

Official Journal

of the European Union

C 72 E



English edition

Information and Notices

Volume 57
11 March 2014

<u>Notice No</u>	<u>Contents</u>	<u>Page</u>
	I <i>Resolutions, recommendations and opinions</i>	
	RESOLUTIONS	
	European Parliament	
	2012-2013 SESSION	
	Sittings of 25 and 26 October 2012	
	The Minutes of this session have been published in OJ C 15 E, 18.1.2013.	
	TEXTS ADOPTED	
	Thursday 25 October 2012	
2014/C 72 E/01	Concerns of European citizens and business with the functioning of the Single Market European Parliament resolution of 25 October 2012 on the 20 main concerns of European citizens and business with the functioning of the Single Market (2012/2044(INI))	1
2014/C 72 E/02	EU trade negotiations with Japan European Parliament resolution of 25 October 2012 on EU trade negotiations with Japan (2012/2711(RSP)) ...	16
2014/C 72 E/03	EU report on policy coherence for development (2011) European Parliament resolution of 25 October 2012 on the EU 2011 Report on Policy Coherence for Development (2012/2063(INI))	21
	Friday 26 October 2012	
2014/C 72 E/04	Human rights situation in the United Arab Emirates European Parliament resolution of 26 October 2012 on the human rights situation in the United Arab Emirates (2012/2842(RSP))	40

EN

(Continued overleaf)

<u>Notice No</u>	Contents (continued)	Page
2014/C 72 E/05	Discrimination against girls in Pakistan, in particular the case of Malala Yousafzai European Parliament resolution of 26 October 2012 on the discrimination against girls in Pakistan, in particular the case of Malala Yousafzai (2012/2843(RSP))	43
2014/C 72 E/06	Situation in Cambodia European Parliament resolution of 26 October 2012 on the situation in Cambodia (2012/2844(RSP))	48
2014/C 72 E/07	Innovative financial instruments in the context of the next Multiannual Financial Framework European Parliament resolution of 26 October 2012 on innovative financial instruments in the context of the next Multiannual Financial Framework (2012/2027(INI))	51
2014/C 72 E/08	Annual report on the activities of the European Ombudsman 2011 European Parliament resolution of 26 October 2012 on the annual report on the activities of the European Ombudsman 2011 (2012/2049(INI))	59
2014/C 72 E/09	European Semester for economic policy coordination: implementation of 2012 priorities European Parliament resolution of 26 October 2012 on the European Semester for economic policy coordination: implementation of 2012 priorities (2012/2150(INI))	64
2014/C 72 E/10	EU-Russia trade relations following Russia's accession to the WTO European Parliament resolution of 26 October 2012 on EU-Russia trade relations following Russia's accession to the WTO (2012/2695(RSP))	77
2014/C 72 E/11	Elections in Belarus European Parliament resolution of 26 October 2012 on the situation in Belarus after the parliamentary elections of 23 September 2012 (2012/2815(RSP))	81
2014/C 72 E/12	Elections in Georgia European Parliament resolution of 26 October 2012 on the elections in Georgia (2012/2816(RSP))	87

III *Preparatory acts*

EUROPEAN PARLIAMENT

Thursday 25 October 2012

2014/C 72 E/13	Procedures for applying the EC-Serbia Stabilisation and Association Agreement and the EC-Serbia Interim Agreement ***I European Parliament legislative resolution of 25 October 2012 on the proposal for a regulation of the European Parliament and of the Council concerning certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part, and for applying the Interim Agreement between the European Community, of the one part, and the Republic of Serbia, of the other part (COM(2011)0938 – C7-0010/2012 – 2011/0465(COD)) ...	91
	P7_TC1-COD(2011)0465 Position of the European Parliament adopted at first reading on 25 October 2012 with a view to the adoption of Regulation (EU) No .../2012 of the European Parliament and of the Council concerning certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part, and for applying the Interim Agreement between the European Community, of the one part, and the Republic of Serbia, of the other part	92



Thursday 25 October 2012

I

(Resolutions, recommendations and opinions)

RESOLUTIONS

EUROPEAN PARLIAMENT

Concerns of European citizens and business with the functioning of the Single Market

P7_TA(2012)0395

European Parliament resolution of 25 October 2012 on the 20 main concerns of European citizens and business with the functioning of the Single Market (2012/2044(INI))

(2014/C 72 E/01)

The European Parliament,

- having regard to the Commission working document entitled ‘Single Market through the lens of the people: a snapshot of citizens’ and businesses’ 20 main concerns’ (SEC(2011)1003),
- having regard to the Commission communication entitled ‘Single Market Act - Twelve levers to boost growth and strengthen confidence - “Working together to create new growth” ’ (COM(2011)0206),
- having regard to the Commission communication entitled “Towards a Single Market Act - For a highly competitive social market economy: 50 proposals for improving our work, business and exchanges with one another” (COM(2010)0608),
- having regard to the Commission communication entitled ‘Europe 2020 - A strategy for smart, sustainable and inclusive growth’ (COM(2010)2020),
- having regard to the Commission communication entitled ‘A single market for 21st century Europe’ (COM(2007)0724) and the accompanying Commission staff working document entitled ‘The single market: review of achievements’ (SEC(2007)1521),
- having regard to its resolution of 4 September 2007 on the single market review⁽¹⁾ and the Commission staff working document entitled ‘The single market review: one year on’ (SEC(2008)3064),
- having regard to the Commission communication entitled ‘Smart Regulation in the European Union’ (COM(2010)0543),
- having regard to the Commission’s 27th annual report on monitoring the application of European Union law (2009) (COM(2010)0538) and the accompanying Commission staff working document entitled ‘Situation in the different sectors’ (SEC(2010)1143),

⁽¹⁾ OJ C 187 E, 27.7.2008, p. 80.

Thursday 25 October 2012

- having regard to the Commission communication entitled ‘A Europe of Results – Applying Community Law’ (COM(2007)0502),
 - having regard to the Commission recommendation of 29 June 2009 measures to improve the functioning of the single market ⁽¹⁾,
 - having regard to the Council conclusions of 10 December 2010 on the Single Market Act,
 - having regard to Professor Mario Monti’s report to the Commission on revitalising the single market,
 - having regard to its resolution of 20 May 2010 on delivering a single market to consumers and citizens ⁽²⁾,
 - having regard to the Internal Market Scoreboard No 21 (2010) and to its resolutions of 9 March 2010 ⁽³⁾ and 23 September 2008 ⁽⁴⁾ on the Internal Market Scoreboard,
 - having regard to Articles 258 to 260 of the Treaty on the Functioning of the European Union (TFEU),
 - having regard to Articles 7, 10 and 15 of the Treaty on the Functioning of the European Union,
 - having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on Economic and Monetary Affairs, the Committee on Employment and Social Affairs, the Committee on Industry, Research and Energy, the Committee on Transport and Tourism, the Committee on Legal Affairs and the Committee on Petitions (A7-0310/2012),
- A. whereas the document ‘The Single Market through the lens of the people: a snapshot of citizens’ and businesses’ 20 main concerns’ confirms that there is a gap between the expectations and the reality of the single market;
- B. whereas there are still too many obstacles preventing Europeans from taking full advantage of the existence of the single market, thus hindering the development of a sense of belonging to the same community; whereas there is an urgent need to resolve these difficulties in order to allow Europeans to benefit fully from their right to freedom of movement and the advantages resulting from membership of the European Union;
- C. whereas, in the context of the economic, financial and social crisis currently affecting Europe, it is essential to abolish obstacles and relaunch the single market, and thus contribute to innovation, growth, the promotion of competitiveness, job creation and increased market confidence, whereas deepening the single market will benefit all European citizens, thereby contributing to the territorial, economic and social cohesion of the Union;
- D. whereas the single market constitutes a key element in realising the objectives of the Europe 2020 strategy, and in achieving the objectives of intelligent, sustainable and inclusive growth, whereas the new paradigm for political thought on relaunching the single market should focus on the citizens, on consumers and, in particular, on SMEs;

⁽¹⁾ OJ L 176, 7.7.2009, p. 17.

⁽²⁾ OJ C 161 E, 31.5.2011, p. 84.

⁽³⁾ OJ C 349 E, 22.12.2010, p. 25.

⁽⁴⁾ OJ C 8 E, 14.1.2010, p. 7.

Thursday 25 October 2012

- E. whereas European citizens have found banks imposing a range of impediments and complex and discriminatory demands when they want to open a bank account, with the result that 30 million European citizens have no bank account and mobility is thus impeded; whereas according to Eurobarometer data 29 % of consumers surveyed find it difficult to compare the different offers with respect to current accounts and are thus unable to choose the account most appropriate to their requirements;
- F. whereas some 30 % of European citizens are unaware that they have the right to crossborder healthcare and to be reimbursed for it; whereas only one in three European citizens knows that they a European health insurance card is needed when travelling abroad and that this card is indispensable for short-term stays, such as holidays, business trips or periods studying in another country;
- G. whereas the free movement of goods is a cornerstone of the EU, and the Union has introduced a uniform type-approval system and harmonised registration certificates for motor vehicles; whereas, therefore, buying a car in or transferring a car to another Member State has become much easier; whereas European citizens who move to other Member States and intend to take their car with them are faced with onerous and complex procedures, requiring documentation that does not exist in their own Member State and payment of additional taxes; whereas European citizens intending to purchase a car in another Member State experience similar difficulties, whereas Parliament receives numerous complaints from citizens faced with cumbersome formalities, very often relating to the re-registration of their vehicles in another Member State and the associated additional costs; whereas at the same time the Union and the Member States need to ensure that the re-registration of stolen vehicles with falsified registration certificates does not occur;
- H. whereas the EU rules on passengers' rights provide a minimum level of protection for citizens and thus facilitate mobility and social integration; whereas they help create a level playing field for transport operators within as well as across modes; whereas the EU legal framework protecting passengers' rights needs to guarantee a minimum standard of consumer protection that is able to withstand evolving commercial practices such as add-on charges, as well as covering cases of bankruptcy or insolvency of airlines; whereas the Union needs to react to new multimodal mobility patterns;
- I. whereas the elimination of regulatory and physical barriers to the creation of a European Single Railway area, particularly in the case of freight, would help boost growth within the Single Market;
- J. whereas 62 % of European consumers would like to change energy supplier and switch to a cheaper tariff, but their freedom of choice is limited by the lack of clear and comparable information and the obstacles to ending their existing energy supply contracts; whereas such a change would represent a saving of EUR 100 per customer, or EUR 13 billion across Europe;
- K. whereas the deepening of the Single Market in the mobile telecommunications field, particularly regarding roaming, would be greatly welcomed by European citizens;
- L. whereas 26 % of European consumers surveyed have experienced problems with internet services provision; whereas the process of switching from one internet service provider to another is complicated and expensive, and consumers frequently experience poor quality of service and uneven enforcement of national rules;
- M. whereas lack of information on consumer rights, incorrect application of legislation and difficulty in resolving disputes over crossborder purchases have led to consumer distrust of on-line purchases, preventing the EU from having a genuine digital market at the service of citizens and businesses; whereas figures from the European Consumer Centres (ECCs) show that online purchases are responsible for the majority (59 %) of complaints made by consumers;
- N. whereas businesses continue to face problems accessing public procurement contracts in other Member States, both as contractors and as subcontractors, due in particular to differing national practices in public procurement and to the complex administrative requirements existing in some Member States, as well as to language barriers;

Thursday 25 October 2012

- O. whereas improving the access of SMEs to funding is of major importance in the current economic climate, both for the survival and development of the enterprises themselves and for strengthening entrepreneurship and development in Europe generally,
- P. whereas special attention must be paid to people with disabilities so that they can make the most of the single market, taking action to ensure that new electronic content is also fully available to disabled people, in accordance with the international Web Content Accessibility Guidelines ⁽¹⁾ and with the UN Convention on the Rights of Persons with Disabilities, which set out accessibility obligations ⁽²⁾;

I. Introduction

1. Welcomes the Commission's presentation of the working document entitled 'The Single Market through the lens of the people: a snapshot of citizens' and businesses' 20 main concerns', which followed the EP resolution of 20 May 2010 on a single market at the service of consumers and citizens;
2. Congratulates the Commission on this significant initiative in response to the difficulties and concerns faced by citizens and businesses in exercising the rights conferred on them by the EU; considers, however, that the working document could have gone into more depth;
3. Is convinced that the completion of the internal market is necessary for the economic and social wellbeing of the citizens of the EU; calls on the Commission to present concrete actions and feasible proposals to resolve the issues identified as the 20 main concerns of the citizens;
4. Believes that, in this time of severe financial crisis, the EU needs to step up its efforts to eliminate barriers to the smooth functioning of the single market, in particular in sectors which can act as motors for sustainable growth, such as crossborder business and entrepreneurial activities, service provision, mobility, access to finance and financial literacy;
5. Recognises that increased mobility of qualified labour can contribute to making Europe more competitive; believes that to this end it is necessary to adopt a modern framework for the recognition of professional qualifications, by making use of the Internal Market Information System (IMI) alert mechanism;
6. Welcomes the introduction of a European Professional Card supported by the Internal Market Information System, in the context of which the criteria for such a card are now being evaluated with the aim of facilitating administrative procedures and voluntary crossborder mobility within the EU; believes, moreover, that the IMI will be able to achieve faster cooperation between Member State of origin and host state, thus helping address the persisting mismatches in the EU labour market;
7. Stresses that the mobility of workers in different Member States must be a voluntary act and must always go hand in hand with full respect for labour rights;
8. Expresses its concern over the fraudulent employment agencies which engage in the exploitation of labour throughout the EU, thus undermining the proper functioning of the free movement of workers, and calls on the Commission and Council to draw up an action plan to address this issue, for example by closer cooperation between national labour inspectorates.
9. Stresses the urgent need to improve citizens' awareness with regard to taxation in the EU and to reduce tax barriers for crossborder workers and employers, in order to facilitate mobility and promote crossborder business initiatives while fighting opportunities for tax evasion and tax fraud;

⁽¹⁾ Web Content Accessibility Guidelines (WCAG) 2.0 - <http://www.w3.org/TR/WCAG20/>

⁽²⁾ See <http://www.un.org/disabilities/convention/conventionfull.shtml>

Thursday 25 October 2012

10. Emphasises, accordingly, the need for a socially justifiable fiscal policy, playing a redistributive role and geared towards growth, which will be capable of dealing with the major issues of fiscal competition, effective monitoring, taxation of offshore companies and the eradication of the tax havens currently flourishing inside the EU;
11. Calls on the Commission to strengthen programmes that contribute to improving the entrepreneurship, internationalisation and competitiveness of European SMEs, which are the backbone of the European economy;
12. Calls on the Commission to encourage SMEs to recruit young people and to strengthen mobility programmes that encourage the young to enhance their skills, thereby becoming more employable and able to enter the labour market;
13. Welcomes further legislative initiatives aimed at creating a fully integrated Single Market in order to increase competition and efficiency and provide greater choice for European consumers.
14. Stresses the role of the internet in business efficiency and the rapidly increasing role of e-commerce in creating new markets, growth and opportunities for businesses; stresses the need for to ensure fully operational ADR and ODR systems, reinforcing the confidence of consumers and businesses in the digital market; calls for the simplification of licensing systems, the creation of an efficient framework for copyright, and action to prevent product and brand piracy;
15. Recalls that Article 194 TFEU lays down that Union policy on energy shall be driven by a spirit of solidarity between Member States; stresses that the completion of the internal market in energy should take account of the structural socioeconomic differences of the European regions and should not impose burdens on Member States;
16. Notes that with the adoption in 2011 of legislation on passengers' rights in the case of bus and coach transport in, the Union now has a comprehensive and integrated set of rules on basic passengers' rights covering all modes of transport;
17. Considers that the main goal of the EU banking sector should be to provide capital to the real economy, this being one of the preconditions for the development of a knowledge-driven single market that fosters growth, competition and jobs;
18. Welcomes the reform of public procurement proposed by the Commission, and considers that establishing common principles at EU level, together with flexible, clear and simple rules on public procurement, would enable companies, and above all SMEs, to better exploit the opportunities offered by crossborder public procurement; emphasises that it is essential to establish an EU-wide public e-procurement system, which would ensure greater transparency and competitiveness and allow public money to be used more efficiently;
19. Regrets the fact that the legislative proposal aimed at ensuring the full accessibility of public sector websites by 2015 has been deferred; welcomes the roadmap for digital inclusion, and calls for the implementation of the Web Accessibility Initiative (WAI) and the Web Content Accessibility Guidelines (WCAG) for e-government portals;
20. Draws attention to the importance of developing European standards, which are absolutely necessary both for the realisation of the Single Market and for increasing the EU's international competitiveness; calls on the Commission to ensure easier access to European standards for SMEs and micro-enterprises;
21. Points out that differences in the regulation of e-signatures in the Member States remain a major obstacle to the proper functioning of the EU Single Market, particularly the provision of services; considers it essential to establish a single system for the recognition of e-signatures throughout the EU;

Thursday 25 October 2012

22. Emphasises the importance for e-invoicing of ensuring legal certainty, a transparent technical environment and open and compatible solutions grounded in legal requirements, commercial operations and common technical standards, in order to facilitate the widespread adoption of this practice;

23. Stresses that all EU citizens who do not already hold a bank account in the Member State where they have lodged a request for one should have access to basic banking services; considers, in this regard, that basic banking services facilitate access for low-income consumers to basic payment instruments for the deposit, transfer and withdrawal of cash in the single market, notably with respect to crossborder commuting; calls, therefore, on the Commission to make a legislative proposal to ensure consumer-friendly procedures for opening bank accounts across the Union;

24. Is concerned that EU citizens who inherit, retire or transfer capital abroad are frequently faced with double taxation; calls for increased efforts to alleviate this situation; regrets that the Commission has only proposed a recommendation in the area of inheritance taxation;

25. Reiterates its call on the Commission to assess the different rules on pension funds and the need to improve portability of pensions, in particular occupational pensions, when workers change employer and move from one Member State to another; calls, as a matter of urgency, for a revision of the Pension Funds Directive;

26. Stresses the need for the EU institutions and the Member States to step up efforts to ensure a single market that is fairer, more operational, more competitive and more effective;

II. Governance

27. Stresses the need to develop a holistic approach to the single market, centred on finding practical and useful solutions for citizens, consumers and SMEs so that they can fully benefit from its advantages, while at the same time not giving rise to over-regulation;

28. Reaffirms the need to strengthen cooperation and interaction between Parliament, the Council, the Commission and the Member States, so that citizens feel more included in the main projects and day-to-day activities of the EU and so that EU action, where deemed necessary, is targeted and useful; stresses that the dialogue with civil society is essential to restore confidence in the single market;

29. Recognises, that for the smooth functioning of the internal market it is also important to protect social rights, and recalls the recommendation made by Professor Monti in his report to the Commission that 'the social dimension of the internal market should receive greater attention by delivering on the commitment to real "social impact assessments" based on the development of more sophisticated methodologies and upgraded statistical information'.

30. Urges the Member States to modernise public administration, simplifying the regulatory framework, and to encourage the use of electronic facilities such as e-government;

31. Encourages the Member States to exchange best practice, so that European legislation is applied uniformly;

32. Welcomes the Commission's decision to refine its management database for handling cases related to the application of EU law ⁽¹⁾;

⁽¹⁾ CHAP - Complaints Handling and Public Enquiries registration system;
EU PILOT - Problem-solving with Member States;
NIF - Database for registering cases of non-communication.

Thursday 25 October 2012

33. Calls on the Commission to develop the 'Your Europe' portal in order to turn it into a genuine digital 'one-stop shop' providing citizens and businesses with information about the single market; calls on the Member States to supply the national data currently lacking in the 'Your Europe' portal as soon as possible, to provide more links from their national government portals related to the various sections of the website, and to develop references to 'Your Europe' from relevant local and national administration portals so as to facilitate access for citizens;
34. Stresses the usefulness of the 'Your Europe Advice' facility, which allows citizens free access to personalised information; calls on the Commission and the Member States to take action with a view to significantly raising citizens' awareness of the Europe Direct telephone facility;
35. Welcomes the positive role played by SOLVIT, 'Your Europe Advice', the Enterprise Europe Network, the European Consumer Centres, the Europe Direct Contact Centre and the European Employment Service in providing information and assistance to citizens, consumers and entrepreneurs in the internal market; calls on the Commission to find ways to improve coordination between these services and avoid duplication of efforts and resources;
36. Calls on the Commission to make every effort to deliver a single, live online point of contact for citizens and consumers, via its offices in each Member State; believes these points of contact should operate in close cooperation with the European Parliament's information offices in order to make a comprehensive 'one-stop shop' available to every citizen; takes the view that creating such a point of contact in each Member State would truly help make the internal market more accessible and provide a more efficient, user-friendly service which would not only give information but also communicate to people, in an easily understandable way, the concrete opportunities offered by the internal market; believes this would help prevent confusion on the part of the average citizen, the consumer and business;
37. Calls on the Commission to analyse the involvement of local and regional authorities in the strategy for expanding the Single Market Information System;12. calls on the Member States to improve their civil services' understanding of their obligations regarding use of the IMI, and to ensure that their employees receive appropriate training;
38. Stresses that three shortcomings lie behind the concerns of citizens with regard to the operation of the single market, i.e. lack of information, gaps in application, and a legislative vacuum; believes that simultaneous action must be taken to eliminate these three shortcomings if the operation of the Single Market is to be optimised;
39. Stresses the importance of SMEs to the European economy, and calls on the Commission, together with the Member States, to improve the 'SME test' so as to ensure that it is applied consistently and coherently across all relevant policy areas and is incorporated into the overall assessment of proposals, so as to reduce the basic obstacles, bureaucracy and administrative overheads that impede the development of SMEs in terms of contributing to a more favourable business environment that will promote entrepreneurship, innovation, investment, growth and job creation; calls on the Commission to undertake a review of all directives and regulations which impact negatively on SMEs, and to submit a report with recommendations by June 2013;
40. Recalls the decision of Parliament calling on all its committees to apply the principles of the 'SME test' to legislative reports when they have been voted on by the relevant committee and are being submitted to plenary for approval, and emphasises the need for rapid implementation of this decision;
41. Considers that close adherence to the 'Think Small First' principle would ensure that future legislation does not introduce further difficulties and frustrations for citizens and businesses in the Single Market;

Thursday 25 October 2012

42. Emphasises that the Commission should step up its efforts to focus on the impact of regulations and directives on industry, SMEs and micro-enterprises with Better Regulation targets; stresses, in particular, the need for the burden reduction programme to continue beyond 2012 with a more ambitious and expanded scope, and for the introduction of regulatory burden offsetting;

43. Calls on the Commission to strengthen its commitment to assessing whether there is real added value of action at EU level before work begins on a draft proposal;

44. Welcomes the Commission's announcement of a programme to eliminate cost burdens for SMEs by means of a presumption that micro-enterprises will be exempted from burdensome rules unless a case for their inclusion is explicitly made;

III. Information and communication

45. Emphasises that there is a lack of information about the single market, which often means that citizens and enterprises do not know or do not understand their rights and obligations, and do not know how to obtain the required answers or assistance; emphasises the need to design information that takes account of the specific characteristics of vulnerable consumer groups;

46. Emphasises that it is equally important that citizens can make known their concerns in relation to the internal market and can forward their suggestions in such a way that their voice will be more effectively heard by both the Commission and Parliament;

47. Calls on the Commission to make use of all available technological resources in order to launch a dialogue with the citizens on the single market, by organising interactive information campaigns, prioritising the 20 main concerns, informing citizens and enterprises concerning the benefits of the Single Market, practical and concrete solutions to their day-to-day problems, and their rights, and encouraging them to participate in the creation of a competitive, fair and balanced market, while also paying special attention to strengthening the Points of Single Contact (PSCs);

48. Welcomes the activity of the PSCs, which have the role of simplifying access to information on conducting business in the Member States, centralising in a single national point of contact all necessary formalities and administrative requirements for establishing or expanding a business across borders;

49. Calls on the Commission and the Member States to make every effort to devise useful communication strategies and information mechanisms relating to citizens' enjoyment of their social rights and benefits across the EU;

50. Stresses the importance of involving local and regional authorities and organisations, jointly with civil society, in information campaigns, paying particular attention to information campaigns in schools and universities in order to involve the next generation and prepare it for a more active European citizenship;

51. Is convinced that consumer confidence in a well-functioning financial services market promotes financial stability, growth, efficiency and innovation in the long term; emphasises, therefore, the need to ensure that consumers have better access to information and independent advice in this sector, and that conflicts of interest are avoided;

52. Emphasises the fact that significant variations exist between energy bills, depending on the supplier, with regard to the quantity and quality of information provided to European energy consumers; stresses that it is essential to provide consumers with timely and adequate information on consumption and pricing, so that they can choose the energy supplier they wish;

Thursday 25 October 2012

53. Encourages the establishment of a common methodology and a common, comprehensive and easy-to-use format for energy bills, with a minimum level of information that suppliers should include when billing, so that consumers can understand the content of their energy bills everywhere in the EU and thus use energy more economically and efficiently;

54. Urges the Member States to provide NRAs with the powers and resources needed to exercise their duties, e.g. monitoring and proper customer complaint handling; asks the Commission and ACER to propose recommendations on how the NRAs' supervisory powers could be improved; calls on the Commission to promote improvements to the coordination and exchange of best practice and information among NRAs and the competent national and European authorities;

55. Calls on the Commission, together with the Member States, to develop a digital single market that is worthy of the name and competitive and will serve European consumers and businesses, in particular SMEs; recalls that the existence of a genuine European digital single market will be of socio-economic benefit to European consumers in general, in particular the inhabitants of isolated and less accessible regions and those with any kind of disability, as well as to enterprises in the EU, in particular SMEs, which will thus be able to access new markets;

56. Stresses that, in order for a genuine European digital single market to be created, consumer confidence and security need to be increased, by guaranteeing the protection of consumers' personal data and the security of digital signatures, improving dispute resolution mechanisms, and enhancing confidence and security regarding the means of payment used;

57. Recalls the need to fill the remaining gaps in the field of contract law, as well as to adopt effective instruments for clearing the obstacles that result from disparities in the rules applicable to contracts, which create barriers to trade, additional transaction costs and legal uncertainty for enterprises, thereby also causing consumers to mistrust the single market;

58. Calls on the Commission and the Member States to take appropriate measures to ensure that all citizens are fully informed of their rights under the European Health Insurance Card (EHIC) and of the existing financial obligations as regards using health services and care in different Member States; stresses that this information must be easily accessible and understandable (including electronic availability), and must be accessible to citizens with disabilities;

59. Calls on the Commission to ensure that all citizens entitled to the EHIC are issued with the card on request, and that any misapplication of the rules is corrected without delay; calls on Member States to provide information on any additional insurance or other action that may be necessary for citizens to be entitled to the same health care abroad as they enjoy at home;

60. Urges the Member States to simplify and accelerate the administrative procedures for reimbursement of treatment received abroad, and to ensure that their social insurance and health insurance systems provide sufficient protection for mobile citizens;

61. Highlights the lack of information for officials and other employees of regional and local government on the opportunities existing for European and international mobility; stresses that the European and international mobility of these officials and employees will help create more modern and efficient administrations in the Member States, a factor which is crucial to the implementation of the EU acquis, as well as enabling the exchange of best practice;

Thursday 25 October 2012

IV. Legislation/Transposition

62. Emphasises that the success of EU law is always dependent on its application and its transposition within a reasonable time into Member States' national legislation; considers regular, careful and effective controls to be essential in this area, and calls on the Commission to intervene in the event of deficiencies in transposition and to continue to cooperate closely with Parliament in this regard;

63. Recognises that although the number of infringement proceedings initiated by the Commission has decreased, there were still about 2100 such proceedings under way at the end of 2010;

64. Notes the large number of petitions received by Parliament's Committee on Petitions relating to the problems citizens face within the internal market, particularly as regards the incorrect transposition or implementation of EU law; calls on the Commission to incorporate in its report the findings and results of the petitions submitted to that committee; stresses that the petitions procedure needs to be better utilised in order to improve the EU's legislative processes, particularly as regards legislative remedies to barriers to crossborder trade and enforcement of consumer rights;

65. Calls on the Member States to prioritise the correct and timely transposition of legislation relating to the Single Market and to reduce levels of non-compliance; invites them to implement a 'Single Market test' within the framework of their national legislation, taking into account the impact of its standards on citizens and enterprises in the context of the internal market;

66. Underlines that the procedures for reclaiming VAT across borders need to be made less bureaucratic and cumbersome for businesses; stresses that there should also be increased access to crossborder venture capital financing; calls on the Commission and the Member States, since legislative and implementation gaps in the single market legislation have been identified, to reinforce their efforts to effectively implement the relevant legislation, especially on issues related to social protection;

67. Calls on the Commission to include reference to the affected area of activity and its impact on the single market when initiating infringement proceedings for incorrect transposition of, or failure to transpose, EU legislation;

68. Urges the Commission, with regard to infringement proceedings, to make full use of the changes introduced by Article 260 TFEU;

69. Supports the Commission's efforts to simplify the cross-border transferability of cars, and calls on the Member States to fully implement the principles of EU law on the registration of cars in other Member States; recalls in this regard that cars (right-hand drive vehicles included) that are compliant with the relevant EU type-approval should be eligible for registration in Member States, and calls on the Commission to increase the security of harmonised registration certificates in order to minimise the risk of re-registration of stolen vehicles with falsified registration certificates;

70. Calls on the Commission to apply zero tolerance to any discriminatory rules and practices by Member States in the field of employment which run counter to EU law, and to initiate appropriate proceedings without delay in the event of non-compliance; also calls on the Commission not to tolerate any other forms of discriminatory or unjustifiable practices, controls or requirements hampering European workers and employers in the exercise of their rights under EU law;

71. Recalls that freedom of movement is a fundamental right which workers must be able to exercise without discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment; believes that, in order to ensure this freedom, workers should be properly informed, adequate redress mechanisms should be put in place, and all Member States should strictly implement the relevant EU rules;

Thursday 25 October 2012

72. Calls on the Commission to carefully monitor both the transposition and the effective application of Directive 2000/78/EC in the Member States, and to intervene in the event that any deficiencies are observed; calls on the Member States and the Council to give priority to the urgent adoption of the proposal for a directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation;

73. Emphasises the need to improve working conditions and ensure adequate protection, without any form of discrimination, for workers posted in the EU; calls for action to improve the implementation and application of the Posting of Workers Directive, in close cooperation with the social partners; welcomes the conclusions of the Single Market Forum in this regard;

74. Recalls that the EU legislation in force protects the rights of consumers and provides a solid foundation for a competitive European energy market, but that it has not yet been transposed properly into national legislation in several Member States;

75. Urging all Member States to fully implement the third energy package and other related EU legislation, respecting the agreed deadlines; asks the Commission to undertake vigorous monitoring of the transposition of these rules;

76. Calls on the Commission to continue to promote best practice with regard to the transposition of legislation relating to the single market;

77. Stresses that the coherent and harmonised implementation and enforcement of passenger protection throughout the Union is of key importance for travelling citizens, including people with reduced mobility, as well as for ensuring a level playing field for transport operators; Recognises that people with disabilities very often encounter obstacles and barriers when travelling that exclude them from many of the opportunities of the single market, and calls on the Commission to pay greater attention to this aspect in relation to passengers' rights;

78. Calls on the Commission and the Member States to ensure that passenger rights legislation is implemented correctly, that European citizens are aware of the rights of passengers in the EU, and, especially, that those rights are respected;

79. Stresses the need to address the problems experienced by citizens and businesses; notes that despite the minimal evidence included in the Working Paper, many of the problem areas identified have been the subject of recent impact assessments and proposals by the Commission; strongly believes that where action is proposed the Commission must produce robust and conclusive evidence in favour of the policy option chosen in the draft legislation; calls on Parliament to give full consideration to the accuracy and persuasiveness of the impact assessments produced by the Commission when considering draft proposals, in order that adopted legislation meets the needs of citizens and businesses alike;

80. Considers it important to exchange information and promote cooperation between national systems, and, in this context, welcomes the recently achieved interconnection of business registers ⁽¹⁾; continues to urge crossborder cooperation on administration and improved networking through central platforms; welcomes the Commission's initiatives to this effect, e.g. for developing a system for the electronic transmission of social security information between national social security systems;

⁽¹⁾ Position of the European Parliament of 14 February 2012, (texts adopted, P7_TA(2012)0033).

Thursday 25 October 2012

81. Emphasises that the crossborder enforcement and recognition of decisions and the legal effects of documents are central to mobility in the internal market; looks forward to the prompt application of the regulation on succession rights in all EU Member States; calls on the Commission to continue its work in relation to the recognition of the legal effects of civil status records, on the basis of the Green Paper of 2010 ⁽¹⁾ and the consultations of 2011 – and regards the legislative proposals planned for 2013 with interest;

82. Notes the objective of improved legislation, and believes that the Commission, Parliament and the Council should redouble their efforts to improve the strategy for smart regulation;

83. Endorses the commitment shown to addressing the issue of regulatory burdens; in this regard, recalls the previous commitment of Parliament to require the Commission to identify equivalent cost offsets when proposing new legislation; further recalls Parliament's request that the programme for administrative burden reduction be extended and expanded, and therefore looks forward to proposals for reducing administrative burdens and regulatory impediments, since these would address many of the main concerns of citizens and businesses regarding the Single Market;

84. Stresses that, despite the simplification of legislation and the reduction in the administrative burden as regards the utilisation of internal market freedoms by businesses, it is generally necessary to secure the safety and health provisions that protect consumers and employees;

85. Invites the Commission to submit all new European regulations to an 'e-commerce test';

V. Suggestions

86. Calls on the Commission to monitor the 20 main concerns of citizens and businesses in relation to the Single Market' after two years, and to update them; also calls on it to draw up a table for each of the concerns highlighted, indicating which actors are responsible for solutions to each of the root causes identified;

87. Calls on the Commission, in future reports, to highlight corresponding actions for which it is clearly responsible, such as taking timely and appropriate action in the event of incorrect transposition of EU legislation by Member States, ensuring adequate implementation of EU law, and reviewing inadequate legislation;

88. Calls on the Commission to present the document 'The new Single Market Act - Twelve levers to boost growth and strengthen confidence - "Working together to create new growth" ' in the second half of 2012;

89. Encourages the Commission and the Member States to focus their information campaigns during the European Year of Citizens 2013 on the areas of those concerns that relate to rights based on EU citizenship, since these, on the basis of the selection methodology of the report, truly reflect what matters most to EU citizens in their everyday lives in the internal market;

90. Calls on the Commission to find ways of amalgamating the EU Citizenship Report with the report entitled 'The Single Market through the lens of the people' in future, so as to avoid duplication and confusion and guard against the risk of decoupling problems from solutions;

⁽¹⁾ COM(2010)0747.

Thursday 25 October 2012

91. Calls on the Commission, together with the Member States, regional and local authorities and civil society representatives, to launch regular European information campaigns in national, regional and local media, as well as interactive campaigns, strengthening the dialogue with citizens on the benefits of the single market, citizens' rights and responsibilities, and where to obtain information or assistance to resolve problems; calls on the Commission to monitor and control the effectiveness and success of these information campaigns;

92. Calls on the Commission to ensure that existing tools such as SOLVIT, the Internal Market Scoreboard, Internal Market Information System, 'Your Europe Advice' and 'Your Europe' are effectively interconnected so as to make it possible to monitor the proper and timely transposition of EU directives;

93. Emphasises the need to support the EURES system and its effective interconnectedness with national work placement systems, as one of the means of combating unemployment in the EU, as also to address the phenomenon of inability to fill vacancies due to lack of candidates with relevant qualifications;

94. Urges the Commission to undertake an evaluation of the areas in which Community regulation simultaneously achieves both the objective of simplified and direct application by Member States and the objectives of the Single Market;

95. Calls on the Commission to promote urgent measures aimed at overcoming the imbalances in energy infrastructure existing in the Union which represent an obstacle to the completion of the internal energy market and the achievement of the Europe 2020 goals;

96. Calls on the Member States to use ICT tools to improve transparency and accountability, reduce administrative burdens, improve administrative processes, reduce CO₂ emissions, save public resources and contribute to a more participatory democracy, while at the same time strengthening the level of trust and confidence;

97. Calls on the Commission and the Member States, while complying with Regulation (EC) No 883/2004 and Article 153 TFEU, to undertake studies to ensure the continuity of social security protection for mobile citizens in the EU and equal treatment with nationals, also taking into consideration an optional, voluntary and transferable social security system at European level, complementary to the general system, in order to set up closer cooperation on social policy; previous ideas relating to a '28th regime' of social security systems should be updated and incorporated into the studies;

98. Urges the Member States to take whatever action is necessary to simplify the complex national administrative procedures and ensure that workers, employers and other parties involved in a cross-border employment situation have access to all required information on rights and obligations related to their employment, such as social security, including unemployment protection, health care and taxation rules; considers that this information needs to be available, as far as possible in electronic form, before, during and after the mobility experience;

99. Urges the Commission to establish a central coordination point at EU level aimed at recording the concerns of mobile workers, employers and other interested parties, in order to devise solutions between Member States and prevent problems arising from mobile employment relationships, including the posting of workers;

100. Calls on the Member States to treat non-EU family members of EU nationals as bona fide clients throughout the administrative procedures they have to undergo;

Thursday 25 October 2012

101. Calls on the Member States to establish a 'one-stop shop' for all mobile people in the EU, enabling them to handle their work- and home-related administrative matters and be informed of their rights and obligations at a single location in the host country, including the possibility of carrying out and managing administrative procedures on-line, in order to improve the effective exercise of rights by citizens moving within the EU;

102. Calls on the Commission to ensure access to a basic payment account at a reasonable price for all European Union citizens, in order to increase mobility;

103. Welcomes the Commission's proposals for facilitating access to crossborder health care; urges the Commission and the Member States to ensure the swift and effective implementation of Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in crossborder health care, taking due account of the principles of universality, access to quality care, equity and solidarity; calls on the Commission and the Member States, in addition, to continue working towards the target of widespread deployment of telemedicine and e-health services by 2020; supports, furthermore, the pilot projects aimed at ensuring EU citizens secure online access to their patient data and interoperability of patient records, thus providing patients with continuity of care;

104. Calls on the Commission to put forward a legislative proposal on the roadworthiness testing of motor vehicles, with a view to reducing the administrative burden for citizens and industry while guaranteeing the dynamic development of testing methods and test content and at the same time ensuring the highest possible level of road safety;

105. Calls for the mutual recognition of technical controls between Member States, on a basis of common definitions and comparable test standards when a vehicle is transferred from one Member State to another; proposes the establishment of a European database to centralise the technical data of all vehicles, in order to enable Europe-wide comparability and facilitate crossborder vehicle registration; calls on the Member States to minimise the financial cost to the public of registering vehicles in another Member State, by avoiding unnecessary costs through a common approach;

106. Calls on the Commission and the Member States to ensure the more rigorous enforcement of interoperability between national transport and mobility services, products and systems, such as those subject to EU rules relating to road toll systems or the ERTMS, alongside European-level integrated information, pricing and ticketing in the fields of public and intermodal mobility;

107. Urges the Commission to facilitate access to microfinance facilities for the setting-up and development of small businesses, particularly those that intend to pursue crossborder operations;

108. Calls on the Member States and the Commission to facilitate investment opportunities for innovative start-ups by removing the obstacles that hinder the emergence of an EU- wide venture capital market;

109. Calls on the Member States to make use of existing structures and the creation of 'one-stop shops' in order to simplify and facilitate access to information enabling SMEs to apply for European, national and local funds, bearing in mind that 'one-stop shops' have greater added value when they are created at the expense of existing administration and thus do not place additional burdens on the taxpayer; stresses the importance of 'one-stop shops' as fundamental starting-points to attract and enable private investments in the field of research and energy, and calls on the Commission to reinforce the measures for further simplification and transparency of the European, national and local financing frameworks; urges the Member States to facilitate SMEs' access to funds by simplifying the rules on data submission, and to promote online data repositories for certificates and other supporting documents;

Thursday 25 October 2012

110. Calls on the Member States and the Commission to secure agreements enabling SMEs to operate throughout the EU and to commercialise their ideas, by granting them better access to markets and reducing red tape;

111. Calls on the Commission to draw up a legislative proposal offering passengers better protection in the event of airline insolvency, for example through mandatory insurance for airlines or the establishment of a guarantee fund;

112. Draws attention to the fact that it is still difficult for passengers to book and buy multimodal tickets within the EU, and calls on the Commission, the Member States and transport companies to take action for the creation of an integrated multimodal ticketing system;

113. Calls on the Commission to submit a proposal on passengers' rights where more than one mode of transport is used, so as to enable the legislation to keep pace with evolving multimodal mobility patterns.

114. Calls on the Commission to reformulate the Internal Market Information System (IMI), widening the scope and improving the operability of administrative cooperation, and to rethink the SOLVIT programme so as to give it a new framework and adequate resources, particularly human resources, in order to ensure that all centres have enough experienced and sufficient staff to enable them to deal with the queries submitted to them in a fully satisfactory manner;

115. Repeats its call on Member States to improve early language learning, to put in place a system of recognition of formal and informal education, including lifelong learning, and of competences acquired in another Member State, and to ensure better coordination with labour market needs, in order to create a future labour force with comparable qualifications that is beneficial to a common European labour market and enhances productivity levels; emphasises, moreover, the need to continue with efforts towards equivalence of national certification systems through the European Qualifications Framework;

116. Takes the view that educational institutions should indicate, in a supplement to the diplomas awarded by them, how their national diplomas can be compared and evaluated vis-à-vis diplomas awarded in other Member States, particularly in neighbouring countries;

117. Highlights the success of the automatic recognition procedure contained in Directive 2005/36/EC on the recognition of professional qualifications, and calls for an assessment to be made of the possibility of extending it to more professions;

118. Calls on the Member States to perform the necessary actions for accessing the Structural and Cohesion Funds and to utilise the amounts obtained for programmes related to vocational training, in order to ensure further support for SMEs;

119. Points to the positive results obtained in certain Member States where energy-saving requirements placed on energy companies have led to numerous advantageous results, including the more widespread use of smart electricity meters for the benefit of consumers;

120. Calls on the Commission to evaluate the possibility of a European exchange programme for officials and other employees of regional and local authorities;

*

* *

121. Instructs its President to forward this resolution to the Council and Commission.

Thursday 25 October 2012

EU trade negotiations with Japan

P7_TA(2012)0398

European Parliament resolution of 25 October 2012 on EU trade negotiations with Japan (2012/2711(RSP))

(2014/C 72 E/02)

The European Parliament,

- having regard to its resolution of 25 November 2010 on human rights and social and environmental standards in international trade agreements ⁽¹⁾,
- having regard to its resolution of 25 November 2010 on international trade policy in the context of climate change imperatives ⁽²⁾,
- having regard to its resolution of 25 November 2010 on corporate social responsibility in international trade agreements ⁽³⁾,
- having regard to its resolution of 6 April 2011 on the future European international investment policy ⁽⁴⁾,
- having regard to its resolution of 27 September 2011 on a New Trade Policy for Europe under the Europe 2020 Strategy ⁽⁵⁾,
- having regard to its resolution of 13 December 2011 on trade and investment barriers ⁽⁶⁾,
- having regard to the Communication from the Commission entitled 'Trade, Growth and World Affairs – Trade Policy as a core component of the EU's 2020 strategy' (COM(2010)0612),
- having regard to the Commission's report on 'Trade and Investment Barriers' published on 21 February 2012 (COM(2012)0070),
- having regard to the Mutual Recognition Agreement between the EU and Japan concluded in 2001,
- having regard to the Agreement on Cooperation on Anti-competitive Activities between the EU and Japan concluded in 2003,
- having regard to the Agreement on Co-operation and Mutual Administrative Assistance in Customs Matters between the European Community and Japan concluded in 2008,
- having regard to the report by Copenhagen Economics entitled 'Assessment of barriers to trade and investment between the EU and Japan', published on 30 November 2009,
- having regard to the results of the Commission's public consultation on EU-Japan trade relations published on 21 February 2011,

⁽¹⁾ OJ C 99 E, 3.4.2012, p. 31.

⁽²⁾ OJ C 99 E, 3.4.2012, p. 94.

⁽³⁾ OJ C 99 E, 3.4.2012, p. 101.

⁽⁴⁾ OJ C 296 E, 2.10.2012, p. 34.

⁽⁵⁾ Texts adopted, P7_TA(2011)0412.

⁽⁶⁾ Texts adopted, P7_TA(2011)0565.

Thursday 25 October 2012

- having regard to the European Council's conclusions of 24-25 March 2011,
 - having regard to the joint statement adopted at the 20th EU-Japan Summit, held in Brussels on 28 May 2011,
 - having regard to its resolution of 11 May 2011 on EU-Japan trade relations ⁽¹⁾,
 - having regard to its resolution of 19 February 2009 on Community action in relation to whaling ⁽²⁾,
 - having regard to the 1997 Treaty of Amsterdam amending the Treaty on the European Union – Protocol on protection and welfare of animals,
 - having regard to the Agreement between the European Community and the Government of Japan on cooperation in science and technology signed on 2 July 2012,
 - having regard to its resolution of 13 June 2012 on EU trade negotiations with Japan ⁽³⁾,
 - having regard to Rule 110(2) of its Rules of Procedure,
- A. whereas the EU and Japan represent together more than a third of world GDP and more than 20 % of world trade;
- B. whereas in 2011 the total amount of bilateral trade in goods between the EU and Japan was worth only EUR 116,4 billion, in contrast to EUR 444,7 billion for EU-USA, EUR 428,3 billion for EU-China and EUR 306,6 billion for EU-Russia;
- C. Whereas in 2011 the Japanese trade surplus with the European Union was worth EUR 18,5 billion, of which automotive products alone accounted for 30 %;
- D. whereas Japan is ranked 16th among nations 'Trading Across Borders' in the World Bank's 'Ease of Doing Business' 2012 rankings, ahead of 18 EU Member States;
- E. whereas Parliament, the Council and the Commission have noted that Japan's capacity to remove non-tariff barriers (NTBs) and obstacles to market access in public procurement is a precondition for launching negotiations on the EU-Japan free trade agreement (FTA);
- F. whereas the Copenhagen Economics study of November 2009 estimated a potential increase of 71 % for EU exports to Japan, and an increase of 61 % for Japanese exports to the EU, if tariffs and non-tariff barriers were reduced to the fullest possible extent;
- G. whereas the European Union and Japan agreed at the joint summit on 28 May 2011 to launch a scoping exercise to investigate the feasibility and shared ambition towards launching negotiations for a free trade agreement; whereas the scoping exercise has been concluded;
- H. whereas the Commission, the Council and Parliament support the maintenance of the global moratorium on commercial whaling and a ban on international commercial trade in whale products, seek to end so-called scientific whaling and support the designation of substantial regions of ocean and seas as sanctuaries in which all whaling is indefinitely prohibited;

⁽¹⁾ Texts adopted, P7_TA(2011)0225.

⁽²⁾ OJ C 76 E, 25.3.2010, p. 46.

⁽³⁾ Texts adopted, P7_TA(2012)0246.

Thursday 25 October 2012

- I. whereas there is a parallel political scoping exercise for a political framework agreement which has also been concluded successfully;

The Economic and political context

1. Believes that the importance of Japan as a political ally, with a similar approach to the EU when facing the new challenges of a globalised world, should be taken into consideration;
2. Believes that it is crucial for the EU to comprehensively deepen its economic and trade relationships with major global economies such as Japan in order to maximise the jobs and growth potential under the EU 2020 strategy; considers this to be particularly urgent in the light of the ongoing economic crisis, high unemployment rates and poor growth projections in the EU;
3. Is concerned, in this regard, that the EU's bilateral trading volume with Japan is dramatically lower than with other partners such as the USA, China and Russia; concludes that the huge potential of the EU-Japanese commercial relationship has not yet been realised to the benefit of EU businesses, workers and consumers, mainly due to the impact of Japanese non-tariff barriers on market access opportunities for European businesses;
4. Notes that Japan is pursuing its interest in other major free trade agreements such as the potential Japan-China-South Korea FTA and the Trans-Pacific Partnership, as well as negotiating several other bilateral agreements; believes that the EU should draw on its experience with the EU-South Korea FTA to achieve comparable market access penetration in negotiations with Japan;

The scoping exercise

5. Notes the conclusion of the EU-Japan scoping exercise to the mutual satisfaction of the Commission and the Japanese Government;
6. Welcomes the emphasis on the removal of NTBs and obstacles to market access in public procurement within the scoping exercise negotiations, as demanded by Parliament;
7. Cautions that, while the roadmaps represent a partial step forward, some lack precision and leave room for interpretation (e.g. the railway procurement provisions); considers, therefore, that greater ambition must be demonstrated by Japan from the outset of future negotiations; emphasises that the implementation on these commitments is crucial and, therefore, calls for concrete results as soon as possible, ideally in advance of the dates established;
8. Calls on the Japanese Government to reconfirm at the onset of formal negotiations of an EU-Japan FTA its commitments made in the scoping exercise, especially with regards to removing non-tariff barriers to trade (NTBs);
9. Requests that, accordingly, as a condition for adopting negotiating directives for an FTA with Japan, the Council insists on a binding review clause activated within one year of the launch of negotiations to assess whether Japan has delivered clear results in eliminating NTBs, in particular those affecting the EU's automotive sector, as well as the obstacles to public procurement for railways and urban transport agreed on in the scoping exercise;

A mandate for negotiations

10. Calls on the Council to authorise the Commission to start negotiations for a free trade agreement with Japan on the basis of the outcome of the scoping exercise and clear targets;

Thursday 25 October 2012

11. Calls on the Commission to dedicate one of the initial negotiation rounds of the EU-Japan FTA to removing NTBs and, therefore, to ensure that an independent impact assessment can be conducted as part of the review clause one year after the start of the negotiations to objectively assess the progress made on this key concern for Parliament;
12. Underlines that such a free trade agreement must be comprehensive, ambitious and fully binding in all its commercial provisions; stresses that an FTA must lead to genuine market openness, and trade facilitation on the ground, rather than just a hypothetical, legal openness; calls on the Commission to formally and periodically update Parliament and the Council on the state of play of the negotiations and on the progress made on dismantling NTBs; considers that if, during the negotiations, Japan does not demonstrate sufficient ambition in meeting the EU's priority demands, the Commission should suspend negotiations after consultations with Parliament and the Council;
13. Notes that the removal of non-tariff barriers is significantly more difficult to monitor and implement than the elimination of import tariffs; urges the Commission to fully take into account Parliament's recommendations as outlined in its resolution of 13 December 2011 on trade and investment barriers and to draw conclusions from the NTB commitments in the EU-South Korea FTA to develop best practise implementation and monitoring mechanisms;
14. Stresses that, for an FTA to be truly advantageous to the EU's economy, the Council should establish a clear timetable and include the following aspects in the Commission's negotiating directives:
- Concrete and measurable results from the Japanese Government on NTBs with a view to eliminating the large majority of barriers hindering EU-Japan trade; underlines that these commitments should go considerably further than the roadmaps already agreed under the scoping exercise; the Commission shall regularly report on progress in this area to the Council and Parliament;
 - Eliminating existing NTBs in the automotive sector such as the 'zoning regulations', other anti-competitive restrictions and the treatment of electric and hybrid vehicles; the preferential treatment for 'kei cars' should also be addressed to ensure fair competition in this important sector;
 - Significant concessions on public procurement guaranteeing market access for European companies in strategic Japanese sectors including railways and urban transport and the same degree of openness as that of the EU's public procurement markets;
 - A strict and effective dispute resolution mechanism requiring early consultations among the parties to combat the development of new NTBs and obstacles to market access in public procurement in Japan after the entry into force of the agreement;
 - A staggered schedule for sensitive tariff reductions in the EU to allow EU industry sufficient time to adapt to increased competition; considers that the removal of such tariffs should be inextricably linked via a 'safety clause' to the progress in removing obstacles to market access in public procurement and NTBs in Japan so that sensitive EU tariffs are not reduced without corresponding elimination of Japanese non-tariff barriers and obstacles to public procurement;
 - Effective bilateral safeguard measures to prevent a surge in imports that would cause, or threaten to cause, serious injury to EU and Japanese industry, especially in sensitive sectors such as the automotive and electronics industries;
 - The removal of a substantial number of the most problematic barriers that inhibit market access for European SMEs;
 - Reference to international health and plant health standards and disciplines, in particular those laid down by the Codex Alimentarius, the World Organisation for Animal Health (OIE) and the International Plant Protection Convention (IPPC);

Thursday 25 October 2012

- Enforceable measures to protect Geographical Indications (GIs) for agricultural and foodstuff products, including wines and spirits;
 - In the light of the March 2011 disaster, a heavy emphasis on energy cooperation and enhanced market access in environmental goods and services;
 - A robust and ambitious sustainable development chapter with core labour standards, including the four ILO priority conventions for industrialised countries; this chapter should also include the establishment of a civil society forum that monitors and comments on its implementation and the effective implementation of multilateral agreements on the environment, animal welfare and the conservation of biological diversity;
 - Real market access opportunities for both sides in each others services market through the elimination of regulatory barriers particularly in investment, access to all tiers of government procurement and significant commitments on competition rules including addressing unfair advantages in the postal service sector;
 - The strengthening and extension of regulatory cooperation dialogues with binding disciplines to improve respect for international standards and regulatory harmonisation, in particular through the adoption and implementation of the standards set by the UN Economic Commission for Europe (UNECE);
 - A comprehensive chapter on investment addressing both investment protection and market access;
15. Reiterates its belief that, if these conditions are met, an EU-Japan FTA has the potential to lead to a win-win situation, beneficial for both economies, and that a deeper degree of integration through an economic integration agreement would multiply the gains considerably to both economies;
16. Notes that serious divergences remain between the EU and Japan on issues related to the management of fisheries and whaling, notably Japan's whaling under the guise of scientific whaling, and calls for broader discussions on the matter of the abolition of whale hunting and of trade in whale products;

Beyond the negotiations

17. Demands that, if negotiations are successful, the Commission undertake a second impact assessment to evaluate the expected advantages and disadvantages of the agreement for EU jobs and growth, including an analysis of the impact on sensitive sectors such as automotives and electronics, and the benefits for the EU's offensive interests;
18. Recalls that Parliament will be asked to give its consent to the potential EU-Japan FTA as stipulated by the Treaty of Lisbon;

*

* *

19. Instructs its President to forward this resolution to the Council and the Commission, the governments and parliaments of the Member States and to the Government and Parliament of Japan.
-

Thursday 25 October 2012

EU report on policy coherence for development (2011)

P7_TA(2012)0399

European Parliament resolution of 25 October 2012 on the EU 2011 Report on Policy Coherence for Development (2012/2063(INI))

(2014/C 72 E/03)

The European Parliament,

- having regard to Articles 9 and 35 of the joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus' ⁽¹⁾,
- having regard to Title V of the Treaty on European Union and, in particular, Article 21(2) thereof, establishing the principles and objectives of the EU in international relations, and to Article 208(2), of the Treaty on the Functioning of the European Union,
- having regard to the UN Convention on Biological Diversity from 1992 and the Stockholm Convention on Persistent Organic Pollutants,
- having regard to Article 12 of the ACP-EC Partnership Agreement (the Cotonou Agreement),
- having regard to the Commission Staff Working Paper entitled 'EU 2011 Report on Policy Coherence for Development' (SEC(2011)1627),
- having regard to the Commission Staff Working Paper entitled "The EU – a global partner for development speeding up progress towards the Millennium Development Goals" (SEC(2008)0434),
- having regard to the Commission Staff Working Document entitled 'Policy Coherence for Development Work Programme 2010-2013' (SEC(2010)0421),
- having regard to the Commission Communication entitled 'Policy Coherence for Development - Establishing the policy framework for a whole-of-the-Union approach' (COM(2009)0458),
- having regard to its resolution of 18 May 2010 on the EU Policy Coherence for Development and the 'Official Development Assistance plus' concept ⁽²⁾,
- having regard to the Council Conclusions on Policy Coherence for Development, 14 May 2012 (doc. 09317/2012),
- having regard to the Council Conclusions on Increasing the Impact of EU Development Policy: an Agenda for Change, 14 May 2012 (doc. 09369/2012),
- having regard to the Council Conclusions on the EU's approach to trade, growth and development in the next decade, 16 March 2012 (doc. 07412/2012),

⁽¹⁾ OJ C 46, 24.2.2006, p. 1.

⁽²⁾ OJ C 161 E, 31.5.2011, p. 47.

Thursday 25 October 2012

- having regard to the Council Conclusions on the Global Approach to Migration and Mobility, 3 May 2012 (doc. 09417/2012),
 - having regard to the Council Conclusions on Policy Coherence for Development, 18 November 2009 (doc. 16079/2009),
 - having regard to the DAC-OECD Peer Review of the European Union of 2012,
 - having regard to the EU Accountability Report 2012 on Review of progress of the EU and its Member States Financing for Development of 9 July 2012,
 - having regard to the Evert Vermeer Foundation Study entitled ‘The EU Raw Materials Policy and Mining in Rwanda – Policy Coherence for Development in practice’ of February 2012,
 - having regard to Declaration A(2010)21584 of 28 September 2010 of the 21st session of the ACP-EU Joint Parliamentary Assembly,
 - having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Development and the opinions of the Committee on Employment and Social Affairs, the Committee on Fisheries and the Committee on Women’s Rights and Gender Equality (A7-0302/2012),
- A. whereas Article 208 of the Treaty on the Functioning of the European Union establishes the reduction and, in the long term, the eradication of poverty, as defined in the European Consensus on Development, as the primary objective of EU development policy, and whereas the Union shall take account of the objectives of development cooperation in the policies that it implements and which are likely to affect developing countries;
- B. whereas the European Union’s commitment to ensure policy coherence for development (PCD), in accordance with the conclusions of the European Council in 2005, was recently reaffirmed in its conclusions on PCD;
- C. whereas there are clear inconsistencies in the EU’s trade, agriculture, fisheries, climate, intellectual property rights, migration, finance, arms and raw materials policies which affect development goals; whereas PCD can contribute to poverty reduction by finding fundamental synergies among EU Policies;
- D. whereas the new development policy framework presented in the Agenda for Change aims for policy coherence not only within the Union but also with regards to the Union and its Member States by advocating joint-programming and emphasising the role of the EU as coordinator, convener and policy maker;
- E. whereas a post-2015 international framework for development cooperation has the potential to play a catalytic role in addressing important development and other global challenges and could help to fulfil individuals’ rights and needs;
- F. whereas, despite the improvements, as in case of the EU, direct or indirect subsidies for agricultural products continue to have a negative effect on food security and the development of a viable agricultural sector in developing countries;

Thursday 25 October 2012

- G. whereas the EU is committed to reaching the UN target of 0,7 % of gross national income (GNI) in official development assistance (ODA) by 2015;
- H. whereas the Court of Justice of the European Union (CJEU) issued a judgement in November 2008 whereby the European Investment Bank (EIB) operations in developing countries must prioritise development over any economic or political objective;
- I. whereas a large number of studies have shown that there are between USD 850 billion and USD 1 trillion per year of illicit financial flows out of developing countries, which severely hinders the fiscal revenue of developing countries and consequently their self-development capacities;
- J. whereas the Agenda for Change (COM(2011)0637), in its aim to increase the impact of EU development assistance, reiterates that the objectives of development, democracy, human rights, good governance and security are intertwined;
- K. whereas public procurement accounts for 19 % of world GDP, or almost 40 times the amount provided by the EU and the Member States in ODA; whereas, as such, it has huge potential to be a tool of implementing sustainable government policies both in the EU and in its ODA recipient countries;
- L. whereas malnutrition kills an estimated 2,6 million children each year and, if unchecked, will put almost half a billion children at risk of permanent damage in the next 15 years; whereas about one-third of the pre-school age children in the world currently suffer from underweight (too little weight for their age) or stunting (too short for their age); whereas malnutrition costs countries 2-4 % of their GDP, and costs an individual an estimated 11 % of his or her lifetime earnings, while, at the same time, tested, cost-effective interventions in nutrition exist and would represent a sound investment;
- M. whereas, by 2030, the demand for energy and water is expected to rise by 40 % and the demand for food by 50 %, and whereas population growth, together with a rising middle class in emerging and developing nations, will put huge pressure on natural resources – especially water, energy and land – and on the environment;
- N. whereas the concepts of human development and human security share four fundamental perspectives: they are people-centred, they are multi-dimensional, they have broad views on human fulfilment in the long-term and they address chronic poverty ⁽¹⁾;
- O. whereas the external dimension of the two new DG Home Affairs funds, and the Migration and Asylum component of the new Global Public Goods and Challenges Thematic Programme of the Development Co-operation Instrument (DCI), cover, as anticipated in the declared priorities, similar thematic areas although from different perspectives;
- P. whereas clinical trials that are no longer accepted by Western European ethics committees are approved by the local ethics committees in countries such as India, China, Argentina and Russia; whereas, in particular, the ethical principles which are of utmost importance for developing countries, as reflected in the Declaration of Helsinki, are ignored by companies and regulatory authorities ⁽²⁾;
- Q. whereas culture is, in all its dimensions, a fundamental component of sustainable development because it is, through tangible and intangible heritage, creative industries and various forms of artistic expressions, a powerful contributor to economic development, social stability and environmental protection;

⁽¹⁾ Sen, Amartya: 'Why Human Security?', text presented at the "International Symposium on Human Security" in Tokyo, 28 July 2000.

⁽²⁾ 'Clinical trials in developing countries: How to protect people against unethical practices?', study prepared by the European Parliament Directorate-General for External Policies of the Union.

Thursday 25 October 2012

- R. whereas studies show that if women are educated and can earn and control income, a number of good results follow: maternal and infant mortality declines, women and child health and nutrition improve, agricultural productivity rises, climate change can be mitigated, population growth slows, economies expand and cycles of poverty are broken⁽¹⁾;
- S. whereas information and communication technologies (ICT) have the potential to help mitigating climate change not only by reducing their own share of greenhouse gas emissions but also by using them to reduce emissions in other sectors and to address systemic change and rebound effects, e.g. by dematerialisation and online delivery, transport and travel substitution, monitoring and management applications, greater energy efficiency in production and use, and product stewardship and recycling;
- T. whereas the 2007 DAC Peer Review of European Communities noted that 'good understanding of the appropriateness of budget support in the local context is important';
- U. whereas education can play a pivotal role not only in environmental sustainability, health and economic growth, and in the achievement of the MDGs in general, but also in peace-building; whereas, perhaps more than any other sector, education can provide the highly visible early peace dividends on which the survival of peace agreements may depend if education systems are inclusive and geared towards fostering attitudes conducive to mutual understanding, tolerance and respect, thereby making societies less susceptible to violent conflict;

Operationalising PCD

1. Welcomes the EU's efforts towards PCD; underlines that PCD is not only a legal obligation, but that designing accountable, transparent, human-rights-based, and inclusive policies is a chance for the EU to establish equal and sustainable partnerships with developing countries that go beyond development cooperation; stresses as well that PCD-aligned policies give governments and societies of developing countries the chance, and the responsibility, to generate successes on their own;
2. Believes that PCD must be based on the recognition of the right of a country or a region to define by democratic means its own policies, priorities and strategies to protect its populations' livelihoods in line with the UN International covenant on Economic, social and Cultural rights;
3. Welcomes the eight areas of action for the years 2011-2014 chosen by the Commission in its proposal for a new policy on corporate social responsibility (CSR); underlines the importance of binding CSR obligations and of encouraging employers to apply social standards which are more ambitious than current statutory provisions, including the possibility to develop and obtain a designation such as a social label; calls on the Commission to support the Member States in carefully monitoring the implementation, and ensuring the legal enforcement, of these obligations, and insists that the upcoming initiative on CSR reflects the obligations towards PCD and moves towards binding CSR standards;
4. Stresses that PCD is not merely a technical issue, but primarily a political responsibility, and that Parliament, as co-legislator and as a democratically elected institution, has a key responsibility for translating the commitments into concrete policies;
5. Insists that the European Consensus on Development, including its definition of PCD, remains the doctrinal framework for the EU's development policy, and that any attempt to revise or replace it in the context of the 'Agenda for Change' should involve the institutions that permitted its creation;
6. Recalls that any new political orientation in the context of the 11th EDF emanating from the Agenda for Change must be compatible with the spirit and the letter of the Cotonou Agreement;

⁽¹⁾ Isobel Coleman: 'The global glass ceiling: Why empowering women is good for business'; *Foreign Affairs*, vol. 89, May/June 2010, p 13-20; UNFPA: 'State of World Population 2009, Facing a changing world: women, population and climate'.

Thursday 25 October 2012

7. Stresses that transparency in all areas is instrumental in achieving PCD as it can not only prevent unintended incoherence but is also effective where there are clashes of interest;
8. Calls for the introduction of structured annual meetings between representatives of national parliaments of EU Member States and the European Parliament to ensure consistency in the spending of development aid;
9. Points to the importance of knowledge building and expertise with regard to the complex issue of PCD; asks, therefore, the Commission to ensure that provisions are made to focus some DG Research programmes on issues relevant to PCD; recommends as well the elaboration and promotion of a strategy on development research in order to engage with DG Research and other research DGs, as well as other relevant bodies external to the Commission, e.g. the OECD and the World Bank;
10. Insists that the questions regarding the economic, environmental and social impacts of policies inside and outside of the EU laid down in the Impact Assessments Guidelines from 2009 are answered in the Commission's impact assessments as well as in the impact assessments to be made by Parliament; asks the Commission also to complete the impact assessments in advance of the corresponding policy proposal in order to ensure that civil society organisations (CSOs) and other relevant stakeholders can participate in the process, thereby also creating an added value in terms of capacity;
11. Underlines that the Impact Assessment Board of the Commission and the similar institution to be set up by Parliament need adequate expertise in development policies in order to live up to their responsibility to verify the quality of impacts assessments in terms of PCD;
12. Suggests that a reference to PCD be included in reviews and ex-post evaluations of EU policies if adequate; takes the view that any evaluation exercise of programmes carried out under the European Development Fund (EDF) or the DCI should include an assessment of its consequences for PCD;
13. Welcomes the inclusion of specific PCD commitments in the Danish Presidency's work programme and asks the next Presidencies to follow up on that example;
14. Welcomes the Commission's third biennial report on PCD 2011, but agrees with the Council on the need to include an independent assessment of progress, including qualitative and quantitative consequences and costs of policy incoherence in future reports; suggests that future reports should also include a comprehensive overview of PCD-related results of the country-level dialogues, in order to make the voices of citizens of developing countries heard;
15. Calls on the Member States and their national parliaments to promote PCD through a specific working programme with binding timetables, in order to improve the European PCD work programme;
16. Agrees with the Commission that in the preparation of the next rolling PCD Work Programme, a wider discussion with the European External Action Service (EEAS) and Member States and all relevant stakeholders, for example NGOs and CSOs, is needed; agrees that fewer indicators, together with more precise and better monitoring, can lead to a more operational framework and easier monitoring;
17. Asks the High Representative and the European External Action Service (EEAS) to confirm their important roles in making PCD a reality;
18. Suggests making PCD a clear priority for the EEAS and the Delegations by further strengthening the EU's policy dialogue with CSOs, local parliaments and other stakeholders, by asking them to gather evidence on lack of either inconsistency or coherence, by improving the PCD references in programming documents and making them operational, and by developing a training programme, together with DG DEVCO, for all new EEAS staff to ensure that they are able to understand and apply PCD; points out that adequate resources to fulfil this task must be allocated to the Delegations and the headquarters;

Thursday 25 October 2012

19. Underlines that EU delegations have a central role in designing and managing budget support, and that their resources should be ensured correspondingly;

20. Recalls the paramount importance of Article 12 of the ACP-EC Partnership Agreement and the obligation for the Commission to regularly inform the Secretariat of the ACP Group of planned proposals which might affect the interests of the ACP States; calls on the Commission to inform Parliament when such procedures are undertaken;

21. Welcomes the Commission's proposal to deepen the cooperation with the European Parliament and national parliaments on PCD by engaging in more exchanges with them on the subject and by accompanying them in acquiring specific analytical capacity to contribute to promoting PCD in the EU; proposes that these exchanges between national parliaments, the European Parliament and the Commission should come in the form of structured annual meetings which include clear objectives along with task-monitoring activities with the goal of strengthening PCD in the EU;

22. Considers that public procurement should be effectively used to achieve the overall EU objectives of sustainable development and, therefore, that the future public procurement directives should enable sustainability criteria to be integrated throughout the procurement process;

Specific recommendations under the five areas of focus

Trade

23. Welcomes that the Commission, in its Communication on "Trade, Growth and Development: Tailoring Trade and Investment Policy for Those Countries Most in Need", commits itself to support small producers and promote fair, organic and ethical trade initiatives, but regrets the lack of commitment to mainstream fair trade principles across EU policies;

24. Deplores the publication of two separate reports on trade in general and on trade and development by the Commission which was counterproductive from the viewpoint of PCD;

25. Regrets that GDP per capita is made the sole eligibility criterion for the GSP scheme, as this could run counter to the EU's development objectives; recalls its resolution of 8 June 2011 on "GDP and beyond – Measuring progress in a changing world" ⁽¹⁾, which makes reference to the Human Development Index;

26. Recalls the inconsistencies produced in the context of European Partnership Agreements, namely: a) that some countries are urged to sign an agreement before its exact terms are mutually agreed, b) that the Commission proposes to delete 18 countries from Annex I to the Market Access Regulation, and c) that human rights issues are not sufficiently addressed during negotiations;

27. Takes the view that the OECD guidelines for multi-national enterprises should become binding standards in EU investment treaties for business and industry, ensuring that investment treaties include clauses on transparency and on the fight against illicit capital flows, along with full reporting on environmental and social issues by companies; points out that investment agreements should improve the rights and duties of governments to regulate economic activities in sensitive policy areas such as the environment and foster decent work in the broader public interest and in the longer-term interest of future generations;

Agricultural and Fisheries Policy

28. Deplores that the share of EU Aid for Trade (AfT) to LDCs declined to 16 % in 2010 (EUR 1,7 billion, as against EUR 8,7 billion to non-LDCs) from 22 % in 2009 ⁽²⁾; calls on the Commission to inform Parliament about the annual and/or multi-annual share of the EDF funds spent as AfT;

⁽¹⁾ Texts adopted, P7_TA(2011)0264.

⁽²⁾ European Commission, '2012 EU Accountability Report on Financing for Development, 9 July 2012

Thursday 25 October 2012

29. Proposes that the Commission creates new momentum for sustainable public procurement at the international level, and that the resulting framework of the revision of the public procurement directives should give contracting authorities the policy space to make informed pro-development procurement choices;
30. Calls on the Commission actively to promote, within the WTO, the suggestion of some donors to narrow the scope of the Aid for Trade Initiative in order to make it more monitorable, efficient and focused on key elements of the trade and development nexus, in order to make it more effective and to secure donors' financing;
31. Draws attention to the publication of a revised IPR Strategy vis-à-vis third countries which should, from a development point of view, ensure adequate access to medicines and provide effective incentives for pharmaceutical research by making use of the TRIPs Agreement's flexibilities in appropriate cases, such as health emergencies, and by making the Strategy compatible with the parallel agenda for "affordable access to medicine"; stresses as well that the link to the food security agenda is very important in this context, e.g. to ensure the protection of plant varieties and acknowledge the importance of diverse agricultural systems and traditional seed supply systems;
32. Proposes the implementation of preferential trade rules that enhance green agricultural technology transfers in the WTO and in bilateral trade agreements with developing countries;
33. Welcomes the creation in 2010, within the sustainable development team in Directorate-General for Trade, of a focal point for coordinating fair trade-related activities, which are an important example of how EU trade and development policy can be made more coherent and mutually supportive;
34. Points out that fair trade between the EU and developing countries entails paying a fair price for the resources and agricultural products of the developing countries, i.e. a price which reflects the internal and external costs, while guaranteeing ILO's core labour standards for working conditions as well as international standards on environmental protection;
35. Reiterates its call to address in an effective way the problem of conflict minerals and other resources related to conflict in developing countries that have resulted in the death and displacement of millions of people;
36. Believes that developing countries should protect their economy and proceed to selective market openings, as was the case in Europe;
37. Asks the Commission to further integrate internationally agreed labour and environmental standards into instruments like the EPAs and FTAs;
38. Welcomes the fact that the relevance of smallholder farming for combating hunger is recognised by the EU and that adaptation measures are priorities in the food security agenda; underlines that support for women smallholder farmers is especially relevant;
39. Reiterates that development concerns should be built into the entire process of decision making on the EU's agricultural policy, and calls for the establishment of flanking measures similar to the sugar-protocol accompanying measures (SPAM), if necessary;
40. Repeats its call for regular and independent assessments and evaluations of the EU's agricultural and trade policies, paying special attention to impacts on local and smallholder producers, and building on evidence submitted by governments, farmers' organisations, civil society organisations and other stakeholders in developing countries which are EU trading partners;

Thursday 25 October 2012

41. Urges the EU to strengthen EU-ACP supply chains and to support the strengthening of supply chains within the ACP countries themselves as both markets have developed in mutual dependence; suggests fostering the use of modern market management instruments in developing countries, such as transparency provisions, capacity building, technical regulations, or support with regard to contract negotiation, e.g. in the context of the Joint EU-Africa Strategy;

42. Proposes to set up transnational twinning partnerships between Natura 2000 areas and similar agricultural ecological management areas in developing countries with the aim of: a) exchanging know-how on management of such areas by local authorities, local leaders and local farming communities to ensure that future management is sustainable, both ecologically and economically, and practicable, b) building capacity through twinning of the economic viability of business chains in these areas to contribute to sustainable food security in these areas, and c) implementing research to assist in the protection of agricultural diversity and biodiversity to assure the long-term survival of valuable and threatened species and habitat; proposes as well the establishment of a transnational twinning centre for learning and development of know-how between Natura 2000 areas and similar areas in third countries;

43. Points out that timely information on changes in standards applied to agricultural products, or the application of alternative equivalent standards to imports by the EU, is essential to efforts in developing countries to facilitate long-term planning and ensure competitiveness on the basis of quality;

44. Calls on the Commission to develop an integrated approach to nutrition, set up a dedicated trust fund to address the problem of malnutrition in developing countries, and mobilise the necessary resources to deliver the basic interventions that could prevent the vast majority of malnutrition, especially in the critical 1 000-day window between conception and age 2, which include encouraging optimum feeding and caring practices such as breastfeeding to avoid contaminated water, proper introduction of varied foods for infants, fortification of basic staples and vitamin supplementation; believes that such a trust fund would enable the leveraging and pooling of resources from Commission and Member States, and possibly other donors, and would enable better visibility of EU action in saving lives;

45. Deplores the fact that only approximately EUR 418 million, or around 3,4 % of the total Commission development aid budget of EUR 12 billion per year, is currently allocated to direct nutrition intervention; believes that efforts to tackle malnutrition must be multi-disciplinary, engage multiple stakeholders and be in line with the national priorities of affected countries;

46. Considers that the size of the EU market for fish, and the geographical range of activities by EU-flagged and EU-owned vessels, impose a high level of responsibility on the Union for ensuring that these activities are based upon the same standards in terms of ecological and social sustainability and transparency inside and outside Union waters; notes that such coherence requires coordination both within the Commission itself and between the Commission and the governments of the individual Member States;

47. Reiterates that, in order to improve PCD, the negotiation of fisheries partnership agreements (FPAs) must be based on the contracting country's priorities for the suitable development of its fishing sector; stresses that FPA payments should be compatible with development objectives and that the impacts of FPAs should be closely monitored by the EU;

48. Takes the view that PCD should be reinforced by: a) making DG-MARE and DG-Development jointly responsible for FPAs, b) applying relevant principles outlined in the FAO Code of Conduct for Responsible Fishing, EU commitments towards Policy Coherence for Development, and the EU-ACP Cotonou Agreement, c) incorporating human rights, anti-corruption and accountability obligations in all FPAs, and d) ensuring that FPAs are consistent with or contribute to the poverty reduction and human development objectives identified in the EU's Country and Regional Strategy Papers;

49. Stresses that any access to fisheries resources in third countries' waters must respect not only Article 62 of the UN Convention on the Law of the Sea (UNCLOS) regarding surplus stocks but also Articles 69 and 70 on the rights of land-locked and geographically disadvantaged states within the region, taking into account the nutritional and socioeconomic needs of local populations;

Thursday 25 October 2012

50. Proposes that, in line with the 2006 UN General Assembly resolution on Regional Fisheries Management Organizations (RFMOs), the Commission should be given an unequivocal negotiating mandate for all RFMOs for promoting marine conservation and sustainable fisheries;
51. Considers that any system of attributing fishing opportunities to countries within RFMOs must include the legitimate rights and aspirations of developing states to develop their own fisheries; insists that the EU oppose the introduction of Transferable Fishing Concessions schemes in RFMOs, since they would jeopardise the both the livelihood and the well-being of dependent communities in developing countries;
52. Maintains that the Union's development policy should be carried out within the framework of the obligation agreed in the United Nations and other organisations and competent international bodies, and that the contribution of fishing to development should be made within the framework of the principles and objectives of the Union's external action and should contribute towards the main aim of Union development policy, which is to reduce and ultimately eradicate poverty in developing countries;
53. Believes that the Union should contribute to development in the sphere of fisheries by supporting the principle of surplus fishing stocks and other rules laid down in UNCLOS as well as the application of the FAO Guidelines for responsible fisheries and the FAO Compliance Agreement on the conservation and management of fisheries resources at global level;
54. Emphasises that the objectives of fisheries policy must be implemented on a basis of transparency and coherence with other Union objectives, and that their impact on development must be planned, measured and assessed, and regularly and systematically subjected to democratic control;
55. Wishes to make it clear that fisheries cooperation agreements and the fisheries-related aspects of development cooperation agreements and EU trade agreements should contribute towards making fishing a socially, economically and environmentally sustainable activity for the EU and its partners;
56. Regrets the fact that a substantial proportion of the objectives of the FPAs have not been achieved; regrets in particular the poor results attained in the fields of scientific and technological cooperation and support for the sustainable development of the fishing industry (and allied industries) in developing countries; believes these aspects can be improved through coherent policies and governance of international fishery activity;
57. Stresses that the EU must ensure that the current reform of the Common Fisheries Policy is mainstreamed with its commitment towards developing countries to support the achievement of the Millennium Development Goals as well as the basic human right to food as recognised in the Universal Declaration of Human Rights;
58. Calls on the Commission to ensure that its external action in general, and the FPAs in particular, promote good governance and transparency and create the conditions for developing third countries to base their fisheries policies on the same guidelines and sustainability standards as the Common Fisheries Policy, including: the adoption of decisions based on scientific reports and impact studies and the drafting of multiannual plans allowing exploitation proportionate to the maximum sustainable yield of stocks; special support for small-scale fishing and aquaculture activities and the communities which depend on them; promotion of selective fishing and adaptation of fleet capacity to resources and more responsible fishing practices; the gradual reduction and ultimate elimination of discards; efforts to combat illegal, unreported and unregulated fishing; improvements to safety and welfare conditions at work; protection of biodiversity and the environment and measures to combat climate change; product quality and better marketing; and promotion of research and innovation in order to increase the sustainability of activities in the sphere of fisheries, aquaculture and associated industries;

Thursday 25 October 2012

59. Stresses that the agreements and the industries which develop around them are contributing to the development of third countries and their future ability to exploit their own resources;
60. Maintains firmly that, in their relations with third countries and their actions within international organisations, the Union and its Member States must contribute to building the capacities of societies and governments of developing countries to draw up, implement and monitor sustainable fisheries policies which increase their food security and contribute to their development;
61. Advocates the joint formulation of models with objectives, actions and indicators with the aim of monitoring the use of the funds more effectively in a spirit of partnership; stresses that this monitoring must include the adoption of corrective procedures, to be agreed on with the third country, whenever a deviation of one of the parties from the objectives is observed;
62. Welcomes the example of transparency that the EU has set in a global context by publishing the conditions of its FPAs; urges the Commission to continue its openness by ensuring that the evaluations of these agreements are also publically available, respecting the principles of the Aarhus convention, for the purpose of enabling local parliaments, civil society and other stakeholders to effectively scrutinise the implementation and impact of the agreements;
63. Draws attention to the importance of the existence of transparent and up-to-date scientific data on fish stocks, on all fisheries agreements including those of the EU, and on total fishing effort in each country's waters; considers that scientific assessment should precede the signature of agreements or at least that the agreements should contribute to the examination of data;
64. Draws attention to the problem of illegal, unregistered and undeclared (IUU) fishing; recalls that many vessels do not duly report their catches and are not inspected, that the data supplied by vessels are not checked and that the species caught are not clearly identified; considers that the EU can and must make a more effective contribution towards overcoming these problems; urges the Commission, in all its international relations, to support the principle of flag state responsibility, which underpins international law and is fundamental to an efficient implementation of the IUU regulation;
65. Advocates better linkage of FPAs to existing development policy instruments, particularly the EDF, and to conditions relating to access to EU markets for developing countries.
66. Emphasises that fisheries cooperation is able directly to benefit the 150 million people on our planet who rely on fishing and fishery-related activities for their livelihood.

