



**COUNCIL OF
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"I" ITEM NOTE

From: Presidency

To: Permanent Representatives Committee (Part 2)

Subject: Revised rules for markets in financial instruments (MiFID/MiFIR)

- a) 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) (MiFID)
- b) Proposal for a Regulation of the European Parliament and of the Council on markets in financial instruments and amending Regulation [EMIR] on OTC derivatives, central counterparties and trade repositories (MiFIR)

- Approval of the final compromise text

The following statements are to be entered into the minutes of Coreper:

Statement by France

Transparency on non-equity financial markets (Article 8 MiFiR)

France regrets that the ambitious proposals made by the European Commission to achieve fully transparent non-equity financial markets, in particular for derivatives, have not been endorsed by the co-legislators.

France will support a review on this matter in the near future against the objective of achieving effective and fair price formation on financial markets and legislative proposals if appropriate.

Commodities

ESMA will have to define a methodology of calculation that will be applied by the national competent authorities. France will pay great attention that the mechanism will ensure a good level playing field and an effective application to all commodity derivatives markets.

Regarding the Annex C of MIFID listing the financial instruments, France regrets the exclusion of the scope of the financial instruments of some categories of commodity derivatives contracts traded on OTF and that must be physically settled. France will pay great attention to the precise confinement of this category through the delegated act provided in the recital (8b) of MIFID.

Sanctions

The generalization of the use of administrative sanctions is key to strengthen investor protection and market integrity and to deepen the EU-Single Market.

France then deeply regrets that it was not possible to harmonize administrative sanctions in MIFID and makes clear that, with respect to sanctions, MIFID should not be seen as a precedent whatsoever.

Statement by Portugal

Portugal welcomes the agreement on the revised rules for markets in financial instruments (MiFID/MiFIR), in particular the ambitious sanctions regime foreseen therein. Portugal also commends the efforts of the Hellenic Presidency in trying to achieve a balanced solution to address concerns in this regard.

Portugal notes that the sanctions regime is highly sensitive. Member States operate under very different legal and institutional frameworks and these national frameworks need to remain coherent as harmonisation of the sanctions regime is pursued at European level. The difficulties of these discussions are well known and most Member States specificities have been addressed, in particular when they are grounded on constitutional concerns.

Portugal will strive to implement the permanent ban on the exercise of management functions in investment firms in conformity with national law.

Statement by the Commission

Non-discriminatory access to central counterparties, trading venues and benchmarks (Article 28 - 30 MiFiR)

One of the main purposes of the Commission proposal is to ensure the prohibition of discriminatory practices and the removal of barriers that limit competition in the clearing of financial instruments in order to increase competition for clearing of financial instruments so as to lower investment and borrowing costs, eliminate inefficiencies and foster innovation in European markets.

While agreeing that a gradual transition towards a complete opening may be useful, the agreement reached by the co-legislators will not reach the purpose intended by the Commission proposal. Transitional periods of more than two years after the entry into application - 30 months have been agreed by the co-legislators, would further consolidate vested market positions.

Transparency on non-equity financial markets (Article 8 MiFiR)

Whereas the Commission has constructively worked with co-legislators to define limited exemptions from the proposed transparency regime to cater for overarching public interests such as to avoid affecting the refinancing of Member States, it regrets that its ambitious proposals to achieve fully transparent non-equity financial markets, in particular for derivatives, have not been endorsed by the co-legislators.

It will review this matter again in the near future against the objective of achieving effective and fair price formation on financial markets and make legislative proposals if appropriate.

Empowerments for delegated acts (Articles 66, 67, 68 MiFID and Articles 6, 10, 28, 29, 30 MiFIR)

The Commission notes that many empowerments for delegated acts under Articles 290 TFEU in its proposals have been changed into regulatory technical standards under Article 10 of Regulation 2010/1095 ("ESMA Regulation"). These amendments do not respect the limitations set out in that Regulation in so far as technical standards can only cover aspects requiring technical expertise and cannot imply strategic decisions or policy choices.