EUROPEAN COMMISSION

MEMO

Brussels, 14 January 2014

Markets in Financial Instruments (MiFID): Commissioner Michel Barnier welcomes agreement in trilogue on revised European rules

I welcome the agreement in principle reached today by the European Parliament and the Council on updated rules for markets in financial instruments (MiFID II). These new rules will improve the way capital markets function to the benefit of the real economy. They are a key step towards establishing a safer, more open and more responsible financial system and restoring investor confidence in the wake of the financial crisis. The Commission would, however, have preferred a more ambitious implementation period.

The MiFID II reform means that organised trading of financial instruments must shift to multilateral and well-regulated trading platforms. Strict transparency rules will ensure that dark trading of shares and other equity instruments which undermine efficient and fair price formation will no longer be allowed. Although I regret that the Commission's proposed ambitious transparency regime for non-equity instruments, such as bonds and derivatives, has not been fully achieved, MiFID II represents an important step in the right direction towards greater transparency in this area.

In fulfilment of our G-20 commitments, the introduction of a trading obligation for derivatives will make trading safer and more efficient and will complement the compulsory clearing requirements under the European Markets Infrastructure Regulation. By introducing a harmonised EU system setting limits on the positions held in commodity derivatives, MIFID II will contribute to orderly pricing and prevent market abuse, thus curbing speculation on commodities and the disastrous impacts it can have on the world's poorest populations.

The establishment of a harmonised EU framework for non-discriminatory access to trading venues and central counterparties, as well as to benchmarks for trading and clearing purposes, will lead to improved competition and more effective, integrated and safe capital markets for the benefit of investors. Transitional rules will ensure that the shift is made in a smooth way.

MiFID II will also strengthen investor protection. Investment firms will have to meet stricter standards to ensure that investors can trust that they are being offered products which are suitable to them and that their assets are well protected. Investors will also be able to rely on independent and neutral advice and fee and remuneration structures must not conflict with this requirement.

MiFID II will also ensure that legislation keeps pace with technological developments. The dramatic increase in the speed and volumes of order flows can pose systemic risks. The new rules ensure safe and orderly markets and financial stability through the introduction of trading controls, an appropriate liquidity provision obligation for high-frequency traders pursuing market-making strategies and by regulating the provision of direct electronic market access.

Today’s agreement also strengthens the existing rules to ensure effective cooperation between authorities and harmonised administrative sanctions in order to detect and deter of breaches of MiFID. Throughout the EU investment firms must be well supervised and, where necessary, properly sanctioned.

Last but not least, through the creation of a harmonised legal framework for EU market access of third-country firms for professional clients, MiFID II will deepen the single market and improve the EU's ability to speak with one voice at international level.

I would like to congratulate all parties who have worked tirelessly on this very complex and technical file. I would like to thank in particular the European Parliament – especially the rapporteur, Markus Ferber, and the shadow rapporteurs; and the Greek Presidency (as well as the preceding Lithuanian, Irish, Cypriot and Danish presidencies) for their hard work and commitment, which has helped us to reach this important agreement."

Background

In October 2011, the European Commission tabled proposals to revise the Markets in Financial Instruments Directive (MiFID II) with the aim of making financial markets more efficient, resilient and transparent, and to strengthen the protection of investors (see IP/11/1219).

Key elements of the agreement reached today by the co-legislators:

(1) MiFID II introduces a **market structure framework** which closes loopholes and ensures that trading, wherever appropriate, takes place on regulated platforms. To this end, it subjects shares to a trading obligation. It further ensures that investment firms operating an internal matching system which executes client orders in shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments on a multilateral basis have to be authorised as a Multilateral trading facility (MTF). It also introduces a new multilateral trading venue, the Organised Trading Facility (OTF), for non-equity instruments to trade on organised multilateral trading platforms.

