutions*

Or. en

Amendment 96
Proposal for a directive
Article 41 – paragraph 2

Text proposed by the Commission

2. Member States shall require that a third country *firm* intending to provide investment services or activities together with any ancillary services to retail clients in those Member States' territory shall establish a branch in the Union.

Amendment

2. Member States shall require that a third country *financial institution* intending to provide investment services or activities together with any ancillary services to retail clients *or to professional clients within the meaning of Section II of Annex II* in those Member States' territory shall establish a branch in the Union.

Amendment 97
Proposal for a directive
Article 41 – paragraph 3 – subparagraph 1

Text proposed by the Commission

3. The Commission may adopt a decision in accordance with the procedure referred to in **Article 95** in relation to a third country **if** the legal and supervisory arrangements of that third country ensure that firms authorised in that third country comply with legally binding requirements which have equivalent effect to the requirements set out in this Directive, in Regulation (EU) No .../... [MiFIR] and in Directive 2006/49/EC [**Capital Adequacy Directive**] and their implementing measures and that third country provides for equivalent reciprocal recognition of the prudential framework applicable to investment firms authorised in accordance with this directive.

Amendment

3. The Commission may adopt a decision in accordance with the **examination** procedure referred to in **Article 95(2)** in relation to a third country **stating whether** the legal and supervisory arrangements of that third country ensure that firms authorised in that third **country** comply with legally binding requirements which have equivalent effect to the requirements set out in this Directive, in Regulation (EU) No .../... [MiFIR] and in Directive 2006/49/EC and their implementing measures and that third country provides for equivalent reciprocal recognition of the prudential framework applicable to investment firms authorised in accordance with this directive.

Amendment 98
Proposal for a directive
Article 41 – paragraph 3 – subparagraph 2 – point a

Text proposed by the Commission

(a) firms providing investment services and activities in that third country are subject to authorisation and to effective supervision and enforcement on an ongoing basis;

Amendment

(a) **investment** firms **or market operators** providing investment services and activities in that third country are subject to authorisation and to effective supervision and enforcement on an ongoing basis;

Amendment 99
Proposal for a directive
Article 41 – paragraph 3 – subparagraph 2 – point b

Text proposed by the Commission

(b) firms providing investment services and activities in that third country are subject to sufficient capital requirements and appropriate requirements applicable to shareholders and members of their management body;

Amendment

(b) **investment** firms **or market operators** providing investment services and activities in that third country are subject to sufficient capital requirements and appropriate requirements applicable to shareholders and members of their management body;

Or. en

Amendment 100
Proposal for a directive
Article 41 – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

(c) firms providing investment services and activities are subject to adequate organisational requirements in the area of internal control functions;

Amendment

(c) **investment** firms **or market operators** providing investment services and activities are subject to adequate organisational requirements in the area of internal control functions;

Or. en

Amendment 101
Proposal for a directive
Article 44 – paragraph 2 – subparagraph 2

Text proposed by the Commission

ESMA shall submit those draft regulatory technical standards to the Commission by [XXX].

Amendment

ESMA shall submit those draft regulatory technical standards to the Commission by... *.

*** OJ please insert date: 18 months after entry into force of this Directive.**

Amendment 102
Proposal for a directive
Article 44 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with ***the procedure laid down in*** Articles 10 to 14 of Regulation (EU) No 1095/2010.

Amendment

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Or. en

Amendment 103
Proposal for a directive
Article 44 – paragraph 3 – subparagraph 2

Text proposed by the Commission

ESMA shall submit those draft implementing technical standards to the Commission by ***[31 December 2016]***.

Amendment

ESMA shall submit those draft implementing technical standards to the Commission by ...*.

**** OJ please insert date: 18 months after entry into force of this Directive.***

Or. en

Amendment 104
Proposal for a directive
Article 45 – paragraph 1

Text proposed by the Commission

Member States shall register the ***firms*** authorised in accordance with Articles 41. The register shall be publicly accessible and shall contain information on the

Amendment

Member States shall register the ***third-country financial institutions*** authorised in accordance with Articles 41. The register shall be publicly accessible and shall

services or activities which the third country **firms** are authorised to provide. It shall be updated on a regular basis. Every authorisation shall be notified to the ESMA.

contain information on the services or activities which the third country **financial institutions** are authorised to provide. It shall be updated on a regular basis. Every authorisation shall be notified to the ESMA.

Or. en

Amendment 105
Proposal for a directive
Article 48 – paragraph 1 – point a

Text proposed by the Commission

(a) commit sufficient time to perform their functions.

They shall not **combine** at the same time more than **one of the following combinations**:

(i) one executive directorship **with two non-executive directorships**

(ii) **four** non-executive directorships.

Executive or non-executive directorships held within the same group shall be considered as one single directorship.

Competent authorities may authorise a member of the management body of a market operator to **combine** more directorships than allowed under the previous sub-paragraph, taking into account individual circumstances and the nature, scale and complexity of the investment firm's activities.

Amendment

(a) commit sufficient time to perform their functions.

They shall not **hold** at the same time more than:

(i) one executive directorship; **or**

(ii) **two** non-executive directorships.

An executive directorship may be combined with a non-executive directorship within the same group.

Executive or non-executive directorships held within the same group shall be considered as one single directorship.

Competent authorities may authorise a member of the management body of a market operator to **hold** more directorships than allowed under the previous sub-paragraph **or may require them to hold fewer directorships**, taking into account individual circumstances and the nature, scale and complexity of the investment firm's activities.

Or. en

Amendment 106
Proposal for a directive
Article 48 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) ensure effective systems are in operation to identify and manage conflicts between the market operator and the regulated market or its members and to operate and maintain appropriate arrangements to separate different business functions.

Or. en

Amendment 107
Proposal for a directive
Article 48 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

Competent authorities may authorise a market operator not to establish a separate nomination committee taking into account the nature, scale and complexity of the market operator's activities.

Competent authorities may authorise a market operator not to establish a separate nomination committee taking into account the nature, scale and complexity of the market operator's activities, ***provided a reasonably comparable alternative mechanism is in place.***

Or. en

Amendment 108
Proposal for a directive
Article 48 – paragraph 4 – subparagraph 1 – point c

Text proposed by the Commission

Amendment

(c) ***to*** notions of honesty, integrity and independence of mind of a member of the management body as referred to in paragraph 1(c),

(c) ***the*** notions of honesty, integrity and independence of mind of a member of the management body as referred to in paragraph 1(c), ***taking account of the potential for conflicts of interest,***

Amendment 109
Proposal for a directive
Article 48 – paragraph 4 – subparagraph 2

Text proposed by the Commission

ESMA shall submit those draft regulatory technical standards to the Commission by *[31 December 2014]*.

Amendment

ESMA shall submit those draft regulatory technical standards to the Commission by ...*.

** OJ please insert date: 12 months after entry into force of this Directive.*

Amendment 110
Proposal for a directive
Article 48 – paragraph 6

Text proposed by the Commission

6. The management body of a market operator shall be able to ensure that the regulated market is managed in a sound and prudent way and in a manner that promotes the integrity of the market.

The management body shall monitor and periodically assess the effectiveness of the regulated market's organization and take appropriate steps to address any deficiencies.

Members of the management body in its supervisory function shall have adequate access to information and documents which are needed to oversee and monitor management decision-making.

Amendment

deleted

Amendment 111
Proposal for a directive
Article 48 – paragraph 7 – subparagraph 1

Text proposed by the Commission

7. The competent authority shall refuse authorisation if it is not satisfied that the persons who meant to effectively direct the business of the regulated market are of sufficiently good repute or sufficiently experienced, or if there are objective and demonstrable grounds for believing that the management body of the ***firm*** may pose a threat to its effective, sound and prudent management and to the adequate consideration of the integrity of the market.

Amendment

7. The competent authority shall refuse authorisation if it is not satisfied that the persons who meant to effectively direct the business of the regulated market are of sufficiently good repute or sufficiently experienced, or if there are objective and demonstrable grounds for believing that the management body of the ***market operator*** may pose a threat to its effective, sound and prudent management and to the adequate consideration of the integrity of the market.

Or. en

Amendment 112
Proposal for a directive
Article 48 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7a. The management body of a market operator shall be able to ensure that the regulated market is managed in a sound and prudent way and in a manner that promotes the integrity of the market.

The management body shall monitor and periodically assess the effectiveness of the regulated market's organisation and take appropriate steps to address any deficiencies.

Members of the management body in its supervisory function shall have adequate access to information and documents which are needed to oversee and monitor management decision-making.

The management body shall establish, maintain and publish a statement of the policies and practices on which it relies to

fulfil the requirements of this paragraph.

Or. en

Amendment 113
Proposal for a directive
Article 51 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall require a regulated market to have effective systems, procedures and arrangements in place to ensure that all orders entered into the system by a member or participant are valid for a minimum of 500 milliseconds.

Or. en

Amendment 114
Proposal for a directive
Article 51 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall require a regulated market to have in place effective systems, procedures and arrangements to reject orders that exceed pre-determined volume and price thresholds or are clearly erroneous ***and to be able to temporarily halt trading if there is a significant price movement in a financial instrument on that market or a related market during a short period and, in exceptional cases, to be able to cancel, vary or correct any transaction.***

2. Member States shall require a regulated market to have in place effective systems, procedures and arrangements to reject orders that exceed pre-determined volume and price thresholds or are clearly erroneous.

Or. en

Amendment 115
Proposal for a directive
Article 51 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall require a regulated market to be able to temporarily halt trading if there is a significant price movement in a financial instrument on that market or a related market during a short period and, in exceptional cases, to be able to cancel, vary or correct any transaction. Member States shall require a regulated market to ensure that the parameters for halting trading are calibrated in a way which takes into account the liquidity of different asset classes and sub-classes and is sufficient to avoid significant disruptions to the orderliness of trading. Member States shall ensure that a regulated market reports the parameters for halting trading and any material changes to those parameters to the competent authority which shall in turn report them to ESMA. ESMA shall publish the parameters on its website.

