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Markets in financial instruments: Council confirms agreement with EP

The Permanent Representatives Committee today approved, on behalf of the Council, a compromise agreed with the European Parliament on new rules on the provision of services for investments in financial instruments and on the operation of regulated financial markets (*6406/14 ADD 1 and ADD 1 COR 1, ADD 2, ADD 3 and ADD 3 REV 1*).

The compromise was reached on 14 January between the presidency of the Council and the Parliament and will enable adoption of the legislation in first reading. The Council had set out its position in June 2013.

The "MIFID" proposals are aimed at promoting the integration, competitiveness, and efficiency of EU financial markets. They set out to amend and replace existing rules[1] for markets in financial instruments by two new legislative instruments:

– a *regulation* improving transparency and competition of trading activities by limiting the use of waivers[2] on disclosure requirements and by providing for non-discriminatory access to trading venues and central counterparties (CCPs) for all financial instruments, and requiring derivatives to be traded on organised venues (*6406/14 ADD 2*);

– a *directive* amending rules on the authorisation and organisational requirements for providers of investment services and on investor protection. The directive also introduces a new type of trading venue, the organised trading facility (OTF). Standardised derivatives contracts are increasingly traded on these platforms, which are currently not regulated (*6406/14 ADD 1*).

[1] Directive 2004/39/EC
[2] By setting an overall EU cap and a cap per trading venue.

The proposals set out to ensure that all organised trading is conducted on regulated trading venues: regulated markets, multilateral trading facilities and organised trading facilities. Strengthened requirements are introduced in relation to organisation, transparency and market surveillance in all three types of venue. Transparency requirements are calibrated for different types of instrument, notably equity, bonds and derivatives, and for different types of trading, notably order book and quote-driven systems. The measures will limit high-frequency trading.

Commodity trading will be controlled with the introduction of position limits aimed at preventing market abuse, including cornering of the market, and supporting orderly pricing and settlement. Market participants will have to report their positions at least daily. Coal and oil derivatives will be temporarily exempted from requirements to go through clearinghouses.

The proposed directive and regulation cover the provision by banks and investment firms of services such as brokerage, financial advice, dealing, portfolio management and underwriting. They are aimed at overcoming problems that have emerged in the implementation of rules that entered into force 2007 and which essentially abolished the possibility for member states to require trading to take place on specific exchanges, enabling competition from alternative venues.

Market and technological developments have outpaced various provisions in MIFID and the trading environment has become more complex. And the 2008 financial crisis exposed weaknesses in the regulation of instruments other than shares, traded mostly between professional investors. Such developments underscored the need for strengthened investor protection.

Whilst remedying such problems, the revision of MIFID will enable the EU to meet commitments made at the G20 summit at Pittsburg in September 2009 to tackle less regulated and more opaque parts of the financial system.

The regulation and the directive will now have to be approved by the parliament, so as to allow final adoption by the Council once the texts have been finalised in all languages.