



**COUNCIL OF
THE EUROPEAN UNION**

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"A" ITEM NOTE

from : General Secretariat
to Council

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)
- General approach

I. INTRODUCTION

1. The Commission transmitted the above mentioned proposals to amend the current MiFID to the Council on 20 October 2011. The objective of this legislative package is, inter alia, to further the integration, competitiveness, and efficiency of EU financial markets by responding to the challenges created by developments in financial markets, and dealing with the weaknesses the financial crisis has exposed.

2. The legislative package amending MiFID has two parts:
 - A Regulation sets out requirements in relation to the disclosure of trade transparency data to the public and transaction data to competent authorities, removing barriers to non-discriminatory access to clearing facilities, the mandatory trading of derivatives on organised venues, specific supervisory actions regarding financial instruments and positions in derivatives.
 - A Directive amends specific requirements regarding the provision of investment services, the scope of exemptions from the current Directive, organisational and conduct of business requirements for investment firms, organisational requirements for trading venues, the authorisation and ongoing obligations applicable to providers of data services, powers available to competent authorities, sanctions, and rules applicable to third-country firms operating via a branch.
3. Intensive negotiations have been going on during the PL, DK, CY and IE Presidencies aiming at an agreement on the Council's general approach, which would allow the Presidency to start negotiations with the European Parliament with a view to reaching a first reading agreement. The EP ECON Committee voted on its reports on 26 September 2012, and the EP position was further confirmed by the Plenary on 26 October 2012.
4. At the meeting of the Permanent Representatives Committee (part 2) on 17 June 2013 a provisional agreement was reached on the general approach, as set out in docs. 11006/13 EF 128 ECOFIN 558 CODEC 1471 (MiFID) and 11007/13 EF 129 ECOFIN 559 CODEC 1472 (MiFIR).

II. CONCLUSION

5. It is therefore suggested that the Council (ECOFIN on 21 June 2013) as an "A" item:

- confirms the agreement on the general approach, as set out in docs. 11006/13 EF 128 ECOFIN 558 CODEC 1471 (MiFID) and 11007/13 EF 129 ECOFIN 559 CODEC 1472 (MiFIR);
- invites the Presidency to start negotiations with the European Parliament on the basis of this general approach with a view to reaching an agreement at first reading, and
- enters into its minutes the statements set out in Annex.

Statement by the Council

Recital 93a of MiFID and recital 40a of MiFIR shall be revisited at Trilogue stage in order to meet the concerns expressed.

Statement by the UK delegation

The UK expresses concern that it is legally uncertain whether the powers granted to ESMA in Articles 31 and 35 are acceptable in terms of the principles derived from *Case 9/56 Meroni v High Authority [1957-1958] ECR 133* concerning the nature of decisions which may be vested with Union Agencies.

Statement by the European Commission

The objective of the Commission is to make European capital markets safer, more transparent and efficient so that they can best perform their role of financing the real economy. In that context, the Commission is committed during the trilogues to work towards strengthening transparency rules for both equity markets and non-equity markets (bonds and derivatives), strengthening the rules applicable to the new category of trading platform - the "Organised Trading Facility (OTF)" - and strengthening the sanctions regime under the markets in financial instruments directive and regulation in line with the Commission proposals.