Or. en

Amendment 116
Proposal for a directive
Article 51 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall require a regulated market to have in place effective systems, procedures and arrangements to ensure that algorithmic trading systems cannot create or contribute to disorderly trading conditions on the market including systems to limit the ratio of unexecuted orders to transactions that may be entered into the system by a member or participant, to be

3. Member States shall require a regulated market to have in place effective systems, procedures and arrangements to ensure that algorithmic ***or high-frequency*** trading systems cannot create or contribute to disorderly trading conditions on the market including systems to limit the ratio of unexecuted orders to transactions that may be entered into the system by a member or

able to slow down the flow of orders if there is a risk of its system capacity being reached and to limit the minimum tick size that may be executed on the market.

participant, to be able to slow down the flow of orders if there is a risk of its system capacity being reached and to limit the minimum tick size that may be executed on the market. ***In particular Member States shall prohibit a regulated market from allowing its members to provide direct electronic access.***

Or. en

Amendment 117
Proposal for a directive
Article 51 – paragraph 4

Text proposed by the Commission

Amendment

4. Member States shall require a regulated market that permits direct electronic access to have in place effective systems procedures and arrangements to ensure that members or participants are only permitted to provide such services if they are an authorised investment firm under this Directive, that appropriate criteria are set and applied regarding the suitability of persons to whom such access may be provided and that the member or participant retains responsibility for orders and trades executed using that service.

deleted

Member States shall also require that the regulated market set appropriate standards regarding risk controls and thresholds on trading through such access and is able to distinguish and if necessary to stop orders or trading by a person using direct electronic access separately from orders or trading by the member or participant.

Or. en

Amendment 118
Proposal for a directive
Article 51 – paragraph 5

Text proposed by the Commission

5. Member States shall require a regulated market to ensure that its rules on co-location services **and fee structures** are transparent, fair and non-discriminatory.

Amendment

5. Member States shall require a regulated market to ensure that its rules on co-location services are transparent, fair and non-discriminatory.

Or. en

Amendment 119
Proposal for a directive
Article 51 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Member States shall require that a regulated market ensure that its fee structures are transparent, fair and non-discriminatory and that they do not create incentives to place, modify or cancel orders or to execute transactions in a way which contributes to disorderly trading conditions or market abuse. In particular, Member States shall require a regulated market to impose a higher fee for placing an order that is subsequently cancelled than an order which is executed and shall impose a higher fee on participants placing a high ratio of cancelled orders to executed orders in order to reflect the additional burden on system capacity. Member States shall allow a regulated market to adjust its fees for cancelled orders according to the length of time for which the order was maintained.

Or. en

Amendment 120
Proposal for a directive
Article 51 – paragraph 7 – point b

Text proposed by the Commission

Amendment

(b) to set out conditions under which trading should be halted if there is a significant price movement in a financial instrument on that market or a related market during a short period;

deleted

Or. en

Amendment 121
Proposal for a directive
Article 51 – paragraph 7 – point d

Text proposed by the Commission

Amendment

(d) to establish controls concerning direct electronic access;

(d) to identify the circumstances in which it could be appropriate to slow down the flow of orders;

Or. en

Amendment 122
Proposal for a directive
Article 51 – paragraph 7 – point e

Text proposed by the Commission

Amendment

(e) to ensure co-location services and fee structures are fair and non-discriminatory.

(e) to ensure co-location services and fee structures are fair and non-discriminatory and that fee structures do not create incentives for disorderly trading conditions or market abuse.

Or. en

Amendment 123
Proposal for a directive
Article 53 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Member States shall require that an operator of a regulated market that suspends or removes from trading a financial instrument makes public this decision, communicates it to other regulated markets, MTFs and OTFs trading the same financial instrument and communicates relevant information to the competent authority. The competent authority shall inform the competent authorities of the other Member States of this. Member States shall require that other regulated markets, MTFs and OTFs trading the same financial instrument also suspend or remove that financial instrument from trading where the suspension or removal is due to the non-disclosure of information about the issuer or financial instrument except for cases where this could cause significant damage to the investors' interests or the orderly functioning of the market. Member States shall require the other regulated markets, MTFs and OTFs to communicate their decision to their competent authority and all regulated markets, MTFs and OTFs trading the same financial instrument, including an explanation where it was decided not to suspend or remove the financial instrument from trading.

Amendment

Member States shall require that an operator of a regulated market that suspends or removes from trading a financial instrument makes public this decision, communicates it to other regulated markets, MTFs and OTFs trading the same financial instrument and communicates relevant information to the competent authority. The competent authority shall inform the competent authorities of the other Member States of this. Member States shall require that other regulated markets, MTFs and OTFs trading the same financial instrument also suspend or remove that financial instrument from trading ***as soon as possible*** where the suspension or removal is due to the non-disclosure of information about the issuer or financial instrument except for cases where this could cause significant damage to the investors' interests or the orderly functioning of the market. Member States shall require the other regulated markets, MTFs and OTFs to communicate their decision to their competent authority and all regulated markets, MTFs and OTFs trading the same financial instrument, including an explanation where it was decided not to suspend or remove the financial instrument from trading.

Or. en

Amendment 124
Proposal for a directive
Article 53 – paragraph 3 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

ESMA shall submit those draft

implementing technical standards to the Commission by*

** OJ please insert date: 18 months after entry into force of this Directive.*

Or. en

Amendment 125
Proposal for a directive
Article 53 – paragraph 3 – subparagraph 3

Text proposed by the Commission

ESMA shall submit those draft implementing technical standards to the Commission by [XXX].

Amendment

deleted

Or. en

Amendment 126
Proposal for a directive
Article 53 – paragraph 4

Text proposed by the Commission

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 to specify the list of circumstances constituting significant damage to the investors' interests and the orderly functioning of the internal market referred to in paragraphs 1 and 2 and to determine issues relating to the non-disclosure of information about the issuer or financial instrument as referred to in paragraph 1.

Amendment

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 to specify the list of circumstances constituting significant damage to the investors' interests, *to specify the notion of "as soon as possible"* and the orderly functioning of the internal market referred to in paragraphs 1 and 2 and to determine issues relating to the non-disclosure of information about the issuer or financial instrument as referred to in paragraph 1, *including the necessary procedure for lifting the suspension of trading in a financial instrument.*

Or. en

Amendment 127
Proposal for a directive
Article 54 – paragraph 2 – subparagraph 2

Text proposed by the Commission

ESMA shall submit those draft regulatory technical standards to the Commission by **//**.

Amendment

ESMA shall submit those draft regulatory technical standards to the Commission by ...*.

** OJ please insert date: 18 months after entry into force of this Directive.*

Or. en

Amendment 128
Proposal for a directive
Article 59 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Member States shall ensure that regulated markets, operators of MTFs and OTFs which admit to trading or trade commodity derivatives apply limits on the number of contracts which any given market members or participants can enter into over a specified period of time, ***or alternative arrangements with equivalent effect such as position management with automatic review thresholds , to be imposed*** in order to:

Amendment

Member States shall ensure that regulated markets ***and*** operators of MTFs and OTFs which admit to trading or trade commodity derivatives apply limits on the number of contracts which any given market members or participants can enter into over a specified period of time in order to:

Or. en

Amendment 129
Proposal for a directive
Article 59 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The limits **or arrangements** shall be transparent and non-discriminatory, specifying the persons to whom they apply and any exemptions, and taking account of the nature and composition of market participants and of the use they make of the contracts admitted to trading. They shall specify clear quantitative thresholds such as the maximum number of contracts persons can enter, taking account of the characteristics of the underlying commodity market, including patterns of production, consumption and transportation to market.

Amendment

The limits shall be transparent and non-discriminatory, specifying the persons to whom they apply and any exemptions, and taking account of the nature and composition of market participants and of the use they make of the contracts admitted to trading. ***In particular, they shall differentiate between positions which objectively reduce risks directly related to commercial activities related to the commodity and other positions.*** They shall specify clear quantitative thresholds such as the maximum number of contracts persons can enter **or hold**, taking account of the characteristics of the underlying commodity market, including patterns of production, consumption and transportation to market.

Or. en

Amendment 130
Proposal for a directive
Article 59 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall require that regulated markets and operators of MTFs and OTFs which admit to trading or trade commodity derivatives also apply such other controls on positions as are necessary to ensure the orderly operation of markets and in particular to reduce the potential for manipulation of the market for the derivative or the underlying by holders of large positions and to ensure that market participants have the necessary arrangements in place to settle the contract physically where necessary. Such controls shall include the possibility for the trading venue to require members or participants to terminate or reduce a

position.

Or. en

Amendment 131
Proposal for a directive
Article 59 – paragraph 2

Text proposed by the Commission

2. Regulated markets, MTF and OTFs shall inform their competent authority of the details of the limits *or arrangements*. The competent authority shall communicate the same information to ESMA which shall publish and maintain on its website a database with summaries of the limits *or arrangements* in force.

Amendment

2. Regulated markets, MTF and OTFs shall inform their competent authority of the details of the limits. The competent authority shall communicate the same information to ESMA which shall publish and maintain on its website a database with summaries of the limits in force.

Or. en

Amendment 132
Proposal for a directive
Article 59 – paragraph 3

Text proposed by the Commission

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 to determine the limits or alternative arrangements on the number of contracts which any person can enter into over a specified period of time and the necessary equivalent effects of the alternative arrangements established in accordance with paragraph 1, as well as the conditions for exemptions. The limits or alternative arrangements shall take account of the conditions referred to in paragraph 1 and the limits that have been set by regulated markets, MTFs and OTFs. The limits or alternative arrangements determined in the delegated acts shall also take precedence over any

Amendment

deleted

measures imposed by competent authorities pursuant to Article 72(1) paragraph (g) of this Directive.