Climate Change and Energy

67. Reiterates that more attention needs to be focused on maximising the synergies between EU climate change policies and the EU development objectives, especially in terms of tools and instruments used and the collateral development and/or climate change adaptation benefits;
68. Stresses that an investment in education for sustainable development, including combating climate change, is an area where development aid can achieve multiple objectives at once, especially when women are targeted;
69. Believes that the challenges posed by climate change must be addressed through structural reforms, and calls for a systematic climate change risk assessment of all aspects of EU's policy planning and decision making, including trade, agriculture, food security, etc., and demands that the result of this assessment be used to formulate clear and coherent country and regional strategy papers, as well as development programmes and projects;

Thursday 25 October 2012

70. Calls for specific attention to be devoted to the special needs of smallholder agriculture and livestock farmers facing the consequences of climate change in any policy and agreements entailing possible reduction of, or constraints in the access to, resources for food production, such as land, water, mobility, among others;

71. Repeats its call on the Commission and the Member States to collect country-specific and gender-disaggregated data when planning, implementing and evaluating climate change policies, programmes and projects, in order effectively to assess and address the differing effects of climate change on each gender and to produce a guide on adapting to climate change, outlining policies that can protect women and empower them to cope with the effects of climate change;

72. Welcomes the proposals made in the European Report on Development 2011/2012 on an integrated and ecosystems-based management of water, energy and land, with those three resources being crucial for development; asks the Commission to follow-up on the proposals made in the report; points especially to the existence of significant EU and global governance gaps, and stresses the necessity of a change towards more sustainability in consumption and production patterns within the Union itself;

73. Suggests that the EU should work in developing countries to promote investment, innovative approaches and high standards of corporate practice in the inclusive and sustainable use of water, energy and land; suggests as well that the emphasis on sustainable energy and agriculture in the 'Agenda for Change' should be complemented with interventions in the area of water;

74. Calls on the Commission to report on the social sustainability of biofuels by the end of 2012 and to consult with affected communities and local NGOs beforehand; points out that this is an opportunity to propose an adequate methodology and cover the full impacts that European biofuels targets are having on food security, land rights and other development issues; recalls that the monitoring and reporting by the Commission foreseen in the proposed directive provides an opportunity, if appropriate, to propose corrective actions, based on lessons learned;

75. Underlines the importance of guaranteeing that imported bioenergy is produced on the basis of acceptable working environments and employment standards and respecting local communities;

76. Encourages the further development of second and third generation bioenergy from biomass by-products, wastes and residues;

77. Asks the Commission to reconsider the 10 % target for biofuels from renewable sources by 2020 set forth in the Renewable Energies Directive, unless strict sustainability criteria are applied;

78. Urges the Member States to allocate a significant share of the auctioning revenues from the European Emissions Trading System (ETS) to climate change-related activities in developing countries from 2013 onwards;

79. Urges the Commission to propose an adequate and PCD-aligned methodology to calculate the effects of indirect land use change, reminding the Commission that such a methodology was due by the end of 2010;

Security

80. Stresses that the review of the EU's arms exports due in 2012 must be based on comprehensive information in order to comply with the development objectives; points out that the publication of the Council's Thirteenth Annual Report on control of exports of military technology and equipment raised questions about the reliability and usability of the data provided;

Thursday 25 October 2012

81. Draws attention to the EU's pledges for democracy and human rights and for conditions such as those enshrined in the "more for more" approach concerning the EU's immediate Neighbourhood policy; stresses that their relevance can only be assured when no other policy area, and when no interaction with partner countries, counteract initiatives undertaken to strengthen human rights, human security and democracy in partner countries;

82. Recalls the fact that arms exports are an inter-governmental issue and that PCD should be taken into account in this context; concludes that deciding whether to approve arms exports to developing countries in relation to the "sustainable development" criterion, i.e. criterion 8 of the Consolidated EU and National Arms Export Licensing Criteria, can be difficult, given that other policy considerations can override its application; recommends that Member States provide a full statement of the methodology used in relation to this criterion;

83. Acknowledges the interdependence of development, democracy, human rights, good governance and security, which any discussion on PCD has to take into account;

84. Takes the view that the concepts of human security and development should be considered as essential in the security-development nexus, as they are centred on the individual;

85. Points out that coordination among peace-building, humanitarian aid and development activities in post-conflict situations should be improved in accordance with the "Linking Relief, Rehabilitation and Development" (LRRD) strategic framework in order to comply with the principles of PCD and human security, the latter still being undervalued; reminds the Commission that the Council had invited it to prepare an EU Action Plan on situations of conflict and fragility in 2009, and that the EU endorsed the New Deal for engagement in fragile states that was adopted at the Busan High Level Forum on Aid Effectiveness;

86. Emphasises that with the Council Working Group on Conventional Arms Exports being the main committee responsible for the EU's Code of Conduct on Arms Exports, it is imperative that development objectives are taken into account in this forum; calls on the Council to make the European Code of Conduct on Arms Exports legally binding;

Migration

87. Stresses that 'brain drain' can cause serious problems in developing countries, especially in the health sector; acknowledges that 'brain drain' affecting developing countries is the result of a combination of structural causes and 'push and pull' factors; therefore asks the Commission to monitor the effects of the Blue Card system on developing countries and take corrective action if necessary; asks as well the Commission to promote the application of the "WHO Code of practice" regarding the international recruitment of health personnel to both the public and the private sectors;

88. Underlines that it has to be guaranteed that mobility partnerships are consistent with the international human rights legal framework; asks the EU to prevent conditionality in development aid relating to migration reduction, in both bilateral and multilateral negotiations by the EU and its Member States;

89. Insists that the external dimension strand in the Asylum and Migration Fund is fully coherent with the external aid instruments and EU development objectives; proposes that safeguards be put in place to prevent Member States from using this strand of funding merely to curb migration from developing countries;

90. Supports a migrant-centred and human rights based approach to EU migration policy with the view to enable the Member States and partner countries to respect, protect and fulfil the human rights of all migrants and to enable migrants to claim their rights throughout the migration journey; emphasises that human rights-based and migrant-centred approaches will help to analyse, in a proper way, the root causes of forced migration – notably conflicts, climate change, unemployment and poverty – and ensure that the EU offers adequate responses to these, in line with PCD;

Thursday 25 October 2012

91. Points out that it is expedient to involve diasporas and diaspora returnees as development agents, the latter being especially relevant in the context of the European financial crisis;

92. Emphasises the need to further explain the parameters of complementarity and to put in place a coherent and integrated institutional dialogue to plan and manage external and internal funds addressing migration-related issues from a PCD and human rights perspective;

93. Calls on the Commission and the ACP countries, in the ongoing revision of the ACP-EU Agreement, to include in Article 13 the principles of circular migration and its facilitation by granting circular visas; stresses that the article in question emphasises respect for human rights and equitable treatment of nationals of ACP countries, but that the scope of these principles is seriously compromised by bilateral readmission agreements with transit countries which, taken together, amount to an externalisation by Europe of the management of migration, and which do not guarantee respect for the rights of migrants and may result in 'cascade' readmissions that jeopardise their safety and their lives;

94. Reaffirms the importance of co-financing NGOs as a principle that motivates grant beneficiaries to contribute to higher accountability and development effectiveness and that improves cooperation of all stakeholders, as recommended by the Istanbul principles ⁽¹⁾;

Other Issues

95. Solicits attention to emphasise the overall framework of good governance and respect for human rights and its catalytic role for development in partner countries in all policy dialogues, irrespective of the five core issues identified for PCD assessment purposes;

96. Proposes that the concept of 'aid effectiveness' be complemented with the concept of 'development effectiveness' as the latter is more suitable to measure PCD and more convenient for deepening the dialogue with BRICS countries in the field of development policy;

97. Draws attention to the cross-cutting nature of good governance programmes in developing countries, and encourages further efforts in this regard by the Commission; draws attention as well to the need, in the current period of multiple crises, for better global governance as it has an instrumental role to play in achieving global development; regrets that the Outcome Document of the UN Rio+20 conference lacks the commitment on resource conservation, climate change adaptation and mitigation, and economic sustainability that the EU had called for; urges, nevertheless, the EU to remain closely involved in defining the Sustainable Development Goals (SDGs) and in making them operational by 2015;

98. Supports the Commission's proposal to create a comprehensive overview of the costs of policies that are not aligned with PCD, and of the benefits, or win-win situations, created by PCD-aligned policies that can be used both for further awareness-raising and training and as a basis for discussion with the European citizens and other affected stakeholders in order to overcome misconceptions which are still prevalent as regards the costs and benefits of PCD; such an analysis would be especially helpful in the fields of migration – where the EU should stress the linkages between migration and development policies, and provide constant information to its people on the benefits of these linkages – and sustainable energy;

99. Calls on the Commission and the Council to develop a long-term, cross-sectoral EU strategy for development education, awareness-raising and active global citizenship;

⁽¹⁾ Istanbul principles, as agreed at the Open Forum's Global Assembly in Istanbul, September 28-30, 2010.

Thursday 25 October 2012

100. Calls on the Member States to develop – or strengthen – national development education strategies and programmes on education in sustainable development, and to make PCD part of their respective curricula;

101. Points out that the ongoing initiative on Markets for Financial Instruments Directive (MiFID) can make a valuable contribution to the fulfilment of the overarching objectives of the Union's development cooperation by including strict position limits and a strict limitation on exemptions from MiFID, and by strengthening the powers for regulators to intervene in specific products or activities;

102. Reiterates that, in the interest of transparency and accountability, the EEAS and DEVCO should monitor how the division of responsibilities agreed between the Commission and the EEAS works in practice, and improve it in ways that avoid overlaps and ensure synergies;

103. Refers to the fact that the EEAS has put forward the concept of "EU actorness" in order to increase the visibility of EU actions; takes the view that this makes PCD even more important, as every negative impact will be associated even more closely with the EU; urges the Commission to make sure that this concept does not contradict other objectives of development policy as formulated by the EU, especially the objectives of ownership and policy space for developing countries;

104. Suggests that, in line with the Cotonou Agreement and the reference document on 'Engaging Non-State Actors in New Aid Modalities' ⁽¹⁾, the EU delegations should undertake a comprehensive mapping of NGOs, CSOs and local authorities relevant for their work in the respective country, especially of local and community-based organizations;

105. Reiterates that the creation of a Standing Rapporteur for PCD from the ACP countries in the context of the Joint Parliamentary Assembly would facilitate the coordination with, and work of, the EP's Standing Rapporteur on PCD and the relevant department of the Commission and Council, and would help to eliminate obstacles to PCD within developing countries themselves;

106. Recalls that, in its June 2011 Communication on the Multi-Annual Financial Framework, the Commission had proposed extending the powers of scrutiny of the EDF to Parliament; regrets that this proposal does not feature in the legislative proposal for the 11th EDF;

107. Underlines that a post-2015 international framework for development cooperation, in order to provide a more comprehensive approach to poverty eradication and sustainable development, should go beyond a traditional interpretation of development cooperation, leveraging policy coherence for development as an important mechanism and promoting rights-based approaches; points out that such a framework should go beyond the current concept of public action and aid and should involve all countries (developed, developing, emerging) and all actors (traditional and new donors, developing and developed country governments, and local authorities, the private sector, NGOs, social partners, etc.) in a coherent and inclusive process;

108. Welcomes the fact that the social clause in Article 9 of the Treaty on the Functioning of the European Union (TFEU) applies both within and beyond the EU's borders;

109. Stresses the need to ensure that the social provisions enshrined in EU trade agreements are implemented and properly monitored; considers it necessary to ensure that mechanisms for revision and enforcement are available;

⁽¹⁾ Tools and Methods Series, reference document no 12: Engaging Non-State Actors in New Aid Modalities for Better Development Outcomes and Governance.

Thursday 25 October 2012

110. Calls on the Commission to include provisions on social standards and on the objectives of full and productive employment, taking into account gender equality and youth, decent work, respect for workers' rights, including for migrant workers, and gender equality in all EU trade agreement;

111. Stresses the need to support and spread collective bargaining as a tool for reducing labour market inequalities, ensuring decent work and wages, preventing social dumping and undeclared work, and ensuring fair competition;

112. Underlines the necessity to respect the conditions of work contracts, stressing that the work performed by young people and women should not represent any type of exploitation, whether in the form of sexual exploitation, forced labour or services, slavery or practices similar to slavery;

113. Underlines the importance of CSR obligations, and of encouraging employers to apply social standards which are more ambitious than current statutory provisions, including the possibility to develop and obtain a designation such as a social label; calls on the Commission to support the Member States in carefully monitoring the implementation, and ensuring the legal enforcement, of these obligations;

114. Stresses the importance of establishing PCD focal points also in developing countries to improve information exchanges, inter alia on issues beyond EU competences, such as the socially-inclusive use of resource rents or taxation and remittances, and the impact of the so-called 'brain drain' on countries of origin; calls on the Commission to mainstream social policy in the work of the EEAS; believes it is essential also for middle-income countries to commit an increasing proportion of their revenue to social purposes, notably by developing taxation systems and social protection;

115. Urges the Commission and the Member States to pay greater attention to the participation and integration of migrants, particularly women and children, in receiving countries, and on the portability of social rights;

116. Calls on the Commission to engage in social dialogue with non-EU labour organisations and trade unions about the implementation of social standards in their respective countries, and to ensure more adequate technical assistance for the implementation of social and fiscal policy;

117. Asks the Commission to consider scaling up its support for culture-related programmes or cooperation projects with partners from developing countries due to their cross-cutting nature regarding the EU's development objectives;

118. Highlights that planning for the provision of basic services, such as primary education, needs to focus more forcefully on those specific characteristics of particularly marginalised groups that make the provision of such services more difficult and that limit the ability of the groups to take advantage of what is available;

119. Underlines the urgent need to change the humanitarian mindset and recognise the vital role of education, especially of education during conflict-related emergencies and in the aftermath of conflicts; regrets that education is still one of the most underfunded areas of humanitarian aid;

120. Asks the Commission to consider the cross-cutting nature of ICTs in development policies, especially the positive influence they can have on the education system, and stresses that intellectual property rights, technology transfer and local capacity-building require particular attention in that context;

Thursday 25 October 2012

121. Points out that true banking transactions using mobile phone technology (m-banking) should be distinguished from basic money transfers using such technology (m-payments), and stresses that the need to regulate international money transactions (e.g. to prevent money laundering or terrorism financing) must be reconciled with the need to promote affordable access to money for the poor through the use of mobile phones; suggests that collecting existing best practices would be a useful way to share knowledge and address those challenges;

122. Regrets that budget support arrangements are still characterised by a lack of citizen and parliamentary oversight of agreements and their implementation and monitoring;

123. Reiterates that while budget support should be in line with efforts to promote democratic governance, strengthen developing countries' own economic resources, combat corruption and strengthen the accountability of public spending, it should in the first instance focus on poverty reduction;

124. Reiterates that the EU's efforts to secure access to raw materials from developing countries must not undermine local development and poverty eradication but instead support developing countries in translating their mineral wealth into real development; stresses that the EU should support good governance, value-addition processes and the financial transparency of governments and commercial undertakings so that local mining sectors can act as catalysts for development;

125. Stresses that financial transparency is essential for supporting revenue mobilisation and combating tax evasion; insists that the current reform of the EU Accounting and Transparency Directives should include a requirement for listed and large private extractive and timber companies to disclose payments made governments on a project-by-project basis, with reporting thresholds that reflect the size of the payments from the perspective of poor communities;

126. Takes the view that, while there is a limit to what donor aid can achieve in terms of strengthening domestic accountability, some forms of aid can make a difference, from 'doing no harm' to actually strengthening existing domestic accountability systems, e.g. by involving local CSOs and parliaments of developing countries in the context of sector-wide approaches (SWAp);

127. Regrets that global health funding and interventions are skewed toward high-visibility events, such as the Asian tsunami, as well as toward a few high-profile infectious diseases (such as HIV/AIDS), obscuring the fact that non-communicable diseases account for 63 % of all deaths worldwide and injuries account for 17 % of the global burden of morbidity, and that women and children die because of the failure to deliver basic care during pregnancy, childbirth and infancy;

128. Stresses that it can, in line with its responsibility to protect the rights of clinical trials subjects in developing countries and to protect the health of EU citizens, use its right to initiate investigations; proposes that the actions of the European Medicines Agency (EMA) on certain issues – e.g. its actions to clarify the practical application of ethical standards to clinical trials – be monitored, making sure that EMA is taking measures to harmonise the application of ethical standards by the responsible authorities;

129. Asks the Commission to support local civil society groups, particularly women's groups and those that have an agenda focussed on gender issues, through accessible funding and through capacity-building in order for them to be able to fulfil their role as effective development actors and custodians of peace and good government, especially in fragile and conflict situations;

Thursday 25 October 2012

130. Welcomes the EU plan of Action on Gender Equality and Women's Empowerment in Development, and encourages the monitoring and implementation of gender mainstreaming in EU funded projects at country level; calls on the EU High Representative to take all measures needed to provide adequate and effective training to EU delegation staff members regarding a gender-sensitive approach to peace keeping, conflict-prevention and peace-building;

131. Welcomes the Commission's active work, both at the policy level and through its different funding instruments and budget support mechanisms, aimed at stepping up its commitment to foster women's empowerment, particularly by seeking to integrate the priorities and needs of women in all key PCD areas;

132. Emphasises the need to maintain reliable statistical data and to record the causes of maternal deaths in accordance with the WHO's ICD Maternal Mortality coding, which can guide countries and help them improve the attribution and estimation of the causes of maternal mortality;

133. Reaffirms its declaration A(2010)21584 of the ACP-EU Parliamentary Assembly;

134. Calls for PCD to favour a participative approach that promotes the empowerment and self-determination of local people and, above all, of women;

135. Reaffirms the importance of taking account of the situation of women, not simply as a vulnerable section of the population, but also as active facilitators of development policies; notes, in this context, that women are responsible for 80 % of farming in Africa, even if it is still rare for them to have the possibility of owning the land they cultivate; calls, therefore, not only for agricultural and fisheries policies to be integrated into PCD because of their impact on development, but also for them to be assessed in terms of their differential impact on women and men respectively;

136. Stresses the importance of taking account of the most disadvantaged and vulnerable social groups, notably women and girls, and of paying particular attention to them in order to avoid any further increase in inequality; point out that, as experience has shown, 'neutral' measures entrench the existing power structure and that it is essential to take positive, informed, systematic action in the form of measures that improve the situation of women, so as to ensure that such measures benefit the most disadvantaged;

137. Stresses that the policy of promoting equality between men and women should not only be the subject of a specific budget heading in the context of development policies, but should also be regarded as a cross-cutting issue, since every policy that has an impact on society affects women and men differently, given the persistence of gendered roles in society and the fact that PCD offers a practical means of preventing negative externalities from adversely affecting equality between men and women;

138. Stresses the need for PCD to incorporate a global approach which extends beyond the family and microsocial level and takes gender relations into account; takes the firm view that this cross-cutting approach to gender issues needs to be incorporated in every development project and every analysis of a society; insist that this approach must apply not only to all sectors but in all political, economic, social, environmental, cultural and other fields; points out that such an approach, which systematically takes account of the situation and role of women and gender relations in a society, is more comprehensive, humanistic and democratic than an approach which sets women apart, in particular as it avoids marginalising women in 'women's projects' or projects which add to women's workloads or responsibilities without increasing their power or control over the benefits generated by the projects in question;

139. Affirms that, while the success of development policies and, consequently, of PCD cannot be measured solely by general indicators that have already demonstrated their limitations, such as trends in GDP per inhabitant, other indicators, such as those relating to equality between men and women, should be able to provide a fuller picture of the overall effect of development policies; points out that data, broken down by gender, must therefore be collected on the spot in order to evaluate and enhance the impact of PCD;

Thursday 25 October 2012

140. Stresses the role of women in leveraging development policies by participating in the formulation and implementation of such policies, thereby ensuring that political and economic negotiations take women's interests into account and creating a virtuous circle in which women are the driving force behind development policies which, in turn, set up the structures whereby women can be empowered; highlights the importance of supporting civil society organisations and groups which take on the task of promoting gender equality and women's empowerment;

141. Notes that women play an essential part in development, since, in their role as mothers and carers for children and other dependent members of the family, they assume responsibility for the family's general well-being; points out, by way of example, that women play a crucial role in the field of nutrition and food security, particularly in the context of subsistence farming;

142. Stresses that the situation of women is, in many cases, deteriorating more than that of men, both in relative and absolute terms; notes with concern that there has been an increase in poverty over the last twenty years or so, which has primarily affected women;

143. Stresses that, although the important role played by women in development policies and development cooperation is very widely recognised, the statistics and quantitative data which specifically relate to women are still inadequate and fail to meet the objective of reporting the situation of women in developing countries, particularly in fields such as health, education, prevention and meeting basic needs; stresses, therefore, that care must be taken to ensure that in all PCD objectives, analyses, documents and assessments the quantitative data is broken down by gender, and that gender-specific indicators are included, in order to take account of women's real living conditions;

144. States that every child, regardless of sex, has the right to life, survival and development, and reaffirms that girl children as well have equal status under the UN Convention on the Rights of the Child; calls on EU delegations in developing countries to work with the governments of those countries to ensure that girl children enjoy their rights without discrimination, inter alia by requiring the immediate registration of all children after birth, granting girls and boys equal entitlement to education and schooling, combating stereotypes and ending the unethical and discriminatory practices of prenatal sex selection, abortion of female foetuses, female infanticide, early forced marriage, female genital mutilation and especially child prostitution and sex tourism; reaffirms its resolution of 5 July 2012 on the forced abortion scandal in China ⁽¹⁾

145. Stresses the need to ensure respect for the right of girl children to express an opinion and to be heard on matters affecting their health and human dignity, emphasising that the best interests of the child must be the first concern; highlights the need of all children, and of girl children in particular, to be brought up in a family environment of peace, dignity, tolerance, freedom, non-discrimination, gender equality and solidarity; calls for the strict implementation of the Geneva Declaration of the Rights of the Child and of the Beijing Declaration on Women;

146. Recalls that the EU and the Member States must take into account the rights and duties of the parents, legal guardians, or other individuals legally responsible for the child, when dealing with the rights of the child in the context of development assistance; calls on the competent institutions to pay special attention to the relationships between parents and children, for example through programmes containing concrete measures specifically tailored to national requirements, seeking to provide maximum and optimum assistance for parents or guardians in the fulfilment of their parental duties in order to prevent family breakdown, child mistreatment or placement in social care as a result of serious poverty, or to ensure that such a measure is envisaged only as a very last resort;

⁽¹⁾ Texts adopted, P7_TA(2012)0301.

Thursday 25 October 2012

147. Asserts that, when implementing the specific clauses on the prohibition on coercion or compulsion in sexual and reproductive health matters agreed on at the Cairo International Conference on Population and Development, as well as the legally binding international human rights instruments, the EU *acquis communautaire* and the Union policy competencies in these matters, Union assistance should not be provided to any authority, organisation or programme which promotes, supports or participates in the management of any action which involves such human rights abuses as coercive abortion, forced sterilisation of women and men, determining foetal sex resulting in prenatal sex selection or infanticide, especially where such actions set their priorities in response to psychological, social, economic or legal pressure; calls on the Commission to present a report on the implementation of the Union's external assistance covering this programme;

148. Expresses great concern about the fact that gender-based violence, especially sexual violence, exploitation and femicide, is widespread in many parts of the world, in particular in developing countries; stresses that upholding women's rights, including their sexual and reproductive rights, and safeguarding the respect of their human dignity is essential in order to prevent and combat gender-based violence, provide protection and appropriate counselling to victims, and to ensure that perpetrators are punished; calls on the Commission to make the fight against impunity for the perpetrators of such violence one of the priorities for its development assistance policy;

149. Points out that women are frequently discriminated against in terms of recognition of their struggles for peace, and that extreme suffering is inflicted on women as such in countries at war; maintains that action of this kind, including the rape of girls by soldiers, forced prostitution, forced impregnation of women, sexual slavery, rape and sexual harassment, and consensual abduction (by means of seduction), are crimes which must not be ignored; asserts that the EU must treat these as fundamental problems to be taken into account;

150. Points out that particular attention should be paid to gender education of both sexes, starting from an early school stage, so as to gradually change societal attitudes and stereotypes towards parity of men and women;

151. States that the assistance measures must take into account the specific features of crises or emergencies, and of countries or situations where there is a serious lack of fundamental freedoms, where human security is most at risk or where human rights organisations and defenders operate under the most difficult conditions; stresses that particular attention should be paid to situations in which women are being exposed to physical or psychological violence;

152. Stresses the importance of promoting women's human rights and of mainstreaming gender equality in the civil, political, social, economic and cultural spheres, as well as in national legislation;

153. Underlines the importance of strengthening women's role in promoting human rights and democratic reform, in supporting conflict prevention and in consolidating political participation and representation;

*

* *

154. Instructs its President to forward this resolution to the Council and the Commission.

Friday 26 October 2012

Human rights situation in the United Arab Emirates

P7_TA(2012)0400

European Parliament resolution of 26 October 2012 on the human rights situation in the United Arab Emirates (2012/2842(RSP))

(2014/C 72 E/04)

The European Parliament,

- having regard to its resolution of 24 March 2011 on EU relations with the Gulf Cooperation Council (GCC),
 - having regard to the visit by its Delegation for relations with the Arab Peninsula to the United Arab Emirates from 29 April to 3 May 2012,
 - having regard to Article 30 of the Constitution of the United Arab Emirates,
 - having regard to the Arab Charter on Human Rights, to which the United Arab Emirates is a party,
 - having regard to its annual human rights reports,
 - having regard to the EU Strategic Framework and Action Plan on Human Rights and Democracy,
 - having regard to the EU Guidelines on Human Rights Defenders of 2004, as updated in 2008,
 - having regard to the Co-Chairs' statement at the 22nd EU-GCC Joint Council and Ministerial Meeting in Luxembourg of 25 June 2012,
 - having regard to the statement by the Vice-President / High Representative (VP/HR) following the EU-GCC Joint Council and Ministerial Meeting of 20 April 2011 and her remarks following the 22nd EU-GCC Joint Council and Ministerial Meeting of 25 June 2012,
 - having regard to the Cooperation Agreement of 25 February 1989 between the European Union and the Gulf Cooperation Council,
 - having regard to the Joint Action Programme (2010-2013) for the implementation of the EU-GCC Cooperation Agreement of 1989,
 - having regard to the Universal Declaration of Human Rights of 1948,
 - having regard to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and to the International Covenant on Civil and Political Rights (ICCPR),
 - having regard to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol) and the UN Conventions on the Elimination of All Forms of Discrimination against Women (CEDAW) and on the Rights of the Child (CRC),
 - having regard to the recommendations of the UN Special Rapporteur on trafficking in persons, especially women and children, of 12 April 2012,
 - having regard to Rules 122(5) and 110(4) of its Rules of Procedure,
- A. whereas the government of the United Arab Emirates has accelerated its crackdown on human rights defenders and civil society activists in 2012, bringing the number of political detainees to 64;

Friday 26 October 2012

- B. whereas most of them are in incommunicado detention, there are allegations of torture, and they are being denied legal assistance;
- C. whereas the detainees include the vice-president of the Student Association of the United Arab Emirates, Mansoor al-Ahmadi, one sitting judge, Mohamed al-Abdouly, two former judges, Khamis al-Zyoudi and Ahmed al-Za'abi, and two prominent human rights lawyers, Mohamed al-Mansoori – a former president of the Jurists' Association – and Mohamed al-Roken;
- D. whereas employees of the Emirian lawyer who is offering the detainees legal assistance have allegedly been subjected to a systematic campaign of harassment and intimidation, including the deportation of three non-Emirian employees on grounds of national security; whereas lawyers who have travelled to the United Arab Emirates to offer legal assistance to the detainees have also been harassed;
- E. whereas human rights defenders and democracy activists have been subjected to harassment, travel bans, restrictions on freedom of expression and freedom of assembly, arbitrary detention, revocation of nationality, deportation, and illegal imprisonment;
- F. whereas the authorities of the United Arab Emirates have insisted that their crackdown is a response to a foreign-inspired Islamist plot that aims to overthrow the government; whereas the detainees all have ties to al-Islah, a peaceful Islamist group that has operated in the United Arab Emirates since 1974; whereas the evidence indicates that national security is the pretext for a crackdown on peaceful activism designed to stifle calls for constitutional reform and reform on human rights issues such as statelessness;
- G. whereas a prominent human rights defender and blogger, Ahmed Mansoor, was attacked twice in recent weeks and has suffered constant intimidation and threats; whereas he spent seven months in jail in 2011 before his conviction in November for insulting the country's senior officials; whereas the authorities have retained his passport and arbitrarily barred him from travelling;
- H. whereas, together with other activists, Mansoor was accused of insulting political figures in the country after arranging for and signing a petition calling for greater political participation via an elected parliament with full legislative and regulatory powers;
- I. whereas on 15 July 2012, in his statement, the public prosecutor, announced that the detained group of political opponents would be investigated for plotting 'crimes against state security', 'opposing the UAE constitution and ruling system', and having ties to 'foreign organisations and agendas';
- J. whereas while freedom of speech and press freedom are constitutionally protected in the United Arab Emirates, its penal code allows the authorities to prosecute people for speech which is critical of the government; whereas at least one online discussion forum has been closed down, and access from the United Arab Emirates to several political websites has been blocked;
- K. whereas prominent internationally renowned non-governmental organisations promoting democracy in the region were closed in 2012 by the authorities of the United Arab Emirates, notably the Dubai office of the National Democratic Institute and the Abu Dhabi office of the German pro-democracy think tank Konrad-Adenauer-Stiftung;
- L. whereas, according to the report of the Special Rapporteur on trafficking in persons, trafficking in persons for labour exploitation continues to be widespread in the United Arab Emirates and victims of such trafficking remain unidentified;
- M. whereas the government made little progress in implementing the CEDAW Committee recommendation in early 2010;
- N. whereas death sentences continue to be imposed in the United Arab Emirates;

Friday 26 October 2012

1. Expresses great concern about assaults, repression and intimidation against human rights defenders, political activists and civil society actors within the United Arab Emirates who peacefully exercise their basic rights to freedom of expression, opinion, and assembly; calls on the authorities of the United Arab Emirates to halt the ongoing crackdowns immediately;
 2. Calls for the unconditional release of all prisoners of conscience and activists including human rights defenders and calls on the authorities of the United Arab Emirates to ensure that detainees deemed to have broken the law be brought before a judge, be charged with a crime and be provided with the legal assistance of their choosing;
 3. Calls on the authorities of the United Arab Emirates to conduct thorough and impartial investigations into the assault and public threats made against Ahmed Mansoor and all the other cases of harassment and assault;
 4. Calls for the respect of all human rights and fundamental freedoms, including freedom of expression, both online and offline, freedom of assembly, women's rights and gender equality, the fight against discrimination, and the right to a fair trial;
 5. Welcomes the accession of the United Arab Emirates on 19 July 2012 to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and urges the UAE authorities to affirm its commitment to its assumed treaty obligations by conducting thorough, impartial and independent investigations into the allegations of torture as well as allegations that individuals have been forcibly disappeared;
 6. Calls on the United Arab Emirates to affirm its intent to 'uphold the highest standards in the promotion and protection of human rights' in line with its bid for membership of the UN Human Rights Council for 2013 to 2015 by ratifying the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and their optional protocols and by issuing a standing invitation to visit to all UN special procedure mandate holders;
 7. Condemns the application of the death penalty under any circumstance;
 8. Welcomes the adoption of the new EU human rights package and urges the European institutions, including the EU Special Representative for Human Rights, to take concrete actions, together with the 27 Member States, to ensure a clear and principled EU policy vis-à-vis the United Arab Emirates that addresses the ongoing serious human rights violations, through démarches, public statements and initiatives at the Human Rights Council;
 9. Calls on the Vice-President of the Commission / High Representative of the Union and the European institutions to place human rights at the centre of its relations with all third countries, including strategic partners, with special emphasis on the next EU-GCC Ministerial Meeting;
 10. Believes that it is crucial to continue the efforts to increase the cooperation between the EU and the Gulf region and to promote mutual understanding and trust; considers that regular inter-parliamentary meetings between Parliament and its partners in the region are an important forum to develop a constructive and frank dialogue on issues of common concern;
 11. Instructs its President to forward this resolution to the Government and Parliament of the United Arab Emirates, the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy, the Commission, the EU Special Representative for Human Rights, the parliaments and governments of the Member States, the United Nations High Commissioner for Human Rights and the governments of the Member States of the Gulf Cooperation Council.
-

Friday 26 October 2012

Discrimination against girls in Pakistan, in particular the case of Malala Yousafzai

P7_TA(2012)0401

European Parliament resolution of 26 October 2012 on the discrimination against girls in Pakistan, in particular the case of Malala Yousafzai (2012/2843(RSP))

(2014/C 72 E/05)

The European Parliament,

- having regard to its resolution of 15 December 2011 on the situation of women in Afghanistan and Pakistan ⁽¹⁾,
- having regard to its previous resolutions on human rights and democracy in Pakistan, in particular those of 20 January 2011 ⁽²⁾ and 20 May 2010 ⁽³⁾,
- having regard to its resolution of 18 April 2012 on the Annual Report on Human Rights in the World and the European Union's policy on the matter, including implications for the EU's strategic human rights policy ⁽⁴⁾,
- having regard to the statement of 10 October 2012 by the spokesperson of the High Representative on the shooting of a young human rights defender in Pakistan,
- having regard to the statement of 10 October 2012 by the Executive Director of UN Women condemning the attack on Malala Yousafzai,
- having regard to the Council conclusions on intolerance, discrimination and violence on the basis of religion or belief, adopted on 21 February 2011,
- having regard to the EU-Pakistan five-year engagement plan of March 2012, containing priorities such as good governance, cooperation in the field of women's empowerment and dialogue on human rights,
- having regard to the Council conclusions on Pakistan of 25 June 2012, reiterating the EU's expectations regarding the promotion of and respect for human rights,
- having regard to the Commission Communication entitled 'A special place for children in EU external action' (COM(2008)0055),
- having regard to Article 26 of the 1948 Universal Declaration of Human Rights (UDHR),
- having regard to the United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) of 18 December 1979 and the United Nations Declaration on the Elimination of Violence against Women of 20 December 1993,

⁽¹⁾ Texts adopted, P7_TA(2011)0591.

⁽²⁾ OJ C 136 E, 11.5.2012, p. 90.

⁽³⁾ OJ C 161 E, 31.5.2011, p. 147.

⁽⁴⁾ Texts adopted, P7_TA(2012)0126.

Friday 26 October 2012

- having regard to UN Security Council resolutions 1325 (2000) and 1820 (2008) on women, peace and security, and to UN Security Council resolution 1888 (2009) on sexual violence against women and children in situations of armed conflict, which emphasises the responsibility of all states to put an end to impunity and to prosecute those responsible for crimes against humanity and war crimes, including those relating to sexual and other violence against women and girls,

- having regard to Rules 122(5) and 110(4) of its Rules of Procedure,

- A. whereas on 9 October 2012 Malala Yousafzai, a 14-year-old girl from the Swat Valley, was singled out in the school bus on her way home, shot in the head and neck and severely wounded, while two other girls also sustained wounds in the attack;

- B. whereas Malala Yousafzai had become a national symbol of resistance against the Taliban's efforts to deprive girls of an education through blogs she wrote since the age of 11, receiving in December 2011 the National Youth Peace Prize, which has been renamed in her honour the National Malala Peace Prize;

- C. whereas the Tehreek-e-Taliban Pakistan (TTP) have claimed responsibility for the attack and issued a statement after the attacks, claiming it was obligatory to kill anyone leading a campaign against Islamic law and announcing that the movement would attempt to kill Yousafzai again if she recovers from her injuries;

- D. whereas in Pakistan and many other Muslim countries protests have taken place in admiration of and solidarity with Malala Yousafzai and in condemnation of the brutal attack by the Taliban;

- E. whereas the security forces have reacted by arresting many suspects of the crime, and whereas the Pakistani Parliament has debated a motion condemning the attack, which has, however, met with resistance from the main opposition party, the Pakistan Muslim League-N;

- F. whereas the attack on Malala Yousafzai has been preceded in the last 12 months by the killing of human rights defenders Farida Afridi and Zarteef Afridi, allegedly for their work for women's welfare and education;

- G. whereas in recent months Pakistan has continued to experience attacks by armed groups using terror tactics and influenced by and/or associated with the Taliban or Al-Qaida, including the TTP and those attacks have often targeted government sites, schools and civilians, including children, in Khyber-Pakhtunkhwa, the Federally Administered Tribal Areas (FATA) and urban centres;

- H. whereas, in 2011, 11 incidents were reported of children being used by armed groups to carry out suicide attacks, children continued to be victims of indiscriminate attacks, including by improvised explosive devices and suicide bombings, a total of 57 children were killed during the reporting period by landmines, explosive remnants of war and improvised explosive devices, bomb blasts, shelling and targeted attacks and, on 13 September 2011, TTP allegedly attacked a school bus in Khyber-Pakhtunkhwa, killing four children;

- I. whereas, according to government figures, in 2012, 246 schools (59 girls' schools, 187 boys' schools) were destroyed and 763 damaged (244 girls' schools, 519 boys' schools) in Khyber Pakhtunkhwa Province as a result of the conflict with the Taliban, depriving thousands of children of access to education;

Friday 26 October 2012

- J. whereas, from 2009 to the present, girls' schools have continued to be directly targeted by armed groups in bomb and improvised explosive device attacks, resulting in 152 incidents of partial or complete destruction of school facilities in the FATA and Khyber-Pakhtunkhwa in 2011; whereas the attacks were reportedly intended to avenge military operations in the region and were in opposition to secular and girls' education; whereas the most recent attack on a girls' school was perpetrated on 25 September 2012 in the Charsadda district;
- K. whereas the situation remains extremely serious for many women and girls in Pakistan, and whereas Pakistan is labelled the third most dangerous place in the world for women by the Global Gender Gap Index;
- L. whereas the Unesco's Education For All (EFA) Global Monitoring Report of 16 October 2012 revealed that Pakistan had reduced the amount it spent on education to less than 2,3 % of the Gross National Product (GNP), despite having the second-largest number of out-of-school girls in the world;
- M. whereas girls often continue to be victims of domestic violence, trafficking and forced marriages or are traded in settlement of disputes;
- N. whereas, in most cases, the perpetrators of violence against women and girls remain unprosecuted;
- O. whereas, although there are a number of discriminatory laws against women in Pakistan, in 2011 and 2012 the Government of Pakistan introduced new legislation to tackle discrimination and violence against women more effectively, including laws against forced marriage, harassment of women at the workplace and at home, and acid attacks; whereas these laws are still awaiting implementation and enforcement;
- P. whereas the rise of Taliban control in certain territories is having negative consequences for women and girls, hindering them in the exercise of their rights;
- Q. whereas, in its five-year engagement plan of March 2012, the EU reaffirmed its commitment to building a strong long-term partnership based on mutual interests and shared values with Pakistan, supporting Pakistan's democratic institutions and civilian government, as well as civil society;
- R. whereas, while the EU is prepared to pursue cooperation, it is counting on Pakistan to respect its international commitments, in particular in the field of security and human rights, including women's rights;
- S. whereas on 5 June 2012 the EU and Pakistan announced that a Steering Committee on Counter-Terrorism was being set up with a view to closer cooperation in combating terrorism;
- T. whereas Article 3(5) of the Treaty on European Union states that the promotion of democracy and respect for human rights and civil liberties are fundamental principles and aims of the European Union and constitute common ground for its relations with third countries; whereas EU assistance in trade and development is conditional upon respect for human rights and minority rights;
1. Strongly condemns the violent attack on Malala Yousafzai and the serious injuries inflicted on two of her classmates, noting that the assault constitutes a severe violation of the Rights of the Child, as well as an assault on both basic human values and all human rights defenders in Pakistan;

Friday 26 October 2012

2. Expresses its admiration at and acknowledgement of the courage and determination with which Malala Yousafzai has, since a very young age, engaged in the struggle for the rights of girls to receive education and has become a role model for many girls of her age; welcomes the swift medical action that was taken by Pakistani military medics and medics in the UK and strongly hopes that she will be able to fully recover from her serious injuries;
3. Welcomes the widespread condemnation of the attack by large sections of Pakistani society, Islamic scholars and most major political parties; calls on all political parties to clearly condemn the TTP as the ones who have claimed responsibility for the attack;
4. Expresses its support for all those Pakistani families who encourage the education of their daughters;
5. Calls on the Government of Pakistan to ensure the safety of Malala Yousafzai and her family and to bring to justice those responsible for the assault; calls on the Government of Pakistan to ensure the safety of other human rights activists – particularly women and girls who become active in society and politics – who have received threats from the Taliban and other extremist groups; expresses its concern about the reported threats against 17-year-old Hinna Khan and her family;
6. Is deeply concerned about the situation of women and girls and the repeated reports of violations of children's and women's rights in Pakistan, including reports of children being used by armed groups to carry out suicide attacks; stresses that closer international attention must be paid as a matter of urgency to the situation of women and girls in Pakistan;
7. Is deeply worried about the worsening trend of violent extremism, which constitutes a serious threat to women and girls, and the use of intimidation and violence, which has already led to the blowing up of girls' schools and the flogging of women in parts of the FATA and Khyber Pakhtunkhwa;
8. Urges the Pakistani authorities to prosecute those individuals and groups inciting violence, in particular those calling for the killing of individuals and groups with whom they disagree;
9. Demands that much more be done by the Pakistani Government to trace the hundreds, if not thousands, of victims of enforced disappearance in Pakistan, including children, some of them girls as young as nine and ten years old; calls for the results of internal government investigations into the scale of this problem to be published;
10. Welcomes the child protection policy in the FATA, launched on 10 January 2012, which is seeking to implement a plan for protective services and child protection units in all FATA agencies;
11. Welcomes the fact that the Child Protection Act 2010, as already in force in the Khyber Pakhtunkhwa province, is now to be extended to the Provincially Administered Tribal Areas (PATA), including Swat, with immediate effect; hopes that the effective application of this act will help to bring the PATA under the writ of law;
12. Urges the Government of Pakistan to use the current momentum to make real improvements to women's and girls rights, reviewing and reforming parts of the Hudood Ordinances and the Law of Evidence, the Child Marriage Restraint Act and other pieces of legislation that violate the status and rights of women, making them subordinate in law;

Friday 26 October 2012

13. Welcomes the introduction of new legislation by the Government of Pakistan in 2011 and 2012 in order to tackle discrimination and violence against women more effectively, and calls on the government to ensure the actual implementation and enforcement of these new laws;
 14. Urges the Government of Pakistan to work closely with the UN and the EU in delivering on the Millennium Development Goals, in particular Goal 2 which states that 'by 2015 all children, girls and boys, will be able to complete a full course of primary schooling'; calls on the Pakistani Government to make it a priority to increase the number of girls receiving school education and to guarantee their safety while receiving education;
 15. Calls on the Government of Pakistan to increase funding for public schools and to take effective measures to impose a mandatory standard curriculum of basic education and an inspection regime on all privately or publicly owned madrassas, which are often the only source of education, especially in rural areas;
 16. Calls on the Commission to develop, jointly with the Government of Pakistan, education programmes aimed at improving the literacy and education of women in Pakistan as part of its development aid policy;
 17. Urges the Commission and the Council, as well as the international community, to significantly increase funds aimed at efforts to protect women and girls from rape, abuse and domestic violence and to support measures to enable civil society movements against discrimination of women and girls;
 18. Calls on the Commission to act upon its pledge to children in its communication 'A Special Place for Children in the EU External Action' and to ensure that the EU does all it can to promote and safeguard the rights of children;
 19. Insists that women's and children's rights should be explicitly addressed in all human rights dialogues, and in particular the issue of combating and eliminating all forms of discrimination and violence against women and girls, in particular forced marriage, domestic violence and femicide, and likewise insists that the invocation of any custom, tradition or religious consideration of any kind in order to evade the duty to eliminate such brutality should be rejected; believes that the prevention of the practice of child marriage is vital to ensure that the fundamental rights of adolescent girls in Pakistan are respected;
 20. Calls on the competent EU institutions to continue to emphasise the issue of religious tolerance in society in their political dialogue with Pakistan, given that this matter is of central importance to the long-term fight against Islamist extremism;
 21. Urges the competent EU institutions to insist that the Government of Pakistan must uphold the democracy and human rights clause enshrined in the cooperation agreement between the European Union and the Islamic Republic of Pakistan; reiterates its call on the European External Action Service and the EU Special Representative for Human Rights in particular to regularly report on the implementation of the cooperation agreement and the democracy and human rights clause, including the exercise of women's and children's rights;
 22. Instructs its President to forward this resolution to the Council, the European External Action Service, the Vice-President of the European Commission / High Representative of the Union for Foreign Affairs and Security Policy, the EU Special Representative for Human Rights, the governments and parliaments of the Member States, UN Women, the UN Human Rights Council and the Government and Parliament of Pakistan.
-

Friday 26 October 2012

Situation in Cambodia

P7_TA(2012)0402

European Parliament resolution of 26 October 2012 on the situation in Cambodia (2012/2844(RSP))

(2014/C 72 E/06)

The European Parliament,

- having regard to the reports of 16 July and 24 September 2012 by the United Nations Special Rapporteur on the situation of human rights in Cambodia,
- having regard to the 21st session of the United Nations Human Rights Council of 24 September 2012,
- having regard to the Statement by the Spokesperson of the EU High Representative Catherine Ashton of 1 October 2012 on the sentencing of human rights defenders in Cambodia,
- having regard to the recommendations of the EU Election Observation Mission report on the National Assembly Elections of 27 July 2008 in Cambodia,
- having regard to the joint letter of 1 October 2012 from ten NGOs to the EU Trade Commissioner de Gucht,
- having regard to the EU ‘everything but arms’ (EBA) trade scheme, which allows all least developed countries (LDCs), including Cambodia, unhindered access for all its exports, except arms, to the EU,
- having regard to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, to which Cambodia is a party,
- having regard to the 1998 UN Declaration on Human Rights Defenders,
- having regard to the Cooperation Agreement of 1997 between the European Community and the Kingdom of Cambodia ⁽¹⁾, in particular Article 1 (respect for human rights), Article 19 (non-execution of the agreement) and Annex 1 regarding Article 19 (suspension of the agreement if one party violates Article 1),
- having regard to the United Nations Declaration on the Rights of Indigenous Peoples adopted by the UN General Assembly during its 62nd session on 13 September 2007,
- having regard to its previous resolutions on Cambodia, especially the one of 21 October 2010 ⁽²⁾,
- having regard to Rules 122(5) and 110(4) of its Rules of Procedure,

⁽¹⁾ OJ L 269, 19.10.1999, p. 18.

⁽²⁾ OJ C 70 E, 8.3.2012, p. 90.

Friday 26 October 2012

- A. whereas the latest report by the UN Special Rapporteur on the situation of human rights in Cambodia recognises that after two decades of conflict, and since the Paris Peace Accords in 1991, Cambodia has made progress in strengthening democracy, human rights and the rule of law;
- B. whereas four human rights defenders accused of anti-state crime – Mom Sonando, Head of the Association of Democrats of Cambodia and Director of Beehive Radio, and his co-defendants, Phorn Sreoun, Touch Ream and Kann Sovann – were sentenced by the Phnom Penh Municipal Court on 1 October 2012;
- C. whereas the security forces continue to use excessive force against protestors; whereas on 26 April 2012 Chut Wutty, a leading environmental campaigner who investigated illegal logging, was shot dead by the police; whereas on 22 May 2012 thirteen women activists from Boeung Kak area were arbitrarily arrested and sentenced to lengthy prison terms for holding a peaceful protest at the development site affecting their community; whereas they have been released upon international pressure though their convictions have been upheld; whereas on 16 May 2012 a 14-year old girl, Heng Chantha, was shot dead by the security forces and no investigation into her death is taking place;
- D. whereas due to the Government's Economic Land Concession (ELC) policy, over the past decade at least 400 000 people have been displaced and dispossessed of their land, homes and livelihoods by the authorities and by businesses, leading to violent clashes with communities and having aggravating effects on poverty;
- E. whereas as of August 2012 the Cambodian Government has granted at least 2 157 744 hectares of economic land concessions to over 200 companies, often in violation of the provisions of the 2001 Land Law and bypassing legal safeguards such as the obligations to prevent concessions in protected areas, undertake social impact assessment and obtain the free, prior and informed consent of indigenous communities;
- F. whereas the Prime Minister, Hun Sen, issued in May 2012 a directive establishing a moratorium on new economic land concessions and stipulating a review of the existing concessions; whereas despite the directive at least 12 new concessions were granted, since a loophole in the directive allows conclusion of new land concessions already in an advanced stage of negotiations or agreed to in principle; whereas there has been no real review of existing land concessions and none of the problematic ones have been cancelled;
- G. whereas according to the main findings of the UN Special Rapporteur's report, major flaws exist in the administration of elections in Cambodia and urgent reforms are needed to give Cambodians confidence in the electoral process as the country approaches its general elections in July 2013;
- H. whereas following Cambodia's last national elections, the EU Election Observation Mission in Cambodia concluded that the elections did not meet international standards for democratic elections and called on the Cambodian Government to undertake a number of fundamental electoral reforms;
- I. whereas the EU is Cambodia's single largest donor;
1. Condemns all politically motivated sentences and convictions against political critics, parliamentary opposition politicians, notably Sam Rainsy, human rights defenders and land activists, and deplores the deaths of Chut Wutty and Heng Chantha, both killed while exercising their right to peaceful protest;

Friday 26 October 2012

2. Calls for an immediate and unconditional release of Mom Sonando and other government critics and land rights activists who are being held for political reasons only;
 3. Stresses that all those responsible for human rights violations should be identified and held accountable for their actions;
 4. Underlines the importance of the UN Special Rapporteur's conclusion that the serious and widespread human rights violations associated with land concessions need to be addressed and remedied;
 5. Urges the Cambodian Government to cease all forced evictions, review the May 2012 directive and introduce and enforce a moratorium on evictions in Cambodia until a transparent and accountable legal framework and relevant policies are in place to ensure that future economic land concessions are granted in accordance with international human rights law and to ensure that all those forcibly evicted are guaranteed adequate compensation and suitable alternative accommodation;
 6. Calls on the Commission to investigate the escalation of human rights abuses in Cambodia as a result of economic land concessions being granted for agro-industrial development linked to the export of agricultural goods to the European Union, and to temporarily suspend EBA preferences on agricultural products from Cambodia in cases where human rights abuses are identified; notes the decision of the Prime Minister of Cambodia to halt new economic land concessions and his pledge to review existing concessions;
 7. Urges the Cambodian Government, the National Election Committee and the provincial election committee to implement the recent UN recommendations on reforming the electoral system to ensure it conforms with international standards before, during and after the casting of votes; calls on the Commission closely to monitor the implementation of the UN recommendations by the Cambodian authorities;
 8. Is concerned about the situation of Sam Rainsy, the leader of the Sam Rainsy Party, who has been convicted on charges that are allegedly politically motivated; urges the Cambodian Government and opposition parties to work towards reconciliation in order to enable the opposition to play a full role in Cambodian politics and in the forthcoming elections, in order to provide credibility to the electoral process;
 9. Encourages the Cambodian Government to strengthen democracy, the rule of law, respect for human rights and fundamental freedoms – in particular media freedom and freedom of expression and assembly – as these values constitute an essential element of the EU-Cambodia Cooperation Agreement, as defined in Article 1 of that Agreement;
 10. Instructs its President to forward this resolution to the Government and National Assembly of the Kingdom of Cambodia, the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy, the EU Special Representative for Human Rights, the governments and parliaments of the EU Member States, the governments of the ASEAN Member States, the UN Secretary-General and the UN High Commissioner for Human Rights.
-

Friday 26 October 2012

Innovative financial instruments in the context of the next Multiannual Financial Framework

P7_TA(2012)0404

European Parliament resolution of 26 October 2012 on innovative financial instruments in the context of the next Multiannual Financial Framework (2012/2027(INI))

(2014/C 72 E/07)

The European Parliament,

- having regard to the Commission communications entitled ‘A Budget for Europe 2020’ (COM(2011)0500), ‘A framework for the next generation of innovative financial instruments – the EU equity and debt platforms’ (COM(2011)0662) (‘the communication on financial instruments’), ‘A growth package for integrated European infrastructures’ (COM(2011)0676), ‘An action plan to improve access to finance for SMEs’ (COM(2011)0870) and ‘A pilot for the Europe 2020 Project Bond Initiative’ (COM(2011)0660),

- having regard to the Commission proposals, in particular the proposal for a Council regulation laying down the multiannual financial framework for the years 2014-2020 (COM(2011)0398), the proposal for a regulation of the European Parliament and of the Council on the financial rules applicable to the annual budget of the Union (COM(2010)0815), the proposal for a regulation of the European Parliament and of the Council amending Decision No 1639/2006/EC establishing a Competitiveness and Innovation Framework Programme (2007-2013) and Regulation (EC) No 680/2007 laying down general rules for the granting of Community financial aid in the field of the trans-European transport and energy networks (COM(2011)0659), the proposal for a regulation of the European Parliament and of the Council establishing Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020) (COM(2011)0809), the proposal for a regulation of the European Parliament and of the Council establishing a Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (2014-2020) (COM(2011)0834), the proposal for a regulation of the European Parliament and of the Council on establishing the Creative Europe Programme (COM(2011)0785), the proposal for a regulation of the European Parliament and of the Council establishing ‘Erasmus For All’, the Union Programme for Education, Training, Youth and Sport (COM(2011)0788), the proposal for a regulation of the European Parliament and of the Council establishing the Connecting Europe Facility (COM(2011)0665), the proposal for a regulation of the European Parliament and of the Council on a European Union Programme for Social Change and Innovation (COM(2011)0609), the proposal for a regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Council Regulation (EC) No 1083/2006 (COM(2011)0615/2),

- having regard to the Commission working documents entitled ‘Financial Instruments in Cohesion Policy’ (SWD(2012)0036) and ‘Elements for a Common Strategic Framework 2014 to 2020 – the European Regional Development Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund’ (SWD(2012)0061) (‘the common strategic framework for the structural and cohesion funds’),

- having regard to the European Court of Auditors special reports No 4/2011 on the audit of the SME Guarantee Facility and No 2/2012 on financial instruments for SMEs co-financed by the European Regional Development Fund, and to Opinion No 7/2011 of the Court of Auditors on the proposal for a regulation on the structural and cohesion funds,

Friday 26 October 2012

- having regard to its resolution of 8 June 2011 entitled 'Investing in the future: a new Multiannual Financial Framework (MFF) for a competitive, sustainable and inclusive Europe' ⁽¹⁾, and its resolution of 6 July 2011 on the financial, economic and social crisis: recommendations concerning the measures and initiatives to be taken ⁽²⁾,

 - having regard to Rule 48 of its Rules of Procedure,

 - having regard to the report of the Committee on Budgets and the opinions of the Committee on Budgetary Control, the Committee on Industry, Research and Energy and the Committee on Regional Development (A7-0270/2012),
- A. whereas, since the early years of the last decade, the EU institutions have developed a series of innovative financial instruments (IFIs) based on arrangements combining grants from the Union budget with public and/or private funding in order to boost the volume of investment available to achieve the Union's strategic objectives;
- B. whereas, under point 49 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management, 'the institutions agree that the introduction of co-financing mechanisms is necessary to reinforce the leverage effect of the European Union budget by increasing the funding incentive. They agree to encourage the development of appropriate multiannual financial instruments acting as catalysts for public and private investors';
- C. whereas it is estimated that approximately 1,3 % of the EU budget is currently devoted to IFIs, the Union having created, within the 2007-2013 MFF, 14 such instruments in the field of internal policies (EUR 3 billion, or 3,4 % of the available budget, under heading 1a, and approximately EUR 5,9 billion for regional and cohesion policy) as well as 11 in the field of external policies (EUR 1,2 billion, or 2,2 %, under budget heading 4, without taking into account those IFIs created in connection with the European Development Fund);
- D. whereas the Union has already acquired experience in the management of IFIs, and numerous relevant evaluations and comparative impact assessments have been published;
- E. whereas, according to its resolution of 8 June 2011 on Investing in the future: a new Multiannual Financial Framework (MFF) for a competitive, sustainable and inclusive Europe, the implementation framework of the innovative financial instruments should be decided through the ordinary legislative procedure, in order to ensure a continuous flow of information and participation of the budgetary authority regarding the use of these instruments across the Union, allowing Parliament to verify that its political priorities are met, as well as a strengthened control on such instruments from the European Court of Auditors;

IFIs – the background

1. Recalls that the introduction of IFIs at European level was seen as a way of enabling the Union to stimulate investment in the real European economy in line with the Union's objectives at a time when, against the background of a constant fall in the volume of resources allocated to its budget, its political ambitions, and thus its needs, were steadily growing;

⁽¹⁾ Texts adopted, P7_TA(2011)0266.

⁽²⁾ Texts adopted, P7_TA(2011)0331.

Friday 26 October 2012

2. Emphasises that the ultimate purpose of and the rationale for IFIs is that they should act in situations of market failure or suboptimal investment as a catalyst which makes it possible, on the basis of a contribution from the Union budget, to mobilise funding – public and/or private – for projects which can secure no support, or only inadequate support, from the market; points out that intervention by the public sector thus makes it possible to reduce the risk-related costs, by defraying part of those costs, thereby facilitating the implementation of the projects concerned;
3. Points out that the IFIs developed thus far have been used to carry out an extremely wide variety of interventions, ranging from the taking of stakes in equity/venture capital funds to the provision of guarantees/counter-guarantees to financial intermediaries (in particular banks), via the creation jointly with financial institutions of risk-sharing instruments in order to stimulate investment, innovation and research;
4. Notes that this variety is justified by the diversity of areas covered (support for SMEs, energy, climate change, employment and micro-credit, research and innovation, transport infrastructure, information technologies);
5. Emphasises that the use of IFIs is governed by strict legislative (agreement of the legislative authority required) and budgetary rules; notes that the use of IFIs does not generate unforeseen costs for the Union budget, in that the liability borne by the Union budget is limited to the amount of the Union contribution committed to the IFI in question on the basis of annual budget appropriations, as agreed by the budgetary authority, and there shall not give rise to contingent liabilities for the Union budget; points out that in fact IFIs contribute to the sound and efficient management of public funds, given that the contribution paid from the budget may generate proceeds which can be reinvested (reflows) in the IFI concerned, thereby strengthening its capacity to provide support and enhancing the effectiveness of public-sector action; stresses the need, therefore, for IFIs funded operations to be properly audited by the EU Court of Auditors and for the co-legislators to be fully informed about any findings;
6. Points out that there are three types of investment situation: 1) optimal, where the investment is certain to generate a return and allows financing by the market, 2) sub-optimal, in which there is a return but it is not sufficient to secure financing by the market and justifies the use of an IFI, and 3) investment characterised by little or no return, which necessitates intervention by the Union in the form of grants, which may be combined with IFIs if the project permits;
7. Reiterates that the increased use of IFIs should not turn into a strategy to reduce the size of the Union budget but should serve to optimise its use, and welcomes the fact that in its communication on IFIs, as referred to above, the Commission acknowledges that ‘the intention behind an increased use of innovative financial instruments is (...) not to replace grant funding with financial instruments’;
8. Emphasises that the experience gained thus far with IFIs is satisfactory in overall terms, even if their multiplier effect varies substantially depending on the area of intervention, the sectoral objectives to be achieved with IFIs, the type of IFI proposed and the arrangements for its implementation;
9. Points out that in the area of internal Union policies, IFIs are implemented either at European level (managed by the Commission itself or on the basis of authority delegated by it) or at the national level in the context of regional and cohesion policy (managed jointly with the Member States);
10. Emphasises that the implementation of IFIs thus depends on the involvement of a chain of actors running from the Commission, as the body responsible for disbursing funds under the Union budget, to the EIB group (European Investment Bank and European Investment Fund), via banks, whether national or local, commercial or specialising in investment or development, and private and public investors; stresses that, more generally, their success is contingent on the mobilisation of public, quasi-public and private financial intermediaries whose objectives vary depending on the area of intervention (micro-credit institutions, guarantee funds for SMUs, regional development organisations, research support funds, etc.);

Friday 26 October 2012

11. Notes, in particular, substantial differences between the IFIs managed centrally at Union level and those implemented on the basis of shared management in the areas of regional and cohesion policy or external relations;

12. Notes that in the cohesion policy field IFIs have been performing differently across Member States and across types of IFIs; acknowledges that IFIs in the context of cohesion policy have been beset by poor legislative framework resulting in delays in implementation, problems in achieving critical mass and substantial multiplier effect, and lack of oversight and coordination; welcomes in this regard the Commission's proposal to strengthen the legislative framework and thus enhance the use of IFIs in cohesion policy in the next programming period (2014-2020);

13. Notes, as regards the use of IFIs in the external policy field, that the number of international financial institutions involved is very high, as is the multiplier effect generated by the Union contribution, but that the range of instruments, the number of which has increased in recent years in particular and now totals 13, is too wide;

14. Notes that these IFIs are implemented on the basis of agreements even more complex than those concluded in the internal policy field and involve a range of different management procedures and actors (EBRD, international organisations);

15. Notes that, under these conditions, there is sometimes a lack of visibility surrounding the effect of Union budget action on economic operators and citizens;

16. Notes that in the external policy field most IFIs generate reflows which can be reinvested, whereas in the internal policy field the reverse is true;

17. Notes that, depending on requirements, IFIs have developed in accordance with different strategic objectives and resources and not always in a coordinated manner, which has given rise to problems of overlapping;

18. Notes that implementing IFIs takes time and calls for sophisticated investment skills, careful preparation of projects and detailed knowledge of market mechanisms, but that potentially such instruments can improve the management and effectiveness of the projects supported, through the combination of skills and know-how specific to the actors involved; points out that IFIs offer an incentive to pool financial and human resources with a view to achieving common and strategic European objectives;

Commission proposals for the period covered by the next Multiannual Financial Framework (2014-2020)

19. Notes that for the period 2014-2020, the Commission is proposing for the internal policy field a small number of IFIs with a broader scope; welcomes this development, which should improve the visibility of these instruments for actors, help them achieve critical mass and improve the way the risk associated with these instruments is spread and diversified, on the basis of a portfolio approach;

20. Welcomes the Commission's proposal to create platforms for the equity and debt instruments; notes that these platforms are designed to simplify and standardise the IFIs implemented under the Union budget and make them more coherent in overall terms; stresses that for the platforms to be operational and successful in implementation, the framework for application and other technical details should be presented in a timely manner and certainly before the start of the next programming period 2014-2020;

Friday 26 October 2012

21. Draws attention, in this context, to the imminent creation of a Union platform for external cooperation and development, designed to improve the quality and effectiveness of the 'blending' (combination of grants and loans) mechanisms used in the context of those policies, whilst taking proper account of the regional frameworks governing the Union's relations with its partner countries; notes that the purpose of the platform is to facilitate both the assessment of the existing external policy instruments and the design of the new instruments for the period 2014-2020;

22. Welcomes the fact that the application of financial instruments (FIs) is being extended under the cohesion policy to all thematic objectives and all CSF funds, and to those projects, project groups or parts of project programmes that will generate income and profits and which therefore are appropriate for FIs in the next programming period; stresses, nevertheless, that a better overview of applied FIs is necessary in order to mitigate the risk of poor coordination and overlapping of different schemes;

23. Notes that uniform model instruments will be made available to national management authorities ('off-the-shelf instruments'); takes the view that their success will be contingent on timely introduction of technical details and more intensive upstream exchanges of information between the Commission and local authorities;

24. Welcomes the fact that Regulation (EU, Euratom) No 966/2012 is henceforth the legislative framework of reference for the definition, design and use of IFIs, thereby ensuring compliance with the objectives and interests of the Union;

25. Takes the view that the creation of the platforms referred to above could be accompanied by the introduction of continuous, centralised coordination of IFIs by the Commission; notes that an interdepartmental experts group on financial instruments (FIEG) has been set up, and considers that it should be given the task of strengthening the Commission's institutional capacity to monitor IFIs;

26. Takes the view that the introduction of innovative IFIs under the umbrella of the Union will help put finance at the service of the real economy for projects with European added value;

Designing the new IFIs

27. Emphasises that since the mid-1990s, public investment in the EU has been falling steadily, and that this trend has become more pronounced since the start of the financial crisis in 2008; notes, further, that project promoters are facing a credit squeeze and are finding it more difficult to borrow money on the capital markets; is convinced, therefore, that the continued development of IFIs at national and Union level could become a contributing factor if the Union is to ensure a coordinated return to smart, sustainable and inclusive growth

28. Emphasises that, according to Commission estimates, implementing the EU 2020 Strategy and its seven headline initiatives would require investment throughout the Union totalling EUR 1 600 billion between now and 2020; notes that these investments meet objectives ranging from the implementation of major infrastructure projects to the provision of support for smaller-scale projects that offer significant potential for growth at local and regional level, including measures to foster social cohesion;

29. Reiterates that IFIs are intended to help or facilitate projects regarded as fundamental to the achievement of the Union's strategic objectives, and must therefore take better account of, and fit in with, programme time scales;

Friday 26 October 2012

30. Firmly believes that IFIs must address one or more specific policy objectives of the Union, in particular those outlined by the EU 2020 Strategy, operate in a non-discriminatory fashion, have a clear end date, respect the principles of sound financial management and be complementary to traditional instruments such as grants, thus improving the quality of spending and contributing to the guiding principles of ensuring optimal use of financial resources;

31. Takes the view that innovative IFIs can facilitate the implementation of public-private partnerships by attracting more private capital for public infrastructure projects;

32. Emphasises the importance of ex ante assessments in identifying situations of market failure or sub-optimal investment conditions, investment needs, potential private sector involvement, possibilities for economies of scale and questions of critical mass, and in verifying that the instrument does not distort competition within the internal market and does not violate the rules on State aid; calls on the Commission to propose objective, polythematic and relevant criteria to govern the role and use of ex ante assessments; believes firmly in the principle of evidence-based policy making, and believes that such assessments will contribute to the efficient and effective running of IFIs;

33. Regards it as essential, as part of a results-based approach, that a reasonable number of simple qualitative and/or quantitative indicators should be incorporated into the ex ante and ex post assessments of all IFIs, both as regards the financial performance of the instrument and as regards its contribution to achieving the Union's objectives; takes the view that this requirement must not serve to impose an excessive administrative burden on project managers; emphasises, in this respect, the break in continuity in the use of an innovative IFI that may ensue from its requisite ex post assessment;

34. Notes, however, that the increase in the number of IFIs is posing many challenges in the areas of regulation, governance and the monitoring of their effectiveness, and that it is essential to strike a balance between the need for transparency and monitoring, on the one hand, and a sufficient level of effectiveness and speed of implementation, on the other; takes the view that reducing the number of the financial instruments could minimise disparities and ensure a sufficient critical mass;

35. Emphasises, therefore, the importance of a legal framework which is as simple, clear and transparent as possible, which does not increase the administrative burden on intermediaries and recipients and which makes IFIs attractive to public and private investors;

36. Takes the view, in particular, that the rules on reporting should be improved in order to be clear and, as far as possible, uniform, so that a reasonable balance can be struck between the reliability of information and the attractiveness of IFIs; calls on the Commission to put in place the appropriate management and control systems that will ensure the enforcement of the existing auditing rules;

37. Calls on the Commission to provide Parliament with a single, separate annual summary report on IFIs, covering the purposes for which they are used and their performance by type of fund, thematic objective and Member State;

38. Given the inherent lack of visibility of these financial instruments, urges the Commission to take measures to ensure adequate communication about this type of intervention using the European budget, directed not only to potential investors but also to European citizens; underlines the importance of an extensive EU-level information campaign on the new financial instruments in order to allow access for all investors, regardless of the size of the institution they represent;

Friday 26 October 2012

39. Stresses that the leverage and multiplier effects vary considerably from one area of intervention to another; takes the view that the European legislator must not set targets that are too uniform in this field since these effects are, by their very nature, determined to a large extent by economic circumstances and by the characteristics of the area concerned;

40. Emphasises that the scope for implementing IFIs is still vague, and likely to change quickly; notes, accordingly, that the creative capacity, or the capacity for flexibility and adaptability to local circumstances, should be as high as possible; proposes, therefore, that it should be possible for the budgetary authority to adjust the annual amount allocated to each instrument if this is likely to facilitate the achievement of the purposes for which it was created;

41. Reiterates that the reinvestment of interest and other income generated by a given instrument in that instrument ('reflows') must be the principle governing all IFIs, and that any exception to this rule must be duly substantiated; welcomes the progress in this sense recorded by the new Financial Regulation that is to come into force next year;

42. Believes that it is vital to develop the ability and technical capacity of managing authorities, financial intermediaries and banks and local authorities to use and manage IFIs; recommends that exchanges of expertise should be stepped up between all these actors, in particular those familiar with the relevant national market, ahead of the adoption by the Commission of the implementing act intended to define the standardised instruments made available to the Member States; regards it vital that such exchanges are effected in a timely manner if cultural obstacles are to be overcome, ownership of IFIs is to be guaranteed and such instruments are to be ensured every chance of success;

43. Believes that the role of various national and regional banking institutions needs to be acknowledged, given their necessary experience and know-how in addressing local and regional specificities of relevance to the development and implementation of financial instruments;

44. Takes the view that the innovative nature of IFIs requires the establishment of a framework for the coordination of public financial institutions that will be delegated the power of budgetary implementation of the IFIs, and which would involve representatives of the Commission, the Council and Parliament;

45. Welcomes the prompt agreement reached between Parliament and the Council on the implementation of a pilot phase (2012-2013) for project bonds in the areas of transport, energy and information technologies ⁽¹⁾; expresses its willingness, on the basis of the full-scale independent evaluation of this pilot phase, to assess what future steps are to be taken in order to enhance the efficiency of Union spending as well as to increase investment volumes towards priority projects;

46. Requests as a matter of urgency, therefore, that the project bonds initiative be implemented and that an accurate evaluation be carried out of the appropriateness of a new, separate initiative for the issuing of European bonds for infrastructure, with the direct participation of EU capital in infrastructure projects in the common interest, with strong European added value, through the public issuing of project bonds on the part of the Union;

⁽¹⁾ Texts adopted of 5.7.2012, P7_TA(2012)0296.

Friday 26 October 2012

47. Believes that the European Union would send a powerful signal to public and private investors, as well as to financial markets, by participating directly, alone or with other Member States, in the capitalisation of infrastructure projects (characterised by long-term return on investment); believes that this EU participation in an investment capacity should ensure consistency with the Union's long-term policy objectives and would represent a guarantee of realisation of the project, serving as a strong catalyst and an equally strong lever;

48. Welcomes, also, the agreement reached at the European Council meeting of 28 and 29 June 2012 to increase the EIB's capital by EUR 10 billion, which will enable the EIB group to boost its lending capacity within the Union in coming years by approximately EUR 60 billion, and thus play a welcome counter-cyclical role as part of the concerted efforts to revive the European economy; points out that it is generally acknowledged that EIB loans have a multiplier effect of three; emphasises, therefore, that this new commitment must not undermine the parallel efforts to strengthen and improve the joint EIB-Union budget instruments used to share risk and take equity stakes, since these are used to support other types of projects and measures than those covered by EIB loans and have a higher multiplier effect than such loans;

49. Draws attention to the fact that, irrespective of the degree to which IFIs fulfil their intended purpose, they will generate their full impact only if the overall legal and regulatory environment is conducive to their development, as reflected, for example, in the treatment of long-term investments under the prudential rules which are currently undergoing revision (Basel III, Solvency II);

50. Is confident that the greater use of IFIs will have an extremely positive impact on the European economy, but fears that, in practice, this will be limited to projects offering short- to medium-term returns; fears that investment in projects equally fundamental to the achievement of the EU's strategic objectives for intelligent, sustainable and inclusive growth may not be realised because such projects are deemed too risky for investors, and because public funds are lacking; calls, therefore, on the Commission to submit, as quickly as possible, proposals to facilitate the release of savings, an underused resource at present, to support medium- and long-term projects which generate sustainable growth in the Union;

51. Takes the view that if the critical mass of a given innovative IFI is sufficient, this could be very attractive for the private capital market in light of the reduced risk resulting from the sizeable volume of the project portfolio and the possible fluidity of trade in the markets;

52. Emphasises the need to ensure that the possible emergence of a 'mixed financial economy' does not result in innovative IFIs becoming complex derivatives that can be securitised or diverted from their original purpose;

*

* *

53. Instructs its President to forward this resolution to the Council and the Commission.

Friday 26 October 2012

Annual report on the activities of the European Ombudsman 2011

P7_TA(2012)0405

European Parliament resolution of 26 October 2012 on the annual report on the activities of the European Ombudsman 2011 (2012/2049(INI))

(2014/C 72 E/08)

The European Parliament,

- having regard to the annual report on the activities of the European Ombudsman 2011,
 - having regard to Article 24, third paragraph, Article 228 and Article 298 of the Treaty on the Functioning of the European Union (TFEU),
 - having regard to Articles 41 and 43 of the Charter of Fundamental Rights of the European Union,
 - having regard to its resolution of 18 June 2008 ⁽¹⁾ on the adoption of a decision of the European Parliament amending its Decision 94/262/ECSC, EC, Euratom of the European Parliament of 9 March 1994, on the regulations and general conditions governing the performance of the Ombudsman's duties ⁽²⁾,
 - having regard to the Framework Agreement on Cooperation concluded between the European Parliament and the European Ombudsman on 15 March 2006, which entered into force on 1 April 2006,
 - having regard to the implementing provisions of the Statute of the Ombudsman of 1 January 2009 ⁽³⁾,
 - having regard to its previous resolutions on the European Ombudsman's activities,
 - having regard to Rule 205(2), second and third sentences, of its Rules of Procedure,
 - having regard to the report of the Committee on Petitions (A7-0297/2012),
- A. whereas the annual report on the European Ombudsman's activities in 2011 was formally submitted to the President of Parliament on 22 May 2012, and whereas the Ombudsman, Mr Nikiforos Diamandouros, presented the report to the Committee on Petitions in Brussels on 19 June 2012;
- B. whereas Article 24 TFEU stipulates that 'every citizen of the Union may apply to the Ombudsman established in accordance with Article 228';
- C. whereas Article 228 TFEU empowers the European Ombudsman to receive complaints concerning instances of maladministration in the activities of EU institutions, bodies, offices and agencies, with the exception of the Court of Justice of the European Union acting in its judicial role;
- D. whereas, pursuant to Article 298 TFEU the EU institutions, bodies, offices and agencies 'shall have the support of an open, efficient and independent European administration', and whereas the same article provides for the adoption, to that end, of specific secondary legislation, in the form of regulations, applicable to all areas of EU administration;

⁽¹⁾ OJ C 286 E, 27.11.2009, p. 172.

⁽²⁾ OJ L 113, 4.5.1994, p. 15.

⁽³⁾ Adopted on 8 July 2002 and amended by decisions of the Ombudsman of 5 April 2004 and 3 December 2008.

