



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 5 May 2014
(OR. en)**

**Interinstitutional File:
2011/0298 (COD)**

**9344/14
ADD 1**

**CODEC 1192
EF 141
ECOFIN 438**

"I/A" ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

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) **(first reading)**
- Adoption of the legislative act (**LA + S**)
= Statements

Statements by the Commission

Non-discriminatory access to central counterparties, trading venues and benchmarks (Article 35 - 37 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 9 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 64, 65, 66 MiFID and Articles 7, 11, 35, 36, 37 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.

Statement by Italy

Italy appreciates the global agreement reached on the revision of the Markets in Financial Instruments Directive (MiFID/MiFIR). Nevertheless Italy seconds the Commission in regretting that some of the proposals aiming at enhancing the transparency of non-equity financial markets, including the sovereign debt market, have not been endorsed by the co-legislators.

Italy is in favour of a proper review of the mentioned matter in the future, with a view to fulfilling the ambitious objectives of the Commission initial proposal.

Statement by Sweden

Access to data traffic records held by providers of public electronic communications networks by public authorities amounts to a serious interference with the right to respect of private and family life and the right to protection of personal data. Issues of privacy and surveillance are highly sensitive topics that need to be dealt with in a consistent manner across all EU policy areas. Such powers should be restricted to investigations of crimes. Sweden is worried that this power is spreading to financial market files which do not deal with such matters. The judgment of the European Court of Justice on the 8th of April in which the ECJ declares the Data Retention Directive (2006/24/EC) to be invalid further reinforces this view (see Cases C-293/12 and C-594/12).

Déclarations de la France

Transparence pour les marchés financiers autres que les marchés d'actions (article 8 du règlement)

La France regrette que les propositions ambitieuses formulées par la Commission européenne pour renforcer la transparence des marchés financiers autres que les marchés d'actions, notamment les marchés de dérivés, n'aient pas été retenues par le Conseil et le Parlement européen.

La France est favorable à une révision du texte dans un avenir proche sur ce sujet, visant notamment à garantir un processus de formation des prix juste et efficace sur les marchés financiers.

Matières premières

Aux termes de l'article 57 de la directive, l'autorité européenne des marchés financiers (AEMF) doit définir la méthode de calcul des limites de position que les autorités nationales compétentes doivent appliquer. La France rappelle son attachement à ce que ce mécanisme soit appliqué dans les mêmes conditions dans toute l'Union européenne et à l'ensemble des marchés de produits dérivés ayant comme sous-jacents des matières premières.

S'agissant de l'annexe C de la directive établissant la liste des instruments financiers, la France regrette que certaines catégories de contrats dérivés sur matières premières à dénouement physique et négociés sur des OTF aient été retirés du champ des instruments financiers. La France attachera une attention toute particulière à ce que cette exemption soit la plus encadrée possible, à travers notamment l'acte délégué de la Commission prévu au considérant (10) de la directive.

Sanctions

La généralisation de l'utilisation des sanctions administratives est décisive pour renforcer la protection des investisseurs et l'intégrité du marché et pour approfondir le marché intérieur européen.

C'est pourquoi la France regrette profondément qu'il n'ait pas été possible d'obtenir une harmonisation des sanctions administratives dans la directive MIF II. Elle souhaite donc souligner que, s'agissant des sanctions, la directive MIF II ne peut pas être considérée comme une référence ou un précédent.