Or. en

Amendment 133
Proposal for a directive
Article 59 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. ESMA shall develop draft regulatory technical standards to specify the limits on the number of contracts which any person can enter into over a specified period of time and additional controls needed to ensure orderly operation of markets, as well as the conditions for exemptions and for determining when positions objectively reduce risks directly related to commercial activities relating to the commodity. The limits shall take account of the conditions referred to in paragraph 1, the need for appropriate differentiation between commodities and categories of market participant, and the limits that have been set by regulated markets, MTFs and OTFs.

ESMA shall submit those draft regulatory technical standards to the Commission by*

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

** OJ please insert date: 12 months after entry into force of this Directive.*

Or. en

Amendment 134
Proposal for a directive
Article 59 – paragraph 4

Text proposed by the Commission

Amendment

4. Competent authorities shall not impose limits or alternative arrangements which are more restrictive than those adopted pursuant to paragraph 3 except in exceptional cases where they are objectively justified and proportionate taking into account the liquidity of the specific market and the orderly functioning of the market. The restrictions shall be valid for an initial period not exceeding six months from the date of its publication on the website of the relevant competent authority. Such a restriction may be renewed for further periods not exceeding six months at a time if the grounds for the restriction continue to be applicable. If the restriction is not renewed after that six-month period, it shall automatically expire. *deleted*

When adopting more restrictive measures than those adopted pursuant to paragraph 3, competent authorities shall notify ESMA. The notification shall include a justification for the more restrictive measures. ESMA shall within 24 hours issue an opinion on whether it considers the measure is necessary to address the exceptional case. The opinion shall be published on ESMA's website.

Where a competent authority takes measures contrary to an ESMA opinion, it shall immediately publish on its website a notice fully explaining its reasons for doing so.

Or. en

Amendment 135
Proposal for a directive
Article 60 – paragraph 4 – subparagraph 2

Text proposed by the Commission

ESMA shall submit those draft implementing technical standards to the Commission by [XXX].

Amendment

ESMA shall submit those draft implementing technical standards to the Commission by ... *.

**** OJ please insert date: 12 months after entry into force of this Directive.***

Or. en

Amendment 136
Proposal for a directive
Article 60 – paragraph 4 – subparagraph 3

Text proposed by the Commission

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with ***the procedure laid down in*** Articles 15 of Regulation (EU) No 1095/2010.

Amendment

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Articles 15 of Regulation (EU) No 1095/2010.

Or. en

Amendment 137
Proposal for a directive
Article 60 – paragraph 5 – subparagraph 2

Text proposed by the Commission

The Commission shall be empowered to adopt implementing acts in accordance with Article 95 concerning measures to require all reports mentioned in point (a) of paragraph 1 to be sent to ESMA at a specified weekly time, for their centralised publication by the latter.

Amendment

deleted

Amendment 138
Proposal for a directive
Article 60 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. ESMA shall develop draft implementing technical standards to specify the measures to require all reports mentioned in point (a) of paragraph 1 to be sent to ESMA at a specified weekly time, for their centralised publication by the latter.

ESMA shall submit those draft implementing technical standards to the Commission by ...*.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

**** OJ please insert date: 12 months after entry into force of this Directive.***

Amendment 139
Proposal for a directive
Article 63 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Amendment

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by [...].

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by ...*.

**** OJ please insert date: 12 months after entry into force of this Directive.***

Amendment 140
Proposal for a directive
Article 63 – paragraph 5 – subparagraph 2

Text proposed by the Commission

ESMA shall submit those draft implementing technical standards to the Commission by *[31 December 2016]*.

Amendment

ESMA shall submit those draft implementing technical standards to the Commission by ...* .

** OJ please insert date: 18 months after entry into force of this Directive.*

Amendment 141
Proposal for a directive
Article 64 – paragraph 1 – point d

Text proposed by the Commission

(d) has seriously **and** systematically infringed the provisions of this Directive.

Amendment

(d) has seriously **or** systematically infringed the provisions of this Directive.

Amendment 142
Proposal for a directive
Article 65 – paragraph 2

Text proposed by the Commission

2. ESMA shall develop guidelines for the assessment of the suitability of the members of the management body described in paragraph 1, taking into account different roles and functions carried out by them.

Amendment

2. ESMA shall, **by ...***, develop guidelines for the assessment of the suitability of the members of the management body described in paragraph 1, taking into account different roles and functions carried out by them **and the need to avoid conflicts of interest between members of the management body and users of the**

APA, CTP or ARM.

** OJ please insert date: 12 months after entry into force of this Directive.*

Or. en

Amendment 143
Proposal for a directive
Article 66 – paragraph 2

Text proposed by the Commission

2. The home Member State shall require the APA to operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients.

Amendment

2. The home Member State shall require the APA to operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients.
In particular, an APA who is also a market operator or investment firm shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.

Or. en

Amendment 144
Proposal for a directive
Article 66 – paragraph 5 – subparagraph 2

Text proposed by the Commission

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by [...].

Amendment

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by ...*.

**** OJ please insert date: 12 months after entry into force of this Directive.***

Or. en

Amendment 145
Proposal for a directive
Article 67 – paragraph 1 – subparagraph 1 – point g

Text proposed by the Commission

(g) the trading venue the transaction was executed on or otherwise the code ‘OTC’;

Amendment

(g) the trading venue ***or systematic internaliser on which*** the transaction was executed on or otherwise the code ‘OTC’;

Or. en

Amendment 146
Proposal for a directive
Article 67 – paragraph 2 – subparagraph 1 – point g

Text proposed by the Commission

(g) the trading venue the transaction was executed on or otherwise the code ‘OTC’;

Amendment

(g) the trading venue ***or systematic internaliser on which*** the transaction was executed on or otherwise the code ‘OTC’;

Or. en

Amendment 147
Proposal for a directive
Article 67 – paragraph 6 – subparagraph 2

Text proposed by the Commission

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by [...] in respect of information published in accordance with Articles 5 and 19 of Regulation (EU) No .../... [MiFIR] and by [...] in respect of information published in accordance with Articles 9 and 20 of Regulation (EU) No .../... [MiFIR].

Amendment

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by ... * in respect of information published in accordance with Articles 5 and 19 of Regulation (EU) No .../... [MiFIR] and by ... ** in respect of information published in accordance with Articles 9 and 20 of Regulation (EU) No .../... [MiFIR].

**** OJ please insert date: 12 months after entry into force of this Directive.***

***** OJ please insert date: 18 months after***

entry into force of this Directive.

Or. en

Amendment 148
Proposal for a directive
Article 67 – paragraph 7

Text proposed by the Commission

7. The Commission shall ***be empowered to*** adopt delegated acts in accordance with Article 94 concerning measures clarifying what constitutes a reasonable commercial basis to provide access to data streams as referred to in paragraphs 1 and 2.

Amendment

7. The Commission shall adopt delegated acts in accordance with Article 94 concerning measures clarifying what constitutes a reasonable commercial basis to provide access to data streams as referred to in paragraphs 1 and 2.

Or. en

Amendment 149
Proposal for a directive
Article 67 – paragraph 8 – point d

Text proposed by the Commission

(d) other means to ensure that the data published by different CTPs is consistent and allows for comprehensive mapping and cross-referencing against similar data from other sources.

Amendment

(d) other means to ensure that the data published by different CTPs is consistent and allows for comprehensive mapping and cross-referencing against similar data from other sources, ***and aggregation at European Union level.***

Or. en

Amendment 150
Proposal for a directive
Article 68 – paragraph 2

Text proposed by the Commission

2. The home Member State shall require the ARM to operate and maintain effective

Amendment

2. The home Member State shall require the ARM to operate and maintain effective

administrative arrangements designed to prevent conflicts of interest with its clients.

administrative arrangements designed to prevent conflicts of interest with its clients.

In particular, an ARM that is also a market operator or investment firm shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.

Or. en

Amendment 151

Proposal for a directive

Article 69 – paragraph 2 – subparagraph 1

Text proposed by the Commission

The competent authorities referred to in paragraph 1 shall be public authorities, without prejudice to the possibility of delegating tasks to other entities where that is expressly provided for in **Article 23(4)**.

Amendment

The competent authorities referred to in paragraph 1 shall be public authorities, without prejudice to the possibility of delegating tasks to other entities where that is expressly provided for in **Article 29(4)**.

Or. en

Amendment 152

Proposal for a directive

Article 70 – paragraph 1

Text proposed by the Commission

If a Member State designates more than one competent authority to enforce a provision of this Directive, their respective roles shall be clearly defined and they shall cooperate closely.

Amendment

If a Member State designates more than one competent authority to enforce a provision of this Directive **or Regulation (EU) No .../... [MiFIR]**, their respective roles shall be clearly defined and they shall cooperate closely.

Or. en

Amendment 153
Proposal for a directive
Article 70 – paragraph 2

Text proposed by the Commission

Each Member State shall require that such cooperation also take place between the competent authorities for the purposes of this Directive and the competent authorities responsible in that Member State for the supervision of credit and other financial institutions, pension funds, UCITS, insurance and reinsurance intermediaries and insurance undertakings.

Amendment

Each Member State shall require that such cooperation also take place between the competent authorities for the purposes of this Directive **or Regulation (EU) No. .../... [MiFIR]** and the competent authorities responsible in that Member State for the supervision of credit and other financial institutions, pension funds, UCITS, insurance and reinsurance intermediaries and insurance undertakings.