Friday 26 October 2012

- E. whereas Article 41 of the Charter of Fundamental Rights states that 'Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union';
- F. whereas maladministration occurs not only when a public body fails to act in accordance with a rule or principle that is binding upon it, and whereas the principles of good administration require the EU institutions to be service-minded and to ensure that members of the public are properly treated and enjoy their rights fully;
- G. whereas this definition does not limit maladministration to cases where the rule or principle that is being violated is legally binding; whereas the principles of good administration go further than the law, requiring the EU institutions not only to respect their legal obligations, but also to be service-minded and to ensure that members of the public are properly treated and enjoy their rights fully;
- H. whereas in 2011 the Ombudsman received 2 510 complaints (2 667 in 2010), opened 396 inquiries (335 in 2010) and completed 318 inquiries (326 in 2010); whereas of the total of 2 544 complaints processed by the Ombudsman in 2011, 698 (27 %) were within his mandate (744 in 2010);
- I. whereas 1 321 complaints received were within the competence of a member of the European Network of Ombudsmen; whereas this Network is composed of national and regional ombudsmen; whereas Parliament's Committee on Petitions is a full member of the Network of European Ombudsmen;
- J. whereas in 2011 the Ombudsman transferred 59 complaints to the Committee on Petitions; whereas 147 complainants were referred to the Commission and 591 to other institutions and bodies, including SOLVIT and Your Europe Advice, as well as to specialised ombudsmen or other complaint-handling bodies in the Member States;
- K. whereas almost 61 % of the complaints received in 2011 were submitted using the internet; whereas more than half of the internet submissions (53 %) were received through the electronic complaints form on the Ombudsman's website;
- L. whereas the significantly reduced number of requests for information over the last few years demonstrate the success of the Ombudsman's interactive guide, which has been available on his website since January 2009;
- M. whereas the number of complaints outside the Ombudsman's mandate fell to 1 846 in 2011, which is the lowest level recorded since 2003;
- N. whereas, traditionally, the largest number of complaints were submitted by German and Spanish complainants; whereas in 2011 Spain moved to the top position, followed by Germany, Poland and Belgium; whereas relative to the size of their populations most complaints came from Luxembourg, Cyprus, Belgium, Malta and Slovenia;
- O. whereas the Ombudsman opened a total of 396 inquiries, of which 382 were based on complaints and 14 were opened on his own initiative; whereas the number of enquiries opened in 2011 was the highest ever;
- P. whereas most inquiries concerned the Commission (231), followed by EPSO (42); whereas the number of inquiries opened concerning Parliament dropped by more than half compared with 2010; whereas the number of inquiries concerning the Council rose by one third;
- Q. whereas the Ombudsman closed 318 inquiries in 2011; whereas most of these inquiries (66 %) were closed within one year, with one third closed within three months; whereas the average length of inquiries was 10 months;

Friday 26 October 2012

- R. whereas in 64 cases the Ombudsman found no maladministration; whereas a finding of no maladministration is not a negative outcome as the complainant can benefit from a full explanation from the institution concerned, and the outcome serves as evidence that the institution acted in conformity with the principles of good administration;
- S. whereas in 84 of the cases closed a positive outcome was reached, with the institution concerned accepting a friendly solution or settling the matter; whereas the Ombudsman endeavours to achieve a friendly solution whenever possible; whereas the cooperation of the EU institutions is essential to the achievement of a friendly solution;
- T. whereas in 47 cases the Ombudsman found maladministration, and in 13 cases where maladministration was found the institution concerned either fully or partially accepted a draft recommendation;
- U. whereas 35 cases were closed with a critical remark, and 39 were closed with further remarks intended to help the institutions concerned improve the quality of the administration of the institutions concerned;
- V. whereas the Ombudsman annually publicises his findings on the institutions' follow-up to critical and further remarks;
- W. whereas the overall rate of satisfactory follow-up to critical and further remarks in 2010 was 78 %; whereas the follow-up to further remarks was satisfactory in 95 % of cases, while the follow-up to critical remarks was significantly lower at 68 %;
- X. whereas in 2011 the Ombudsman issued 25 draft recommendations, and closed 13 cases when the institution concerned accepted a draft recommendation, either fully or in part;
- Y. whereas in 2011 the Ombudsman did not submit any special reports to Parliament;
- Z. whereas the Ombudsman's Budget is an independent section of the budget of the European Union, divided into three titles: Title 1 concerning salaries, allowances, and other expenditure related to staff; Title 2 covering buildings, furniture, equipment, and miscellaneous operating expenditure; Title 3 concerning the expenditure resulting from general functions carried out by the institution;
1. Approves the annual report for 2011 presented by the European Ombudsman;
 2. Notes that in 2011 the Ombudsman helped more than 22 000 citizens, of whom 2 510 submitted complaints, 1 284 requested information and 18 274 obtained advice through the interactive guide on the Ombudsman's website;
 3. Notes the fact that in recent years the total number of complaints submitted to the Ombudsman has gradually decreased, in particular the number of complaints falling outside his mandate; is following this phenomenon with interest in order to assess whether there is a direct link between this decrease and the introduction of the interactive guide;
 4. Notes that in over 65 % of the complaints dealt with by the Ombudsman, he was able either to open an inquiry or to refer the complainant to a competent body, such as a member of the European Network of Ombudsmen, which includes Parliament's Committee on Petitions, the Commission or another complaint-handling body (e.g. SOLVIT); notes that in 2011 the Committee on Petitions received 59 complaints from the Ombudsman;
 5. Notes that the main types of alleged maladministration investigated by the Ombudsman in 2011 concerned issues of lawfulness (28 % of inquiries), requests for information (16,2 %), fairness (13,6 %), grounds for decisions and possibilities for appeal (8,1 %), reasonable time limits for taking decisions (7,3 %), requests for public access to documents (7,1 %), absence of discrimination (86,8 %) and the obligation to reply to letters in the language of citizens and to indicate the competent official (5,8 %);

Friday 26 October 2012

6. Notes that the majority of inquiries opened by the Ombudsman in 2011 concerned the Commission (231), with EPSO in second position (42); considers that, since the Commission is the institution whose decisions have direct impact on citizens, it is logical that it should be the main object of complaints;
7. Is pleased to note that the number of inquiries opened by the Ombudsman with regard to Parliament dropped by more than half compared with 2010; notes that the Ombudsman opened one third more inquiries concerning the Council of the EU;
8. Notes that in 2011 the Ombudsman modified his procedures in order to make them more citizen-friendly, and introduced a new type of inquiry – a ‘clarificatory inquiry’ –which enables complainants to clarify their complaint if the Ombudsman, at first sight, is not convinced that there are grounds to ask an institution for its opinion on a case;
9. Points out that the Ombudsman now actively invites complainants to make observations when they are dissatisfied with an institution’s reply, whereas previously complainants had to make a new complaint if they were not satisfied with the substance of a reply;
10. Is pleased that this new approach resulted in the Ombudsman closing fewer cases as ‘settled by the institution’ and closing a higher number of cases with a finding of ‘no maladministration’ or ‘no further inquiries justified’;
11. Notes that the Ombudsman also reviewed the treatment of complaints falling outside his mandate, which are now dealt with by the Registry department at the Ombudsman’s office, which ensures that complainants are informed as rapidly as possible that the Ombudsman cannot deal with their complaints and that they are advised who to turn to;
12. Points out that a 2011 special Eurobarometer report on citizens’ rights and the performance of the EU administration ⁽¹⁾ showed that citizens attach great value to their right to complain to the European Ombudsman and that only their right to move and reside freely in the Union, and their right to good administration, were more important in their view;
13. Commends the Ombudsman for publishing a booklet entitled *Problems with the EU? Who can help you*, which contains comprehensive information on problem-solving mechanisms for citizens who face problems with the EU, and for making this publication available also in audio and large-print format;
14. Highlights the fact that, despite some progress in recent years, the proportion of processed complaints which actually fell within the Ombudsman’s remit in 2011 was once again relatively low (approximately 27 %), and that consideration should therefore be given to more comprehensive and proactive public awareness-raising – particularly in close cooperation with national and regional ombudsmen, Parliament and the Commission – about the Ombudsman’s sphere of responsibility;
15. Agrees with the Ombudsman that a straightforward and concise statement of the fundamental values that EU civil servants’ behaviour should reflect can effectively promote citizens’ trust in the European civil service and the EU institutions it serves;
16. Endorses the Ombudsman’s view that an institution in which a culture of service is embedded does not regard complaints as a threat, but as an opportunity to communicate more effectively and, if a mistake has been made, to put matters right and learn lessons for the future;

⁽¹⁾ <http://www.ombudsman.europa.eu/en/press/statistics.faces>

Friday 26 October 2012

17. Recalls that the Charter of Fundamental Rights (Article 41) includes the right to good administration as a fundamental right of Union citizenship;
18. Calls on all European Union institutions, bodies, offices and agencies to act in accordance with the European Code of Good Administrative Behaviour, adopted by Parliament in its resolution of 6 September 2001 ⁽¹⁾;
19. Welcomes the Ombudsman's sustained and constructive efforts, through the production of relevant publications, for example, to facilitate the drafting of a regulation on the European Union's general administrative procedures; stresses that such legislation, which should provide for legally binding minimum quality standards and procedural guarantees in all spheres of direct EU administration, could be based on Article 298 TFEU and that the Ombudsman ought to be closely consulted on its actual drafting;
20. Endorses the Ombudsman's view that the principles of good administration go further than the law and require the EU institutions, bodies, offices and agencies not only to respect their legal obligations, but also to be service-minded and to ensure that members of the public are properly treated and enjoy their rights fully;
21. Commends the Ombudsman for having published and distributed to staff in all EU institutions, bodies, offices and agencies *The European Ombudsman's Guide to complaints*, with a view to encouraging the EU administration to improve its performance by deepening its commitment to the principles of a culture of service to citizens;
22. Welcomes the Ombudsman's cooperation with the European Network of Ombudsmen and asks that such cooperation be directed inter alia to publicising the European Citizens' Initiative as a new tool enabling citizens to be involved directly in the process of preparing EU legislation and ensuring that this instrument is not too cumbersome for citizens in terms of technical requirements;
23. Recalls that the Eighth National Seminar of the Network of European Ombudsmen was held in Copenhagen in October 2011; recalls that its Committee on Petitions is a full member of the Network and that the Committee was represented at the Seminar; recalls that at the Seminar the members of the Network agreed to find ways better to inform citizens in Europe of their rights;
24. Recalls that at the Seminar the Ombudsman presented a draft text on public service principles for EU civil servants wherein he identified five such principles, namely commitment to the EU and its citizens, integrity, objectivity, respect for others and transparency; notes that the Ombudsman organised a public consultation on these principles and that the final version of the text was published on 19 June 2012;
25. Notes with satisfaction that the Ombudsman has exercised his powers in an active and balanced way, in a spirit of critical consensus and close cooperation with the other EU bodies, during the reporting period;
26. Insists that the Ombudsman continue to ensure the best possible use of resources, avoiding unnecessary duplication of staff and cooperating with other existing EU institutions in order to secure efficiency savings for the EU budget;
27. Instructs its President to forward this resolution and the report of the Committee on Petitions to the Council, the Commission, the European Ombudsman and the governments and parliaments of the Member States, and to their ombudsmen or similar competent bodies.

⁽¹⁾ OJ C 72 E, 21.3.2002, p. 331.

Friday 26 October 2012

European Semester for economic policy coordination: implementation of 2012 priorities

P7_TA(2012)0408

European Parliament resolution of 26 October 2012 on the European Semester for economic policy coordination: implementation of 2012 priorities (2012/2150(INI))

(2014/C 72 E/09)

The European Parliament,

- having regard to its resolution of 1 December 2011 on the European semester for economic policy coordination ⁽¹⁾,
- having regard to the conclusions of the European Council of 28/29 June 2012,
- having regard to the Treaty on the Functioning of the European Union, and in particular Article 136 in combination with Article 121(2) thereof,
- having regard to Regulation (EU) No 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies ⁽²⁾,
- having regard to Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States ⁽³⁾,
- having regard to Regulation (EU) No 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area ⁽⁴⁾,
- having regard to Council Regulation (EU) No 1177/2011 of 8 November 2011 amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure ⁽⁵⁾,
- having regard to Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances ⁽⁶⁾,
- having regard to Regulation (EU) No 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area ⁽⁷⁾,
- having regard to its resolution of 15 December 2011 on the Scoreboard for the surveillance of macroeconomic imbalances: envisaged initial design ⁽⁸⁾;
- having regard to Annex I to the European Council Conclusions of 24-25 March 2011 entitled 'The Euro Plus Pact: Stronger economic policy coordination for competitiveness and convergence' ⁽⁹⁾,

⁽¹⁾ Texts adopted, P7_TA(2011)0542.

⁽²⁾ OJ L 306, 23.11.2011, p. 12.

⁽³⁾ OJ L 306, 23.11.2011, p. 41.

⁽⁴⁾ OJ L 306, 23.11.2011, p. 8.

⁽⁵⁾ OJ L 306, 23.11.2011, p. 33.

⁽⁶⁾ OJ L 306, 23.11.2011, p. 25.

⁽⁷⁾ OJ L 306, 23.11.2011, p. 1.

⁽⁸⁾ Texts adopted, P7_TA(2011)0583.

⁽⁹⁾ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/120296.pdf

Friday 26 October 2012

- having regard to the Communication from the Commission of 23 November 2011 on the Annual Growth Survey 2012 (COM(2011)0815),
- having regard to its resolution of 15 February 2012 on the contribution to the Annual Growth Survey 2012 ⁽¹⁾,
- having regard to the Council Recommendation of 10 July 2012 on the implementation of the broad guidelines for the economic policies of the Member States whose currency is the euro ⁽²⁾,
- having regard to the Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of Austria and delivering a Council opinion on the Stability Programme of Austria, 2011-2016 ⁽³⁾,
- having regard to the Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of Belgium and delivering a Council Opinion on the Stability Programme of Belgium, 2012-15 ⁽⁴⁾,
- having regard to the Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of Bulgaria and delivering a Council opinion on the Convergence Programme of Bulgaria, 2012-15 ⁽⁵⁾,
- having regard to the Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of Cyprus and delivering a Council opinion on the Stability Programme of Cyprus, 2012-2015 ⁽⁶⁾,
- having regard to the Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of the Czech Republic and delivering a Council opinion on the Convergence Programme of the Czech Republic, 2012-2015 ⁽⁷⁾,
- having regard to the Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of Denmark and delivering a Council opinion on the Convergence Programme of Denmark, 2012-2015 ⁽⁸⁾,
- having regard to the Council Recommendation on the National Reform Programme 2012 of Estonia and delivering a Council Opinion on the Stability Programme of Estonia, 2012-15 ⁽⁹⁾,
- having regard to the Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of Finland and delivering a Council Opinion on the Stability Programme of Finland, 2012-2015 ⁽¹⁰⁾,
- having regard to the Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of France and delivering a Council opinion on the Stability Programme of France, 2012-2016 ⁽¹¹⁾,
- having regard to the Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of Germany and delivering a Council opinion on the Stability Programme of Germany, 2012-16 ⁽¹²⁾,

⁽¹⁾ Texts adopted, P7_TA(2012)0048.

⁽²⁾ OJ C 219, 24.7.2012, p. 95.

⁽³⁾ OJ C 219, 24.7.2012, p. 1.

⁽⁴⁾ OJ C 219, 24.7.2012, p. 5.

⁽⁵⁾ OJ C 219, 24.7.2012, p. 9.

⁽⁶⁾ OJ C 219, 24.7.2012, p. 13.

⁽⁷⁾ OJ C 219, 24.7.2012, p. 17.

⁽⁸⁾ OJ C 219, 24.7.2012, p. 21.

⁽⁹⁾ OJ C 219, 24.7.2012, p. 25.

⁽¹⁰⁾ OJ C 219, 24.7.2012, p. 28.

⁽¹¹⁾ OJ C 219, 24.7.2012, p. 31.

⁽¹²⁾ OJ C 219, 24.7.2012, p. 35.

Friday 26 October 2012

- having regard to the Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of Greece ⁽¹⁾,
- having regard to the Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of Hungary and delivering a Council opinion on the Convergence Programme of Hungary, 2012-2015 ⁽²⁾,
- having regard to the Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of Ireland and delivering a Council Opinion on the Stability Programme of Ireland, 2012-2015 ⁽³⁾,
- having regard to the Council recommendation of 10 July 2012 on the National Reform Programme 2012 of Italy and delivering a Council opinion on the Stability Programme of Italy, 2012-2015 ⁽⁴⁾,
- having regard to the Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of Latvia and delivering a Council Opinion on the Convergence Programme of Latvia, 2012-15 ⁽⁵⁾,
- having regard to the Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of Lithuania and delivering a Council opinion on the Convergence Programme of Lithuania, 2012-15 ⁽⁶⁾,
- having regard to the Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of Luxembourg and delivering a Council opinion on the Stability Programme of Luxembourg, 2012-15 ⁽⁷⁾,
- having regard to the Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of Malta and delivering a Council opinion on the Stability Programme of Malta, 2012-15 ⁽⁸⁾,
- having regard to the Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of the Netherlands and delivering a Council opinion on the Stability Programme of the Netherlands, 2012-2015 ⁽⁹⁾,
- having regard to the Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of Poland and delivering a Council Opinion on the Convergence Programme of Poland, 2012-2015 ⁽¹⁰⁾,
- having regard to the Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of Portugal and delivering a Council Opinion on the Stability Programme of Portugal, 2012-16 ⁽¹¹⁾,
- having regard to the Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of Romania and delivering a Council opinion on the Convergence Programme of Romania, 2012-15 ⁽¹²⁾,

⁽¹⁾ OJ C 219, 24.7.2012, p. 38.

⁽²⁾ OJ C 219, 24.7.2012, p. 40.

⁽³⁾ OJ C 219, 24.7.2012, p. 44.

⁽⁴⁾ OJ C 219, 24.7.2012, p. 46.

⁽⁵⁾ OJ C 219, 24.7.2012, p. 50.

⁽⁶⁾ OJ C 219, 24.7.2012, p. 54.

⁽⁷⁾ OJ C 219, 24.7.2012, p. 58.

⁽⁸⁾ OJ C 219, 24.7.2012, p. 61.

⁽⁹⁾ OJ C 219, 24.7.2012, p. 88.

⁽¹⁰⁾ OJ C 219, 24.7.2012, p. 65.

⁽¹¹⁾ OJ C 219, 24.7.2012, p. 69.

⁽¹²⁾ OJ C 219, 24.7.2012, p. 72.

Friday 26 October 2012

- having regard to the Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of Slovakia and delivering a Council opinion on the Stability Programme of Slovakia, 2012-2015 ⁽¹⁾,
 - having regard to the Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of Slovenia and delivering a Council opinion on the Stability Programme of Slovenia, 2012-15 ⁽²⁾,
 - having regard to the Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of Spain and delivering a Council opinion on the Stability Programme of Spain, 2012-2015 ⁽³⁾,
 - having regard to the Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of Sweden and delivering a Council Opinion on the Convergence Programme of Sweden, 2012-15 ⁽⁴⁾,
 - having regard to the Council Recommendation of 10 July 2012 on the National Reform Programme 2012 of the United Kingdom and delivering a Council opinion on the Convergence Programme of the United Kingdom, 2012-2017 ⁽⁵⁾,
 - having regard to its resolution of 14 June 2012 on ‘Single Market Act: The Next Steps To Growth’ ⁽⁶⁾,
 - having regard to its resolution of 20 May 2010 on delivering a single market to consumers and citizens ⁽⁷⁾,
 - having regard to Rule 48 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 Employment and Social Affairs, the Committee on Budgets, the Committee on the Internal Market and Consumer Protection, the Committee on Constitutional Affairs and the Committee on Women’s Rights and Gender Equality (A7-0312/2012),
- A. whereas the economic, social, financial and sovereign debt crises have not yet abated;
- B. whereas the current economic situation has demonstrated that stronger coordination between Member States’ macroeconomic and budgetary policies is needed in order to achieve a more integrated and balanced economic union;
- C. whereas the economic context remains uncertain and whereas in 2010 the Member States committed themselves to the Europe 2020 goals for developing a smart, sustainable and inclusive EU economy; whereas, however, the EU is not on track to attain the Europe 2020 goals within the timeframe set, as the combined national targets are too low and the measures taken in respect of almost all the goals, especially those concerning energy efficiency, employment, poverty reduction and research and development, have not led to significant progress;
- D. whereas the European Semester framework was finally codified in Regulation (EU) No 1175/2011 of 16 November 2011 (the Wortmann-Kool report) and, as one of the main cornerstones of the economic and governance package, it has an essential role to play, leading the Union in taking further steps towards the completion of the Economic and Monetary Union (EMU);

⁽¹⁾ OJ C 219, 24.7.2012, p. 74.

⁽²⁾ OJ C 219, 24.7.2012, p. 77.

⁽³⁾ OJ C 219, 24.7.2012, p. 81.

⁽⁴⁾ OJ C 219, 24.7.2012, p. 85.

⁽⁵⁾ OJ C 219, 24.7.2012, p. 91.

⁽⁶⁾ Texts adopted, P7_TA(2012)0258.

⁽⁷⁾ OJ C 161 E, 31.5.2011, p. 84.

Friday 26 October 2012

- E. whereas the crisis and the increasing disparities in competitiveness since the introduction of the euro have highlighted the need for enhanced coordination of economic and employment policies and improved budgetary practices;
- F. whereas this is the first time that the European Semester has been fully implemented and whereas the necessary lessons must be drawn in order for it to reach its full potential;
- G. whereas the European Council is firmly committed to mobilising, at every level of governance in the EU, all levers, instruments and policies to stimulate smart, sustainable, inclusive, resource-efficient and job-creating growth by adopting the “Compact for growth and jobs”;
- H. whereas the European Council conclusions of 30 January 2012 state: ‘Growth and employment will only resume if we pursue a consistent and broad-based approach, combining a smart fiscal consolidation preserving investment in future growth, sound macroeconomic policies and an active employment strategy preserving social cohesion’, and whereas the EU should assist the Member States in creating a dynamic environment for economic growth and prosperity through sustainable policies;
- I. whereas Parliament made recommendations in its resolution of 15 February 2012 on employment and social aspects in the Annual Growth Survey 2012 ⁽¹⁾, in which it asked the Council to include the following priorities in its guidance for the 2012 European Semester: to ensure coherence and increase ambition to achieve the Europe 2020 objectives, to support sustainable job creation with investment and tax reform, to improve the quality of employment and conditions for increased labour participation, to tackle youth unemployment, to tackle poverty and social exclusion with the emphasis on groups with no or limited links to the labour market and to enhance democratic legitimacy, accountability and ownership;
- J. whereas the European Semester has gained in importance and its process now incorporates multiple documents or subdocuments to be submitted by the Member States (National Reform Programmes (NRPs), Stability and Convergence Programmes (SCPs), National Social Reports (NSRs) and National Job Plans (NJPs)), and whereas these documents need to address increasing numbers of goals; whereas the number of such documents and the overlap between them detract from the transparency and coherence of the European Semester process; whereas the quality of the documents submitted by Member States and the level of involvement of stakeholders and national parliaments in their drafting varies greatly;
- K. whereas between 2008 and mid-2012 the EU-27 unemployment rate climbed from around 7 % to 10,4 %, equating to about 25 million unemployed people;
- L. whereas across the EU more than one in five young people is unemployed (22 %), with youth unemployment exceeding 50 % in some Member States;
- M. whereas 8,3 million Europeans under the age of 25 are not in education, employment or training (NEET) and whereas this figure is continuing to rise;
- N. whereas more than 115 million people are in danger of social exclusion in the EU-27 because they are at an aggravated risk of poverty, are severely materially deprived or live in households with very low work intensity;
- O. whereas the single market is needed more than ever as a means of revitalising the European economy, by providing a concrete response to the crisis and acting as an instrument to promote competitiveness and preserve social welfare;

⁽¹⁾ Texts adopted, P7_TA(2012)0047.

Friday 26 October 2012

1. Welcomes the Council's country-specific recommendations for the euro area; recalls that, due to the implementation of the new economic and governance package, this is the first time that those recommendations have had a macroeconomic scenario of the euro area as a whole, and points out that they have gained a new level of detail; believes that the recommendations have not yet reached their full potential;
2. Points out that the European Semester is the proper framework within which to ensure the effective economic governance of the euro area Member States that are linked by common responsibility, bringing together the multilateral surveillance of budgetary and macroeconomic policies and the implementation of the European Strategy for Growth and Jobs as embodied in the EU2020 Strategy;
3. Is concerned to note that, in many Member States, national parliaments, social partners and civil society were not involved in the European Semester process; therefore urges the Commission to ensure that more democratic legitimacy be given to the process through the involvement of national parliaments, social partners and civil society;
4. Urges the Commission to avoid taking a one-size-fits-all approach to the recommendations given to Member States and to ensure that such recommendations are made according to the specific needs of the Member State concerned;
5. Recalls that the European Semester allows for the necessary *ex-ante* surveillance and coordination in the euro area context, both via the exchange of draft budget plans and the previous discussion of all major economic policy reform plans, allowing the reduction and/or elimination of any possible negative spill-over effects that may arise from national actions on other countries or on the euro area as a whole;
6. Welcomes the measures that have been proposed and believes that they should be progressively improved in order to achieve sound and sustainable public finances, minimize macroeconomic imbalances and boost competitiveness that will lead to higher growth and employment; stresses the need for proper coherence within and among the different Member States' recommendations, for better use of the macroeconomic scoreboard and for account to be taken of the negative spill-over effects of individual members' economic policies;
7. Notes the Commission's insistence on conducting growth and competitiveness-enhancing structural reforms to allow the EU to get to grips with the crisis and regain its pre-eminent role in the world economy; strongly supports the Commission's efforts to correct the macroeconomic imbalances within the euro area; calls on the Commission to intensify this work;
8. Looks forward to the dedicated study from the Commission on the interlinkages between deficits and surpluses in the euro area due to appear in autumn 2012;
9. Welcomes the emphasis on resource efficiency programmes, which have significant employment potential while also benefiting the environment, providing sustainable jobs and offering a clear return on investment for both public and private finances;
10. Notes that most of the structural reforms are concentrating on a small number of areas, such as labour markets (including wage determination), the taxation system, the banking sector, the pension system, the services sector (by removing unjustified restrictions on regulated trades and professions), liberalising certain industries, improving the efficiency and quality of public expenditure, cutting red tape, removing unnecessary layers of government, combating tax evasion, and reforming mortgage and real estate markets; acknowledges that there is still a long way to go and believes that the right foundations have to be set and that there is still room for improvement;

Friday 26 October 2012

11. Expresses its concern about the fact that no recommendations have been made on the Europe 2020 objectives to those Member States with a financial assistance programme; calls on the Commission to assess the impact of the economic adjustment programme on progress towards the Europe 2020 headline targets and to propose modifications designed to bring the adjustment programme into line with the Europe 2020 objectives;
12. Acknowledges the Commission's emphasis on labour market reforms with a view to increasing the competitiveness of the euro area; considers that wage increases should be kept in line with productivity; similarly shares the Commission's insistence on the importance of the long-term sustainability of pension systems;
13. Calls on the Commission to be more explicit, thorough and coherent in its recommendations, to continue to monitor recommendations made in the past, including detailed explanation and evaluation in those cases where the Commission thinks a country has only partially followed the recommendations and to take full account of the different economic and social realities of each Member State; considers that the Commission should make recommendations to Member States on how to minimise the negative spill-over effects of their internal policies and facilitate compliance of other Member States;
14. Notes that in this year's country-specific recommendations the Commission urges a number of Member States to restructure national systems for wage formation and/or to reduce national wage levels; stresses that the autonomy of social partners is a crucial element of any well-functioning labour market and should be taken into account;
15. Reiterates that the Commission is in a unique position to develop a truly detailed European macro-economic plan that can boost growth and jobs and urges the Commission to allow for adjustments of specific recommendations when these prove inadequate to achieve defined objectives; believes that in order to pursue such a plan the Commission should propose that European funds be used as efficiently as possible and should look for ways to adapt them to the needs that the EU currently has, something which requires adequate funding;
16. With a view to increasing the efficiency of the process, stresses the need to better align the timing of the release of the Annual Growth Survey (which targets the EU-27 as a whole) and the Alert Mechanism Report, introduced by the six-pack (which targets specific Member States only);
17. Highlights the fact that the Annual Growth Survey is based on the forecasts prepared by the Commission in the autumn; emphasises, therefore, the need to take potential forecast errors into account, as they may have consequences for the budgetary adjustment required from the Member States;
18. Points out that structural reforms can only yield results in the medium to long term and may not per se solve the recessionary spiral in which the EU currently finds itself;
19. Calls upon the Commission to include the EU2020 Strategy in the European Semester and to ensure that it is better reflected in the country-specific recommendations, such as policies aimed at tackling youth unemployment and combating poverty; notes that in many countries little or no progress is being made with regard to achieving the social and environmental targets of the EU2020 strategy, meaning that the EU as whole is not on track to make good on EU2020
20. Welcomes the important Commission initiative of 27 June 2012 to reinforce the fight against tax fraud and evasion; stresses that enhanced efforts in this area – at national and EU levels as well as in relation to third countries – should be a crucial element in programmes aimed at consolidating public finances; calls for the raised level of ambition signalled by the initiative to be fully materialised in future legislative proposals and to be clearly reflected in the continuous work within the framework of the European Semester;

Friday 26 October 2012

21. Encourages the Member States to strictly follow the rules set by the Stability and Growth Pact, as modified by the 'six-pack', by pursuing differentiated growth-friendly fiscal consolidation taking into account country-specific circumstances, and to render public finances more resilient and ensure that the European economy becomes more sustainable as well as to reduce pressure from the banking sector; firmly believes that the sustainability of fiscal discipline and fiscal institutions at both national and sub-national level should be strengthened and that government expenditure should be shifted towards long-term investment, which would foster sustainable growth; calls on the Member States to avoid unwanted negative spill-over effects by facilitating compliance by other Member States, in particular by taking due account of recommendations made to other Member States when drawing up their own policies;
22. Welcomes the end of excessive deficit procedures for several Member States; hopes that more procedures can be brought to an end in the near future; urges all political leaders to pursue such efforts and maintain their commitments while taking due account of the macroeconomic context;
23. Acknowledges the very demanding efforts that have been requested of all European citizens in recent years;
24. Urges all parties involved to speedily agree on the 'two-pack' to complement current legislation adopted in co-decision;
25. Asks the parties involved in the Council decision-making process not to call the decisions into question shortly after their adoption;
26. Lauds the economic dialogue held so far between European Parliament and national representatives; emphasises the importance of this dialogue with a view to achieving a fully operational European Semester framework and attaining the necessary level of democratic accountability with regard to all those involved; reiterates its commitment to conducting further dialogues that must be an important element of enhanced Europe-wide debate on economic and social priorities and instruments; believes that economic dialogue constitutes a milestone towards enhanced democratic accountability regarding economic policy surveillance and coordination within the EMU;
27. Notes with concern that the European Parliament has been constantly marginalised in the main economic decisions resulting from the crisis, and considers that it must be involved in order to increase the legitimacy of decisions which affect all citizens;
28. Considers it essential to enhance the Semester's legitimacy and to clear up the remaining legal ambiguities which may otherwise give rise to institutional conflicts in the future, including the superimposition and duplication of competences and responsibilities, and the lack of clarity and increased complexity of the EU's institutional framework;
29. Regrets that parliamentary scrutiny plays only a minor role in the process, and stresses that the European Semester must in no way jeopardise the prerogatives of the European Parliament and the national parliaments;
30. Calls on the Commission to report on the progress made regarding the call issued by Parliament in its resolution of 1 December 2011 on the European Semester for Economic Policy Coordination for 'the Commission to ask civil society and social partners to contribute an annual shadow report on the progress of the Member States regarding the headline targets and the implementation of measures proposed in the NRPs';
31. Calls on the Commission and the Council to agree on concrete measures that improve the participation and involvement of the social partners, NGOs and local authorities in the formulation and implementation of sustainable policies in the framework of the European Semester, at both national and European level; welcomes the fact that the Cypriot Presidency has identified this challenge as one of its priorities;

Friday 26 October 2012

32. Underlines the need to strengthen the working methods of the Eurogroup so as to increase its overall accountability towards the European Parliament; further believes that a move towards a stronger Community approach is needed;

33. Is of the opinion that the economic dialogue should be extended along the lines of the monetary dialogue with the ECB, to include regular discussions between the European Parliament, the Commission and the ECOFIN President on the preparation of and follow-up to the Annual Growth Survey and the Country-Specific Recommendations;

34. Reiterates the need to involve Parliament – the only supranational European institution with electoral legitimacy – in economic policy coordination;

35. Recalls that the European Parliament must be recognised as the appropriate European democratic forum for providing an overall evaluation at the end of the European Semester; believes that, as a sign of this recognition, representatives of the EU institutions and the economic bodies involved in the process should provide information to Members of the European Parliament when asked to do so;

36. Reiterates its urgent call to take action to improve the stability of the financial system in the euro area, to foster the creation of a genuine Economic and Monetary Union built on enhanced democratic legitimacy and accountability, and to implement the EU 2020 strategy; recalls that such action is needed to regain stability worldwide since the Union is a decisive global player; urges all political leaders to take the measures necessary to reach this goal;

37. Recalls that the recommendations by the Commission are a contribution to the Spring Council;

38. Recalls that any decision of the Council not to follow the Commission's recommendations should be duly explained and be accompanied by a full explanatory statement; welcomes the 'comply or explain' principle introduced by the 'six pack' regarding Country Specific Recommendations; believes that such a clause will increase the transparency and scrutiny of the EU Semester process;

39. Building on the European Semester for economic policy coordination (as codified in Regulation (EC) No 1466/97) the Commission should present a framework regulation specifying the role (including time-lines) of the Member States and the EU institutions under the various steps of the Semester cycle;

Sectoral contributions to the European Semester 2012***Employment and Social Policies***

40. Welcomes the Commission communication entitled 'Towards a job-rich recovery' (COM(2012)0173) and its staff working documents; calls on the Commission to make the exploitation of the job-creation potential of the green economy, health and social care and the ICT sector key priorities in the 2013 AGS;

41. Deplores the fact that, despite their political commitment during the 2012 Spring European Council and the Commission's guidance in the Employment Package, most Member States did not submit a National Job Plan (NJP) as part of their 2012 NRPs; considers it regrettable that the Commission has not made this a commitment which must be respected by the Member States, and urges it to call on the Member States to deliver their NJPs as soon as possible; calls, furthermore, for NJPs to include comprehensive measures for job creation and green employment, a link between employment policies and financial instruments, labour market reforms, a clear timetable for rolling out the multiannual reform agenda over the next 12 months and an indication of both the fields and regions experiencing specialisation shortages and surpluses; calls on the Commission to follow up its plan for a labour market monitoring system based on objective data and for an individual tracking scheme for countries that do not comply with country-specific recommendations;

Friday 26 October 2012

42. Proposes that the Commission oversee the preparation of NJPs;
43. Points out that social economy enterprises are part of the European social model and the single market and therefore deserve strong recognition and support, and that their specificities need to be taken into account when designing European policies; reiterates its call on the Commission to draw up a framework for the social economy, recognising its components and involving both the Member States and stakeholders in order to encourage the exchange of best practices, as it is an important element of the European social model and the single market;
44. Stresses the importance of ensuring greater social cohesion, without neglecting cooperation by companies in achieving this, which could be encouraged notably by allowing them to promote their innovative and virtuous actions in social matters through a label which would attract new investors and promote the development of a European social model in the long term;
45. Welcomes the recognition of the importance of access to finance for SMEs, as they are the cornerstone of employment and job creation within the EU and have significant potential for addressing youth unemployment and the gender imbalance; urges the Member States to make access to finance for SMEs an absolute priority in their national growth plans;
46. Regrets that the Council failed to take into account Parliament's call for a focus on job quality in its guidance for 2012; agrees with the Commission that all employment contracts should give workers access to a core set of rights, including pension rights, social protection and access to lifelong learning; calls on the Commission to include job quality, training and advanced training, core workers' rights, and support for labour market mobility, self-employment and cross-border mobility by increasing security for workers in transition between jobs in the 2013 AGS;
47. Calls on the Member States to combat the existence and proliferation of non-decent labour contracts and false self-employment and to ensure that people with temporary or part-time contracts or who are self-employed have adequate social protection and access to training and, when feasible, advanced training, and to implement related framework agreements;
48. Calls for labour market flexibility to be improved by introducing modern forms of employment contract; recognises that part-time employment is often the choice of the employee, especially among women;
49. Welcomes the recommendations addressing the low participation of women in the labour market; notes, however, that a broader gender equality perspective going beyond employment rates is missing; calls on the Commission to address labour market segregation, unequal distribution of care responsibilities and the effects of fiscal consolidation on women in its policy guidance;
50. Calls on the Commission and the Member States to address the low labour market participation of disadvantaged groups, including people belonging to minorities (e.g. Roma), coming from the poorest micro-regions or living with disabilities; calls on the Commission and the Member States also to address the unequal distribution of jobs between regions and social groups and the effects of fiscal consolidation on vulnerable social groups;
51. Notes that recommendations have been made to several Member States regarding wages; stresses that wages are, above all, the income that workers need to live on; stresses that the Commission's practice of determining wage formation and wage levels in programme countries may increase the risk of in-work poverty or wage inequalities which harm low-income groups; calls on the Commission to step up policy guidance to those Member States in which wages have stagnated in comparison with productivity levels, while respecting the autonomy of the social partners, as protected *inter alia* in Articles 152 and 153(5) of the Treaty on the Functioning of the European Union (TFEU);

Friday 26 October 2012

52. Welcomes the increased focus of the Commission and the Council on combating youth unemployment; calls on the Commission to propose, without prejudice to national legislation, a binding European Youth Guarantee without delay, in order to improve effectively the situation of young people who are not in employment, education or training (NEET) and to gradually overcome the problem of youth unemployment in the EU; stresses that the European Youth Guarantee requires specific European financial support, especially in those Member States with the highest youth unemployment rates, and calls for some of the unspent Structural Funds to be deployed for this purpose; calls on the Council to swiftly decide on the proposals in the Employment Package;

53. Welcomes the inclusion of the recommendation to tackle the social consequences of the crisis in the 2012 guidance and the increased focus on combating poverty in the country-specific recommendations; is gravely concerned, however, about the increase in poverty (including in-work poverty and poverty among elderly people) and unemployment in the EU; calls on the Member States to raise their ambitions, to step up the measures they are taking to combat poverty, and to follow up closely on the Commission's recommendations; calls on the Commission explicitly to address in-work poverty, poverty among people with limited or no links to the labour market and poverty among elderly people in the 2013 AGS; emphasises that Article 9 of the TFEU needs to be mainstreamed throughout the European Semester;

54. Reiterates the need to require additional commitments from the Member States in the social field, giving the EU the responsibility of implementing the priorities chosen in a context of growth and social cohesion within the single market;

55. Stresses the urgent need to develop new tools to fight social imbalances and unemployment in Europe;

56. Calls on the Member States and on the European Council to involve social and health ministers in the European Semester process and at all stages of the NRP process, as this would involve strengthening the role of the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO), which is necessary as the issues of pensions, wage policies and the tax wedge on labour fall within its mandate;

57. Calls on the Commission to report on the use of a common, uniform set of benchmarks across the EU for assessing the NRPs; stresses that standards and data should reflect social inclusion and environmental sustainability, in addition to economic data; calls on the Commission to encourage the Member States to use social indicators and data that measure progress and development which go beyond the measure of GDP, as this is crucial in order to measure progress on reaching the Europe 2020 targets;

Budgetary Policies

58. Urges the Commission, in its next AGS, to fully address and underline the role of the EU budget in the European Semester process by providing factual and concrete data on its triggering, catalytic, synergetic and complementary effects on overall public expenditure at local, regional and national levels; believes, moreover, that funding at EU level can generate savings for the Member States' budgets and that this should be emphasised; considers that in terms of stimulating growth and boosting job creation, as well as successfully reducing macroeconomic imbalances throughout the Union, the EU budget has a vital role to play;

59. Urges the Council, during negotiations on the 2013 EU budget, to accept a political and public debate on the level of appropriations needed to implement the 'Compact for Growth and Jobs' adopted at the June 2012 European Council; expresses its strong concern at the position repeatedly taken by the Council to reduce artificially the level of payment appropriations available in the EU budget, which would jeopardise the EU's ability to meet its legal and political commitments; calls, once more, on the Council to agree with Parliament and the Commission on a common method to assess real payment needs; underlines the urgency of the situation, especially in headings 1A and 1B (competitiveness for growth and employment / cohesion for growth and employment), as well as in rural development funds;

Friday 26 October 2012

60. Calls on the Member States to fully seize the possibilities agreed in the 'Compact for Growth and Jobs' to consider reallocations within their national structural and cohesion fund envelopes (EUR 55 billion) in support of research and innovation, SMEs (including facilitating their access to EU funds) and youth employment; calls on the Commission to provide, in its AGS 2013 to be published in November 2012, a full and complete picture of what has been achieved in that respect;

61. Emphasises, moreover, that the 'Compact for Growth and Jobs' expressly invites Member States to use part of their structural fund allocation to work with the EIB on loan risk and loan guarantee facilities for knowledge and skills, resource efficiency, strategic infrastructure and access to finance for SMEs; is of the opinion that Member State authorities should seek to maximise the growth potential offered by other already agreed EU initiatives financed by the EU budget, such as the pilot phase for project bonds, the various existing EU innovative financial instruments in place since 2007 in the field of research innovation, support to SMEs or microcredit schemes; underlines, furthermore, the increased EIB lending capacity for the period 2012-2015; believes that, if properly combined and implemented, all these measures could form the foundations of an EU investment programme for the years to come with a dramatically positive effect on GDP and employment in the EU-27, with some academics estimating a GDP increase of 0,56 % and 1,2 million additional jobs;

62. Calls, therefore, on the Member States neither to consider their national GNI contribution to the EU budget as an adjustment variable in their consolidation efforts, nor to seek to reduce artificially the volume of the EU budget's growth-enhancing expenditure contrary to the political commitments they have made at the highest level; is, however, aware of the economic tension between the need to consolidate public finances in the short run, on the one hand, and any potential increase for some Member States in their GNI-based contribution brought about by an increase in the level of payments in the EU budget; restates, therefore, its strong calls for reform of the financing of the EU budget – to be agreed in the framework of the 2014-2020 MFF negotiations – by reducing the share of Member States' GNI-based contributions to the EU budget to 40 % by 2020, thereby contributing to their consolidation efforts ⁽¹⁾;

63. Asks the Commission, moreover, to explore the possibility of excluding the GNI-based contribution to the EU budget from the calculation of the structural deficit as defined in the two-pack;

64. Warns that, in the context of the negotiations on the multiannual financial framework for 2014-2020, lowering the level of the EU budget, given its role as a catalyst for investment, would have an adverse effect on the creation of growth and jobs in the Union;

Internal market

65. Urges the Commission to make single market governance a key priority, since it contributes substantially to reaching the targets of the European Semester, namely sustainable economic growth and employment; takes the view that the Commission's country-specific recommendations should, at the same time, offer the Member States more practical solutions for improving the functioning of the single market, so that stronger public support and political commitment are created to encourage the completion of the single market;

66. Calls on the Council and the Commission to link the European Semester to the Single Market Act in order to secure the coherence of European economic policy and the creation of sustainable growth;

67. Emphasises that the initiatives taken in the framework of the Single Market Act must be consistent with, and contribute to, achieving the objectives of the seven flagship initiatives of the Europe 2020 Strategy for smart, sustainable and inclusive growth;

68. Calls on the Commission to coordinate the annual report on the integration of the single market with other single market monitoring instruments, such as the Internal Market Scoreboard, in order to avoid overlap and to produce efficient and clear recommendations and to secure the coherence of European economic policy;

⁽¹⁾ Texts adopted P7_TA(2012)0245.

Friday 26 October 2012

69. Lauds in this context the Commission's proposal to define country-specific recommendations relating to the single market, especially concerning correct transposition of legislation and transposition deadlines; calls on the Commission to step up its actions in ensuring the proper implementation and enforcement of EU legislation in the Member States by making determined use of all its powers;

70. Urges the Commission and the Member States to give priority to the adoption of the 12 key actions of the Single Market Act, as an important contribution to strengthening the Single Market in a comprehensive and balanced manner;

Constitutional affairs

71. Considers that close cooperation between the European Parliament and the national parliaments, pursuant to Article 9 of Protocol No 1, is essential in order to establish the necessary democratic legitimacy and national ownership of the Semester process; calls for a reinforcement of the dialogue between the European and the national levels, respecting the division of labour between them;

72. Considers that in addition to ensuring cooperation between parliaments, it is also necessary to make greater efforts to communicate with the citizens and actively include them in the process;

73. Takes the view that, in order to reduce concerns over legitimacy, the national parliaments should play a more active role in the process, and suggests that the Member States adjust their internal procedures so that the national parliaments can be involved in the discussion of their countries' fiscal and reform plans before their submission to the EU;

Women's Rights and Gender Equality

74. Reiterates its call on the Member States to integrate a gender equality perspective into the European Semester process, as well as to put more focus on training within labour-market policies by taking into account women's needs and situation when implementing the policy guidance given in the Annual Growth Survey; commends those Member States that have mainstreamed the gender dimension throughout their National Reform Programmes (NRPs) but regrets that many Member States have omitted any mention of gender; calls on the Commission to propose to the Member States a uniform format and criteria for integrating a gender equality perspective into the NRPs;

75. Calls on the Member States to set specific quantitative targets in their respective NRPs in line with women's employment statistics, and to take specific measures targeting vulnerable groups of women (such as young, migrant, disabled and single mothers);

76. Recalls that the gender pay gap is still an issue in the EU and that it also affects the level of pensions that women later receive, which may consequently result in women finding themselves below the poverty line; calls, therefore, on the Member States to set qualitative targets in NRPs related to closing the gender pay gap, thus reducing both the unfair treatment of women pensioners and the poverty vulnerability of elderly women;

*

* *

77. Instructs its President to forward this resolution to the European Council, the governments of the Member States, the Commission, the national parliaments and the European Central Bank.

Friday 26 October 2012

EU-Russia trade relations following Russia's accession to the WTO

P7_TA(2012)0409

European Parliament resolution of 26 October 2012 on EU-Russia trade relations following Russia's accession to the WTO (2012/2695(RSP))

(2014/C 72 E/10)

The European Parliament,

- having regard to its previous resolutions on Russia, in particular its resolutions of 14 December 2011 ⁽¹⁾ on the EU-Russia Summit of 15 December 2011 and of 9 June 2011 ⁽²⁾ on the EU-Russia Summit of 9-10 June 2011,
- having regard to the Partnership and Cooperation Agreement (PCA) between the EU and the Russian Federation ⁽³⁾, and to the negotiations initiated in 2008 on a new EU-Russia agreement, as well as to the 'Partnership for Modernisation' initiated in 2010,
- having regard to the Report of the Working Party on the Accession of the Russian Federation to the World Trade Organisation ⁽⁴⁾ and the Addendum thereto ⁽⁵⁾ of 17 November 2011,
- having regard to the Council Decision of 14 December 2011 establishing the position to be taken by the European Union within the relevant instances of the World Trade Organisation on the accession of the Russian Federation to the WTO ⁽⁶⁾,
- having regard to its position of 4 July 2012 on the draft Council decision on the conclusion of the Agreement between the European Union and the Russian Federation relating to the preservation of commitments on trade in services contained in the current EU-Russia Partnership and Cooperation Agreement ⁽⁷⁾,
- having regard to its position of 4 July 2012 on the draft Council decision on the conclusion of the Agreement between the European Union and the Government of the Russian Federation on trade in parts and components of motor vehicles between the European Union and the Russian Federation ⁽⁸⁾,
- having regard to its position of 4 July 2012 on the draft Council decision on the conclusion of the Agreement in the form of an Exchange of Letters between the European Union and the Russian Federation relating to the introduction or increase of export duties on raw materials ⁽⁹⁾,
- having regard to the draft legislative resolution on the draft Council decision on the conclusion of the Agreement in the form of an Exchange of Letters between the European Union and the Russian Federation relating to the administration of tariff-rate quotas applying to exports of wood from the Russian Federation to the European Union and the Protocol between the European Union and the Government of the Russian Federation on technical modalities pursuant to that Agreement ⁽¹⁰⁾,
- having regard to the report from the Commission to the European Council entitled 'Trade and Investment Barriers Report 2011 – Engaging our strategic economic partners on improved market access: Priorities for action on breaking down barriers to trade' (COM(2011)0114),

⁽¹⁾ Texts adopted, P7_TA(2011)0575.

⁽²⁾ Texts adopted, P7_TA(2011)0268.

⁽³⁾ OJ L 327, 28.11.1997, p. 1.

⁽⁴⁾ WT/ACC/RUS/70; WT/MIN(11)/2.

⁽⁵⁾ WT/ACC/RUS/70/Add.1; WT/MIN(11)/2/Add.1.

⁽⁶⁾ OJ L 6, 10.1.2012, p. 6.

⁽⁷⁾ Texts adopted, P7_TA(2012)0284.

⁽⁸⁾ Texts adopted, P7_TA(2012)0285.

⁽⁹⁾ Texts adopted, P7_TA(2012)0286.

⁽¹⁰⁾ (see report A7-0177/2012 - 16775/2011 - C7-0515/2011 - 2011/0322(NLE)).

Friday 26 October 2012

- having regard to the report from the Commission to the European Council entitled ‘Trade and Investment Barriers Report 2012’ (COM(2012)0070),
 - having regard to Rule 110(2) of its Rules of Procedure,
- A. whereas the Russian Federation concluded its multilateral negotiations on accession to the WTO after 18 years of negotiations on 10 November 2011 and was officially accepted as a member on 16 December 2011;
- B. whereas the EU’s evolving common foreign security and energy policy should, in line with the principle of conditionality, include Russia as an important partner provided that the fundamental values upon which the Union is based, such as democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law are shared and upheld;
- C. whereas the EU is a strategic trade partner of Russia, ranking as its first and still growing source of imports, its main export destination and a key investment partner (in terms of inward foreign direct investment), accounting for 47,1 % of Russia’s overall trade; whereas this relationship is still growing, while Russia has also become the EU’s second source of imports (EUR 158,6 billion) and its fourth export destination (EUR 86,1 billion) (2010 figures);
- D. whereas, while imports from Russia are mainly energy and mineral fuels products (79,5 %), the EU’s exports to Russia are diverse, covering nearly all categories of machinery and transport equipment (44,7 %), manufactured goods, food and live animals (2010 figures);
- E. whereas at the Khanty-Mansyisk Summit of 26-27 June 2008 the EU and Russia launched negotiations for a New Partnership and Cooperation Agreement, to replace the existing one and provide an updated contractual framework for EU-Russia relations in the years to come, including substantial and legally binding provisions on trade, investment and energy;
- F. whereas the European Union continues to be committed to further deepening and developing its relations with Russia and to the principles enshrined in the Partnership for Modernisation, based on common interests and a deep commitment to universal values and democratic principles, respect for fundamental and human rights and the rule of law;
1. Welcomes Russia’s accession to the WTO, as ratified by the Russian State Duma on 10 July 2012; believes that Russia’s anchoring to the multilateral trading system and its rules represents a further step in improving the bilateral EU-Russia relationship;
2. Notes with concern, however, that in the run-up to the completion of its WTO accession Russia has not been fully living up to its future WTO obligations, as it has introduced or extended a number of potentially trade restrictive measures, including a ban on imports of live animals from the EU, legislation including preferences for domestic producers in public procurement, decisions establishing seasonal import duties on certain types of sugar, and new legislation on a recycling scheme for vehicles;
3. Calls on Russia to remove the unjustified temporary bans, unilateral temporary tariff increases and protectionist measures and barriers to open and fair trade identified by the G-20’s biannual report on Trade and Investment Measures and by the Commission’s Trade and Investment Barriers Reports, which have done great damage to EU exporters;
4. Emphasises that the EU and Russia are interdependent trading partners, especially with respect to raw materials and vital energy sources; considers that their economic relations have a strong potential that the WTO accession will help tap into;

Friday 26 October 2012

5. Reckons that Russia's WTO schedules of commitments feature a very substantial lowering and binding of tariffs in goods and services; calls on Russia to fully implement without delay all its commitments in order to derive all available benefits from its WTO membership;
6. Is deeply concerned at the continuing problem of the production and sale of counterfeit products in Russia; calls on the Russian Federation to take measures in the field of intellectual property rights (IPRs), and to implement, as soon as possible and to its fullest extent, its WTO commitments in the TRIPS agreement;
7. Believes that Russia would thereby evidence its strong commitment to enhancing its role and its companies' involvement in the multilateral trading system; views the opening of Russia's economy to more international trade and investment as an added incentive for the Russian Government to strongly pursue its ongoing reforms, fighting corruption, implementing the rule of law and enhancing the business climate;
8. Calls on the Commission and the EEAS to support Russia's efforts to join the OECD, a process which entails committing to a set of trade-related guidelines and principles covering, inter alia, market openness, fighting bribery, credit export agencies and governance of state-owned enterprises; urges Russia to join other WTO agreements, in particular the Government Procurement Agreement, for which it will already have observer status;
9. Urges Russia to contribute to relaunching the bilateral negotiations for the New Partnership and Cooperation Agreement; insists that such negotiations must take place between the EU and Russia only; considers that involving other members of the Customs Union which are not in the WTO would hamper the negotiations;
10. Regards full compliance with WTO rules and gradual implementation of its commitments by Russia as being a necessary precondition for sustaining such further negotiations aimed at establishing common rules in twelve major regulatory aspects, including mutual non-preferential commitments in trade in goods and services, sanitary and phytosanitary measures (SPS), IPRs, public procurement, competition, energy and investment;
11. Calls on the Commission to defend as essential elements in these negotiations:
 - use of European technical regulations, standards and conformity assessment procedures; calls for an agreement between European and Russian standard-setting bodies and for the fast establishment of a unified system of conformity assessment accreditation in Russia;
 - a substantial and legally binding chapter on energy, building on the goodwill shown in the signature of the Early Warning Mechanism in 2011 and based on clear principles of transparency, fair competition, reciprocity and non-discrimination; asserts that the objective should remain an open and transparent EU-Russia energy market;
 - elimination by Russia of its dual pricing of goods, and clarification and stabilisation of the terms of establishment of services companies, in order to enhance investment by such EU companies in Russia;
 - the large untapped market for public procurement; calls on the Commission to secure fair reciprocal rules and procedures for the attribution of public tenders in both markets at national and subnational level;
 - reform of Russian customs procedures in the light of international conventions;
 - an SPS chapter, to ensure that each party can apply only justified temporary bans, in particular for agricultural products, livestock and food products, in full respect of the principles of proportionality, transparency, non-discrimination and scientific justification;

Friday 26 October 2012

- a Sustainable Development chapter, based on the United Nations Universal Declaration of Human Rights and the relevant ILO core conventions, to underline the need to fully respect and enforce human rights and labour rights, as well as a commitment to the implementation of the relevant international environmental standards; calls, to this end, for the establishment of dialogue with relevant stakeholders and civil society;
 - a comprehensive chapter on the protection of all forms of IPRs; calls for this chapter to include principles for the protection of geographical indications (GIs) and a list of protected GIs;
 - an upgrade of the current dispute settlement regime, to ensure greater transparency and non-discrimination in the investment climate in Russia;
 - a comprehensive and ambitious chapter on investment, including extensive liberalisation provisions (prohibition of a wide range of performance requirements and pre-establishment of national treatment), as well as robust investment protection measures, on the basis of Parliament's recommendations for the new EU-wide investment competence (resolution of 6 April 2011 on the future European international investment policy ⁽¹⁾);
12. Calls, in addition, for the easier movement of capital between the parties, on the basis of respect for the international conventions on money laundering; supports the negotiations for a Bilateral Investment Treaty between the EU and Russia, including provisions on state-investor and, where appropriate, investor-state disputes, harmonising the level playing field between EU investors and enhancing and stabilising the legal framework for European investments in Russia;
13. Calls on the Commission to closely monitor the implementation of the various sector-specific plans in Russia to identify possible trade-distortive and discriminatory provisions therein, such as elements of subsidisations and local content requirements in public procurement and investment, and urges the Commission to actively engage with Russia to ensure it does fully enforce its WTO commitments after becoming a fully-fledged member; considers, in this regard, that the Commission should revert to WTO-compatible trade defence instruments (TDI) where appropriate;
14. Is of the opinion that the EU-Russia Partnership of Modernisation (PoM) is a useful initiative for enhancing the new economic and commercial relations between the two parties in the WTO and bilaterally; underlines the need for the European Commission and the Russian Government to ensure an efficient use of the funding of projects implemented under the PoM; is of the view that by fostering synergies between both parties' trade and investment strategies, the full potential of Russia's economic modernisation and diversification can be more effectively realised;
15. Urges the Russian government to commission an independent and impartial investigation into the Yukos case;
16. Considers the implementation of the 'Common Steps towards visa-free travel' as an element of the EU-Russia trade and investment relations and notes the latest developments in negotiations on an EU-Russia Visa Waiver Agreement;
17. Expresses its concern that the Russia-Kazakhstan-Belarus Customs Union will impose additional barriers to trade with Russia, thus going against WTO rules and Russia's WTO commitments;
18. Calls on Russia to capitalise on its membership of WTO to join forces with the EU and other Eastern European countries parties to this multilateral trade organisation in assisting Belarus in implementing WTO compatible trade rules and practices with the aim of joining in at the earliest possible opportunity;

⁽¹⁾ Texts adopted, P7_TA(2011)0141.

Friday 26 October 2012

19. Is of the opinion that the accession of Russia to the WTO can facilitate trade flows between the EU and Russia, while stimulating economic growth and jobs creation on both sides; sees the possibility of concluding a New Partnership and Cooperation Agreement as a further opportunity to contribute to an enhanced partnership between the two parties, while fostering sustainable development in their joint neighbourhood;

20. Instructs its President to forward this resolution to the Council and the European Commission and to the Government and the Parliament of the Russian Federation.

Elections in Belarus

P7_TA(2012)0410

European Parliament resolution of 26 October 2012 on the situation in Belarus after the parliamentary elections of 23 September 2012 (2012/2815(RSP))

(2014/C 72 E/11)

The European Parliament,

- having regard to its previous resolutions on Belarus, in particular those of 5 July 2012 ⁽¹⁾, 29 March 2012 ⁽²⁾, 16 February 2012 ⁽³⁾, 15 September 2011 ⁽⁴⁾, 12 May 2011 ⁽⁵⁾, 10 March 2011 ⁽⁶⁾, 20 January 2011 ⁽⁷⁾, 10 March 2010 ⁽⁸⁾ and 17 December 2009 ⁽⁹⁾,
- having regard to the statements of 24 September 2012 by President Schulz, of 24 September 2012 by Vice-President Protasiewicz, Mr Brok and Mr Kaczmarek, of 25 September 2012 by Mr Vigenin and of 26 September 2012 by the Delegation for relations with Belarus, all on the parliamentary elections in Belarus,
- having regard to the statement of 24 September 2012 by EU High Representative Catherine Ashton and Commissioner Štefan Füle on the parliamentary elections in Belarus,
- having regard to the Council conclusions on Belarus (3191st Foreign Affairs Council meeting, Luxembourg, 15 October 2012),
- having regard to the conclusions of the European Council of 1-2 March 2012 expressing its deep concern over the further deterioration of the situation in Belarus,
- having regard to Council Decision 2012/126/CFSP of 28 February 2012 implementing Decision 2010/639/CFSP concerning restrictive measures against Belarus ⁽¹⁰⁾,
- having regard to the Council conclusions on the launching of a European dialogue of modernisation with Belarusian society (3157th Foreign Affairs Council meeting, Brussels, 23 March 2012,

⁽¹⁾ Texts adopted, P7_TA(2012)0300.

⁽²⁾ Texts adopted, P7_TA(2012)0112.

⁽³⁾ Texts adopted, P7_TA(2012)0063.

⁽⁴⁾ Texts adopted, P7_TA(2011)0392.

⁽⁵⁾ Texts adopted, P7_TA(2011)0244.

⁽⁶⁾ OJ C 199 E, 7.7.2012, p. 182.

⁽⁷⁾ OJ C 136 E, 11.5.2012, p. 57.

⁽⁸⁾ OJ C 349 E, 22.12.2010, p. 37.

⁽⁹⁾ OJ C 286 E, 22.10.2010, p. 16.

⁽¹⁰⁾ OJ L 55, 29.2.2012, p. 19.

Friday 26 October 2012

- having regard to Council Regulation (EU) No 354/2012 of 23 April 2012 amending Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus,
 - having regard to the statement of 28 February 2012 by High Representative Catherine Ashton on her decision and that of the Polish Government to recall the head of the EU delegation in Minsk and the Polish ambassador to Belarus respectively,
 - having regard to Council of Europe Parliamentary Assembly resolution 1857 (2012) of 25 January 2012 on the situation in Belarus, which condemns the ongoing persecution of members of the opposition and the harassment of civil society activists, independent media and human rights defenders in Belarus,
 - having regard to the report of the UN High Commissioner for Human Rights of 10 April 2012, and to resolution 17/24 of the UN Human Rights Council of 17 June 2011, on the human rights situation in Belarus,
 - having regard to the declaration of the Eastern Partnership Summit adopted in Prague on 7-9 May 2009 and the declaration on the situation in Belarus adopted at the Eastern Partnership Summit in Warsaw on 30 September 2011,
 - having regard to the joint statement made by the Ministers of Foreign Affairs of the Visegrád Group and of Estonia, Latvia and Lithuania, in Prague on 5 March 2012,
 - having regard to Article 19 of the Universal Declaration of Human Rights, Article 19 of the International Covenant on Civil and Political Rights and Article 11 of the EU Charter of Fundamental Rights,
 - having regard to the Needs Assessment Mission Report of 16-18 July 2012, the Interim report of 14 September, and the Statement of the preliminary findings and conclusions on the parliamentary elections in Belarus, presented by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the OSCE Parliamentary Assembly (OSCE PA) by 24 September 2012,
 - having regard to the 'Human Rights Defenders for Free Elections' campaign preliminary report on parliamentary elections in Belarus of 23 September 2012,
 - having regard to Rule 110(2) and (4) of its Rules of Procedure,
- A. whereas none of the parliamentary or presidential elections held in Belarus since 1995 have been recognised by the OSCE as being free and fair;
 - B. whereas the parliamentary elections held on 23 September 2012 – in particular the conduct of those elections and their pluralistic nature – were seen by the EU as a new opportunity for Belarus to demonstrate its respect for democratic values and European standards;
 - C. whereas according to the international election observation mission of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the OSCE Parliamentary Assembly, in these parliamentary elections many OSCE commitments – including the citizens' rights to associate, stand as candidates, and express themselves freely – were not respected, despite some improvements to the electoral law;
 - D. whereas it is evident that with no democratic opposition candidates elected to the national parliament, and with many political prisoners still in jail, the Belarusian authorities ignored the numerous calls of the international community, and decided instead to take another step away from democracy and to further isolate their country;

Friday 26 October 2012

- E. whereas a large number of democratic opposition candidates were denied registration on the grounds of minor inaccuracies in their income and property statements, or through the invalidation of ballot-access signatures; whereas many of them were not allowed to be part of the electoral commissions;
- F. whereas the registration of candidates was carried out in a discriminatory manner; whereas a majority of those who were denied the right to register were received by the initiative groups in support of Mikola Statkevich and Ales Mikhalevich; whereas Aliaksandr Milinkevich, chairman of the Movement for Freedom, and Mikhail Pashkevich, activist of the 'Tell the Truth' campaign, among others, were denied the right to register as candidates;
- G. whereas the candidates were only allowed to present a pre-recorded speech of at most five-minutes on state-owned media; whereas airtime was refused to numerous candidates, in particular those who called for the elections to be boycotted, and, as a result, many candidates for the opposition parties were unable to communicate their views to the voters;
- H. whereas, notwithstanding the freedom of expression guaranteed in the Belarusian Constitution, freedom of the press remains very restricted in Belarus, independent media face ongoing harassment and critical voices are silenced by aggressive means; whereas news coverage of peaceful demonstrations against President Lukashenko and media reports on the deteriorating economic situation have been curtailed; whereas criticism of the country's government and President is considered a criminal offence;
- I. whereas many students and employees of state-owned companies were forced to vote early under the threat of losing their scholarships or jobs; whereas voters in the armed forces were improperly pressured into voting early;
- J. whereas the OSCE Election Observation Mission was invited by the Belarusian authorities to observe elections without any restrictions or limitations; whereas, just a week before of the parliamentary elections, two members of the mission – a German and a Lithuanian MP – were denied entry into Belarus, without any exhaustive explanation or clarification given, casting doubt on the declarations made by the Belarusian authorities and undermining the atmosphere of trust between both sides;
- K. whereas the EU welcomed the deployment of the OSCE/ODIHR observers and stressed the importance of guaranteeing those observers effective access to all stages of the electoral process, including the counting of votes, and underlined in particular the importance of guaranteeing the rights of the opposition both to stand for election and to gain access to the electoral monitoring commissions and the media;
- L. whereas according to the OSCE/ODIHR preliminary findings and conclusions, these elections were not competitive, and there were many cases where the Belarusian Electoral Code, which was supposed to increase campaigning opportunities, was violated; whereas the election took place in a strictly controlled environment, with barely visible campaigning, and was marked by a lack of transparency in vote counting and in aggregating results from various polling stations;
- M. whereas twelve political prisoners remain in detention in Belarus, including the human rights defender and Vice President of the International Federation of Human Rights Ales Bialiatski, Nobel Prize candidate and nominee for the European Parliament Sakharov Prize for Freedom of Thought, as well as the former presidential candidate Mikola Statkevich and the leader of the youth organisation 'Malady Front', Zmitser Dashkevich;
- N. whereas on 26 September 2012 the prominent opposition activist Siarhei Kavalenka was released from prison after he had asked for clemency under increasing pressure from prison authorities who had put him in solitary confinement and blackmailed him; whereas the release of political prisoners is not unconditional, as they are subject to constant surveillance by the authorities and must regularly report to the police about their whereabouts;

Friday 26 October 2012

- O. whereas Belarus remains the only country in Europe which still issues death sentences and carries out executions; whereas, according to human right activists, around 400 people have been executed in Belarus since 1991;
- P. whereas Belarus endorsed the Prague Declaration at the Eastern Partnership Summit of 7-9 May 2009, reaffirming its commitment to the principles of international law and to fundamental values, including democracy, the rule of law and respect for human rights and fundamental freedoms;
1. Deeply regrets that the conduct of parliamentary elections in Belarus once again failed to meet many of the basic standards set by the OSCE, resulting – notwithstanding some minor improvements in the elections' legal framework – in unfair, non-free, non-transparent and unbalanced consultations;
 2. Believes that the parliament elected in Belarus falls short of democratic legitimacy and that the European Parliament will therefore continue its policy of not recognising it, both in its bilateral relations with Belarus and within the framework of the Euronest Parliamentary Assembly; regrets that the Euronest Parliamentary Assembly does not at this stage have grounds to invite the official representatives of the legislative body in Belarus to take their seats in the Assembly, and that their absence deprives the Eastern Partnership of an important tool for bringing Belarus closer to the EU's democratic values;
 3. Points out that the EU hoped for an improvement in the organisation of the elections, noting that the persistent failure to organise free and fair elections is a further set-back for Belarus and will remain a serious challenge in the conduct of relations between Belarus and the EU;
 4. Condemns the detention of journalists, a tactic obviously aimed at controlling the free flow of information by not allowing journalists to exercise their regular work duties, thus violating one of the most basic freedoms, the freedom of speech;
 5. Regrets the decision of the Belarusian authorities repeatedly, in the past couple of years, to refuse entry visas to Members of the European Parliament and to national parliamentarians; calls on the Belarusian authorities not to create any further obstacles that prevent the European Parliament Delegation for relations with Belarus from visiting the country;
 6. Urges the Belarusian authorities to review their actions, improve and upgrade the electoral legislation and conduct new, free and fair parliamentary elections in line with international standards; urges them also immediately and unconditionally to release, and rehabilitate, all political prisoners, without coercing them into signing false confessions and pardon pleas, and to respect their own people by protecting their basic freedoms and allowing them to enjoy their basic rights; expresses deep concern regarding the recurring reports of deliberately inflicted inhumane detention conditions, particularly as regards to Ales Bialiatski, Mikola Statkevich and Dzmitry Dashkevich;
 7. Calls in this context on the Belarusian Government to move towards ensuring that genuinely democratic elections are held in the future, in accordance with international democratic standards, by introducing changes to electoral law and practice, such as by:
 - (a) creating fair conditions and opportunities for all candidates to conduct a genuine electoral campaign;
 - (b) ensuring that all parties participating in elections are represented at all election commission levels, in particular at precinct commission level;
 - (c) ensuring that votes cast preclude any doubts as to the possibility of fraud in this connection;
 - (d) abolishing the early-voting procedure or, at least, guaranteeing that early votes cast are subject to a separate procedure from that for ordinary votes cast, and that early-voting results are recorded separately in electoral protocols;

Friday 26 October 2012

- (e) ensuring transparency during the counting process and the publishing of all final results;
8. Urges the Belarusian Government, in order to end the country's self-imposed isolation from the rest of Europe and in order for relations between the EU and Belarus to improve significantly, to respect human rights by:
- (a) refraining from threatening with criminal prosecution, including for avoiding military service in Belarus, students expelled from universities for their civic stance and obliged to continue their studies abroad;
 - (b) eliminating all obstacles in the way of proper registration of NGOs in Belarus;
 - (c) improving the treatment of and respect for national minorities, their culture, churches, education system and historical and material heritage, hereunder also recognising the legitimately elected body of the Union of Poles;
9. Urges, once again, Belarus, the only European country which still carries out capital punishment, to introduce an immediate moratorium on executions and to immediately announce a moratorium on the death penalty as a first step towards complete abolition;
10. Recalls that the European Union declared its readiness to renew its relationship with Belarus and its people within the framework of the European Neighbourhood Policy as soon as the Belarusian Government demonstrated its respect for democratic values and for the basic rights of the Belarusian people;
11. Welcomes the 'European dialogue on modernisation with Belarusian society' on necessary reforms for the modernisation of Belarus and on the related potential development of relations with the EU as well as the related information campaign in Belarus; notes with satisfaction that the European Dialogue has helped to stimulate a constructive and substantial debate among representatives of Belarusian society in Minsk on concrete ideas on the reform needs of the country;
12. Calls on the Council and the Commission to support initiatives aimed at developing Belarusian civil society, which could result in increasing citizens' political participation, and raise awareness of the need for change; calls for the creation of a consistent and long-term programme of support and strengthening of Belarusian opposition organisations, and to offer and expand the dialogue with Belarusian civil society; believes that the attempt to empower Belarusian citizens is a vital milestone and the most effective way towards democracy and rule of law in Belarus;
13. Calls on the EEAS, the Council and the Commission to continue the dialogue with – and devise a clearer policy vis-à-vis – Belarus, subject to strict positive conditionality based on a gradual step-by-step approach and equipped with benchmarks, timetables, a revision clause and adequate financial resources;
14. Calls on the Council and the Commission to take further steps, unilaterally if necessary, towards the facilitation and liberalisation of visa procedures for Belarusian citizens, as such action is crucial to fulfil the main goal of EU policy towards Belarus, namely to facilitate and intensify people-to-people contacts and to democratise the country; urges them, in this context, to consider the scope for lowering the cost of visas for Belarusian citizens entering the Schengen Area, which is the only way to prevent Belarus and its citizens from becoming increasingly isolated;
15. Deplores once more the foreign travel ban list drafted by the Belarus Government that forbids several opponents and human rights activists from leaving the country; expresses its sympathy to all the people included in this list and calls on the Minsk authorities to put an end to such practices that violate the fundamental freedoms of Belarus citizens;

Friday 26 October 2012

16. Reiterates its call on the Commission to support, with financial and political means, the efforts of Belarusian civil society, independent media (including TV Belsat, European Radio for Belarus, Radio Racja and others) and non-governmental organisations in Belarus to promote democracy; calls for increased attention to the protection of digital freedoms in Belarus which are enablers of other human rights, particularly freedom of expression and freedom of assembly; urges the Belarusian authorities to secure that bloggers and web administrators are not prosecuted for their human rights activities;
 17. Calls on the Council and the Commission to consider measures to improve the business climate, trade, investment, energy and transport infrastructure and cross-border cooperation between the EU and Belarus, so as to contribute to the well-being and prosperity of the citizens of Belarus, as well as their ability to communicate with and freely travel to the EU in this context;
 18. Calls on international sports organisations to take into account the human rights situation in the country when granting Belarusian authorities the honour to host high-profile international sports events, in order to apply pressure to the regime until it shows clear signs of its commitment to democratic principles and fundamental freedoms;
 19. Calls on Belarus, with regard to the planned construction of a new nuclear power plant, to comply fully with the Aarhus Convention and to implement strictly all the norms of the ESPOO Convention on Environmental Impact Assessment in a Transboundary Context;
 20. Calls on the EU Member States to avoid using the existing visa procedures in ways that contradict or go against the Council's and Commission's efforts to strengthen Belarusian civil society;
 21. Calls on the Council and the EU Member States, in the light of a number of recent incidents pertaining to cooperation between Belarusian and EU authorities, to improve the EU's internal cooperation and information-sharing significantly, and to refrain immediately from cooperating with the Belarusian authorities in the field of police training in order to prevent any further endangerment of Belarusian civil society activists;
 22. Regrets that four officials representing the Polish education ministry were denied visas to travel to Belarus, where they were to attend a conference on Polish-language education organised by the Union of Poles in Baranavichy, Brest region, on 13 October 2012;
 23. Deplores the decision of the Belarusian authorities not to cooperate with the newly appointed UN Human Rights special rapporteur on Belarus, and calls on them to allow him to fulfil his mandate and to visit the country when needed;
 24. Encourages all Belarusian democratic political forces and civil society activists to find a united approach that allows them to increase the effectiveness of their actions and to establish concrete programmes for policy change that aim at improving and democratising the lives of the Belarusian people;
 25. Calls on the EU institutions to use the findings of the Belarusian Round Table, held on 17 October 2012 in the European Parliament, to reach a deep and comprehensive assessment of the current situation of the opposition in, and of the possible future scenarios for, Belarus;
 26. Instructs its President to forward this resolution to the Council, the Commission, the EEAS, the parliaments and governments of the Member States, the Secretary-General of the United Nations, the Parliamentary Assemblies of the OSCE and the Council of Europe, the Secretariat of the CIS and the Belarusian authorities.
-

Friday 26 October 2012

Elections in Georgia

P7_TA(2012)0411

European Parliament resolution of 26 October 2012 on the elections in Georgia (2012/2816(RSP))

(2014/C 72 E/12)

The European Parliament,

- having regard to its previous resolutions and reports, and in particular its resolution of 17 November 2011 containing its recommendations to the Council, the Commission and the EEAS on the negotiations of the EU-Georgia Association Agreement ⁽¹⁾,
 - having regard to the Partnership and Cooperation Agreement (PCA) between Georgia and the European Union, which entered into force on 1 July 1999,
 - having regard to the joint EU-Georgia European Neighbourhood Policy (ENP) Action Plan, endorsed by the EU-Georgia Cooperation Council on 14 November 2006 and laying out the strategic objectives based on commitments to shared values and effective implementation of political, economic and institutional reforms,
 - having regard to the ceasefire agreement on 12 August 2008, mediated by the EU and signed by Georgia and the Russian Federation, and the implementation agreement of 8 September 2008,
 - having regard to the joint statement of 2 October 2012 by the High Representative Catherine Ashton and Commissioner Stefan Füle on the results of Georgia's parliamentary elections on 2 October 2012,
 - having regard to the statement of preliminary findings and conclusions arising from the international election observation of the Georgian parliamentary elections held on 1 October 2012,
 - having regard to the Council conclusions on Georgia of 15 October 2012,
 - having regard to the ENP Progress Report on Georgia published on 15 May 2012,
 - having regard to the Joint Declaration of the Prague Eastern Partnership Summit of 7 May 2009,
 - having regard to Rule 110(2) and (4) of its Rules of Procedure,
- A. whereas the active engagement of Georgia and a commitment to shared values and principles, including democracy, the rule of law, good governance and respect for human rights, are essential to move the European integration process forward and ensure the success of the negotiations for – and subsequent implementation of – the association agreement; whereas domestic political stability in Georgia and a focus on internal reform are prerequisites for the further development of relations between the EU and Georgia;
- B. whereas Georgia is one of the founding members of the Eastern Partnership; whereas at the Warsaw Summit both the EU's and the Eastern Partnership's representatives reaffirmed that the Eastern Partnership is based on a community of values and on principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law;

⁽¹⁾ Texts adopted, P7_TA(2011)0514.

Friday 26 October 2012

- C. whereas the most recent parliamentary elections in Georgia, held on 1 October 2012, were free and fair and in line with internationally recognised standards; whereas, overall, the freedoms of association, assembly and expression were respected and the people of Georgia, despite a very polarised campaign, freely expressed their will;
 - D. whereas the Council and the European Parliament took note of the preliminary assessment by the Office for Democratic Institutions and Human Rights (ODIHR) of the conduct of the Georgian parliamentary elections held on 1 October 2012;
 - E. whereas some key issues of the electoral code still remain to be addressed, with regard, in particular to certain important recommendations made earlier by the OSCE/ODIHR and the Venice Commission, e.g. relating to disparities in population size among the single-member constituencies;
 - F. whereas Georgia, as an important partner of the EU, demonstrated its strong commitment to democratic standards during these parliamentary elections;
 - G. whereas the Georgian breakaway territories of South Ossetia and Abkhazia are still de facto occupied by the Russian armed forces; whereas, despite the six-point ceasefire agreement signed in 2008 by the Russian Federation and Georgia, access for the EU Monitoring Mission to South Ossetia and Abkhazia remains hindered;
 - H. whereas the EU has remained committed to and has continued to give its full support to Georgia's territorial integrity and sovereignty and to the peaceful resolution of conflicts in Georgia;
 - I. whereas the broadcast of video footage showing the torture of inmates in Georgian prisons has caused a widespread outcry and has revealed serious misconduct on the part of government agencies responsible for law and order; whereas two ministers resigned because of this scandal;
1. Congratulates the Georgian people on the significant step they have taken towards the consolidation of democracy in their country; welcomes the fact of the democratic parliamentary elections of 1 October 2012, which were conducted in line with OSCE and Council of Europe commitments, although certain issues remain to be addressed; stresses that this election represents an important step for the democratic development of Georgia and the political future of the country; welcomes the first instance of the transfer of power by means of democratic, free and fair elections to have occurred in Georgia;
 2. Stresses that one of the EU's foreign policy objectives is to enhance and foster relations with Georgia;
 3. Welcomes the progress in relations between the EU and Georgia, and reaffirms the values, principles and commitments of democracy, the rule of law, respect for human rights and fundamental freedoms, the market economy, sustainable development and good governance;
 4. Encourages all Georgian political parties to work together constructively during the coming transition period, and afterwards to ensure stability, the rule of law, respect for human rights and good governance, on a basis of full respect for the democratically expressed will of the Georgian people;
 5. Calls on all political forces to show restraint, and trusts there will be constructive cooperation between the executive and legislative powers in Georgia during the expected period of cohabitation; notes that the period of constitutional cohabitation will require a concerted effort to seek political compromise and consensus while fully respecting the Georgian Constitution and its cardinal laws; stresses that constructive relations between the President, the Government and the Parliament are essential for Georgia's democratic credentials and governance;

Friday 26 October 2012

6. Welcomes President Saakashvili's statement accepting his party's defeat in the elections, and stresses that the fact of such a statement being made at so early a stage after the elections sends out a positive signal with regard to democracy in Georgia; considers this an extraordinary event in a country and a region where other post-Soviet leaders have in many cases given up office only under pressure from mass protests or the threat of civil war;
7. Calls on the Georgian authorities to fully address all the shortfalls identified by the International Election Observation, including the recommendations of the OSCE/ODIHR and the Venice Commission concerning the electoral code;
8. Welcomes the implementation of the principles of 'must carry' and 'must offer', which significantly contributed to media pluralism ahead of the elections;
9. Notes that despite the polarised and tense electoral environment, the freedoms of expression, association and assembly were respected overall; is aware, however, that instances of harassment and intimidation of party activists and supporters marred the campaign environment at times;
10. Stresses the importance for a fully functioning democracy of adopting and implementing a stringent and effective law on party financing, as well as a law on potential and actual conflicts of interest, in order to draw a clear dividing line between private and public interests for persons holding public office;
11. Urges the Georgian authorities to investigate and prosecute all cases of ill-treatment and torture in Georgian prisons, and calls for a deep and effective reform of the penitentiary system; in line with the Charter of Fundamental Rights of the European Union; welcomes the decision of the Georgian prisons minister to form a monitoring group in order to let human rights activists and the media visit facilities to check the conditions;
12. Insists that the new government must continue to combat corruption and implement the political reforms already begun by the current government;
13. Calls on the Council and Commission to ensure the necessary support for the new administration and to continue the ongoing dialogue, so as to ensure continuity and maintain momentum in the negotiations for an Association Agreement, and to consider it in line with the principle of 'more for more' to redouble the efforts to complete the negotiations for a visa-free regime between Georgia and the EU, in the context of a Deep and Comprehensive Free Trade Agreement;
14. Reaffirms the EU's support for the sovereignty and territorial integrity of Georgia; hopes that both Georgia and Russia will continue actively to engage in conflict resolution without preconditions; hopes Georgia will maintain its engagement in the Geneva International Discussions and pursue an effective policy in engaging with the breakaway regions;
15. Calls on the VP/HR to make further efforts to encourage Russia to comply with the six-point Sarkozy Plan to stabilise and resolve the conflict in Georgia; calls, in this regard, on Russia to withdraw its troops from the breakaway Georgian territories of Abkhazia and South Ossetia and to allow unfettered access for the European Union Monitoring Mission (EUMM) to those two provinces;
16. Stresses the need for the new government to maintain Georgia's constructive engagement in the Geneva International Discussions; regrets, in this respect, the slow pace of negotiations and the absence of any substantial progress between the two parties at the Geneva Discussions on Security and Stability in the South Caucasus, and calls for a stronger engagement with a view to complying in full with all six points of the ceasefire agreement of September 2008; notes the invitation to the Georgian Dream coalition to send representatives to participate in the 21st round of internationally mediated peace talks on the Georgian conflicts, to be held in Geneva;

Friday 26 October 2012

17. Looks forward to the conclusion of the negotiations of the new Association Agreement between the EU and Georgia, in line with the European aspirations of the country, and stresses the importance of Georgia's European integration process for the continuation of economic, social and political reform; welcomes the EU's commitment to the objective of visa-free travel, and expects the parties to make substantial progress in this respect;

18. Expects the new majority and the new government to continue cooperation with the EU and NATO, and hopes that relations between the EU and Georgia will remain strong; welcomes the express commitment on the part of the incoming Georgian government to further Euro-Atlantic integration and its determination to build on the results of the good work done by the previous authorities;

19. Instructs its President to forward this resolution to the Vice-President / High Representative for Foreign Affairs and Security Policy, the Council, the Commission, the Governments and Parliaments of the Member States, the President, Government and Parliament of Georgia, the Secretary-General of NATO and the OSCE.

Thursday 25 October 2012

III

(Preparatory acts)

EUROPEAN PARLIAMENT

Procedures for applying the EC-Serbia Stabilisation and Association Agreement and the EC-Serbia Interim Agreement *I**

P7_TA(2012)0389

European Parliament legislative resolution of 25 October 2012 on the proposal for a regulation of the European Parliament and of the Council concerning certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part, and for applying the Interim Agreement between the European Community, of the one part, and the Republic of Serbia, of the other part (COM(2011)0938 – C7-0010/2012 – 2011/0465(COD))

(2014/C 72 E/13)

*(Ordinary legislative procedure: first reading)**The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0938),
 - having regard to Article 294(2) and Article 207 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0010/2012),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on International Trade (A7-0273/2012),
1. Adopts its position at first reading hereinafter set out;
 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;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Thursday 25 October 2012

P7_TC1-COD(2011)0465

Position of the European Parliament adopted at first reading on 25 October 2012 with a view to the adoption of Regulation (EU) No .../2012 of the European Parliament and of the Council concerning certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part, and for applying the Interim Agreement between the European Community, of the one part, and the Republic of Serbia, of the other part

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure ⁽¹⁾,

Whereas:

- (1) A Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part, (the 'SAA') was signed on 29 April 2008. The SAA is in the process of ratification.
- (2) On 29 April 2008, the Council concluded an interim agreement on trade and trade-related matters between the European Community, of the one part, and the Republic of Serbia, of the other part ⁽²⁾, (the 'Interim Agreement') which provides for the early entry into force of the trade and trade-related provisions of the SAA. The Interim Agreement entered into force on 1 February 2010.
- (3) It is necessary to lay down rules for the implementation of certain provisions of the Interim Agreement and for the procedures for the adoption of detailed rules of implementation. Since the trade and trade-related provisions of those instruments are, to a very large extent, identical, this Regulation should also apply to the implementation of the SAA after its entry into force.
- (4) In order to ensure uniform conditions for the implementation of the Interim Agreement and of the SAA, implementing powers should be conferred on the Commission. Those powers 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 ⁽³⁾. ~~Given that the implementing measures form part of the common commercial policy, the examination procedure should be used for their adoption. Where the Interim Agreement and the SAA foresee the possibility, in exceptional and critical circumstances, to apply forthwith measures necessary to deal with the situation, the Commission should adopt immediately such implementing acts. [Am. 1]~~
- (4a) It is appropriate that the advisory procedure be used for the adoption of provisional measures to address exceptional and critical circumstances given the effects of those provisional measures and their sequential logic in relation to the adoption of definitive measures. Where a delay in the imposition of such provisional measures would cause damage which would be difficult to repair it is necessary to allow the Commission to adopt immediately applicable provisional measures. [Am. 2]**

⁽¹⁾ Position of the European Parliament of 25 October 2012.

