

EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Chair

Brussels,
SG.C2/LA/rs D(2015)

**NOTE FOR THE ATTENTION OF MR JONATHAN FAULL
DIRECTOR GENERAL, DG FISMA**

Subject: Opinion of the Impact Assessment Board on Commission Delegated Regulation supplementing Directive 2014/65/EU on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (MiFID II) and Regulation (EU) No 600/2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (MiFIR)

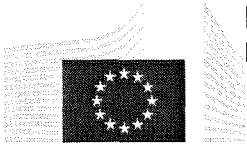
Please find in annex the opinion of the Impact Assessment Board on the draft impact assessment report on the above mentioned subject. I hope you find the recommendations useful, and suggest that you include a paragraph in the final version of the impact assessment report referring to the Board's examination and briefly explaining if and how the Board's recommendations have led to changes compared to the earlier draft. Such a cross-reference will contribute to the coherence of the file as it goes into the inter-service consultation and is presented to the College.

Let me remind you that it is the responsibility of your service to ensure that the Board's opinion is uploaded to CIS-Net and that it is submitted to the Registry together with the corresponding initiative, the impact assessment and the executive summary, when they are introduced for adoption by the College. More detailed instructions are available on [GoPro](#).

Once the College has adopted the corresponding initiative, the Board's opinion will be published on the Europa website, unless you inform us of the reasons - in accordance with Regulation 2001/1049 - why this should not be done in this particular case prior to the date of adoption. Please send (a copy of) such a request to the Impact Assessment Board to the Ares address ve_sg.IAB.

Marianne Klingbeil

Encl. Opinion of the Impact Assessment Board
Copies C. Martinez Alberola (President's cabinet), M. Sutton, R. Maggi (First Vice-President's cabinet)
C. Day, E. Messaoudi, C. Becher, E. Golberg, S. Weyand, M. Wimmer, M. Björklund(SG),
Board members



Brussels,
D(2015)

Opinion

Title

DG FISMA - Impact Assessment on Commission Delegated Regulation supplementing Directive 2014/65/EU on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (MiFID II) and Regulation (EU) No 600/2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (MiFIR)

(draft version of 25 March 2015)*

(A) Context

Directive 2014/65/EU on markets in financial instruments (MiFID II) and Regulation (EU) No 600/2014 on markets in financial instruments No 648/2012 (MiFIR) aim to further enhance investor protection and financial market transparency across the Union. MiFID II/MiFIR extends the transparency requirements to equity-like and non-equity instruments and to market players that had not previously or to a lesser extent been regulated. Investor protection is enhanced by strengthening the inducements regime and introducing additional safeguards concerning clients' assets. This impact assessment supports the decision on delegated acts of MiFID II and MiFIR, notably in the areas of investor protection, market integration and integrity as well as transparency, where a consistent implementation throughout the Union is considered necessary.

(B) Overall opinion: POSITIVE

The Board recommends that the following aspects of the IA report are improved:

- 1) The scale and the scope of impacts should be better indicated. The report should explain how the proposed options differ from the current practice in Member States and use a range of national experiences (where available) to illustrate and quantify the impacts, in particular, regarding inducements and safeguarding clients' assets;**
- 2) The summary of impacts should explain how the preferred option in different areas achieves the objectives of investor protection, transparency and market integration;**
- 3) The report should better present the views of the different stakeholder groups (e.g. investors vs investment firms) and explain how they have been taken into account, in particular, with regards to inducements.**

(C) Main recommendations for improvements

- (1) Elaborate assessment of impacts.** The report should better indicate the scope and

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

scale of the impacts (who is affected and to what extent?) with the help of examples from Member States or G20 countries. Where available, it should complement the UK experience with that of other Member States. The report should clarify the interaction between SME growth market and definition of liquid market. It should better explain the impact on consumers, for example, when assessing the options relating to energy contracts: what would be the impacts on provision of energy and energy prices? The report should also refer to the experience in countries outside the EU (e.g. the US) with regards issues like inducements or prices for trading data.

(2) Improve summary of impacts and comparison of options. When summarising the overall and specific impacts of the measures, the report should explain to what extent the preferred options achieve the overall objectives such as improved investor protection, increased transparency and market integration. It should better link the summary of impacts and comparison of options to the rest of the analysis, in particular, regarding safeguarding client assets, quality enhancement criterion for inducements, systematic internalisers and high frequency trading. The report should better explain why the preferred options in the areas of SME growth market label, clarifying the boundary between commodities and commodity derivatives in energy contracts traded on organised trading facilities, and definition of commercial purposes go beyond the ESMA technical advice. It should also elaborate the proposed monitoring and evaluation arrangements, e.g. how the level of achieved market integration would be measured.

(3) Better present stakeholder views. The report should better distinguish between the views of different stakeholder groups (e.g. investors vs investment firms or views within the same group) on the range of issues covered by the IA. It should explain how their arguments have been weighed in the options assessment, in particular with regards to inducements on investment research and quality enhancement criteria.

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

(D) Procedure and presentation

The drafting of the report should be improved (e.g. language, correct references provided, consistency in tabular comparison of options). The glossary should be complemented by all essential terms used to describe options or assess impacts such as "market integration" or "SME growth market".

(E) IAB scrutiny process

Reference number	2015/FISMA/002; 2015/FISMA/025
External expertise used	No
Date of IAB meeting	22 April 2015