Or. en

Amendment 154
Proposal for a directive
Article 71 – paragraph 2 – point a

Text proposed by the Commission

(a) have access to any document in any form whatsoever which would be relevant for the performance of the supervisory duties and to receive a copy of it;

Amendment

(a) have access to any document in any form whatsoever, **including the records referred to in Article 16(7)** which would be relevant for the performance of the supervisory duties and to receive a copy of it;

Or. en

Amendment 155
Proposal for a directive
Article 71 – paragraph 2 – point d

Text proposed by the Commission

(d) require existing telephone and existing data traffic records held by investment firms where a reasonable suspicion exists that such records related to the subject-

Amendment

(d) require existing telephone and existing data traffic records **or equivalent records referred to in Article 16(7)** held by investment firms where a reasonable

matter of the inspection may be relevant to prove a breach by the investment firm of its obligations under this Directive; these records shall however **not** concern the content of the communication to which they relate;

suspicion exists that such records related to the subject-matter of the inspection may be relevant to prove a breach by the investment firm of its obligations under this Directive; these records shall however **only** concern the content of the communication to which they relate **where the release of such records is consistent with data protection safeguards in place under Union and national law**;

Or. en

Amendment 156
Proposal for a directive
Article 71 – paragraph 3

Text proposed by the Commission

3. If a request for records of telephone or data traffic referred to in point (d) of paragraph 2 requires authorisation from a judicial authority according to national rules such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

Amendment

3. If a request for records of telephone or data traffic **in a form referred to in Article 16(7)** referred to in point (d) of paragraph 2 requires authorisation from a judicial authority according to national rules such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

Or. en

Amendment 157
Proposal for a directive
Article 72 – paragraph 1 – introductory part

Text proposed by the Commission

1. Competent authorities shall be given all supervisory remedies that are necessary for the exercise of their functions. Within the limits provided for in their national legal frameworks they shall **exercise such** remedies:

Amendment

1. Competent authorities shall be given all supervisory remedies that are necessary for the exercise of their functions. Within the limits provided for in their national legal frameworks they shall **have at least the following powers**:

Or. en

Amendment 158
Proposal for a directive
Article 72 – paragraph 1 – point h a (new)

Text proposed by the Commission

Amendment

(ha) require that compensation be paid or other remedial action be taken to correct any financial loss or other damage suffered by an investor as a result of any practice or conduct that is contrary to this Directive or to Regulation (EU) No.../... [MiFIR].

Or. en

Amendment 159
Proposal for a directive
Article 73 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall provide ESMA annually with aggregated information about all administrative measures and sanctions imposed in accordance with paragraphs 1 and 2.

3. Member States shall provide ESMA annually with aggregated information about all administrative measures and sanctions imposed in accordance with paragraphs 1 and 2. ***ESMA shall publish that information in an annual report.***

Or. en

Amendment 160
Proposal for a directive
Article 73 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. ESMA shall develop draft implementing technical standards concerning the procedures and forms for submitting information as referred to in this Article.

ESMA shall submit those draft implementing technical standards to the Commission by*

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No. 1095/2010.

** OJ please insert date: 18 months after entry into force of this Directive.*

Or. en

Amendment 161
Proposal for a directive
Article 75 – paragraph 1 – introductory part

Text proposed by the Commission

1. This Article shall apply to the following:

Amendment

1. This Article shall apply ***at least*** to the following:

Or. en

Amendment 162
Proposal for a directive
Article 75 – paragraph 1 – point 1

Text proposed by the Commission

(l) an investment firm ***repeatedly*** failing to provide information or reports to clients and to comply with obligations on the assessment of suitability or appropriateness in accordance with the national provisions implementing Articles 24 and 25;

Amendment

(l) an investment firm failing to provide information or reports to clients and to comply with obligations on the assessment of suitability or appropriateness in accordance with the national provisions implementing Articles 24 and 25;

Or. en

Amendment 163
Proposal for a directive
Article 75 – paragraph 1 – point n

Text proposed by the Commission

(n) an investment firm ***repeatedly*** failing to obtain the best possible result for clients when executing orders and failing to establish arrangements in accordance with national provisions implementing Article 27 and Article 28;

Amendment

(n) an investment firm failing to obtain the best possible result for clients when executing orders and failing to establish arrangements in accordance with national provisions implementing Article 27 and Article 28;

Or. en

Amendment 164
Proposal for a directive
Article 75 – paragraph 1 – point r a (new)

Text proposed by the Commission

Amendment

(ra) the management body of a data service provider failing to perform its duties in accordance with Article 65;

Or. en

Amendment 165
Proposal for a directive
Article 75 – paragraph 1 – point r b (new)

Text proposed by the Commission

Amendment

(rb) an APA, CTP or ARM failing to fulfil its organisational requirements in accordance with Article 66, 67 or 68;

Or. en

Amendment 166
Proposal for a directive
Article 75 – paragraph 1 – point s

Text proposed by the Commission

(s) a regulated market, a market operator or an investment firm ***repeatedly*** failing to make public information in accordance with Articles 3, 5, 7 or 9 of Regulation (EU) No (EU) .../... [MiFIR];

Amendment

(s) a regulated market, a market operator or an investment firm failing to make public information in accordance with Articles 3, 5, 7 or 9 of Regulation (EU) No (EU) .../... [MiFIR];

Or. en

Amendment 167

Proposal for a directive

Article 75 – paragraph 1 – point t

Text proposed by the Commission

(t) an investment firm ***repeatedly*** failing to make public information in accordance with Articles 13, 17, 19 and 20 of Regulation (EU) No .../... [MiFIR];

Amendment

(t) an investment firm failing to make public information in accordance with Articles 13, 17, 19 and 20 of Regulation (EU) No .../... [MiFIR];

Or. en

Amendment 168

Proposal for a directive

Article 75 – paragraph 1 – point u

Text proposed by the Commission

(u) an investment firm ***repeatedly*** failing to report transactions to competent authorities in accordance with Article 23 of Regulation (EU) No .../... [MiFIR];

Amendment

(u) an investment firm failing to report transactions to competent authorities in accordance with Article 23 of Regulation (EU) No .../... [MiFIR];

Or. en

Amendment 169

Proposal for a directive

Article 75 – paragraph 1 – point z

Text proposed by the Commission

Amendment

(z) an investment firm marketing, distributing or selling financial instruments or performing a type of financial activity or adopting a practice in contravention of prohibitions or restrictions imposed based on Article 32 of Regulation (EU) No .../... [MiFIR].

(z) an investment firm marketing, distributing or selling financial instruments or performing a type of financial activity or adopting a practice in contravention of prohibitions or restrictions imposed based on Article **31 or** 32 of Regulation (EU) No .../... [MiFIR].

Or. en

Amendment 170

Proposal for a directive

Article 75 – paragraph 2 – subparagraph 1 – point f

Text proposed by the Commission

Amendment

(f) in case of a natural person, administrative pecuniary sanctions of up to **5 000 000 EUR**, or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of entry into force of this Directive;

(f) in case of a natural person, administrative pecuniary sanctions of up to **EUR 10 000 000** , or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of entry into force of this Directive;

Or. en

Amendment 171

Proposal for a directive

Article 75 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

Where the benefit derived from the violation can be determined, Member States shall ensure that the maximum level is no lower than twice the amount of that benefit.

deleted

Or. en

Amendment 172
Proposal for a directive
Article 75 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States may empower competent authorities to impose additional types of sanction, or to impose sanctions exceeding the amounts mentioned in points (e), (f) and (g) of paragraph 2, provided that they are consistent with Article 76.

Or. en

Amendment 173
Proposal for a directive
Article 75 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Member States shall empower competent authorities to impose effective, proportionate and dissuasive sanctions for breaches of this Directive and of Regulation EU No .../... [MiFIR] which are not referred to in paragraph 1.

Or. en

Amendment 174
Proposal for a directive
Article 76 – paragraph 2

Text proposed by the Commission

Amendment

2. ESMA shall issue guidelines addressed to competent authorities in accordance with Article 16 of Regulation No (EU) 1095/2010 on types of administrative measures and sanctions and level of administrative pecuniary sanctions.

2. ESMA shall issue guidelines **by ...** * addressed to competent authorities in accordance with Article 16 of Regulation No (EU) 1095/2010 on types of administrative measures and sanctions and level of administrative pecuniary sanctions.

** OJ please insert date: 12 months after entry into force of this Directive.*

Or. en

Amendment 175
Proposal for a directive
Article 76 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. This Article is without prejudice to the ability of competent authorities to pursue criminal sanctions where empowered to do so under national law. Any criminal sanction imposed shall be taken into account when determining the type and level of any administrative sanction applied in addition.

Or. en

Amendment 176
Proposal for a directive
Article 78

Text proposed by the Commission

Amendment

Article 78

deleted

Submitting information to ESMA in relation to sanctions

1. Member States shall provide ESMA annually with aggregated information regarding all administrative measures or administrative sanctions imposed in accordance with Article 73. ESMA shall publish this information in an annual report.

2. Where the competent authority has disclosed an administrative measure or administrative sanction to the public, it

shall contemporaneously report that fact to ESMA. Where a published administrative measure or administrative sanction relates to an investment firm, ESMA shall add a reference to the published sanction in the register of investment firms established under Article 5(3).

3.ESMA shall develop draft implementing technical standards concerning the procedures and forms for submitting information as referred to in this Article.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

ESMA shall submit those draft implementing technical standards to the Commission by [XX].

Or. en

Amendment 177
Proposal for a directive
Article 81 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that competent authorities, all persons who work or who have worked for the competent authorities or entities to whom tasks are delegated pursuant to Article 69(2), as well as auditors and experts instructed by the competent authorities, are bound by the obligation of professional secrecy. They shall not divulge any confidential information which they may receive in the course of their duties , save in summary or aggregate form such that individual investment firms, market operators, regulated markets or any other person cannot be identified, without prejudice to requirements of national

Amendment

1. Member States shall ensure that competent authorities, all persons who work or who have worked for the competent authorities or entities to whom tasks are delegated pursuant to Article 69(2), as well as auditors and experts instructed by the competent authorities, are bound by the obligation of professional secrecy. They shall not divulge any confidential information which they may receive in the course of their duties , save in summary or aggregate form such that individual investment firms, market operators, regulated markets or any other person cannot be identified, without prejudice to requirements of national

criminal law or the other provisions of this Directive.

criminal law or the other provisions of this Directive **or Regulation (EU) No.../... [MiFIR]**.