⁽²⁾ OJ L 28, 30.1.2010, p. 1.

⁽³⁾ OJ L 55, 28.2.2011, p. 13.

Thursday 25 October 2012

- (4b) *The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to exceptional and critical circumstances within the meaning of Article 26(5)(b) and Article 27(4) of the Interim Agreement, and, thereafter, of Article 41(5)(b) and Article 42(4) of the SAA, imperative grounds of urgency so require. [Am. 3]*
- (5) The SAA and the Interim Agreement stipulate that certain agricultural and fishery products originating in the Republic of Serbia may be imported into the Union at a reduced customs duty, within the limits of tariff quotas. It is necessary to lay down provisions regulating the management **and review** of those tariff quotas **in order to allow for their thorough assessment**. [Am. 4]
- (6) Where trade defence measures become necessary, they should be adopted in accordance with Council Regulation (EC) No 260/2009 of 26 February 2009 on the common rules for imports ⁽¹⁾, Council Regulation (EC) No 1061/2009 of 19 October 2009 establishing common rules for exports ⁽²⁾, Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽³⁾ or, as the case may be, Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community ⁽⁴⁾.
- (7) Where a Member State provides information to the Commission on a possible fraud or failure to provide administrative cooperation, the relevant Union law applies, in particular Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters ⁽⁵⁾.
- (8) This Regulation contains implementing measures for the Interim Agreement, and should thus apply from the date of entry into force of the Interim Agreement,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down rules and the procedures for the adoption of detailed rules for the implementation of certain provisions of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part, (the 'SAA'), and of the interim agreement on trade and trade-related matters between the European Community, of the one part, and the Republic of Serbia, of the other part (the 'Interim Agreement').

Article 2

Concessions for fish and fishery products

Detailed rules on the implementation of Article 14 of the Interim Agreement, and thereafter Article 29 of the SAA, concerning the tariff quotas for fish and fishery products, shall be adopted by the Commission in accordance with the examination procedure set out in Article 13(3) of this Regulation.

Article 3

Tariff reductions

1. Subject to paragraph 2, rates of preferential duty shall be rounded down to the first decimal place.

⁽¹⁾ OJ L 84, 31.3.2009, p. 1.

⁽²⁾ OJ L 291, 7.11.2009, p. 1.

⁽³⁾ OJ L 343, 22.12.2009, p. 51.

⁽⁴⁾ OJ L 188, 18.7.2009, p. 93.

⁽⁵⁾ OJ L 82, 22.3.1997, p. 1.

Thursday 25 October 2012

2. Where the result of calculating the rate of the preferential duty in application of paragraph 1 is one of the following, the preferential rate shall be considered a full exemption:

- (a) 1 % or less in the case of ad valorem duties, or
- (b) EUR 1 or less per individual amount in the specific duties.

Article 4

Technical adaptations

Amendments and technical adaptations to the provisions adopted pursuant to this Regulation rendered necessary by changes to the Combined Nomenclature and to the Integrated tariff of the European Communities (TARIC) subdivisions or arising from the conclusion of new or modified agreements under Article 218 of the Treaty on the Functioning of the European Union (TFEU) between the Union and the Republic of Serbia, **shall not entail any substantive changes and** shall be adopted in accordance with the **examination** procedure set out in Article 13(3) or, as the case may be, with respect to agricultural products the **examination** procedure referred to in Article 14(2). [Am. 5]

Article 5

General safeguard clause

Without prejudice to Article 7 of this Regulation, where the Union needs to take a measure as provided for in Article 26 of the Interim Agreement, and thereafter Article 41 of the SAA, it shall be adopted in accordance with the conditions and procedures laid down in Regulation (EC) No 260/2009, unless otherwise specified in Article 26 of the Interim Agreement, and thereafter Article 41 of the SAA.

Article 6

Shortage clause

Without prejudice to Article 7 of this Regulation, where the Union needs to take a measure as provided for in Article 27 of the Interim Agreement, and thereafter Article 42 of the SAA, it shall be adopted in accordance with the procedures laid down in Regulation (EC) No 1061/2009.

Article 7

Exceptional and critical circumstances

Where exceptional and critical circumstances arise within the meaning of Articles 26(5)(b) and 27(4) of the Interim Agreement, and thereafter of Article 41(5)(b) and 42(4) of the SAA, the Commission may take immediately applicable measures as provided for in Articles 26 and 27 of the Interim Agreement, and thereafter in Article 41 and 42 of the SAA, in accordance with the procedure referred to in Article 15(2) of this Regulation.

Article 8

Safeguard clause for agricultural and fishery products

Notwithstanding Articles 5 and 6, where the Union needs to take a safeguard measure concerning agricultural and fishery products, as provided for in Article 17(2) or Article 26 of the Interim Agreement, and thereafter in Article 32(2) or Article 41 of the SAA, the Commission shall, at the request of a Member State or on its own initiative, adopt the necessary measures, where applicable after referring the matter to the Interim Committee pursuant to Article 26(5)(a) of the Interim Agreement, and thereafter to the Stabilisation and Association Council pursuant to Article 41(5)(a) of the SAA.

Thursday 25 October 2012

If the Commission receives a request from a Member State, it shall take a decision thereon:

- (a) within three working days following the receipt of a request, where the referral procedure provided for in Article 26 of the Interim Agreement, and thereafter in Article 41 of the SAA, does not apply; or
- (b) within three days of the end of the 30-day period referred to in Article 26(5)(a) of the Interim Agreement, and thereafter in Article 41(5)(a) of the SAA, where the referral procedure provided for in Article 26(5)(a) of the Interim Agreement, and thereafter Article 41(5)(a) of the SAA, applies.

The Commission shall adopt those immediately applicable acts in accordance with the procedure referred to in Article 14(3).

Article 9

Surveillance

For the purposes of implementing Article 17(2) of the Interim Agreement, and thereafter Article 32(2) of the SAA, a Union surveillance of imports of goods listed in Annex V of Protocol 3 shall be established. The procedure laid down in Article 308d of the Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽¹⁾ shall apply.

Article 10

Dumping and subsidy

In the event of a practice which is liable to warrant application by the Union of the measures provided for in Article 25(2) of the Interim Agreement, and thereafter Article 40(2) of the SAA, the Commission shall decide whether to introduce anti-dumping or countervailing measures in accordance with the provisions laid down in, respectively, Regulation (EC) No 1225/2009 and Regulation (EC) No 597/2009.

Article 11

Competition

1. In the event of a practice which the Commission considers not to be compatible with Article 38 of the Interim Agreement, and thereafter with Article 73 of the SAA, the Commission shall, after examining the case on its own initiative or on the request of a Member State, decide upon the appropriate measure provided for in Article 38 of the Interim Agreement, and thereafter in Article 73 of the SAA.

In relation to aid, the measures provided for in Article 38(10) of the Interim Agreement, and thereafter Article 73(10) of the SAA, shall be adopted in accordance with the procedures laid down in Regulation (EC) No 597/2009.

2. In the event of a practice that may cause measures to be applied to the Union by the Republic of Serbia on the basis of Article 38 of the Interim Agreement, and thereafter of Article 73 of the SAA, the Commission shall, after examining the case, decide whether the practice is compatible with the principles set out in the Interim Agreement, and thereafter the SAA. Where necessary, the Commission shall take appropriate decisions on the basis of criteria which result from the application of Articles 101, 102 and 107 TFEU.

⁽¹⁾ OJ L 253, 11.10.1993, p. 1.

Thursday 25 October 2012

Article 12

Fraud or failure to provide administrative cooperation

Where the Commission, on the basis of information provided by a Member State or on its own initiative, finds that the conditions laid down in Article 31 of the Interim Agreement, and thereafter in Article 46 of the SAA, are met, it shall, without undue delay:

- (a) inform the European Parliament and the Council; and
- (b) notify the Interim Committee, and thereafter the Stabilisation and Association Committee, of its finding together with the objective information, and enter into consultations within the Interim Committee, and thereafter the Stabilisation and Association Committee.

The Commission shall publish any notice under Article 31(5) of the Interim Agreement, and thereafter in Article 46(5) of the SAA, in the *Official Journal of the European Union*.

The Commission may, in accordance with the advisory procedure referred to in Article 13(2) of this Regulation, suspend temporarily the relevant preferential treatment of the products as provided for in Article 31(4) of the Interim Agreement, and thereafter in Article 46(4) of the SAA.

Article 13

Committee procedure

1. The Commission shall be assisted by the Customs Code Committee set up by Article 248a of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁽¹⁾. The Customs Code Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

3a. Where the opinion of the Customs Code Committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the Customs Code Committee so decides or a majority of Customs Code Committee members so request. [Am. 6]

Article 14

Committee procedure concerning agricultural products

1. The Commission shall be assisted by the Management Committee for the Common Organisation of Agricultural Markets established by Article 195 of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products⁽²⁾ (the 'Agricultural Committee'). The Agricultural Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

⁽¹⁾ OJ L 302, 19.10.1992, p. 1.

⁽²⁾ OJ L 299, 16.11.2007, p. 1

Thursday 25 October 2012

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

3a. Where the opinion of the Agricultural Committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the Agricultural Committee so decides or a majority of Agricultural Committee members so request. [Am. 7]

Article 15

Committee procedure for measures in case of exceptional and critical circumstances

1. The Commission shall be assisted by the Committee established by Article 4 of Regulation (EC) No 260/2009 (the 'Imports Committee'). The Imports Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with ~~Article 5~~ **Article 4** thereof, shall apply. **[Am. 8]**

2a. Where the opinion of the Imports Committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the Imports Committee so decides or a majority of Imports Committee members so request. [Am. 9]

Article 16

Notification

The Commission, acting on behalf of the Union, shall be responsible for notification to the Interim Committee, and thereafter the Stabilisation and Association Council and the Stabilisation and Association Committee, respectively, as required by the Interim Agreement or the SAA.

Article 17

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 February 2010.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done

For the European Parliament
The President

For the Council
The President

Thursday 25 October 2012

Extending the period of application of Council Decision 2003/17/EC, and updating the names of a third country and the authorities responsible for production approval and control *I**

P7_TA(2012)0390

European Parliament legislative resolution of 25 October 2012 on the proposal for a decision of the European Parliament and of the Council amending Council Decision 2003/17/EC by extending its period of application and by updating the names of a third country and of the authorities responsible for the approval and control of the production (COM(2012)0343 – C7-0161/2012 – 2012/0165(COD))

(2014/C 72 E/14)

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0343),
 - having regard to Article 294(2) and Article 43(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0161/2012),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 18 September 2012 ⁽¹⁾,
 - having regard to the undertaking given by the Council representative by letter of 28 September 2012 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Agriculture and Rural Development (A7-0315/2012),
1. Adopts its position at first reading hereinafter set out;
 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;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

⁽¹⁾ Not yet published in the Official Journal.

Thursday 25 October 2012

P7_TC1-COD(2012)0165

Position of the European Parliament adopted at first reading on 25 October 2012 with a view to the adoption of Decision No .../2012/EU of the European Parliament and of the Council amending Council Decision 2003/17/EC by extending its period of application and by updating the names of a third country and of the authorities responsible for the approval and control of the production

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Decision No 1105/2012/EU.)

Conservation and sustainable exploitation of fisheries resources *I**

P7_TA(2012)0391

European Parliament legislative resolution of 25 October 2012 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (COM(2012)0277 – C7-0137/2012 – 2012/0143(COD))

(2014/C 72 E/15)

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0277),
 - having regard to Article 294(2) and Article 43(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0137/2012),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 18 September 2012 ⁽¹⁾,
 - having regard to the undertaking given by the Council representative by letter of 22 October 2012 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Fisheries (A7-0314/2012),
1. Adopts its position at first reading hereinafter set out;
 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;
 3. Instructs its President to forward its position to the Council, the Commission and the national and regional parliaments in the Member States.

⁽¹⁾ Not yet published in the Official Journal.

Thursday 25 October 2012

P7_TC1-COD(2012)0143

Position of the European Parliament adopted at first reading on 25 October 2012 with a view to the adoption of Regulation (EU) No .../2012 of the European Parliament and of the Council on amending Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Regulation (EU) No 1152/2012.)

Protection of geographical indications of agricultural products and foodstuffs ***

P7_TA(2012)0392

European Parliament legislative resolution of 25 October 2012 on the draft Council decision on the conclusion of the Agreement between the European Union and the Republic of Moldova on the protection of geographical indications of agricultural products and foodstuffs (08741/2012 – C7-0173/2012 – 2012/0069(NLE))

(2014/C 72 E/16)

(Consent)

The European Parliament,

- having regard to the draft Council decision (08741/2012),
 - having regard to the draft Agreement between the European Union and the Republic of Moldova on the protection of geographical indications of agricultural products and foodstuffs (08742/2012),
 - having regard to the request for consent submitted by the Council in accordance with Article 207(4), first subparagraph, Article 218(6), second subparagraph, point (a)(v) and Article 218(7) of the Treaty on the Functioning of the European Union (C7-0173/2012),
 - having regard to Rules 81 and 90(7) of its Rules of Procedure,
 - having regard to the recommendation of the Committee on International Trade (A7-0272/2012),
1. Consents to conclusion of the Agreement;
 2. Instructs its President to forward its position to the Council, the Commission and the governments and parliaments of the Member States and of the Republic of Moldova.
-

Thursday 25 October 2012

Conclusion, on behalf of the EU, of the Food Assistance Convention ***

P7_TA(2012)0393

European Parliament legislative resolution of 25 October 2012 on the draft Council decision on the conclusion, on behalf of the European Union, of the Food Assistance Convention (12267/2012 – C7-0210/2012– 2012/0183(NLE))

(2014/C 72 E/17)

(Consent)

The European Parliament,

- having regard to the draft Council decision (12267/2012),
 - having regard to the Food Assistance Convention (attached to the draft Council decision),
 - having regard to the request for consent submitted by the Council in accordance with Article 214(4) and Article 218(6), second subparagraph, point (a) of the Treaty on the Functioning of the European Union (C7-0210/2012),
 - having regard to Rules 81 and 90(7) of its Rules of Procedure,
 - having regard to the recommendation of the Committee on Development (A7-0309/2012),
1. Consents to conclusion of the Convention;
 2. Instructs its President to forward its position to the Council, the Commission and the governments and parliaments of the Member States.

Consular protection for citizens of the Union abroad *

P7_TA(2012)0394

European Parliament legislative resolution of 25 October 2012 on the proposal for a Council directive on consular protection for citizens of the Union abroad (COM(2011)0881 – C7-0017/2012 – 2011/0432(CNS))

(2014/C 72 E/18)

(Special legislative procedure – consultation)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2011)0881),
- having regard to Article 23 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C7-0017/2012),

Thursday 25 October 2012

- having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Foreign Affairs and of the Committee on Legal Affairs (A7-0288/2012),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 293(2) of the Treaty on the Functioning of the European Union;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 1

Proposal for a directive Recital 6 a (new)

(6a) Under Article 35 of the Treaty on European Union, the diplomatic and consular missions of the Member States and the Union delegations in third countries shall cooperate and shall contribute to the implementation of the right of citizens of the Union to protection in the territory of third countries.

Amendment 2

Proposal for a directive Recital 7

(7) Where unrepresented citizens need protection in third countries efficient cooperation and coordination is required. The assisting Member State present in a third country and the Member State of origin of the citizen **may need to cooperate closely. Local consular cooperation may be more complex for unrepresented citizens, as it requires coordination with authorities not represented on the ground. To fill the gap caused by the absence of an embassy or consulate of the citizen's own Member State, a stable framework should be ensured.**

(7) Where unrepresented citizens need protection in third countries efficient cooperation and coordination is required. The assisting Member State **and the Union delegation** present in a third country and the Member State of origin of the citizen **should cooperate closely.**

Amendment 3

Proposal for a directive Recital 7 a (new)

(7a) Local consular cooperation may be more complex for unrepresented citizens, as it requires coordination with authorities not represented on the ground. To fill the gap caused by the absence of an embassy or consulate of the citizen's own Member State, a stable framework should be ensured. Local consular cooperation should pay due attention to unrepresented citizens, for example by collecting the relevant contact details of the nearest regional embassies and consulates of Member States.

Thursday 25 October 2012

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 4**Proposal for a directive
Recital 7 b (new)**

(7b) In order to facilitate and improve consular protection, with special attention being paid to the situation of unrepresented citizens, the Commission should establish practical guidelines.

Amendment 5**Proposal for a directive
Recital 8**

(8) Citizens of the Union are unrepresented if their Member State of nationality does not have an accessible embassy or consulate in a third country. The notion of accessibility should be interpreted with a view to safeguarding the protection of citizens.

(8) Citizens of the Union are unrepresented if their Member State of nationality does not have an accessible embassy or consulate in a third country **or if accessing the embassy or consulate would present the citizen of a given Member State with an unnecessary use of precious time and financial resources in cases of emergency.** The notion of accessibility should be interpreted with a view to safeguarding the protection of citizens.

Amendment 6**Proposal for a directive
Recital 9**

(9) In accordance with the right to respect for private and family life as recognised in Article 7 of the Charter of Fundamental Rights of the European Union, the assisting Member State should provide protection to third country family members of citizens of the Union **under the same conditions as to third country family members of its own nationals. Any definition as to which persons are family members should draw inspiration from Articles 2 and 3 of the** Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. Member States may not be in a position to deliver all types of consular protection to third country family members, **notably** emergency travel documents **are not being issued.** In accordance with Article 24 of the Charter, the best interests of the child, as provided for in the United Nations Convention on the Rights of the Child of 20 November 1989, should be a primary consideration.

(9) In accordance with the right to respect for private and family life as recognised in Article 7 of the Charter of Fundamental Rights of the European Union, the assisting Member State should provide protection to third country family members of citizens of the Union, as **defined in** Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, **under the same conditions as to third- country family members of its own nationals, taking into account the fact that** Member States may not be in a position to deliver all types of consular protection to third country family members, **such as** emergency travel documents. **However, Member States should take all action in their power to secure the integrity of the citizen's family.** In accordance with Article 24 of the Charter, the best interests of the child, as provided for in the United Nations Convention on the Rights of the Child of 20 November 1989, should be a primary consideration.

Amendment 7**Proposal for a directive
Recital 9 a (new)**

(9a) The assisting Member State should consider providing protection to recognised refugees and stateless persons and other persons who do not hold the nationality of any Member State but who reside in one of the Member States and are holders of a travel document issued by that Member State, taking into account their particular situation.

Thursday 25 October 2012

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 8
Proposal for a directive
Recital 10

(10) Unrepresented citizens should be able to freely choose the embassy **or** consulate from which they seek consular protection. Member States should be able to enter arrangements on burden-sharing. However such arrangements should be transparent for the citizen and should not jeopardize effective consular protection. Any such arrangement should be notified to the Commission and published on its dedicated website.

(10) Unrepresented citizens should be able to freely choose the embassy, consulate **or, where appropriate, the Union delegation** from which they seek consular protection. Member States should be able to enter arrangements on burden-sharing. **Such arrangements should be fairly distributed and take into account the capacities of each Member State.** However such arrangements should be transparent for the citizen and should not jeopardize effective consular protection. Any such arrangement should be notified to the Commission and published on its dedicated website **and on relevant websites of the Member States and of the Council.**

Amendment 9
Proposal for a directive
Recital 12

(12) Protection should be provided if applicants establish that they are citizens of the Union. Unrepresented citizens in need of consular protection may no longer be in possession of their identity documents. The fundamental status of citizenship of the Union is conferred directly by Union law and identity documents are of merely declaratory value. If applicants are unable to provide identity documents, they should therefore be able to prove their identity by any other means, if necessary following verification with the authorities of the Member State of which the applicant claims to be a national.

(12) Protection should be provided if applicants establish that they are citizens of the Union. Unrepresented citizens in need of consular protection may no longer be in possession of their identity documents. The fundamental status of citizenship of the Union is conferred directly by Union law and identity documents are of merely declaratory value. If applicants are unable to provide identity documents, they should therefore be able to prove their identity by any other means, if necessary following verification with the authorities of the Member State of which the applicant claims to be a national. **The assisting embassy or consulate should provide unrepresented citizens with the necessary means for verifying their identity.**

Amendment 10
Proposal for a directive
Recital 14

(14) In order to clarify which coordination and cooperation measures are necessary the ambit of cooperation and coordination should be specified. Consular protection for unrepresented citizens includes assistance in a number of typical situations, such as in case of arrest or detention, serious accident or serious illness and death, as well as with regard to providing relief and repatriation in case of distress and the issuance of emergency documents. Since the necessary protection always depends on the factual situation, consular protection should not be limited to those situations specifically mentioned in this Directive.

(14) In order to clarify which coordination and cooperation measures are necessary the ambit of cooperation and coordination should be specified. Consular protection for unrepresented citizens includes assistance in a number of typical situations, such as in case of arrest or detention, serious accident or serious illness and death, as well as with regard to providing relief and repatriation in case of distress and the issuance of emergency documents, **and in crisis situations.** Since the necessary protection always depends on the factual situation, consular protection should not be limited to those situations specifically mentioned in this Directive.

Thursday 25 October 2012

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 11**Proposal for a directive
Recital 14 a (new)**

(14a) When providing consular protection in cases of arrest or detention, special situations should be taken into account, in particular when victims of trafficking in human beings are arrested or detained for committing crimes as a direct consequence of being trafficked. Unrepresented citizens could be in a more vulnerable situation given the fact that they do not have a direct representation.

Amendment 12**Proposal for a directive
Recital 15**

(15) A prerequisite for effective coordination and cooperation between Member States' consular authorities is to establish the different types of assistance which are delivered in specific situations. Those types of assistance should reflect the common *practises* among Member States, without prejudice to Article 23 of the Treaty on the Functioning of the European Union which imposes an obligation on Member States to provide protection under the same conditions as to their nationals.

(15) A prerequisite for effective coordination and cooperation between Member States' consular authorities is to establish the different types of assistance which are delivered in specific situations. Those types of assistance should reflect the common *practices* among Member States, without prejudice to Article 23 of the Treaty on the Functioning of the European Union which imposes an obligation on Member States to provide protection under the same conditions as to their nationals. *It should be ensured that language barriers are overcome and unrepresented citizens are provided with interpretation or other necessary assistance.*

Amendment 13**Proposal for a directive
Recital 18 a (new)**

(18a) The Member States should consider establishing a "trust fund" for consular protection, from which the embassy or consulate of the assisting Member State could advance its expenses for assisting an unrepresented citizen and into which the Member States of the assisted unrepresented citizen should reimburse the financial advance. The Commission, acting in cooperation with the Member States, should establish clear rules defining the division of financial burdens for the proper functioning of such a fund.

Amendment 14**Proposal for a directive
Recital 20**

(20) Regarding coordination *on the ground and* in crisis situations, competences and respective roles should be clarified in order to ensure that unrepresented citizens are fully taken care of. *Local consular cooperation should pay due attention to unrepresented citizens, for example by collecting relevant contact details of the nearest regional embassies and consulates of Member States.*

(20) Regarding coordination in crisis situations, competences and respective roles should be clarified in order to ensure that unrepresented citizens are fully taken care of. *In crisis situations, the Union delegations should ensure the necessary coordination among Member States. To be able to fulfil that role, the European External Action Service (EEAS) should be provided with the necessary financial means, including for the training of Member States' consular staff.*

Thursday 25 October 2012

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 15**Proposal for a directive
Recital 21**

(21) In the event of crisis adequate preparation and a clear division of responsibilities are essential. Crisis contingency planning should therefore fully include unrepresented citizens and national contingency plans should be coordinated. **The concept of the Lead State should be further developed in that context.**

(21) In the event of crisis adequate preparation and a clear division of responsibilities are essential. Crisis contingency planning should therefore fully include unrepresented citizens and national contingency plans should be coordinated **by the EEAS.**

Amendment 16**Proposal for a directive
Recital 22 a (new)**

(22a) The EEAS should organise training for consular staff in order to facilitate assistance to citizens, including unrepresented citizens as a part of preparation for crisis situations.

Amendment 17**Proposal for a directive
Recital 22 b (new)**

(22b) Training courses should be organised for consular staff in order to improve cooperation and increase their knowledge of citizens' rights under the Treaties and this Directive.

Amendment 18**Proposal for a directive
Recital 23**

(23) In third countries the Union is represented by the Union delegations, which together with the diplomatic and consular missions of the Member States contribute to the implementation of the right of citizens of the Union regarding consular protection as specified further in Article 35 of the Treaty on European Union. **In line with the Vienna Convention on consular relations Member States may provide consular protection on behalf of another Member State unless the third country concerned objects. Member States should undertake the necessary measures in relation to third countries to ensure that consular protection on behalf of other Member States can be provided.**

(23) In third countries the Union is represented by the Union delegations, which together with the diplomatic and consular missions of the Member States contribute to the implementation of the right of citizens of the Union regarding consular protection as specified further in Article 35 of the Treaty on European Union. **The Union delegations should ensure the necessary coordination among Member States and may be entrusted with consular tasks wherever relevant. The EEAS should be provided with the necessary financial means in order to be able to fulfil that role.**

Amendment 19**Proposal for a directive
Recital 25**

(25) This Directive should not affect more favourable national provisions in so far as they are compatible with this Directive.

(25) This Directive should not affect more favourable national provisions in so far as they are compatible with this Directive. **This Directive should not impose any obligations on the Member States to provide unrepresented citizens with those types of assistance which are not provided to their own nationals.**

Thursday 25 October 2012

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 20**Proposal for a directive
Recital 25 a (new)**

(25a) This Directive should not affect the obligation and/or right of unrepresented Member States to assist their citizens directly where necessary and/or desirable. Unrepresented Member States should give continuous support to Member States which are providing consular assistance to the citizens of the former.

Amendment 21**Proposal for a directive
Recital 25 b (new)**

(25b) In order to ensure the swift and efficient functioning of this Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of any amendment to the Annexes. 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 the simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

Amendment 22**Proposal for a directive
Recital 27**

(27) In accordance with the prohibition of discrimination contained in the Charter, Member States should implement this Directive without discrimination between the beneficiaries of this Directive on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or beliefs, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

(27) In accordance with the prohibition of discrimination contained in the Charter, **in particular in Article 21**, Member States, **Union delegations and, where relevant, the EEAS** should **always** implement this Directive without discrimination between the beneficiaries of this Directive on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or beliefs, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

Amendment 23**Proposal for a directive
Recital 27 a (new)**

(27a) Member States should encourage their own nationals to register themselves on the websites of their Ministries for Foreign Affairs before visiting third countries in order to facilitate their assistance in cases of need, in particular in crisis situations.

Amendment 24**Proposal for a directive
Recital 27 b (new)**

(27b) Commission should consider establishing a 24/7 hotline in order to make information easily accessible for those citizens seeking consular protection in cases of emergency.

Thursday 25 October 2012

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 25**Proposal for a directive
Article 1**

This Directive lays down the cooperation and coordination measures necessary to facilitate the **exercise of the right** of citizens of the Union, in the territory of a third country in which the Member State of which they are nationals is not represented, **to protection** by the diplomatic or consular authorities of another Member State on the same conditions as the nationals of that Member State.

This Directive lays down the cooperation and coordination measures necessary to facilitate the **protection** of citizens of the Union, in the territory of a third country in which the Member State of which they are nationals is not represented, by the diplomatic or consular authorities of another Member State on the same conditions as the nationals of that Member State. **Where relevant, Union delegations may also be entrusted with consular tasks for unrepresented citizens.**

Amendment 26**Proposal for a directive
Article 2 – paragraph 1**

1. Every citizen holding the nationality of a Member State of the Union which is not represented by a diplomatic or consular authority in a third country, hereafter "unrepresented citizen", shall be **entitled to protection** by the diplomatic or consular authorities of another Member State under the same conditions as its nationals.

1. Every citizen holding the nationality of a Member State of the Union which is not represented by a diplomatic or consular authority in a third country, hereafter "unrepresented citizen", shall be **protected** by the diplomatic or consular authorities of another Member State under the same conditions as its nationals **and by the Union delegation.**

Amendment 27**Proposal for a directive
Article 2 – paragraph 3**

3. Family members of unrepresented citizens who themselves are not citizens of the Union are entitled to consular protection under the same conditions as the family members of nationals of the **assisting** Member State **who themselves are not nationals.**

3. Family members of unrepresented citizens who themselves are not citizens of the Union are entitled to consular protection under the same conditions as the family members of nationals of the Member State **of origin, or to consular protection by a Union delegation.**

Amendment 28**Proposal for a directive
Article 3 – paragraph 3**

3. Honorary consuls shall be regarded as equivalent to accessible embassies or consulates **within the scope of their** competences pursuant to national law and practices.

3. Honorary consuls shall be regarded as equivalent to accessible embassies or consulates **to the extent that they have the relevant** competences pursuant to national law and practices.

Amendment 29**Proposal for a directive
Article 4 – paragraph 1**

1. Unrepresented citizens may choose the Member State embassy or consulate from which they seek consular protection.

1. Unrepresented citizens may choose the Member State embassy or consulate from which they seek consular protection. **They may also seek assistance from the Union delegation wherever necessary and relevant. Member States shall make available, on the websites of their Ministries for foreign affairs, information on their citizens' right to seek, in a third country in which those Member States are not represented, consular protection, in accordance with this Directive, from the diplomatic or consular authorities of another Member State, and on the conditions of the exercise of that right.**

Thursday 25 October 2012

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 30**Proposal for a directive
Article 4 – paragraph 2**

2. *A Member State may represent another Member State on a permanent basis and Member States' embassies or consulates in a third country may conclude arrangements on burden-sharing, provided that effective treatment of applications is ensured. Member States shall inform the European Commission of any such arrangement in view of publication on its dedicated internet site.*

2. *In order to provide unrepresented citizens with consular protection and ensure the effective treatment of applications, Member States' representations and where relevant, the Union delegation may conclude local arrangements on burden sharing and the exchange of information. After notification to local authorities, such local arrangements shall be reported to the Commission and to the EEAS and published on the Commission's website and on the relevant websites of the Member States concerned. Those arrangements shall fully respect the provisions of this Directive.*

Amendment 31**Proposal for a directive
Article 5 – paragraph 2**

2. If the citizen of the Union is unable to produce a valid passport or identity card, nationality may be proven by any other means, if necessary following verification with the diplomatic and consular authorities of the Member State of which the applicant claims to be a national.

2. If the citizen of the Union is unable to produce a valid passport or identity card, nationality may be proven by any other means, if necessary following verification with the diplomatic and consular authorities of the Member State of which the applicant claims to be a national. *The assisting embassy or consulate shall provide unrepresented citizens with the necessary means for verifying their identity.*

Amendment 32**Proposal for a directive
Chapter 1 a and Article 5 a (new)****CHAPTER 1a****Local consular protection cooperation and coordination****Article 5a****General principle**

Member States' diplomatic and consular authorities shall closely cooperate and coordinate among each other and with the Union to ensure protection of unrepresented citizens under the same conditions as for nationals. The Union delegations shall facilitate cooperation and coordination among the Member States and between Member States and the Union to ensure the protection of unrepresented citizens under the same conditions as for nationals. When a consulate or embassy or, where relevant, the Union delegation assists an unrepresented citizen, the regionally responsible nearest consulate or embassy or the Ministry of Foreign Affairs of the citizen's Member State of nationality, as well as the Union delegation, shall be contacted and shall cooperate in order to define the measures to be taken. Member States shall notify the relevant contact persons in the Ministries of Foreign Affairs to the EEAS which shall continuously update them in its secure internet site.

(Article 7 of the Commission's proposal becomes obsolete.)

Thursday 25 October 2012

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 33**Proposal for a directive****Article 6 – paragraph 2 – introductory part**

2. The consular protection referred to in paragraph 1 shall include assistance in the following situations

2. The consular protection referred to in paragraph 1 shall include assistance in the following situations **in particular:**

Amendment 34**Proposal for a directive****Article 6 – paragraph 2 – point b**

(b) being victim of crime;

(b) being victim of crime **or in danger of being victim of crime;**

Amendment 35**Proposal for a directive****Article 6 – paragraph 2 – subparagraph 1 a (new)**

This consular protection shall also extend to all other situations where the represented Member State would habitually provide assistance to its own citizens.

Amendment 36**Proposal for a directive****Article 8 – paragraph 1**

1. Where an unrepresented citizen is arrested or detained Member States' embassies or consulates, subject to Article 6(1), shall in particular:

1. Where an unrepresented citizen is arrested or **otherwise** detained Member States' embassies or consulates, subject to Article 6(1), shall in particular:

(a) assist in informing the citizen's family members or other related persons at the citizen's request;

(a) assist in informing the citizen's family members or other related persons at the citizen's request;

(b) visit the citizen and **monitor** minimum standards **of treatment in prison;**

(b) visit the citizen and **ensure that** minimum standards **of detention conditions are granted;**

(c) provide the citizen with information on **the** rights **of the detained.**

(c) provide the citizen with information on **his/her** rights;

(ca) make sure that the citizen has access to proper legal advice.

Amendment 37**Proposal for a directive****Article 8 – paragraph 3**

3. The embassy or consulate shall report to the citizen's Member State of nationality following any of its visits of the citizen and upon monitoring of minimum standards of **treatment in prison.** It shall immediately inform the citizen's Member State of nationality about any complaints of ill-treatment.

3. The embassy or consulate shall report to the citizen's Member State of nationality following any of its visits of the citizen and upon monitoring of minimum standards of **detention conditions.** It shall immediately inform the citizen's Member State of nationality about any complaints of ill-treatment **and about the action taken in order to prevent such ill-treatment and ensure that minimum standards of detention conditions are granted.**

Thursday 25 October 2012

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 38**Proposal for a directive
Article 8 – paragraph 4**

4. The embassy or consulate shall inform the citizen's Member State of nationality about information provided by it to the citizen about his or her rights. It shall act as an intermediary, including as to assistance with drafting petitions for pardons or early releases and where the citizen wishes to apply for a transfer. If necessary it shall act as an intermediary for any legal fees deposited via the diplomatic or consular authorities of the citizen's Member State of nationality.

4. The embassy or consulate shall inform the citizen's Member State of nationality about information provided by it to the citizen about his or her rights. It shall act as an intermediary, including as **to ensure that the citizen has access to proper legal advice and** to assistance **including** with drafting petitions for pardons or early releases and where the citizen wishes to apply for a transfer. If necessary it shall act as an intermediary for any legal fees deposited via the diplomatic or consular authorities of the citizen's Member State of nationality.

Amendment 39**Proposal for a directive
Article 9 – paragraph 1**

1. Where an unrepresented citizen is the victim of a crime Member States' embassies or consulates, subject to Article 6(1), shall in particular:

- (a) assist in informing the citizen's family members or other related persons, if the citizen so wishes;
- (b) provide the citizen with information and/or assistance regarding **relevant legal issues and** health care.

1. Where an unrepresented citizen is the victim of a crime **or in danger of being victim of a crime** Member States' embassies or consulates, subject to Article 6(1), shall in particular:

- (a) assist in informing the citizen's family members or other related persons, if the citizen so wishes;
- (b) provide the citizen with information and/or assistance regarding health care;

(ba) provide the citizen with information on his/her rights and with access to proper legal assistance and counselling.

Amendment 40**Proposal for a directive
Article 9 – paragraph 2**

2. The embassy or consulate shall inform the citizen's Member State of nationality about the incident, its seriousness and the assistance given **and** shall liaise with the citizen's family members or other related persons **if** the citizen, **where possible, has given his or her** consent.

2. The embassy or consulate shall inform the citizen's Member State of nationality about the incident, its seriousness and the assistance given. **That Member State shall** liaise with the citizen's family members or other related persons **unless the citizen has refused to give** consent.

Amendment 41**Proposal for a directive
Article 10 – paragraph 2**

2. The embassy or consulate shall inform the citizen's Member State of nationality about the incident, its seriousness and the assistance given **and if appropriate** liaise with the victim's family members or other related persons. It shall inform the citizen's Member State of nationality if there is a need for medical evacuation. Any medical evacuation shall be subject to prior consent of the citizen's Member State of nationality except in cases of extreme urgency.

2. The embassy or consulate shall inform the citizen's Member State of nationality about the incident, its seriousness and the assistance given. **That Member State shall** liaise with the victim's family members or other related persons **unless the citizen has refused to give consent**. It shall inform the citizen's Member State of nationality if there is a need for medical evacuation. Any medical evacuation shall be subject to prior consent of the citizen's Member State of nationality except in cases of extreme urgency.

Thursday 25 October 2012

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 42**Proposal for a directive
Article 11 a (new)****Article 11a****Local cooperation**

Local cooperation meetings shall include a regular exchange of information relating to unrepresented citizens on matters such as the safety of citizens, detention conditions or consular access. Unless otherwise agreed centrally by the Ministries for Foreign Affairs, the Chair shall be a representative of a Member State or the Union delegation decided locally. The Chair shall collect and regularly update contact details, in particular regarding the contact points of unrepresented Member States, and share them with the local embassies and consulates and the Union delegation.

Amendment 43**Proposal for a directive
Chapter 3 and Article 12****CHAPTER 3***deleted***Financial procedures****Article 12****General rules**

Where an unrepresented citizen requests assistance in the form of financial advance or repatriation, subject to Article 6 (1), the following procedure shall apply:

- (a) the unrepresented citizen shall undertake to repay to his or her Member State of nationality the full value of any financial advance or cost incurred, plus a consular fee if applicable, using the standard form set out in Annex I;*
- (b) if required by the assisting embassy or consulate, the citizen's Member State of nationality shall without delay provide the necessary information concerning the request, specifying whether any consular fee may be applicable;*
- (c) the assisting embassy or consulate shall inform the citizen's Member State of nationality about any request for financial advance or repatriation which it processed;*
- (d) (on written request from the assisting embassy or consulate in the format set out in Annex I, the citizen's Member State of nationality shall reimburse the full value of any financial advance or cost incurred.*

Amendment 44**Proposal for a directive
Article 13****Article 13***deleted***Facilitated procedure in crisis situations**

1. *In crisis situations the assisting embassy or consulate shall coordinate any evacuation or other necessary support provided for an unrepresented citizen with the citizen's Member State of nationality.*

Thursday 25 October 2012

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

The assisting Member State shall submit any requests for reimbursement of the costs of such evacuation or support to the Ministry of Foreign Affairs of the citizen's Member State of nationality. The assisting Member State may seek reimbursement even if the unrepresented citizen has not signed an undertaking to repay pursuant to Article 12 (a).

This paragraph shall not prevent the citizen's Member State of nationality from pursuing repayment on the basis of national rules.

2. In major crises, the costs of evacuation or support shall be reimbursed by the citizen's Member State of nationality on a pro-rata basis, by dividing the overall costs by the number of citizens assisted, if the assisting Member State so requests.

3. Where costs cannot be calculated, the assisting Member State may request reimbursement on the basis of fixed sums corresponding to the type of support provided, as set out in Annex 2.

4. Where the assisting Member State was financially supported in respect of assistance by the EU Civil Protection Mechanism, any contribution from the citizen's Member State of nationality shall be determined after deduction of the Union's contribution.

5. For requests for reimbursement the common formats set out in Annex 2 shall be used.

Amendment 45

Proposal for a directive Chapter 4 – title

Local and crisis cooperation and coordination

Crisis cooperation and coordination

Amendment 46

Proposal for a directive Article 14

Article 14

deleted

Local cooperation

Local cooperation meetings shall include a regular exchange of information on unrepresented citizens, on matters such as safety of citizens, prison conditions or consular access. Unless otherwise agreed by the Ministries of Foreign Affairs centrally, the Chair shall be a representative of a Member State or the Union delegation decided locally. The Chair shall collect and regularly update contact details, in particular regarding the contact points of unrepresented Member States, and share them with the local embassies and consulates and the Union delegation.

Thursday 25 October 2012

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 47**Proposal for a directive
Article 15 – paragraph 1**

1. *To ensure comprehensive preparedness local* contingency planning shall include unrepresented citizens. Member States represented in a third country shall coordinate the contingency plans among themselves and with the Union delegation. They shall agree on respective tasks to ensure that unrepresented citizens are fully assisted in case of crisis, **appoint** representatives for assembly points and **inform** unrepresented citizens on crisis preparedness arrangements under the same conditions as nationals.

1. *Union delegations shall coordinate* contingency planning among Member States **in order to ensure comprehensive preparedness, including the division of** tasks to ensure that unrepresented citizens are fully assisted in case of crisis, **the appointment of** representatives for assembly points and **the provision of information to** unrepresented citizens on crisis preparedness arrangements under the same conditions as nationals.

Amendment 48**Proposal for a directive
Article 15 – paragraph 2**

2. In the event of a crisis Member States **and the Union** shall closely cooperate to ensure efficient assistance of unrepresented citizens. **Member States and the Union shall inform each other** about available evacuation capacities in a timely manner. **Upon request Member States may be supported by** existing intervention teams at Union level including consular experts, in particular from the unrepresented Member States.

2. In the event of a crisis Member States **and the EEAS** shall closely cooperate to ensure efficient assistance of unrepresented citizens. **The Union delegation shall coordinate the exchange of information** about available evacuation capacities in a timely manner, **coordinate the evacuation itself and provide the necessary assistance for evacuation, with possible support from** existing intervention teams at Union level including consular experts, in particular from the unrepresented Member States.

Amendment 49**Proposal for a directive
Article 16 – Title***Lead State**Coordination in preparation for and in the event of crises***Amendment 50****Proposal for a directive
Article 16 – paragraph 1**

1. *For the purpose of this directive the Lead State(s) is (are) one or more Member State(s) in a given third country,* in charge of coordinating and **leading** assistance regarding the preparation for and in case of crisis, which includes a specific role for unrepresented citizens.

1. *The Union delegations shall be* in charge of coordinating and **providing** assistance regarding the preparation for and in case of crisis, which includes a specific role for unrepresented citizens.

Amendment 51**Proposal for a directive
Article 16 – paragraph 2**

2. *A Member State is designated as Lead State in a given third country, if it notified its intention through the existing secure communication network; unless another Member State*

deleted

Thursday 25 October 2012

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

objects within 30 days or the proposed Lead State renounces the task through the secure communication network. If more than one Member State wish to assume jointly the task of Lead State they shall jointly notify their intention through the secure communication network. In the event of crisis one or more Member States may assume this task immediately and shall undertake notification within 24 hours. Member States may decline the offer, but their nationals and other potential beneficiaries remain, in accordance with Article 6(1), eligible to assistance from the Lead State. If there is no Lead State, Member States represented on the ground shall agree on which Member State will coordinate assistance for unrepresented citizens.

Amendment 52

Proposal for a directive Article 16 – paragraph 3

3. To prepare for crises the **Lead State(s)** shall ensure that unrepresented citizens are duly included in embassies and consulates' contingency planning, that contingency plans are compatible and that embassies and consulates **as well as Union delegations** are duly informed about these arrangements.

3. To prepare for crises the **Union delegation** shall ensure that unrepresented citizens are duly included in embassies and consulates' contingency planning, that contingency plans are compatible and that embassies and consulates are duly informed about these arrangements.

Amendment 53

Proposal for a directive Article 16 – paragraph 4

4. In the event of crisis the **Lead State(s) or the Member State coordinating assistance** shall be in charge of coordination and leading assistance and assembly operations for unrepresented citizens, and **if necessary ensure** evacuation to a place of safety with the support of the **other** Member States concerned. It shall also provide a point of contact for unrepresented Member States, through which they can receive information about their citizens and coordinate necessary assistance. **The Lead State(s) or, the Member State coordinating assistance for unrepresented citizens** may seek, if appropriate, support from instruments such as the EU Civil Protection Mechanism and the crisis management structures of the European External Action Service. Member States shall provide the **Lead State(s) or the Member State coordinating assistance** with all the relevant information regarding their unrepresented citizens present in a crisis situation.

4. In the event of crisis the **Union delegation** shall be in charge of coordination and leading assistance and assembly operations for unrepresented citizens, and **coordinate** evacuation to a place of safety with the support of the Member States concerned. It shall also provide a point of contact for unrepresented Member States, through which they can receive information about their citizens and coordinate necessary assistance. **The Union delegation and the Member States concerned** may seek, if appropriate, support from instruments such as the EU Civil Protection Mechanism and the crisis management structures of the European External Action Service. Member States shall provide the **Union delegation** with all the relevant information regarding their unrepresented citizens present in a crisis situation.

Amendment 54

Proposal for a directive Chapter 4 a (new)

CHAPTER 4a

Financial procedures

Thursday 25 October 2012

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 55
Proposal for a directive
Article 16 a (new)

Article 16a

General rules

Where an unrepresented citizen requests assistance in the form of a financial advance or repatriation, subject to Article 6(1), the following procedure shall apply:

- (a) the unrepresented citizen shall undertake to repay to his or her Member State of nationality the full value of any financial advance or costs incurred, plus a consular fee if applicable, using the standard form set out in Annex 1;*
- (b) if required by the assisting embassy or consulate, the citizen's Member State of nationality shall without delay provide the necessary information concerning the request, specifying whether any consular fee may be applicable;*
- (c) the assisting embassy or consulate shall inform the citizen's Member State of nationality about any request for a financial advance or repatriation which it processed;*
- (d) on written request from the assisting embassy or consulate in the format set out in Annex 1, the citizen's Member State of nationality shall reimburse the full value of any financial advance or costs incurred.*

Amendment 56
Proposal for a directive
Article 16 b (new)

Article 16b

Facilitated procedure in crisis situations

- 1. In crisis situations the Union delegation shall coordinate any evacuation or other necessary support provided for an unrepresented citizen with the citizen's Member State of nationality.*
- 2. The EEAS shall have the necessary financial means for coordinating and providing assistance regarding preparation for and in crisis situations.*

Thursday 25 October 2012

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 57**Proposal for a directive
Article 18 a (new)****Article 18a****Amendments to the annexes**

The Commission shall be empowered to adopt delegated acts in accordance with Article 18b concerning any amendment to the Annexes.

Amendment 58**Proposal for a directive
Article 18 b (new)****Article 18b****Exercise of delegation**

1. *The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.*

2. *The delegation of power referred to in Article 18a shall be conferred for an indeterminate period of time from ... (*).*

3. *The delegation of powers referred to in Article 18a may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.*

4. *As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.*

5. *A delegated act adopted pursuant to Article 18a shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two 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 two months at the initiative of the European Parliament or the Council.*

(*) *Date of entry into force of this Directive.*

Thursday 25 October 2012

Appointment of a member of the Executive Board of the European Central Bank

P7_TA(2012)0396

European Parliament decision of 25 October 2012 on the Council recommendation for appointment of a Member of the Executive Board of the European Central Bank (C7-0195/2012 – 2012/0806(NLE))

(2014/C 72 E/19)

(Consultation)

The European Parliament,

- having regard to the Council's recommendation of 10 July 2012 ⁽¹⁾,
 - having regard to Article 283(2), second subparagraph of the Treaty on the Functioning of the European Union, pursuant to which the European Council consulted Parliament (C7-0195/2012),
 - having regard to Rule 109 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A7-0348/2012),
- A. whereas, by letter of 13 July 2012, received on 18 July 2012, the European Council consulted Parliament on the appointment of Yves Mersch as a Member of the Executive Board of the European Central Bank (ECB) for a term of office of eight years;
- B. whereas Parliament's Committee on Economic and Monetary Affairs then proceeded to evaluate the credentials of the nominee, in particular in view of the requirements laid down in Article 283(2) of the Treaty on the Functioning of the European Union (TFEU) and in the light of the need for full independence of the ECB in the area of monetary policy pursuant to Article 130 TFEU, whereas in carrying out this evaluation, the committee received a curriculum vitae from the candidate as well as his replies to the written questionnaire that had been sent to him;
- C. whereas the committee subsequently held a hearing with the nominee on 22 October 2012, at which he made an opening statement and then responded to questions from the members of the committee;
- D. whereas there was a broad consensus that the nominee is of recognised standing and has the professional qualification and experience in monetary and banking matters needed to exercise the functions of an Member of the Executive Board of the ECB;
- E. whereas, prior to the end of the term of office of Ms Tumpel-Gugerell, the issue of female representation at the ECB was raised informally by MEPs;
- F. whereas, from the creation of the ECB, until the departure of Ms Tumpel-Gugerell, there had always been a female member of the Executive Board of the ECB;
- G. whereas, according to the principle of sincere cooperation between the Member States and the Union, as set out in Article 4(3) TFEU, the committee ensured, before the end of Mr Gonzalez-Paramo's mandate in May 2012, that the Council was informed, by way of letter of 8 May 2012 to the President of the Eurogroup, by the chair the committee, on behalf of all the political groups, about the lack of diversity on the Executive Board of the ECB and the need for a female candidate to be presented;

⁽¹⁾ OJ C 215, 21.7.2012, p. 4.

Thursday 25 October 2012

- H. whereas, in the same letter, the chair of the committee encouraged the Eurogroup to implement a medium-term plan to promote women to influential positions in the ECB, in national central banks and in national finance ministries;
- I. whereas no formal reply was received to the letter of 8 May 2012;
- J. whereas Article 2 of the Treaty on European Union lays down the principle of equality between women and men;
- K. whereas Article 19 TFEU confers powers upon the Union to combat gender discrimination;
- L. whereas gender diversity in boards and governments ensure broader competence and wider perspectives, and whereas recruiting only men or only women means a more narrow selection and risks missing out on potentially excellent candidates;
- M. whereas the terms of office of the current Executive Board of the ECB extends to 2018 so that the Executive Board is potentially void of gender diversity until that date;
- N. whereas, by letter of 19 September 2012, the President of the European Parliament, following a meeting of the Conference of Presidents, requested that the President of the European Council make a commitment to ensure that all of the Union's institutions under his responsibility should implement concrete measures to ensure gender balance;
- O. whereas the Commission adopted a strategy for equality between women and men 2010-2015 (COM(2010)0491) on 21 September 2010 and a report on Progress on Equality between Women and Men in 2011(SWD(2012/0085) on 16 April 2012;
- P. whereas the Commission's proposal for a directive of the European Parliament and the Council on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (Capital Requirements Directive (CRD4)), included requirement for institutions to put in place a policy promoting gender diversity on the management body;
- Q. whereas the European Council adopted the European pact for Gender Equality for the period 2011 to 2020 on 7 March 2011;
- R. whereas Parliament has adopted resolutions of 13 March 2012 on women in political decision-making ⁽¹⁾, of 8 March 2011 on equality between women and men in the European Union - 2010 ⁽²⁾, and of 6 July 2011 on women and business leadership ⁽³⁾;
1. Delivers a negative opinion on the Council recommendation to appoint Yves Mersch as a Member of the Executive Board of the ECB and requests that the recommendation be withdrawn and that a new one be submitted to Parliament;
2. Instructs its President to forward this decision to the European Council, the Council and the governments of the Member States.

⁽¹⁾ Texts adopted, (P7_TA(2012)0070).

⁽²⁾ OJ C 199 E, 7.7.2012, p. 65.

⁽³⁾ Texts adopted, (P7_TA(2011)0330).

Thursday 25 October 2012

Protection against dumped imports from countries not members of the European Community *I**

P7_TA(2012)0397

European Parliament legislative resolution of 25 October 2012 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community (COM(2012)0270 – C7-0146/2012 – 2012/0145(COD))

(2014/C 72 E/20)

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0270),
 - having regard to Article 294(2) and Article 207 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0146/2012),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rules 55 and 46(1) of its Rules of Procedure,
 - having regard to the report of the Committee on International Trade (A7-0243/2012),
1. Adopts its position at first reading hereinafter set out;
 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;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2012)0145

Position of the European Parliament adopted at first reading on 25 October 2012 with a view to the adoption of Regulation (EU) No .../2012 of the European Parliament and of the Council amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Thursday 25 October 2012

Acting in accordance with the ordinary legislative procedure ⁽¹⁾,

Whereas:

- (1) In Case C-249/10 P ⁽²⁾, the Court of Justice ruled that the sampling technique provided for in Article 17 of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽³⁾ may not be applied for the purposes of the determination of claims of market economy treatment to be made under Article 2(7)(c) of that Regulation.
- (2) The ruling by the Court of Justice would require that the Commission examine all applications for market economy treatment filed by cooperating exporting producers who are not part of the sample, irrespective of whether the number of cooperating producers is large. However, such a practice would impose a disproportionate administrative burden on the investigating authorities of the Union. Therefore, it is appropriate to amend Regulation (EC) No 1225/2009.
- (3) Moreover, the use of the sampling technique provided for in Article 17 of Regulation (EC) No 1225/2009 for the purposes of the determination of claims of market economy treatment to be made under Article 2(7)(c) of that Regulation is allowed under the rules of the World Trade Organisation. For example, the panel of the Dispute Settlement Body of the World Trade Organisation in dispute DS405 (*European Union — Anti-Dumping measures on Certain Footwear from China*, report adopted on 22 February 2012) found that China did not establish that the European Union acted inconsistently with Articles 2.4 and 6.10.2 of the Anti-dumping Agreement, Paragraph 15(a)(ii) of China's Accession Protocol, and Paragraphs 151(e) and (f) of China's Accession Working Party Report, by failing to examine the market economy treatment applications of the cooperating Chinese exporting producers that are not part of the sample for the original investigation.
- (4) Therefore, taking into account this background and for reasons of legal certainty, it is considered appropriate to introduce a provision clarifying that the decision to limit the investigation to a reasonable number of parties by using samples on the basis of Article 17 of Regulation (EC) No 1225/2009 also applies to the parties subject to an examination in accordance with Article 2(7)(b) and (c). Consequently, it is also appropriate to clarify that a determination under Article 2(7)(c) should not be made for exporting producers that are not part of the sample, unless such producers request and obtain individual examination in accordance with Article 17(3).
- (5) Furthermore, it is considered appropriate to clarify that the anti-dumping duty to be applied to imports from exporters or producers which have made themselves known in accordance with Article 17, but were not included in the examination shall not exceed the weighted average margin of dumping established for the parties in the sample, irrespective of whether the normal value established for such parties was determined on the basis of Article 2(1) to 2(6) or Article 2(7)(a).
- (6) Lastly, the three month time-limit by which a determination pursuant to Article 2(7)(c) should be made has proved impracticable, in particular in proceedings where sampling in accordance with Article 17 is applied. It is therefore considered appropriate to remove this time-limit.
- (7) In the interests of legal certainty and the principle of sound administration, it is necessary to provide that these amendments should apply as soon as possible to all new and pending investigations.
- (8) Regulation (EC) No 1225/2009 should therefore be amended accordingly,

⁽¹⁾ Position of the European Parliament of 25 October 2012.

⁽²⁾ Case C-249/10 P *Brosmann Footwear (HK) and Others v Council*, judgment of 2 February 2012.

⁽³⁾ OJ L 343, 22.12.2009, p. 51.

Thursday 25 October 2012

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1225/2009 is amended as follows:

(1) Article 2(7) is amended as follows:

(a) The penultimate sentence of subparagraph (c) is modified as follows:

The terms "within three months of the initiation of the investigation" are **replaced by the following**:

"within normally seven months but not later than within eight months of the initiation of the investigation".

[Am. 1]

(b) The following subparagraph (d) is added:

"(d) When the Commission has limited its examination in accordance with Article 17, a determination pursuant to subparagraphs (b) and (c) shall be limited to the parties included in the examination and any producer that receives individual treatment pursuant to Article 17(3).";

(2) In Article 9(6), the first sentence is replaced by the following:

"When the Commission has limited its examination in accordance with Article 17, any anti-dumping duty applied to imports from exporters or producers which have made themselves known in accordance with Article 17 but were not included in the examination shall not exceed the weighted average margin of dumping established with respect to the parties in the sample, irrespective of whether the normal value for such parties is determined on the basis of Article 2(1) to 2(6) or Article 2(7)(a)."

Article 2

This Regulation shall apply to all new and pending investigations at the time of entry into force of this Regulation.

Article 3

This Regulation shall enter into force on the first day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...,

For the European Parliament
The President

For the Council
The President

Friday 26 October 2012

EU-US agreement on the coordination of energy-efficiency labelling programmes for office equipment ***

P7_TA(2012)0403

European Parliament legislative resolution of 26 October 2012 on the draft Council decision on the signing and conclusion of the Agreement between the Government of the United States of America and the European Union on the coordination of energy-efficiency labelling programmes for office equipment (09890/2012 – C7-0134/2012 – 2012/0048(NLE))

(2014/C 72 E/21)

(Consent)

The European Parliament,

- having regard to the draft Council decision (09890/2012),
 - having regard to draft agreement between the Government of the United States of America and the European Union on the coordination of energy-efficiency labelling programmes for office equipment (10193/2012),
 - having regard to the request for consent submitted by the Council in accordance with Articles 194 and 207 and with Article 218(6), second subparagraph, point (a), of the Treaty on the Functioning of the European Union (C7-0134/2012),
 - having regard to Rules 81 and 90(7) of its Rules of Procedure,
 - having regard to the recommendation of the Committee on Industry, Research and Energy (A7-0275/2012),
1. Consents to conclusion of the Agreement;
 2. Instructs its President to forward its position to the Council, the Commission and the governments and parliaments of the Member States and of the United States of America.

Markets in financial instruments, and repeal of Directive 2004/39/EC*I**

P7_TA(2012)0406

Amendments adopted by the European Parliament on 26 October 2012 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))⁽¹⁾

(2014/C 72 E/22)

(Ordinary legislative procedure – recast)

[Amendment No 1 unless otherwise indicated]

AMENDMENTS BY THE EUROPEAN PARLIAMENT (*)

to the Commission proposal

⁽¹⁾ The matter was referred back to the committee responsible for reconsideration pursuant to Rule 57(2), second subparagraph (A7-0306/2012).

(*) Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■**.

Friday 26 October 2012

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)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

- Having regard to the Treaty on the functioning of the European Union, and in particular Article 53(1) thereof,
- Having regard to the proposal from the European Commission,
- After transmission of the draft legislative act to the national parliaments,
- Having regard to the opinion of the European Central Bank ⁽¹⁾,
- Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,
- Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ⁽⁴⁾ has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.
- (2) Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field ⁽⁵⁾ sought to establish the conditions under which authorised investment firms and banks could provide specified services or establish branches in other Member States on the basis of home country authorisation and supervision. To this end, that Directive aimed to harmonise the initial authorisation and operating requirements for investment firms including conduct of business rules. It also provided for the harmonisation of some conditions governing the operation of regulated markets.
- (3) In recent years more investors have become active in the financial markets and are offered an even more complex wide ranging set of services and instruments. In view of these developments the legal framework of the **European** Union should encompass the full range of investor-oriented activities. To this end, it is necessary to provide for the degree of harmonisation needed to offer investors a high level of protection and to allow investment firms to provide services throughout the **European** Union, being an internal market, on the basis of home country supervision. In view of the preceding, Directive 93/22/EEC was replaced by Directive 2004/39/EC.
- (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, **address** unregulated areas, ensure that supervisors are granted adequate powers to fulfil their tasks.

⁽¹⁾ OJ C 161, 7.6.2012, p. 3.

⁽²⁾ OJ C 191, 29.6.2012, p. 80.

⁽³⁾ Position of the European Parliament of 26 October 2012.

⁽⁴⁾ OJ L 145, 30.4.2004, p. 1.

⁽⁵⁾ OJ L 141, 11.6.1993, p. 27.

Friday 26 October 2012

- (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. **Notwithstanding the responsibilities of shareholders to ensure that boards carry out their responsibilities appropriately, 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.**
- (6) The High Level Group on Financial Supervision in the European Union invited the European Union to develop a more harmonised set of financial regulation. In the context of the future European supervision architecture, the European Council of 18 and 19 June 2009 also stressed the need to establish a European single rule book applicable to all financial institutions in the Single Market.
- (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 **European** 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 areas referred to, the proposal should be based on Article 53(1) of the Treaty on the Functioning of the European Union (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.
- (8) It is appropriate to include in the list of financial instruments ■ commodity derivatives and others which are constituted and traded in such a manner as to give rise to regulatory issues comparable to traditional financial instruments. **Contracts of insurance in respect of activities of classes set out in Annex I of Directive 2009/138/EC of 25 November 2009 of the European Parliament and of the Council on the taking-up and pursuit of business of Insurance and Reinsurance (Solvency II) ⁽¹⁾ if entered into with an insurance undertaking, reinsurance undertaking, third-country insurance undertaking or third-country reinsurance undertaking, are not derivatives or derivative contracts for the purposes of this Directive.**
- (9) A range of fraudulent practices have occurred in spot secondary markets in emission allowances (EUAs) which could undermine trust in the emissions trading schemes, set up by Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emissions allowance trading within the Community ⁽²⁾, and measures are being taken to strengthen the system of EUA registries and conditions for opening an account to trade EUAs. In order to reinforce the integrity and safeguard the efficient functioning of those markets, including comprehensive supervision of trading activity, it is appropriate to complement measures taken under Directive 2003/87/EC by bringing emission allowances fully into the scope of this Directive and of Regulation (EU) No .../...[MAR] ■. **By contrast it is appropriate to clarify that spot foreign exchange transactions are outside the scope of the Directive even though currency derivatives are included.**

⁽¹⁾ OJ L 335, 17.12.2009, p. 1.

⁽²⁾ OJ L 275, 25.10.2003, p. 32.

Friday 26 October 2012

- (10) The purpose of this Directive is to cover undertakings the regular occupation or business of which is to provide investment services and/or perform investment activities on a professional basis. Its scope should not therefore cover any person with a different professional activity.
- (11) It is necessary to establish a comprehensive regulatory regime governing the execution of transactions in financial instruments irrespective of the trading methods used to conclude those transactions so as to ensure a high quality of execution of investor transactions and to uphold the integrity and overall efficiency of the financial system. A coherent and risk-sensitive framework for regulating the main types of order-execution arrangement currently active in the European financial marketplace should be provided for. It is necessary to recognise the emergence of a new generation of organised trading systems alongside regulated markets which should be subjected to obligations designed to preserve the efficient and orderly functioning of financial markets **and to ensure that such organised trading systems do not benefit from regulatory loopholes.**
- (12) All trading venues, namely regulated markets, multilateral trading facilities (MTFs), and organised trading facilities (OTFs), should lay down transparent rules governing access to the facility. However, while regulated markets and MTFs should continue to be subject to similar requirements regarding whom they may admit as members or participants, OTFs should be able to determine and restrict access based inter alia on the role and obligations which **they** have in relation to their clients. **Trading venues should be able to allow users to specify the type of order flow that their orders interact with prior to their orders entering the system provided this is done in an open and transparent manner and does not involve discrimination by the platform operator.**
- (13) Systematic internalisers should be defined as investment firms which, on an organised, **regular** and systematic basis, deal on own account by executing client orders outside a regulated market, an MTF or an OTF **in a bilateral system**. In order to ensure the objective and effective application of this definition to investment firms, any bilateral trading carried out with clients should be relevant and quantitative criteria should complement the qualitative criteria for the identification of investment firms required to register as systematic internalisers, laid down in Article 21 of Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards recordkeeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive⁽¹⁾. While **trading venues are facilities** in which multiple third-party buying and selling interests interact in the system, a systematic internaliser should not be allowed to bring together third-party buying and selling interests **in functionally the same way as a trading venue.**
- (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 an 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 an 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 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⁽²⁾, 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 which should include the scale of the activity and the extent to which it reduces risks arising from the main business.** 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

⁽¹⁾ OJ L 241, 2.9.2006, p. 1.

⁽²⁾ OJ L 177, 30.6.2006, p. 1.

Friday 26 October 2012

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.

- (15) References in the text to persons should be understood as including both natural and legal persons.
- (16) Insurance or assurance undertakings the activities of which are subject to appropriate monitoring by the competent prudential-supervision authorities and which are subject to Directive 2009/138/EC should be excluded ***except for certain provisions relating to insurance products used as investment vehicles. Investments are often sold to clients in the form of insurance contracts as an alternative to or substitute for financial instruments regulated under this Directive. To deliver consistent protection for retail clients, it is important that investments under insurance contracts are subject to the same conduct of business standards, in particular those relating to managing conflicts of interest, restrictions on inducements, and rules on ensuring the suitability of advice or appropriateness of non-advised sales. The investor protection and conflicts of interest requirements in this Directive should therefore be applied equally to those investments packaged under insurance contracts and coordination should be ensured between this Directive and other relevant law including Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation*** ⁽¹⁾.
- (17) Persons who do not provide services for third parties but whose business consists in providing investment services solely for their parent undertakings, for their subsidiaries, or for other subsidiaries of their parent undertakings should not be covered by this Directive.
- (18) Persons who provide investment services only on an incidental basis in the course of professional activity should also be excluded from the scope of this Directive, provided that activity is regulated and the relevant rules do not prohibit the provision, on an incidental basis, of investment services.
- (19) Persons who provide investment services consisting exclusively in the administration of employee-participation schemes and who therefore do not provide investment services for third parties should not be covered by this Directive.
- (20) It is necessary to exclude from the scope of this Directive central banks and other bodies performing similar functions as well as public bodies charged with or intervening in the management of the public debt, which concept covers the investment thereof, with the exception of bodies that are partly or wholly State-owned the role of which is commercial or linked to the acquisition of holdings.
- (21) In order to clarify the regime of exemptions for the European System of Central Banks (ESCB), other national bodies performing similar functions and the bodies intervening in the management of public debt, it is appropriate to limit such exemptions to the bodies and institutions performing their functions in accordance with the law of one Member State or in accordance with the **European** Union law as well as to international bodies of which one or more Member States are members.
- (22) It is necessary to exclude from the scope of this Directive collective investment undertakings and pension funds whether or not coordinated at **European** Union level, and the depositaries or managers of such undertakings, since they are subject to specific rules directly adapted to their activities.

⁽¹⁾ OJ L 9, 15.1.2003, p. 3.

Friday 26 October 2012

- (22a) *For a well-functioning internal market in electricity and natural gas, and for the carrying out of the tasks of transmission system operators (TSOs) under Directive 2009/72/EC⁽¹⁾, Directive 2009/73/EC⁽²⁾, Regulation (EC) No 714/2009⁽³⁾, Regulation (EC) No 715/2009⁽⁴⁾, or network codes and guidelines adopted pursuant to those Regulations, it is necessary that TSOs are exempted when issuing transmission rights, in the form of either physical transmission rights or financial transmission rights, and when providing a platform for secondary trading.*
- (23) In order to benefit from the exemptions from this Directive the person concerned should comply on a continuous basis with the conditions laid down for such exemptions. In particular, if a person provides investment services or performs investment activities and is exempted from this Directive because such services or activities are ancillary to his main business, when considered on a group basis, he should no longer be covered by the exemption related to ancillary services where the provision of those services or activities ceases to be ancillary to his main business.
- (24) Persons who provide the investment services and/or perform investment activities covered by this Directive should be subject to authorisation by their home Member States in order to protect investors and the stability of the financial system.
- (25) Credit institutions that are authorised under Directive 2006/48/EC should not need another authorisation under this Directive in order to provide investment services or perform investment activities. When a credit institution decides to provide investment services or perform investment activities the competent authorities, before granting an authorisation, should verify that it complies with the relevant provisions of this Directive.
- (26) Structured deposits have emerged as a form of investment product but are not covered under any legislative act for the protection of investors at **European** Union level, while other structured investments are covered by such legislative acts. It is appropriate therefore to strengthen the confidence of investors and to make regulatory treatment concerning the distribution of different packaged retail investment products more uniform in order to ensure an adequate level of investor protection across the **European** Union. For this reason, it is appropriate to include in the scope of this Directive structured deposits. In this regard, it is necessary to clarify that since structured deposits are a form of investment product, they do not include **simple** deposits linked solely to interest rates, such as Euribor or Libor, regardless of whether or not the interest rates are predetermined, or whether they are fixed or variable. **Such simple deposits are therefore outside the scope of this Directive.**
- (27) In order to strengthen the protection of investors in the **European** Union, it is appropriate to limit the conditions under which Member States can exclude the application of this Directive to persons providing investment services to clients who, as a result, are not protected under the Directive. In particular, it is appropriate to require Member States to apply requirements at least analogous to those laid down in this Directive to those persons, in particular in the phase of authorisation, in the assessment of their reputation and experience and of the suitability of any shareholders, in the review of the conditions for initial authorisation and on-going supervision as well as on conduct of business obligations.
- (28) In cases where an investment firm provides one or more investment services not covered by its authorisation, or performs one or more investment activities not covered by its authorisation, on a non-regular basis it should not need an additional authorisation under this Directive.

⁽¹⁾ Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009, concerning common rules for the internal market in electricity (OJ L 198, 30.7.2009, p. 20).

⁽²⁾ Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009, concerning common rules for the internal market in natural gas (OJ L 211, 14.8.2009, p. 94).

⁽³⁾ Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity (OJ L 211, 14.8.2009, p. 15).

⁽⁴⁾ Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks (OJ L 211, 14.8.2009, p. 36).

Friday 26 October 2012

- (29) For the purposes of this Directive, the business of reception and transmission of orders should also include bringing together two or more investors thereby bringing about a transaction between those investors.
- (30) Investment firms and credit institutions distributing financial instruments they issue themselves should be subject to the provisions of this Directive when they provide investment advice to their clients. In order to eliminate uncertainty and strengthen investor protection, it is appropriate to provide for the application of this Directive when, in the primary market, investment firms and credit institutions distribute financial instruments issued by them without providing any advice. For this purpose, the definition of the service of execution of orders on behalf of clients should be extended.
- (31) The principles of mutual recognition and of home Member State supervision require that the Member States' competent authorities should not grant or should withdraw authorisation where factors such as the content of programmes of operations, the geographical distribution or the activities actually carried on indicate clearly that an investment firm has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within the territory of which it intends to carry on or does carry on the greater part of its activities. An investment firm which is a legal person should be authorised in the Member State in which it has its registered office. An investment firm which is not a legal person should be authorised in the Member State in which it has its head office. In addition, Member States should require that an investment firm's head office must always be situated in its home Member State and that it actually operates there.
- (32) 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 ⁽¹⁾ has provided for detailed criteria for the prudential assessment of proposed acquisitions in an investment firm and for a procedure for their application. In order to provide legal certainty, clarity and predictability with regard to the assessment process, as well as to the result thereof, it is appropriate to confirm the criteria and the process of prudential assessment laid down in Directive 2007/44/EC. In particular, competent authorities should appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria: the reputation of the proposed acquirer; the reputation and experience of any person who will direct the business of the investment firm; the financial soundness of the proposed acquirer; whether the investment firm will be able to comply with the prudential requirements based on this Directive and on other directives, in particular on Directives 2002/87/EC ⁽²⁾ and 2006/49/EC ⁽³⁾; **whether the acquisition will increase conflicts of interests**; whether there are reasonable grounds to suspect that money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC ⁽⁴⁾ is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.
- (33) An investment firm authorised in its home Member State should be entitled to provide investment services or perform investment activities throughout the **European** Union without the need to seek a separate authorisation from the competent authority in the Member State in which it wishes to provide such services or perform such activities.
- (34) Since certain investment firms are exempted from certain obligations imposed by Directive 2006/49/EC, they should be obliged to hold either a minimum amount of capital or professional indemnity insurance or a combination of both. The adjustments of the amounts of that insurance should take into account adjustments made in the framework of Directive 2002/92/EC. This particular treatment for the purposes of capital adequacy should be without prejudice to any decisions regarding the appropriate treatment of these firms under future changes to **European** Union law on capital adequacy.

⁽¹⁾ OJ L 247, 21.9.2007, p. 1.

⁽²⁾ Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (OJ L 35, 11.2.2003, p. 1).

⁽³⁾ Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (OJ L 177, 30.6.2006, p. 201).

⁽⁴⁾ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

Friday 26 October 2012

- (35) Since the scope of prudential regulation should be limited to those entities which, by virtue of running a trading book on a professional basis, represent a source of counterparty risk to other market participants, entities which deal on own account in financial instruments, including those commodity derivatives covered by this Directive, as well as those that provide investment services in commodity derivatives to the clients of their main business on an ancillary basis to their main business when considered on a group basis, provided that this main business is not the provision of investment services within the meaning of this Directive, should be excluded from the scope of this Directive.
- (36) In order to protect an investor's ownership and other similar rights in respect of securities and his rights in respect of funds entrusted to a firm those rights should in particular be kept distinct from those of the firm. This principle should not, however, prevent a firm from doing business in its name but on behalf of the investor, where that is required by the very nature of the transaction and the investor is in agreement, for example stock lending.
- (37) The requirements concerning the protection of client assets are a crucial tool for the protection of clients in the provision of services and activities. These requirements can be excluded when full ownership of funds and financial instrument is transferred to an investment firm to cover any present or future, actual or contingent or prospective obligations. This broad possibility may create uncertainty and jeopardise the effectiveness of the requirements concerning the safeguard of client assets. Thus, at least when retail clients' assets are involved, it is appropriate to limit the possibility of investment firms to conclude title transfer financial collateral arrangements as defined under Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements⁽¹⁾, for the purpose of securing or otherwise covering their obligations.
- (38) It is necessary to strengthen the role of management bodies of investment firms in ensuring sound and prudent management of the firms, the promotion of the integrity of the market and the interest of investors. ***In the interests of a coherent approach to corporate governance it is desirable to align the requirements for investment firms as far as possible to those included in Directive .../.../EU [CRD IV] and to ensure that such requirements are proportionate to the nature, scale and complexity of their business. To prevent conflicts of interest an executive member of the management body of investment firms should not also be an executive member of the management body of a trading venue but could be a non-executive member of such a management body, for example in order to provide user participation in decision-making.*** The management body of an investment firm should at all time commit sufficient time and possess adequate knowledge, skills and experience to be able to understand the business of the investment firm and its main risk. To avoid group thinking and facilitate critical challenge, management boards of investment firms should be sufficiently diverse as regards age, gender, provenance, education and professional background to present a variety of views and experiences. Gender balance is of a particular importance to ensure adequate representation of demographical reality. ***Where practiced, employee representation in the management body should also be seen as a positive way of enhancing diversity, by adding a key perspective and genuine knowledge of the internal workings of the institution. Furthermore mechanisms are needed to ensure that members of management bodies can be held accountable in case of severe mis-management.***
- (39) In order to have an effective oversight and control over the activities of investment firms, the management body should be responsible and accountable for the overall strategy of the investment firm, taking into account the investment firm's business and risk profile. The management body should assume clear responsibilities across the business cycle of the investment firm, in the areas of the identification and definition of the strategic objectives of the firm, of the approval of its internal organisation, including criteria for selection and training of personnel, of the definition of the overall policies governing the provision of services and activities, including the remuneration of sales staff and the approval of new products for distribution to clients. Periodic monitoring and assessment of the strategic objectives of investment firms, their internal organisation and their policies for the provision of services and activities should ensure their continuous ability to deliver sound and prudent management, in the interest of the integrity of the markets and the protection of investors.

⁽¹⁾ OJ L 168, 27.6.2002, p. 43.

Friday 26 October 2012

- (40) The expanding range of activities that many investment firms undertake simultaneously has increased potential for conflicts of interest between those different activities and the interests of their clients. It is therefore necessary to provide for rules to ensure that such conflicts do not adversely affect the interests of their clients.

I

- (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 ⁽¹⁾ 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 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. **For communications between retail clients and financial institutions it is appropriate to allow the Member States to recognise instead appropriate written records of such communications for financial institutions established and branches located within their territory.**
- (43) Member States should ensure **respect for the** right of 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 ⁽²⁾ 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** ⁽³⁾ **which govern the processing of personal data carried out in application of this Directive.** This protection should, in particular, 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 Council** ⁽⁴⁾ **in the application of this Directive is subject to Regulation (EC) 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** ⁽⁵⁾.
- (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 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.
- (45) In line with Council conclusions on strengthening **European** Union financial supervision of June 2009, and in order to contribute to the establishment of a single rulebook for **European** Union financial markets, help further develop a level playing field for Member States and market participants, enhance investor protection and improve supervision and enforcement, the **European** Union is committed to minimise, where appropriate, discretions available to Member States across

⁽¹⁾ OJ L 241, 2.9.2006, p. 26.

⁽²⁾ OJ L 281, 23.11.1995, p. 31.

⁽³⁾ OJ L 201, 31.7.2002, p. 37.

⁽⁴⁾ OJ L 331, 15.12.2010, p. 84.

⁽⁵⁾ OJ L 8, 12.1.2001, p. 1.

Friday 26 October 2012

European Union financial services law. In addition to the introduction in this Directive of a common regime for the recording of telephone conversations or electronic communications involving client orders, it is appropriate to reduce the possibility of competent authorities to delegate supervisory tasks in certain cases, to limit discretions in the requirements applicable to tied agents and to the reporting from branches. **However, while competent authorities have responsibilities under this Directive to safeguard investor protection, nothing in this Directive prevents Member States from nominating authorities in addition to the competent authorities to provide additional monitoring of markets to enhance the protection of retail investors.**

- (46) **Technical advances have enabled high-frequency trading and an evolution of business models. 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.** 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 **market** access or sponsored access. Trading technology has provided benefits to the market and market participants generally such as wider participation in markets, **arguably** increased liquidity, **although doubts remain about the real depth of liquidity provided**, narrower spreads, reduced short term volatility and the means to obtain better **price formation and** execution of orders for clients. Yet, **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. **Algorithmic** trading or high frequency **trading** can, **like any other form of trading**, lend itself to certain forms of abusive behaviour if misused **which should be prohibited under Regulation (EU) No .../... [new MAR]. High-frequency trading may also, because of the information advantage provided to high-frequency traders, prompt investors to choose to execute trades in venues where they can avoid interaction with high-frequency traders. It is appropriate to subject high-frequency trading strategies which rely on certain specified characteristics to particular regulatory scrutiny. While these are predominantly strategies which rely on trading on own account such scrutiny should also apply where the execution of the trading strategy is structured in such a way as to avoid the execution taking place on own account.**
- (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. **These should reflect and build on the technical guidelines issued by ESMA in February 2012 on systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities (ESMA/2012/122) in order to strengthen the resilience of markets in the light of technological developments.** 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. **In this respect, ESMA should play an important coordinating role by defining appropriate tick sizes in order to ensure orderly markets at Union level. In addition, all orders should be subject to appropriate risk controls at source. It is therefore also appropriate to end the practice of sponsored and naked 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. It is also necessary to be able to clearly identify order flows coming from high-frequency trading. ESMA should also continue to monitor developments in technology and in methods used to access trading venues and should continue to prepare guidelines to ensure that the requirements of this Directive can continue to be effectively applied in the light of new practices.**
- (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 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 **on all trading venues** to temporarily halt trading if there are sudden unexpected price movements.