These rules ensure a level playing field with Regulated Markets (RMs) and MTFs. The neutrality of OTF operators is ensured through restrictions on the use of own capital, including matched principal trading, and discretion in their execution policy. It introduces a trading obligation for shares as well as a trading obligation for derivatives which are eligible for clearing under the European Markets Infrastructure Regulation (EMIR) and are sufficiently liquid. This will move trading in these instruments onto multilateral and well regulated platforms in accordance with the G-20 commitments.

(2) MIFID II increases **equity market transparency** and for the first time establishes a principle of transparency for non-equity instruments such as bonds and derivatives. For equities a double volume cap mechanism limits the use of reference price waivers and negotiated price waivers (4% per venue cap and 8% global cap) together with a requirement for price improvement at the mid-point for the former. Large in scale waivers and order management waivers remains the same as under MiFID I. MiFID II also broadens the pre- and post-trade transparency regime to include non-equity instruments, although pre-trade transparency waivers are available for large orders, request for quote and voice trading. Post trade transparency is provided for all financial instruments with the possibility of deferred publication or volume masking as appropriate.

Rules have also been established to enhance the effective consolidation and disclosure of trading data through the obligation for trading venues to make pre- and post-trade data available on a reasonable commercial basis and through the establishment of a consolidated tape mechanism for post-trade data. These rules are accompanied by the establishment of approved reporting mechanism (ARM) and authorised publication arrangement (APA) for trade reporting and publication.

(3) To meet the G20 commitments, MiFID II provides for **strengthened supervisory powers** and a harmonised position-limits regime for commodity derivatives to improve transparency, support orderly pricing and prevent market abuse. Under this system competent authorities will impose limits on persons' positions in accordance with a methodology for calculation set by the European Securities and Markets Authority (ESMA). It also introduces a position-reporting obligation by category of trader. This will help regulators and market participants to have better information on the functioning of these markets.

(4) A new framework will improve conditions for **competition in the trading and clearing of financial instruments**. This is essential for the integration of efficient and safe EU capital markets. For this purpose, MiFID establishes a harmonised EU regime for non-discriminatory access to trading venues and central counterparties (CCPs).Smaller trading venues and newly established CCPs will benefit from optional transition periods. The non-discriminatory access regime will also apply to benchmarks for trading and clearing purposes. Transitional rules will ensure the smooth application of these provisions.

(4) MiFID II will introduce trading **controls for algorithmic trading activities** which have dramatically increased the speed of trading and can cause systemic risks. These safeguards include the requirement for all algorithmic traders to be properly regulated and to provide liquidity when pursuing a market-making strategy. In addition, investment firms which provide direct electronic access to a trading venue will be required to have in place systems and risk controls to prevent trading that may contribute to a disorderly market or involve market abuse.

(5) **Stronger investor protection** is achieved by introducing better organisational requirements, such as client asset protection or product governance, which also strengthen the role of management bodies. The new regime also provides for strengthened conduct rules such as an extended scope for the appropriateness tests and reinforced information to clients. Independent advice is clearly distinguished from non-independent advice and limitations are imposed on the receipt of commissions (inducements). MiFID also introduces harmonised powers and conditions for ESMA to prohibit or restrict the marketing and distribution of certain financial instruments in well-defined circumstances and similar powers for the European Banking Authority (EBA) in the case of structured deposits. Concerning Packaged Retail Investment Products (PRIPS), the new framework also covers structured deposits and amends the Insurance Mediation Directive (IMD) to introduce some rules for insurance-based investment products.

(6) The agreement strengthens the existing regime to ensure **effective and harmonised administrative sanctions**. The use of criminal sanctions is framed so as to ensure the cooperation between authorities and the transparency of sanctions. A harmonised system of strengthened cooperation will improve the effective detection of breaches of MIFID.

(7) A harmonised regime for granting access to EU markets for **firms from third countries** is based on an equivalence assessment of third country jurisdictions by the Commission. The regime applies only to the cross-border provision of investment services and activities provided to professional and eligible counterparties. For a transitional period of three years and then pending equivalence decisions by the Commission, national third-country regimes continue to apply.

More information:

http://ec.europa.eu/internal_market/securities/isd/mifid/index_en.htm