Or. en

Amendment 178
Proposal for a directive
Article 81 – paragraph 3

Text proposed by the Commission

3. Without prejudice to requirements of national criminal law, the competent authorities, bodies or natural or legal persons other than competent authorities which receive confidential information pursuant to this Directive may use it only in the performance of their duties and for the exercise of their functions, in the case of the competent authorities, within the scope of this Directive or, in the case of other authorities, bodies or natural or legal persons, for the purpose for which such information was provided to them and/or in the context of administrative or judicial proceedings specifically related to the exercise of those functions. However, where the competent authority or other authority, body or person communicating information consents thereto, the authority receiving the information may use it for other purposes.

Amendment

3. Without prejudice to requirements of national criminal law, the competent authorities, bodies or natural or legal persons other than competent authorities which receive confidential information pursuant to this Directive **or to Regulation (EU) No .../... [MiFIR]** may use it only in the performance of their duties and for the exercise of their functions, in the case of the competent authorities, within the scope of this Directive or **of Regulation (EU) No .../... [MiFIR] or**, in the case of other authorities, bodies or natural or legal persons, for the purpose for which such information was provided to them and/or in the context of administrative or judicial proceedings specifically related to the exercise of those functions. However, where the competent authority or other authority, body or person communicating information consents thereto, the authority receiving the information may use it for other purposes.

Or. en

Amendment 179
Proposal for a directive
Article 81 – paragraph 4

Text proposed by the Commission

4. Any confidential information received, exchanged or transmitted pursuant to this Directive shall be subject to the conditions of professional secrecy laid down in this Article. Nevertheless, this Article shall not prevent the competent authorities from exchanging or transmitting confidential information in accordance with this Directive and with other Directives applicable to investment firms, credit institutions, pension funds, UCITS, insurance and reinsurance intermediaries, insurance undertakings regulated markets or market operators or otherwise with the consent of the competent authority or other authority or body or natural or legal person that communicated the information.

Amendment

4. Any confidential information received, exchanged or transmitted pursuant to this Directive **or to Regulation (EU) No. .../... [MiFIR]** shall be subject to the conditions of professional secrecy laid down in this Article. Nevertheless, this Article shall not prevent the competent authorities from exchanging or transmitting confidential information in accordance with this Directive **or with Regulation (EU) No. .../... [MiFIR]** and with other Directives **or Regulations** applicable to investment firms, credit institutions, pension funds, UCITS, insurance and reinsurance intermediaries, insurance undertakings regulated markets or market operators or otherwise with the consent of the competent authority or other authority or body or natural or legal person that communicated the information.

Or. en

Amendment 180

Proposal for a directive

Article 83 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Competent authorities of different Member States shall cooperate with each other whenever necessary for the purpose of carrying out their duties under this Directive, making use of their powers whether set out in this Directive or in national law.

Amendment

Competent authorities of different Member States shall cooperate with each other whenever necessary for the purpose of carrying out their duties under this Directive **or under Regulation (EU) No. .../... [MiFIR]**, making use of their powers whether set out in this Directive or **in Regulation (EU) No.../... [MiFIR] or** in national law.

Or. en

Amendment 181
Proposal for a directive
Article 83 – paragraph 1 – subparagraph 3

Text proposed by the Commission

In order to facilitate and accelerate cooperation, and more particularly exchange of information, Member States shall designate a single competent authority as a contact point for the purposes of this Directive. Member States shall communicate to the Commission, ESMA and to the other Member States the names of the authorities which are designated to receive requests for exchange of information or cooperation pursuant to this paragraph. ESMA shall publish and keep up-to-date a list of those authorities on its website.

Amendment

In order to facilitate and accelerate cooperation, and more particularly exchange of information, Member States shall designate a single competent authority as a contact point for the purposes of this Directive **and of Regulation (EU) No.../... [MiFIR]**. Member States shall communicate to the Commission, ESMA and to the other Member States the names of the authorities which are designated to receive requests for exchange of information or cooperation pursuant to this paragraph. ESMA shall publish and keep up-to-date a list of those authorities on its website.

Or. en

Amendment 182
Proposal for a directive
Article 83 – paragraph 4

Text proposed by the Commission

4. Where a competent authority has good reasons to suspect that acts contrary to the provisions of this Directive, carried out by entities not subject to its supervision, are being or have been carried out on the territory of another Member State, it shall notify the competent authority of the other Member State and ESMA in as specific a manner as possible. The notified competent authority shall take appropriate action. It shall inform the notifying competent authority and ESMA of the outcome of the action and, to the extent possible, of significant interim developments. This paragraph shall be without prejudice to the competence of the notifying competent

Amendment

4. Where a competent authority has good reasons to suspect that acts contrary to the provisions of this Directive **or of Regulation (EU) No.../... [MiFIR]**, carried out by entities not subject to its supervision, are being or have been carried out on the territory of another Member State, it shall notify the competent authority of the other Member State and ESMA in as specific a manner as possible. The notified competent authority shall take appropriate action. It shall inform the notifying competent authority and ESMA of the outcome of the action and, to the extent possible, of significant interim developments. This paragraph shall be

authority.

without prejudice to the competence of the
notifying competent authority.

Or. en

Amendment 183
Proposal for a directive
Article 83 – paragraph 7 – subparagraph 1

Text proposed by the Commission

7. ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation arrangements referred to in paragraph 2.

Amendment

8. ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation arrangements referred to in paragraph 2.

Or. en

Amendment 184
Proposal for a directive
Article 83 – paragraph 7 – subparagraph 2

Text proposed by the Commission

ESMA shall submit those draft implementing technical standards to the Commission by ***[31 December 2016]***.

Amendment

ESMA shall submit those draft implementing technical standards to the Commission by ...*.

**** OJ please insert date: 18 months after entry into force of this Directive.***

Or. en

Amendment 185
Proposal for a directive
Article 84 – title (new)

Text proposed by the Commission

Amendment

Cooperation between competent

*authorities in supervisory activities, for
on-the-spot verifications or investigations*

Or. en

Amendment 186
Proposal for a directive
Article 84 – paragraph 3 – subparagraph 2

Text proposed by the Commission

ESMA shall submit those draft regulatory technical standards to the Commission by *[31 December 2016]*.

Amendment

ESMA shall submit those draft regulatory technical standards to the Commission by ...*.

** OJ please insert date: 18 months after
entry into force of this Directive.*

Or. en

Amendment 187
Proposal for a directive
Article 84 – paragraph 4 – subparagraph 2

Text proposed by the Commission

ESMA shall submit those draft implementing technical standards to the Commission by *[31 December 2016]*.

Amendment

ESMA shall submit those draft implementing technical standards to the Commission by ...*.

** OJ please insert date: 18 months after
entry into force of this Directive.*

Or. en

Amendment 188
Proposal for a directive
Article 85 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Competent authorities of Member States having been designated as contact points for the purposes of this Directive in accordance with Article 83(1) shall immediately supply one another with the information required for the purposes of carrying out the duties of the competent authorities, designated in accordance to Article 69(1), set out in the provisions adopted pursuant to this Directive.

Amendment

1. Competent authorities of Member States having been designated as contact points for the purposes of this Directive **and of Regulation (EU) No.../... [MiFIR]** in accordance with Article 83(1) shall immediately supply one another with the information required for the purposes of carrying out the duties of the competent authorities, designated in accordance to Article 69(1), set out in the provisions adopted pursuant to this Directive **or to Regulation (EU) No.../... [MiFIR]**.

Or. en

Amendment 189
Proposal for a directive
Article 85 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Competent authorities exchanging information with other competent authorities under this Directive may indicate at the time of communication that such information must not be disclosed without their express agreement, in which case such information may be exchanged solely for the purposes for which those authorities gave their agreement.

Amendment

Competent authorities exchanging information with other competent authorities under this Directive **or Regulation (EU) No.../... [MiFIR]** may indicate at the time of communication that such information must not be disclosed without their express agreement, in which case such information may be exchanged solely for the purposes for which those authorities gave their agreement.

Or. en

Amendment 190
Proposal for a directive
Article 85 – paragraph 4 – subparagraph 2

Text proposed by the Commission

ESMA shall submit those draft

Amendment

ESMA shall submit those draft

implementing technical standards to the Commission by *[31 December 2016]*.

implementing technical standards to the Commission by ...*.

** OJ please insert date: 18 months after entry into force of this Directive.*

Or. en

Amendment 191
Proposal for a directive
Article 85 – paragraph 5

Text proposed by the Commission

5. Neither this Article nor Articles 81 or 92 shall prevent a competent authority from transmitting to ESMA, the European Systemic Risk Board (hereinafter the ‘ESRB’), central banks, the European System of Central Banks and the European Central Bank, in their capacity as monetary authorities, and, where appropriate, to other public authorities responsible for overseeing payment and settlement systems, confidential information intended for the performance of their tasks; likewise such authorities or bodies shall not be prevented from communicating to the competent authorities such information as they may need for the purpose of performing their functions provided for in this Directive.

Amendment

5. Neither this Article nor Articles 81 or 92 shall prevent a competent authority from transmitting to ESMA, the European Systemic Risk Board (hereinafter the ‘ESRB’), central banks, the European System of Central Banks and the European Central Bank, in their capacity as monetary authorities, and, where appropriate, to other public authorities responsible for overseeing payment and settlement systems, confidential information intended for the performance of their tasks; likewise such authorities or bodies shall not be prevented from communicating to the competent authorities such information as they may need for the purpose of performing their functions provided for in this Directive *or in Regulation (EU) No .../... [MiFIR]*.

Or. en

Amendment 192
Proposal for a directive
Article 86 – paragraph 1 – point -a (new)

Text proposed by the Commission

Amendment

(-a) to cooperate as provided for in Article 83;

Or. en

Amendment 193
Proposal for a directive
Article 87 – paragraph 1 – point -a (new)

Text proposed by the Commission

Amendment

(-a) such an investigation, on-the-spot verification, supervisory activity or exchange of information might adversely affect the sovereignty, security or public policy of the Member State addressed;

Or. en

Amendment 194
Proposal for a directive
Article 88 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Amendment

ESMA shall submit those draft implementing technical standards to the Commission by ***[31 December 2016]***.