Friday 26 October 2012

- (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 trading venue fee structures incentivise a lower ratio of system messages to executed trades with higher fees applying to practices such as the cancellation of high volumes or proportions of orders which could create such disorderly conditions and which require trading venues to increase the capacity of infrastructure without necessarily benefitting other market participants.*
- (49) In addition to measures relating to algorithmic and high frequency trading it is appropriate to **prohibit sponsored and naked access and to include controls** relating to investment firms providing direct **market** access to markets for clients **█**. It is also appropriate that firms providing direct **market** 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. **In addition to ESMA's powers to prepare updated guidelines on different forms of market access and associated controls, this** should ensure that requirements may be amended where necessary to deal with further innovation and developments in this area.
- (50) There is a multitude of trading venues currently operating in the Union, among which a number are trading identical instruments. In order to address potential risks to the interests of investors it is necessary to formalise and further **coordinate** the processes on the consequences for trading on other venues if one trading venue decides to suspend or remove a financial instrument from trading. In the interest of legal certainty and to adequately address conflicts of interests when deciding to suspend or to remove instruments from trading, it should be ensured that if one regulated market or MTF stops trading due to non disclosure of information about an issuer or financial instrument, the others follow that decision. In addition, it is necessary to **further** formalise and improve the exchange of information and the cooperation of trading venues in cases of exceptional conditions in relation to a particular instrument that is traded on various venues. **This should include arrangements to prevent trading venues using information transmitted in the context of a suspension or removal of an instrument from trading for commercial purposes.**
- (51) More investors have become active in the financial markets and are offered a more complex wide-ranging set of services and instruments and, in view of these developments, it is necessary to provide for a degree of harmonisation to offer investors a high level of protection across the **European** Union. When Directive 2004/39/EC was adopted, the increasing dependence of investors on personal recommendations required to include the provision of investment advice as an investment service subject to authorisation and to specific conduct of business obligations. The continuous relevance of personal recommendations for clients and the increasing complexity of services and instruments require enhancing the conduct of business obligations in order to strengthen the protection of investors.
- (51a) *While enhanced conduct of business obligations for advisory services are necessary they are not sufficient to ensure appropriate investor protection. 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 and characteristics 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. However, this should not relieve third-party distributors of responsibility where they market or distribute the product outside the target group without the knowledge or consent of the firm that designed the product. Producers should also periodically review the performance of their products, to assess whether the products have performed in accordance with their design and to establish whether their target market for the product remains correct. Investors also need appropriate information about products and in particular information on a consistent basis about the cumulative impact of different layers of charges on the investment return. The provisions of Article 80(8) of Directive 2006/48/EC should be taken into account in this regard.*

Friday 26 October 2012

- (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, in particular the range of products they consider in providing personal recommendations to clients, **the cost of the advice or, where the cost of fees and inducements cannot be ascertained prior to the provision of the advice, the manner in which the cost will be calculated**, 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. **Guidelines by ESMA could be useful in ensuring effective and consistent application of these provisions.** 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 **discretionary** portfolio management, the **investment firm** should, **prior** to the **agreement**, **inform** the **client** about the **expected scale** of **inducements**, and **periodic reports should disclose all inducements paid or received.** **Given the need to ensure that such third-party inducements do not prevent the investment firm from acting in the best interests of the client, provision should also be made to allow under certain conditions a prohibition on the receipt of such inducements or to require them to be transferred to the client.**
- (52a) **To further protect consumers, it is also appropriate to ensure investment firms do not remunerate or assess the performance of their own staff in a way that conflicts with the firm's duty to act in the best interests of their clients. Remuneration of staff selling or advising on investments should therefore not be solely dependent on sales targets or the profit to the firm from a specific financial instrument as this would create incentives to deliver information which is not fair, clear and not misleading and to make recommendations which are not in the best interests of clients.**
- (52b) **Given the complexity of investment products and the continuous innovation in their design, it is also important to ensure that staff who advise on or sell investment products to retail clients possess an appropriate level of knowledge and competence in relation to the products offered. Investment firms need to allow their staff sufficient time and resources to achieve this knowledge and competence and to apply it in providing services to clients.**
- (53) Investment firms are allowed to provide investment services that only consist of execution and/or the reception and transmission of client orders, without the need to obtain information regarding the knowledge and experience of the client in order to assess the appropriateness of the service or the instrument for the client. Since these services entail a relevant reduction of clients' protections, it is appropriate to improve the conditions for their provision. In particular, it is appropriate to exclude the possibility to provide these services in conjunction with the ancillary service consisting of granting credits or loans to investors to allow them to carry out a transaction in which the investment firm is involved, since this increases the complexity of the transaction and makes more difficult the understanding of the risk involved. It is also appropriate to better define the criteria for the selection of the financial instruments to which these services should relate in order to exclude the financial instruments which embed a derivative **unless that derivative does not increase the risk to the client**, or incorporate a structure which makes it difficult for the client to understand the risk involved.
- (54) Cross-selling practices are a common strategy for retail financial service providers throughout the **European** Union. They can provide benefits to retail clients but can also represent practices where the interest of the client is not adequately considered. For instance, certain forms of cross-selling practices, namely tying practices where two or more financial services are sold together in a package and at least one of those services is not available separately, can distort competition and negatively affect clients' mobility and their ability to make informed choices. An example of tying practices can be the necessary opening of current accounts when an investment service is provided to a retail client. While practices of bundling, where two or more financial services are sold together in a package, but each of the services can also be purchased separately, may also distort competition and

Friday 26 October 2012

negatively affect customer mobility and clients' ability to make informed choices, they at least leave choice to the client and may therefore pose less risk to the compliance of investment firms with their obligations under this Directive. The use of such practices should be carefully assessed in order to promote competition and consumer choice.

- (55) A service should be considered to be provided at the initiative of a client unless the client demands it in response to a personalised communication from or on behalf of the firm to that particular client, which contains an invitation or is intended to influence the client in respect of a specific financial instrument or specific transaction. A service can be considered to be provided at the initiative of the client notwithstanding that the client demands it on the basis of any communication containing a promotion or offer of financial instruments made by any means that by its very nature is general and addressed to the public or a larger group or category of clients or potential clients.
- (56) One of the objectives of this Directive is to protect investors. Measures to protect investors should be adapted to the particularities of each category of investors (retail, professional and counterparties). However, in order to enhance the regulatory framework applicable to the provision of services irrespective of the categories of clients concerned, it is appropriate to make it clear that principles to act honestly, fairly and professionally and the obligation to be fair, clear and not misleading apply to the relationship with any clients.
- (57) By way of derogation from the principle of home country authorisation, supervision and enforcement of obligations in respect of the operation of branches, it is appropriate for the competent authority of the host Member State to assume responsibility for enforcing certain obligations specified in this Directive in relation to business conducted through a branch within the territory where the branch is located, since that authority is closest to the branch, and is better placed to detect and intervene in respect of infringements of rules governing the operations of the branch.
- (58) It is necessary to impose an effective 'best execution' obligation to ensure that investment firms execute client orders on terms that are most favourable to the client. This obligation should apply to the firm which owes contractual or agency obligations to the client.
- (58a) *In order to contribute to a wider shareholder base across the Union, the best execution framework should be enhanced for retail investors so they can access the wider range of execution venues that are now available across the Union. Advances in technology for monitoring best execution should be considered when applying the best execution framework.***
- (59) In order to enhance the conditions under which investment firms comply with their obligation to execute orders on terms most favourable to their clients in accordance with this Directive, it is appropriate to require execution venues to make available to the public data relating to the quality of execution of transactions on each venue.
- (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 **a quarterly** 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.**
- I**
- (62) Persons who provide investment services on behalf of more than one investment firm should not be considered as tied agents but as investment firms when they fall under the definition provided in this Directive, with the exception of certain persons who may be exempted.

Friday 26 October 2012

- (63) This Directive should be without prejudice to the right of tied agents to undertake activities covered by other Directives and related activities in respect of financial services or products not covered by this Directive, including on behalf of parts of the same financial group.
- (64) The conditions for conducting activities outside the premises of the investment firm (door-to-door selling) should not be covered by this Directive.
- (65) Member States' competent authorities should not register or should withdraw the registration where the activities actually carried on indicate clearly that a tied agent has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within the territory of which it intends to carry on or does carry on the greater part of its activities.
- (66) For the purposes of this Directive eligible counterparties should be considered as acting as clients.
- (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 request** treatment as professional clients **where stringent conditions established by Member States are met**.
- (68) In respect of transactions executed between eligible counterparties, the obligation to disclose client limit orders should only apply where the counter party is explicitly sending a limit order to an investment firm for its execution.
- I**
- (70) Investment firms should all have the same opportunities of joining or having access to regulated markets throughout the **European** Union. Regardless of the manner in which transactions are at present organised in the Member States, it is important to abolish the technical and legal restrictions on access to regulated markets.
- (71) In order to facilitate the finalisation of cross-border transactions, it is appropriate to provide for access to clearing and settlement systems throughout the **European** Union by investment firms, irrespective of whether transactions have been concluded through regulated markets in the Member State concerned. Investment firms which wish to participate directly in other Member States' settlement systems should comply with the relevant operational and commercial requirements for membership and the prudential measures to uphold the smooth and orderly functioning of the financial markets.
- (72) The provision of services by third-country firms in the **European** Union is subject to national regimes and requirements. These regimes are highly differentiated and the firms authorised in accordance with them do not enjoy the freedom to provide services and the right of establishment in Member States other than the one where they are established. It is appropriate to introduce a common regulatory framework at **European** Union level **for third-country firms, including both investment firms and market operators. In order to provide a basis for third-country firms to benefit from a passport enabling them to provide investment services and carry out investment activities throughout the EU, the** regime should harmonise the existing fragmented framework,

Friday 26 October 2012

ensure certainty and uniform treatment of third-country firms accessing the **European** Union, ensure that an **effective** equivalence assessment **is** carried out by the Commission, **prioritising the assessment of the EU's largest trading partners and areas within the scope of the G-20 programme**, in relation to the regulatory and supervisory framework of third countries and should provide for a comparable level of protections to investors in the EU receiving services **provided** by third-country firms.

- (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 **European** Union. The establishment of the branch shall be subject to authorisation and supervision in the **European** 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 **into the Union** without branches should be limited to eligible counterparties **and professional clients other than those who have waived protections in order to be treated as professional clients. Except where provided only at the own exclusive initiative of the client, 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.
- (74) The provision of this Directive regulating the provision of **investment** services **or activities** by third-country firms in the **European** Union should not affect the possibility for persons established in the Union to receive investment services by a third-country firm at their own exclusive initiative. **Where** a third-country firm provides services **at the** own exclusive initiative of a person established in the Union, the services should not be deemed as provided in the territory of the Union. **Where** a third-country firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union, it should not be deemed as a service provided at the own exclusive initiative of the client.
- (75) The authorisation to operate a regulated market should extend to all activities which are directly related to the display, processing, execution, confirmation and reporting of orders from the point at which such orders are received by the regulated market to the point at which they are transmitted for subsequent finalisation, and to activities related to the admission of financial instruments to trading. This should also include transactions concluded through the medium of designated market makers appointed by the regulated market which are undertaken under its systems and in accordance with the rules that govern those systems. **Given the importance of market makers to the orderly and efficient functioning of markets trading venues should have written agreements in place with market makers clarifying their obligations and ensuring that in all but exceptional circumstances they fulfil their commitment to provide liquidity to the market.** Not all transactions concluded by members or participants of the regulated market, MTF or OTF are to be considered as concluded within the systems of a regulated market, MTF or OTF. Transactions which members or participants conclude on a bilateral basis and which do not comply with all the obligations established for a regulated market, an MTF or an OTF under this Directive should be considered as transactions concluded outside a regulated market, an MTF or an OTF for the purposes of the definition of systematic internaliser. In such a case the obligation for investment firms to make public firm quotes should apply if the conditions established by this Directive are met.
- (76) The provision of core market data services which are pivotal for users to be able to obtain a desired overview of trading activity across **European** Union markets and for competent authorities to receive accurate and comprehensive information on relevant transactions should be subject to authorisation and regulation to ensure the necessary level of quality.
- (77) The introduction of approved publication arrangements should improve the quality of trade transparency information published in the OTC space and contribute significantly to ensuring that such data is published in a way facilitating its consolidation with data published by trading venues.

Friday 26 October 2012

- (78) **Now that a market structure is in place which allows for competition between multiple trading venues it is essential that an effective and comprehensive consolidated tape is in operation as soon as possible.** The introduction of a commercial solution for a consolidated tape for equities **and equity-like instruments** 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 **to ensure that consistent and accurate market data is made available** which are in competition with each other in order to **deliver** 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. By requiring all CTPs to consolidate all APA data it will be assured that competition will take place on the basis of quality of service to clients rather than breadth of data covered. Nevertheless it is appropriate to make provision now for a public solution to be developed if the commercial solution does not lead to the timely delivery of an effective and comprehensive consolidated tape.**
- (79) Revision of Directive 2006/49/EC should fix the minimum capital requirements with which regulated markets should comply in order to be authorised, and in so doing should take into account the specific nature of the risks associated with such markets.
- (80) Operators of a regulated market should also be able to operate an MTF in accordance with the relevant provisions of this Directive.
- (81) The provisions of this Directive concerning the admission of instruments to trading under the rules enforced by the regulated market should be without prejudice to the application of Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities⁽¹⁾. A regulated market should not be prevented from applying more demanding requirements in respect of the issuers of securities or instruments which it is considering for admission to trading than are imposed pursuant to this Directive.
- (82) Member States should be able to designate different competent authorities to enforce the wide-ranging obligations laid down in this Directive. Such authorities should be of a public nature guaranteeing their independence from economic actors and avoiding conflicts of interest. In accordance with national law, Member States should ensure appropriate financing of the competent authority. The designation of public authorities should not exclude delegation under the responsibility of the competent authority.
- (83) The G-20 summit in Pittsburgh on 25 September 2009 agreed to improve the regulation, functioning and transparency of financial and commodity markets to address excessive commodity price volatility. The Commission Communications of 28 October 2009 on A Better Functioning Food Supply Chain in Europe, and of 2 February 2011 on Tackling the Challenges in Commodity Markets and Raw Materials outlined measures that fall to be taken in the context of the review of Directive 2004/39/EC. **In September 2011, the International Organization of Securities Commissions published Principles for the Regulation and Supervision of Commodity Derivatives Markets. These principles were endorsed by the G-20 summit in Cannes on 4 November 2011 which called for market regulators to have formal position management powers, including the power to set ex ante position limits as appropriate.**
- (84) The powers made available to competent authorities should be complemented with explicit powers to **obtain** information from any person regarding the size and purpose of a position in derivatives contracts related to commodities and to request the person to take steps to reduce the size of the position in the derivative contracts.

⁽¹⁾ OJ L 184, 6.7.2001, p. 1.

Friday 26 October 2012

- (85) Explicit powers should be granted to **trading venues and to** competent authorities to limit the ability of any person or class of persons **to enter into or hold** a derivative contract in relation to a commodity, **based on technical standards determined by ESMA, and to otherwise manage positions in such a way as to promote integrity of the market for the derivative and the underlying commodity without unduly constraining liquidity.** 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. **Such limits should not apply to positions which objectively reduce risks directly relating to commercial activities in relation to the commodity. In order to avoid unintended impacts on the markets for the underlying commodity from the regulation of derivatives it is also appropriate to clarify the distinction between spot contracts and futures contracts.**
- (86) **In addition to the powers made available to competent authorities, all trading** venues which offer trading in commodity derivatives should have in place appropriate limits **and such other appropriate position management arrangements as are necessary** to support liquidity, prevent market abuse, and ensure the orderly pricing and settlement conditions. **Such arrangements may include for instance identification of build-up of large position concentrations especially close to settlement, position limits, price movement limits, ordering liquidation or transfer of open positions, suspension of trading, altering delivery terms or conditions, cancelling trades and requiring delivery intentions.** ESMA should maintain and publish a list containing summaries of all such measures in force. **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. **Given that no one trading venue can see the aggregate positions taken by its members or participants in the overall market it is also appropriate to allow for specification of the controls through regulatory technical standards,** including with a view to avoiding any divergent effects of the limits applicable to comparable contracts on different venues.
- (87) Venues where the most liquid commodity derivatives are traded should publish an aggregated weekly breakdown of the positions held by different types of market participants, including the clients of those not trading on their own behalf. A comprehensive and detailed breakdown both by the type and identity of the market participant should be **communicated** to the competent authority upon request, **taking account, where applicable, of reporting requirements already imposed under Article 8 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency** ⁽¹⁾.
- I**
- (89) It is desirable to facilitate access to capital for small and medium-sized enterprises (SME) and to facilitate the further development of specialist markets that aim to cater for the needs of smaller and medium-sized issuers. These markets which are usually operated under this Directive as MTFs are commonly known as SME markets, growth markets or junior markets. The creation within the MTF category of a new sub category of SME growth market and the registration of these markets should raise their visibility and profile and aid the development of common pan-European regulatory standards for those markets. **Attention should be focused on how to provide future law for the further fostering and promotion of use of this market as a new asset class that will be attractive for investors. All other EU market regulation should be updated to provide a lessening of administrative burdens and to provide further incentives for listing of SMEs on the SME growth markets.**
- (90) The requirements applying to this new category of markets need to provide sufficient flexibility to be able to take into account the current range of successful market models that exist across Europe. They also need to strike the correct balance between maintaining high levels of investor protection,

⁽¹⁾ OJ L 326, 8.12.2011, p. 1.

Friday 26 October 2012

which are essential to fostering investor confidence in issuers on these markets, while reducing unnecessary administrative burdens for issuers on those markets. It is proposed that more details about SME market requirements such as those relating to criteria for admission to trading on such a market would be further prescribed in delegated acts or technical standards.

- (91) Given the importance of not adversely affecting existing successful markets the option should remain for operators of markets aimed at SME issuers to choose to continue to operate such a market in accordance with the requirements under the Directive without seeking registration as an SME growth market.
- (92) Any confidential information received by the contact point of one Member State through the contact point of another Member State should not be regarded as purely domestic.
- (93) It is necessary to enhance convergence of powers at the disposal of competent authorities so as to pave the way towards an equivalent intensity of enforcement across the integrated financial market. A common minimum set of powers coupled with adequate resources should guarantee supervisory effectiveness.
- (94) In view of the significant impact and market share acquired by various MTFs, it is appropriate to ensure that adequate cooperation arrangements are established between the competent authority of the MTF and that of the jurisdiction in which the MTF is providing services. In order to anticipate any similar developments, this should be extended to OTFs.
- (95) In order to ensure compliance by investment firms and regulated markets, those who effectively control their business and the members of the investment firms and regulated markets' management body with the obligations deriving from this Directive and from Regulation (EU) No .../... [MiFIR] and to ensure that they are subject to similar treatment across the **European** Union, Member States should be required to provide for administrative sanctions and measures which are effective, proportionate and dissuasive. Therefore, administrative sanctions and measures set out by Member States should satisfy certain essential requirements in relation to addressees, criteria to be taken into account when applying a sanction or measure, publication, key sanctioning powers and levels of administrative pecuniary sanctions.
- (96) In particular, competent authorities should be empowered to impose pecuniary sanctions which are sufficiently high to offset the benefits that can be expected and to be dissuasive even for larger institutions and their managers.
- (97) In order to ensure a consistent application of sanctions across Member States, when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, Member States should be required to ensure that when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, the competent authorities take into account all relevant circumstances.
- (98) In order to ensure sanctions have a dissuasive effect on the public at large, sanctions should normally be published, except in certain well-defined circumstances.
- (99) In order to detect potential breaches, competent authorities should have the necessary investigatory powers, and should establish effective **and reliable** mechanisms to encourage reporting of potential or actual breaches, **including protection of employees reporting breaches within their own institution**. These mechanisms should be without prejudice to adequate safeguards for accused persons. Appropriate procedures should be established to ensure the right of the reported person of defence and to be heard before the adoption of a final decision concerning him as well as the right to seek remedy before a tribunal against a decision concerning him.

Friday 26 October 2012

- (100) This Directive should refer to both administrative sanctions and measures in order to cover all actions applied after a violation is committed, and which are intended to prevent further infringements, irrespective of their qualification as a sanction or a measure under national law.
- (101) This Directive should be without prejudice to any provisions in the law of Member States relating to criminal sanctions. ***Without prejudice to the legal systems of the Member States, they should ensure that where it is alleged that a member of the management board of an investment firm or of a market operator has breached the provisions of or has committed an offence in matters falling within the scope of this Directive or of Regulation (EU) No .../... [MiFIR], he may be personally subject to criminal or civil proceedings.***
- (102) With a view to protecting clients and without prejudice to the right of customers to bring their action before the courts, it is appropriate that Member States ensure that public or private bodies are established with a view to settling disputes out-of-court, to cooperate in resolving cross-border disputes, taking into account Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes ⁽¹⁾ and Commission Recommendation 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes ⁽²⁾. When implementing provisions on complaints and redress procedures for out-of-court settlements, Member States should be encouraged to use existing cross-border cooperation mechanisms, in particular the Financial Services Complaints Network (FIN-Net).
- (103) Any exchange or transmission of information between competent authorities, other authorities, bodies or persons should be in accordance with the rules on transfer of personal data to third countries as laid down in Directive 95/46/EC. Any exchange or transmission of personal data by ESMA with third countries should be in accordance with the rules on the transfer of personal data as laid down in Regulation (EC) No 45/2001.
- (104) It is necessary to reinforce provisions on exchange of information between national competent authorities and to strengthen the duties of assistance and cooperation which they owe to each other. Due to increasing cross-border activity, competent authorities should provide each other with the relevant information for the exercise of their functions, so as to ensure the effective enforcement of this Directive, including in situations where infringements or suspected infringements may be of concern to authorities in two or more Member States. In the exchange of information, strict professional secrecy is needed to ensure the smooth transmission of that information and the protection of particular rights.
- █
- (106) ***The*** power to adopt acts in accordance with Article 290 TFEU 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 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 ***clarification of what constitutes a reasonable commercial basis for an APA to make information public, for CTPs to provide access to data streams and for an approved reporting mechanism (ARM) to report information, the clarification of details of the information obligation on CTP, the*** cooperation

⁽¹⁾ OJ L 115, 17.4.1998, p. 31.

⁽²⁾ OJ L 109, 19.4.2001, p. 56.

Friday 26 October 2012

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.

- (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 **effective** equivalence decision concerning third country legal and supervisory framework for the provision of services by third-country firms 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⁽¹⁾.
- (108) Technical standards in financial services should ensure consistent harmonisation and adequate protection of depositors, investors and consumers across the **European** Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA, with the elaboration of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission. **To ensure consistent investor and consumer protection across financial services sectors, ESMA should carry out its tasks, to the extent possible, in close cooperation with the other two European Supervisory Authorities within the framework of the Joint Committee of the European Supervisory Authorities.**
- (109) The Commission should adopt the regulatory technical standards developed by ESMA **specifying the criteria for determining whether an activity is ancillary to the main business**, regarding procedures for granting and refusing requests for authorisation of investment firms, regarding requirements for management bodies, regarding acquisition of qualifying holding, regarding obligation to execute orders on terms most favourable to clients, regarding cooperation and exchange of information, regarding freedom to provide investment services and activities, regarding establishment of a branch, regarding provision of services by third-country firms, **in regarding the limits on holdings of certain commodity derivatives and further specifying the position checks applicable to other commodity derivatives**, regarding procedures for granting and refusing requests for authorisation of data reporting services providers, regarding organisational requirements for APAs and CTPs and regarding cooperation among competent authorities. The Commission should adopt those 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**.
- (110) The Commission should also be empowered to adopt implementing technical standards **developed** by ESMA regarding procedures for granting and refusing requests for authorisation of investment firms, regarding acquisition of qualifying holding, regarding the trading process on finalisation of transactions in MTFs and OTFs, regarding the suspension and removal of instruments from trading, regarding freedom to provide investment services and activities, regarding the establishment of a branch, regarding provision of services by third-country firms, regarding position reporting by categories of traders, regarding the submission of information to ESMA, regarding the obligation to cooperate, regarding cooperation among competent authorities, regarding exchange of information and regarding consultation prior to authorisation. **The Commission should adopt those 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.**
- (111) The Commission should submit a report to the European Parliament and the Council assessing the functioning of organised trading facilities, the functioning of the regime for SME growth markets, the impact of requirements regarding automated and high-frequency trading, the experience with the mechanism for banning certain products or practices and the impact of the measures regarding commodity derivatives markets.

⁽¹⁾ OJ L 55, 28.2.2011, p. 13

Friday 26 October 2012

- (112) Since the objective of this Directive, namely creating an integrated financial market in which investors are effectively protected and the efficiency and integrity of the overall market are safeguarded, requires the establishment of common regulatory requirements relating to investment firms wherever they are authorised in the **European** Union and governing the functioning of regulated markets and other trading systems so as to prevent opacity or disruption on one market from undermining the efficient operation of the European financial system as a whole and can therefore, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective
- (113) The establishment of a consolidated tape for non-equity instruments is deemed to be more difficult to implement than the consolidated tape for equity instruments and potential providers should be able to gain experience with the latter before constructing it. In order to facilitate the proper establishment of the consolidated tape for non-equity financial instruments, it is therefore appropriate to provide for an extended date of application of the national measures transposing the relevant provision. **Nevertheless it is appropriate to make provision now for a public solution to be developed if the commercial solution does not lead to the timely delivery an effective and comprehensive consolidated tape.**
- (113a) In order to further develop the Union framework governing securities, the Commission should put forward a proposal for a regulation on securities law further specifying the definition of safekeeping and administration of financial instruments and should also, in conjunction with ESMA, the European Supervisory Authority (European Banking Authority) and the European Systemic Risk Board promote work on standardisation of identifiers and messaging so as to enable near-real time transaction analysis and the identification of complex product structures, such as those containing derivatives or repos.**
- (114) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular the right to the protection of personal data, the freedom to conduct a business, the right to consumer protection, the right to an effective remedy and to a fair trial, the right not to be tried or punished twice for the same offence, and has to be implemented in accordance with those rights and principles.

(114a) The European Data Protection Supervisor has been consulted,

HAVE ADOPTED THIS DIRECTIVE:

TITLE I

DEFINITIONS AND SCOPE

Article 1

Scope

1. This Directive shall apply to investment firms, regulated markets, data reporting service providers and third-country firms providing investment services or activities in the **European** Union.
2. This Directive establishes requirements in relation to the following:
 - (a) authorisation and operating conditions for investment firms;
 - (b) provision of investment services or activities by third-country firms with the establishment of a branch;
 - (c) authorisation and operation of regulated markets;
 - (d) authorisation and operation of data reporting service providers; and

Friday 26 October 2012

(e) supervision, cooperation and enforcement by competent authorities.

3. **This Directive** shall also apply to credit institutions authorised under Directive 2006/48/EC, when providing one or more investment services and/or performing investment activities, and **to credit institutions and investment firms** when selling or advising clients in relation to deposits other than those with a rate of return which is determined in relation to an interest rate (**structured deposits**).

I

3a. The following provisions shall also apply to insurance undertakings and insurance intermediaries, including tied insurance intermediaries, authorised or registered under, respectively, Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance ⁽¹⁾, Directive 2002/92/EC or Directive 2009/138/EC, when selling or advising clients in relation to insurance-based investments:

— **Article 16(3);**

— **Articles 23 to 26; and**

— **Articles 69 to 80 and 83 to 91, where necessary, for the purpose of allowing competent authorities to give effect to the articles referred to in the first and second indents in relation to insurance-based investments.**

Article 2

Exemptions

1. This Directive shall not apply to:

- (a) insurance undertakings or undertakings carrying on the reinsurance and retrocession activities referred to in Directive 2009/138/EC, **without prejudice to Article 1(3a);**
- (b) persons which provide investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;
- (c) persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions **;**
- (d) persons who do not provide any investment services or activities other than dealing on own account unless they:
 - (i) are market makers;
 - (ii) are a member of or a participant in a regulated market or multilateral trading facility (MTF) **or have direct market access to a trading venue;**
 - (**ia**) **engage in algorithmic trading;**
 - (**ib**) **given the scale of their trading activities are deemed to have a significant market presence by the competent authority; or**
 - (iii) deal on own account **when** executing client orders.

⁽¹⁾ OJ L 345, 19.12.2002, p. 1.

Friday 26 October 2012

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.

This exemption shall apply to persons who, when dealing emission allowances, do not provide any investment services or activities other than dealing on own account and do not execute client orders, and which own or directly operate installations subject to Directive 2003/87/EC;

- (e) persons which provide investment services consisting exclusively in the administration of employee-participation schemes;
- (f) persons which provide investment services which only involve both administration of employee-participation schemes and the provision of investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;
- (g) the members of the ESCB and other national bodies performing similar functions in the **European Union**, other public bodies charged with or intervening in the management of the public debt in the **European 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;**
- (h) collective investment undertakings and pension funds whether coordinated at **European Union** level or not and the depositaries and managers of such undertakings;
- (i) persons who:
 - (i) deal on own account in financial instruments, excluding persons who deal on own account **when** 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 point (10) of Section C of Annex I 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 **consolidated or non-consolidated** 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 **or acting as a market-maker in relation to commodity derivatives,**
- **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;**
- (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;
- ;**
- (l) associations set up by Danish and Finnish pension funds with the sole aim of managing the assets of pension funds that are members of those associations;

Friday 26 October 2012

- (m) 'agenti di cambio' whose activities and functions are governed by Article 201 of Italian Legislative Decree No 58 of 24 February 1998;
- (n) transmission system operators as defined in Article 2(4) of Directive 2009/72/EC or Article 2(4) of Directive 2009/73/EC when carrying out their tasks under those Directives or Regulation (EC) 714/2009 or Regulation (EC) 715/2009 or network codes or guidelines adopted pursuant those Regulations.

2. The rights conferred by this Directive shall not extend to the provision of services as counterparty in transactions carried out by public bodies dealing with public debt or by members of the ESCB performing their tasks as provided for by the TFEU and the Statute of the ESCB and of the European Central Bank (ECB) or performing equivalent functions under national parliaments.

3. The Commission shall adopt delegated acts in accordance with Article 94 concerning measures in respect of the **exemption laid down in paragraph 1(c) to clarify when** an activity is provided in an incidental manner.

■

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 size of the activity relative to the main activities and the significance of the activity in the relevant markets;**
- (d) the desirability of limiting net credit risk exposures to non-systemically significant levels;**
- (e) the scale of market risk associated with the activity relative to the market risk arising from the main business;**
- (f) systemic relevance of the sum of net positions and exposures of a non-financial counterparty as referred to in Article 10 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ⁽¹⁾.**

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.

⁽¹⁾ OJ L 201, 27.7.2012, p. 1.

(*) 12 months after the date of entry into force of this Directive.

Friday 26 October 2012

Article 3

Optional exemptions

1. Member States may choose not to apply this Directive to any persons for which they are the home Member State, provided that the activities of those persons are authorised and regulated at national level, where those persons:

- (a) are not allowed to hold clients' funds or securities and which for that reason are not allowed at any time to place themselves in debit with their clients;
- (b) are not allowed to provide any investment service except the provision of investment advice, with or without the reception and transmission of orders in transferable securities and units in collective investment undertakings, and **the reception and transmission of orders in transferable securities and units in collective investment undertakings at the initiative of the client; and**
- (c) in the course of providing that service, are allowed to transmit orders only to:
 - (i) investment firms authorised in accordance with this Directive;
 - (ii) credit institutions authorised in accordance with Directive 2006/48/EC;
 - (iii) branches of investment firms or of credit institutions which are authorised in a third country and which are subject to and comply with prudential rules considered by the competent authorities to be at least as stringent as those laid down in this Directive, in Directive 2006/48/EC or in Directive 2006/49/EC;
 - (iv) collective investment undertakings authorised under the law of a Member State to market units to the public and to the managers of such undertakings;
 - (v) investment companies with fixed capital, as defined in Article 15(4) of Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent ⁽¹⁾, the securities of which are listed or dealt in on a regulated market in a Member State;

1a. Member States' regimes shall submit the persons referred to in paragraph 1 to requirements which are at least analogous to the following requirements under this Directive, **taking into account their size, risk profile and legal form:**

- (a) conditions and procedures for authorisation and on-going supervision as established in Article 5 (1) and (3), Articles 7, 8, 9, 10, 21, 22 **and 23 and the respective implementing measures adopted by the Commission by means of delegated acts in accordance with Article 94;**
- (b) conduct of business obligations as established in Article 24(1), (2), (3), (5) and Article 25(1), (4) and (5) and the respective implementing measures in Directive 2006/73/EC;
- (c) **organisational requirements as established in Article 16(3) and the delegated acts adopted by the Commission in accordance with Article 94.**

⁽¹⁾ OJ L 26, 31.1.1977, p. 1.

Friday 26 October 2012

1b. Member States shall require persons excluded from the scope of this Directive under paragraph 1 to be covered under an investor-compensation scheme recognised in accordance with Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes ⁽¹⁾ or under a system ensuring equivalent protection to their clients. **Member States may allow professional indemnity insurances as an alternative coverage, where this would be appropriate and proportionate in the view of the size, risk profile and legal nature of the persons excluded from the scope of this Directive under paragraph 1. Member States shall ensure that persons who are excluded from the scope of this Directive under paragraph 1 and who are selling financial instruments to retail clients or providing investment advice or portfolio management to retail clients, have to obey rules for investor protection which are equivalent to the provisions of Article 16(6) and (7) and Articles 24 and 25.**

2. Persons excluded from the scope of this Directive according to paragraph 1 shall not benefit from the freedom to provide services and/or activities or to establish branches as provided for in Articles 36 and 37 respectively.

3. Member States shall notify the Commission and ESMA of the exercise of the option under this Article and shall ensure that each authorisation granted in accordance with paragraph 1 mentions that it is granted according to this Article.

4. Member States shall communicate to ESMA the provisions of national law analogous to the requirements of this Directive listed in paragraph 1.

Article 4

Definitions

1. For the purposes of this Directive, the definitions provided in Article 2 of Regulation (EU) No .../... [MiFIR] shall apply to this Directive.

2. The following definitions shall also apply:

- (1) 'investment services and activities' means any of the services and activities listed in Section A of Annex I relating to any of the instruments listed in Section C of Annex I;

The Commission shall adopt delegated acts in accordance with Article 94 measures specifying:

— the derivative contracts referred to in point 7 of Section C of Annex I that have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls;

— the derivative contracts referred to in point (10) of Section C of Annex I that have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls;

- (2) 'ancillary service' means any of the services listed in Section B of Annex I;

- (3) 'investment advice' means the provision of personal recommendations to a client, either upon its request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments;

⁽¹⁾ OJ L 84, 26.3.1997, p. 22.

Friday 26 October 2012

- (4) 'execution of orders on behalf of clients' means acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients. Execution of orders includes the conclusion of agreements to sell financial instruments issued by a credit institution or an investment firm at the moment of their issuance;
- (5) 'dealing on own account' means trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments;
- (6) 'market maker' means a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against his proprietary capital **■**;
- (7) 'portfolio management' means managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments;
- (8) 'client' means any natural or legal person to whom an investment firm provides investment or ancillary services;
- (9) 'professional client' means a client meeting the criteria laid down in Annex II;
- (10) 'retail client' means a client who is not a professional client;
- (11) 'SME growth market' means a MTF that is registered as an SME growth market in accordance with Article 35;
- (12) 'small and medium-sized enterprise' means a company that **has** an average market capitalisation of less than **EUR 200 000 000**;
- (13) 'limit order' means an order to buy or sell a financial instrument at its specified price limit or better and for a specified size;
- (14) 'financial instrument' means those instruments specified in Section C of Annex I;
- (15) 'money-market instruments' means those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment;
- (16) 'home Member State' means:
 - (a) in the case of investment firms:
 - (i) if the investment firm is a natural person, the Member State in which its head office is situated;
 - (ii) if the investment firm is a legal person, the Member State in which its registered office is situated;
 - (iii) if the investment firm has, under its national law, no registered office, the Member State in which its head office is situated;

Friday 26 October 2012

- (b) in the case of a regulated market, the Member State in which the regulated market is registered or, if under the law of that Member State it has no registered office, the Member State in which the head office of the regulated market is situated;
- (17) 'host Member State' means the Member State, other than the home Member State, in which an investment firm has a branch or performs services and/or activities or the Member State in which a regulated market provides appropriate arrangements so as to facilitate access to trading on its system by remote members or participants established in that same Member State;
- (18) 'competent authority' means the authority, designated by each Member State in accordance with **Article 69**, unless otherwise specified in this Directive;
- (19) 'credit institution' means a credit institution as defined under Directive 2006/48/EC;
- (20) 'UCITS management company' means a management company as defined in Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) ⁽¹⁾;
- (21) 'tied agent' means a natural or legal person who, under the full and unconditional responsibility of only one investment firm on whose behalf it acts, promotes investment and/or ancillary services to clients or prospective clients, receives and transmits instructions or orders from the client in respect of investment services or financial instruments, places financial instruments or provides advice to clients or prospective clients in respect of those financial instruments or services;
- (22) 'branch' means a place of business other than the head office which is a part of an investment firm, which has no legal personality and which provides investment services and/or activities and which may also perform ancillary services for which the investment firm has been authorised; all the places of business set up in the same Member State by an investment firm with headquarters in another Member State shall be regarded as a single branch;
- (23) 'qualifying holding' means a direct or indirect holding in an investment firm which represents 10 % or more of the capital or of the voting rights, as set out in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market ⁽²⁾, taking into account the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the investment firm in which that holding subsists;
- (24) 'parent undertaking' means a parent undertaking as defined in Articles 1 and 2 of Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts ⁽³⁾;
- (25) 'subsidiary' means a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC, including any subsidiary of a subsidiary undertaking of an ultimate parent undertaking;
- (26) 'close links' means a situation in which two or more natural or legal persons are linked by:
- (a) 'participation' which means the ownership, direct or by way of control, of 20 % or more of the voting rights or capital of an undertaking;

⁽¹⁾ OJ L 302, 17.11.2009, p. 32.

⁽²⁾ OJ L 390, 31.12.2004, p. 38.

⁽³⁾ OJ L 193, 18.7.1983, p. 1.

Friday 26 October 2012

- (b) 'control' which means the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 1(1) and (2) of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking, any subsidiary undertaking of a subsidiary undertaking also being considered a subsidiary of the parent undertaking which is at the head of those undertakings;
- (c) a situation in which they are permanently linked to one and the same person by a control relationship;
- (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;
- (28) 'management body in its supervisory function' means the management body acting in its supervisory function of overseeing and monitoring management decision-making;
- (29) 'senior management' means individuals who exercise executive functions with a firm and who are responsible and accountable for the day-to-day management of the firm, including the implementation of the policies concerning the distribution of services and products to clients by the firm and its personnel;
- (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 **or to execute client orders or to fulfil any legal obligation through the determination of a parameter of the order; or to the processing of executed transactions;**
- (30a) '**high-frequency trading**' means **algorithmic 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;**
- (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 two of the following characteristics:**
- (i) **it uses co-location facilities, direct market access or proximity hosting;**
 - (ii) **it relates to a daily portfolio turnover of at least 50 %;**
 - (iii) **the proportion of orders cancelled (including partial cancellations) exceeds 20 %;**
 - (iv) **the majority of positions taken are unwound within the same day;**
 - (v) **over 50 % of the orders or transactions made on trading venues offering discounts or rebates to orders which provide liquidity are eligible for such rebates;**
- (31a) "**direct market access**" means **an arrangement where a member or participant of a trading venue permits a person to use its trading code so the person can transmit orders electronically to the investment firm's internal electronic trading systems for automatic onward transmission under the investment firm's trading code to a specified trading venue;**

Friday 26 October 2012

(31b) *'sponsored and naked market access' means an arrangement where a member or participant of a trading venue permits a person to use its trading code so the person can transmit orders electronically under the investment firm's trading code to a specified trading venue without the orders being routed through the investment firm's internal electronic trading systems;*

■

(33) *'cross-selling practice' means the offering of an investment service together with another service or product as part of a package or as a condition for the same agreement or package.*

(33a) *'insurance-based investment' means an insurance contract where the amount payable to the client is exposed to the market value of an asset or payout from an asset or reference value, and where the client does not directly hold the asset;*

(33b) *'investment product' means an product where the amount payable to the client is determined with reference to the value of financial instruments or the product is a structured deposit or the product is an insurance-based investment or the product is a packaged retail investment product as defined in Article ... of Directive .../.../EU [PRIPS];*

(33c) *'discretionary portfolio management' means portfolio management where the mandate from the client allows the portfolio manager discretion to select the investment products or financial instruments in which the client's funds are invested;*

(33d) *'Third-country firm' means a firm that would be an investment firm or market operator if its head office were located within the Union.*

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to specify some technical elements of **or amend** the definitions laid down in **points (3), (11), (12), and (27) to (33d) of** paragraph 2 of this Article, **if appropriate, to take into account:**

(a) technical developments in financial markets;

(b) the list of abusive practices referred to in Article 34b(b) of Regulation (EU) No .../... [MAR] in particular with regard to high-frequency trading and including, but not limited to, spoofing, quote stuffing and layering.

TITLE II

AUTHORISATION AND OPERATING CONDITIONS FOR INVESTMENT FIRMS

CHAPTER I

CONDITIONS AND PROCEDURES FOR AUTHORISATION

Article 5

Requirement for authorisation

1. Each Member State shall require that the performance of investment services or activities as a regular occupation or business on a professional basis be subject to prior authorisation in accordance with the provisions of this Chapter. Such authorisation shall be granted by the home Member State competent authority designated in accordance with Article 69.

Friday 26 October 2012

2. By way of derogation from paragraph 1, Member States shall allow any market operator to operate an MTF or an organised trading facility (OTF), subject to the prior verification of their compliance with the provisions of this Chapter.

3. Member States shall register all investment firms. The register shall be publicly accessible and shall contain information on the services or activities for which the investment firm is authorised. It shall be updated on a regular basis. Every authorisation shall be notified to ESMA.

ESMA shall establish a list of all investment firms in the **European** Union. The list shall contain information on the services or activities for which each investment firm is authorised and it shall be updated on a regular basis. ESMA shall publish and keep up-to-date that list on its website.

Where a competent authority has withdrawn an authorisation in accordance with Article 8(b) to (d), that withdrawal shall be published on the list for a period of five years.

4. Each Member State shall require that:

- any investment firm which is a legal person, have its head office in the same Member State as its registered office,
- any investment firm which is not a legal person or any investment firm which is a legal person but under its national law has no registered office, have its head office in the Member State in which it actually carries on its business.

Article 6

Scope of authorisation

1. The home Member State shall ensure that the authorisation specifies the investment services or activities which the investment firm is authorised to provide. The authorisation may cover one or more of the ancillary services set out in Section B of Annex I. Authorisation shall in no case be granted solely for the provision of ancillary services.

2. An investment firm seeking authorisation to extend its business to additional investment services or activities or ancillary services not foreseen at the time of initial authorisation shall submit a request for extension of its authorisation.

3. The authorisation shall be valid for the entire **European** Union and shall allow an investment firm to provide the services or perform the activities, for which it has been authorised, throughout the **European** Union, either through the establishment of a branch or the free provision of services.

Article 7

Procedures for granting and refusing requests for authorisation

1. The competent authority shall not grant authorisation unless and until such time as it is fully satisfied that the applicant complies with all requirements under the provisions adopted pursuant to this Directive.

2. The investment firm shall provide all information, including a programme of operations setting out inter alia the types of business envisaged and the organisational structure, necessary to enable the competent authority to satisfy itself that the investment firm has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations under the provisions of this Chapter.

Friday 26 October 2012

3. An applicant shall be informed, within six months of the submission of a complete application, whether or not authorisation has been granted.
4. ESMA shall develop draft regulatory technical standards to specify:
 - (a) the information to be provided to the competent authorities under Article 7(2) including the programme of operations;
 - (b) the tasks of nomination committees required under Article 9(2);
 - (c) the requirements applicable to the management of investment firms under Article 9(8) and the information for the notifications under Article 9(5);
 - (d) the requirements applicable to shareholders and members with qualifying holdings, as well as obstacles which may prevent effective exercise of the supervisory functions of the competent authority, under Article 10(1) and (2).

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.

5. ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information provided for in Article 7(2) and in Article 9(5).

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.

Article 8

Withdrawal of authorisation

The competent authority may withdraw the authorisation issued to an investment firm where such an investment firm:

- (a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has provided no investment services or performed no investment activity for the preceding six months, unless the Member State concerned has provided for authorisation to lapse in such cases;
- (b) has obtained the authorisation by making false statements or by any other irregular means;
- (c) no longer meets the conditions under which authorisation was granted, such as compliance with the conditions set out in Directive 2006/49/EC;

(*) **18 months after the date of entry into force of this Directive.**

Friday 26 October 2012

- (d) has seriously and systematically infringed the provisions adopted pursuant to this Directive governing the operating conditions for investment firms;
- (e) falls within any of the cases where national law, in respect of matters outside the scope of this Directive, provides for withdrawal.

Every withdrawal of authorisation shall be notified to ESMA.

Article 9

Management body

-1. For the purposes of this Directive, a non-executive director is defined as follows: A non-executive director or outside director is a member of the board of directors of a company who does not form part of the executive management team. He or she is not an employee of the company or affiliated with it in any other way. They are differentiated from inside directors, who are members of the board who also serve or previously served as executive managers of the company.

Non-executive directors shall have responsibilities in the following areas:

- *Non-executive directors shall constructively challenge and contribute to the development of strategy;*
- *Non-executive directors shall scrutinise the performance of management in meeting agreed goals and objectives and monitoring, and where necessary removing, senior management and in succession planning;*
- *Non-executive directors shall satisfy themselves that financial information is accurate and that financial controls and systems of risk management are robust and defensible;*
- *Non-executive directors shall be responsible for determining appropriate levels of remuneration of executive directors and have a prime role in appointing, and where necessary removing, senior management and in succession planning.*

Non-executive directors shall also provide independent views on:

- *resources;*
- *appointments;*
- *standards of conduct.*

Non-executive directors shall be the custodians of the governance process. They shall not be involved in the day-to-day running of business but shall monitor the executive activity and contribute to the development of strategy.

1. **Members** of the management body of any investment firm shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties, **and allowing for a broad range of experience to be acknowledged so as not to discriminate against women.**

Friday 26 October 2012

Members of the management body shall, in particular, fulfil the following requirements:

- (a) **All members** of the management body shall commit sufficient time to perform **their** functions in the investment firm. **The number of directorships a member of the management body can hold at the same time shall take into account individual circumstances and the nature, scale and complexity of the institution's activities.**

Members of the management body of institutions that are significant in terms of their size, internal organisation and the nature, the scope and the complexity of their activities 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:

- (i) within the same group;
- (ii) **within institutions which:**
 - **are members of the same institutional protection scheme if the conditions of Article 108(7) of Regulation (EU) No .../2012 [CRD IV] are fulfilled;**
 - **have established links according to Article 108(6) of Regulation (EU) No .../2012 [CRD IV]; or**
- (iii) **within undertakings (including non-financial institutions) where the institutions owns a qualifying holding.**

shall be considered as one single directorship.

Members of the management body shall not combine at the same time an executive directorship in an investment firm with an executive directorship in a regulated market, an MTF or an OTF even within the same group.

Point (a) shall include:

- (i) **undertakings and non-financial entities:**
 - **in which there is a qualified holding within the meaning of Article 4(21) of Regulation (EU) No .../2012 [CRD IV];**
 - **in which there is participation within the meaning of Article 4(49) of Regulation (EU) No .../2012 [CRD IV]; or**
 - **which have close links within the meaning of Article 4(72) of Regulation (EU) No .../2012 [CRD IV] with certain non-financial institutions.**

Friday 26 October 2012

- (ii) **parent financial holding companies within the meaning of Article 4(65), (66) and (67) of Regulation(EU) No .../2012 [CRD IV] controlling a central or regional credit institution adhering to an IPS scheme.**
- (b) The management body shall possess adequate collective knowledge, skills and experience to be able to understand the investment firm's activities, and in particular the main risk involved in those activities.
- (c) Each member of the management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management **and to effectively oversee and monitor management decision-making.**

Investment firms shall devote adequate resources to the induction and training of members of the management body.

Where the market operator that seeks authorisation to operate an MTF or an OTF and the persons that effectively direct the business of the MTF or the OTF are the same as the members of the management body of the regulated market, those persons shall be deemed to comply with the requirements laid down in the first subparagraph.

2. Member States shall require investment firms, where appropriate and proportionate in view of the nature, scale and complexity of their business, to establish a nomination committee to assess compliance with the first paragraph and to make recommendations, when needed, on the basis of their assessment. The nomination committee shall be composed of members of the management body who do not perform any executive function in the institution concerned. Where, under national law, the management body does not have any competence in the process of appointment of its members, this paragraph shall not apply.
3. Member States shall require investment firms **and their respective nomination committees to engage a broad set of qualities and competences when recruiting members to its management bodies. In particular:**
- (a) **Investment firms shall put in place a policy promoting professionalism responsibility and commitment as the guiding criteria for senior recruitment, safeguarding that those appointed are unquestionably loyal to the interests of the institution.**
- (b) **Investment firms shall also take concrete steps towards a more balanced representation on boards, such as training of nomination committees, the creation of rosters of competent candidates, and the introduction of a nomination process where at least one candidate of each sex is presented.**
- (c) **Where practiced, employee representation in the management body shall also, by adding a key perspective and genuine knowledge of the internal workings of the institution, be seen as a positive way of enhancing diversity.**

Competent authorities shall require investment firms to implement a 1/3 gender quota by ... (*).

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

Friday 26 October 2012

4. ESMA shall develop draft regulatory standards to specify ***how the institution should take into account*** the following:
- (a) the notion of sufficient time commitment of a member of the management body to perform his functions, in relation to the individual circumstances and the nature, scale and complexity of activities of the investment firm which competent authorities must take into account when they authorise a member of the management body to combine more directorships than permitted as referred to in paragraph 1(a);
 - (b) the notion of adequate collective knowledge, skills and experience of the management body as referred to in paragraph 1(b),
 - (c) to notions of honesty, integrity and independence of mind of a member of the management body as referred to in paragraph 1(b),
 - (d) the notion of adequate human and financial resources devoted to the induction and training of members of the management body,
 - (e) the notion of diversity to be taken into account for the selection of members of the management body.

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.

I

5. Member States shall require the investment firm to notify the competent authority of all members of its management body and of any changes to its membership, with all information needed to assess whether the firm complies with paragraphs 1, 2 and 3.
6. Member States shall require the management body of an investment firm to ensure that the firm is managed in a sound and prudent way and in a manner that promotes the integrity of the market and the interest of the its clients. To this end, the management body shall:
- (a) define, approve and oversee the strategic objectives of the firm;
 - (b) define, approve and oversee the organisation of the firm, including the skills, knowledge and expertise required to personnel, the resources, the procedures and the arrangements for the provision of services and activities by the firm, taking into account the nature, scale and complexity of its business and all the requirements with which the firm must comply;
 - (c) define, approve and oversee a policy as to services, activities, products and operations offered or provided by the firm, in accordance with the risk tolerance of the firm and the characteristics and needs of the clients to whom they will be offered or provided, including carrying out appropriate stress testing, where appropriate;

(*) 12 months after the date of entry into force of this Directive.

Friday 26 October 2012

(ca) *define, approve and oversee the firm's remuneration of sales staff which should be designed to encourage responsible business conduct, fair treatment of consumers and to avoid conflicts of interest, and disclose the remuneration structure to customers, where appropriate, such as where potential conflicts of interest cannot be managed or avoided, without prejudice to Article 24;*

(d) provide effective oversight of senior management;

(da) maintain an anti-fraud strategy.

The management body shall monitor and periodically assess the effectiveness of the investment firm's organisation and the adequacy of the policies relating to the provision of services to clients 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.

7. The competent authority shall refuse authorisation if it is not satisfied that the persons who will effectively direct the business of the investment firm 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 interest of its clients and the integrity of the market.
8. Member States shall require that the management of investment firms is undertaken by at least two persons meeting the requirements laid down in paragraph 1.

By way of derogation from the first subparagraph, Member States may grant authorisation to investment firms that are natural persons or to investment firms that are legal persons managed by a single natural person in accordance with their constitutive rules and national laws. Member States shall nevertheless require that:

- (a) alternative arrangements be in place which ensure the sound and prudent management of such investment firms and the adequate consideration of the interest of clients and the integrity of the market;
- (b) the natural persons concerned are of sufficiently good repute, possess **an appropriate level of knowledge** and **competence** and **are given** sufficient time to perform their duties **and update and validate their knowledge and competence**.

8a. Without prejudice to the legal systems of the Member States, Member States shall ensure that where it is alleged that a member of the management board has breached the provisions of or has committed an offence in relation to matters falling within the scope of this Directive or of Regulation (EU) No .../... [MiFIR], he may be personally subject to criminal and civil proceedings.

8b. This Article shall be without prejudice to provisions on the representation of employees in company boards as provided for by national law or practice.

Article 10

Shareholders and members with qualifying holdings

1. The competent authorities shall not authorise the performance of investment services or activities by an investment firm until they have been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and the amounts of those holdings.

Friday 26 October 2012

The competent authorities shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of an investment firm, they are not satisfied as to the suitability of the shareholders or members that have qualifying holdings.

Where close links exist between the investment firm and other natural or legal persons, the competent authority shall grant authorisation only if those links do not prevent the effective exercise of the supervisory functions of the competent authority.

2. The competent authority shall refuse authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the undertaking has close links, or difficulties involved in their enforcement, prevent the effective exercise of its supervisory functions.

3. Member States shall require that, where the influence exercised by the persons referred to in the first subparagraph of paragraph 1 is likely to be prejudicial to the sound and prudent management of an investment firm, the competent authority take appropriate measures to put an end to that situation.

Such measures may consist in applications for judicial orders or the imposition of sanctions against directors and those responsible for management, or suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.

Article 11

Notification of proposed acquisitions

1. Member States shall require any natural or legal person or such persons acting in concert (the 'proposed acquirer'), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in an investment firm or to further increase, directly or indirectly, such a qualifying holding in an investment firm as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 % or so that the investment firm would become its subsidiary (the 'proposed acquisition'), first to notify in writing the competent authorities of the investment firm in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information, as referred to in Article 13(4).

Member States shall require any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in an investment firm first to notify in writing the competent authorities, indicating the size of the intended holding. Such a person shall likewise notify the competent authorities if he has taken a decision to reduce his qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20 %, 30 % or 50 % or so that the investment firm would cease to be his subsidiary.

Member States need not apply the 30 % threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one-third.

In determining whether the criteria for a qualifying holding referred to in Article 10 and in this Article are fulfilled, Member States shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I, provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition.

Friday 26 October 2012

2. The relevant competent authorities shall work in full consultation with each other when carrying out the assessment provided for in Article 13(1) (the 'assessment') if the proposed acquirer is one of the following:

- (a) a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed;
- (b) the parent undertaking of a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed; or
- (c) a natural or legal person controlling a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.

The competent authorities shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. In this regard, the competent authorities shall communicate to each other upon request all relevant information and shall communicate on their own initiative all essential information. A decision by the competent authority that has authorised the investment firm in which the acquisition is proposed shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer.

3. Member States shall require that, if an investment firm becomes aware of any acquisitions or disposals of holdings in its capital that cause holdings to exceed or fall below any of the thresholds referred to in the first subparagraph of paragraph 1, that investment firm is to inform the competent authority without delay.

At least once a year, investment firms shall also inform the competent authority of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at annual general meetings of shareholders and members or as a result of compliance with the regulations applicable to companies whose transferable securities are admitted to trading on a regulated market.

4. Member States shall require that competent authorities take measures similar to those referred to in paragraph 3 of Article 10 in respect of persons who fail to comply with the obligation to provide prior information in relation to the acquisition or increase of a qualifying holding. If a holding is acquired despite the opposition of the competent authorities, the Member States shall, regardless of any other sanctions to be adopted, provide either for exercise of the corresponding voting rights to be suspended, for the nullity of the votes cast or for the possibility of their annulment.

Article 12

Assessment period

1. The competent authorities shall, promptly and in any event within two working days following receipt of the notification required under the first subparagraph of Article 11(1), as well as following the possible subsequent receipt of the information referred to in paragraph 2 of this Article, acknowledge receipt thereof in writing to the proposed acquirer.

The competent authorities shall have a maximum of sixty working days as from the date of the written acknowledgement of receipt of the notification and all documents required by the Member State to be attached to the notification on the basis of the list referred to in Article 13(4) (the 'assessment period'), to carry out the assessment.

Friday 26 October 2012

The competent authorities shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.

2. The competent authorities may, during the assessment period, if necessary, and no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed.

For the period between the date of request for information by the competent authorities and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption shall not exceed 20 working days. Any further requests by the competent authorities for completion or clarification of the information shall be at their discretion but may not result in an interruption of the assessment period.

3. The competent authorities may extend the interruption referred to in the second subparagraph of paragraph 2 up to 30 working days if the proposed acquirer is one of the following:

(a) a natural or legal person situated or regulated outside the **European** Union;

(b) a natural or legal person not subject to supervision under this Directive or Directives 2009/65/EC, 2009/138/EC or 2006/48/EC.

4. If the competent authorities, upon completion of the assessment, decide to oppose the proposed acquisition, they shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing and provide the reasons for that decision. Subject to national law, an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. This shall not prevent a Member State from allowing the competent authority to make such disclosure in the absence of a request by the proposed acquirer.

5. If the competent authorities do not oppose the proposed acquisition within the assessment period in writing, it shall be deemed to be approved.

6. The competent authorities may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

7. Member States may not impose requirements for the notification to and approval by the competent authorities of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Directive.

8. ESMA shall develop draft regulatory technical standards to establish an exhaustive list of information, referred to in paragraph 4 to be included by proposed acquirers in their notification, without prejudice to paragraph 2.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.

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.

8a. ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the modalities of the consultation process between the relevant competent authorities as referred to in Article 11(2).

Friday 26 October 2012

ESMA shall submit those draft implementing technical standards to the Commission by 1 January 2014.

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.

Article 13

Assessment

1. In assessing the notification provided for in Article 11(1) and the information referred to in Article 12(2), the competent authorities shall, in order to ensure the sound and prudent management of the investment firm in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the investment firm, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

- (a) the reputation of the proposed acquirer;
 - (b) the reputation and experience of any person who will direct the business of the investment firm as a result of the proposed acquisition;
 - (c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the investment firm in which the acquisition is proposed;
 - (d) whether the investment firm will be able to comply and continue to comply with the prudential requirements based on this Directive and, where applicable, other Directives, in particular Directives 2002/87/EC and 2006/49/EC, in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;
- (da) whether the proposed acquisition increases the risk of conflicts of interest;**
- (e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

The Commission shall be empowered to adopt delegated acts in accordance with Article 94 which adjust the criteria set out in the first subparagraph of this paragraph.

2. The competent authorities may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or if the information provided by the proposed acquirer is incomplete.

3. Member States shall neither impose any prior conditions in respect of the level of holding that must be acquired nor allow their competent authorities to examine the proposed acquisition in terms of the economic needs of the market.

4. Member States shall make publicly available a list specifying the information that is necessary to carry out the assessment and that must be provided to the competent authorities at the time of notification referred to in Article 11(1). The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition. Member States shall not require information that is not relevant for a prudential assessment.

Friday 26 October 2012

5. Notwithstanding Article 12(1), (2) and (3), where two or more proposals to acquire or increase qualifying holdings in the same investment firm have been notified to the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.

Article 14

Membership of an authorised investor compensation scheme

The competent authority shall verify that any entity seeking authorisation as an investment firm meets its obligations under Directive 97/9/EC at the time of authorisation.

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 schemes ⁽¹⁾.

Article 15

Initial capital endowment

Member States shall ensure that the competent authorities do not grant authorisation unless the investment firm has sufficient initial capital in accordance with the requirements of Directive 2006/49/EC having regard to the nature of the investment service or activity in question.

Article 16

Organisational requirements

1. The home Member State shall require that investment firms comply with the organisational requirements set out in paragraphs 2 to 8 of this Article and in Article 17.

2. An investment firm shall establish adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and tied agents with its obligations under the provisions of this Directive as well as appropriate rules governing personal transactions by such persons.

3. An investment firm shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest as defined in Article 23 from adversely affecting the interests of its clients. ***These arrangements shall include a policy and other necessary arrangements to assess the compatibility of the investment product with the needs of the clients to whom it would be offered, and to ensure that investment products or structured deposits designed by the firm for sale to professional or retail clients meet the needs of an identified target market and that an investment firm marketing investment products ensures that the investment product is marketed to clients within the target group. Sales targets and internal inducement schemes shall not incentivise the sale of products outside the targeted group. In particular, an investment firm which designs investment products, structured deposits or financial instruments shall have in place a product approval process and shall take all the necessary operational and procedural measures to implement this product approval process. Before investment products and financial instruments are placed or distributed in the market, these products and instruments need approval according to the product approval process. All the relevant risks shall be carefully assessed and products and instruments shall only be placed or distributed when this is in the interests of the targeted group of clients. The product approval process shall ensure that existing products are regularly reviewed in order to ensure that the product is continuing to meet the needs of the identified target market. The product approval process shall be reviewed annually. An investment firm shall at all times be able to provide the relevant competent authority an up to date and detailed description of the nature and details of its product approval process.***

⁽¹⁾ OJ L 135, 31.5.1994, p. 5.

Friday 26 October 2012

4. An investment firm shall take reasonable steps to ensure continuity and regularity in the performance of investment services and activities. To this end the investment firm shall employ appropriate and proportionate systems, resources and procedures.

5. An investment firm shall ensure, when relying on a third party for the performance of operational functions which are critical for the provision of continuous and satisfactory service to clients and the performance of investment activities on a continuous and satisfactory basis, that it takes reasonable steps to avoid undue additional operational risk. Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of its internal control and the ability of the supervisor to monitor the firm's compliance with all obligations.

An investment firm shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems.

6. An investment firm shall arrange for records to be kept of all services and transactions undertaken by it which shall be sufficient to enable the competent authority to monitor compliance with the requirements under this Directive, and in particular to ascertain that the investment firm has complied with all obligations with respect to clients or potential clients.

7. 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.

Member States may waive the obligation to record telephone conversations when the investment firm does not as its main business receive and transmit orders and execute orders on behalf of clients.

With regard to communications between financial institutions and retail clients Member States may instead of the records referred to in the first subparagraph recognise the adequate documentation of the content of such telephone conversations in the form of minutes where such minutes are signed by the client.

Records of telephone conversation or electronic communications recorded in accordance with ***the first subparagraph or the minutes prepared in accordance with the second subparagraph*** shall be provided to the client involved upon request. ***Member States shall require that such records are kept until one year after the investment has ended.***

Relevant persons of the investment firm may undertake the conversations and communications referred to in subparagraph 1 only on equipment provided by the investment firm and of which records are kept.

8. An investment firm shall, when holding financial instruments belonging to clients, make adequate arrangements so as to safeguard clients' ownership rights, especially in the event of the investment firm's insolvency, and to prevent the use of a client's instruments on own account except with the client's express consent.

9. An investment firm shall, when holding funds belonging to clients, make adequate arrangements to safeguard the clients' rights and, except in the case of credit institutions, prevent the use of client funds for its own account.

Friday 26 October 2012

10. An investment firm shall not conclude title transfer collateral arrangements with retail clients for the purpose of securing or covering clients' present or future, actual or contingent or prospective obligations.

11. In the case of branches of investment firms, the competent authority of the Member State in which the branch is located shall, without prejudice to the possibility of the competent authority of the home Member State of the investment firm to have direct access to those records, enforce the obligation laid down in paragraph 6 and 7 with regard to transactions undertaken by the branch.

12. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to specify the concrete organisational requirements laid down in paragraphs 2 to 9 of this Article 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.

Article 17

Algorithmic *and high-frequency* trading

1. An investment firm that engages in algorithmic trading shall have in place effective systems and risk controls **suitable to the business it operates** 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 investment 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.

2. An investment firm that engages in algorithmic trading shall at least annually **on its own initiative and at any other time on request** provide to its home competent authority a **detailed** description of the nature of its algorithmic trading strategies, details of the trading parameters or limits to which the system is subject, the key compliance and risk controls that it has in place to ensure the conditions in paragraph 1 are satisfied and details of the testing of its systems. **An investment firm shall, at the request of a** competent authority, **submit** further information about its algorithmic trading and the systems used for that trading.

2a. An investment firm that engages in a high frequency trading strategy shall store in an approved form the raw audit trail of any quotation and trading activities performed on any trading venue and make it available to the national competent authority upon request.

3. **An investment firm that engages in market making including through participation in a market making scheme offered by a trading venue shall enter into a binding written agreement between the firm and the trading venue regarding the essential obligations arising from the market making and shall adhere to the terms and conditions of the agreement, including liquidity provision. The investment firm shall have in place effective systems and controls to ensure that it fulfils its obligations under the agreement at all times. Where any investment firm deploys an algorithmic trading strategy in order to fulfil its obligations as a market maker it shall ensure that the algorithm 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 and that the trading parameters or limits of the algorithm shall ensure that the investment firm 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 unless the written agreement provides otherwise.**

Friday 26 October 2012

4. **Investment firms shall not provide sponsored and naked market access to a trading venue.** An investment firm that provides direct **market** 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.

5. An investment firm that acts as a general clearing member for other persons shall have in place effective systems and controls to ensure clearing services are only applied to persons who are suitable and meet clear criteria and that appropriate requirements are imposed on those persons to reduce risks to the firm and to the market. 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 that service.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to specify the detailed organisational requirements laid down in paragraphs 1 to 5 to be imposed on investment firms performing different investment services and/or activities and ancillary services or combinations thereof.

Article 18

Trading process and finalisation of transactions in an MTF and an OTF

1. Member States shall require that investment firms or market operators operating an MTF or an OTF, in addition to meeting the organisational requirements laid down in Article 16, establish transparent rules and procedures for fair and orderly trading and establish objective criteria for the efficient execution of orders. They shall have arrangements for the sound management of the technical operations of the facility, including the establishment of effective contingency arrangements to cope with risks of systems disruption.

2. Member States shall require that investment firms or market operators operating an MTF or an OTF establish transparent rules regarding the criteria for determining the financial instruments that can be traded under its systems.

Member States shall require that, where applicable, investment firms or market operators operating an MTF or an OTF provide, or are satisfied that there is access to, sufficient publicly available information to enable its users to form an investment judgement, taking into account both the nature of the users and the types of instruments traded.

3. Member States shall require that investment firms or market operators operating an MTF or an OTF establish, publish and maintain transparent **and non-discriminatory** rules, based on objective criteria, governing access to its facility.

3a. Member States shall require investment firms or market operators operating an MTF or an OTF to have arrangements in place to identify clearly any conflict of interest between the interest of the MTF or OTF, its owners or its operator and the sound operation of the MTF or OTF, and to manage the potential adverse consequences for the operation of the MTF or OTF or its participants arising from any such conflicts of interest.

Friday 26 October 2012

4. Member States shall require that investment firms or market operators operating an MTF or an OTF clearly inform its users of their respective responsibilities for the settlement of the transactions executed in that facility. Member States shall require that investment firms or market operators operating an MTF or an OTF have put in place the necessary arrangements to facilitate the efficient settlement of the transactions concluded under the systems of the MTF or an OTF.

4a. Member States shall require that an MTF or OTF has at least three materially active members or users, each having the opportunity to interact with all the others in respect to price formation.

5. Where a transferable security, which has been admitted to trading on a regulated market, is also traded on an MTF or an OTF without the consent of the issuer, the issuer shall not be subject to any obligation relating to initial, ongoing or ad hoc financial disclosure with regard to that MTF or an OTF.

6. Member States shall require that any investment firm or market operator operating an MTF or an OTF comply immediately with any instruction from its competent authority pursuant to Article 72(1) to suspend or remove a financial instrument from trading.

7. Member States shall require investment firms and market operators operating an MTF or an OTF to provide the competent authority **and ESMA** with a detailed description of the functioning of the MTF or OTF, **including any links to or participation by a regulated market, an MTF, an OTF or a systematic internaliser owned by the same investment firm or market operator, and a list of their members and/or users**. 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 **European** 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.

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

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.

Article 19

Specific requirements for MTFs

1. Member States shall require that investment firms or market operators operating an MTF, in addition to meeting the requirements laid down in Articles 16 and 18, shall establish **and implement** non-discretionary rules for the execution of orders in the system.

2. Member States shall require that the rules referred to in Article 18(4) governing access to an MTF comply with the conditions established in Article 55(3).

(*) **18 months after the date of entry into force of this Directive.**

Friday 26 October 2012

3. Member States shall require that investment firms or market operators operating an MTF to have arrangements:

- (a) *to be adequately equipped to manage the risks to which it is exposed, to implement appropriate arrangements and systems to identify all significant risks to its operation, and to put in place effective measures to mitigate those risks;*
- (b) to identify clearly and manage the potential adverse consequences, for the operation of the MTF or for its participants, of any conflict of interest between the interest of the MTF, its owners or its operator and the sound functioning of the MTF;
- (c) *to have effective arrangements to facilitate the efficient and timely finalisation of the transactions executed under its systems; and*
- (d) *to have available, at the time of authorisation and on an ongoing basis, sufficient financial resources to facilitate its orderly functioning, having regard to the nature and extent of the transactions concluded on the market and the range and degree of the risks to which it is exposed.*

4. Member States shall require a MTF to **comply with Articles 51 and 51a and to** have in place effective systems, procedures and arrangements to **do so**.

5. Member States shall ensure that Articles 24, 25, 27 and 28 are not applicable to the transactions concluded under the rules governing an MTF between its members or participants or between the MTF and its members or participants in relation to the use of the MTF. However, the members of or participants in the MTF shall comply with the obligations provided for in Articles 24, 25, 27 and 28 with respect to their clients when, acting on behalf of their clients, they execute their orders through the systems of an MTF.

Article 20

Specific requirements for OTFs

1. Member States shall require that investment firms and market operators operating an OTFs establish arrangements preventing the execution of client orders in an OTF against the proprietary capital of the investment firm or market operator operating the OTF **or from any entity that is part of the same corporate group and/or legal person as the investment firm and/or market operator**.

The investment firm or market operator or an entity that is part of the same corporate group and/or legal person as the investment firm and/or market operator shall not act as a systematic internaliser in an OTF operated by itself and an OTF shall not connect with a systematic internaliser in a way which enables orders in an OTF and orders or quotes in a systematic internaliser to interact. An OTF shall not connect with another OTF in a way which enables orders in different OTFs to interact.

1a. Member States shall require that where a bond, structured finance product or emission allowance is admitted to trading on a regulated market or traded on an MTF, investment firms and market operators operating an OTF only allow orders which are large in scale to be executed on the OTF.

1b. Investment firms or market operators operating an OTF shall have discretion in operating the OTF only in relation to:

(a) *how a transaction is to be executed; and*

(b) *how clients interact.*

Friday 26 October 2012

2. A request for authorisation as an OTF shall include a detailed explanation why the system does not correspond to and cannot operate as a regulated market, MTF, or systematic internaliser. **Once authorised, an operator of an OTF shall report annually to the competent authority providing an updated explanation.**

2a. Member States shall require investment firms and market operators operating an OTF take appropriate steps to identify and manage any conflict of interest arising in connection with the oversight and operation of the OTF which could adversely affect the members or participants of the OTF.

3. Member States shall ensure that Articles 24, 25, 27 and 28 are applied to the transactions concluded on an OTF.

4. Member States shall require **OTFs to comply with Article 51 and 51a and to** have in place effective systems, procedures and arrangements to **do so**.

CHAPTER II

OPERATING CONDITIONS FOR INVESTMENT FIRMS

SECTION 1

GENERAL PROVISIONS

Article 21

Regular review of conditions for initial authorisation

1. Member States shall require that an investment firm authorised in their territory comply at all times with the conditions for initial authorisation established in Chapter I of this Title.

2. Member States shall require competent authorities to establish the appropriate methods to monitor that investment firms comply with their obligation under paragraph 1. They shall require investment firms to notify the competent authorities of any material changes to the conditions for initial authorisation.

ESMA may develop guidelines regarding the monitoring methods referred to in this paragraph.

Article 22

General obligation in respect of on-going supervision

Member States shall ensure that the competent authorities monitor the activities of investment firms so as to assess compliance with the operating conditions provided for in this Directive. Member States shall ensure that the appropriate measures are in place to enable the competent authorities to obtain the information needed to assess the compliance of investment firms with those obligations.

Article 23

Conflicts of interest

1. Member States shall require investment firms to take all **necessary** steps to identify **all** conflicts of interest between themselves, including their managers, employees and tied agents, or any person directly or indirectly linked to them by control and their clients or between one client and another that arise in the course of providing any investment and ancillary services, or combinations thereof, **including those caused by the receipt of inducements from third parties or by the firm's own remuneration and other incentive structures.**

Friday 26 October 2012

2. Where organisational or administrative arrangements made by the investment firm in accordance with Article 16(3) to **prevent or** manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the investment firm shall clearly disclose the general nature and/or sources of conflicts of interest to the client before undertaking business on its behalf.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 to:
 - (a) define the steps that investment firms might reasonably be expected to take to identify, prevent, manage and disclose conflicts of interest when providing various investment and ancillary services and combinations thereof;
 - (b) establish appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the clients or potential clients of the investment firm.

SECTION 2

PROVISIONS TO ENSURE INVESTOR PROTECTION

Article 24

General principles and information to clients

1. Member States shall require that, when providing investment services or, where appropriate, ancillary services to clients, an investment firm act honestly, fairly and professionally in accordance with the best interests of its clients and comply, in particular, with the principles set out in this Article and in Article 25.

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. Member States shall ensure that investment firms take reasonable steps to ensure that each investment product is marketed and distributed to clients within the target group and that sales targets and internal reward schemes or inducements do not provide an incentive for marketing or distribution of the investment product outside the target group. Member States shall require investment firms which design investment products or structured deposits for sale to professional or retail clients to provide information to any third party distributor on the intended target market for the product.

1b. Member States shall ensure that the manner in which an investment firm remunerates its staff, appointed representatives or other investment firms does not impede compliance with its obligation to act in the best interests of clients. Member States shall ensure that where staff advise on, market or sell investment products or financial instruments to retail clients, the remuneration structures involved do not prejudice their ability to provide an objective recommendation, where applicable, or to provide information in a manner that is fair, clear and not misleading in accordance with paragraph 2 and does not otherwise give rise to undue conflicts of interest.

In particular, Member States shall ensure that:

- (a) remuneration is not largely dependent on targets for the sale or profitability of investment products or financial instruments;**
- (b) remuneration or other arrangements including performance assessment do not provide an incentive to staff to recommend a particular investment product or financial instrument to a retail client when the investment firm could offer another investment product or financial instrument which would better meet that client's objectives.**

Friday 26 October 2012

1c. Member States shall ensure that investment firms are not regarded as fulfilling their obligations under Article 23 or of the first paragraph of this Article where, in particular, they pay any person except the client or are paid any fee or commission, or provide or are provided with any non-monetary benefit in connection with the provision of an investment service or ancillary service by any party except the client, other than where the payment of the fee or commission, or the provision of the non-monetary benefit is designed to enhance the quality of the relevant service to the client and does not impair compliance with the firm's duty to act honestly, fairly and professionally in accordance with the best interest of its clients and:

- (a) is transferred to the investor accompanied by documentation detailing all the services and the fee or commission that is associated with it;**
- (b) enables or is necessary for the provision of investment services, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the firm's duties to act honestly, fairly and professionally in accordance with the best interests of its clients; or**
- (c) its existence, nature and amount, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the client, in a manner that is comprehensive, prior to the provision of the relevant service;**

unless Member States provide that the requirements of this paragraph are only satisfied where the value of the fee, commission or non-monetary benefit is transferred to the client. [Am. 5]

2. All information, including marketing communications, addressed by the investment firm to clients or potential clients shall be fair, clear and not misleading. Marketing communications shall be clearly identifiable as such.

3. Appropriate information shall be provided to clients or potential clients **at the appropriate time** about:

- the investment firm and its services; **where investment advice is given the information shall specify the scope of the products covered by the advice,**
- **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, financial** instruments or in respect of particular investment strategies,
- execution venues,
- costs and associated charges **related to both investment or ancillary services and any investment product, structured deposit or financial instruments recommended or marketed to clients.**

For all investment products the information in the first subparagraph shall include the total cost of investment by means of a standardised illustration of the cumulative effect on returns of all deductions, including fees and costs, which are not caused by the occurrence of underlying market risk, on the basis of a standardised projection expressed as a cash amount before investment and at least once a year for each actual investment.

Friday 26 October 2012

3a. *When investment advice or discretionary portfolio management is provided, the appropriate information referred to in paragraph 3 shall be provided before the investment advice is given and shall include the following:*

- (a) the range of investment products and financial instruments on which the recommendation will be based and, in particular, whether the range is limited to financial instruments issued or provided by entities having close links with the investment firm;*
- (b) whether a fee is payable by the consumer for the advice and, if so, the fee or basis for calculating it;*
- (c) whether the firm receives any fees, commissions, monetary or non-monetary benefits or other inducements from third parties in relation to the provision of the investment advice and, where applicable, the mechanisms for transferring the inducement to the client;*
- (d) whether the investment firm will provide the client with a periodical assessment of the suitability of the financial instruments recommended to clients,*

The information referred to in the first subparagraph **and in paragraph 1c(c)** 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. **Member States** may require that this information **■** be provided in a standardised format.

4. In cases where an investment service is offered as part of a financial product which is already subject to other provisions of **European** Union law or common Union standards related to credit institutions and consumer credits with respect to information requirements, this service shall not be additionally subject to the obligations set out in paragraphs 2, 3 and 3a.

5. **Member States** may additionally prohibit or further restrict the offer or acceptance of fees, commissions or non-monetary benefits in relation to the provision of investment advice or discretionary portfolio management. This may include requiring any such fees, commissions or non-monetary benefits to be returned to the client or offset against fees paid by the client.

5a. **Member States** shall require that where an investment firm informs the client that investment advice or discretionary portfolio management is given on an independent basis, the investment firm assesses a sufficiently large number of investment products or financial instruments available on the market which are sufficiently diversified with regard to their type and issuers or product providers to ensure that the client's investment objectives can be suitably met and is not limited to financial instruments issued or provided by entities having close links with the investment firm.

Where the investment firm informs the client that investment advice is given on an independent basis, **Member States** shall ensure that the acceptance of any fees, commissions or non-monetary benefits in relation to investment advice or discretionary portfolio management is prohibited. [Am. 6]

6. **Member States** shall require an investment firm when providing discretionary portfolio management to disclose in a periodic report all inducements paid or received in relation to the discretionary portfolio management during the preceding period. **Member States** shall ensure that an investment firm does not remunerate or assess the performance of its employees, representatives or other associated investment firms in a way that conflicts with its duty to act in the best interests of clients. [Am. 7]

Friday 26 October 2012

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.

ESMA, **in cooperation with the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority), through the Joint Committee of the European Supervisory Authorities**, 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.

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, **including the conditions with which the information must comply in order to be fair, clear and not misleading, the details about content and format of information to clients in relation to investment firms and their services, the criteria for the assessment of different issuers and product providers for the provision of investment advice on an independent basis, the criteria to assess compliance of firms receiving inducements with the obligation to act honestly, fairly and professionally in accordance with the best interest of the client.** Those delegated acts shall take into account: [Am. 8]

- (a) the nature of the service(s) offered or provided to the client or potential client, taking into account the type, object, size and frequency of the transactions;
- (b) the nature of the **investment** products being offered or considered including different types of financial instruments and deposits referred to in Article 1(2);
- (c) the retail or professional nature of the client or potential clients or, in the case of paragraph 3, their classification as eligible counterparties;

(ca) the parameters for the standardised illustrations referred to in paragraph 3.

Article 25

Assessment of suitability and appropriateness and reporting to clients

-1. Member States shall require investment firms to ensure and demonstrate that natural persons giving investment advice or information about investment products, investment services or ancillary services to clients on behalf of the investment firm possess the necessary knowledge and competence to fulfil their obligations under Article 24 and this Article and shall publish the criteria used to assess knowledge and competence.

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 **including his ability to bear losses, 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 and ability to bear losses.**

Member States shall ensure that where an investment firm provides investment advice recommending a package of services or products bundled pursuant to Article 24(7) each individual component is suitable for the client as well as the overall bundled package.

(*) 12 months after the date of entry into force of this Directive.

Friday 26 October 2012

2. Member States shall ensure that investment firms, when providing investment services other than those referred to in paragraph 1, ask the client or potential client to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the investment firm to assess whether the investment service or product envisaged is appropriate for the client. **Where a bundle of services or products is envisaged pursuant to Article 24(7) the assessment should consider whether each individual component is appropriate as well as the overall bundled package.**

Where the investment firm considers, on the basis of the information received under the previous subparagraph, that the product or service is not appropriate to the client or potential client, the investment firm shall warn the client or potential client. This warning may be provided in a standardised format.

Where clients or potential clients do not provide the information referred to under the first subparagraph, or where they provide insufficient information regarding their knowledge and experience, the investment firm shall warn them that the firm is not in a position to determine whether the service or product envisaged is appropriate for them. This warning may be provided in a standardised format.

3. Member States shall allow investment firms when providing investment services that only consist of execution or the reception and transmission of client orders with or without ancillary services, with the exclusion of the ancillary service specified in Section B (1) of Annex 1, to provide those investment services to their clients without the need to obtain the information or make the determination provided for in paragraph 2 where all the following conditions are met:

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

(i) shares admitted to trading on a regulated market or on an equivalent third-country market or on a MTF, where these are shares in companies, and excluding shares in non-UCITS collective investment undertakings and shares that embed a derivative **unless the derivative does not increase risk to the investor;**

(ii) bonds or other forms of securitised debt, admitted to trading on a regulated market or on an equivalent third country market or on a MTF, excluding those that embed a derivative or incorporate a structure which **would make** it difficult for a client to understand the risk involved **unless the derivative does not increase risk to the investor;**

(iii) money market instruments, excluding those that embed a derivative or incorporate a structure which **would make** it difficult for a client to understand the risk involved **unless the derivative does not increase the risk to the investor;**

(iv) shares or units in UCITS **;**

(v) other non-complex financial instruments for the purpose of this paragraph.

For the purpose of this point, if the requirements and the procedure laid down under subparagraphs 3 and 4 of paragraph 1 of Article 4 of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading⁽¹⁾ are fulfilled, a third-country market shall be considered as equivalent to a regulated market.

⁽¹⁾ OJ L 345, 31.12.2003, p. 64.

