



SUMMARY OF THE OUTCOMES OF THE FIRST POLITICAL TRILOGUE ON THE REVIEW OF MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE (MiFID/MiFIR)

On 4 July the first political trilogue on MiFID/MiFIR was held in Strasbourg. During the trilogue, the agenda for the further political trilogues was agreed. There was also an initial discussion on the issues of market structure and corporate governance. The purpose of this flash note is to inform the Member States about the outcomes of the trilogue, views and explanations provided by the European Parliament (EP), and about the suggested way forward in the trilogue process.

The list of themes for discussion in political trilogues

The EP, the Commission and the Council agreed on the list of the themes for political trilogues, as set out in the Annex 1 of the Presidency document circulated for the Financial Services Working Party meeting of 2 July.

Outcomes of discussions on the main issues

Market structure

The Presidency presented the General Approach and arguments behind the main changes compared with the Commission's and EP's text. The Presidency indicated that it will have to revert to the Member States to discuss any changes proposed by the EP in the trilogue process.

The EP highlighted that market structure is the key issue for them in MiFID/MiFIR. The main concern of the EP in this respect is that the trade from existing MTFs and regulated markets could be driven to newly created OTFs. With a view to restrict the OTF category, the EP proposed limiting the scope of OTFs to non-equities, introducing an OTC definition, and prohibiting proprietary trading.

The EP in general agreed to consider the possibility to retain OTF for equities if the Council would agree to make the OTF category more restricted. The EP indicated that they see the issue of market structure as a part of the package.

The EP broadly shared the view of the Council and the Commission that there is a need for a different treatment of illiquid sovereign debt instruments, so they could broadly support the exemption from the prohibition of proprietary trading for OTFs in the case of such instruments. However, the EP were less convinced of the need of Matched Principal Trading in the case of non-equities, and wanted to at least stricthen the definition. The Commission will prepare a paper regarding the need of proprietary trading for OTFs while trading in illiquid sovereign debt instruments.

The EP are willing to introduce the OTC definition, which was regarded as a solution to abolish the loopholes in the OTC derivatives market. EP would like the Council to show flexibility on this issue. The Commission was asked to present a non-paper regarding the OTC definition and its link with MAR and MAD.

The EP expressed their disapproval of review clauses in MiFID, as they create preconditions for a further MiFID review, especially in the area of market structure. Instead of the review clauses, the EP would prefer technical standards or delegated acts. The Commission was assigned to prepare a non-paper to be distributed as a basis for further discussions in this respect.

The EP explained that their reasoning for increasing the market capitalization limit for SME growth markets was to provide space for the enterprises listed on those markets to grow. The EP stated that normally listed SMEs grow very rapidly, and higher threshold would allow the companies to benefit longer from the SME growth markets. The Commission was assigned to prepare a non-paper analysing such limit.

Corporate governance

In general, all three parties of the trilogue agreed with the need to align corporate governance provisions in MiFID/MiFIR with the respective provisions in CRD IV. The EP indicated that they are ready to withdraw their additional amendments not present in the CRD IV text (such as the requirement to ensure that members of the management boards in the different entities breaching the MiFID/R provisions may be personally subject to criminal and civil proceedings and explicit non-discrimination against women and the requirement to implement 1/3 gender quota).

Plans for further trilogues

It was agreed that during the summer a substantial amount of technical work would be done. Three further political trilogues are planned in September:

- **4 September.** Themes to be discussed: Investor protection, Commodities and Scope/Exemptions.
- **11 September.** Themes to be discussed: Trading obligation and clearing obligation, Transparency (pre-, post-) and reporting and Trading controls (including suspension/withdrawal from trading).
- **25 September.** Themes to be discussed: Sanctions and redress, Third countries and Access.

The Presidency plans to hold a Working Party meeting before every political trilogue. The next Working Party meeting on MiFID/MiFIR is preliminary scheduled for **2 September. We hope to be able to confirm this as soon as possible.**

The dates for two following political trilogues are pencilled for **9 and 16 October**. The information on the issues to be discussed in those trilogues will be presented by the Presidency at a later stage.

With a view to facilitate further discussions, the Presidency would like to ask the Member States to provide their views regarding the issues to be discussed in further trilogues - in particular in the trilogues of 4 and 11 September - by 19 July, indicating any redlines and flexibilities.