ESMA shall submit those draft implementing technical standards to the Commission by ... *.

**** OJ please insert date: 18 months after entry into force of this Directive.***

Or. en

Amendment 195
Proposal for a directive
Article 91 – paragraph 2

Text proposed by the Commission

2. The competent authorities shall, without delay, provide ESMA with all information necessary to carry out its duties under this Directive and in accordance with **Article 35 of** Regulation (EU) No 1095/2010.

Amendment

2. The competent authorities shall, without delay, provide ESMA with all information necessary to carry out its duties under this Directive and ***under Regulation (EU) No. .../... [MiFIR] and*** in accordance with Regulation (EU) No 1095/2010.

Or. en

Amendment 196
Proposal for a directive
Article 91 a (new)

Text proposed by the Commission

Amendment

Article 91a

Data protection

With regard to the processing of personal data carried out by Member States within the framework of this Directive and of Regulation (EU) No .../... [MiFIR], competent authorities shall apply the provisions of Directive 95/46/EC and the national rules implementing that Directive. With regard to the processing of personal data by ESMA within the framework of this Directive and of Regulation (EU) No.../... [MiFIR], ESMA shall comply with the provisions of Regulation (EC) No 45/2001.

Or. en

Amendment 197
Proposal for a directive
Article 93 – paragraph 1

Text proposed by the Commission

Amendment

The Commission shall be empowered to

The Commission shall be empowered to

adopt delegated acts in accordance with Article 94 concerning Articles 2(3), 4(1), 4(2), 13(1), 16(12), 17(6), 23(3), 24(8), 25(6), 27(7), 28(3), 30(5), 32(3), 35(8), 44(4), 51(7), 52(6), 53(4), 59(3), 60(5), 66(6), 66(7), 67(3), 67(7), 67(8), 68(5), 83(7) **and 99(2)**.

adopt delegated acts in accordance with Article 94 concerning Articles 2(3), 4(3), 13(1), 16(12), 17(6), 23(3), 24(8), 25(6), 27(7), 28(3), 30(5), 32(3), 35(8), 44(4), 51(7), 52(6), 53(4), 60(5), 66(6), 66(7), 67(3), 67(7), 67(8), 68(5) **and** 83(7).

Or. en

Amendment 198
Proposal for a directive
Article 94 – paragraph 5

Text proposed by the Commission

5. A delegated act adopted pursuant to **Article 93** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **2 months** of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by **2 months** at the initiative of the European Parliament or the Council.

Amendment

5. A delegated act adopted pursuant to **Articles 2(3), 4(3), 13(1), 16(12), 17(6), 23(3), 24(8), 25(6), 27(7), 28(3), 30(5), 32(3), 35(8), 44(4), 51(7), 52(6), 53(4), 60(5), 66(6), 66(7), 67(3), 67(7), 67(8), 68(5) and 83(7)** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **three months** of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by **three months** at the initiative of the European Parliament or the Council.

Or. en

Amendment 199
Proposal for a directive
Article 95 – paragraph 1

Text proposed by the Commission

1. **For the adoption of implementing acts under Article 41 and 60, the** Commission

Amendment

1. **The** Commission shall be assisted by the European Securities Committee established

shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

by Commission Decision 2001/528/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

Or. en

Amendment 200
Proposal for a directive
Article 95 – paragraph 2

Text proposed by the Commission

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply, ***having regard to the provisions of Article 8 thereof.***

Amendment

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Or. en

Amendment 201
Proposal for a directive
Article 96 – paragraph 1 – introductory part

Text proposed by the Commission

1. Before ***[2 years following application of MiFID as specified in Article 97]*** the Commission after consulting ESMA shall present a report to the European Parliament and the Council on:

Amendment

1. Before ...* the Commission after consulting ESMA shall present a report to the European Parliament and the Council on:

**** OJ please insert date: 42 months after the entry into force of this Directive.***

Or. en

Amendment 202
Proposal for a directive
Article 96 – paragraph 1 – point a

Text proposed by the Commission

(a) the functioning of organised trading facilities, taking into account supervisory experiences acquired by competent authorities, the number of OTFs authorised in the EU and their market share;

Amendment

(a) the functioning of organised trading facilities, taking into account supervisory experiences acquired by competent authorities, the number of OTFs authorised in the EU and their market share ***and in particular examining whether any adjustments are needed to the definition of an OTF and whether the range of instruments covered by the OTF category remains appropriate;***

Or. en

Amendment 203
Proposal for a directive
Article 96 a (new)

Text proposed by the Commission

Amendment

Article 96a

Staff and resources of ESMA

By ... *, ESMA shall assess the staffing and resources needs arising from the assumption of its powers and duties in accordance with this Directive and with Regulation (EU) No .../... [MiFIR] and submit a report to the European Parliament, the Council and the Commission.

**** OJ please insert date: 18 months after entry into force of this Directive.***

Or. en

Amendment 204
Proposal for a directive
Article 97 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall adopt and publish, by [...] **at the latest**, the laws, regulations and administrative provisions necessary to comply with **this** Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

Amendment

Member States shall adopt and publish, by ... *, the laws, regulations and administrative provisions necessary to comply with **Articles 1 to 5, 7, 9, 10, 13 to 25, 27 to 32, 34 to 37, 39, 41 to 46, 48, 51 to 54, 59 to 69a, 71 to 77, 79, 80, 83, 84, 85, 87 to 90, 92 to 99 and Annexes I and II [list of all Articles which have undergone substantive changes compared to Directive 2004/39/EC]**. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

*** OJ please insert date: two years after entry into force of this Directive.**

Or. en

Amendment 205
Proposal for a directive
Article 97 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Members States shall apply these measures from [...] except for the provisions transposing Article 67(2) which shall apply from **[2 years after the application date for the rest of the Directive]**.

Amendment

Members States shall apply these measures from ... * except for the provisions transposing Article 67(2) which shall apply from ... **.

*** OJ please insert date: 30 months after entry into force of this Directive.**

****OJ please insert date: 42 months after the entry into force of this Directive.**

Or. en

Amendment 206
Proposal for a directive
Article 98

Text proposed by the Commission

Directive 2004/39/EC ***together with its successive amendments are*** repealed with effect from [...]. References to ***the*** Directive 2004/39/EC or to Directive 93/22/EEC shall be construed as references to this Directive. References to terms defined in, or Articles of, Directive 2004/39/EC or Directive 93/22/EEC shall be construed as references to the equivalent term defined in, or Article of, this Directive.

Amendment

Directive 2004/39/EC ***as amended by the acts listed in Part A of Annex IIa is*** repealed with effect from ... *, ***without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of Directive 2004/39/EC set out in Part B of Annex IIa of this Directive.*** References to Directive 2004/39/EC or to Directive 93/22/EEC shall be construed as references to this Directive ***or to Regulation (EU) No .../... [MiFIR] and shall be read in accordance with the correlation tables in Parts A and B, respectively, of Annex IIb.*** References to terms defined in, or Articles of, Directive 2004/39/EC or Directive 93/22/EEC shall be construed as references to the equivalent term defined in, or Article of, this Directive.

**** OJ please insert date: 30 months after entry into force of this Directive.***

Or. en

Amendment 207
Proposal for a directive
Article 99 – paragraph 1

Text proposed by the Commission

1. ***Existing third*** country ***firms*** shall be able to ***continue to*** provide services and activities in Member States, in accordance with national regimes until ***[4 years*** after the ***entry into force of this directive]***.

Amendment

1. ***Third*** country ***financial institutions*** shall be able to provide services and activities ***through a branch*** in Member States, in accordance with national regimes, until ***one year*** after the ***adoption by the Commission of a decision in relation to the relevant third country in accordance with Article 41(3).***

Amendment 208
Proposal for a directive
Article 99 – paragraph 2

Text proposed by the Commission

Amendment

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 to extend the period of application of paragraph 1, taking into account the equivalence decisions already adopted by the Commission in accordance with Article 41 (3) and expected developments in the regulatory and supervisory framework of third countries.

deleted

Amendment 209
Proposal for a directive
Annex I – Section C – point 4

Text proposed by the Commission

Amendment

(4) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, ***emission allowances*** or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;

(4) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;

Amendment 210
Proposal for a directive
Annex I – Section C – point 10

Text proposed by the Commission

(10) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, OTF, or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls.

Amendment

(10) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, ***emission allowances*** or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, OTF, or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls.

Or. en

Amendment 211
Proposal for a directive
Annex I – Section C – point 11 a (new)

Text proposed by the Commission

Amendment

(11a) Additional specifications in relation to points (7) and (10)

1. For the purposes of point (7), a contract which is not a spot contract within the meaning of paragraph 2 of this Article and which is not covered by paragraph 4 shall be considered as having the characteristics of other derivative financial instruments and not being for commercial purposes if it satisfies the following conditions:

(a) it meets one of the following sets of criteria:

(i) it is traded on a third-country trading facility that performs a similar function to a regulated market, an MTF or an OTF;

(ii) it is expressly stated to be traded on, or is subject to the rules of, a regulated market, an MTF, an OTF or such a third country trading facility;

(iii) it is expressly stated to be equivalent to a contract traded on a regulated market, MTF, OTF or such a third country trading facility;

(b) it is cleared by a clearing house or other entity carrying out the same functions as a central counterparty, or there are arrangements for the payment or provision of margin in relation to the contract;

(c) it is standardised so that, in particular, the price, the lot, the delivery date or other terms are determined principally by reference to regularly published prices, standard lots or standard delivery dates.

2. A spot contract for the purposes of paragraph 1 means a contract for the sale of a commodity, asset or right, under the terms of which delivery is scheduled to be made within the longer of the following periods:

(a) two trading days;

(b) the period generally accepted in the market for that commodity, asset or right as the standard delivery period.