Friday 26 October 2012

- (b) the service is provided at the initiative of the client or potential client,
 - (c) the client or potential client has been clearly informed that in the provision of this service the investment firm is not required to assess the suitability or appropriateness of the instrument or service provided or offered and that therefore he does not benefit from the corresponding protection of the relevant conduct of business rules. This warning may be provided in a standardised format,
 - (d) the investment firm complies with its obligations under Article 23.
4. The investment firm shall establish a record that includes the document or documents agreed between the firm and the client that set out the rights and obligations of the parties, and the other terms on which the firm will provide services to the client. The rights and duties of the parties to the contract may be incorporated by reference to other documents or legal texts.
5. The client must receive from the investment firm adequate reports **in a durable medium** 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 specifying at least the client's objectives, the recommendation and** how the advice given meets the personal characteristics **and objectives** of the client. **Where an investment firm provides discretionary portfolio management and where an investment firm providing investment advice informs the client that it will provide an assessment of suitability on a periodic basis in accordance with Article 24(3a)(d) it shall inform the client about the frequency of the assessment and the related communication and the report shall include information about the performance of the relevant investment products and, where investment advice or discretionary portfolio management is provided, an updated assessment of the suitability of those investment products.**
6. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 o ensure that investment firms comply with the principles set out **in paragraphs 1 to 5** when providing investment or ancillary services to their clients. Those delegated acts shall **in particular specify criteria for the assessment of knowledge and competence required under paragraph 1 and shall** take into account:
- (a) the nature of the service(s) offered or provided to the client or potential client, taking into account the type, object, size and frequency of the transactions;
 - (b) the nature of the products being offered or considered, including different types of financial instruments and banking deposits referred to in Article 1(2);
 - (c) the retail or professional nature of the client or potential clients or, in the case of paragraphs 5, their classification as eligible counterparties.
7. ESMA shall develop by [...] (*), and update periodically, guidelines for the assessment of financial instruments incorporating a structure which makes it difficult for the client to understand the risk involved in accordance with paragraph 3(a).

(*) 12 months after the date of entry into force of this Directive.

Friday 26 October 2012

Article 26

Provision of services through the medium of another investment firm

Member States shall allow an investment firm receiving an instruction to perform investment or ancillary services on behalf of a client through the medium of another investment firm to rely on client information transmitted by the latter firm. The investment firm which mediates the instructions will remain responsible for the completeness and accuracy of the information transmitted.

The investment firm which receives an instruction to undertake services on behalf of a client in this way shall also be able to rely on any recommendations in respect of the service or transaction that have been provided to the client by another investment firm. The investment firm which mediates the instructions will remain responsible for the appropriateness for the client of the recommendations or advice provided.

The investment firm which receives client instructions or orders through the medium of another investment firm shall remain responsible for concluding the service or transaction, based on any such information or recommendations, in accordance with the relevant provisions of this Title.

Article 27

Obligation to execute orders on terms most favourable to the client

1. Member States shall require that investment firms take all **necessary** steps to obtain, when executing orders, the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. Nevertheless, whenever there is a specific instruction from the client the investment firm shall execute the order following the specific instruction.

Where an investment firm executes an order on behalf of a retail client, the best possible result shall be determined in terms of the total consideration, representing the price of the financial instrument and the costs related to execution, which shall include all expenses incurred by the client which are directly related to the execution of the order, including execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

1a. An investment firm shall not receive any remuneration, discount or non-monetary benefit for routing orders to a particular trading venue or execution venue.

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 **and that following execution of a transaction on behalf of a client the investment firm shall, on request, inform the client where the order was executed.** Periodic reports shall include details about price, speed of execution and likelihood of execution for individual financial instruments.

3. Member States shall require investment firms to establish and implement effective arrangements for complying with paragraph 1. In particular Member States shall require investment firms to establish and implement an order execution policy to allow them to obtain, for their client orders, the best possible result in accordance with paragraph 1.

4. The order execution policy shall include, in respect of each class of instruments, information on the different venues where the investment firm executes its client orders and the factors affecting the choice of execution venue. It shall at least include those venues that enable the investment firm to obtain on a consistent basis the best possible result for the execution of client orders.

Friday 26 October 2012

Member States shall require that investment firms provide appropriate information to their clients on their order execution policy. That information shall explain clearly, in sufficient detail and in a way that can be easily understood by clients, how orders will be executed by the firm for the client. Member States shall require that investment firms obtain the prior consent of their clients to the execution policy.

Member States shall require that, where the order execution policy provides for the possibility that client orders may be executed outside a regulated market, MTF or OTF, the investment firm shall, in particular, inform its clients about this possibility. Member States shall require that investment firms obtain the prior express consent of their clients before proceeding to execute their orders outside a regulated market MTF or OTF or an MTF. Investment firms may obtain this consent either in the form of a general agreement or in respect of individual transactions.

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 in terms of trading volumes sent where they executed client orders in the preceding quarter and data on the execution quality obtained.

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, if any, 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.

■

6. Member States shall require investment firms to be able to demonstrate to their clients, at their request, that they have executed their orders in accordance with the firm's execution policy **and this Article.**

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning:

- (a) the criteria for determining the relative importance of the different factors that, pursuant to paragraph 1, may be taken into account for determining the best possible result taking into account the size and type of order and the retail or professional nature of the client;
- (b) factors that may be taken into account by an investment firm when reviewing its execution arrangements and the circumstances under which changes to such arrangements may be appropriate. In particular, the factors for determining which venues enable investment firms to obtain on a consistent basis the best possible result for executing the client orders;
- (c) the nature and extent of the information to be provided to clients on their execution policies, pursuant to paragraph 4.

8. ESMA shall develop draft regulatory technical standards to determine:

- (a) the specific content, the format and the periodicity of data related to the quality of execution to be published in accordance with paragraph 2, taking into account the type of execution venue and the type of financial instrument concerned;

Friday 26 October 2012

- (b) the content and the format of information to be published by investment firms in accordance with paragraph 5, second subparagraph.

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.

Article 28

Client order handling rules

1. Member States shall require that investment firms authorised to execute orders on behalf of clients implement procedures and arrangements which provide for the prompt, fair and expeditious execution of client orders, relative to other client orders or the trading interests of the investment firm.

These procedures or arrangements shall allow for the execution of otherwise comparable client orders in accordance with the time of their reception by the investment firm.

2. Member States shall require that, in the case of a client limit order in respect of shares admitted to trading on a regulated market which are not immediately executed under prevailing market conditions, investment firms are, unless the client expressly instructs otherwise, to take measures to facilitate the earliest possible execution of that order by making public immediately that client limit order in a manner which is easily accessible to other market participants. Member States may decide that investment firms comply with this obligation by transmitting the client limit order to a regulated market or MTF. Member States shall provide that the competent authorities may waive the obligation to make public a limit order that is large in scale compared with normal market size as determined under Article 4 of Regulation (EU) No .../... [MiFIR].

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures which define:

- (a) the conditions and nature of the procedures and arrangements which result in the prompt, fair and expeditious execution of client orders and the situations in which or types of transaction for which investment firms may reasonably deviate from prompt execution so as to obtain more favourable terms for clients;
- (b) the different methods through which an investment firm can be deemed to have met its obligation to disclose not immediately executable client limit orders to the market.

Article 29

Obligations of investment firms when appointing tied agents

1. Member States shall allow an investment firm to appoint tied agents for the purposes of promoting the services of the investment firm, soliciting business or receiving orders from clients or potential clients and transmitting them, placing financial instruments and providing advice in respect of such financial instruments and services offered by that investment firm.

(*) 12 months after the date of entry into force of this Directive.

Friday 26 October 2012

2. Member States shall require that where an investment firm decides to appoint a tied agent it remains fully and unconditionally responsible for any action or omission on the part of the tied agent when acting on behalf of the firm. Member States shall require the investment firm to ensure that a tied agent discloses the capacity in which he is acting and the firm which he is representing when contacting or before dealing with any client or potential client.

Member States shall prohibit tied agents registered in their territory from handling clients' money and/or financial instruments.

Member States shall require the investment firms to monitor the activities of their tied agents so as to ensure that they continue to comply with this Directive when acting through tied agents.

3. Tied agents shall be registered in the public register in the Member State where they are established. ESMA shall publish on its website references or hyperlinks to the public registers established under this Article by the Member States that decide to allow investment firms to appoint tied agents.

Member States shall ensure that tied agents are only admitted to the public register if it has been established that they are of sufficiently good repute and that they possess **the** appropriate general, commercial and professional knowledge **and competence** so as to be able to **deliver the investment service or ancillary service and to** communicate accurately all relevant information regarding the proposed service to the client or potential client.

Member States may decide that, **subject to appropriate control**, investment firms **rather than competent authorities** can verify whether the tied agents which they have appointed are of sufficiently good repute and possess the knowledge as referred to in the third subparagraph.

The register shall be updated on a regular basis. It shall be publicly available for consultation.

4. Member States shall require that investment firms appointing tied agents take adequate measures in order to avoid any negative impact that the activities of the tied agent not covered by the scope of this Directive could have on the activities carried out by the tied agent on behalf of the investment firm.

Member States may allow competent authorities to collaborate with investment firms and credit institutions, their associations and other entities in registering tied agents and in monitoring compliance of tied agents with the requirements of paragraph 3. In particular, tied agents may be registered by an investment firm, credit institution or their associations and other entities under the supervision of the competent authority.

5. Member States shall require that investment firms appoint only tied agents entered in the public registers referred to in paragraph 3.

5a. Member States shall require investment firms to provide tied agents they appoint with up to date information on the investment product and the target market as determined in accordance with Article 24(1) and to ensure that the tied agent provides the client with the information required under Article 24(3).

6. Member States may reinforce the requirements set out in this Article or add other requirements for tied agents registered within their jurisdiction.

Friday 26 October 2012

Article 30

Transactions executed with eligible counterparties

1. Member States shall ensure that investment firms authorised to execute orders on behalf of clients and/or to deal on own account and/or to receive and transmit orders, may bring about or enter into transactions with eligible counterparties without being obliged to comply with the obligations under Articles 24 (with the exception of paragraph 3), 25 (with the exception of paragraph 5) and 27 and Article 28(1) in respect of those transactions or in respect of any ancillary service directly related to those transactions.

Member States shall ensure that, in their relationship with eligible counterparties, investment firms act honestly, fairly and professionally and communicate in a way which is fair, clear and not misleading, taking into account the nature of the eligible counterparty and of its business.

2. Member States shall recognise as eligible counterparties for the purposes of this Article investment firms, credit institutions, insurance companies, UCITS and their management companies, pension funds and their management companies, other financial institutions authorised or regulated under **European** Union law or the national law of a Member State, undertakings exempted from the application of this Directive under Article 2(1)(k), national governments and their corresponding offices including public bodies that deal with public debt at national level, central banks and supranational organisations.

Classification as an eligible counterparty under the first subparagraph shall be without prejudice to the right of such entities to request, either on a general form or on a trade-by-trade basis, treatment as clients whose business with the investment firm is subject to Articles 24, 25, 27 and 28.

3. Member States may also recognise as eligible counterparties other undertakings meeting pre-determined proportionate requirements, including quantitative thresholds. In the event of a transaction where the prospective counterparties are located in different jurisdictions, the investment firm shall defer to the status of the other undertaking as determined by the law or measures of the Member State in which that undertaking is established.

Member States shall ensure that the investment firm, when it enters into transactions in accordance with paragraph 1 with such undertakings, obtains the express confirmation from the prospective counterparty that it agrees to be treated as an eligible counterparty. Member States shall allow the investment firm to obtain this confirmation either in the form of a general agreement or in respect of each individual transaction.

4. Member States may recognise as eligible counterparties third country entities equivalent to those categories of entities referred to in paragraph 2.

Member States may also recognise as eligible counterparties third country undertakings such as those referred to in paragraph 3 on the same conditions and subject to the same requirements as those laid down at paragraph 3.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 to specify measures which define:

(a) the procedures for requesting treatment as clients under paragraph 2;

Friday 26 October 2012

- (b) the procedures for obtaining the express confirmation from prospective counterparties under paragraph 3;
- (c) the predetermined proportionate requirements, including quantitative thresholds that would allow an undertaking to be considered as an eligible counterparty under paragraph 3.

SECTION 3

MARKET TRANSPARENCY AND INTEGRITY

Article 31

Monitoring of compliance with the rules of the MTF or the OTF and with other legal obligations

1. Member States shall require that investment firms and market operators operating an MTF or OTF establish and maintain effective arrangements and procedures, relevant to the MTF or OTF, for the regular monitoring of the compliance by its users or clients with their rules. **Member States shall ensure that investment firms and market operators operating an MTF or an OTF shall monitor orders placed and cancelled and the transactions undertaken by their users or clients under their systems in order to identify breaches of those rules, disorderly trading conditions or conduct that may involve market abuse and shall deploy the resource necessary to ensure that such monitoring is effective.**

2. Member States shall require investment firms and market operators operating an MTF or an OTF to report significant breaches of its rules or disorderly trading conditions or conduct that may involve market abuse to the competent authority. Member States shall also require investment firms and market operators operating an MTF or an OTF to supply the relevant information without delay to the authority competent for the investigation and prosecution of market abuse and to provide full assistance to the latter in investigating and prosecuting market abuse occurring on or through its systems.

Article 32

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

1. **Without prejudice to the right of the competent authority under Article 72(d) and (e) to demand suspension or removal of an instrument from trading, the operator of an MTF or OTF may suspend or remove from trading a financial instrument which no longer complies with the rules of the MTF or OTF unless such a step would be likely to cause significant damage to the investors' interests or the orderly functioning of the market.**

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. **Where the suspension or removal is due to the non-disclosure of information about the issuer or financial instrument, the relevant competent authority in the meaning of point (7) of Article 2 of Commission Regulation (EC) No 1287/2006 shall require that other regulated markets, MTFs and OTFs and any other trading arrangement trading the same financial instrument shall also suspend or remove that financial instrument from trading as soon as possible.** 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.

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

Friday 26 October 2012

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.

■

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:**

- (a) **specify the notion of "as soon as possible"** and the orderly functioning of the internal market, as referred to in paragraphs 1 and 2;
- (b) 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.**

■

Article 34

Cooperation and exchange of information for MTFs and OTFs

1. Member States shall require that an investment firm or a market operator operating an MTF or an OTF immediately informs investment firms and market operators of other MTFs, OTFs and regulated markets of:

- (a) disorderly trading conditions; ■ and
- (c) system disruptions;

in relation to a financial instrument.

1a. Member States shall require that an investment firm or a market operator operating an MTF or an OTF which identifies conduct that may indicate abusive behaviour within the scope of Regulation (EU) No .../... [MAR] immediately informs the competent authority designated under Article 16 of that Regulation or a body to which the tasks of the competent authority have been delegated in accordance with Article 17 of that Regulation in order to facilitate real-time cross-market surveillance.

2. ESMA shall develop draft regulatory technical standards to determine the specific circumstances that trigger an information requirement as referred to in paragraph 1.

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 ■ in Articles 10 to 14 of Regulation (EU) No 1095/2010.

(*) **12 months after the date of entry into force of this Directive.**

Friday 26 October 2012

SECTION 4

SME MARKETS

Article 35

SME growth markets

1. Member States shall provide that the operator of a MTF may apply to its home competent authority to have the MTF registered as an SME growth market.
2. Member States shall provide that the home competent authority may register the MTF as an SME growth market if the competent authority receives an application referred to in paragraph 1 and is satisfied that the requirements in paragraph 3 are complied with in relation to the MTF.
3. The MTF shall be subject to effective rules, systems and procedures which ensure that the following is complied with:
 - (a) the majority of issuers whose financial instruments are admitted to trading on the market are small and medium-sized enterprises (SMEs);
 - (b) appropriate criteria are set for initial and ongoing admission to trading of financial instruments of issuers on the market;
 - (c) on initial admission to trading of financial instruments on the market there is sufficient information published to enable investors to make an informed judgment about whether or not to invest in the instruments, either an appropriate admission document or a prospectus if the requirements in Directive 2003/71/EC are applicable in respect of a public offer being made in conjunction with the admission to trading;
 - (d) there is appropriate ongoing periodic financial reporting by or on behalf of an issuer on the market, for example audited annual reports;
 - (e) issuers on the market and persons discharging managerial responsibilities in the issuer and persons closely associated with them comply with relevant requirements applicable to them under the Regulation (EU) No .../... [MAR];
 - (f) the storage and public dissemination of regulatory information concerning the issuers on the market;
 - (g) there are effective systems and controls aimed at preventing and detecting market abuse on that market as required under the Regulation (EU) No .../... [MAR].
4. The criteria in paragraph 3 are without prejudice to compliance by the operator of the MTF with other obligations under this Directive relevant to the operation of MTFs. They also do not prevent the operator of the MTF from imposing additional requirements to those specified in that paragraph.
5. Member States shall provide that the home competent authority may deregister a MTF as an SME growth market in any of the following cases:
 - (a) the operator of the market applies for its deregistration;
 - (b) the requirements in paragraph 3 are no longer complied with in relation to the MTF.

Friday 26 October 2012

6. Member States shall require that if a home competent authority registers or deregisters an MTF as an SME growth market under this Article it shall as soon as possible notify ESMA of that registration. ESMA shall publish on its website a list of SME growth markets and shall keep the list up to date.

7. Member States shall require that where a financial instrument of an issuer is admitted to trading on one SME growth market, the financial instrument may also be traded on another SME growth market **only with the explicit** consent of the issuer. In such a case however, the issuer shall not be subject to any obligation relating to corporate governance or initial, ongoing or ad hoc disclosure with regard to the latter SME market.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 further specifying the requirements set out in paragraph 3. The measures shall take into account the need for the requirements to maintain high levels of investor protection to promote investor confidence in those markets while minimising the administrative burdens for issuers on the market.

CHAPTER III

RIGHTS OF INVESTMENT FIRMS

Article 36

Freedom to provide investment services and activities

1. Member States shall ensure that any investment firm authorised and supervised by the competent authorities of another Member State in accordance with this Directive, and in respect of credit institutions in accordance with Directive 2006/48/EC, may freely perform investment services and/or activities as well as ancillary services within their territories, provided that such services and activities are covered by its authorisation. Ancillary services may only be provided together with an investment service and/or activity.

Member States shall not impose any additional requirements on such an investment firm or credit institution in respect of the matters covered by this Directive.

2. Any investment firm wishing to provide services or activities within the territory of another Member State for the first time, or which wishes to change the range of services or activities so provided, shall communicate the following information to the competent authorities of its home Member State:

- (a) the Member State in which it intends to operate;
- (b) a programme of operations stating in particular the investment services and/or activities as well as ancillary services which it intends to perform and whether it intends to use tied agents in the territory of the Member States in which it intends to provide services. Where an investment firm intends to use tied agents, the investment firm shall communicate to the competent authority of its home Member State the identity of those tied agents.

Where an investment firm intends to use tied agents, the competent authority of the home Member State of the investment firm shall, within one month from the reception of the information, communicate to the competent authority of the host Member State designated as contact point in accordance with Article 83(1) the identity of the tied agents that the investment firm intends to use to provide services in that Member State. The host Member State shall publish such information. ESMA may request access to that information in accordance with the procedure and under the conditions set out in Article 35 of Regulation (EU) No 1095/2010.

3. The competent authority of the home Member State shall, within one month of receiving the information, forward it to the competent authority of the host Member State designated as contact point in accordance with Article 83(1). The investment firm may then start to provide the investment service or services concerned in the host Member State.

Friday 26 October 2012

4. In the event of a change in any of the particulars communicated in accordance with paragraph 2, an investment firm shall give written notice of that change to the competent authority of the home Member State at least one month before implementing the change. The competent authority of the home Member State shall inform the competent authority of the host Member State of those changes.

5. Any credit institution wishing to provide investment services or activities as well as ancillary services according to paragraph 1 through tied agents shall communicate to the competent authority of its home Member State the identity of those tied agents.

Where the credit institution intends to use tied agents, the competent authority of the home Member State of the credit institution shall, within one month from the reception of the information, communicate to the competent authority of the host Member State designated as contact point in accordance with Article 83(1) the identity of the tied agents that the credit institution intends to use to provide services in that Member State. The host Member State shall publish such information.

6. Member States shall, without further legal or administrative requirement, allow investment firms and market operators operating MTFs and OTFs from other Member States to provide appropriate arrangements on their territory so as to facilitate access to and use of their systems by remote users or participants established in their territory.

7. The investment firm or the market operator that operates an MTF shall communicate to the competent authority of its home Member State the Member State in which it intends to provide such arrangements. The competent authority of the home Member State of the MTF shall communicate, within one month, this information to the Member State in which the MTF intends to provide such arrangements.

The competent authority of the home Member State of the MTF shall, on the request of the competent authority of the host Member State of the MTF and within a reasonable delay, communicate the identity of the members or participants of the MTF established in that Member State.

8. ESMA shall develop draft regulatory technical standards to specify the information to be notified in accordance with paragraphs 2, 4 and 7.

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.

9. ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 3, 4 and 7.

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

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.

(*) 18 months after the date of entry into force of this Directive.

Friday 26 October 2012

Article 37

Establishment of a branch

1. Member States shall ensure that investment services and/or activities as well as ancillary services may be provided within their territories in accordance with this Directive and Directive 2006/48/EC through the establishment of a branch provided that those services and activities are covered by the authorisation granted to the investment firm or the credit institution in the home Member State. Ancillary services may only be provided together with an investment service and/or activity.

Member States shall not impose any additional requirements save those allowed under paragraph 8, on the organisation and operation of the branch in respect of the matters covered by this Directive.

2. Member States shall require any investment firm wishing to establish a branch within the territory of another Member State first to notify the competent authority of its home Member State and to provide it with the following information:

- (a) the Member States within the territory of which it plans to establish a branch;
- (b) a programme of operations setting out inter alia the investment services and/or activities as well as the ancillary services to be offered and the organisational structure of the branch and indicating whether the branch intends to use tied agents and the identity of those tied agents;
- (c) the address in the host Member State from which documents may be obtained;
- (d) the names of those responsible for the management of the branch.

Where an investment firm uses a tied agent established in a Member State outside its home Member State, such tied agent shall be assimilated to the branch and shall be subject to the provisions of this Directive relating to branches.

3. Unless the competent authority of the home Member State has reason to doubt the adequacy of the administrative structure or the financial situation of an investment firm, taking into account the activities envisaged, it shall, within three months of receiving all the information, communicate that information to the competent authority of the host Member State designated as contact point in accordance with Article 83(1) and inform the investment firm concerned accordingly.

4. In addition to the information referred to in paragraph 2, the competent authority of the home Member State shall communicate details of the accredited compensation scheme of which the investment firm is a member in accordance with Directive 97/9/EC to the competent authority of the host Member State. In the event of a change in the particulars, the competent authority of the home Member State shall inform the competent authority of the host Member State accordingly.

5. Where the competent authority of the home Member State refuses to communicate the information to the competent authority of the host Member State, it shall give reasons for its refusal to the investment firm concerned within three months of receiving all the information.

6. On receipt of a communication from the competent authority of the host Member State, or failing such communication from the latter at the latest after two months from the date of transmission of the communication by the competent authority of the home Member State, the branch may be established and commence business.

Friday 26 October 2012

7. Any credit institution wishing to use a tied agent established in a Member State outside its home Member State to provide investment services and/or activities as well as ancillary services in accordance with this Directive shall notify the competent authority of its home Member State.

Unless the competent authority of the home Member State has reason to doubt the adequacy of the administrative structure or the financial situation of a credit institution, it shall, within three months of receiving all the information, communicate that information to the competent authority of the host Member State designated as contact point in accordance with Article 83(1) and inform the credit institution concerned accordingly.

Where the competent authority of the home Member State refuses to communicate the information to the competent authority of the host Member State, it shall give reasons for its refusal to the credit institution concerned within three months of receiving all the information.

On receipt of a communication from the competent authority of the host Member State, or failing such communication from the latter at the latest after two months from the date of transmission of the communication by the competent authority of the home Member State, the tied agent can commence business. Such tied agent shall be subject to the provisions of this Directive relating to branches.

8. The competent authority of the Member State in which the branch is located shall assume responsibility for ensuring that the services provided by the branch within its territory comply with the obligations laid down in Articles 24, 25, 27, 28, of this Directive and Articles 13 to 23 of Regulation (EU) No .../... [MiFIR] and in measures adopted pursuant thereto.

The competent authority of the Member State in which the branch is located shall have the right to examine branch arrangements and to request such changes as are strictly needed to enable the competent authority to enforce the obligations under Articles 24, 25, 27, 28 of this Directive and Articles 13 to 23 of Regulation (EU) No .../... [MiFIR] and measures adopted pursuant thereto with respect to the services and/or activities provided by the branch within its territory.

9. Each Member State shall provide that, where an investment firm authorised in another Member State has established a branch within its territory, the competent authority of the home Member State of the investment firm, in the exercise of its responsibilities and after informing the competent authority of the host Member State, may carry out on-site inspections in that branch.

10. In the event of a change in any of the information communicated in accordance with paragraph 2, an investment firm shall give written notice of that change to the competent authority of the home Member State at least one month before implementing the change. The competent authority of the host Member State shall also be informed of that change by the competent authority of the home Member State.

11. ESMA shall develop draft regulatory technical standards to specify the information to be notified in accordance with paragraphs 2, 4 and 10.

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 ■ down Articles 10 to 14 of Regulation (EU) No 1095/2010.

12. ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 3 and 10.

(*) 18 months after the date of entry into force of this Directive.

Friday 26 October 2012

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

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.

Article 38

Access to regulated markets

1. Member States shall require that investment firms from other Member States which are authorised to execute client orders or to deal on own account have the right of membership or have access to regulated markets established in their territory by means of any of the following arrangements:

- (a) directly, by setting up branches in the host Member States;
- (b) by becoming remote members of or having remote access to the regulated market without having to be established in the home Member State of the regulated market, where the trading procedures and systems of the market in question do not require a physical presence for conclusion of transactions on the market.

2. Member States shall not impose any additional regulatory or administrative requirements, in respect of matters covered by this Directive, on investment firms exercising the right conferred by paragraph 1.

Article 39

Access to central counterparty, clearing and settlement facilities and right to designate settlement system

1. Member States shall require that investment firms from other Member States have the right of access to central counterparty, clearing and settlement systems in their territory for the purposes of finalising or arranging the finalisation of transactions in financial instruments.

Member States shall require that access of those investment firms to such facilities be subject to the same non-discriminatory, transparent and objective criteria as apply to local participants. Member States shall not restrict the use of those facilities to the clearing and settlement of transactions in financial instruments undertaken on a regulated market or MTF or OTF in their territory.

2. Member States shall require that regulated markets in their territory offer all their members or participants the right to designate the system for the settlement of transactions in financial instruments undertaken on that regulated market, subject to the following conditions:

- (a) such links and arrangements between the designated settlement system and any other system or facility as are necessary to ensure the efficient and economic settlement of the transaction in question;
- (b) agreement by the competent authority responsible for the supervision of the regulated market that technical conditions for settlement of transactions concluded on the regulated market through a settlement system other than that designated by the regulated market are such as to allow the smooth and orderly functioning of financial markets.

This assessment of the competent authority of the regulated market shall be without prejudice to the competencies of the national central banks as overseers of settlement systems or other supervisory authorities on such systems. The competent authority shall take into account the oversight/supervision already exercised by those institutions in order to avoid undue duplication of control.

Friday 26 October 2012

Article 40

Provisions regarding central counterparty, clearing and settlement arrangements in respect of MTFs

1. Member States shall not prevent investment firms and market operators operating an MTF from entering into appropriate arrangements with a central counterparty or clearing house and a settlement system of another Member State with a view to providing for the clearing and/or settlement of some or all trades concluded by market participants under their systems.
2. The competent authority of investment firms and market operators operating an MTF may not oppose the use of central counterparty, clearing houses and/or settlement systems in another Member State except where this is demonstrably necessary in order to maintain the orderly functioning of that MTF and taking into account the conditions for settlement systems established in Article 39(2).

In order to avoid undue duplication of control, the competent authority shall take into account the oversight and supervision of the clearing and settlement system already exercised by the *relevant* central banks as overseers of clearing and settlement systems or by other supervisory authorities with a competence in such systems.

CHAPTER IV

PROVISION OF SERVICES BY THIRD-COUNTRY FIRMS

SECTION 1

PROVISION OF SERVICES **OR ACTIVITIES** WITH ESTABLISHMENT OF A BRANCH

Article 41

Establishment of a branch

1. Member States shall require that a third-country firm intending to provide investment services or **to perform investment** activities together with any ancillary services in their territory through a branch acquire a prior authorisation by the competent authorities of those Member States in accordance with the following provisions:
 - (a) the Commission has adopted a decision in accordance with paragraph 3;
 - (b) the provision of services for which the third-country firm requests authorisation is subject to authorisation and supervision in the third country where the firm is established and the requesting firm is properly authorised. The third country where the third-country firm is established shall not be listed as Non-Cooperative Country and Territory by the Financial Action Task Force on anti-money laundering and terrorist financing;
 - (c) cooperation arrangements, that include provisions regulating the exchange of information for the purpose of preserving the integrity of the market and protecting investors, are in place between the competent authorities in the Member State **where the branch is to be established** and competent supervisory authorities of the third country where the firm is established;
 - (d) sufficient initial capital is at free disposal of the branch;
 - (e) one or more persons responsible for the management of the branch are appointed and they comply with the requirement established under Article 9(1);

Friday 26 October 2012

- (f) the third country where the third-country firm is established has signed an agreement with the Member State where the branch **is to** be established, which fully comply with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including, if any, multilateral tax agreements;
- (g) the firm **belongs to** an investor-compensation scheme authorised or recognised in accordance with Directive 97/9/EC, **at the time of authorisation**.

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 **or to professional clients within the meaning of Section II of Annex II** in those Member States' territory shall establish a branch in the **European** Union.

3. The Commission **shall** 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 **effective equivalence and** reciprocal recognition of the prudential framework applicable to investment firms authorised in accordance with this Directive.

The prudential framework of a third country may be considered **to have** equivalent **effect** where that framework fulfils all the following conditions:

- (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;
- (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;
- (c) firms providing investment services and activities are subject to adequate organisational requirements in the area of internal control functions;
- (d) it ensures market transparency and integrity by preventing market abuse in the form of insider dealing and market manipulation.

The Commission may limit its decision under this paragraph to investment firms or to market operators providing one or more specified investment services or carrying out one or more specified investment activities in relation to one or more financial instruments.

A third-country firm may be authorised for the purposes of paragraph 1 where it falls within a category covered by the Commission's decision.

4. The third-country firm referred to in paragraph 1 shall submit its application to the competent authority of the Member State where it intends to establish a branch after the adoption by the Commission of the decision determining that the legal and supervisory framework of the third country in which the third-country firm is authorised is equivalent to the requirements described in paragraph 3.

Friday 26 October 2012

Article 42

Obligation to provide information

A third-country firm intending to obtain authorisation for the provision of any investment services or **performance of investment** activities together with any ancillary services in the territory of a Member State shall provide the competent authority of that Member State with the following:

- (a) the name of the authority responsible for its supervision in the third country concerned. When more than one authority is responsible for supervision, the details of the respective areas of competence shall be provided;
- (b) all relevant details of the firm (name, legal form, registered office and address, members of the management body, relevant shareholders) and a programme of operations setting out the investment services and/or activities as well as the ancillary services to be provided and the organisational structure of the branch, including a description of any outsourcing to third parties of essential operating functions;
- (c) the name of the persons responsible for the management of the branch and the relevant documents to demonstrate compliance with requirements under Article 9 (1);
- (d) information about the initial capital at free disposal of the branch.

Article 43

Granting authorisation

1. The competent authority of the Member State where the third-country firm **has established or** intends to establish its branch shall only grant authorisation when the following conditions are met:

- (a) the competent authority is satisfied that **the** conditions under Article 41 are fulfilled;
- (b) the competent authority is satisfied that the branch of the third-country firm will be able to comply with the provisions under **paragraph 2**;
- (ba) the competent authority is satisfied that the third-country firm intends to provide a significant proportion of investment services or to perform a significant quantity of its investment activities within the European Union in the Member State where it is seeking to establish the branch.**

The competent authority shall inform the third-country firm, within six months of submission of a complete application, whether or not the authorisation has been granted.

2. The branch of the third-country firm authorised in accordance with paragraph 1, shall comply with the obligations laid down in Articles 16, 17, **18, 19, 20**, 23, 24, 25 and 27, Article 28(1), **and Articles 30, 31, 32, and 34** of this Directive and in **Articles 3** to 23 of Regulation (EU) No .../... [MiFIR] and the measures adopted pursuant thereto and shall be subject to the supervision of the competent authority in the Member State where the authorisation was granted.

Member States shall not impose any additional requirements on the organisation and operation of the branch in respect of the matters covered by this Directive.

Friday 26 October 2012

Article 44

Provision of services *and activities* in other Member States

1. A third-country firm authorised in accordance with Article 43 shall be able to provide the services and **perform the** activities covered under the authorisation in other Member States of the **European** Union without the establishment of new branches. To this purpose, it shall communicate the following information to the competent authority of the Member State where the branch is established:

- (a) the Member State in which it intends to operate;
- (b) a programme of operations stating in particular the investment services or activities as well as the ancillary services which it intends to perform in that Member State.

The competent authority of the Member State where the branch is established shall, within one month from receipt of the information, forward it to the competent authority of the host Member State designated as contact point in accordance with Article 83(1). The third-country firm may then start to provide the service or the services concerned in the host Member States.

In the event of a change in any of the particulars communicated in accordance with the first subparagraph, the third-country firm shall give written notice of that change to the competent authority of the Member State where the branch is established at least one month before implementing the change. The competent authority of the Member State where the branch is established shall inform the competent authority of the host Member State of those changes.

The firm shall remain subject to the supervision of the Member State where the branch is established in accordance with Article 43.

2. ESMA shall develop draft regulatory technical standards to determine:
- (a) the minimum content of the cooperation arrangements referred to in Article 41(1)(c), so as to ensure that the competent authorities of the Member State granting an authorisation to a third-country firm are able to exercise all their supervisory powers under this Directive;
 - (b) the detailed content of the programme of operation as required in Article 42, point (b);
 - (c) the content of the documents concerning the management of the branch as required in Article 42, point (c);
 - (d) the detailed content of information regarding the initial capital at free disposal of the branch as required under Article 42, point (d).

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.

(*) 18 months after the date of entry into force of this Directive.

Friday 26 October 2012

3. ESMA shall develop draft implementing technical standards to determine standard forms, template and procedures for the provision of information and for the notification provided for in those paragraphs.

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.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to define the conditions for the assessment of the sufficient initial capital at free disposal of the branch taking into account the investment services or activities provided by the branch and the type of clients to whom they should be provided.

SECTION 2

REGISTRATION AND WITHDRAWAL OF AUTHORISATION

Article 45

Registration

Member States shall keep a register of the **third-country firms** authorised in accordance with Articles 41. The register shall be publicly accessible and shall contain information on the 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.

ESMA shall establish a list of all third-country firms authorised to provide services and activities in the **European** Union. The list shall contain information on the services or activities for which the non-EU firm is authorised and it shall be updated on a regular basis. ESMA shall publish that list on its website and update it.

Article 46

Withdrawal of authorisation

The competent authority which granted an authorisation under Article 43 may withdraw it where the third-country firm:

- (a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has provided no investment services or performed no investment activity for the preceding six months, unless the Member State concerned has provided for the authorisation to lapse in such cases;
- (b) has obtained the authorisation by making false statements or by any other irregular means;
- (c) no longer meets the conditions under which authorisation was granted;
- (d) has seriously and systematically infringed the provisions adopted pursuant to this Directive governing the operating conditions for investment firms and applicable to third-country firms;
- (e) falls within any of the cases where national law, in respect of matters outside the scope of this Directive, provides for withdrawal.

(*) **18 months after the date of entry into force of this Directive.**

Friday 26 October 2012

Every withdrawal of authorisation shall be notified to ESMA.

The withdrawal shall be published on the list established in Article 45 for a period of five years.

TITLE III

REGULATED MARKETS

Article 47

Authorisation and applicable law

1. Member States shall reserve authorisation as a regulated market to those systems which comply with the provisions of this Title.

Authorisation as a regulated market shall be granted only where the competent authority is satisfied that both the market operator and the systems of the regulated market comply at least with the requirements laid down in this Title.

In the case of a regulated market that is a legal person and that is managed or operated by a market operator other than the regulated market itself, Member States shall establish how the different obligations imposed on the market operator under this Directive are to be allocated between the regulated market and the market operator.

The operator of the regulated market shall provide all information, including a programme of operations setting out inter alia the types of business envisaged and the organisational structure, necessary to enable the competent authority to satisfy itself that the regulated market has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations under the provisions of this Title.

2. Member States shall require the operator of the regulated market to perform tasks relating to the organisation and operation of the regulated market under the supervision of the competent authority. Member States shall ensure that competent authorities keep under regular review the compliance of regulated markets with the provisions of this Title. They shall also ensure that competent authorities monitor that regulated markets comply at all times with the conditions for initial authorisation established under this Title.

3. Member States shall ensure that the market operator is responsible for ensuring that the regulated market that it manages complies with all requirements under this Title.

Member States shall also ensure that the market operator is entitled to exercise the rights that correspond to the regulated market that it manages by virtue of this Directive.

4. Without prejudice to any relevant provisions of Directive 2003/6/EC, the public law governing the trading conducted under the systems of the regulated market shall be that of the home Member State of the regulated market.

5. The competent authority may withdraw the authorisation issued to a regulated market where it:

- (a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has not operated for the preceding six months, unless the Member State concerned has provided for authorisation to lapse in such cases;

Friday 26 October 2012

- (b) has obtained the authorisation by making false statements or by any other irregular means;
 - (c) no longer meets the conditions under which authorisation was granted;
 - (d) has seriously and systematically infringed the provisions adopted pursuant to this Directive;
 - (e) falls within any of the cases where national law provides for withdrawal.
6. ESMA shall be notified of any withdrawal of authorisation.

Article 48

Requirements for the management of the regulated market

1. **Members** of the management body of any market operator **shall** be at all times of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.

All Members of the management body shall, in particular, fulfil the following requirements:

- (a) **They shall** commit sufficient time to perform their functions. **The number of directorships a member of the management body can hold at the same time shall take into account individual circumstances and the nature, scale and complexity of the institution's activities.**

Members of the management body of market operators that are significant in terms of their size, internal organisation and the nature, the scope and the complexity of their activities shall not combine at the same time more than one of the following combinations:

- (i) one executive directorship; **or**
- (ii) **two** non-executive directorships.

Executive or non-executive directorships held:

- (i) within the same group;
- (ii) **within institutions which:**
 - **are members of the same institutional protection scheme if the conditions of Article 108(7) of Regulation (EU) No .../2012 [CRD IV] are fulfilled,**
 - **have established links according to Article 108(6) of Regulation (EU) No .../2012 [CRD IV]; or**
- (iii) **within undertakings (including non-financial institutions) where the institutions owns a qualifying holding,**

shall be considered as one single directorship.

I

- (b) **They shall** possess adequate collective knowledge, skills and experience to be able to understand the regulated market's activities, and in particular the main risk involved in those activities.

Friday 26 October 2012

- (c) **They shall** act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management **and to effectively oversee and monitor management decision-making.**

Market operators **shall** devote adequate resources to the induction and training of members of the management body.

- (ca) **They shall 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.**

2. Member States shall require operators of a regulated market to establish a nomination committee to assess compliance with the provisions of the first paragraph and to make recommendations, when needed, on the basis of their assessment. The nomination committee shall be composed of members of the management body who do not perform any executive function in the market operator concerned.

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.**

Where, under national law, the management body does not have any competence in the process of appointment of its members, this paragraph shall not apply.

3. Member States shall require market operators **and their respective nomination committees to engage a broad set of qualities and competences when recruiting members to its management bodies.**

In particular:

- (a) **market operators shall put in place a policy promoting professionalism, responsibility and commitment as the guiding criteria for senior recruitment, safeguarding that those appointed are unquestionably loyal to the interests of the institution;**
- (b) **investment firms shall also take concrete steps towards a more balanced representation on boards, such as training of nomination committees, the creation of rosters of competent candidates, and the introduction of a nomination process where at least one candidate of each sex is presented;**
- (c) **where practiced, employee representation in the management body shall also, by adding a key perspective and genuine knowledge of the internal workings of the institution, be seen as a positive way of enhancing diversity.**

4. ESMA shall develop draft regulatory standards to specify **how the market operator should take into account** the following:

- (a) the notion of sufficient time commitment of a member of the management body to perform his functions, in relation to the individual circumstances and the nature, scale and complexity of activities of the market operator which competent authorities must take into account when they authorise a member of the management body to combine more directorships than permitted as referred to in paragraph 1(a);

Friday 26 October 2012

- (b) the notion of adequate collective knowledge, skills and experience of the management body as referred to in paragraph 1(b),
- (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**;
- (d) the notion of adequate human and financial resources devoted to the induction and training of members of the management body,
- (e) the notion of diversity to be taken into account for the selection of members of the management body.

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.

5. Member States shall require the operator of the regulated market to notify the competent authority of the identity of all members of its management body and of any changes to its membership, along with all information needed to assess whether the firm complies with paragraphs 1, 2 and 3.

■

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.

Member States shall ensure that, in the process of authorisation of a regulated market, the person or persons who effectively direct the business and the operations of an already authorised regulated market in accordance with the provisions of this Directive are deemed to comply with the requirements laid down in paragraph 1.

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.

(*) 12 months after the date of entry into force of this Directive.

Friday 26 October 2012

7b. Without prejudice to the legal systems of the Member States, they shall ensure that where it is alleged that a member of the management board has breached the provisions of or has committed an offence in matters falling within the scope of this Directive or of Regulation (EU) No .../... [MiFIR] he may be personally subject to criminal and civil proceedings. t

Article 49

Requirements relating to persons exercising significant influence over the management of the regulated market

1. Member States shall require the persons who are in a position to exercise, directly or indirectly, significant influence over the management of the regulated market to be suitable.
2. Member States shall require the operator of the regulated market:
 - (a) to provide the competent authority with, and to make public, information regarding the ownership of the regulated market and/or the market operator, and in particular, the identity and scale of interests of any parties in a position to exercise significant influence over the management;
 - (b) to inform the competent authority of and to make public any transfer of ownership which gives rise to a change in the identity of the persons exercising significant influence over the operation of the regulated market.
3. The competent authority shall refuse to approve proposed changes to the controlling interests of the regulated market and/or the market operator where there are objective and demonstrable grounds for believing that they would pose a threat to the sound and prudent management of the regulated market.

Article 50

Organisational requirements

Member States shall require the regulated market:

- (a) to have arrangements to identify clearly and manage the potential adverse consequences, for the operation of the regulated market or for its participants, of any conflict of interest between the interest of the regulated market, its owners or its operator and the sound functioning of the regulated market, and in particular where such conflicts of interest might prove prejudicial to the accomplishment of any functions delegated to the regulated market by the competent authority;
- (b) to be adequately equipped to manage the risks to which it is exposed, to implement appropriate arrangements and systems to identify all significant risks to its operation, and to put in place effective measures to mitigate those risks;
- (c) to have arrangements for the sound management of the technical operations of the system, including the establishment of effective contingency arrangements to cope with risks of systems disruptions;
- (d) to have transparent and non-discretionary rules and procedures that provide for fair and orderly trading and establish objective criteria for the efficient execution of orders;
- (e) to have effective arrangements to facilitate the efficient and timely finalisation of the transactions executed under its systems;
- (f) to have available, at the time of authorisation and on an ongoing basis, sufficient financial resources to facilitate its orderly functioning, having regard to the nature and extent of the transactions concluded on the market and the range and degree of the risks to which it is exposed.

Friday 26 October 2012

Article 51

Systems resilience, circuit breakers and electronic trading

1. Member States shall require a regulated market to have in place effective systems, procedures and arrangements **which are designed** to ensure its trading systems are resilient, have sufficient capacity to deal with peak order and message volumes, are able to ensure orderly trading under conditions of market stress, are fully tested to ensure such conditions are met **even in times of extreme market volatility** and are subject to effective business continuity arrangements to ensure continuity of its services if there is any unforeseen failure of its trading systems.

1a. Member States shall require a regulated market to have in place agreements covering the conduct of market makers and to ensure that a sufficient number of investment firms take part in such agreements, who will post firm quotes at competitive prices with the result of providing liquidity to the market on a regular and ongoing basis for a minimum proportion of continuous trading hours, taking into account prevailing market conditions, rules and regulations, unless such a requirement is not appropriate to the nature and scale of the trading on that regulated market. Member States shall require a regulated market to enter into a binding written agreement between the regulated market and the investment firm regarding the obligations arising from the participation in such a scheme, including but not limited to liquidity provision. The regulated market shall monitor and enforce compliance by investment firms with the requirements of such binding written agreements. The regulated market shall inform the competent authority about the content of the binding written agreement and shall satisfy the competent authority of its compliance with the requirements in this paragraph.

ESMA shall develop guidelines regarding the circumstances in which an investment firm would be obliged to enter into the market making agreement referred to in this paragraph and may develop guidelines on the content of such agreements.

1b. 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 and cannot be cancelled or modified during that period.

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 **■**.

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, where it is informed by the relevant market operator, 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 the nature of the market model and types of users 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 in a consistent and comparable manner, and that the competent authority shall in turn report them to ESMA. ESMA shall publish the parameters on its website. Member States shall require that where a regulated market which is material in terms of liquidity in that instrument halts trading, in any Member State, that trading venue has the necessary systems and procedures in place to ensure that it will notify competent authorities so as to coordinate a market-wide response and determine whether it is appropriate to halt trading other venues on which the instrument is traded until trading resumes on the original market.

Friday 26 October 2012

3. Member States shall require a regulated market to have in place effective systems, procedures and arrangements, **including requiring members or participants to carry out appropriate testing of algorithms and providing environments to facilitate such testing**, to ensure that algorithmic or high-frequency trading systems cannot create or contribute to disorderly trading conditions on the market **and to manage any disorderly trading conditions which do arise from such algorithmic or high-frequency trading systems**, including systems to **identify all orders involving high frequency trading**, limit the ratio of unexecuted orders to transactions that may be entered into the system by a member or 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 **and enforce** the minimum tick size that may be executed on the market.

4. Member States shall require **regulated markets to prohibit members or participants from providing sponsored and naked market access**. Member States shall require a regulated market that permits direct **market** 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.

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 **market** access separately from orders or trading by the member or participant.

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

5a. Member States shall require that a regulated market ensure that its fee structures including execution fees, ancillary fees and any rebates 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 market making obligations in the individual shares or a suitable basket of shares in exchange for any rebates that are granted, to impose a higher fee for placing an order that is subsequently cancelled than an order which is executed and to impose a higher fee on participants placing a high ratio of cancelled orders to executed orders and on those operating a high frequency trading strategy 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 and to calibrate the fees to each financial instrument to which they apply.

6. Member States shall require that upon request by the competent authority for a regulated market, that regulated market make available to the competent authority data relating to the order book or give the competent authority access to the order book so that it is able to monitor trading.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning the requirements laid down in this Article, and in particular:

(a) to ensure trading systems of regulated markets are resilient and have adequate capacity;

■

(c) to set out the maximum **■** ratio of unexecuted orders to transactions that may be adopted by regulated markets **taking into account the liquidity of the financial instrument**;

Friday 26 October 2012

- (d) *to identify the circumstances in which it could be appropriate to slow down the flow of orders;*
- (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;*
- (ea) *to determine where a regulated market is material in terms of liquidity in that instrument;*
- (eb) *to ensure market making schemes are fair and non-discriminatory and to establish minimum market making obligations that regulated markets must stipulate when designing a market making scheme and the conditions under which the requirement to have in place a market making scheme is not appropriate;*
- (ec) *to ensure appropriate testing of algorithms so as to ensure that algorithmic or high-frequency trading systems cannot create or contribute to disorderly trading conditions on the market.*

Article 51a

Tick sizes

1. *Member States shall require regulated markets to adopt tick size regimes in shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and in any other financial instrument for which regulatory technical standards are developed in accordance with paragraph 4.*

2. *The tick size regimes referred to in paragraph 1 shall:*

(a) *be calibrated to reflect the liquidity profile of the financial instrument in different markets and the average bid-ask spread, taking into account the desirability of enabling reasonably stable prices without unduly constraining further narrowing of spreads;*

(b) *adapt the tick size for each financial instrument appropriately.*

3. *ESMA shall develop draft regulatory technical standards to specify minimum tick sizes or tick size regimes for specific shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments where this is necessary to ensure the orderly functioning of markets, in accordance with the factors in paragraph 2 and the price, spreads and depth of liquidity of the instruments.*

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.

(*) *12 months after the date of entry into force of this Directive.*

Friday 26 October 2012

4. ESMA may develop draft regulatory technical standards to specify minimum tick sizes or tick size regimes for specific financial instruments other than those listed in paragraph 3 where this is necessary to ensure the orderly functioning of markets, in accordance with the factors in paragraph 2 and the price, spreads and depth of liquidity of the instruments.

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.

Article 51b

Synchronisation of business clocks

1. Member States shall require that all trading venues and their participants synchronise the business clocks they use to record the date and time of any reportable event.

2. ESMA shall develop draft regulatory technical standards to specify the level of accuracy to which clocks should be synchronised in accordance with international standards.

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. [Am. 4]

Article 52

Admission of financial instruments to trading

1. Member States shall require that regulated markets have clear and transparent rules regarding the admission of financial instruments to trading.

Those rules shall ensure that any financial instruments admitted to trading in a regulated market are capable of being traded in a fair, orderly and efficient manner and, in the case of transferable securities, are freely negotiable.

2. In the case of derivatives, the rules shall ensure in particular that the design of the derivative contract allows for its orderly pricing as well as for the existence of effective settlement conditions.

3. In addition to the obligations set out in paragraphs 1 and 2, Member States shall require the regulated market to establish and maintain effective arrangements to verify that issuers of transferable securities that are admitted to trading on the regulated market comply with their obligations under **European** Union law in respect of initial, ongoing or ad hoc disclosure obligations.

Member States shall ensure that the regulated market establishes arrangements which facilitate its members or participants in obtaining access to information which has been made public under **European** Union law.

4. Member States shall ensure that regulated markets have established the necessary arrangements to review regularly the compliance with the admission requirements of the financial instruments which they admit to trading.

5. A transferable security that has been admitted to trading on a regulated market can subsequently be admitted to trading on other regulated markets, even without the consent of the issuer and in compliance with the relevant provisions of Directive 2003/71/EC. The issuer shall be informed by the regulated market of the fact that its securities are traded on that regulated market. The issuer shall not be subject to any obligation to provide information required under paragraph 3 directly to any regulated market which has admitted the issuer's securities to trading without its consent.

(*) 12 months after the date of entry into force of this Directive.

Friday 26 October 2012

6. The Commission shall adopt delegated acts in accordance with Article 94 which:
 - (a) specify the characteristics of different classes of instruments to be taken into account by the regulated market when assessing whether an instrument is issued in a manner consistent with the conditions laid down in the second subparagraph of paragraph 1 for admission to trading on the different market segments which it operates;
 - (b) clarify the arrangements that the regulated market is to implement so as to be considered to have fulfilled its obligation to verify that the issuer of a transferable security complies with its obligations under **European** Union law in respect of initial, ongoing or ad hoc disclosure obligations;
 - (c) clarify the arrangements that the regulated market has to establish pursuant to paragraph 3 in order to facilitate its members or participants in obtaining access to information which has been made public under the conditions established by **European** Union law.

Article 53

Suspension and removal of instruments from trading

1. Without prejudice to the right of the competent authority under Article 72(1)(d) and (e) to demand suspension or removal of an instrument from trading, the operator of the regulated market may suspend or remove from trading a financial instrument which no longer complies with the rules of the regulated market unless such a step would be likely to cause significant damage to the investors' interests or the orderly functioning of the market.

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.

The relevant competent authority within the meaning of point (7) of Article 2 of Commission Regulation (EC) No 1287/2006 for that financial instrument shall require the suspension or removal from trading on the regulated markets, MTFs and OTFs that operate under their supervision as soon as possible and shall also require its suspension or removal in accordance with paragraph 2 where the suspension or removal is due to the non-disclosure of information about the issuer or financial instrument.

2. A competent authority which requests the suspension or removal of a financial instrument from trading on one or more regulated markets MTFs or OTFs **in accordance with paragraph 1** shall immediately make public its decision and inform ESMA and the competent authorities of the other Member States. Save where it is likely to cause significant damage to the investors' interests or the orderly functioning of the internal market, the competent authorities of the other Member States shall **require** the suspension or removal of that financial instrument from trading on the regulated markets, MTFs and OTFs that operate under their supervision.

3. ESMA shall develop draft implementing technical standards to determine the format and timing of the communications and publications referred to in paragraphs 1 and 2.

ESMA shall submit those draft implementing technical standards to the Commission by [...] (*).

(*) 18 months after the date of entry into force of this Directive.

Friday 26 October 2012

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.

■

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.**

Article 54

Cooperation and exchange of information for regulated markets

1. Member States shall require that, in relation to a financial instrument, an operator of a regulated market immediately informs operators of other regulated markets, MTFs and OTFs of:

(a) disorderly trading conditions;

■ and

(c) system disruptions.

1a. Member States shall require that an operator of a regulated which identifies conduct that may indicate abusive behaviour within the scope of Regulation (EU) No .../... [MAR] immediately informs the competent authority designated under Article 16 of that Regulation or a body to which the powers of the competent authority have been delegated in accordance with Article 17 of that Regulation in order to facilitate real-time cross-market surveillance.

2. ESMA shall develop draft regulatory technical standards to determine the specific circumstances that trigger an information requirement as referred to in paragraph 1.

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.

Article 55

Access to the regulated market

1. Member States shall require the regulated market to establish, **implement** and maintain transparent and non-discriminatory rules, based on objective criteria, governing access to or membership of the regulated market.

2. Those rules shall specify any obligations for the members or participants arising from:

(a) the constitution and administration of the regulated market;

(*) **18 months after the date of entry into force of this Directive.**

Friday 26 October 2012

- (b) rules relating to transactions on the market;
- (c) professional standards imposed on the staff of the investment firms or credit institutions that are operating on the market;
- (d) the conditions established, for members or participants other than investment firms and credit institutions, under paragraph 3;
- (e) the rules and procedures for the clearing and settlement of transactions concluded on the regulated market.

3. Regulated markets may admit as members or participants investment firms, credit institutions authorised under Directive 2006/48/EC and other persons who:

- (a) are of sufficient good repute;
- (b) have a sufficient level of trading ability, competence and experience;
- (c) have, where applicable, adequate organisational arrangements;
- (d) have sufficient resources for the role they are to perform, taking into account the different financial arrangements that the regulated market may have established in order to guarantee the adequate settlement of transactions.

4. Member States shall ensure that, for the transactions concluded on a regulated market, members and participants are not obliged to apply to each other the obligations laid down in Articles 24, 25, 27 and 28. However, the members or participants of the regulated market shall apply the obligations provided for in Articles 24, 25, 27 and 28 with respect to their clients when they, acting on behalf of their clients, execute their orders on a regulated market.

5. Member States shall ensure that the rules on access to or membership of the regulated market provide for the direct or remote participation of investment firms and credit institutions.

6. Member States shall, without further legal or administrative requirements, allow regulated markets from other Member States to provide appropriate arrangements on their territory so as to facilitate access to and trading on those markets by remote members or participants established in their territory.

The regulated market shall communicate to the competent authority of its home Member State the Member State in which it intends to provide such arrangements. The competent authority of the home Member State shall communicate that information to the Member State in which the regulated market intends to provide such arrangements within 1 month. ESMA may request access to that information in accordance with the procedure and under the conditions set out in Article 35 of Regulation (EU) No 1095/2010.

The competent authority of the home Member State of the regulated market shall, on the request of the competent authority of the host Member State and within a reasonable time, communicate the identity of the members or participants of the regulated market established in that Member State.

7. Member States shall require the operator of the regulated market to communicate, on a regular basis, the list of the members and participants of the regulated market to the competent authority of the regulated market.

Friday 26 October 2012

Article 56

Monitoring of compliance with the rules of the regulated market and with other legal obligations

1. Member States shall require that regulated markets establish and maintain effective arrangements and procedures for the regular monitoring of the compliance by their members or participants with their rules. Regulated markets shall monitor **orders placed and cancelled and** the transactions **undertaken** by their members or participants under their systems in order to identify breaches of those rules, disorderly trading conditions or conduct that may involve market abuse **and shall deploy the resource necessary to ensure that such monitoring is effective.**
2. Member States shall require the operators of the regulated markets to report significant breaches of their rules or disorderly trading conditions or conduct that may involve market abuse to the competent authority of the regulated market. Member States shall also require the operator of the regulated market to supply the relevant information without delay to the authority competent for the investigation and prosecution of market abuse on the regulated market and to provide full assistance to the latter in investigating and prosecuting market abuse occurring on or through the systems of the regulated market.

Article 57

Provisions regarding central counterparty and clearing and settlement arrangements

1. Member States shall not prevent regulated markets from entering into appropriate arrangements with a central counterparty or clearing house and a settlement system of another Member State with a view to providing for the clearing and/or settlement of some or all trades concluded by market participants under their systems.
2. The competent authority of a regulated market may not oppose the use of central counterparty, clearing houses and/or settlement systems in another Member State except where this is demonstrably necessary in order to maintain the orderly functioning of that regulated market and taking into account the conditions for settlement systems established in Article 39(2).

In order to avoid undue duplication of control, the competent authority shall take into account the oversight/supervision of the clearing and settlement system already exercised by the national central banks as overseers of clearing and settlement systems or by other supervisory authorities with competence in relation to such systems.

Article 58

List of regulated markets

Each Member State shall draw up a list of the regulated markets for which it is the home Member State and shall forward that list to the other Member States and ESMA. A similar communication shall be effected in respect of each change to that list. ESMA shall publish and keep up-to-date a list of all regulated markets on its website.

TITLE IV

POSITION LIMITS, CHECKS AND REPORTING

Article 59

Position limits and checks

1. 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 **amount** of contracts **or positions** which any given market members or participants can enter into **or hold** over a specified period of time **in order to:**

- (a) support liquidity;

Friday 26 October 2012

- (b) prevent market abuse;
- (c) support orderly pricing and settlement conditions;
- (ca) *promote convergence between prices in of derivatives in the delivery month and spot prices for the underlying commodity, without prejudice to price discovery in the market for the underlying commodity;*
- (cb) *prevent the build-up of market distorting positions.*

The limits *referred to in the first subparagraph* shall *apply to both physically and cash settled contracts, 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 *net position* persons can enter *into or hold over a specific period of time*, taking account the characteristics of the *derivatives market, including liquidity, and the* underlying commodity market, including patterns of production, consumption and transportation to market. *They shall not apply to positions which in an objectively measurable way reduce risks directly related to commercial activities.*

1a. For positions which in an objectively measurable way reduce risks directly related to commercial activities a position check system shall be introduced. This position check shall be carried out by the regulated markets and the operators of MTFs and OTFs in accordance with the following:

- (a) *members and participants of regulated markets, MTFs and OTFs must report to the respective trading venue the details of their positions, in accordance with Article 60(2);*
- (b) *regulated markets and operators of MTFs and OTFs may require information from members and participants on all relevant documentation regarding the size or purpose of a position or exposure entered into via a commodity derivative;*
- (c) *after analysing the information received in accordance with points (a) and (b), regulated markets and operators of MTFs and OTFs may require that steps be taken by market members or participants affected, or may take steps themselves, to reduce the size of or to eliminate the position or exposure to commodity derivatives if this is necessary to ensure the integrity and orderly functioning of the markets affected;*
- (d) *after analysing the information received in accordance with points (a) and (b), regulated markets and operators of MTFs and OTFs may, if the measures under point (c) are inadequate, limit the ability of market members or participants to enter into a commodity derivative, including by introducing additional non-discriminatory limits on positions which market members or participants can enter into over a specified period of time, if this is necessary to ensure the achievement of the objectives referred to in paragraph 1 or the integrity and orderly functioning of the markets affected;*
- (e) *the regulated markets, MTFs and OTFs shall, in accordance with paragraph 2, inform the competent authorities of the details of the information received in accordance with points (b) to (d) and of the measures taken;*
- (f) *the competent authorities shall aggregate the data received from different trading venues and shall, where necessary, require market members or participants to reduce their aggregate position in accordance with paragraph 3.*

Friday 26 October 2012

1b. Regulated markets, and operators of MTFs and OTFs which admit to trading or trade commodity derivatives may impose additional arrangements in relation to the contracts and positions for which limits are set in accordance with paragraph 1 where this is necessary to ensure the integrity and orderly functioning of the markets affected. Competent authorities may also require regulated markets, and operators of MTFs and OTFs which admit to trading or trade commodity derivatives to impose such additional arrangements where necessary to ensure the integrity and orderly functioning of the markets.

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

2a. ESMA shall periodically examine the data received in accordance with paragraph 2 of this Article and Article 60(1) and (1a) and shall assess whether any measures are necessary in relation to positions which in an objectively measurable way reduce risks directly related to commercial activities in addition to those provided for in paragraph 1a of this Article in order to ensure the integrity and orderly functioning of markets.

Where it considers such measures to be necessary, ESMA shall submit a reasoned report to the Commission outlining the measures proposed and why they are needed and shall transmit that report without delay to the European Parliament and the Council.

3. ESMA shall **draft regulatory technical standards** to determine **the limits referred to in paragraph 1 and to further specify the position check referred to in paragraph 1a, in particular the limits on the amount of contracts or the net position** which any person can enter into **or hold** over a specified period of time, **the methods for calculating positions held by persons directly or indirectly, the modalities for applying such limits including the aggregate position across trading venues and the criteria for determining whether a position qualifies as directly reducing risks related to commercial activities.**

The limits, **which shall also differentiate between classes of market participants, and position check** shall take account of the conditions referred to in **paragraphs 1 and 1a** and the **rules** that have been set by regulated markets, MTFs and OTFs.

After conducting an open public consultation, ESMA shall submit those draft regulatory technical standards, to the Commission by [...] (*).

Power shall be 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.

The limits **and position check** determined in the **regulatory technical standards** shall also take precedence over any measures imposed by competent authorities pursuant to Article 72(g) of this Directive.

4. Competent authorities shall not impose limits **in** 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.

(*) 12 months after the date of entry into force of this Directive.

Friday 26 October 2012

When adopting more restrictive **limits** than those adopted pursuant to paragraph 3, competent authorities shall notify ESMA. The notification shall include a justification for the more restrictive **limits**. 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 **imposes limits** contrary to an ESMA opinion, it shall immediately publish on its website a notice fully explaining its reasons for doing so.

Article 60

Position reporting by categories of traders

1. Member States shall ensure that regulated markets, MTFs, and OTFs which admit to trading or trade commodity derivatives or emission allowances or derivatives thereof:

- (a) make public a weekly report with the aggregate positions held by the different categories of traders for the different financial instruments traded on their platforms in accordance with paragraph 3 **and communicate this report to the competent authority and to ESMA;**
- (b) provide the competent authority with a complete breakdown of the positions of any or all market members or participants, including any positions held on behalf of their clients, upon request.

The obligation laid down in point (a) shall only apply when both the number of traders and their open positions in a given financial instrument exceed minimum thresholds.

1a. Member States shall ensure that investment firms trading in commodity derivatives or emission allowances or derivatives thereof outside a trading venue provide the competent authority, upon request, with a complete breakdown of their positions, in accordance with Article 23 of Regulation (EU) No .../...[MiFIR] and, where applicable, of Article 8 of Regulation (EU) No 1227/2011.

2. In order to enable the publication referred to in paragraph 1(a), Member States shall require members and participants of regulated markets, MTFs and OTFs to report to the respective trading venue the details of their positions in real time, including any positions held on behalf of their clients.

3. The members, participants and their clients shall be classified by the regulated market, MTF or OTF as traders according to the nature of their main business, taking account of any applicable authorisation, as either:

- (a) investment firms as defined in Directive 2004/39/EC or credit institution as defined in Directive 2006/48/EC;
- (b) investment funds, either an undertaking for collective investments in transferable securities (UCITS) as defined in Directive 2009/65/EC, or an alternative investment fund manager as defined in Directive 2011/61/EU;
- (c) other financial institutions, including insurance undertakings and reinsurance undertakings as defined in Directive 2009/138/EC, and institutions for occupational retirement provision as defined in Directive 2003/41/EC;
- (d) commercial undertakings;
- (e) in the case of emission allowances or derivatives thereof, operators with compliance obligations under Directive 2003/87/EC.

Friday 26 October 2012

The reports **referred to** in point (a) of paragraph 1 **shall** specify the number of long and short positions by category of trader, changes thereto since the previous report, percent of total open interest represented by each category, and the number of traders in each category.

The reports referred to in of paragraph 1(a) and in paragraph 1a should differentiate between:

(a) positions identified as positions which in an objectively measurable way reduce risks directly related to commercial activities; and

(b) other positions.

4. ESMA shall develop draft implementing technical standards to determine the format of the reports referred to in paragraph 1(a) **and paragraph 1a**, and the content of the information to be provided in accordance with paragraph 2.

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 **■** Articles 15 of Regulation (EU) No 1095/2010.

In the case of emission allowances or derivatives thereof, the reporting shall not prejudice the compliance obligations under Directive 2003/87/EC.

4a. *ESMA shall develop draft implementing technical standards to specify the measures to require all reports referred to 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.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to specify the thresholds referred to in the last subparagraph of paragraph 1 and to refine the categories of members, participants or clients referred to in paragraph 3.

■

5a. *ESMA shall develop draft implementing technical standards to specify the measures to require all reports referred to 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.

(*) 12 months after the date of entry into force of this Directive.

Friday 26 October 2012

TITLE V

DATA REPORTING SERVICES

SECTION 1

AUTHORISATION PROCEDURES FOR DATA REPORTING SERVICES PROVIDERS

Article 61

Requirement for authorisation

1. Member States shall require that the provision of data reporting services described in Annex I, Section D as a regular occupation or business be subject to prior authorisation in accordance with the provisions of this section. Such authorisation shall be granted by the home Member State competent authority designated in accordance with Article 69.

2. By way of derogation from paragraph 1, Member States shall allow any market operator to operate the data reporting services of an approved publication arrangement (APA), a consolidated tape provider (CTP) and an approved reporting mechanism (ARM), subject to the prior verification of their compliance with the provisions of this Title. Such a service shall be included in their authorisation.

3. Member States shall register all data reporting services providers. The register shall be publicly accessible and shall contain information on the services for which the data reporting services provider is authorised. It shall be updated on a regular basis. Every authorisation shall be notified to ESMA.

ESMA shall establish a list of all data reporting services providers in the **European** Union. The list shall contain information on the services for which the data reporting services provider is authorised and it shall be updated on a regular basis. ESMA shall publish and keep up-to-date that list on its website.

Where a competent authority has withdrawn an authorisation in accordance with Article 64, that withdrawal shall be published on the list for a period of 5 years.

Article 62

Scope of authorisation

1. The home Member State shall ensure that the authorisation specifies the data reporting service which the data reporting services provider is authorised to provide. A data reporting services provider seeking to extend its business to additional data reporting services shall submit a request for extension of its authorisation.

2. The authorisation shall be valid for the entire **European** Union and shall allow a data reporting services provider to provide the services, for which it has been authorised, throughout the **European** Union.

Article 63

Procedures for granting and refusing requests for authorisation

1. The competent authority shall not grant authorisation unless and until such time as it is fully satisfied that the applicant complies with all requirements under the provisions adopted pursuant to this Directive.

2. The data reporting services provider shall provide all information, including a programme of operations setting out inter alia the types of services envisaged and the organisational structure, necessary to enable the competent authority to satisfy itself that the data reporting services provider has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations under the provisions of this Title.

Friday 26 October 2012

3. An applicant shall be informed, within six months of the submission of a complete application, whether or not authorisation has been granted.

4. ESMA shall develop draft regulatory technical standards to determine:

(a) the information to be provided to the competent authorities under paragraph 2, including the programme of operations;

(b) the information included in the notifications under Article 65 paragraph 4.

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

5. ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information provided for in paragraph 2 and in Article 65(4).

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.

Article 64

Withdrawal of authorisation

The competent authority may withdraw the authorisation issued to a data reporting services provider where the provider:

(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has provided no data reporting services for the preceding six months, unless the Member State concerned has provided for authorisation to lapse in such cases;

(b) has obtained the authorisation by making false statements or by any other irregular means;

(c) no longer meets the conditions under which authorisation was granted;

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

Article 65

Requirements for the management body of a data reporting services provider

1. **Members** of the management body of a data reporting services provider shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.

(*) 12 months after the date of entry into force of this Directive.

(**) 18 months after the date of entry into force of this Directive.

Friday 26 October 2012

The management body shall possess adequate collective knowledge, skills and experience to be able to understand the activities of the data reporting services provider. **Each** member of the management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management.

Where a market operator seeks authorisation to operate an APA, a CTP or an ARM and the members of the management body of the APA, the CTP or the ARM are the same as the members of the management body of the regulated market, those persons are deemed to comply with the requirement laid down in the first subparagraph.

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.**

2a. Without prejudice to the legal systems of the Member States, they shall ensure that where it is alleged that a member of the management board has breached the provisions of or has committed an offence in matters falling within the scope of this Directive or of Regulation (EU) No .../... [MiFIR] he or may be personally subject to criminal and civil proceedings.

3. Member States shall require the data reporting services provider to notify the competent authority of all members of its management body and of any changes to its membership, along with all information needed to assess whether the entity complies with paragraph 1 of this Article.

4. The management body of a data reporting services provider shall be able to ensure that the entity is managed in a sound and prudent way and in a manner that promotes the integrity of the market and the interest of its clients.

5. The competent authority shall refuse authorisation if it is not satisfied that the person or the persons who shall effectively direct the business of the data reporting services provider are of sufficiently good repute, or if there are objective and demonstrable grounds for believing that proposed changes to the management of the provider pose a threat to its sound and prudent management and to the adequate consideration of the interest of its clients and the integrity of the market.

SECTION 2

CONDITIONS FOR APAS

Article 66

Organisational requirements

1. The home Member State shall require an APA to have adequate policies and arrangements in place to make public the information required under Articles 19 and 20 of Regulation (EU) No .../... [MiFIR] as close to real time as is technically possible, on a reasonable commercial basis. The information shall be made available free of charge 15 minutes after the publication of a transaction. The home Member State shall require the APA to be able to efficiently and consistently disseminate such information in a way that ensures fast access to the information, on a non-discriminatory basis and in a format that facilitates the consolidation of the information with similar data from other sources.

1a. The information made public by an APA in accordance with paragraph 1 shall include, at least, the following details:

(a) the identifier of the financial instrument;

(*) 12 months after the date of entry into force of this Directive.

Friday 26 October 2012

- (b) *the price at which the transaction was concluded;*
- (c) *the volume of the transaction;*
- (d) *the time of the transaction;*
- (e) *the time the transaction was reported;*
- (f) *the price notation of the transaction;*
- (g) *the trading venue or systematic internaliser on which the transaction was executed on or otherwise the code 'OTC';*
- (h) *if applicable, an indicator that the transaction was subject to specific conditions.*

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.***

3. The home Member State shall require the APA to have sound security mechanisms in place designed to guarantee the security of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage before publication. The APA shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

4. The home Member State shall require the APA to have systems in place that can effectively check trade reports for completeness, identify omissions and obvious errors and request re-transmission of any such erroneous reports.

5. In order to ensure consistent harmonisation of paragraph 1, ESMA shall develop draft regulatory technical standards to determine common formats, data standards and technical arrangements facilitating the consolidation of information as referred to in paragraph 1.

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

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 clarifying what constitutes a reasonable commercial basis to make information public as referred to in paragraph 1.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 specifying:

- (a) the means by which an APA may comply with the information obligation referred to in paragraph 1;
- (b) the content of the information published under paragraph 1.

(*) *12 months after the date of entry into force of this Directive.*

Friday 26 October 2012

SECTION 3

CONDITIONS FOR CTPS

Article 67

Organisational requirements

1. The home Member State shall require a CTP to have adequate policies and arrangements in place to collect the information made public in accordance with Articles 5 and 19 of Regulation (EU) No .../... [MiFIR], consolidate it into a continuous electronic data stream and make the information available to the public as close to real time as is technically possible, on a reasonable commercial basis including, at least, the following details:

- (a) the identifier of the financial instrument;
- (b) the price at which the transaction was concluded;
- (c) the volume of the transaction;
- (d) the time of the transaction;
- (e) the time the transaction was reported;
- (f) the price notation of the transaction;
- (g) the trading venue **or systematic internaliser on which** the transaction was executed on or otherwise the code 'OTC';

(ga) where applicable, the automated trading system that generated the transaction;

- (h) if applicable, an indicator that the transaction was subject to specific conditions.

The information shall be made available free of charge 15 minutes after the publication of a transaction. The home Member State shall require the CTP to be able to efficiently and consistently disseminate such information in a way that ensures fast access to the information, on a non-discriminatory basis and in formats that are easily accessible and utilisable for market participants.

2. The home Member State shall require a CTP to have adequate policies and arrangements in place to collect the information made public in accordance with Articles 9 and 20 of Regulation (EU) No .../... [MiFIR], consolidate it into a continuous electronic data stream and make following information available to the public as close to real time as is technically possible, on a reasonable commercial basis including, at least, the following details:

- (a) the identifier or identifying features of the financial instrument;
- (b) the price at which the transaction was concluded;
- (c) the volume of the transaction;
- (d) the time of the transaction;
- (e) the time the transaction was reported;
- (f) the price notation of the transaction;

Friday 26 October 2012

- (g) the trading venue **or systematic internaliser on which** the transaction was executed on or otherwise the code 'OTC';
- (h) if applicable, an indicator that the transaction was subject to specific conditions.

The information shall be made available free of charge 15 minutes after the publication of a transaction. The home Member State shall require the CTP to be able to efficiently and consistently disseminate such information in a way that ensures fast access to the information, on a non-discriminatory basis and in generally accepted formats that are interoperable and easily accessible and utilisable for market participants.

3. The home Member State shall require the CTP to ensure that the data provided is consolidated from **all** the regulated markets, MTFs, OTFs and APAs and for the financial instruments specified by delegated acts under paragraph 8(c).

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

5. The home Member State shall require the CTP to have sound security mechanisms in place designed to guarantee the security of the means of transfer of information and to minimise the risk of data corruption and unauthorised access. The home Member State shall require the CTP to maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

6. In order to ensure consistent harmonisation of paragraphs 1 and 2, ESMA shall develop draft regulatory technical standards to determine data standards and formats for the information to be published in accordance with Articles 5, 9, 19 and 20 of Regulation (EU) No .../... [MiFIR], including instrument identifier, price, quantity, time, price notation, venue identifier and indicators for specific conditions the transactions was subject to as well as technical arrangements promoting an efficient and consistent dissemination of information in a way ensuring for it to be easily accessible and utilisable for market participants as referred to in paragraphs 1 and 2, including identifying additional services the CTP could perform which increase the efficiency of the market.

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].

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.

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.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures specifying:

- (a) the means by which the CTP may comply with the information obligation referred to in paragraphs 1 and 2;

(*) 12 months after the date of entry into force of this Directive.

(**) 18 months after the date of entry into force of this Directive.

Friday 26 October 2012

- (b) the content of the information published under paragraphs 1 and 2;
- (c) the financial instruments data of which must be provided in the data stream;
- (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.**

Article 67a

Single consolidated data base

1. By [...] (*), ESMA shall submit to the European Parliament, the Council and the Commission an opinion on the availability of high quality post-trade information made public in accordance with Articles 5 and 19 of Regulation (EU) No .../... [MiFIR] in a consolidated format capturing the entire market in accordance with user-friendly standards at a reasonable cost.

2. Where ESMA considers that post-trade information made public in accordance with Articles 5 and 19 is not available or not of high quality or does not capture the entire market, ESMA shall give a negative opinion.

3. Within three months of a negative opinion under paragraph 2, the Commission shall adopt a delegated act in accordance with Article 94 concerning measures specifying the establishment of a single entity operating a consolidated tape for post-trade information made public in accordance with Articles 5 and 19.

4. By [...] (**), ESMA shall issue to the European Parliament, the Council and the Commission an opinion on the availability of a high-quality post-trade information made public in accordance with Articles 9 and 20 of Regulation (EU) No .../... [MiFIR] in a consolidated format capturing the entire market in accordance with user-friendly standards at a reasonable cost.

5. Where ESMA considers that post-trade information made public in accordance with Articles 9 and 20 is not available or not of high quality or does not capture the entire market, ESMA shall give a negative opinion.

6. Within three months of a negative opinion under paragraph 5, the Commission shall adopt a delegated act in accordance with Article 94 concerning measures specifying the establishment of a single entity operating a consolidated tape for post-trade information made public in accordance with Articles 9 and 20.

SECTION 4

CONDITIONS FOR ARMS

Article 68

Organisational requirements

1. The home Member State shall require an ARM to have adequate policies and arrangements in place to report the information required under Article 23 of Regulation (EU) No .../... [MiFIR] as quickly as possible, and no later than the close of the following working day. Such information shall be reported in accordance with the requirements laid down in Article 23 of Regulation (EU) No .../... [MiFIR] on a reasonable commercial basis.

(*) Six months after the date of application of this Directive.

(**) One year after the date of application of this Directive.

Friday 26 October 2012

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. ***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.***

3. The home Member State shall require the ARM to have sound security mechanisms in place designed to guarantee the security of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage. The home Member State shall require the ARM to maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

4. The home Member State shall require the ARM to have systems in place that can effectively check transaction reports for completeness, identify omissions and obvious errors and request re-transmission of any such erroneous reports.

5. The Commission ***shall*** adopt delegated acts in accordance with *Article 94*, measures clarifying what constitutes a reasonable commercial basis to report information as referred to in paragraph 1.

TITLE VI

COMPETENT AUTHORITIES

CHAPTER I

DESIGNATION, POWERS AND REDRESS PROCEDURES

Article 69

Designation of competent authorities

1. Each Member State shall designate the competent authorities which are to carry out each of the duties provided for under the different provisions of Regulation (EU) No .../... [MiFIR] and of this Directive. Member States shall inform the Commission, ESMA and the competent authorities of other Member States of the identity of the competent authorities responsible for enforcement of each of those duties, and of any division of those duties.

2. 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)***.

Any delegation of tasks to entities other than the authorities referred to in paragraph 1 may not involve either the exercise of public authority or the use of discretionary powers of judgement. Member States shall require that, prior to delegation, competent authorities take all reasonable steps to ensure that the entity to which tasks are to be delegated has the capacity and resources to effectively execute all tasks and that the delegation takes place only if a clearly defined and documented framework for the exercise of any delegated tasks has been established stating the tasks to be undertaken and the conditions under which they are to be carried out. Those conditions shall include a clause obliging the entity in question to act and be organised in such a manner as to avoid conflict of interest and so that information obtained from carrying out the delegated tasks is not used unfairly or to prevent competition. The final responsibility for supervising compliance with this Directive and with its implementing measures shall lie with the competent authority or authorities designated in accordance with paragraph 1.

Member States shall inform the Commission, ESMA and the competent authorities of other Member States of any arrangements entered into with regard to delegation of tasks, including the precise conditions regulating such delegation.

Friday 26 October 2012

3. ESMA shall publish and keep up-to-date a list of the competent authorities referred to in paragraphs 1 and 2 on its website.

Article 70

Cooperation between authorities in the same Member State

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.

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.

Member States shall require that competent authorities exchange any information which is essential or relevant to the exercise of their functions and duties.

Article 71

Powers to be made available to competent authorities

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

- (a) directly or in collaboration with other authorities;
- (b) under their responsibility by delegation to entities to which tasks have been delegated according to Article 69(2); or
- (c) by application to the competent judicial authorities.

2. The powers referred to in paragraph 1 shall be exercised in conformity with national law and shall include, at least, the rights to:

- (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;
 - (b) **require the provision of** information from any person and if necessary to summon and question a person with a view to obtaining information;
 - (c) carry out on-site inspections;
- (ca) carry out mystery shopping;**
- (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 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;**

Friday 26 October 2012

(da) require the freezing and/or the sequestration of assets;

- (e) request temporary prohibition of professional activity;
- (f) require authorised investment firms and regulated markets' auditors to provide information;
- (g) refer matters for criminal prosecution;
- (h) allow auditors or experts to carry out verifications or investigations;
- (i) **require the provision of** information including all relevant documentation from any person regarding the size and purpose of a position or exposure entered into via a **commodity** derivative, and any assets or liabilities in the underlying market.

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 of this Article 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.

4. The processing of personal data collected in the exercise of the supervisory and investigatory powers pursuant to this Article shall be carried out in accordance with Directive 95/46/EC.

