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EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Brussels,
D(2011)

Opinion

Title **DG MARKT - Impact Assessment on a Revision of the Directive on Markets in Financial Instruments**

(draft version of 20 April 2011)

(A) Context

The Markets in Financial Instruments Directive (MiFID) regulatory framework consists of Framework Directive 2004/39/EC, Implementing Directive 2006/73/EC and Implementing Regulation No 1287/2006. Applied since November 2007, the framework is a core pillar in EU financial integration regulating the provision of investment services in financial instruments, the operation of regulated markets and the related powers and duties of national competent authorities. Reviewing the framework is a key component in the overall Commission strategy for safe and efficient EU financial markets. The revision aims to address the issues raised by the financial crisis, incorporate the lessons from MiFID implementation and adapt to on-going technological and market developments.

The report concerns the revision of the Framework Directive. Separate impact assessments will accompany proposed changes to the implementing legislation as needed.

(B) Overall assessment

While the report contains a considerable amount of analysis to support decision making, this should be better presented to clarify the initiative's overall context and underlying logic. The report also needs to be further improved in some specific respects. It should provide greater evidence of the problems with the affected markets or, when such evidence is weak, should provide supplementary justifications for EU action, such as the need to respond to G-20 commitments or precautionary concerns. The report should also clarify the scope and relevance of the proposed increase in regulatory coverage and should provide more information on how the proper calibration of the revised framework would be achieved so as to ensure its proportionality and cost-effectiveness. The report should also further clarify the nature of the powers of the European Security Market Authority and the content and impact of some of preferred options. Finally, the report should strengthen the comparison of options, providing more clarity on the sources and size of identified benefits and giving a more thorough presentation of the reasons why opposing stakeholder views are dismissed.

Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium. Telephone: (32-2) 299 11 11.
Office: BERL 6/29. Telephone: direct line (32-2) 2981898. Fax: (32-2) 2965960.

E-mail: impact-assessment-board@ec.europa.eu

(C) Main recommendations for improvements

(1) Clarify the initiative's overall context and underlying logic. Reflecting the wide scope of the MiFID framework, the report addresses a broad range of issues, making an effort to present them in a comprehensive manner. However, the presentation should be further improved to make the report more accessible. A brief introduction specifically designed for the non-expert reader should place the initiative in the context of the overall set of Commission proposals concerning financial markets and explain why such a diverse set of issues affecting a broad range of different stakeholders is addressed through one individual initiative. The report should also provide information on the relative size of the affected financial markets, and how they work, so as to give an indication of the extent to which the scope of the MiFID framework may be extended. In addition, the report should provide a more precise assessment of the similarities and differences with parallel initiatives in third countries, notably the US. Finally, the report should strike a better balance between presentations in the main text and in the annexes, giving priority to a discussion of the most important or more problematic issues in the main text. Accordingly, the main text should consider a reduced number of options (or groupings of options) and provide a more comprehensive description and analysis of the key issues and related options and impacts.

(2) Improve the analysis of the problems. The analysis of the problems should start from concrete evidence or examples of limited market efficiency rather than from the limited scope of the existing regulatory framework (which is a potential problem driver rather than a problem per se). The magnitude of the identified problems and the relative importance of the various underlying drivers should also be established on the basis of stronger evidence, particularly with regard to the issues raised by high frequency trading (HFT), lacking transparency in non-equity assets and different conditions for third country firms' access across Member States. The analysis of problems should also show more clearly how each of them would be affected by all relevant recent Commission proposals. Finally, the report should acknowledge more transparently when evidence is weak or non-available, clearly illustrating the reasons why regulatory action is nevertheless being considered (for instance on precautionary grounds or as a follow up to G-20 commitments).

(3) Better illustrate the content of some preferred policy options and their justification. The report should clarify what the preferred option concerning regulators' power to impose bans would imply compared to the status quo. It should also better specify the role of the European Security Market Authority, indicating whether (and why) new powers would be conferred to it or not. With regards to derivatives markets, the report should explain in greater detail why, and how, position limits would be imposed and exemptions for commodity firms trading on their own account narrowed. In these cases, as well as in the cases of "SMEs markets", HFT limits and MiFID's extension to secondary trading in emission allowances, the report should also explain more thoroughly the reasons why opposing stakeholders' views are dismissed. Finally, the report should explain how the "proper calibration" of regulatory measures would be ensured for the proposed solutions to the lack of a level paying field and to the insufficient transparency for market participants.

(4) Improve the analysis of options and their comparison. The report should strengthen the analysis of benefits, more clearly identifying their nature and, whenever possible, giving a rough indication of the order of magnitude. In order to do so, the main text could draw upon the annex on estimated indirect economic effects. An indication of the relative importance of estimated costs should also be provided by comparing absolute figures to relevant variables like transaction costs for market participants. On this strengthened basis, the report should discuss more extensively the reasons why benefits are assessed to be greater than costs in the case of all preferred options. As for specific effects, the report should highlight the more significant differences in impact across Member States and discuss in greater detail the potential implications of narrowing exemptions for commodity firms trading derivatives on their own account. Finally, when comparing options, the report should ensure that efficiency is systematically assessed against a comprehensive baseline scenario that transparently takes into account the impact of relevant parallel initiatives by national regulators or the Commission (such as the reviews of the Market Abuse and Capital Requirements Directives).

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The key presentational concerns are identified in the main recommendations above.

(E) IAB scrutiny process

Reference number	**2011/MARKT/044**
External expertise used	No
Date of Board Meeting	18 May 2011