However, a contract is not a spot contract if, irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the underlying is to be postponed and not to be performed within the period mentioned in the first subparagraph.

3. For the purposes of point (10), a derivative contract relating to an underlying referred to in this Section shall be considered to have the characteristics of other derivative

financial instruments if one of the following conditions is satisfied:

(a) that contract is settled in cash or may be settled in cash at the option of one or more of the parties, otherwise than by reason of a default or other termination event;

(b) that contract is traded on a regulated market, an MTF or an OTF;

(c) the conditions laid down in paragraph 1 are satisfied in relation to that contract.

4. A contract shall be considered to be for commercial purposes for the purposes of point (7) and as not having the characteristics of other derivative financial instruments for the purposes of points (7) and (10), if it is entered into with or by an operator or administrator of an energy transmission grid, energy balancing mechanism or pipeline network, and it is necessary to keep in balance the supplies and uses of energy at a given time.

5. In addition to derivative contracts of a kind referred to in point (10), a derivative contract relating to any of the following shall fall within point (10) if it meets the criteria set out in both point (10) and in paragraph 3:

(a) telecommunications bandwidth;

(b) commodity storage capacity;

(c) transmission or transportation capacity relating to commodities, whether cable, pipeline or other means;

(d) an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources;

(e) a geological, environmental or other physical variable;

(f) any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being

transferred;

(g) an index or measure related to the price or value of, or volume of transactions in any asset, right, service or obligation.

Or. en

Amendment 212
Proposal for a directive
Annex II – part II – point II.1 – paragraph 6

Text proposed by the Commission

Member States *may* adopt specific criteria for the assessment of the expertise and knowledge of municipalities and local public authorities requesting to be treated as professional clients. These criteria can be alternative or additional to the ones listed in the previous paragraph.

Amendment

Member States *shall* adopt specific criteria for the assessment of the expertise and knowledge of municipalities and local public authorities requesting to be treated as professional clients. These criteria can be alternative or additional to the ones listed in the previous paragraph.

Or. en

Amendment 213
Proposal for a directive
Annex II a – Part A (new)

Text proposed by the Commission

Amendment

Annex IIa

Part A

Repealed Directive with list of its successive amendments (referred to in Article 98)

Directive 2004/39/EC of the European Parliament and of the Council (OJ L 145, 30.4.2004, p. 1)

Directive 2006/31/EC of the European Parliament and of the Council of 5 April 2006 on markets in financial instruments, as regards certain deadlines (OJ L 114,

27.4.2006, p. 60)

Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (OJ L 247, 21.9.2007, p. 1)

Directive 2008/10/EC of the European Parliament and of the Council of 11 March 2008 on markets in financial instruments, as regards the implementing powers conferred on the Commission (OJ L 76, 19.3.2008, p. 33)

Directive 2010/78/EC of the European Parliament and of the Council of 24 November 2010 in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (OJ L 331, 15.12.2010, p. 120)

Or. en

Amendment 214
Proposal for a directive
Annex II a – Part B (new)

Text proposed by the Commission

Amendment by the Parliament

Part B

List of time-limits for transposition into national law (referred to in Article 98)

Directive 2004/39/EC

Transposition period

31 January 2007

Amendment 215
Proposal for a directive
Annex II b – Title (new)

Text proposed by the Commission

Amendment

Correlation Tables

Amendment 216
Proposal for a directive
Annex II b – Part A (new)

Text proposed by the Commission

Amendment by the Parliament

Part A

This Directive

Directive 2004/39/EC

Article 1(1)

Article 1(1)

Article 1(2)

Article 1(3)

Article 1(2)

Article 2

Article 2

Article 3(1)(2)

Article 3(1)(2)

Article 3(3)(4)

Article 4(1)

Article 4(2)

Article 4(1)

Article 4(3)

Article 4(2)

Article 5

Article 5

Article 6

Article 6

Article 7(1)(2)(3)(4)

Article 7(1)(2)(3)(4)

Article 7(5)
Article 8
Article 9(1)(2)(3)(4)
Article 9(5)
Article 9(6)
Article 9(7)
Article 9(8)
Article 10(1)(2)
Article 10(3)
Article 11(1)
Article 11(2)
Article 11(3)
Article 11(4)
Article 12
Article 13
Article 14
Article 15
Article 16(1)(2)(3)(4)(5)(6)
Article 16(7)
Article 16(8)
Article 16(9)
Article 16(10)
Article 16(11)
Article 16(12)
Article 17
Article 18(1)(2)
Article 18(3)
Article 18(4)
Article 18(5)
Article 18(6)
Article 18(7)(8)
Article 19
Article 20

Article 7(4)
Article 8
Article 9(1)
Article 9(2)

Article 9(3)
Article 9(4)
Article 10(1)(2)

Article 10(3)
Article 10(4)
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Annex I

Annex II

Or. en

Amendment 217

Proposal for a directive

Annex II b – Part B (new)

Text proposed by the Commission

Amendment by the Parliament

Part B

Regulation (EU) No .../... [MiFIR]

Directive 2004/39/EC

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Article 72

Or. en

EXPLANATORY STATEMENT

Introduction

The review of the Markets in Financial Instruments Directive (MiFID) has to be seen in the context of EU's reaction to the financial crisis. MiFID I (2004/39/EC) was implemented on 1 November 2007, replacing the Investment Services Directive (ISD). It was supplemented by an implementing regulation (EC No. 1287/2006) and an implementing directive (2006/73/EC).

There are two main reasons why this review is taking place only five years after the implementation of MiFID I: the market situation has changed due to technical progress, new market participants and the development of more complex trading strategies. Moreover, in response to the financial crisis, MiFID needs to be reviewed in order to reduce systemic risk and to ensure financial markets stability as well as adequate investor protection. Therefore, on 20th October 2011 the European Commission proposed a regulation and a directive which together would replace Directive 2004/39/EC.

The European Parliament launched a consultation which gave all interested parties the chance to comment. The 193 responses were published on the Committee of Economic and Monetary Affairs of the European Parliament (ECON) homepage to be fully transparent. Furthermore, your rapporteur has presented three working documents to give an overview of MiFID I and to identify some key aspects of the Commission proposals.

As the MiFID review is an important step towards transparent and efficient financial markets in the European Union, your rapporteur welcomes the Commission proposals in general as this was one of the Parliament's key issues in its *resolution of 14 December 2010 on regulation of trading in financial instruments – 'dark pools' etc.* (2010/2075(INI)). In its resolution the Parliament called inter alia for a further investigation of high frequency trading and the appropriateness of existing transparency requirements for trading venues. Whilst welcoming the Commission's overall aim to guarantee that all organised trading is conducted on regulated trading venues your rapporteur regrets that the Commission did not take on board one of the main issues of the Parliament's resolution which was not to introduce a new category of trading venues but instead to adjust the requirements for the execution venues introduced in MiFID I: Regulated Markets (RM), Multilateral Trading Facilities (MTF) and Systemic Internalisers (SI).

Position of your rapporteur

Your rapporteur supports the Commission's proposal to extend the **scope** of the MiFID rules and limit the **exemptions**, as he is in favour of closing all gaps in the regulatory framework in order not to have parts of the market left unregulated. To ensure that the exemptions are not misused your rapporteur proposes a reporting obligation for persons to explain why their activity is ancillary to their main business. ESMA should draft regulatory technical standards

to further specify the criteria for ancillary activities.

The Commission strengthens the regulatory framework for **investor protection** in order to provide improved information to clients about the services and the execution of their orders. The rapporteur supports this aim. Nevertheless he is not in favour of the proposed new obligation to specify whether the investment advice is independent and if it is based on a broad or a more restricted analysis of the market as restricting the use of the word "independent" may mean that other forms of advice have a negative connotation. Therefore your rapporteur has chosen a more neutral wording and proposes that clients should be informed before investment advice is given if there have been third party payments and if the advice is given on a limited number of instruments. Clients should also be informed about the frequency of the periodic assessment of the suitability of financial instruments. Portfolio managers should not be prohibited from accepting inducements but this acceptance of any inducements should be fully transparent and information on this should be given to the client prior to the agreement. Furthermore your rapporteur introduces a new obligation that investment firms shall, when designing a new product, specify a target group within the retail or professional client category and ensure that the product is designed to meet those customers' needs and marketed to clients within the target group. Finally, your rapporteur believes that information which has to be obtained about clients should also contain information about the clients' risk tolerance.

When it comes to **record keeping** the Commission proposes that these should also contain records of **telephone conversations** or **electronic communications**. However as requiring access to these kind of records could conflict with national law on protection of data or personal privacy, your rapporteur proposes that Member States could also recognise alternatives such as minutes as an adequate means of documentation.

Whilst MiFID I differentiated between three categories of organised execution venues - as mentioned above RMs, MTFs and SIs - the Commission is now introducing a fourth category called **Organised Trading Facilities (OTF)**. For all trading venues there are identical pre- and post-trade requirements and nearly identical requirements regarding organisational aspects and market surveillance. The main difference between RMs and MTFs on the one hand and OTFs on the other hand is that for OTFs there is a degree of discretion over how a transaction should be executed. Your rapporteur questions whether the creation of a new category is the right way to capture organised venues which are not caught by the already existing categories. In order not to create new loopholes he proposes to limit the OTF category to non-equities, and consequently adjusts the review clause to ensure that the need for and effect of this new category are reviewed.

The proposals on MiFID II contain specific obligations imposed on anyone who is carrying out **algorithmic trading** whilst defining algorithmic trading broadly. Your rapporteur suggests a more differentiated approach and proposes definitions for high frequency trading and a high frequency trading strategy to identify a particular subset of algorithmic trading, and in addition a ban of direct electronic access. Furthermore the rapporteur acknowledges the Commissions proposals for RMs, MTFs and OTFs to ensure that they are resilient in extreme market situations and that they have in place proper **circuit breakers** and business continuity arrangements. Your rapporteur welcomes this approach but makes three proposals to strengthen it: first, to slow down trading and order flows he proposes that all orders should be

valid for at least 500 milliseconds; second, for all trading venues there should be parameters for halting trading which should be reported to the competent authorities and ESMA who should publish these on its website; third, to require trading venues to ensure their fee structures contain higher fees for placing an order which is cancelled than for an order which is executed and higher fees for market participants who place a high ratio of cancelled orders.

The Commission proposes that the **corporate governance** provisions should be strengthened with regard to profile, role and responsibilities of both executive and non-executive directors and balance in the composition of management bodies. Your rapporteur strengthens the rules for management bodies of trading venues and proposes that one person should not be able to hold more than one executive or two non-executive directorships at the same time, although the ability to combine executive and non-executive directorships within the same group was retained. There should also be effective systems in place to identify and manage conflicts of interest.

With **SME growth markets** the Commission creates a new subcategory of markets which is usually operated as MTF. While supportive of the objective, your rapporteur is uncertain of the benefits in practice of labelling some markets as SME growth and proposes that the concept should at least be based on the standard EU definition of SMEs.

According to the Commission all trading venues on which commodity derivative contracts are traded should adopt **position limits** or alternative arrangements in order to ensure the proper functioning of the market and to provide standardised information. Your rapporteur welcomes this approach in general as he supports the aim of banning excessive speculation on food prices. Nevertheless some adjustment and strengthening is needed. According to your rapporteur, the use of other controls on positions should be an addition, not an alternative, to the use of position limits. However, in setting such limits there should be a differentiation between positions related to commercial activity as regards to commodity and other positions. It should be up to ESMA to further specify the limits on the number of contracts in draft regulatory standards.

Regarding **data consolidation** all firms would have to publish their trade reports through Approved Publication Arrangements (APA) to allow efficient comparison of prices and trades across all venues possible. Your rapporteur supports the Commission proposals but points out that all information should be treated on a non-discriminatory basis.

The **third country regime** proposed by the Commission is based on an equivalence assessment of third country jurisdictions, so that third country firms in relation to which an equivalence decision has been adopted by the Commission would be able to request authorisation to provide services in the EU. In order to have a complete third country regime your rapporteur replaced "third country investment firm" by "third country financial institution".

The Commission proposals also contain wide-ranging **powers for national authorities and ESMA**. For example supervisory authorities would be able to intervene at any stage during the existence of a commodity derivative contract or to limit positions ex-ante and in a non-discriminatory way. Member States would be required to put in place at least a specified minimum level of administrative sanctions. Your rapporteur strengthens these measures in

order to ensure that market participants abide by the MiFID rules.

Finally, your rapporteur reduces the number of **delegated and implementing acts**, as he considers that the major political decisions have to be taken within the ordinary legislative procedure by Parliament and Council, and specifies the periods for ESMA to draft the **requested regulatory standards**.

ANNEX: LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS

Ref.: D(2012)12430

Mrs Sharon Bowles
Chair of the Committee on Economic and Monetary Affairs
ASP 10G201
Brussels

Subject: 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)
(COM(2011)0656 – C7-0382/2011 – 2011/0298(COD))

Dear Chairman,

The Committee on Legal Affairs, which I am honoured to chair, has examined the proposal referred to above, pursuant to Rule 87 on Recasting, as introduced into the Parliament's Rules of Procedure.

Paragraph 3 of that Rule reads as follows:

"If the committee responsible for legal affairs considers that the proposal does not entail any substantive changes other than those identified as such in the proposal, it shall inform the committee responsible.

In such a case, over and above the conditions laid down in Rules 156 and 157, amendments shall be admissible within the committee responsible only if they concern those parts of the proposal which contain changes.

However, if in accordance with point 8 of the Interinstitutional Agreement, the committee responsible intends also to submit amendments to the codified parts of the proposal, it shall immediately notify its intention to the Council and to the Commission, and the latter should inform the committee, prior to the vote pursuant to Rule 54, of its position on the amendments and whether or not it intends to withdraw the recast proposal."

Following the opinion of the Legal Service, whose representatives participated in the meetings of the Consultative Working Party examining the recast proposal, and in keeping with the recommendations of the draftsman, the Committee on Legal Affairs considers that the proposal in question does not include any substantive changes other than those identified as such in the proposal and that, as regards the codification of the unchanged provisions of the earlier acts with those changes, the proposal contains a straightforward codification of the

existing texts, without any change in their substance.

In conclusion, after discussing it at its meeting of 1 March 2012, the Committee on Legal Affairs, by 22 votes in favour and no abstention¹, recommends that your Committee, as the committee responsible, proceed to examine the above proposal in accordance with Rule 87.

Yours faithfully,

Klaus-Heiner LEHNE

Encl.: Opinion of the Consultative Working Party.

¹ The following were present for the final vote: Klaus-Heiner Lehne (Chair), Evelyn Regner (Vice-Chair), Raffaele Baldassarre (Vice-Chair), Françoise Castex (Vice-Chair), Sebastian Valentin Bodu (Vice-Chair), Luigi Berlinguer, Piotr Borys, Cristian Silviu Buşoi, Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Kurt Lechner, Eva Lichtenberger, Antonio Masip Hidalgo, Jiří Maštálka, Alajos Mészáros, Angelika Niebler, Bernhard Rapkay, Dagmar Roth-Behrendt, Alexandra Thein, Rainer Wieland, Cecilia Wikström, Jacek Włosowicz, Tadeusz Zwiefka.

**ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL
SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE
COMMISSION**



CONSULTATIVE WORKING PARTY
OF THE LEGAL SERVICES

Brussels, 10 January 2012

OPINION

**FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT
THE COUNCIL
THE COMMISSION**

**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)
COM(2011)0656 of 20.10.2011 – 2011/0298(COD)**

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 10 and 28 November 2011 for the purpose of examining, among others, the aforementioned proposal submitted by the Commission.

At those meetings¹, an examination of the proposal for a directive of the European Parliament and of the Council recasting Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC resulted in the Consultative Working Party's establishing, by common accord, as follows.

1) As far as the explanatory memorandum is concerned, in order to be drafted in full compliance with the relevant requirements laid down by the Inter-institutional Agreement such a document should have specified which provisions of the earlier act remain unchanged in the proposal, as is provided for under point 6(a)(iii) of that agreement.

¹ The Consultative Working Party had at its disposal the English, French and German language versions of the proposal and worked on the basis of the English version, being the master-copy language version of the text under discussion.

2) The following changes proposed in the recast text should have been identified by using the grey-shaded type generally used for marking substantive changes:

- in Recital 37, the deletion of the entire text of existing recital 27 of Directive 2004/39/EC;
- in Recital 61, the adding of the final words "*OTF or systematic internaliser*";
- in recital 102, the replacement of the word "*encourage*" with the words "*ensure that*";
- in Article 1(1), the adding of the final words "*data reporting service providers and third country firms providing investment services or activities in the Union*";
- in Article 1(3), first indent, the adding of a reference to a new Article 17;
- in Article 1(3), fourth indent, the words "*to 80*";
- in Article 1(3), fifth indent, the deletion of the indication "*Article 71(1)*";
- in Article 2(1)(iii), the deletion of the words "*outside a regulated market or an MTF on an organised, frequent and systematic basis by providing a system accessible to third parties in order to engage in dealings with them*";
- in Article 5(2), the deletion of the final words "*and 15*";
- in Article 9(7), the deletion of the words "*proposed changes to the management of the firm*";
- in Article 16(1), the adding of the final words "*and in Article 17*";
- in Article 16(11), the adding of the words "*and 7*";
- in Article 18(1), the deletion of the words "*and non-discretionary*";
- in Article 18(6), the replacement of the existing reference to "*Article 50(1)*" with a reference to a new "*Article 72(1)*";
- in Article 24(1), the replacement of the words "*in paragraphs 2 to 8*" with the words "*in this Article and in Article 25*";
- in Article 24(3), second subparagraph, the word "*should*";
- in Article 29(1), the replacement of the words "*may decide to*" with the word "*shall*";
- in Article 30(2), first subparagraph, the deletion of the words "*and (l)*";
- in Article 36(2), second subparagraph, the replacement of the word "*may*" with the word "*shall*";
- in Article 55(3)(b), the adding of the final words "*and experience*";
- in Article 92(1), fourth subparagraph, the adding of a final point (f);
- in Annex I, Section C, point 10, the deletion of the words "*emission allowances*".

3) In Article 4(2)(18), corresponding to Article 4(1)(22) of Directive 2004/39/EC, the reference to "*Article 48*" appearing in the currently applicable text should have been adapted so as to read as a reference made to "*Article 69*".

4) In Article 36(9), first subparagraph, before the word "*ESMA*" the words "*In order to ensure uniform conditions of application of this Article*", which constitute the initial wording of Article 31(7), third subparagraph, of Directive 2004/39/EC should have been present and should have been marked with "double-strikethrough".

5) In Article 69(2), first subparagraph, corresponding to Article 48(2), first subparagraph, of Directive 2004/39/EC, the reference to "*Article 23(4)*" appearing in the currently applicable text should have been adapted so as to read as a reference made to "*Article 29(4)*".

6) In order to comply with all the requirements laid down in point 7 of the Inter-institutional Agreement, the recasting act should comprise also the following elements which are not present in the proposal for recasting submitted by the Commission:

- a correlation table to be annexed in accordance with point 7(b);
- a wording in the repealing article providing that Member States' obligations arising from the transposition period of the repealed Directive shall not be affected by such a repeal, in accordance with point 7(c)(i), as well as a table containing the indication of that period to be annexed in accordance with point 7(c)(ii).

In consequence, examination of the proposal has enabled the Consultative Working Party to conclude, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such therein or in the present opinion. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing text, without any change in its substance.

C. PENNERA
Jurisconsult

H. LEGAL
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L. ROMERO REQUENA
Director General