Article 72

Remedies to be made available to competent authorities

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 which may be exercised in the ways specified in Article 71(1)**:

- (a) require the cessation of any practice or conduct that is contrary to the provisions of Regulation(EU) No .../... [MiFIR] and the provisions adopted in the implementation of this Directive and to desist from a repetition of that practice or conduct;
- (b) **require** the freezing and/or the sequestration of assets;
- (c) adopt any type of measure to ensure that investment firms and regulated markets continue to comply with legal requirements;
- (d) require the suspension of trading in a financial instrument;
- (e) require the removal of a financial instrument from trading, whether on a regulated market or under other trading arrangements;
- (f) request any person that has provided information in accordance with Article 71(2) (i) to subsequently take steps to reduce the size of the position or exposure;
- (g) limit the ability of any person or class of persons from entering into a commodity derivative, including by introducing non-discriminatory limits on positions or the number of such derivative contracts per underlying which any given class of persons can enter into over a specified period of time, when necessary to ensure the integrity and orderly functioning of the affected markets;
- (h) issue public notices;

Friday 26 October 2012

- (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].**
- (hb) **suspend the marketing or sale of investment products where the conditions of Article 32 of Regulation (EU) No .../... [MiFIR] are met or where the investment firm has not developed or applied an effective product approval process or otherwise failed to comply with Article 16(3) of this Directive;**
- (hc) **require the removal of a natural person from the management board of an investment firm or market operator.**

Article 73

Administrative sanctions

1. Member States shall ensure that their competent authorities may take the appropriate administrative sanctions and measures where the provisions of Regulation (EU) No .../... [MiFIR] or the national provisions adopted in the implementation of this Directive have not been complied with, and shall ensure that they are applied. Member States shall ensure that these measures are effective, proportionate and dissuasive.
 2. Member States shall ensure that where obligations apply to investment firms and market operators, in case of a breach, administrative sanctions and measures can be applied to the members of the investment firms' and market operators' management body, and any other natural or legal persons who, under national law, are responsible for a violation.
 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.**
 4. Where the competent authority has disclosed an administrative measure or sanction to the public, it shall, at the same time, report that fact to ESMA.
 5. Where a published sanction relates to an investment firm authorised in accordance with this Directive, ESMA shall add a reference to the published sanction in the register of investment firms established under Article 5(3).
- 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.

Article 74

Publication of sanctions

Member States shall provide that the competent authority publishes any sanction or measure that has been imposed for breaches of the provisions of Regulation (EU) No .../... [MiFIR] or of the national provisions adopted in the implementation of this Directive without undue delay including information on the type and nature of the breach and the identity of persons responsible for it, unless such disclosure would seriously jeopardise the financial markets. Where the publication would cause a disproportionate damage to the parties involved, competent authorities shall publish the sanctions on an anonymous basis.

(*) **18 months after the date of entry into force of this Directive.**

Friday 26 October 2012

Article 75

Breach of authorisation requirement and other breaches

1. **Member States** shall **ensure that their laws, regulations or administrative provisions provide for sanctions at least in respect of** the following:

- (a) performing investment services or activities as a regular occupation or business on a professional basis without obtaining authorisation in breach of Article 5;
- (b) acquiring, directly or indirectly, a qualifying holding in an investment firm or further increasing, directly or indirectly, such a qualifying holding in an investment firm as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 % or so that the investment firm would become its subsidiary (the 'proposed acquisition'), without notifying in writing the competent authorities of the investment firm in which the acquirer is seeking to acquire or increase a qualifying holding in breach of the first subparagraph of Article 11(1);
- (c) disposing, directly or indirectly, of a qualifying holding in an investment firm or reducing a qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20 %, 30 % or 50 % or so that the investment firm would cease to be a subsidiary, without notifying in writing the competent authorities, in breach of the second subparagraph of Article 11(1);
- (d) an investment firm having obtained an authorisation through false statements or any other irregular means in breach of Article 8(b);
- (e) an investment firm failing to comply with requirements applicable to the management body in accordance with Article 9(1);
- (f) the management body of an investment firm failing to perform its duties in accordance with Article 9(6);
- (g) an investment firm, on becoming aware of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in Article 11(1), failing to inform the competent authorities of those acquisitions or disposals in breach of the first subparagraph of Article 11(3);
- (h) an investment firm failing to, at least once a year, inform the competent authority of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings in breach of the second subparagraph of Article 11(3);
- (i) an investment firm failing to have in place an organisational requirement imposed in accordance with the national provisions implementing Article 16 and 17;
- (j) an investment firm failing to identify, prevent, manage and disclose conflicts of interests in accordance with the national provisions implementing Article 23;
- (k) a MTF or an OTF failing to establish rules, procedures and arrangements or failing to comply with instructions in accordance with the national provisions implementing Articles 18, 19 and 20;
- (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;

Friday 26 October 2012

- (m) an investment firm accepting or receiving fees, commissions or any monetary benefit in contravention of the national provisions implementing Article 19(5) and (6);
- (n) an investment firm **■** failing to obtain the best possible result for clients when executing orders **or** failing to establish arrangements in accordance with national provisions implementing Article 27 and Article 28;
- (o) operating a regulated market without obtaining authorisation in breach of Article 47;
- (p) the management body of a market operator failing to perform its duties in accordance with Article 48(6);
- (q) a regulated market or a market operator failing to have in place arrangements, systems, rules and procedures and to have available sufficient financial resources in accordance with national provisions implementing Article 50;
- (r) a regulated market or a market operator failing to have in place systems, procedures, arrangements and rules or failing to grant access to data in accordance with national rules implementing Article 51 **or failing to implement the tick size regime required under Article 51a**;
- (ra) the management body of a data service provider failing to perform its duties in accordance with Article 65;**
- (rb) an APA, CTP or ARM failing to fulfil its organisational requirements in accordance with Article 66, 67 or 68;**
- (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 .../... [MiFIR];
- (t) an investment firm **■** failing to make public information in accordance with Articles 13, 17, 19 and 20 of Regulation (EU) No .../... [MiFIR];
- (u) an investment firm **■** failing to report transactions to competent authorities in accordance with Article 23 of Regulation (EU) No .../... [MiFIR];
- (v) a financial counterparty and a non financial counterparty failing to trade derivatives on trading venues in accordance with Article 24 of Regulation (EU) No .../... [MiFIR];
- (w) a central counterparty failing to grant access to its clearing services in accordance with Article 28 of Regulation (EU) No .../... [MiFIR];
- (x) a regulated market, a market operator or an investment firm failing to grant access to its trade feeds in accordance with Article 29 of Regulation (EU) No .../... [MiFIR];
- (y) a person with proprietary rights to benchmarks failing to grant access to a benchmark in accordance with Article 30 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];

Friday 26 October 2012

(za) a natural person belonging to the management body of a market operator or an investment firm that has knowledge of any breaches referred to in this paragraph and decides not to report those breaches to the competent authority.

2. Member States shall ensure that in the cases referred to in paragraph 1, **their laws, regulations or administrative provisions provide for** administrative sanctions and measures that can be applied **including** at least the following:

- (a) a public statement, which indicates the natural or legal person and the nature of the breach;
- (b) an order requiring the natural or legal person to cease the conduct and to desist from a repetition of that conduct;
- (c) in case of an investment firm, withdrawal of the authorisation of the institution in accordance with Article 8;
- (d) a temporary **or permanent** ban against any member of the investment firm's management body or any other natural person, who is held responsible, to exercise **management** functions in investment firms;

(da) a temporary ban on the investment firm being a member of or participant in regulated markets, MTFs and OTFs;

- (e) in case of a legal person, administrative pecuniary sanctions of up to **15 %** of the total annual turnover of the legal person in the preceding business year; where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the total annual turnover resulting from the consolidated account of the ultimate parent undertaking in the preceding business year;
- (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;
- (g) administrative pecuniary sanctions of up to **ten times** the amount of the benefit derived from the violation where that benefit can be determined.

I

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

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.

Article 76

Effective application of sanctions

1. Member States shall ensure that when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, the competent authorities shall take into account all relevant circumstances, including:

- (a) the gravity and the duration of the breach;
- (b) the degree of responsibility of the responsible natural or legal person;

Friday 26 October 2012

- (c) the financial strength of the responsible natural or legal person, as indicated by the total turnover of the responsible legal person or the annual income of the responsible natural person;
- (d) the importance of profits gained or losses avoided by the responsible natural or legal person, insofar as they can be determined;
- (e) the losses for third parties caused by the breach, insofar as they can be determined;
- (f) the level of cooperation of the responsible natural or legal person with the competent authority;
- (g) previous violations by the responsible natural or legal person.

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.

2a. This Article is without prejudice to the powers of competent authorities to initiate criminal proceedings or impose 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.

Article 77

Reporting of breaches

1. Member States shall ensure that competent authorities establish effective mechanisms to encourage reporting of **potential or actual** breaches of the provisions of Regulation .../... [MiFIR] and of national provisions implementing this Directive to competent authorities.

Those arrangements shall include at least:

- (a) specific procedures for the receipt of reports and their follow-up;
- (b) appropriate protection for employees of financial institutions who denounce breaches committed within the financial institution, **including anonymity where appropriate**;
- (c) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in compliance with the principles laid down in Directive 95/46/EC.

2. Member States shall require financial institutions to have in place appropriate procedures for their employees to report breaches internally through a specific channel.

2a. An employee shall not be prevented from denouncing breaches committed within the financial institution by any confidentiality rules. Any information that contributes to prove breaches committed within the financial institution shall no more be considered as confidential and the disclosure in good faith of such information shall not involve persons disclosing such information in liability of any kind.

■

(*) 12 months after the date of entry into force of this Directive.

Friday 26 October 2012

Article 79

Right of appeal

1. Member States shall ensure that any decision taken under the provisions of Regulation (EU) No .../... [MiFIR] or under laws, regulations or administrative provisions adopted in accordance with this Directive is properly reasoned and is subject to the right of appeal before a tribunal. The right of appeal before a tribunal shall also apply where, in respect of an application for authorisation which provides all the information required, no decision is taken within six months of its submission.

2. Member States shall provide that one or more of the following bodies, as determined by national law, also may, in the interests of consumers and in accordance with national law, take action before the courts or competent administrative bodies to ensure that Regulation (EU) No .../... [MiFIR] and the national provisions for the implementation of this Directive are applied:

- (a) public bodies or their representatives;
- (b) consumer organisations having a legitimate interest in protecting consumers;
- (c) professional organisations having a legitimate interest in acting to protect their members.

Article 80

Extra-judicial mechanism for investors' complaints

1. Member States shall ensure the setting-up of efficient and effective complaints and redress procedures for the out-of-court settlement of consumer disputes concerning the provision of investment and ancillary services provided by investment firms, using existing bodies where appropriate. Member States shall further ensure that all investment firms adhere to one or more such bodies implementing such complaint and redress procedures.

2. Member States shall ensure that those bodies actively cooperate with their counterparts in other Member States in the resolution of cross-border disputes.

3. The competent authorities shall notify ESMA of the complaint and redress procedures referred to in paragraph 1 which are available under its jurisdictions.

ESMA shall publish and keep up-to-date a list of all extra-judicial mechanisms on its website.

Article 81

Professional secrecy

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

2. Where an investment firm, market operator or regulated market has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties may be divulged in civil or commercial proceedings if necessary for carrying out the proceeding.

Friday 26 October 2012

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.

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.

5. This Article shall not prevent the competent authorities from exchanging or transmitting in accordance with national law, confidential information that has not been received from a competent authority of another Member State.

Article 82

Relations with auditors

1. Member States shall provide, at least, that any person authorised within the meaning of Eighth Council Directive 84/253/EEC of 10 April 1984 on the approval of persons responsible for carrying out the statutory audits of accounting documents ⁽¹⁾, performing in an investment firm the task described in Article 51 of Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies ⁽²⁾, Article 37 of Directive 83/349/EEC or Article 73 of Directive 2009/65/EC or any other task prescribed by law, shall have a duty to report promptly to the competent authorities any fact or decision concerning that undertaking of which that person has become aware while carrying out that task and which is liable to:

- (a) constitute a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of investment firms;
- (b) affect the continuous functioning of the investment firm;
- (c) lead to refusal to certify the accounts or to the expression of reservations.

That person shall also have a duty to report any facts and decisions of which the person becomes aware in the course of carrying out one of the tasks referred to in the first subparagraph in an undertaking having close links with the investment firm within which he is carrying out that task.

2. The disclosure in good faith to the competent authorities, by persons authorised within the meaning of Directive 84/253/EEC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any contractual or legal restriction on disclosure of information and shall not involve such persons in liability of any kind.

⁽¹⁾ OJ L 126, 12.5.1984, p. 20.

⁽²⁾ OJ L 222, 14.8.1978, p. 11.

Friday 26 October 2012

CHAPTER II

COOPERATION BETWEEN THE COMPETENT AUTHORITIES OF THE MEMBER STATES AND WITH ESMA

Article 83

Obligation to cooperate

1. 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.

Competent authorities shall render assistance to competent authorities of the other Member States. In particular, they shall exchange information and cooperate in any investigation or supervisory activities.

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.

2. When, taking into account the situation of the securities markets in the host Member State, the operations of a regulated market an MTF, or an OTF that has established arrangements in a host Member State have become of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State, the home and host competent authorities of the regulated market shall establish proportionate cooperation arrangements.

3. Member States shall take the necessary administrative and organisational measures to facilitate the assistance provided for in paragraph 1.

Competent authorities may use their powers for the purpose of cooperation, even in cases where the conduct under investigation does not constitute an infringement of any regulation in force in that Member State.

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 without prejudice to the competence of the notifying competent authority.

5. Without prejudice to paragraphs 1 and 4, competent authorities shall notify ESMA and other competent authorities of the details of:

(a) any requests to reduce the size of a position or exposure pursuant to Article 72(1) (f);

(b) any limits on the ability of persons to enter into an instrument pursuant to Article 72(1)(g).

Friday 26 October 2012

The notification shall include, where relevant, the details of the request pursuant to Article 72(1)(f) including the identity of the person or persons to whom it was addressed and the reasons thereof, as well as the scope of the limits introduced pursuant to Article 72(1)(g) including the person or class of persons concerned, the applicable financial instruments, any quantitative measures or thresholds such as the maximum number of contracts persons can enter into **or outstanding positions** before a limit is reached, any exemptions thereto, and the reasons thereof.

The notifications shall be made not less than 24 hours before the actions or measures are intended to take effect. In exceptional circumstances, a competent authority may make the notification less than 24 hours before the measure is intended to take effect where it is not possible to give 24 hours notice.

A competent authority of a Member State that receives notification under this paragraph may take measures in accordance with Article 72(1)(f) or (g) where it is satisfied that the measure is necessary to achieve the objective of the other competent authority. The competent authority shall also give notice in accordance with this paragraph where it proposes to take measures.

When an action under (a) or (b) relates to wholesale energy products, the competent authority shall also notify the Agency for the Cooperation of Energy Regulators established under Regulation (EC) No 713/2009.

6. In relation to emission allowances, competent authorities should cooperate with public bodies competent for the oversight of spot and auction markets and competent authorities, registry administrators and other public bodies charged with the supervision of compliance under Directive 2003/87/EC in order to ensure that they can acquire a consolidated overview of emission allowances markets.

7. The Commission shall be empowered to adopt delegated acts, **after consulting ESMA**, in accordance with Article 94 concerning measures to establish the criteria under which the operations of a regulated market in a host Member State could be considered as of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State.

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

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.

Article 84

Cooperation between competent authorities in supervisory activities, for on-the-spot verifications or investigations

1 A competent authority of one Member State may request the cooperation of the competent authority of another Member State in a supervisory activity or for an on-the-spot verification or in an investigation. In the case of investment firms that are remote members of a regulated market the competent authority of the regulated market may choose to address them directly, in which case it shall inform the competent authority of the home Member State of the remote member accordingly.

(*) 18 months after the date of entry into force of this Directive.

Friday 26 October 2012

Where a competent authority receives a request with respect to an on-the-spot verification or an investigation, it shall, within the framework of its powers:

- (a) carry out the verifications or investigations itself; allow the requesting authority to carry out the verification or investigation;
- (b) allow auditors or experts to carry out the verification or investigation.

2. With the objective of converging supervisory practices, ESMA may participate in the activities of the colleges of supervisors, including on-site verifications or investigations, carried out jointly by two or more competent authorities in accordance with Article 21 of Regulation (EU) No 1095/2010.

3. ESMA shall develop draft regulatory technical standards to specify the information to be exchanged between competent authorities when cooperating in supervisory activities, on-the-spot-verifications, and investigations.

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.

4. ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for competent authorities to cooperate in supervisory activities, on-site verifications, and investigations.

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.

Article 85

Exchange of information

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]**.

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.

2. The competent authority having been designated as the contact point may transmit the information received under paragraph 1 and Articles 82 and 92 to the authorities referred to in Article 74. They shall not transmit it to other bodies or natural or legal persons without the express agreement of the competent authorities which disclosed it and solely for the purposes for which those authorities gave their agreement, except in duly justified circumstances. In this last case, the contact point shall immediately inform the contact point that sent the information.

(*) **18 months after the date of entry into force of this Directive.**

Friday 26 October 2012

3. Authorities as referred to in Article 74 as well as other bodies or natural and legal persons receiving confidential information under paragraph 1 of this Article or under Articles 82 and 92 may use it only in the course of their duties, in particular:

- (a) to check that the conditions governing the taking-up of the business of investment firms are met and to facilitate the monitoring, on a non-consolidated or consolidated basis, of the conduct of that business, especially with regard to the capital adequacy requirements imposed by Directive 93/6/EEC, administrative and accounting procedures and internal-control mechanisms;
- (b) to monitor the proper functioning of trading venues;
- (c) to impose sanctions;
- (d) in administrative appeals against decisions by the competent authorities;
- (e) in court proceedings initiated under Article 79;
- (f) in the extra-judicial mechanism for investors' complaints provided for in Article 80.

4. ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the exchange of information.

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.

5. Neither this Article nor Articles 81 or 92 shall prevent a competent authority from transmitting to ESMA, the European Systemic Risk Board, central banks, the ESCB and the ECB, 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]**.

Article 86

Binding mediation

1. The competent authorities may refer to ESMA situations where a request relating to one of the following has been rejected or has not been acted upon within a reasonable time:

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

- (a) to carry out a supervisory activity, an on-the-spot verification, or an investigation, as provided for in Article 84; to exchange information as provided for in Article 85.

1a The competent authorities may also refer to ESMA situations where a competent authority disagrees about the procedure or content of an action or inaction of a competent authority of another member state related to any provisions of this Directive or of Regulation(EU) No .../... [MiFIR].

(*) 18 months after the date of entry into force of this Directive.

Friday 26 October 2012

2. In the situations referred to in paragraph 1, ESMA may act in accordance with Article 19 of Regulation (EU) No 1095/2010, without prejudice to the possibilities for refusing to act on a request for information foreseen in Article 87 and to the possibility of ESMA acting in accordance with Article 17 of Regulation (EU) No 1095/2010.

Article 87

Refusal to cooperate

A competent authority may refuse to act on a request for cooperation in carrying out an investigation, on-the-spot verification or supervisory activity as provided for in Article 88 or to exchange information as provided for in Article 85 only where:

(-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;

- (a) judicial proceedings have already been initiated in respect of the same actions and the same persons before the authorities of the Member State addressed;
- (b) final judgment has already been delivered in the Member State addressed in respect of the same persons and the same actions.

In the case of such a refusal, the competent authority shall notify the requesting competent authority and ESMA accordingly, providing as detailed information as possible.

Article 88

Consultation prior to authorisation

1. The competent authorities of the other Member State involved shall be consulted prior to granting authorisation to an investment firm which is one of the following:

- (a) a subsidiary of an investment firm or credit institution authorised in another Member State;
- (b) a subsidiary of the parent undertaking of an investment firm or credit institution authorised in another Member State;
- (c) controlled by the same natural or legal persons as control an investment firm or credit institution authorised in another Member State.

2. The competent authority of the Member State responsible for the supervision of credit institutions or insurance undertakings shall be consulted prior to granting an authorisation to an investment firm which is:

- (a) a subsidiary of a credit institution or insurance undertaking authorised in the **European** Union;
- (b) a subsidiary of the parent undertaking of a credit institution or insurance undertaking authorised in the **European** Union;
- (c) controlled by the same person, whether natural or legal, who controls a credit institution or insurance undertaking authorised in the **European** Union.

Friday 26 October 2012

3. The relevant competent authorities referred to in paragraphs 1 and 2 shall in particular consult each other when assessing the suitability of the shareholders or members and the reputation and experience of persons who effectively direct the business involved in the management of another entity of the same group. They shall exchange all information regarding the suitability of shareholders or members and the reputation and experience of persons who effectively direct the business that is of relevance to the other competent authorities involved, for the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions.

4. ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation.

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.

Article 89

Powers for host Member States

1. Host Member States shall provide that the competent authority may, for statistical purposes, require all investment firms with branches within their territories to report to them periodically on the activities of those branches.

2. In discharging their responsibilities under this Directive, host Member States shall provide that the competent authority may require branches of investment firms to provide the information necessary for the monitoring of their compliance with the standards set by the host Member State that apply to them for the cases provided for in Article 37(8). Those requirements may not be more stringent than those which the same Member State imposes on established firms for the monitoring of their compliance with the same standards.

Article 90

Precautionary measures to be taken by host Member States

1. Where the competent authority of the host Member State has clear and demonstrable grounds for believing that an investment firm acting within its territory under the freedom to provide services is in breach of the obligations arising from the provisions adopted pursuant to this Directive or that an investment firm that has a branch within its territory is in breach of the obligations arising from the provisions adopted pursuant to this Directive which do not confer powers on the competent authority of the host Member State, it shall refer those findings to the competent authority of the home Member State.

If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the investment firm persists in acting in a manner that is clearly prejudicial to the interests of host Member State investors or the orderly functioning of markets, the following shall apply:

(a) after informing the competent authority of the home Member State, the competent authority of the host Member State shall take all the appropriate measures needed in order to protect investors and the proper functioning of the markets, which shall include the possibility of preventing offending investment firms from initiating any further transactions within their territories. The Commission and ESMA shall be informed of such measures without delay; and

(b) the competent authority of the host Member State may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

(*) 18 months after the date of entry into force of this Directive.

Friday 26 October 2012

2. Where the competent authorities of a host Member State ascertain that an investment firm that has a branch within its territory is in breach of the legal or regulatory provisions adopted in that State pursuant to those provisions of this Directive which confer powers on the host Member State's competent authorities, those authorities shall require the investment firm concerned to put an end to its irregular situation.

If the investment firm concerned fails to take the necessary steps, the competent authorities of the host Member State shall take all appropriate measures to ensure that the investment firm concerned puts an end to its irregular situation. The nature of those measures shall be communicated to the competent authorities of the home Member State.

Where, despite the measures taken by the host Member State, the investment firm persists in breaching the legal or regulatory provisions referred to in the first subparagraph in force in the host Member State, the competent authority of the host Member State shall, after informing the competent authority of the home Member State, take all the appropriate measures needed in order to protect investors and the proper functioning of the markets. The Commission and ESMA shall be informed of such measures without delay.

In addition, the competent authority of the host Member State may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

3. Where the competent authority of the host Member State of a regulated market, an MTF or OTF has clear and demonstrable grounds for believing that such regulated market, MTF or OTF is in breach of the obligations arising from the provisions adopted pursuant to this Directive, it shall refer those findings to the competent authority of the home Member State of the regulated market or the MTF or OTF.

Where, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, that regulated market or the MTF persists in acting in a manner that is clearly prejudicial to the interests of host Member State investors or the orderly functioning of markets, the competent authority of the host Member State shall, after informing the competent authority of the home Member State, take all the appropriate measures needed in order to protect investors and the proper functioning of the markets, which shall include the possibility of preventing that regulated market or the MTF from making their arrangements available to remote members or participants established in the host Member State. The Commission and ESMA shall be informed of such measures without delay.

In addition, the competent authority of the host Member State may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

4. Any measure adopted pursuant to paragraphs 1, 2 or 3 involving sanctions or restrictions on the activities of an investment firm or of a regulated market shall be properly justified and communicated to the investment firm or to the regulated market concerned.

Article 91

Cooperation and exchange of information with ESMA ***within the European System of Financial Supervision (ESFS), and with the ESCB***

-1a. Competent authorities, as parties to the ESFS, shall cooperate with trust and full mutual respect, in particular when ensuring the flow of appropriate and reliable information between them and other parties to the ESFS in accordance with the principle of sincere cooperation pursuant to Article 4(3) of the Treaty on European Union.

Friday 26 October 2012

1. The competent authorities shall cooperate with ESMA for the purposes of this Directive, in accordance with Regulation (EU) No 1095/2010.
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, **and, as appropriate, provide ESCB central banks with all information relevant for the performance of their tasks.**

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.

Article 91b

ESMA advisory committee on high-frequency trading

By 30 June 2014, ESMA shall set up an advisory committee of national experts to determine developments of high-frequency trading that could potentially constitute market manipulation with a view to:

- (a) increasing ESMA's knowledge about high-frequency trading; and*
- (b) providing a list of abusive practices with regard to high-frequency trading, including spoofing, quote stuffing and layering, for the purpose of Article 5(1a) of Regulation (EU) No .../... [MAR].*

Article 91c

ESMA advisory committee on technology in financial markets

By 30 June 2014, ESMA shall establish an advisory committee of national experts to establish which technological developments in the markets could potentially constitute market abuse or market manipulation with a view to:

- (a) increasing ESMA's knowledge about new technology related trading strategies and their potential for abuse;*
- (b) adding to the list of abusive practices that have already been identified that relate specifically to high frequency trading strategies; and*
- (c) assessing the effectiveness of different trading venues approaches to dealing with the risks associated with any new trading practices.*

As a result of the assessment referred to in point (c) of the first paragraph, ESMA shall produce additional guidelines for best practice across the Union financial markets.

Friday 26 October 2012

CHAPTER III

COOPERATION WITH THIRD COUNTRIES

Article 92

Exchange of information with third countries

1. Member States and in accordance with Article 33 of Regulation (EU) No 1095/2010, ESMA, may conclude cooperation agreements providing for the exchange of information with the competent authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those required under Article 81. Such exchange of information must be intended for the performance of the tasks of those competent authorities.

Transfer personal data to a third country by a Member State shall be in accordance with Chapter IV of Directive 95/46/EC.

Transfers of personal data to a *third* country by ESMA shall be in accordance with Article 9 of Regulation (EC) No 45/2001.

Member States and ESMA may also conclude cooperation agreements providing for the exchange of information with third country authorities, bodies and natural or legal persons responsible for one or more of the following:

- (a) the supervision of credit institutions, other financial institutions, insurance undertakings and the supervision of financial markets;
- (b) the liquidation and bankruptcy of investment firms and other similar procedures;
- (c) the carrying out of statutory audits of the accounts of investment firms and other financial institutions, credit institutions and insurance undertakings, in the performance of their supervisory functions, or which administer compensation schemes, in the performance of their functions;
- (d) oversight of the bodies involved in the liquidation and bankruptcy of investment firms and other similar procedures;
- (e) oversight of persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions;
- (f) oversight of persons active on emission allowances markets for the purpose of ensuring a consolidated overview of financial and spot markets.

The cooperation agreements referred to in the third subparagraph may be concluded only where the information disclosed is subject to guarantees of professional secrecy at least equivalent to those required under Article 81. Such exchange of information shall be intended for the performance of the tasks of those authorities or bodies or natural or legal persons. Where a *cooperation* agreement involves the transfer of personal data by a Member State, it shall comply with Chapter IV of Directive 95/46/EC and with Regulation (EC) No 45/2001 in the case ESMA is involved in the transfer.

2. Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have transmitted it and, where appropriate, solely for the purposes for which those authorities gave their agreement. The same provision applies to information provided by third country competent authorities.

Friday 26 October 2012

TITLE VII

CHAPTER 1

DELEGATED ACTS

■
 Article 94

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in **Article 2(3), Article 4(2)(1), (3), (11), (12) and (27) to (33d), Article 13(1), Article 16(12), Article 17(6), Article 23(3), Article 24(8), Article 25(6), Article 27(7), Article 28(3), Article 30(5), Article 32(3), Article 35(8), Article 44(4), Article 51(7), Article 52(6), Article 53(4), Article 60(5), Article 66(6) and (7), 67(7) and (8), Article 67a(3) and (6), Article 68(5) and Article 83(7)** shall be conferred for an indeterminate period of time from ... (*).

3. The delegation of powers referred to in **Article 2(3), Article 4(1), (3), (11), (12) and (27) to (33d), Article 13(1), Article 16(12), Article 17(6), Article 23(3), Article 24(8), Article 25(6), Article 27(7), Article 28(3), Article 30(5), Article 32(3), Article 35(8), Article 44(4), Article 51(7), Article 52(6), Article 53(4), Article 60(5), Article 66(6) and (7), 67(7) and (8), Article 67a(3) and (6), Article 68(5) or Article 83(7)** may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to **Article 2(3), Article 4(1), (3), (11), (12) and (27) to (33d), Article 13(1), Article 16(12), Article 17(6), Article 23(3), Article 24(8), Article 25(6), Article 27(7), Article 28(3), Article 30(5), Article 32(3), Article 35(8), Article 44(4), Article 51(7), Article 52(6), Article 53(4), Article 60(5), Article 66(6) and (7), 67(7) and (8), Article 67a(3) and (6), Article 68(5) or Article 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.

CHAPTER 2

IMPLEMENTING ACTS

Article 95

Committee procedure

1. **The** Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC ⁽¹⁾. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 ⁽²⁾.

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

(*) Date of entry into force of this Directive.

⁽¹⁾ OJ L 191, 13.7.2001, p. 45.

⁽²⁾ OJ L 55, 28.2.2011, p. 13.

Friday 26 October 2012

CHAPTER 3

FINAL PROVISIONS

Article 96

Reports and review

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

- (a) the functioning of organised trading facilities, taking into account supervisory experiences acquired by competent authorities, the number of OTFs authorised in the Union 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;**
 - (b) the functioning of the regime for SME growth markets, taking into account the number of MTFs registered as SME growth markets, numbers of issuers present on these, and relevant trading volumes;
 - (c) the impact of requirements regarding automated and high-frequency trading;
 - (d) the experience with the mechanism for banning certain products or practices, taking into account the number of times the mechanisms have been triggered and their effects;
 - (e) the impact of the application **of** limits **and position checks** on liquidity, market abuse and orderly pricing and settlement conditions in commodity derivatives markets;
 - (f) the functioning of the consolidated tape established in accordance with Title V, in particular the availability of post-trade information of a high quality in a consolidated format capturing the entire market **in all asset classes** in accordance with user-friendly standards at a reasonable cost;
- (fa) the impact of the transparency regime in relation to fees, commissions and non-monetary benefits and its impact on the proper functioning of the internal market on cross-border investment advice.**
[Am. 9]

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.

Article 97

Transposition

1. 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.

(*) 42 months after the date of entry into force of this Directive.

(**) 18 months after the date of entry into force of this Directive.

(***) Two years after the date of entry into force of this Directive.

Friday 26 October 2012

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

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

2. Member States shall communicate to the Commission and ESMA the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 98

Repeal

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 thereof.*

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 set out 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.

Article 98a

Amendment to Directive 98/26/EC

Directive 98/26/EC is amended as follows:

In Article 1, the following subparagraph is added:

"This Directive shall not apply to emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community (*).

(*) OJ L 275, 25.10.2003, p. 32."

Article 99

Transitional provisions

Third-country firms may **█** 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).**

█

(*) 30 months after the date of entry into force of this Directive.

(**) 42 months after the date of entry into force of this Directive.

(***) 18 months after the date of entry into force of this Directive.

Friday 26 October 2012

Article 100

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 101

Addressees

This Directive is addressed to the Member States.

Done at ...,

For the European Parliament
The President

For the Council
The President

ANNEX I

LISTS OF SERVICES AND ACTIVITIES AND FINANCIAL INSTRUMENTS

SECTION A

INVESTMENT SERVICES AND ACTIVITIES

- (1) Reception and transmission of orders in relation to one or more financial instruments;
- (2) Execution of orders on behalf of clients;
- (3) Dealing on own account;
- (4) Portfolio management;
- (5) Investment advice;
- (6) Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis;
- (7) Placing of financial instruments without a firm commitment basis;
- (8) Operation of Multilateral Trading Facilities;

I

- (10) Operation of Organised Trading Facilities.

SECTION B

ANCILLARY SERVICES

(-1a) *Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management;*

- (1) Granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction;

Friday 26 October 2012

- (2) Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings;
- (3) Foreign exchange services where these are connected to the provision of investment services;
- (4) Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments;
- (5) Services related to underwriting.
- (6) Investment services and activities as well as ancillary services of the type included under Section A or B of Annex 1 related to the underlying of the derivatives included under points (5), (6), (7) and (10) of Section C where these are connected to the provision of investment or ancillary services.

SECTION C

FINANCIAL INSTRUMENTS

- (1) Transferable securities;
- (2) Money-market instruments;
- (3) Units in collective investment undertakings;
- (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;
- (5) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities 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;
- (6) Options, futures, swaps, and any other derivative contract relating to commodities that **are not intended to** be physically settled provided that they are traded on a regulated market, OTF, or an MTF;
- (6a) Insurance contracts linked to investment-related instruments;**
- (7) Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise referred to in C.6 and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regards to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls;
- (8) Derivative instruments for the transfer of credit risk;
- (9) Financial contracts for differences;
- (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 referred to 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;
- (11) Emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme);

Friday 26 October 2012

(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 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 referred to 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;*

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

Friday 26 October 2012

- (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.*

SECTION D

LIST OF DATA REPORTING SERVICES

- (1) Operating an approved publication arrangement;
- (2) Operating a consolidated tape provider;
- (3) Operating an approved reporting mechanism.

ANNEX II

PROFESSIONAL CLIENTS FOR THE PURPOSE OF THIS DIRECTIVE

Professional client is a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs. In order to be considered a professional client, the client must comply with the following criteria:

I. CATEGORIES OF CLIENT WHO ARE CONSIDERED TO BE PROFESSIONALS

The following should all be regarded as professionals in all investment services and activities and financial instruments for the purposes of the Directive.

- (1) Entities which are required to be authorised or regulated to operate in the financial markets. The list below should be understood as including all authorised entities carrying out the characteristic activities of the entities referred to: entities authorised by a Member State under a Directive, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by a non-Member State:
 - (a) Credit institutions;
 - (b) Investment firms;
 - (c) Other authorised or regulated financial institutions;
 - (d) Insurance companies;
 - (e) Collective investment schemes and management companies of such schemes;
 - (f) Pension funds and management companies of such funds;
 - (g) Commodity and commodity derivatives dealers;
 - (h) Locals;

Friday 26 October 2012

- (i) Other institutional investors;
- (2) Large undertakings meeting two of the following size requirements on a company basis:

— balance sheet total:	EUR 20 000 000
— net turnover:	EUR 40 000 000
— own funds:	EUR 2 000 000

- (3) National and regional governments, including public bodies that manage public debt at national or regional level, Central Banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations.
- (4) Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

The entities referred to above are considered to be professionals. They must however be allowed to request non-professional treatment and investment firms may agree to provide a higher level of protection. Where the client of an investment firm is an undertaking referred to above, the investment firm must inform it prior to any provision of services that, on the basis of the information available to the firm, the client is deemed to be a professional client, and will be treated as such unless the firm and the client agree otherwise. The firm must also inform the customer that he can request a variation of the terms of the agreement in order to secure a higher degree of protection.

It is the responsibility of the client, considered to be a professional client, to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.

This higher level of protection will be provided when a client who is considered to be a professional enters into a written agreement with the investment firm to the effect that it shall not be treated as a professional for the purposes of the applicable conduct of business regime. Such agreement should specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.

II.III. CLIENTS WHO MAY BE TREATED AS PROFESSIONALS ON REQUEST

II.1. Identification criteria

Clients other than those referred to in Section I, including public sector bodies **except** local public authorities, municipalities and **including** private individual investors, may also be allowed to waive some of the protections afforded by the conduct of business rules.

Investment firms should therefore be allowed to treat any of the above clients as professionals provided the relevant criteria and procedure mentioned below are fulfilled. These clients should not, however, be presumed to possess market knowledge and experience comparable to that of the categories listed in Section I.

Any such waiver of the protection afforded by the standard conduct of business regime shall be considered valid only if an adequate assessment of the expertise, experience and knowledge of the client, undertaken by the investment firm, gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved.

The fitness test applied to managers and directors of entities licensed under Directives in the financial field could be regarded as an example of the assessment of expertise and knowledge. In the case of small entities, the person subject to the above assessment should be the person authorised to carry out transactions on behalf of the entity.

Friday 26 October 2012

In the course of the above assessment, as a minimum, two of the following criteria should be satisfied:

- the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters,
- the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 500 000,
- the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

I

II.2. PROCEDURE

The clients defined above may waive the benefit of the detailed rules of conduct only where the following procedure is followed:

- they must state in writing to the investment firm that they wish to be treated as a professional client, either generally or in respect of a particular investment service or transaction, or type of transaction or product,
- the investment firm must give them a clear written warning of the protections and investor compensation rights they may lose,
- they must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections.

Before deciding to accept any request for waiver, investment firms must be required to take all reasonable steps to ensure that the client requesting to be treated as a professional client meets the relevant requirements stated in Section II.1 above.

However, if clients have already been categorised as professionals under parameters and procedures similar to those above, it is not intended that their relationships with investment firms should be affected by any new rules adopted pursuant to this Annex.

Firms must implement appropriate written internal policies and procedures to categorise clients. Professional clients are responsible for keeping the firm informed about any change, which could affect their current categorisation. Should the investment firm become aware however that the client no longer fulfils the initial conditions, which made him eligible for a professional treatment, the investment firm must take appropriate action.

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)

Friday 26 October 2012

Directive 2010/78/EU 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)

Part B

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

Directive 2004/39/EC

<i>Transposition period</i>	<i>31 January 2007</i>
<i>Implementation period</i>	<i>1 November 2007</i>

ANNEX IIB

Correlation Tables

Part A

<i>This Directive</i>	<i>Directive 2004/39/EC</i>
<i>Article 1(1)</i>	<i>Article 1(1)</i>
<i>Article 1(2)</i>	
<i>Article 1(3)</i>	<i>Article 1(2)</i>
<i>Article 2</i>	<i>Article 2</i>
<i>Article 3(1)(2)</i>	<i>Article 3(1) and (2)</i>
<i>Article 3(3)(4)</i>	
<i>Article 4(1)</i>	
<i>Article 4(2)</i>	<i>Article 4(1)</i>
<i>Article 4(3)</i>	<i>Article 4(2)</i>
<i>Article 5</i>	<i>Article 5</i>
<i>Article 6</i>	<i>Article 6</i>
<i>Article 7(1)(2)(3)(4)</i>	<i>Article 7(1), (2), (3) and (4)</i>
<i>Article 7(5)</i>	<i>Article 7(4)</i>
<i>Article 8</i>	<i>Article 8</i>
<i>Article 9(1)(2)(3)(4)</i>	<i>Article 9(1)</i>
<i>Article 9(5)</i>	<i>Article 9(2)</i>
<i>Article 9(6)</i>	
<i>Article 9(7)</i>	<i>Article 9(3)</i>
<i>Article 9(8)</i>	<i>Article 9(4)</i>
<i>Article 10(1)(2)</i>	<i>Article 10(1) and (2)</i>

Friday 26 October 2012

<i>This Directive</i>	<i>Directive 2004/39/EC</i>
Article 10(3)	
Article 11(1)	Article 10(3)
Article 11(2)	Article 10(4)
Article 11(3)	Article 10(5)
Article 11(4)	Article 10(6)
Article 12	Article 10a
Article 13	Article 10b
Article 14	Article 11
Article 15	Article 12
Article 16(1)(2)(3)(4)(5)(6)	Article 13(1), (2), (3), (4), (5) and (6)
Article 16(7)	
Article 16(8)	Article 13(7)
Article 16(9)	Article 13(8)
Article 16(10)	
Article 16(11)	Article 13(9)
Article 16(12)	Article 13(10)
Article 17	
Article 18(1)(2)	Article 14(1) and (2)
Article 18(3)	Article 14(4)
Article 18(4)	Article 14(5)
Article 18(5)	Article 14(6)
Article 18(6)	Article 14(7)
Article 18(7)(8)	
Article 19	
Article 20	
Article 21	Article 16
Article 22	Article 17
Article 23	Article 18
Article 24(1)(2)(3)	Article 19(1), (2) and (3)
Article 24(4)	Article 19(9)
Article 24(5)	
Article 24(6)	
Article 24(7)	
Article 24(8)	

Friday 26 October 2012

<i>This Directive</i>	<i>Directive 2004/39/EC</i>
Article 25(1)	Article 19(4)
Article 25(2)	Article 19(5)
Article 25(3)	Article 19(6)
Article 25(4)	Article 19(7)
Article 25(5)	Article 19(8)
Article 25(6)	Article 19(10)
Article 25(7)	
Article 26	Article 20
Article 27(1)	Article 21(1)
Article 27(2)	
Article 27(3)	Article 21(2)
Article 27(4)	Article 21(3)
Article 27(5)	Article 21(4)
Article 27(6)	Article 21(5)
Article 27(7)	Article 21(6)
Article 27(8)	
Article 28	Article 22
Article 29	Article 23
Article 30	Article 24
Article 31	Article 26
Article 32	
Article 33	
Article 34	
Article 35	
Article 36(1)(2)(3)(4)	Article 31(1), (2),(3) and (4)
Article 36(5)	
Article 36(6)	Article 31(5)
Article 36(7)	Article 31(6)
Article 36(8)(9)	Article 31(7)
Article 37(1)(2)(3)(4)(5)(6)	Article 32(1), (2), (3), (4), (5) and (6)
Article 37(7)	
Article 37(8)	Article 32(7)
Article 37(9)	Article 32(8)

Friday 26 October 2012

<i>This Directive</i>	<i>Directive 2004/39/EC</i>
Article 37(10)	Article 32(9)
Article 37(11)	Article 32(10)
Article 38	Article 33
Article 39	Article 34
Article 40	Article 35
Article 41	
Article 42	
Article 43	
Article 44	
Article 45	
Article 46	
Article 47	Article 36
Article 48	Article 37
Article 49	Article 38
Article 50	Article 39
Article 51	
Article 52	Article 40
Article 53(1)(2)	Article 41(1) and (2)
Article 53(3)(4)	
Article 54	
Article 55	Article 42
Article 56	Article 43
Article 57	Article 46
Article 58	Article 47
Article 59	
Article 60	
Article 61	
Article 62	
Article 63	
Article 64	
Article 65	
Article 66	
Article 67	

Friday 26 October 2012

<i>This Directive</i>	<i>Directive 2004/39/EC</i>
Article 68	
Article 69	Article 48
Article 70	Article 49
Article 71(1)(2)	Article 50(1) and (2)
Article 71(3)(4)	
Article 72	
Article 73(1)	Article 51(1)
Article 73(2)	
Article 73(3)	Article 51(4)
Article 73(4)	Article 51(5)
Article 73(5)	Article 51(6)
Article 74	
Article 75	
Article 76	
Article 77	
Article 78	
Article 79	Article 52
Article 80	Article 53
Article 81	Article 54
Article 82	Article 55
Article 83(1)(2)(3)(4)	Article 56(1), (2), (3) and (4)
Article 83(5)(6)	
Article 83(7)	Article 56(5)
Article 83(8)	Article 56(6)
Article 84	Article 57
Article 85	Article 58
Article 86	Article 58a
Article 87	Article 59
Article 88	Article 60
Article 89	Article 61
Article 90	Article 62
Article 91	Article 62a

Friday 26 October 2012

<i>This Directive</i>	<i>Directive 2004/39/EC</i>
Article 92	Article 63
Article 93	
Article 94	
Article 95	
Article 96	Article 65
Article 97	Article 70
Article 98	
Article 99	Article 71
Article 100	Article 72
Article 101	Article 73
Annex I	Annex I
Annex II	Annex II

Part B

<i>Regulation (EU) No .../... [MiFIR]</i>	<i>Directive 2004/39/EC</i>
Article 1	
Article 2	Article 4
Article 3(1)	Article 29(1) and Article 44(1)
Article 3(2)	Article 44(1)
Article 4(1)	Article 29(2) and Article 44(2)
Article 4(2)	
Article 4(3)	Article 29(3) and Article 44(3)
Article 4(4)	
Article 5(1)	Article 30(1) and Article 45(1)
Article 5(2)	Article 45(1)
Article 6(1)	Article 30(2) and Article 45(2)
Article 6(2)	Article 30(3) and Article 45(3)
Article 7	
Article 8	
Article 9	
Article 10	
Article 11	
Article 12	Articles 28 and 30,

Friday 26 October 2012

<i>Regulation (EU) No .../... [MiFIR]</i>	<i>Directive 2004/39/EC</i>
Article 45	
Article 13	Article 27(1) and (2)
Article 14(1)(2)(3)(4)	Article 27(3)
Article 14(5)	Article 27(7)
Article 14(6)	
Article 15	Article 27(4)
Article 16(1)	Article 27(5)
Article 16(2)	Article 27(6)
Article 16(3)	Article 27(7)
Article 17	
Article 18	
Article 19	Article 28
Article 20	
Article 21	Article 25(1)
Article 22(1)	Article 25(2)
Article 22(2)	
Article 23(1)(2)	Article 25(3)
Article 23(3)	Article 25(4)
Article 23(4)	
Article 23(5)	
Article 23(6)	Article 25(5)
Article 23(7)	Article 25(6)
Article 23(8)	Article 25(7)
Article 23(9)	
Article 24	
Article 25	
Article 26	
Article 27	
Article 28	
Article 29	
Article 30	
Article 31	
Article 32	

Friday 26 October 2012

<i>Regulation (EU) No .../... [MiFIR]</i>	<i>Directive 2004/39/EC</i>
Article 33	
Article 34	
Article 35	
Article 36	
Article 36	
Article 37	
Article 38	
Article 39	
Article 40	
Article 41	
Article 42	Article 64
Article 43	Article 65
Article 44	
Article 45	Article 71
Article 46	Article 72

Markets in financial instruments and amendment of the EMIR Regulation on OTC derivatives, central counterparties and trade repositories *I**

P7_TA(2012)0407

Amendments adopted by the European Parliament on 26 October 2012 on the 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 (COM(2011)0652 – C7-0359/2011 – 2011/0296(COD)) ⁽¹⁾

(2014/C 72 E/23)

(Ordinary legislative procedure: first reading)

[Amendment No 1 unless otherwise indicated]

AMENDMENTS BY THE EUROPEAN PARLIAMENT (*)

to the Commission proposal

⁽¹⁾ The matter was referred back to the committee responsible for reconsideration pursuant to Rule 57(2), second subparagraph (A7-0303/2012).

(*) Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■**.

Friday 26 October 2012

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on markets in financial instruments and amending Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) The **recent** financial crisis has exposed weaknesses in the transparency of financial markets **which can contribute to harmful socio-economic effects**. Strengthening transparency is one of the shared principles to strengthen the financial system as confirmed by the G-20 Leaders' Statement in London on 2 April 2009. In order to strengthen the transparency and improve the functioning of the internal market for financial instruments, a new framework establishing uniform requirements for the transparency of transactions in markets for financial instruments should be put in place. The framework should establish comprehensive rules for a broad range of financial instruments. It should complement requirements for the transparency of orders and transactions in respect of shares established in Directive 2004/39/EC of the European Parliament and the Council of 21 April 2004 on markets in financial instruments ⁽³⁾.
- (2) The High Level Group on Financial Supervision in the EU chaired by Jacques de Larosière invited the Union to develop a more harmonised set of financial regulations. In the context of the future European supervision architecture, the European Council of 18 and 19 June 2009 also stressed the need to establish a European single rule book applicable to all financial institutions in the internal market.
- (3) The new legislation should as a consequence consist of two different legal instruments, a directive and this Regulation. Together, both legal instruments should form the legal framework governing the requirements applicable to investment firms, regulated markets and data reporting services providers. This Regulation should therefore be read together with the directive. The need to establish a single set of rules for all institutions in respect of certain requirements and to avoid potential regulatory arbitrage as well as to provide more legal certainty and less regulatory complexity for market participants warrants the use of a legal basis allowing for the creation of a regulation. In order to remove the remaining obstacles to trade and significant distortions of competition resulting from divergences between national laws and to prevent any further likely obstacles to trade and significant distortions of competition from arising, it is therefore necessary to adopt a Regulation establishing uniform rules applicable in all Member States. This directly applicable legal act aims at contributing in a determining manner to the smooth functioning of the internal market and should, consequently, be based on the provisions of Article 114 of the Treaty on the Functioning of the European Union (TFEU), as interpreted in accordance with the consistent case-law of the Court of Justice of the European Union.

⁽¹⁾ OJ C 143, 22.5.2012, p. 74.

⁽²⁾ Position of the European Parliament of 26 October 2012.

⁽³⁾ OJ L 145, 30.4.2004, p. 1.

Friday 26 October 2012

- (4) Directive 2004/39/EC established rules for making the trading in shares admitted to trading on a regulated market pre- and post-trade transparent and for reporting transactions in financial instruments admitted to trading on a regulated market to competent authorities; the Directive needs to be recast in order to appropriately reflect developments in financial markets and to address weaknesses and to close loopholes that were inter alia exposed in the financial market crisis.
- (5) Provisions in respect of trade and regulatory transparency requirements need to take the form of directly applicable law applied to all investment firms that should follow uniform rules in all Union markets, in order to provide for a uniform application of a single regulatory framework, to strengthen confidence in the transparency of markets across the Union, to reduce regulatory complexity and firms' compliance costs, especially for financial institutions operating on a cross-border basis, and to contribute to the elimination of distortions of competition. The adoption of a regulation ensuring direct applicability is best suited to accomplish those regulatory goals and ensure uniform conditions by preventing diverging national requirements as a result of the transposition of a directive.
- (6) The definitions of regulated market and multilateral trading facility (MTF) should be **clarified** and **remain** closely aligned with each other to reflect the fact that they represent **effectively** the same organised trading functionality. The definitions should exclude bilateral systems where an investment firm enters into every trade on own account, even as a riskless counterparty interposed between the buyer and seller. The term 'system' encompasses all those markets that are composed of a set of rules and a trading platform as well as those that only function on the basis of a set of rules. Regulated markets and MTFs are not obliged to operate a 'technical' system for matching orders **and should be able to operate other trading protocols including systems whereby users are able to request quotes from multiple providers**. A market which is only composed of a set of rules that governs aspects related to membership, admission of instruments to trading, trading between members, reporting and, where applicable, transparency obligations is a regulated market or an MTF within the meaning of this Regulation and the transactions concluded under those rules are considered to be concluded under the systems of a regulated market or an MTF. **The definitions require that interests be brought together in such a way as to result in a contract which occurs where execution takes place under the system's rules or by means of the system's protocols or internal operating procedures**. The term 'buying and selling interests' is to be understood in a broad sense and includes orders, quotes and indications of interest. **One of the important requirements concerns the obligation** that the interests be brought together in the system by means of non-discretionary rules set by the system operator means that they are brought together under the system's rules or by means of the system's protocols or internal operating procedures (including procedures embodied in computer software). The term 'non-discretionary rules' means **■ rules that leave the regulated market or the market operator or investment firm operating an MTF with no discretion as to how interests may interact. ■**
- (7) In order to make European markets more transparent and **efficient** to level the playing field between various venues offering **multilateral** trading services it is necessary to introduce a new category of organised trading facility (OTF) **for bonds, structured finance products, emissions allowances and derivatives and to ensure that it is appropriately regulated and applies non-discriminatory rules regarding access to the facility**. This new category is broadly defined so that now and in the future it should be able to capture all types of organised execution and arranging of trading which do not correspond to the functionalities or regulatory specifications of existing venues. Consequently appropriate organisational requirements and transparency rules which support efficient price discovery need to be applied. The new category includes broker crossing systems, which can be described as internal electronic matching systems operated by an investment firm which execute client orders against other client orders. The new category also encompasses systems **which should be** eligible for trading clearing-eligible and sufficiently liquid derivatives **but which do not have the characteristics of the existing categories of trading venue**. **By contrast, it** should not include facilities where there is no genuine trade execution or arranging taking place in the system, such as bulletin boards used for advertising buying and selling interests, other entities aggregating or pooling potential buying or selling interests, or electronic post-trade confirmation services.

Friday 26 October 2012

- (8) This new category of OTF will complement the existing types of trading venues. While regulated markets and MTFs are characterised by non-discretionary execution of transactions, the operator of an OTF should have discretion over how a transaction is to be executed. Consequently, conduct of business rules, best execution and client order handling obligations should apply to the transactions concluded on an OTF operated by an investment firm or a market operator. However, because an OTF **although only accessible to its clients** constitutes a genuine trading platform, the platform operator should be neutral. Therefore, the operator of an OTF should **be subject to requirements in relation to the sound management of potential conflicts of interest and non-discriminatory execution and should** not be allowed to execute in the OTF any transaction between multiple third-party buying and selling interests including client orders brought together in the system against his own proprietary capital. This **should** also exclude them from acting as systematic internalisers in the OTF operated by them.
- (9) All organised trading should be conducted on regulated venues **with maximal pre- and post-trade transparency. Appropriately calibrated transparency requirements should** therefore apply to all types of trading venues, and to all financial instruments traded thereon.
- (10) Trading in depositary receipts, exchange-traded funds, certificates, similar financial instruments and shares other than those admitted to trading on a regulated market takes place in largely the same fashion, and fulfils a nearly identical economic purpose, as trading in shares admitted to trading on a regulated market. Transparency provisions applicable to shares admitted to trading on regulated markets should thus be extended to these instruments.
- (11) While, in principle, acknowledging the need for a regime of waivers from pre-trade transparency to support the efficient functioning of markets, the actual waiver provisions for shares currently applicable on the basis of Directive 2004/39/EC and of Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive ⁽¹⁾, need to be scrutinised as to their continued appropriateness in terms of scope and conditions applicable. In order to ensure a uniform application of the waivers from pre-trade transparency in shares and eventually other similar instruments and non-equity products for specific market models and types and sizes of orders, the European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽²⁾ should assess the compatibility of individual requests for applying a waiver with this Regulation and future delegated acts. ESMA's assessment should take the form of an opinion in accordance with Article 29 of Regulation (EU) No 1095/2010. In addition, the already existing waivers for shares should be reviewed by ESMA within an appropriate timeframe and an assessment should be made, following the same procedure, as to whether they are still in compliance with the rules set out in this Regulation and in delegated acts provided for herein.
- (12) The financial crisis exposed specific weaknesses in the way information on trading opportunities and prices in financial instruments other than shares is available to market participants, namely in terms of timing, granularity, equal access, and reliability. **Timely pre- and post-trade transparency requirements taking account of the different characteristics and market structures of specific types of instruments other than shares should thus be introduced and adapted as necessary so as to be workable for request-for-quote systems, whether automated or involving voice trading.** In order to provide a sound transparency framework for all relevant instruments, these should apply to bonds and structured finance products with a prospectus or which are admitted to trading either on a regulated market or are traded on an MTF or an OTF, to derivatives which are traded or admitted to trading on regulated markets, MTFs and OTFs or considered eligible for central clearing, as well as, in the case of post-trade transparency, to derivatives reported to trade repositories. Thus only those financial instruments which are bespoke in their design **or insufficiently liquid** would be outside the scope of the transparency obligations.

⁽¹⁾ OJ L 241, 2.9.2006, p. 1

⁽²⁾ OJ L 331, 15.12.2010, p. 84.

Friday 26 October 2012

- (13) It is necessary to introduce an appropriate level of trade transparency in markets for bonds, structured finance products and derivatives in order to help the valuation of products as well as the efficiency of price formation. Structured finance products should, in particular, include asset backed securities as defined in Article 2(5) of Regulation (EC) No 809/2004 ⁽¹⁾, comprising among others collateralised debt obligations.
- (13a) *In the interests of legal certainty, it is appropriate to clarify certain exclusions from the scope of this Regulation. While it is important to regulate currency derivatives including currency swaps which give rise to a cash settlement determined by reference to currencies in order to ensure transparency and market integrity spot currency transactions should not fall within the scope of this Regulation. Similarly, it is important to clarify that contracts of insurance in respect of activities of classes set out in Annex I to Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ⁽²⁾ are not derivatives for the purposes of this Regulation if entered into with a Union or third-country insurance or reinsurance undertaking. Furthermore while risks arising from algorithmic trading should be regulated the use of algorithms in post-trade risk reduction services does not constitute algorithmic trading.*
- (14) In order to ensure uniform applicable conditions between trading venues, the same pre- and post-trade transparency requirements should apply to the different types of venues. The transparency requirements should be **proportionate and** calibrated for different types of instruments, including equities, bonds, and derivatives, **taking into account the interests of investors and issuers, including government bond issuers, and market liquidity. The requirements should also be calibrated** for different types of trading, including order-book and quote-driven systems **such as request for quote** as well as hybrid and voice broking systems, and take account of issuance, transaction size and characteristics of national markets.
- (15) In order to ensure that trading carried out over the counter (OTC) does not jeopardise efficient price discovery or a transparent level-playing field between means of trading, appropriate pre-trade transparency requirements should apply to investment firms dealing on own account in financial instruments OTC insofar as it is carried out in their capacity as systematic internalisers in relation to shares, depositary receipts, exchange-traded funds, certificates or other similar financial instruments, and bonds, structured finance products, and clearing-eligible derivatives.
- (16) An investment firm executing client orders against own proprietary capital should be deemed a systematic internaliser, unless the transactions are carried out outside regulated markets, MTFs and OTFs on an **ad hoc** and irregular basis. Systematic internalisers should be defined as investment firms which, on an organised **regular** and systematic basis, deal on own account by executing client orders **bilaterally** outside a regulated market, an MTF or an OTF. In order to ensure the objective and effective application of this definition to investment firms, any bilateral trading carried out **by executing client orders** should be relevant and quantitative criteria **determined by financial instrument or by asset class could** complement the qualitative criteria for the identification of investment firms required to register as systematic internalisers, laid down in Article 21 of Regulation (EC) No 1287/2006. While an OTF is any system or facility in which multiple third-party buying and selling interests interact in the system, a systematic internaliser should not be allowed to bring together third party buying and selling interests. **In order to guarantee the quality of the price formation process it is appropriate to limit the circumstances in which OTC trading can be carried out outside a systematic internaliser and competent authorities should ensure that for shares no participant in a system where an investment firm executes client orders against own proprietary capital is in a privileged position with regard to order execution.**

⁽¹⁾ Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (OJ L 149, 30.4.2004, p. 1).

⁽²⁾ OJ L 335, 17.12.2009, p. 1.

Friday 26 October 2012

- (17) Systematic internalisers may decide to give access to their quotes only to **their** retail clients, only to **their** professional clients, or to both. They should not be allowed to discriminate within those categories of clients **but should be entitled to take account of distinctions between clients, for example in relation to credit risk**. Systematic internalisers are not obliged to publish firm quotes in relation to transactions **in equity instruments** above standard market size **and in non-equity instruments above retail market size**. The standard market size **or retail market size** for any class of financial instrument should not be significantly disproportionate to any financial instrument included in that class.
- (18) It is **appropriate to ensure that as much trading as possible which occurs outside regulated execution venues takes place in organised systems to which appropriate transparency requirements apply while ensuring that large scale and irregular transactions can be concluded**. It is not the intention that this Regulation require the application of pre-trade transparency rules to **OTC** transactions **involving primary issuance**, the characteristics of which include that **the instruments** are **bespoke** and **designed for the specific requirements of eligible financial or non-financial** counterparties **and are part of a business relationship which is itself characterised by dealings above standard market size or standard retail market size, and where the deals are carried out outside the systems usually used by the firm concerned for its business as a systematic internaliser**.
- (19) Market data should be easily and readily available to users in a format as disaggregated as possible to allow investors, and data service providers serving their needs, to customise data solutions to the furthest possible degree. Therefore, pre- and post-trade transparency data should be made available to the public in an "unbundled" fashion in order to reduce costs for market participants when purchasing data **and approved publication arrangements used to ensure the consistency and quality of such data and to enable the delivery of a consolidated tape for post-trade data**.
- (20) 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 on the free movement of such data ⁽¹⁾ and Regulation (EC) 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 ⁽²⁾ should be fully applicable to the exchange, transmission and processing of personal data for the purposes of this Regulation, particularly Title IV, by Member States and ESMA.
- (21) Considering the agreement reached by the parties to the G-20 Pittsburgh summit on 25 September 2009 to move trading in standardised OTC derivative contracts to exchanges or electronic trading platforms where appropriate, a formal regulatory procedure should be defined for mandating trading between financial counterparties and large non-financial counterparties in all derivatives which have been considered to be clearing-eligible and which are sufficiently liquid to take place on a range of trading venues subject to comparable regulation **¶. This Regulation is not intended to prohibit or limit the use of bespoke derivative contracts or make them excessively costly for non-financial institutions. Therefore, the** assessment of sufficient liquidity should take account of market characteristics at national level including elements such as the number and type of market participants in a given market, and of transaction characteristics, such as the size and frequency of transactions in that market. **In addition, this Regulation is not intended to prevent the use of post-trade risk reduction services.**
- (22) Considering the agreement reached by the parties to the G-20 in Pittsburgh on 25 September 2009 to move trading in standardised OTC derivative contracts to exchanges or electronic trading platforms where appropriate on the one hand, and the relatively lower liquidity of various OTC derivatives on the other, it is appropriate to provide for a suitable range of eligible venues on which trading

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

⁽²⁾ OJ L 8, 12.1.2001, p. 1

Friday 26 October 2012

pursuant to this commitment can take place. All eligible venues should be subject to closely aligned regulatory requirements in terms of organisational and operational aspects, arrangements to mitigate conflicts of interest, surveillance of all trading activity, pre-and post-trade transparency calibrated by financial instrument and **trading model**. The possibility for operators of venues to arrange transactions pursuant to this commitment between **their participants** in a discretionary fashion should however be foreseen in order to improve the conditions for execution and liquidity.

- (23) The trading obligation established for these derivatives should allow for efficient competition between eligible trading venues. Therefore those trading venues should not be able to claim exclusive rights in relation to any derivatives subject to this trading obligation preventing other trading venues from offering trading in these instruments. For effective competition between trading venues for derivatives, it is essential that trading venues have non-discriminatory and transparent access to central counterparties (CCPs). Non-discriminatory access to a CCP should mean that a trading venue has the right to non-discriminatory treatment in terms of how contracts traded on its platform are treated in terms of collateral requirements and netting of economically equivalent contracts and cross-margining with correlated contracts cleared by the same CCP, and non-discriminatory clearing fees.
- (24) ***In order to ensure the orderly functioning and integrity of financial markets, investor protection and financial stability it is necessary to provide a mechanism for monitoring of the design of investment products and for powers to prohibit or restrict the marketing, distribution and sale of any investment product or financial instrument giving rise to serious concerns regarding investor protection, the orderly functioning and integrity of financial markets, or the stability of the whole or part of the financial system, together with appropriate coordination and contingency powers for ESMA. The exercise of such powers by competent authorities and, in exceptional cases, by ESMA should be subject to the need to fulfil a number of specific conditions. Where those conditions are met, the competent authority or, in exceptional cases, ESMA should be able to impose a prohibition or restriction on a precautionary basis before an investment product or financial instrument has been marketed, distributed or sold to clients.***
- (25) Competent authorities should notify ESMA of the details of any of their requests to reduce a position in relation to a derivative contract, of any one-off limits, as well as of any ex-ante position limits in order to improve coordination and convergence in how these powers are applied. The essential details of any ex-ante position limits applied by a competent authority should be published on ESMA's website.
- (26) ESMA should be able to request information from any person regarding their position in relation to a derivative contract, to request that position to be reduced, as well as to limit the ability of persons to undertake individual transactions in relation to commodity derivatives. ESMA should then notify relevant competent authorities of measures it proposes to undertake and should also publish those measures.
- (27) The details of transactions in financial instruments should be reported to competent authorities ***through a system coordinated by ESMA***, to enable them to detect and investigate potential cases of market abuse, to monitor the fair and orderly functioning of markets, as well as the activities of investment firms. The scope of such oversight includes all instruments which are admitted to trading on a regulated market ***or traded on a trading venue*** as well as all instruments the value of which depends on or influences the value of those instruments. In order to avoid an unnecessary administrative burden on investment firms, financial instruments not traded in an organised way and that are not susceptible to market abuse should be excluded from the reporting obligation. ***The reports should use a legal entity identifier in line with the G-20 commitments. The Commission should also report on whether the content and format of the reports are sufficient to detect market abuse, on priorities for monitoring given the vast amount of data reported, on whether the identity of the decision-maker responsible for the use of an algorithm is needed, and on specific arrangements needed to ensure robust reporting of securities lending and repurchase agreements so as to enable oversight by all relevant competent authorities.***

Friday 26 October 2012

- (28) In order to serve their purpose as a tool for market monitoring, transaction reports should identify the person who has made the investment decision, as well as those responsible for its execution. **In addition to the transparency regime provided for in Regulation (EU) No 236/2012 by the European Parliament and by the Council of 14 March 2012 on short selling and certain aspects of credit default swaps ⁽¹⁾, the marking of short sales provides useful supplementary information to enable competent authorities to monitor levels of short selling. Investment firms are required to identify whether sales of shares or of debt instruments issued by a sovereign issuer are short sales.** Competent authorities also need to have full access to records at all stages in the order execution process, from the initial decision to trade, through to its execution. Therefore, investment firms are required to keep records of all their transactions in financial instruments, and operators of platforms are required to keep records of all orders submitted to their systems. ESMA should coordinate the exchange of information among competent authorities to ensure that they have access to all records of transactions and orders, including those entered on platforms that operate outside their territory, in financial instruments under their supervision.
- (29) Double reporting of the same information should be avoided. Reports submitted to trade repositories registered or recognised in accordance with Regulation (EU) No 648/2012 for the relevant instruments which contain all the required information for transaction reporting purposes should not need to be reported to competent authorities, but should be transmitted to them by the trade repositories. Regulation (EU) No 648/2012 should be amended to this effect.
- (30) Any exchange or transmission of information by competent authorities should be in accordance with the rules on the transfer of personal data as laid down in 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 on the free movement of such data ⁽²⁾. Any exchange or transmission of information by ESMA should be in accordance with the rules on the transfer of personal data as laid down in Regulation (EC) 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 ⁽³⁾, which should be fully applicable to the processing of personal data for the purposes of this Regulation.
- (31) Regulation (EU) No 648/2012 sets out the criteria according to which classes of OTC derivatives should be subject to the clearing obligation. It also prevents competitive distortions by requiring non-discriminatory access to CCPs offering clearing of OTC derivatives to trading venues and non-discriminatory access to the trade feeds of trading venues to CCPs offering clearing of OTC derivatives. As OTC derivatives are defined as derivatives contracts whose execution does not take place on a regulated market, there is a need to introduce similar requirements for regulated markets under this Regulation. Provided that ESMA has declared them subject to it, derivatives traded on regulated markets should **■** be subject to a clearing obligation **in the same way as those traded elsewhere.**
- (32) In addition to requirements in Directive 2004/39/EC that prevent Member States from unduly restricting access to post-trade infrastructure such as CCP and settlement arrangements, it is necessary that this Regulation removes various other commercial barriers that can be used to prevent competition in the clearing of **transferable securities and money market** instruments. To avoid any discriminatory practices, CCPs should accept to clear transactions executed in different trading venues, to the extent that those venues comply with the operational and technical requirements established by the CCP. Access should only be denied if **such access would clearly threaten the smooth and orderly functioning of the CCP or the functioning of the financial markets in a manner that causes systemic risk.**

⁽¹⁾ OJ L 86, 24.3.2012, p. 1.

⁽²⁾ OJ L 281, 23.11.1995, p. 31.

⁽³⁾ OJ L 8, 12.1.2001, p. 1.

Friday 26 October 2012

- (33) Trading venues should also be required to provide access including data feeds on a transparent and non-discriminatory basis to CCPs that wish to clear transactions executed on the trading venue **except where such access would threaten the smooth or orderly functioning of markets. The right of access of a CCP to a trading venue should allow for arrangements whereby multiple CCPs are using trade feeds of the same trading venue. However, this should not lead to interoperability for derivatives clearing or create liquidity fragmentation.** The removal of barriers and discriminatory practices is intended to increase competition for clearing and trading of financial instruments in order to lower investment and borrowing costs, eliminate inefficiencies and foster innovation in Union markets. The Commission should continue to closely monitor the evolution of post-trade infrastructure and should, where necessary, intervene in order to prevent competitive distortions from occurring in the internal market.
- (34) The provision of services by third-country firms in the Union is subject to national regimes and requirements. Those regimes are highly differentiated and the firms authorised in accordance with them do not enjoy the freedom to provide services and the right of establishment in Member States other than the one where they are established. It is appropriate to introduce a common regulatory framework at Union level. The regime should harmonize the existing fragmented framework, ensure certainty and uniform treatment of third-country firms accessing the Union, ensure that **an assessment of effective equivalence** has been carried out by the Commission in relation to the regulatory and supervisory framework of third countries and should provide for a comparable level of protections to **clients** in the Union receiving services by third-country firms **and reciprocal access to third-country markets. In applying the regime the Commission and Member States should prioritise the areas covered by the G-20 commitments and agreements with the Union's largest trading partners and should have regard to the central role that the Union plays in worldwide financial markets and ensure that the application of third-country requirements does not prevent Union investors and issuers from investing in or obtaining funding from third countries or third-country investors and issuers from investing, raising capital or obtaining other financial services in Union markets unless this is necessary for objective and evidence-based prudential reasons.**
- (35) The provision of services to retail clients **or retail clients who have opted to be treated as professional clients within the Union** should always require the establishment of a branch in the Union. The establishment of the branch **should** 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. The provision of services without branches should be limited to eligible counterparties **and non-opted up professional clients**. 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.
- (36) The provisions of this Regulation regulating the provision of services **or undertaking of activities** by third-country firms in the Union should not affect the possibility for persons established in the Union to receive investment services by a third-country firm **in the Union** at their own exclusive initiative **or for Union investment firms or credit institutions to receive investment services or activities from a third-country firm or for a client to receive investment services from a third-country firm through the mediation of such a credit institution or investment firm.** Where a third-country firm provides services at own exclusive initiative of a person established in the Union, the services should not be deemed as provided in the territory of the Union. Where a third-country firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union, it should not be deemed as a service provided at the own exclusive initiative of the client.
- (37) A range of fraudulent practices have occurred in spot secondary markets in emission allowances (EUAs) which could undermine trust in the emissions trading schemes, set up by Directive 2003/87/EC, and measures are being taken to strengthen the system of EUA registries and conditions for opening an account to trade EUAs. In order to reinforce the integrity and safeguard the efficient functioning of those markets, including comprehensive supervision of trading activity, it is appropriate to complement measures taken under Directive 2003/87/EC by bringing emission allowances fully into the scope of this Directive and of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) ⁽¹⁾ **█**.

⁽¹⁾ OJ L 96, 12.4.2002, p. 16.

Friday 26 October 2012

- (38) The **power** to adopt delegated acts in accordance with Article 290 TFEU should be **delegated to the Commission** in respect of **the specification of certain** definitions; the precise characteristics of trade transparency requirements; detailed conditions for waivers from pre-trade transparency; deferred post-trade publication arrangements; criteria for the application of the pre-trade transparency obligations for systematic internalisers; specific cost-related provisions related to the availability of market data; the criteria for granting or refusing access between trading venues and CCPs; and the further determination of conditions under which threats to investor protection, the orderly functioning and integrity of financial markets, or the stability of the whole or part of the financial system of the Union may warrant ESMA action. **It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level and in particular with ESMA. 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.**
- (39) **In order to ensure uniform conditions for the implementation of this Regulation**, implementing powers **should be conferred on the Commission. Those powers should relate** to the adoption of the equivalence decision concerning third-country legal and supervisory frameworks for the provision of services by third-country firms 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 ⁽¹⁾.
- (40) Since the objectives of this Regulation, namely to establish uniform requirements relating to financial instruments in relation to disclosure of trade data, reporting of transactions to the competent authorities, trading of derivatives on organised venues, non-discriminatory access to clearing, product intervention powers and powers on position management and position limits, provision of investment services or activities by third-country firms cannot be sufficiently achieved by the Member States, because, although national competent authorities are better placed to monitor market developments, the overall impact of the problems related to trade transparency, transaction reporting, derivatives trading, and bans of products and practices can only be fully perceived in a Union-wide context, and can therefore, by reason of its scale and effects, be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (41) Technical standards in financial services should ensure adequate protection of depositors, investors and consumers across the Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA, with the elaboration of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission.
- (42) The Commission should adopt the draft regulatory technical standards developed by ESMA regarding the content and specifications of transaction reports, **specifying the types of derivative contracts which have a direct, substantial and foreseeable effect within the Union, specifying whether a class of derivatives declared subject to the clearing obligation under Regulation (EU) No 648/2012 or a relevant subset thereof should be traded only on organised trading venues**, regarding the liquidity criteria for derivatives to be considered subject to an obligation to trade on organised trading venues, and concerning the information that the applicant third-country firm should provide to ESMA in its application for registration. **The Commission should adopt those 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**.

I

⁽¹⁾ OJ L 55, 28.2.2011, p. 13.

Friday 26 October 2012

- (44) The application of the requirements in this Regulation should be deferred in order to align applicability with the application of the transposed rules of the recast Directive and to establish all essential implementing measures. The entire regulatory package should then be applied from the same point in time. Only the application of the empowerments for implementing measures should not be deferred so that the necessary steps to draft and adopt these implementing measures can start as early as possible.
- (45) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, in particular the right to the protection of personal data (Article 8), the freedom to conduct a business (Article 16), the right to consumer protection (Article 38), the right to an effective remedy and to a fair trial (Article 47), and the right not to be tried or punished twice for the same offence (Article 50), and has to be applied in accordance with those rights and principles.

(45a) The European Data Protection Supervisor has been consulted,

HAVE ADOPTED THIS REGULATION:

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

1. This Regulation establishes uniform requirements in relation to the following:
 - (a) disclosure of trade data to the public;
 - (b) reporting of transactions to the competent authorities;
 - (c) trading of derivatives on organised venues;
 - (d) non-discriminatory access to clearing and non-discriminatory access to trading in benchmarks;
 - (e) product intervention powers of competent authorities and ESMA and powers of ESMA on position management and position limits;
 - (f) provision of investment services or activities without a branch by third-country firms.
 2. This Regulation applies to **credit institutions authorised under Directive 2006/48/EC** and investment firms **■** authorised under Directive **.../.../EU** [new MiFID] where **the credit institution or investment firm is** providing one or more investment services and/or performing investment activities, and **to market operators**.
 3. Title V of this Regulation also applies to all financial counterparties as defined in **Article [2(8)] of Regulation (EU) No 648/2012** and all non-financial counterparties falling under **Article 10(1)(b)** of that Regulation.
 4. Title VI of this Regulation also applies to central counterparties (CCPs) and persons with proprietary rights to benchmarks.
- 4a. Title VII of this Regulation also applies to all financial counterparties as defined in Article 2(8) of Regulation (EU) No 648/2012.**

Friday 26 October 2012

4b. Title VIII of this Regulation applies to third-country firms providing investment services or activities within a Member State other than through a branch in a Member State.

Article 2

Definitions

1. For the purposes of this Regulation, the following definitions shall apply:

(1) 'investment firm' means any legal person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis;

Member States may include in the definition of investment firms undertakings which are not legal persons, provided that:

(a) their legal status ensures a level of protection for third parties' interests equivalent to that afforded by legal persons, and

(b) they are subject to equivalent prudential supervision appropriate to their legal form.

However, where a natural person provides services involving the holding of third parties' funds or transferable securities, that person may be considered as an investment firm for the purposes of this Regulation and of Directive .../.../EU [new MiFID] only if, without prejudice to the other requirements imposed in Directive .../.../EU [new MiFID], in this Regulation and in Directive .../.../EU [new CRD], he complies with the following conditions:

(a) the ownership rights of third parties in instruments and funds must be safeguarded, especially in the event of the insolvency of the firm or of its proprietors, seizure, set-off or any other action by creditors of the firm or of its proprietors;

(b) the firm must be subject to rules designed to monitor the firm's solvency and that of its proprietors;

(c) the firm's annual accounts must be audited by one or more persons empowered, under national law, to audit accounts;

(d) where the firm has only one proprietor, he must make provision for the protection of investors in the event of the firm's cessation of business following his death, his incapacity or any other such event;

(2) 'credit institution' means credit institution within the meaning of point (1) of Article 4 of Directive 2006/48/EC;

(2a) '**multilateral system**' means a system that brings together or facilitates the bringing together of multiple buying and selling interests in financial instruments, irrespective of the actual number of orders that are executed in the resulting transactions;

(2b) '**bilateral system**' means a system that brings together or facilitates the bringing together of buying and selling interests in financial instruments whereby the investment firm operating the system only executes client orders by dealing on own account;

(2c) '**over-the-counter trading**' means bilateral trading which is carried out by an eligible counterparty on its own account, outside a trading venue or a systematic internaliser, on an occasional and irregular basis with eligible counterparties and always at large in scale sizes;

Friday 26 October 2012

- (3) 'systematic internaliser' means an investment firm which, on an organised, **regular** and systematic basis, deals on own account by executing client orders outside a regulated market, a multilateral trading facility or an organised trading facility, **in a bilateral system**;
- (4) 'market operator' means a person or persons who manages and/or operates the business of a regulated market. The market operator may be the regulated market itself;
- (5) 'regulated market' means a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III of Directive .../.../EU [new MiFID];
- (6) 'multilateral trading facility' means a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with the provisions of Title II of Directive .../.../EU [new MiFID];
- (7) 'organised trading facility' means **a multilateral** system or facility, which is not a regulated market, a multilateral trading facility **or a central counterparty**, operated by an investment firm or a market operator, in which multiple third-party buying and selling interests in **bonds, structured finance products, emission allowances or derivatives** are able to interact in the system in a way that results in a contract in accordance with the provisions of Title II of Directive .../.../EU [new MiFID];
- (8) 'financial instrument' means those instruments specified in Section C of Annex I to Directive .../.../EU [new MiFID];
- (9) 'transferable securities' means those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as:
 - (a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;
 - (b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities;
 - (c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures;
- (10) 'depositary receipts' means those securities which are negotiable on the capital market and which represent ownership of the securities of a non-domiciled issuer while being able to be admitted to trading on a regulated market and traded independently of the securities of the non-domiciled issuer;
- (11) 'exchange-traded funds' **means funds at least one unit or share class of which are traded throughout the day on at least one regulated market, a multilateral trading facility or organised trading facility with at least one market maker which takes action to ensure that the stock exchange value of its units or shares does not significantly vary from their net asset value and where applicable its indicative net asset value**;

Friday 26 October 2012

- (12) 'certificates' means those securities which are negotiable on the capital market and which in case of a repayment of investment by the issuer are ranked above shares but below unsecured bond instruments and other similar instruments;
- (13) 'structured finance products' means those securities created to securitise and transfer credit risk associated with a pool of financial assets entitling the security holder to receive regular payments that depend on the cash flow from the underlying assets;
- (14) 'derivatives' means those financial instruments defined in paragraph 9(c) of Directive .../.../EU [new MiFID] and referred to in Annex I, Section C (4) to (10) thereto;
- (15) 'commodity derivatives' means those financial instruments defined in paragraph 9(c) of Directive .../.../EU [new MiFID] relating to a commodity or an underlying referred to in points (5), (6), (7) or (10) of Section C of Annex I thereto;
- (16) 'actionable indication of interest' means a message from one participants to another in a trading system about available trading interest that contains all necessary information to agree on a trade;
- (17) 'competent authority' means the authority, designated by each Member State in accordance with **Article 69** of Directive .../.../EU [new MiFID], unless otherwise specified in that Directive;
- (18) 'approved publication arrangement' means a person authorised under the provisions established in Directive .../.../EU [new MiFID] to provide the service of publishing trade reports on behalf of **trading venues or** investment firms pursuant to Articles **5, 9, 11** and 12 of this Regulation;
- (19) 'consolidated tape provider' means a person authorised under the provisions established in Directive .../.../EU [new MiFID] to provide the service of collecting trade reports for financial instruments listed in Articles 5, 6, 11 and 12 of this Regulation from regulated markets, multilateral trading facilities, organised trading facilities and **approved publication arrangements** and consolidating them into a continuous electronic live data stream providing real-time **and, where provided for in Article 66(1) and (2) of Directive .../.../EU [new MiFID], delayed** price and volume data per financial instrument;
- (20) 'approved reporting mechanism' means a person authorised under the provisions established in Directive .../.../EU [new MiFID] to provide the service of reporting details of transactions to competent authorities or ESMA on behalf of investment firms;
- (21) 'management body' means the governing body **of an investment firm, market operator or** of a data reporting services provider, comprising the supervisory and the managerial functions, which has the ultimate decision-making authority and is empowered to set the **investment firm's, the market operator's or the data services provider's** strategy, objectives and overall direction, **including** persons who effectively direct the business of the entity;
-
- (24) 'benchmark **index**' means any **tradable or broadly used** commercial index or published figure calculated by the application of a formula to the value of one or more underlying assets or prices, **including estimated prices, interest rates or other values or surveys**, by reference to which the amount payable under a financial instrument is determined, **which acts as the standard measure of the performance of the relevant assets or class or group of assets**;
- (25) 'trading venue' means a regulated market, a multilateral trading facility or an organised trading facility;

Friday 26 October 2012

- (26) 'CCP' means a CCP within the meaning of **point (1) of Article 2** of Regulation (EU) No 648/2012.
- (26a) 'interoperability arrangement' means an interoperability arrangement within the meaning of point (12) of Article 2 of Regulation (EU) No 648/2012.**
- (27) 'investment services and activities' means the services and activities **within the meaning of point (1) of Article 4(2)** of Directive .../.../EU [new MiFID].
- (28) 'third-country financial institution' means an entity, the head office of which is established in a third country, that is authorised or licensed under the law of that third country to carry on any of the activities listed in Directive 2006/48/EC, Directive .../.../EU [new MiFID], Directive 2009/138/EC, Directive 2009/65/EC, Directive 2003/41/EC or Directive 2011/61/EU.
- (28a) 'third-country firm' means a third-country firm within the meaning of point (33d) of Article 4(2) of Directive .../.../EU [new MiFID]**
- (29) 'wholesale energy product' means those contracts and derivatives within the meaning of Article 2(4) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency ⁽¹⁾.
- (29a) 'primary issuance' means a transaction in instruments with bespoke material terms designed for the specific requirements of financial or non-financial counterparties which would be classified as eligible counterparties or professional clients according to Article 30 of Directive .../.../EU [new MiFID] and Annex II thereto.**

2 The definitions provided in **Article 4(2) of Directive .../.../EU [new MiFID] also apply to this Regulation.**

3. The Commission **shall be empowered to** adopt delegated acts in accordance with Article 41, **after consulting ESMA**, specifying **certain** technical elements of the definitions laid down in **points (3), (7), (10) to (16), (18) to (26a), (28) and (29) of** paragraph 1 to adjust them to market development.

Article 2a

Obligation to trade over the counter (OTC) through systematic internalisers

1. All transactions in shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments, which are not intragroup transactions as referred to in Article 3 of Regulation (EU) No 648/2012, which meet the thresholds in Article 13 of this Regulation, and which are not concluded on a regulated market or a multilateral trading facility (MTF) shall be concluded through a systematic internaliser unless the transaction involves the primary issuance of the instrument. This requirement shall not apply to transactions which are large in scale as determined in accordance with Article 4.

2. All transactions in bonds, structured finance products admitted to trading on a regulated market or for which a prospectus has been published, emission allowances and derivatives which are eligible for clearing or which are admitted to trading on a regulated market or are traded on an MTF or an organised trading facility (OTF) and which are not subject to the trading obligation under Article 26, which are not concluded on a regulated market, an MTF, an OTF or a third-country trading venue assessed as equivalent in accordance with Article 26(4), and which meet the thresholds in Article 17, shall be concluded through a systematic internaliser unless the transaction involves the primary issuance of the instrument. This requirement shall not apply to transactions which are large in scale as determined in accordance with Article 8.

⁽¹⁾ OJ L 326, 8.12.2011, p. 1.

Friday 26 October 2012

3. *Where a financial instrument listed in paragraph 1 or 2 is admitted to trading on a regulated market or is traded on an MTF or an OTF and no systematic internaliser is available, transactions may be carried out OTC other than through a systematic internaliser, the characteristics of which are that the transaction is ad hoc and irregular, where:*

(a) the parties to the transaction are eligible counterparties or professional clients; and:

(b) the transaction is large in scale; or

(c) there is not a liquid market for the bond or class of bond, as determined in accordance with Articles 7, 8, 13 and 17.

TITLE II

TRANSPARENCY FOR TRADING VENUES **WITH MULTILATERAL SYSTEMS**

CHAPTER 1

TRANSPARENCY FOR EQUITY INSTRUMENTS

Article 3

Pre-trade transparency requirements for trading venues in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments

1. Regulated markets and investment firms and market operators operating an MTF **■** shall make public current bid and offer prices and the depth of trading interests at those prices which are advertised through their systems for shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments admitted to trading **on a regulated market** or which are traded on an MTF **■**. This requirement shall also apply to actionable indications of interests. Regulated markets and investment firms and market operators operating an MTF **■** shall make this information available to the public on a continuous basis during normal trading hours.

2. Regulated markets and investment firms and market operators operating an MTF **■** shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information under the first paragraph to investment firms which are obliged to publish their quotes in shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments pursuant to Article 13.

Article 4

■ *Waivers for equity instruments*

1. Competent authorities shall be able to waive the obligation for regulated markets and investment firms and market operators operating an MTF **■** to make public the information referred to in Article 3(1) based on the market model or the type and size of orders in the cases defined in accordance with paragraph 3. In particular, the competent authorities shall be able to waive the obligation in respect of: **■**

— orders that are large in scale compared with normal market size for the share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument **concerned, or**

— **a trading methodology by which the price is determined in accordance with a reference price generated by another system, where that reference price is widely published and is generally regarded by market participants as a reliable reference price.**

Friday 26 October 2012

2. Before granting a waiver in accordance with paragraph 1, competent authorities shall notify ESMA and other competent authorities of the intended use of each individual waiver request and provide an explanation regarding its functioning. Notification of the intention to grant a waiver shall be made not less than **four months** before the waiver is intended to take effect. Within **two months** following receipt of the notification, ESMA shall issue **a non-binding** opinion to the competent authority in question assessing the compatibility of each waiver with the requirements established in paragraph 1 and specified in the delegated act adopted pursuant to paragraphs 3(b) and (c). **A competent authority shall only grant waivers upon a non-binding opinion by ESMA.** Where that competent authority grants a waiver and a competent authority of another Member State disagrees with this, that competent authority may refer the matter back to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010. ESMA shall monitor the application of the waivers and shall submit an annual report to the Commission on how they are applied in practice.

2a. A competent authority may withdraw a waiver granted under paragraph 1, as specified pursuant to paragraph 3 if it observes that the waiver is being used in a way that deviates from its original purpose or if it believes that the waiver is being used to circumvent the rules established in this Article.

Before withdrawing the waiver, and as soon as possible, the competent authority shall notify ESMA and other competent authorities of its intention providing full reasons. Within one month of receipt of the notification, ESMA shall issue a non-binding opinion to the competent authority in question. After receiving the opinion, the competent authority shall make its decision effective.

3. The Commission shall adopt, by means of delegated acts in accordance with Article 41, measures specifying:

- (a) the range of bid and offers or designated market-maker quotes, and the depth of trading interest at those prices, to be made public for each class of financial instrument concerned;
- (b) the size or type of orders for which pre-trade disclosure may be waived under paragraph 1 for each class of financial instrument concerned;
- (c) **the detailed arrangements for applying the pre-trade disclosure obligation in Article 3** to trading methods operated by regulated markets **and MTFs** which conclude transactions **■** by periodic auction for each class of financial instrument concerned **or through negotiated transactions.**

4. Waivers granted by competent authorities in accordance with Article 29(2) and Article 44(2) of Directive 2004/39/EC and Articles 18, 19 and 20 of Regulation (EC) No 1287/2006 before ... (*) shall be reviewed by ESMA by ... (**). ESMA shall issue an opinion to the competent authority in question assessing the continued compatibility of each of those waivers with the requirements established in this Regulation and any delegated act based on this Regulation.

Article 5

Post-trade transparency requirements for trading venues in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments

1. Regulated markets and investment firms and market operators operating an MTF **■** shall make public **through an approved publication arrangement (APA)** the price, volume and time of the transactions executed in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments admitted to trading **on a regulated market** or which are traded on an MTF **■**. Regulated markets and investment firms and market operators operating an MTF **■** shall make details of all such transactions public as close to real-time as is technically possible.

(*) 18 months after the date of entry into force of this Regulation.

(**) 42 months after the date of entry into force of this Regulation.

Friday 26 October 2012

2. Regulated markets and investment firms and market operators operating an MTF **■** shall give *effective* access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information under paragraph 1 to investment firms which are obliged to publish the details of their transactions in shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments pursuant to Article 19.

Article 6

Authorisation of deferred publication

1. Competent authorities shall be able to authorise regulated markets to provide for deferred publication of the details of transactions based on their type or size. In particular, competent authorities may authorise deferred publication in respect of transactions that are large in scale compared with the normal market size for that share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument or that class of share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument. Regulated markets and investment firms and market operators operating an MTF **■** shall obtain the competent authority's prior approval of proposed arrangements for deferred trade-publication, and shall clearly disclose these arrangements to market participants and the public. ESMA shall monitor the application of these arrangements for deferred trade-publication and shall submit an annual report to the Commission on how they are applied in practice.

Where a competent authority authorises deferred publication and a competent authority of another Member State disagrees with this or disagrees with the effective application of the authorisation granted, that competent authority may refer the matter back to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

2. The Commission shall adopt, by means of delegated acts in accordance with Article 41, measures specifying:

- (a) the details that need to be specified by regulated markets, investment firms, including systematic internalisers and investment firms and regulated markets operating a MTF **■** in the information to be made available to the public for each class of financial instrument concerned;
- (b) the conditions for authorising a regulated market, an investment firm, including a systematic internaliser or an investment firm or market operator operating an MTF **■** for a deferred publication of trades and the criteria to be applied when deciding the transactions for which, due to their size, or the type, ***including liquidity profile, of the*** share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument involved, deferred publication is allowed for each class of financial instrument concerned.

CHAPTER 2

TRANSPARENCY FOR NON-EQUITY INSTRUMENTS

Article 7

Pre-trade transparency requirements for trading venues in respect of bonds, structured finance products, emission allowances and derivatives

1. Regulated markets and investment firms and market operators operating an MTF or an OTF based on the trading system operated shall make public prices and the depth of trading interests at those prices for orders or quotes advertised through their systems for bonds and structured finance products admitted to trading on a regulated market or for which a prospectus has been published ***and that are sufficiently liquid,*** emission allowances and for derivatives ***which are subject to the trading obligation referred to in Article 24.*** This requirement shall also apply to actionable indications of interests. Regulated markets and investment

Friday 26 October 2012

firms and market operators operating an MTF or an OTF shall make this information available to the public on a continuous basis during normal trading hours. **That publication obligation does not apply to those derivative transactions of non-financial counterparties which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group.**

The requirements set out in the first subparagraph shall be calibrated to the size of issue and transaction size and shall take into account the interests of both issuers and investors and financial stability. The requirements set out in this Article shall only apply to those financial instruments which are determined to be sufficiently liquid or for which there is a liquid market. Where transactions are negotiated between eligible counterparties and professional clients through voice negotiation pre-trade indicative prices must be published as close to the transaction price as reasonably practicable.

2. Regulated markets and investment firms and market operators operating an MTF or an OTF shall give **effective** access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information referred to in the first paragraph to investment firms which are obliged to publish their quotes in bonds, structured finance products, emission allowances and derivatives pursuant to Article 17.

Article 8

■ Waivers relating to non-equity instruments

1. Competent authorities shall be able to waive the obligation for regulated markets and investment firms and market operators operating an MTF or an OTF to make public the information referred to in Article 7(1) for specific sets of products based on the ■ **liquidity and other criteria** defined in accordance with paragraph 4.

2. Competent authorities shall be able to waive the obligation for regulated markets and investment firms and market operators operating an MTF or an OTF to make public the information referred to in Article 7(1) based on the type and size of orders and method of trading in accordance with paragraph 4 of this Article. In particular, the competent authorities shall be able to waive the obligation in respect of orders that are large in scale compared with normal market size for the bond, structured finance product, emission allowance or derivative or type of bond, structured finance product, emission allowance or derivative in question.

3. Before granting a waiver in accordance with paragraphs 1 and 2, competent authorities shall notify ESMA and other competent authorities of its intended use and provide an explanation regarding its functioning. Notification of the intention to grant a waiver shall be made not less than **four months** before the waiver is intended to take effect. Within **two months** following receipt of the notification, ESMA shall issue **a non-binding** opinion to the competent authority in question assessing the compatibility of each individual waiver request with the requirements established in paragraphs 1 and 2 and specified in the delegated act adopted pursuant to paragraph 4(b). **A competent authority shall only grant waivers upon a non-binding opinion by ESMA.** Where that competent authority grants a waiver and a competent authority of another Member State disagrees with this, that competent authority may refer the matter back to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010. ESMA shall monitor the application of the waivers and shall submit an annual report to the Commission on how they are applied in practice.

3a. A competent authority may withdraw a waiver granted under paragraph 1, as specified pursuant to paragraph 4, if it observes that the waiver is being used in a way that deviates from its original purpose or if it believes that the waiver is being used to circumvent the rules established in this Article.

Before withdrawing the waiver, and as soon as possible, the competent authorities shall notify ESMA and other competent authorities of its intention, providing full reasons. Within one month of receipt of the notification, ESMA shall issue a non-binding opinion to the competent authority in question. After receiving the opinion, the competent authority shall make its decision effective.

Friday 26 October 2012

3b. *Where the liquidity of a bond or class of bonds falls below the threshold determined in accordance with paragraph 3c, the obligations referred to in Article 7(1) may be temporarily suspended by a competent authority responsible for supervising one or more trading venues on which the financial instrument is traded. This threshold shall be defined based on objective criteria.*

The suspension shall be valid for an initial period not exceeding three months from the date of its publication on the website of the relevant competent authority. The suspension may be renewed for further periods not exceeding three months at a time if the grounds for the suspension continue to be applicable. If the suspension is not renewed after any three-month period, it shall automatically expire.

Before suspending or renewing the suspension under this paragraph, the relevant competent authority shall notify ESMA of its proposal, providing full reasons. ESMA shall issue an opinion to the competent authority as soon as practicable on whether in its view the conditions referred to in this paragraph have arisen.

3c. *ESMA shall develop draft regulatory technical standards specifying the parameters and methods for calculating the threshold of liquidity referred to in paragraph 1.*

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 the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

The parameters and methods for Member States to calculate the threshold shall be set in such a way that when the threshold is reached, it represents a significant decline in turnover on trading venues supervised by the notifying authority relative to the average level of turnover on those venues for the financial instrument concerned.

4. The Commission shall adopt, by means of delegated acts in accordance with Article 41, measures specifying:

(a) the range of orders or quotes, the prices and the depth of trading interest at those prices, to be made public for each class of financial instrument concerned in accordance with Article 7(1);

(aa) *the calibration of the requirements in Article 7(1) and Article 17(1) for the size of issue and transaction size and for the publication of pre-trade indicative prices in negotiated transactions; and*

(b) the conditions under which pre-trade disclosure may be waived for each class of financial instrument concerned in accordance with paragraphs 1 and 2, based on the following:

■

(iii) the liquidity profile, including the number and type of market participants in a given market and any other relevant criteria for assessing liquidity **for a particular financial instrument;**

(*) 12 months after the date of entry into force of this Regulation. [Am. 4]

Friday 26 October 2012

- (iv) the size or type of orders, **in particular to allow for appropriate differentiation between retail and other markets**, and the size and type of an issue of a financial instrument.

■

Article 9

Post-trade transparency requirements for trading venues in respect of bonds, structured finance products, emission allowances and derivatives

1. Regulated markets and investment firms and market operators operating an MTF or an OTF shall make public, **through an APA**, the price, volume and time of the transactions executed in respect of bonds and structured finance products admitted to trading on a regulated market or for which a prospectus has been published, emission allowances and for derivatives admitted to trading **on a regulated market** or which are traded on an MTF or an OTF. Regulated markets and investment firms and market operators operating an MTF or an OTF shall make details of all such transactions public as close to real-time as is technically possible.

2. Regulated markets and investment firms and market operators operating an MTF or an OTF shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information under the first paragraph to investment firms which are obliged to publish the details of their transactions in bonds, structured finance products, emission allowances and derivatives pursuant to Article 20.

Article 10

Authorisation of deferred publication

1. Competent authorities shall be able to authorise regulated markets and investment firms and market operators operating an MTF or an OTF to provide for deferred publication of the details of transactions based on their type or size **and the liquidity profile of the financial instrument**. In particular, the competent authorities may authorise the deferred publication in respect of transactions that **are over EUR 100 000 or** are **otherwise** large in scale compared with the normal market size for that bond, structured finance product, emission allowance or derivative or that class of bond, structured finance product, emission allowance or derivative **or where liquidity falls below the threshold determined in accordance with Article 8(3b)**.

2. Regulated markets and investment firms and market operators operating an MTF or an OTF shall obtain the competent authority's prior approval of proposed arrangements for deferred trade-publication, and shall clearly disclose these arrangements to market participants and the investing public. ESMA shall monitor the application of these arrangements for deferred trade-publication and shall submit an annual report to the Commission on how they are used in practice.

3. The Commission shall adopt, by means of delegated acts in accordance with Article 41, measures specifying:

- (a) the details that need to be specified by regulated markets, investment firms, including systematic internalisers and investment firms and regulated markets operating a MTF or an OTF in the information to be made available to the public for each class of financial instrument concerned;
- (b) the conditions for authorising for each class of financial instrument concerned a deferred publication of trades for a regulated market, an investment firm, including a systematic internaliser or an investment firm or market operator operating an MTF or an OTF and the criteria to be applied when deciding the transactions for which, due to their size or the type, **including liquidity profile, of the bond, structured finance product, emission allowance or derivative involved, deferred publication and/or the omission of the volume of the transaction and the aggregation of transactions** is allowed.

Friday 26 October 2012

CHAPTER 3

OBLIGATION TO OFFER TRADE DATA ON A SEPARATE AND REASONABLE COMMERCIAL BASIS

Article 11

Obligation to make pre- and post-trade data available separately

1. Regulated markets and market operators and investment firms operating MTFs and, **where applicable**, OTFs shall make the information published in accordance with Articles 3 to 10 available to the public by offering pre- and post-trade transparency data separately.
2. The Commission **shall, after consulting ESMA**, adopt delegated acts in accordance with Article 41 specifying the offering pre- and post-trade transparency data, including the level of disaggregation of the data to be made available to the public as referred to in paragraph 1.

Article 12

Obligation to make pre- and post-trade data available on a reasonable commercial basis

1. Regulated markets, MTFs and, **where applicable**, OTFs shall make the information published in accordance with Articles 3 to 10 available to the public on a reasonable commercial basis **and ensure effective non-discriminatory access to the information**. The information shall be made available free of charge 15 minutes after the publication of a transaction.
2. The Commission may adopt delegated acts in accordance with Article 41 clarifying what constitutes a reasonable commercial basis to make information public as referred to in paragraph 1.

TITLE III

TRANSPARENCY FOR SYSTEMATIC INTERNALISERS AND INVESTMENT FIRMS TRADING OTC

Article 13

Obligation for investment firms to make public firm quotes

1. Systematic internalisers in shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments shall publish a firm quote in those shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments admitted to trading on a regulated market or traded on an MTF **■** for which they are systematic internalisers and for which there is a liquid market. In the case of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments for which there is not a liquid market, systematic internalisers shall disclose quotes to their clients on request.
2. This Article and Articles 14, 15 and 16 shall apply to systematic internalisers when dealing for sizes up to standard market size. Systematic internalisers that only deal in sizes above standard market size shall not be subject to the provisions of this Article.
3. Systematic internalisers may decide the size or sizes at which they will quote. The minimum quote size shall at least be the equivalent of 10 % of the standard market size of a share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument. For a particular share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument each quote shall include a firm bid and offer price or prices for a size or sizes which could be up to standard market size for the class of shares, depositary receipts, exchange-traded funds, certificates or other similar financial instruments to which the financial instrument belongs. The price or prices shall also reflect the prevailing market conditions for that share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument.

Friday 26 October 2012

4. Shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments shall be grouped in classes on the basis of the arithmetic average value of the orders executed in the market for that financial instrument. The standard market size for each class of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments shall be a size representative of the arithmetic average value of the orders executed in the market for the financial instruments included in each class.

5. The market for each share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument shall be comprised of all orders executed in the European Union in respect of that financial instrument excluding those large in scale compared to normal market size.

6. The competent authority of the most relevant market in terms of liquidity as defined in Article 23 for each share, depositary receipt, exchange-traded fund, certificate and other similar financial instrument shall determine at least annually, on the basis of the arithmetic average value of the orders executed in the market in respect of that financial instrument, the class to which it belongs. This information shall be made public to all market participants **and communicated to ESMA which shall publish the information on its website.**

7. In order to ensure the efficient valuation of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and maximises the possibility of investment firms of obtaining the best deal for their clients the Commission shall adopt, by means of delegated acts in accordance with Article 41, measures specifying the elements related to the publication of a firm quote as referred to in paragraph 1 and to the standard market size as referred to in paragraph 2.

Article 14

Execution of client orders

1. Systematic internalisers shall make public their quotes on a regular and continuous basis during normal trading hours. They may update their quotes at any time. They shall also be allowed, under exceptional market conditions, to withdraw their quotes.

The quote shall be made public in a manner which is easily accessible to other market participants on a reasonable commercial basis.

2. Systematic internalisers shall, while complying with the provisions set down in Article 27 of Directive .../.../EU [new MiFID], execute the orders they receive from their clients in relation to the shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments for which they are systematic internalisers at the quoted prices at the time of reception of the order.

However, they may execute those orders at a better price in justified cases provided that this price falls within a public range close to market conditions.

3. Systematic internalisers may also execute orders they receive from their professional clients at prices different than their quoted ones without having to comply with the requirements established in paragraph 2, in respect of transactions where execution in several securities is part of one transaction or in respect of orders that are subject to conditions other than the current market price.

4. Where a systematic internaliser quoting only one quote or whose highest quote is lower than the standard market size receives an order from a client of a size bigger than its quotation size, but lower than the standard market size, it may decide to execute that part of the order which exceeds its quotation size, provided that it is executed at the quoted price, except where otherwise permitted under the conditions of the previous two paragraphs. Where the systematic internaliser is quoting in different sizes and receives an order between those sizes, which it chooses to execute, it shall execute the order at one of the quoted prices in compliance with the provisions of Article 28 of Directive .../.../EU [new MiFID], except where otherwise permitted under the conditions of paragraphs 2 and 3 of this Article.

Friday 26 October 2012

5. In order to ensure the efficient valuation of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and maximises the possibility of investment firms of obtaining the best deal for their clients the Commission shall adopt delegated acts in accordance with Article 41 specifying the criteria specifying when prices fall within a public range close to market conditions as referred to in paragraph 2.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 41, **after consulting ESMA**, clarifying what constitutes a reasonable commercial basis to make quotes public as referred to in paragraph 1.

Article 15

Obligations of competent authorities

The competent authorities shall check the following:

- (a) that investment firms regularly update bid and offer prices published in accordance with Article 13 and maintain prices which reflect the prevailing market conditions;
- (b) that investment firms comply with the conditions for price improvement laid down in Article 14(2).

Article 16

Access to quotes

1 Systematic internalisers may decide, on the basis of their commercial policy and in an objective non-discriminatory way, the investors to whom they give access to their quotes. To that end there shall be clear standards for governing access to their quotes. Systematic internalisers may refuse to enter into or discontinue business relationships with investors on the basis of commercial considerations such as the investor credit status, the counterparty risk and the final settlement of the transaction.

2. In order to limit the risk of exposure to multiple transactions from the same client, systematic internalisers may limit in a non-discriminatory way the number of transactions from the same client which they undertake to enter at the published conditions. They may also, in a non-discriminatory way and in accordance with the provisions of Article 28 of Directive .../.../EU [new MiFID], limit the total number of transactions from different clients at the same time provided that this is allowable only where the number and/or volume of orders sought by clients considerably exceeds the norm.

3. In order to ensure the efficient valuation of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and maximises the possibility of investment firms of obtaining the best deal for their clients the Commission shall, **after consulting ESMA**, adopt delegated acts in accordance with Article 41 specifying:

- (a) the criteria specifying when a quote is published on a regular and continuous basis and is easily accessible as well as the means by which investment firms may comply with their obligation to make public their quotes, which shall include the following possibilities:
 - (i) through the facilities of any regulated market which has admitted the instrument in question to trading;
 - (ii) through an APA;
 - (iii) through proprietary arrangements;

Friday 26 October 2012

- (b) the criteria specifying those transactions where execution in several securities is part of one transaction or orders that are subject to conditions other than current market price;
- (c) the criteria specifying what can be considered as exceptional market circumstances that allow for the withdrawal of quotes as well as conditions for updating quotes;
- (d) the criteria specifying when the number and/or volume of orders sought by clients considerably exceeds the norm as referred to in paragraph 2;
- (e) the criteria specifying when prices fall within a public range close to market conditions as referred to in Article 14(2).

Article 17

Obligation to publish firm quotes in bonds, structured finance products, emission allowance and derivatives

1. Systematic internalisers shall provide firm quotes in bonds and structured finance products admitted to trading on a regulated market or for which a prospectus has been published, emission allowances and derivatives which are clearing-eligible or are admitted to trading on a regulated market or are traded on an MTF or an OTF **for which they are systematic internalisers and for which there is a liquid market as determined in accordance with Articles 7 and 8**, when the following conditions are fulfilled:

- (a) they are prompted for a quote by a client of the systematic internaliser;
- (b) they agree to provide a quote.

1a. The obligation in paragraph 1 shall be calibrated in accordance with Article 7(1) and Article 8(4)(aa) and may be waived where the conditions specified in Article 8(4)(b) are met.

1b. Systematic internalisers may update their quotes at any time in response to changes in market conditions or to correct errors. They may also, under exceptional market conditions, withdraw their quotes.

2. Systematic internalisers shall make the firm quotes provided pursuant to paragraph 1 available to other clients of the investment firm **where the quoted size is at or below a size specific to the financial instrument** in an objective non-discriminatory way on the basis of their commercial policy. **Systematic internalisers may refuse to enter into or discontinue business relationships with investors on the basis of commercial considerations such as the investor credit status, the counterparty risk and settlement risk.**

3. Systematic internalisers shall undertake to enter into transactions with any other client to whom the quote is made available under **their commercial policy** when the quoted size is at or below a size specific to the **financial** instrument.

4. Systematic internalisers may establish non-discriminatory and transparent limits on the number of transactions they undertake to enter into with clients pursuant to any given quote.

5. The quotes made pursuant to paragraph 1 and at or below the size mentioned in **paragraphs 2 and 3** shall be made public in a manner which is easily accessible to other market participants on a reasonable commercial basis.

Friday 26 October 2012

6. The quotes shall be such as to ensure that the firm complies with its obligations under Article 27 of Directive .../.../EU [new MiFID], **where applicable**, and shall reflect prevailing market conditions in relation to prices at which transactions are concluded for the same or similar instruments on regulated markets, MTFs or OTFs.

Article 18

Monitoring by ESMA

1. Competent authorities and ESMA shall monitor the application of **Article 17** regarding the sizes at which quotes are made available to clients of the investment firm and made available to other market participants relative to other trading activity of the firm, and the degree to which the quotes reflect prevailing market conditions in relation to transactions in the same or similar instruments taking place on regulated markets, MTFs, or OTFs. By (*), ESMA shall report to the Commission on the application of **this Article**. In the event of significant quoting and trading activity just beyond the threshold mentioned in Article 17(3) or outside prevailing market conditions, **ESMA** shall report to the Commission before that date.

2. The Commission shall, **after consulting ESMA**, adopt delegated acts in accordance with Article 41 specifying the sizes **specific to the financial instrument** mentioned in **Article 17(2) and (3)** at which firm shall **make firm quotes available to other clients and undertake to** enter into transactions with any other client to whom the quote is made available. **Until such a time as a higher threshold is set by means of such delegated acts for a specific financial instrument the size specific to the financial instrument shall be EUR 100 000.**

3. The Commission **shall** adopt delegated acts in accordance with Article 41 clarifying what constitutes a reasonable commercial basis to make quotes public as referred to in Article 17(5).

Article 19

Post-trade disclosure by investment firms, including systematic internalisers, in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments

1. Investment firms which, either on own account or on behalf of clients, conclude transactions in shares, depositary receipts, exchange-traded funds, certificates or other similar financial instruments admitted to trading on a regulated market or which are traded on an MTF **■**, shall make public **as close to real time as is technically possible** the volume and price of those transactions and the time at which they were concluded. This information shall be made public through an APA.

2. The information which is made public in accordance with paragraph 1 and the time-limits within which it is published shall comply with the requirements adopted pursuant to Article 6. Where the measures adopted pursuant to Article 6 provide for deferred reporting for certain categories of transaction in shares, depositary receipts, exchange-traded funds, certificates or other similar financial instruments, this possibility shall also apply to those transactions when undertaken outside regulated markets **or** MTFs **■**.

3. The Commission may adopt delegated acts in accordance with Article 41 specifying the following:

- (a) identifiers for the different types of trades published under this Article, distinguishing between those determined by factors linked primarily to the valuation of the instruments and those determined by other factors;
- (b) elements of the obligation under paragraph 1 to transactions involving the use of those financial instruments for collateral, lending or other purposes where the exchange of financial instruments is determined by factors other than the current market valuation of the instrument.

(*) **24 months after the date of entry into force of this Regulation.**

Friday 26 October 2012

Article 20

Post-trade disclosure by investment firms, including systematic internalisers, in respect of bonds, structured finance products, emission allowances and derivatives

1. Investment firms which, either on own account or on behalf of clients, conclude transactions in bonds and structured finance products admitted to trading on a regulated market or for which a prospectus has been published, emission allowances and derivatives which are clearing-eligible **■** in accordance with **Article 5(2)** of Regulation (EU) No 648/2012 or are admitted to trading on a regulated market or are traded on an MTF or an OTF shall make public the volume and price of those transactions and the time at which they were concluded. This information shall be made public through an APA.
2. The information which is made public in accordance with paragraph 1 and the time-limits within which it is published shall comply with the requirements adopted pursuant to Article 10. Where the measures adopted pursuant to Article 10 provide for deferred **and/or aggregated** reporting **and/or the omission of the volume of the transaction** for certain categories of transaction in bonds, structured finance products, emission allowances or derivatives, this possibility shall also apply to those transactions when undertaken outside regulated markets, MTFs or OTFs.
3. The Commission may adopt delegated acts in accordance with Article 41 specifying the following:
 - (a) identifiers for the different types of trades published under this Article, distinguishing between those determined by factors linked primarily to the valuation of the instruments and those determined by other factors;
 - (b) the criteria specifying the obligation under paragraph 1 to transactions involving the use of those financial instruments for collateral, lending or other purposes where the exchange of financial instruments is determined by factors other than the current market valuation of the instrument.

TITLE IV

TRANSACTION REPORTING

Article 21

Obligation to uphold integrity of markets

Without prejudice to the allocation of responsibilities for enforcing the provisions of Regulation (EU) No .../... [new MAR], competent authorities coordinated by ESMA in accordance with Article 31 of Regulation (EU) No 1095/2010 shall monitor the activities of investment firms to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market.

Article 22

Obligation to maintain records

1. Investment firms shall keep at the disposal of the competent authority, for at least five years, the relevant data relating to all transactions in financial instruments which they have carried out, whether on own account or on behalf of a client. In the case of transactions carried out on behalf of clients, the records shall contain all the information and details of the identity of the client, and the information required under Directive 2005/60/EC. ESMA may request access to that information in accordance with the procedure and under the conditions set out in Article 35 of Regulation (EU) No 1095/2010.
2. The operator of a regulated market, MTF or OTF shall keep at the disposal of the competent authority, for at least five years, the relevant data relating to all orders in financial instruments which are advertised through their systems. The records shall contain all the details required for the purposes of **Article 23(1) and (3)**. ESMA shall perform a facilitation and coordination role in relation to the access by competent authorities to information under the provisions of this paragraph.

Friday 26 October 2012

Article 23

Obligation to report transactions

1. Investment firms which execute transactions in financial instruments shall report details of such transactions to the competent authority as quickly as possible, and no later than the close of the following working day. The competent authorities shall, in accordance with Article 89 of Directive .../.../EU [new MiFID], establish the necessary arrangements in order to ensure that **ESMA and** the competent authority of the most relevant market in terms of liquidity for those financial instruments also receives this information.

2. **Paragraph 1 shall apply to the following financial instruments when traded outside a trading venue:**

(a) financial instruments which are traded on a trading venue;

(b) financial instruments where the underlying is a financial instrument traded on a trading venue; and

(c) financial instruments where the underlying is an index or basket composed of financial instruments traded on a trading venue.

3. The reports shall, in particular, include details of the **type, asset class**, names and numbers of the instruments bought or sold, the quantity, the dates and times of execution, the transaction prices, a designation to identify the clients on whose behalf the investment firm has executed that transaction, a designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, and means of identifying the investment firms concerned, **and a designation to identify a short sale of a share or a debt instrument issued by a sovereign issuer as defined in Article 3 of Regulation (EU) No 236/2012**. For transactions not carried out on a regulated market, MTF or OTF, the reports shall also include a designation identifying the types of transactions in accordance with the measures to be adopted pursuant to Article 19(3)(a) and Article 20(3)(a). **For commodity derivatives, the reports shall also indicate whether the transaction reduces risk in an objectively measurable way in accordance with Article 59 of Directive .../.../EC [new MiFID]**.

4. Investment firms which transmit orders shall include in the **type, asset class**, transmission of that order all the details required for the purposes of paragraphs 1 and 3. Instead of including a designation to identify the clients on whose behalf the investment firm has transmitted that order or a designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, an investment firm may also choose to report the transmitted order in accordance with the requirements under paragraph 1.

5. The operator of a regulated market, MTF or OTF shall report details of transactions in instruments traded on their platform which are executed through their systems by a firm which is not subject to this Regulation in accordance with paragraphs 1 and 3.

5a. In reporting the designation to identify the clients as required under paragraphs 3 and 4, investment firms shall use a legal entity identifier established to identify clients that are legal persons, in the form of a 20 digit alphanumeric code.

ESMA shall develop guidelines to ensure that the application of legal entity identifiers within the Union complies with international standards, in particular those established by the Financial Stability Board.

Friday 26 October 2012

6. The reports shall be made to the competent authority either by the investment firm itself, an approved reporting mechanism (ARM) acting on its behalf or by the regulated market or MTF or OTF through whose systems the transaction was completed. Trade-matching or reporting systems, including trade repositories registered or recognised in accordance with Title VI of Regulation (EU) No 648/2012, may be approved by the competent authority as an ARM. In cases where transactions are reported directly to the competent authority by a regulated market, an MTF, an OTF or an ARM, the obligation on the investment firm laid down in paragraph 1 may be waived. In cases where transactions have been reported to a trade repository in accordance with **Article 9** of Regulation (EU) No 648/2012 **which is approved as an ARM** and where these reports contain the details required under paragraphs 1 and 3, **including the relevant regulatory technical standards regarding the form and content of reports, and are systematically transmitted to the relevant competent authority within the time limit set by paragraph 1** the obligation on the investment firm laid down in paragraph 1 shall be considered to have been complied with.

6a. The competent authorities shall transmit all the information received pursuant to this Article to a single system, appointed by ESMA, for transaction reporting at Union level. The single system shall allow relevant competent authorities access to all the information reported pursuant to this Article.

7. When, in accordance with Article 37(8) of Directive .../.../EU [new MiFID], reports provided for under this Article are transmitted to the competent authority of the host Member State, it shall transmit this information to the competent authorities of the home Member State of the investment firm, unless they decide that they do not want to receive this information.

8. ESMA shall develop draft regulatory technical standards to determine:

- (a) data standards and formats for the information to be published in accordance with paragraphs 1 and 3, including the methods and arrangements for reporting financial transactions and the form and content of such reports;
 - (b) the criteria for defining a relevant market in accordance with paragraph 1;
 - (c) the references of the instruments bought or sold, the quantity, the dates and times of execution, the transaction prices, the information and details of the identity of the client, a designation to identify the clients on whose behalf the investment firm has executed that transaction, a designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, means of identifying the investment firms concerned, the way in which the transaction was executed, and data fields necessary for the processing and analysis of the transaction reports in accordance with paragraph 3;
- (ca) the processing of the single system referred to in paragraph 6a and the procedures for the exchange of information between that system and the competent authorities;**
- (cb) the conditions upon which national identifiers are developed, attributed and maintained, by Member States, and the conditions under which these national identifiers are used by investment firms so as to provide, pursuant to paragraphs 3, 4 and 5, for the designation to identify the clients in the transaction reports they are required to establish pursuant to paragraph 1.**

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.

(*) 12 months after the date of entry into force of this Regulation.

Friday 26 October 2012

9. **By ... (**)** ESMA shall report to the Commission on the functioning of this Article, including **its interaction with the related reporting obligations under Regulation (EU) No 648/2012, and** whether the content and format of transaction reports received and exchanged **between the single system referred to in paragraph 6a and** competent authorities comprehensively enable to monitor the activities of investment firms in accordance with Article 21 **of this Regulation**. The Commission may take steps to propose any changes, including providing for transactions to be transmitted **only to the single system referred to in paragraph 6a** instead of to competent authorities. **¶ The Commission shall forward ESMA's report to the European Parliament and to the Council.**

Article 23a

Obligation to supply instrument reference data

1. **With regard to instruments admitted to trading on regulated markets or traded on MTFs or OTFs these trading venues shall systematically supply ESMA and competent authorities with identifying instrument reference data for the purpose of transaction reporting under Article 21. This reference data for a given instrument shall be submitted to ESMA and competent authorities before trading commences in that particular instrument. With regard to other instruments, ESMA and competent authorities shall ensure that trade associations and other similar bodies that collect and distribute instrument reference data, supply them with relevant reference data.**

2. **The obligation laid down in paragraph 1 of this Article only applies to the financial instruments specified in Article 23(2). It therefore shall not apply to any other instrument.**

3. **The instrument reference data referred to in paragraph 1 shall be updated whenever relevant so as to ensure its appropriateness.**

4. **In order to allow competent authorities to monitor, pursuant to Article 21, the activities of investment firms to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market, ESMA and the competent authorities shall establish the necessary arrangements in order to ensure that:**

(a) **ESMA and the competent authorities effectively receive the instrument reference data pursuant to paragraph 1;**

(b) **the quality of the data so received is appropriate for the purpose of transaction reporting under Article 21;**

(c) **the instrument reference data received pursuant to paragraph 1 is efficiently exchanged between the relevant competent authorities.**

5. **ESMA shall develop draft regulatory technical standards to determine:**

(a) **data standards and formats for the instrument reference data in accordance with paragraph 1, including the methods and arrangements for supplying the data and any update thereto to ESMA and competent authorities, and the form and content of such data;**

(b) **the measures and conditions that are necessary in relation to the arrangements to be made by ESMA and the competent authorities pursuant to paragraph 4.**

(**) 24 months after the date of entry into force of this Regulation.

Friday 26 October 2012

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.

TITLE V

DERIVATIVES

Article 24

Obligation to trade on regulated markets, MTFs or OTFs

1. Financial counterparties as defined in Article 2(8) of Regulation (EU) No 648/2012 and nonfinancial counterparties that meet the conditions referred to in **Article 10(1b)** thereof shall conclude transactions which are neither intragroup transactions as defined in **Article 3 nor transactions covered by the transitional provisions in Article 89 of that Regulation** with other such financial counterparties or other such non-financial counterparties that meet the conditions referred to in **Article 10(1b)** of Regulation [] (EMIR) in derivatives pertaining to a class of derivatives that has **also** been declared subject to the trading obligation in accordance with the procedure set out in Article 26 and listed in the register referred to in Article 27 only on:

- (a) regulated markets;
- (b) MTFs;
- (c) OTFs **where the derivative is not admitted to trading on a regulated market or traded on an MTF**; or
- (d) third-country trading venues, provided that the Commission has adopted a decision in accordance with paragraph 4 and provided that the third country provides an **effective system for the** equivalent **■** recognition of trading venues authorised under Directive .../.../EU [new MiFID] to admit to trading or trade derivatives declared subject to a trading obligation in that third country on a non-exclusive basis.

2. The trading obligation shall also apply to counterparties referred to in paragraph 1 which enter into derivatives transactions pertaining to derivatives declared subject to the trading obligation with third country financial institutions or other third-country entities that would be subject to the clearing obligation if they were established in the Union. The trading obligation shall also apply to third-country entities that would be subject to the clearing obligation if they were established in the Union, which enter into derivatives transactions pertaining to derivatives declared subject to the trading obligation, provided that the contract has a direct, substantial and foreseeable effect within the Union or where such obligation is necessary or appropriate to prevent the evasion of any provision of this Regulation.

ESMA shall regularly monitor the activity in derivatives which have not been declared subject to the trading obligation as described in Article 24(1) in order to identify cases where a particular class of contracts may pose systemic risk and to prevent regulatory arbitrage between derivative transactions subject to the trading obligation and derivative transactions which are not subject to the trading obligation.

3. Derivatives declared subject to the trading obligation **pursuant to Article 24(1)** shall be eligible to be admitted to trading **on a regulated market** or to trade on any trading venue as referred to in paragraph 1 on a non-exclusive and non-discriminatory basis.

(*) 12 months after the date of entry into force of this Regulation. [Am. 5]

Friday 26 October 2012

4. The Commission may, in accordance with the **examination** procedure referred to in **Article 42(2)** adopt decisions determining that the legal and supervisory framework of a third country ensures that a trading venue authorised in that third country complies with legally binding requirements which are equivalent to the requirements for the trading venues referred to in paragraph 1(a), (b) and (c) **of this Article**, resulting from this Regulation, Directive .../.../EU [new MiFID], and Regulation (EU) No .../... [new MAR], and which are subject to effective supervision and enforcement in that third country.

The legal and supervisory framework of a third country is considered equivalent where that framework fulfils all the following conditions:

- (a) trading venues in that third country are subject to authorisation and to effective supervision and enforcement on an ongoing basis;
- (b) trading venues have clear and transparent rules regarding admission of financial instruments to trading so that such financial instruments are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable;
- (c) issuers of financial instruments are subject to periodic and ongoing information requirements ensuring a high level of investor protection;
- (d) it ensures market transparency and integrity by preventing market abuse in the form of insider dealing and market manipulation.

5. **ESMA** shall **develop draft regulatory technical standards** specifying the types of contracts referred to in paragraph 2 which have a direct, substantial and foreseeable effect within the Union and the cases where the trading obligation is necessary or appropriate to prevent the evasion of any provision of this Regulation.

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.

Where possible, the regulatory technical standards referred to in this paragraph shall be identical to those adopted under Article 4(4) of Regulation (EU) No 648/2012.

Article 25

Clearing obligation for derivatives traded on regulated markets

The operator of a regulated market shall ensure that all transactions in derivatives pertaining to a class of derivatives declared subject to the clearing obligation pursuant to **Article 5(2)** of **Regulation (EU) No 648/2012** that are concluded on the regulated market are cleared by a central counterparty (CCP).

Article 26

Trading obligation procedure

1. **ESMA** shall develop draft **regulatory** technical standards to determine the following:
 - (a) which of the class of derivatives declared subject to the clearing obligation in accordance with **Article 5(2)** and (4) of Regulation (EU) No 648/2012 or a relevant subset thereof shall be traded on the venues referred to in Article 24(1) of this Regulation;

(*) **12 months after the date of entry into force of this Regulation.**

Friday 26 October 2012

- (b) the date *or dates* from which the trading obligation takes effect, **including any phase in and the categories of counterparties to which the obligation applies.**

ESMA shall submit those draft **regulatory** technical standards to the Commission within three months after the **regulatory** technical standards in accordance with Article 5(2) of Regulation (EU) No 648/2012 are adopted by the Commission.

Before submitting the draft regulatory technical standards to the Commission for adoption, ESMA shall conduct a public consultation and, where appropriate, may consult with the competent authorities of third countries.

Power is conferred 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.

2. In order for the trading obligation to take effect:

- (a) the class of derivatives **pursuant to paragraph 1(a)** or a relevant subset thereof must be admitted to trading **on a regulated market** or must be traded on at least one regulated market, MTF or OTF as referred to in Article 24(1), and
- (b) the class of derivatives **pursuant to paragraph 1(a)** or a relevant subset thereof must be considered sufficiently liquid to trade only on the venues referred to in Article 24(1).

3. In developing the draft **regulatory** technical standards referred to in paragraph 1, ESMA shall consider the class of derivatives or a relevant subset thereof as sufficiently liquid **taking into account at least** the following criteria:

- (a) the average frequency of trades;
- (b) the average size of trades **and the frequency of large in scale trades;**
- (c) the number and type of active market participants;

ESMA shall also determine whether the class of derivatives or relevant subset thereof is only sufficiently liquid in transactions below a certain size.

4. ESMA shall, on its own initiative, in accordance with the criteria set out in paragraph 2 and after conducting a public consultation, identify and notify to the Commission the classes of derivatives or individual derivative contracts that should be subject to the obligation to trade on the venues referred to in Article 24(1), but for which no CCP has yet received authorisation under **Article 14** or **15** of Regulation (EU) No 648/2012 or which is not admitted to trading **on a regulated market** or traded on a venue referred to in Article 24(1). Following **the notification referred to in the first subparagraph**, ESMA, the Commission may publish a call for development of proposals for the trading of those derivatives on the venues referred to in Article 24(1).

5. ESMA shall in accordance with paragraph 1, submit to the Commission new draft **regulatory** technical standards to amend, suspend or revoke existing **regulatory** technical standards whenever there is a material change in the criteria set out in paragraph 2. Before doing so, ESMA may consult, where appropriate, the competent authorities of third countries. Power is conferred to the Commission to amend, suspend and revoke the existing **regulatory** technical standards in accordance with **Articles 10 to 14** of Regulation (EU) No 1095/2010.

6. **ESMA shall develop draft** regulatory technical standards specifying the criteria referred to in paragraph 2(b).

Friday 26 October 2012

ESMA shall submit drafts for those 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.

Article 27

Register of derivatives subject to the trading obligation

ESMA shall publish and maintain on its website a register specifying, in an exhaustive and unequivocal manner, the derivatives that are subject to the obligation to trade on the venues referred to in Article 24(1), the venues where they are admitted to trading or traded, and the dates from which the obligation takes effect.

TITLE VI

NON-DISCRIMINATORY CLEARING ACCESS FOR FINANCIAL INSTRUMENTS

Article 28

Non-discriminatory access to a CCP

1. Without prejudice to **Article 7** of Regulation (EU) No 648/2012, a CCP shall accept to clear **transferable securities and money market** instruments on a non-discriminatory and transparent basis, including as regards collateral requirements and fees related to access, regardless of the trading venue on which a transaction is executed, **unless such access would clearly threaten the smooth and orderly functioning of the CCP or the functioning of the financial markets in a manner that causes systemic risk**. This in particular should ensure that a trading venue has the right to non-discriminatory treatment in terms of how contracts traded on its platforms are treated. This requirement does not apply to any derivative contract that is already subject to the access obligations under **Article 7** of Regulation (EU) No 648/2012. **Access of a trading venue to a CCP under this Article shall be granted only where such access would not require interoperability or threaten the smooth and orderly functioning of markets or adversely affect systemic risk**.

2. A request to access a CCP shall be formally submitted to a CCP and its relevant competent authority by a trading venue.

3. The CCP shall provide a written response to the trading venue within **12 months** either permitting access, under the condition that the relevant competent authority has not denied access pursuant to paragraph 4, or denying access. The CCP may only deny a request for access **based on a comprehensive risk analysis and** under the conditions specified in paragraph 6. If a CCP refuses access it shall provide full reasons in its response and inform its competent authority in writing of the decision. The CCP shall make access possible within three months of providing a positive response to the access request. **Any associated costs that arise from paragraphs 1 to 3 shall be borne by the trading venue requesting access, unless otherwise agreed between the CCP and the trading venue requesting access**.

4. The competent authority of the CCP may only deny a trading venue access to a CCP where such access would threaten the smooth or orderly functioning of financial markets. If a competent authority denies access on that basis it shall issue its decision within two months following receipt of the request referred to in paragraph 2 and provide full reasons to the CCP and the trading venue including the evidence on which the decision is based.

5. A trading venue established in a third country may request access to a CCP established in the Union only if the Commission has adopted a decision in accordance with Article 24(4) relating to that third country and provided that the legal framework of that third country provides for an effective equivalent recognition of trading venues authorised under Directive .../.../EU [new MiFID] to request access to CCPs established in that third country.

(*) 12 months after the date of entry into force of this Regulation.

Friday 26 October 2012

6. **ESMA shall develop draft regulatory technical standards** specifying:
- (a) the conditions under which access could be denied by a CCP, **for transferable securities and money market instruments**, including conditions based on the volume of transactions, the number and type of users or other factors creating undue risks;
 - (b) the conditions under which access is granted, including confidentiality of information provided regarding **transferable securities and money market instruments** during the development phase, the non-discriminatory and transparent basis as regards clearing fees, collateral requirements and operational requirements regarding margining.

ESMA shall submit those draft regulatory 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.

Article 28 a

Clearing obligation for equities and bonds traded on regulated markets, MTFs and OTFs

The operator of a regulated market, an MTF, or an OTF shall ensure that all transactions in equities and bonds that are concluded on a regulated market, an MTF and OTF are cleared by a CCP when a CCP accepts to clear that financial instrument.

Article 29

Non-discriminatory access to a trading venue

1. Without prejudice to **Article 8** of Regulation (EU) No 648/2012, a trading venue shall provide trade feeds **for transferable securities and money market instruments** on a non-discriminatory and transparent basis, including as regards fees related to access, on request to any CCP authorised or recognised by Regulation (EU) No 648/2012 that wishes to clear financial transactions executed on that trading venue. This requirement does not apply to any derivative contract that is already subject to the access obligations under **Article 8** of Regulation (EU) No 648/2012.
 2. A request to access a trading venue shall be formally submitted to a trading venue and its relevant competent authority by a CCP.
 3. The trading venue shall provide a written response to the CCP within three months either permitting access, under the condition that the relevant competent authority has not denied access pursuant to paragraph 4, or denying access. The trading venue may only deny access **based on a comprehensive risk analysis and** under the conditions specified under paragraph **paragraphs 4 and 6**. When access is refused the trading venue shall provide full reasons in its response to the trading venue and inform its competent authority in writing of the decision. The trading venue shall make access possible within three months of providing a positive response to the access request.
 4. **For transferable securities and money market instruments**, the competent authority of the trading venue may only deny a CCP access to a trading venue where such access would threaten the smooth or orderly functioning of markets. [**Am. 7**]
- 4a.** If a competent authority denies access on that basis it shall issue its decision within two months following receipt of the request referred to in paragraph 2 and provide full reasons to the trading venue and the CCP including the evidence on which its decision is based.

(*) **12 months after the date of entry into force of this Regulation.** [**Am. 6**]

Friday 26 October 2012

5. A CCP established in a third country may request access to a trading venue in the Union subject to that CCP being recognised under **Article 25** of Regulation (EU) No 648/2012 and provided that the legal framework of that third country provides for an effective equivalent recognition of a CCP authorised under Regulation (EU) No 648/2012 to trading venues established in that third country.

6. **ESMA shall develop draft regulatory technical standards** specifying:

- (a) the conditions under which access could be denied by a trading venue **for transferable securities and money market** instruments, including conditions based on the volume of transactions, the number of users or other factors creating undue risks;
- (b) the conditions under which access is granted, including confidentiality of information provided regarding financial instruments during the development phase and the non-discriminatory and transparent basis as regards fees related to access;

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. [Am. 8]

■

TITLE VII

SUPERVISORY MEASURES ON PRODUCT INTERVENTION AND POSITIONS

CHAPTER 1

PRODUCT INTERVENTION

Article 31

ESMA *intervention* powers ■

-1. In accordance with Article 9(2) of Regulation (EU) No 1095/2010, ESMA shall monitor the investment products, including structured deposits and financial instruments which are marketed, distributed or sold in the Union and may proactively investigate new investment products or financial instruments before they are marketed, distributed or sold in the Union in cooperation with the competent authorities.

1. In accordance with Article 9(5) of Regulation (EU) No 1095/2010, ESMA may, where it is satisfied on reasonable grounds that the conditions in paragraphs 2 and 3 are fulfilled, temporarily prohibit or restrict in the Union:

- (a) the marketing, distribution or sale of **certain specified investment products, including structured deposits, certain specified investment products, including structured deposits**, financial instruments or **investment products, including structured deposits, or** financial instruments with certain **specified** features; or
- (b) a type of financial activity or practice.

A prohibition or restriction may apply in circumstances, or be subject to exceptions, specified by ESMA.

(*) 12 months after the date of entry into force of this Regulation.

Friday 26 October 2012

2. ESMA shall only take a decision under paragraph 1 if all of the following conditions are fulfilled:
 - (a) the proposed action addresses a **significant** threat to investor protection or to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system in the Union;
 - (b) regulatory requirements under Union legislation that are applicable to the relevant **investment product**, financial instrument or activity do not address the threat;
 - (c) a competent authority or competent authorities have not taken action to address the threat or actions that have been taken do not adequately address the threat.

Where the conditions set out in the first subparagraph are fulfilled, ESMA may impose the prohibition or restriction referred to in paragraph 1 on a precautionary basis before an investment product or financial instrument has been marketed or sold to clients.

3. When taking action under this Article ESMA shall take into account the extent to which the action:
 - (a) does not have a detrimental effect on the efficiency of financial markets or on investors that is disproportionate to the benefits of the action; and
 - (b) does not create a risk of regulatory arbitrage.

Where a competent authority or competent authorities have taken a measure under Article 32, ESMA may take any of the measures referred to in paragraph 1 without issuing the opinion provided for in Article 33.

4. Before deciding to take any action under this Article, ESMA shall notify competent authorities of the action it proposes.

4a. Before taking a decision under paragraph 1, ESMA shall give notice of its intention to prohibit or restrict an investment product or financial instrument unless certain changes are made to features of the investment product or financial instrument within a specified timescale.

5. ESMA shall publish on its website notice of any decision to take any action under this Article. The notice shall specify details of the prohibition or restriction and specify a time after the publication of the notice from which the measures will take effect. A prohibition or restriction shall only apply to action taken after the measures take effect.
6. ESMA shall review a prohibition or restriction imposed under paragraph 1 at appropriate intervals and at least every three months. ■ If the prohibition or restriction is not renewed after that **three-month** period it shall expire.
7. Action adopted by ESMA under this Article shall prevail over any previous action taken by a competent authority.

Friday 26 October 2012

8. The Commission shall adopt delegated acts in accordance with Article 41 specifying criteria and factors to be taken into account by ESMA in determining when the threats to investor protection or to the orderly functioning and integrity of financial markets and to the stability of the whole or part of the financial system of the Union referred to in paragraph 2(a) arise. **Those delegated acts shall ensure that ESMA is able to act, where appropriate, on a precautionary basis and shall not be required to wait until the product or financial instrument has been marketed or the type of activity or practice has been undertaken before taking action.**

Article 32

Product intervention by competent authorities

- 1. **Competent authorities shall monitor the investment products, including structured deposits and financial instruments which are marketed, distributed or sold in or from their Member State and may proactively investigate new investment products or financial instruments before they are marketed, distributed or sold in or from the Member State. Particular attention shall be given to financial instruments offering commodity index replications.**

1. A competent authority may prohibit or restrict in or from that Member State:
 - (a) the marketing, distribution or sale of certain **specified investment products, including structured deposits**, financial instruments or **investment products, including structured deposits**, or financial instruments with certain **specified** features; or
 - (b) a type of financial activity or practice.
2. A competent authority may take the action referred to in paragraph 1 if it is satisfied on reasonable grounds that:
 - (a) **an investment product**, a financial instrument or activity or practice gives rise to significant investor protection concerns or poses a serious threat to the orderly functioning and integrity of financial markets or the stability of whole or part of the financial system **within one or more Member States, including through the marketing, distribution, remuneration or provision of inducements related to the investment product or financial instrument**;
 - (ab) **a derivative product has a detrimental effect on the price formation mechanism in the underlying market**;
 - (b) existing regulatory requirements under Union law applicable to the **investment product**, financial instrument or activity or practice do not sufficiently address the risks referred to in point (a) and the issue would not be better addressed by improved supervision or enforcement of existing requirements;
 - (c) the action is proportionate taking into account the nature of the risks identified, the level of sophistication of investors or market participants concerned and the likely effect of the action on investors and market participants who may hold, use or benefit from the financial instrument or activity;
 - (d) the competent authority has properly consulted competent authorities in other Member States that may be significantly affected by the action; and
 - (e) the action does not have a discriminatory effect on services or activities provided from another Member State.

Friday 26 October 2012

Where the conditions set out in the first subparagraph are fulfilled, the competent authority may impose a prohibition or restriction on a precautionary basis before an investment product or financial instrument has been marketed, distributed or sold to clients.

A prohibition or restriction may apply in circumstances, or be subject to exceptions, specified by the competent authority.

2a. Before imposing a prohibition or restriction under paragraph 1, the competent authority shall give notice of its intention to prohibit or restrict an investment product or financial instrument unless certain changes are made to features of the investment product or financial instrument within a specified timescale.

3. The competent authority shall not ***impose a prohibition or restriction*** under this Article unless, not less than one month before it takes the action, it has notified all other competent authorities ***involved*** and ESMA in writing ***or through another medium agreed between the authorities*** of details of:

(a) the financial instrument or activity or practice to which the proposed action relates;

(b) the precise nature of the proposed prohibition or restriction and when it is intended to take effect; and

(c) the evidence upon which it has based its decision and upon which is satisfied that each of the conditions in paragraph 1 are met.

3a. Where the time needed to consult in accordance with paragraph 2(d) and the one-month delay provided for in paragraph 3 could cause irreversible damage to consumers, the competent authority may take action under this Article on a provisional basis for a period not exceeding three months. In that case the competent authority shall immediately inform all other authorities and ESMA of the action taken.

4. The competent authority shall publish on its website notice of any decision to impose any prohibition or restriction referred to in paragraph 1. The notice shall specify details of the prohibition or restriction, a time after the publication of the notice from which the measures will take effect and the evidence upon which it is satisfied each of the conditions in paragraph 1 are met. The prohibition or restriction shall only apply in relation to actions taken after the publication of the notice.

5. The competent authority shall revoke a prohibition or restriction if the conditions in paragraph 1 no longer apply.

6. The Commission shall adopt delegated acts in accordance with Article 41 specifying criteria and factors to be taken into account by competent authorities in determining when the threats to investor protection or to the orderly functioning and integrity of financial markets and to the stability of the whole or part of the financial system of the Union referred to in paragraph 2(a) arise.

Article 33

Coordination by ESMA

1. ESMA shall perform a facilitation and coordination role in relation to action taken by competent authorities under Article 32. In particular ESMA shall ensure that action taken by a competent authority is justified and proportionate and that where appropriate a consistent approach is taken by competent authorities.

Friday 26 October 2012

2. After receiving notification under Article 32 of any action that is to be imposed under that Article, ESMA shall adopt an opinion on whether it considers the prohibition or restriction is justified and proportionate. If ESMA considers that the taking of a measure by other competent authorities is necessary to address the risk, it shall also state this in its opinion. The opinion shall be published on ESMA's website.

3. Where a competent authority proposes to take, or takes, action contrary to an opinion adopted by ESMA under paragraph 2 or declines to take action contrary to such an opinion, it shall immediately publish on its website a notice fully explaining its reasons for so doing.

CHAPTER 2

POSITIONS

Article 34

Coordination of national position management measures and position limits by ESMA

1. ESMA shall perform a facilitation and coordination role in relation to measures taken by competent authorities pursuant to Article 71(2)(i) and Article 72(1)(f) and (g) of Directive .../.../EU [new MiFID]. In particular, ESMA shall ensure that a consistent approach is taken by competent authorities with regard to when these powers are exercised, the nature and scope of the measures imposed, and the duration and follow-up of any measures.

2. After receiving notification of any measure under Article 83(5) of Directive .../.../EU [new MiFID] ESMA shall record the measure and the reasons thereof. In relation to measures pursuant to Article 72(1)(f) and (g) of Directive .../.../EU [new MiFID], it shall maintain and publish on its website a database with summaries of the measures in force including details on the person or class of persons concerned, the applicable financial instruments, any quantitative measures or thresholds such as the maximum **net position** persons can enter into **or hold over a specific period of time** before a limit is reached, any exemptions thereto, and the reasons therefor.

Article 35

Position management powers of ESMA

1. In accordance with Article 9(5) of Regulation (EU) No 1095/2010, ESMA shall, where **one of the** conditions in paragraph 2 **is** satisfied, take one or more of the following measures: [Am. 2]

- (a) request from any person information including all relevant documentation regarding the size and purpose of a position or exposure entered into via a derivative;
- (b) after analysing the information obtained, require any such person **or class of person** to take steps to reduce the size of **or to eliminate** the position or exposure;
- (c) limit the ability of a person from entering into a commodity derivative.

2. ESMA **may** only take a decision under paragraph 1 if **one** of the following conditions **is** fulfilled: [Am. 9]

- (a) the measures listed in points (a) to (c) of paragraph 1 address a threat to the orderly functioning and integrity of financial markets including in relation to delivery arrangements for physical commodities **and the factors listed in Article 59(1)(a) to (cb) of Directive .../.../EU [new MiFID]**, or the stability of the whole or part of the financial system in the Union; [Am. 10]

Friday 26 October 2012

- (b) a competent authority or competent authorities have not taken measures to address the threat or measures that have been taken do not sufficiently address the threat.

Measures related to wholesale energy products shall be taken after consultation with the Agency for the Cooperation of Energy Regulators established under Regulation (EC) No 713/2009.

3. When taking measures referred to in paragraph 1, ESMA shall take into account the extent to which the measure:

- (a) does significantly address the threat to the orderly functioning and integrity of financial markets **including the factors listed in Article 59(1)(a) to (cb) of Directive .../.../EU [new MiFID]**, or of delivery arrangements for physical commodities, or the stability of the whole or part of the financial system in the Union or significantly improve the ability of competent authorities to monitor the threat; [Am. 11]

(b) does not create a risk of regulatory arbitrage;

(c) does not have a detrimental effect on the efficiency of financial markets, including reducing liquidity in those markets or creating uncertainty for market participants, that is disproportionate to the benefits of the measure.

4. Before deciding to undertake or renew any measure referred to in paragraph 1, ESMA shall notify relevant competent authorities of the measure it proposes. In case of a request under paragraph 1(a) or (b) the notification shall include the identity of the person or persons to whom it was addressed and the details and reasons thereof. In the event of a measure under paragraph 1(c) the notification shall include details on the person or class of persons concerned, the applicable financial instruments, the relevant quantitative measures such as the maximum **net position** the person or class of persons in question can enter into **or hold over a specific period of time**, and the reasons thereof.

5. The notification shall be made not less than 24 hours before the measure is intended to take effect or to be renewed. In exceptional circumstances, ESMA may make the notification less than 24 hours before the measure is intended to take effect where it is not possible to give 24 hours notice.

6. ESMA shall publish on its website notice of any decision to impose or renew any measure referred to in paragraph 1(c). The notice shall include details on the person or class of persons concerned, the applicable financial instruments, the relevant quantitative measures such as the maximum **net position** the person or class of persons in question can enter into **or hold over a specific period of time**, and the reasons thereof

7. A measure shall take effect when the notice is published or at a time specified in the notice that is after its publication and shall only apply in relation to a transaction entered into after the measure takes effect.

8. ESMA shall review its measures referred to in paragraph 1(c) at appropriate intervals and at least every three months. If a measure is not renewed after that three-month period, it shall automatically expire. Paragraphs 2 to 8 shall apply to a renewal of measures.

9. A measure adopted by ESMA under this Article shall prevail over any previous measure taken by a competent authority under **Article 72(f), (g) and (ha) of Directive .../.../EU [new MiFID]**.

Friday 26 October 2012

10. The Commission shall adopt delegated acts in accordance with Article 41 specifying criteria and factors to be taken into account by ESMA in determining when a threat to the orderly functioning and integrity of financial markets including in relation to delivery arrangements for physical commodities, or the stability of the whole or part of the financial system in the Union referred to in paragraph 2(a) arise. **Those criteria and factors shall take into account the draft regulatory technical standards developed in accordance with Article 59(3) of Directive .../.../EU [new MiFID] and shall differentiate between situations where ESMA takes action because a competent authority has failed to act and those where ESMA addresses an additional risk which the competent authority is not able to address pursuant to Article 72(f), (g) and (ha) of Directive .../.../EU [new MiFID].**

TITLE VIII

PROVISION OF SERVICES **OR ACTIVITIES** WITHOUT A BRANCH BY THIRD-COUNTRY FIRMS

Article 36

General provisions

1 A third-country firm may provide **investment services or perform activities** to eligible counterparties **and to professional clients within the meaning of Section I of Annex II to Directive .../.../EU [new MiFID]** established in the Union without the establishment of a branch only where it is registered in the register of third-country firms kept by ESMA in accordance with Article 37.

2. ESMA **shall** register a third-country firm that has applied for the provision of investment services **or performance of** activities in the Union in accordance with paragraph 1 only where the following conditions are met:

- (a) the Commission has adopted a decision in accordance with Article 37(1);
- (b) the firm is authorised in the jurisdiction where **its head office** is established to provide the investment services or activities to be provided in the Union and it is subject to effective supervision and enforcement ensuring a full compliance with the requirements applicable in that third country;
- (c) cooperation arrangements have been established pursuant to Article 37(2).

2a. Where a third-country firm is registered in accordance with this Article, Member States shall not impose any additional requirements on the third-country firm in respect of matters covered by this Regulation or by Directive .../.../EU [new MiFID].

3. The third-country firm referred to in paragraph 1 shall submit its application to ESMA after the adoption by the Commission of the decision referred to in Article 37 determining that the legal and supervisory framework of the third country in which the third-country firm is authorised is equivalent to the requirements described in Article 37(1).

The applicant third-country firm shall provide ESMA with all information necessary for its registration. Within 30 working days of receipt of the application, ESMA shall assess whether the application is complete. If the application is not complete, ESMA shall set a deadline by which the applicant third-country firm is to provide additional information.

The registration decision shall be based on the conditions set out in paragraph 2.

Within 180 working days of the submission of a complete application, ESMA shall inform the applicant non-EU firm in writing with a fully reasoned explanation whether the registration has been granted or refused.

Friday 26 October 2012

4. Third-country firms providing services in accordance with this Article shall inform clients established in the Union, before the provision of any investment services, that they are not allowed to provide services to clients other than eligible counterparties **and to professional clients within the meaning of Section I of Annex II to Directive .../.../EU [new MiFID]** and that they are not subject to supervision in the Union. They shall indicate the name and the address of the competent authority responsible for supervision in the third country.

The information in the first subparagraph shall be provided in writing and in a prominent way.

Persons established in the Union may receive investment services by a third-country firm not registered in accordance with paragraph 1 only at their own exclusive initiative. **An initiative by a natural person shall not entitle the third-country firm to market new categories of investment product or investment service to that individual.**

5. **Third-country firms providing services or performing activities in accordance with this Article shall, before providing any service or performing any activity in relation to a client established in the Union, offer to submit any disputes relating to those services or activities to the jurisdiction of a court or arbitral tribunal in a Member State.**

6. **ESMA shall develop draft** regulatory technical standards specifying the information that the applicant third-country firm shall provide to ESMA in its application for registration in accordance with paragraph 3 and the format of information to be provided in accordance with paragraph 4.

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.

Article 37

Equivalence decision

1. The Commission **shall** adopt a decision in accordance with the **examination** procedure referred to in **Article 42(2)** 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 Regulation, in Directive 2006/49/EC and in Directive No .../.../EU [MiFID] and in the implementing measures **adopted under this Regulation and under those Directives**.

The prudential **and business conduct** framework of a third country may be considered **to have** equivalent effect where that framework fulfils all the following conditions:

- (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;
- (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;

(*) 12 months after the date of entry into force of this Regulation.

Friday 26 October 2012

- (c) firms providing investment services and activities are subject to adequate organisational requirements in the area of internal control functions;
- (d) firms providing investment services and activities are subject to appropriate conduct of business rules;
- (e) it ensures market transparency and integrity by preventing market abuse in the form of insider dealing and market manipulation.

A decision of the Commission under this paragraph may be limited to one or more categories of investment firm or to market operators. A third-country firm may be registered in accordance with Article 36 where it falls within a category covered by the Commission's decision.

2. ESMA shall establish cooperation arrangements with the relevant competent authorities of third countries whose legal and supervisory frameworks have been recognised as equivalent in accordance with paragraph 1. Such arrangements shall specify at least:

- (a) the mechanism for the exchange of information between ESMA and the competent authorities of third countries concerned, including access to all information regarding the non-EU firms authorised in third countries that is requested by ESMA;
- (b) the mechanism for prompt notification to ESMA where a third country competent authority deems that a third-country firm that it is supervising and ESMA has registered in the register provided for in Article 38 is in breach of the conditions of its authorisation or other legislation to which it is obliged to adhere;
- (c) the procedures concerning the coordination of supervisory activities including, where appropriate, on-site inspections.

Article 38

Register

ESMA shall keep a register of the **third-country** firms allowed to provide investment services or **perform investment** activities in the Union in accordance with Article 36. The register shall be publicly accessible on the website of ESMA and shall contain information on the services or activities which the **third-country** firms are permitted to provide **or perform** and the reference of the competent authority responsible for their supervision in the third country.

Article 39

Withdrawal of registration

1. ESMA shall withdraw **■** the registration of a **third-country** firm in the register established in accordance with Article 38 where:

- (a) ESMA has well-founded reasons based on documented evidence to believe that, in the provision of investment services and activities in the Union, the **third-country** firm is acting in a manner which is clearly prejudicial to the interests of investors or the orderly functioning of markets; or
- (b) ESMA has well-founded reasons based on documented evidence to believe that, in the provision of investment services and activities in the Union, the **third-country** firm has seriously infringed the provisions applicable to it in the third country and on the basis of which the Commission has adopted the Decision in accordance with Article 37(1).

Friday 26 October 2012

- 2 ESMA shall only take a decision under paragraph 1 **where** all of the following conditions are fulfilled:
 - (a) ESMA has referred the matter to the competent authority of the third country and that **third-country** competent authority has not taken the appropriate measures needed to protect investors and the proper functioning of the markets in the Union or has failed to demonstrate that the third-country firm concerned complies with the requirements applicable to it in the third country; and
 - (b) ESMA has informed the third-country competent authority of its intention to withdraw the registration of the third-country firm at least 30 days before the withdrawal.
3. ESMA shall inform the Commission of any measure adopted in accordance with paragraph 1 without delay and shall publish its decision on its website.
4. The Commission shall assess whether the conditions under which a Decision in accordance with Article 37(1), has been adopted continue to persist in relation to the third country concerned.

TITLE IX

DELEGATED AND IMPLEMENTING ACTS

CHAPTER 1

DELEGATED ACTS

Article 40

Delegated acts

The Commission shall be empowered to adopt delegated acts in accordance with Article 41 concerning Article 2(3), Article 4(3), Article 6(2), Article 8(4), Article 10(2), Article 11(2), Article 12(2), Article 13(7), Article 14(5) and 14(6), Article 16(3), Article 18(2) and (3), Article 19(3), Article 20(3), Article 28(6), Article 29(6), Article 30(3), Article 31(8), Article 32(6) and Article 35(10) **■**.

Article 41

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The **■** power to adopt delegated acts referred to in Article 2(3), Article 4(3), Article 6(2), Article 8(4), Article 10(2), Article 11(2), Article 12(2), Article 13(7), Article 14(5) and 14(6), Article 16(3), Article 18(2) and 18(3), Article 19(3), Article 20(3), Article 28(6), Article 29(6), Article 30(3), Article 31(8), Article 32(6), and Article 35(10) shall be conferred for an indeterminate period of time from the date referred to in Article 41 paragraph 1.
3. The delegation of **power referred to in Article 2(3), Article 4(3), Article 6(2), Article 8(4), Article 10(2), Article 11(2), Article 12(2), Article 13(7), Article 14(5) and 14(6), Article 16(3), Article 18(2) and 18(3), Article 19(3), Article 20(3), Article 28(6), Article 29(6), Article 30(3), Article 31(8), Article 32(6), and Article 35(10)** may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

Friday 26 October 2012

5. A delegated act 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.

CHAPTER 2

IMPLEMENTING ACTS

Article 42

Committee procedure

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

TITLE X

FINAL PROVISIONS

Article 43

Reports and review

1. Before ... (*), the Commission shall, after consulting ESMA, present a report to the European Parliament and to the Council on the impact in practice of the transparency obligations established pursuant to Articles 3 **■** to 12, in particular on the application and continued appropriateness of the waivers to pre-trade transparency obligations established pursuant to Article 3(2) and **■** Article 4(2) and (3), **and 8**.
2. Before ... (*), the Commission shall, after consulting ESMA, present a report to the European Parliament and to the Council on the functioning of **Article 23**, including whether the content and format of transaction reports received and exchanged between competent authorities comprehensively enable to monitor the activities of investment firms in accordance with **Article 23(1)**. The Commission may make any appropriate proposals, including providing for transactions to be reported to a system appointed by ESMA instead of to competent authorities, which allows relevant competent authorities to access all the information reported pursuant to this Article **for the purposes of this Regulation and of Directive .../.../EU [new MiFID] and the detection of insider dealing and market abuse in accordance with Regulation (EU) No .../... [MAR]**.
- 2a. Before ... (*), the Commission shall, after consulting ESMA, present a report to the European Parliament and to the Council on the feasibility of developing a European best bid and offer system for consolidated quotes and whether it could be an appropriate commercial solution to reducing information asymmetries between market participants as well as being a tool for regulators to better monitor quotation activities on trading venues. (*)**

Before ... (*), the Commission shall, after consulting ESMA, present a report to the European Parliament and to the Council on the progress made in moving trading in standardised OTC derivatives to exchanges or electronic trading platforms pursuant to Articles 22 and 24.

(*) 42 months after the date of entry into force of this Regulation.

Friday 26 October 2012

Article 44

Amendment of Regulation (EU) No 648/2012

In **Article 81(3)** of Regulation (EU) No 648/2012, the following subparagraph is added:

"A trade repository shall transmit data to competent authorities in accordance with the requirements under Article 23 of Regulation (EU) No .../... [MiFIR] ⁽¹⁾.

⁽¹⁾ OJ L ...".

Article 45

Transitional provision

Third-country firms shall be able to continue to provide services and activities 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) of Directive .../.../EU [new MiFID]**.

■

Article 46

Entry into force and application

This Regulation shall enter into force on the **twentieth** day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall apply from ... **(*)**, except for Article 2(3), Article 4(3), Article 6(2), Article 8(4), Article 10(2), Article 11(2), Article 12(2), Article 13(7), Article 14(5) and (6), Article 16(3), Article 18(2) and (3), Article 19(3), Article 20(3), Article 23(8), Article 24(5), Article 26, Article 28(6), Article 29(6), Article 30(3) and Articles 31 to 35, which shall apply immediately following the entry into force of this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...,

For the European Parliament
The President

For the Council
The President

(*) 18 months after the date of entry into force of this Regulation.

<u>Notice No</u>	Contents (continued)	Page
2014/C 72 E/14	<p>Extending the period of application of Council Decision 2003/17/EC, and updating the names of a third country and the authorities responsible for production approval and control ***I</p> <p>European Parliament legislative resolution of 25 October 2012 on the proposal for a decision of the European Parliament and of the Council amending Council Decision 2003/17/EC by extending its period of application and by updating the names of a third country and of the authorities responsible for the approval and control of the production (COM(2012)0343 – C7-0161/2012 – 2012/0165(COD))</p>	98
	<p>P7_TC1-COD(2012)0165</p> <p>Position of the European Parliament adopted at first reading on 25 October 2012 with a view to the adoption of Decision No .../2012/EU of the European Parliament and of the Council amending Council Decision 2003/17/EC by extending its period of application and by updating the names of a third country and of the authorities responsible for the approval and control of the production</p>	99
2014/C 72 E/15	<p>Conservation and sustainable exploitation of fisheries resources ***I</p> <p>European Parliament legislative resolution of 25 October 2012 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (COM(2012)0277 – C7-0137/2012 – 2012/0143(COD))</p>	99
	<p>P7_TC1-COD(2012)0143</p> <p>Position of the European Parliament adopted at first reading on 25 October 2012 with a view to the adoption of Regulation (EU) No .../2012 of the European Parliament and of the Council on amending Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy</p>	100
2014/C 72 E/16	<p>Protection of geographical indications of agricultural products and foodstuffs ***</p> <p>European Parliament legislative resolution of 25 October 2012 on the draft Council decision on the conclusion of the Agreement between the European Union and the Republic of Moldova on the protection of geographical indications of agricultural products and foodstuffs (08741/2012 – C7-0173/2012 – 2012/0069(NLE))</p>	100
2014/C 72 E/17	<p>Conclusion, on behalf of the EU, of the Food Assistance Convention ***</p> <p>European Parliament legislative resolution of 25 October 2012 on the draft Council decision on the conclusion, on behalf of the European Union, of the Food Assistance Convention (12267/2012 – C7-0210/2012 – 2012/0183(NLE))</p>	101
2014/C 72 E/18	<p>Consular protection for citizens of the Union abroad *</p> <p>European Parliament legislative resolution of 25 October 2012 on the proposal for a Council directive on consular protection for citizens of the Union abroad (COM(2011)0881 – C7-0017/2012 – 2011/0432(CNS))</p>	101
2014/C 72 E/19	<p>Appointment of a member of the Executive Board of the European Central Bank</p> <p>European Parliament decision of 25 October 2012 on the Council recommendation for appointment of a Member of the Executive Board of the European Central Bank (C7-0195/2012 – 2012/0806(NLE))</p>	118
2014/C 72 E/20	<p>Protection against dumped imports from countries not members of the European Community ***I</p> <p>European Parliament legislative resolution of 25 October 2012 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community (COM(2012)0270 – C7-0146/2012 – 2012/0145(COD))</p>	120
	<p>P7_TC1-COD(2012)0145</p> <p>Position of the European Parliament adopted at first reading on 25 October 2012 with a view to the adoption of Regulation (EU) No .../2012 of the European Parliament and of the Council amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community</p>	120



Friday 26 October 2012

2014/C 72 E/21	<p>EU-US agreement on the coordination of energy-efficiency labelling programmes for office equipment ***</p> <p>European Parliament legislative resolution of 26 October 2012 on the draft Council decision on the signing and conclusion of the Agreement between the Government of the United States of America and the European Union on the coordination of energy-efficiency labelling programmes for office equipment (09890/2012 – C7-0134/2012 – 2012/0048(NLE)) 123</p>	123
2014/C 72 E/22	<p>Markets in financial instruments, and repeal of Directive 2004/39/EC***I</p> <p>Amendments adopted by the European Parliament on 26 October 2012 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)) 123</p> <p>DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL</p> <p>on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council ⁽¹⁾ 124</p> <p>ANNEX I 241</p> <p>ANNEX II 244</p> <p>ANNEX IIA 246</p> <p>ANNEX IIB 247</p>	124
2014/C 72 E/23	<p>Markets in financial instruments and amendment of the EMIR Regulation on OTC derivatives, central counterparties and trade repositories ***I</p> <p>Amendments adopted by the European Parliament on 26 October 2012 on the 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 (COM(2011)0652 – C7-0359/2011 – 2011/0296(COD)) 254</p> <p>REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL</p> <p>on markets in financial instruments and amending Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories ⁽¹⁾ 255</p>	255



⁽¹⁾ Text with EEA relevance

Key to symbols used

- * Consultation procedure
- **I Cooperation procedure: first reading
- **II Cooperation procedure: second reading
- *** Assent procedure
- ***I Codecision procedure: first reading
- ***II Codecision procedure: second reading
- ***III Codecision procedure: third reading

(The type of procedure is determined by the legal basis proposed by the Commission.)

Political amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ¶.

Technical corrections and adaptations by the services: new or replacement text is highlighted in italics and deletions are indicated by the symbol ||.

EUR-Lex (<http://new.eur-lex.europa.eu>) offers direct access to European Union legislation free of charge. The *Official Journal of the European Union* can be consulted on this website, as can the Treaties, legislation, case-law and preparatory acts.

For further information on the European Union, see: <http://europa.eu>



Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN