

MiFID

COM(2011)0656 (2011/0268(COD))

part 1 (recitals)

Document dated: 11 February 2014

		COM	Council	EP	Compromise
-1.		<p>DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL</p> <p>on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council</p> <p>(Recast)</p>	<p>DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL</p> <p>on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council</p> <p>(Recast)</p>	<p>DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL</p> <p>on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council</p> <p>(Recast)</p>	<p><i>Agreed silence procedure 20131008</i></p> <p><i>Trilogue 20131218: agreed to include changes from non-paper on AIFMD</i></p> <p>DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL</p> <p>on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council <u>and amending Directive 2011/61/EU on Alternative Investment Fund Managers</u></p> <p>(Recast)</p> <p><i>Trilogue 20140114: agreed to include changes from non-paper on insurance</i></p> <p>DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL</p> <p>on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council <u>and amending Directive</u></p>

	COM	Council	EP	Compromise
				<u>2011/61/EU on Alternative Investment Fund Managers and Directive 2002/92/EC on insurance mediation</u> (Recast)
1.	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	<i>Agreed silence procedure</i> 20131008 THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
2.	Having regard to the Treaty on the functioning of the European Union, and in particular Article 53(1) thereof,	Having regard to the Treaty on the functioning of the European Union, and in particular Article 53(1) thereof,	Having regard to the Treaty on the functioning of the European Union, and in particular Article 53(1) thereof,	<i>Agreed silence procedure</i> 20131008 Having regard to the Treaty on the functioning of the European Union, and in particular Article 53(1) thereof,
3.	Having regard to the proposal from the Commission ¹ ,	Having regard to the proposal from the Commission ¹ ,	Having regard to the proposal from the <i>European</i> Commission ² ,	<i>Agreed silence procedure</i> 20131008 Having regard to the proposal from the <i>European</i> Commission ³ ,
4.	After transmission of the right legislative act to the national Parliaments,	After transmission of the right legislative act to the national Parliaments,	After transmission of the <i>draft</i> legislative act to the national parliaments,	<i>Agreed silence procedure</i> 20131008 After transmission of the <i>draft</i> legislative act to the national parliaments,
5.			<i>Having regard to the opinion of the European Central Bank⁴,</i>	<i>Agreed silence procedure</i> 20131008

¹ OJ C 71 E, 25.3.2003, p. 62.

¹ OJ C 71 E, 25.3.2003, p. 62.

² OJ C 71 E, 25.3.2003, p. 62.

³ OJ C 71 E, 25.3.2003, p. 62.

⁴ OJ C 144, 20.6.2003, p. 6.

		COM	Council	EP	Compromise
					[See row 7. Lawyer linguists to confirm correct location.] <i>Having regard to the opinion of the European Central Bank⁵,</i>
6.		Having regard to the Opinion of the European Economic and Social Committee ⁶ ,	Having regard to the Opinion of the European Economic and Social Committee ² ,	Having regard to the <i>opinion</i> of the European Economic and Social Committee ⁷ ,	<i>Agreed silence procedure 20131008</i> Having regard to the <i>opinion</i> of the European Economic and Social Committee ⁸ ,
7.		Having regard to the opinion of the European Central Bank ⁹ ,	Having regard to the opinion of the European Central Bank ³ ,	//	<i>Agreed silence procedure 20131008</i> [...] [See Technical group proposal in row 5]
8.		After consulting the European Data Protection Supervisor,	After consulting the European Data Protection Supervisor,	//	<i>Agreed silence procedure 20131008</i> [...] [See recital 114a, row 152. Lawyer linguists to confirm correct location]
9.		Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure, ¹⁰	<i>Agreed silence procedure 20131008</i> Acting in accordance with the

⁵ OJ C 144, 20.6.2003, p. 6.

⁶ OJ C 220, 16.9.2003, p. 1.

² OJ C 220, 16.9.2003, p. 1.

⁷ OJ C 220, 16.9.2003, p. 1.

⁸ OJ C 220, 16.9.2003, p. 1.

⁹ OJ C 144, 20.6.2003, p. 6.

³ OJ C 144, 20.6.2003, p. 6.

¹⁰ *Position of the European Parliament of 26 October 2012.*

		COM	Council	EP	Compromise
					ordinary legislative procedure, ¹¹
10.		Whereas:	Whereas:	Whereas:	<i>Agreed silence procedure 20131008</i> Whereas:
11.	Rec. 1	(1) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC ¹² has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.	(1) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC ⁴ has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.	(1) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments // ¹³ has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.	<i>Agreed silence procedure 20131008</i> [Subject to legal-linguistic review] (1) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments // ¹⁴ has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.
12.	Rec. 2	(2) Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field ¹⁵ sought to establish the conditions under which authorised investment firms and banks could provide specified services or establish branches in other Member States on the basis of home country authorisation and supervision. To this end, that	(2) Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field ⁵ sought to establish the conditions under which authorised investment firms and banks could provide specified services or establish branches in other Member States on the basis of <u>H</u> ome country	(2) Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field ¹⁶ sought to establish the conditions under which authorised investment firms and banks could provide specified services or establish branches in other Member States on the basis of home country authorisation and supervision. To	<i>Agreed silence procedure 20131008</i> (2) Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field ¹⁷ sought to establish the conditions under which authorised investment firms and banks could provide specified services or establish

¹¹ *Position of the European Parliament of 26 October 2012.*

¹² OJ L 145, 30.4.2004, p. 1.

⁴ OJ L 145, 30.4.2004, p. 1.

¹³ OJ L 145, 30.4.2004, p. 1.

¹⁴ OJ L 145, 30.4.2004, p. 1.

¹⁵ OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 2002/87/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

⁵ OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 2002/87/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

¹⁶ OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 2002/87/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

¹⁷ OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 2002/87/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

		COM	Council	EP	Compromise
		Directive aimed to harmonise the initial authorisation and operating requirements for investment firms including conduct of business rules. It also provided for the harmonisation of some conditions governing the operation of regulated markets.	authorisation and supervision. To this end, that Directive aimed to harmonise the initial authorisation and operating requirements for investment firms including conduct of business rules. It also provided for the harmonisation of some conditions governing the operation of regulated markets.	this end, that Directive aimed to harmonise the initial authorisation and operating requirements for investment firms including conduct of business rules. It also provided for the harmonisation of some conditions governing the operation of regulated markets.	branches in other Member States on the basis of home country authorisation and supervision. To this end, that Directive aimed to harmonise the initial authorisation and operating requirements for investment firms including conduct of business rules. It also provided for the harmonisation of some conditions governing the operation of regulated markets.
13.	Rec. 3	(3) In recent years more investors have become active in the financial markets and are offered an even more complex wide-ranging set of services and instruments. In view of these developments the legal framework of the Union should encompass the full range of investor-oriented activities. To this end, it is necessary to provide for the degree of harmonisation needed to offer investors a high level of protection and to allow investment firms to provide services throughout the Union, being a Single Market, on the basis of home country supervision. In view of the preceding, Directive 93/22/EEC was replaced by Directive 2004/39/EC.	(3) In recent years more investors have become active in the financial markets and are offered an even more complex wide-ranging set of services and instruments. In view of these developments the legal framework of the Union should encompass the full range of investor-oriented activities. To this end, it is necessary to provide for the degree of harmonisation needed to offer investors a high level of protection and to allow investment firms to provide services throughout the Union, being a Single Market, on the basis of Home country supervision. In view of the preceding, Directive 93/22/EEC was replaced by Directive 2004/39/EC.	(3) In recent years more investors have become active in the financial markets and are offered an even more complex wide ranging set of services and instruments. In view of these developments the legal framework of the European Union should encompass the full range of investor-oriented activities. To this end, it is necessary to provide for the degree of harmonisation needed to offer investors a high level of protection and to allow investment firms to provide services throughout the European Union, being an <i>internal market</i> , on the basis of home country supervision. In view of the preceding, Directive 93/22/EEC was replaced by Directive 2004/39/EC.	<i>Agreed silence procedure 20131008</i> (3) In recent years more investors have become active in the financial markets and are offered an even more complex wide-ranging set of services and instruments. In view of these developments the legal framework of the European Union should encompass the full range of investor-oriented activities. To this end, it is necessary to provide for the degree of harmonisation needed to offer investors a high level of protection and to allow investment firms to provide services throughout the European Union, being an <i>internal market</i> , on the basis of home country supervision. In view of the preceding, Directive 93/22/EEC was replaced by Directive 2004/39/EC.
14.	Rec. 4	(4) The financial crisis has exposed weaknesses in the functioning and in the transparency of financial markets. The evolution of financial	(4) The financial crisis has exposed weaknesses in the functioning and in the transparency of financial markets. The evolution of financial	(4) The financial crisis has exposed weaknesses in the functioning and in the transparency of financial markets. The evolution of financial	<i>Technical group 20141028</i> (4) The financial crisis has exposed weaknesses in the functioning and

		COM	Council	EP	Compromise
		markets have exposed the need to strengthen the framework for the regulation of markets in financial instruments in order to increase transparency, better protect investors, reinforce confidence, reduce unregulated areas, ensure that supervisors are granted adequate powers to fulfil their tasks.	markets have exposed the need to strengthen the framework for the regulation of markets in financial instruments in order to increase transparency, better protect investors, reinforce confidence, reduce unregulated areas, ensure that supervisors are granted adequate powers to fulfil their tasks.	markets have exposed the need to strengthen the framework for the regulation of markets in financial instruments, <i>including where trading in such markets takes place over the counter</i> , in order to increase transparency, better protect investors, reinforce confidence, <i>address</i> unregulated areas, ensure that supervisors are granted adequate powers to fulfil their tasks.	in the transparency of financial markets. The evolution of financial markets have exposed the need to strengthen the framework for the regulation of markets in financial instruments, <i>including where trading in such markets takes place over the counter</i> , in order to increase transparency, better protect investors, reinforce confidence, <i>address</i> unregulated areas, and ensure that supervisors are granted adequate powers to fulfil their tasks.
15.	Rec. 5	(5) There is agreement among regulatory bodies at international level that weaknesses in corporate governance in a number of financial institutions, including the absence of effective checks and balances within them, have been a contributory factor to the financial crisis. Excessive and imprudent risk taking may lead to the failure of individual financial institutions and systemic problems in Member States and globally. Incorrect conduct of firms providing services to clients may lead to investor detriment and loss of investor confidence. In order to address the potentially detrimental effect of these weaknesses in corporate governance arrangements, the provisions of this Directive should be supplemented by more detailed principles and minimum standards. These principles and standards should apply taking into	(5) There is agreement among regulatory bodies at international level that weaknesses in corporate governance in a number of financial institutions, including the absence of effective checks and balances within them, have been a contributory factor to the financial crisis. Excessive and imprudent risk taking may lead to the failure of individual financial institutions and systemic problems in Member States and globally. Incorrect conduct of firms providing services to clients may lead to investor detriment and loss of investor confidence. In order to address the potentially detrimental effect of these weaknesses in corporate governance arrangements, the provisions of this Directive should be supplemented by more detailed principles and minimum standards. These principles and standards	(5) There is agreement among regulatory bodies at international level that weaknesses in corporate governance in a number of financial institutions, including the absence of effective checks and balances within them, have been a contributory factor to the financial crisis. Excessive and imprudent risk taking may lead to the failure of individual financial institutions and systemic problems in Member States and globally. Incorrect conduct of firms providing services to clients may lead to investor detriment and loss of investor confidence. In order to address the potentially detrimental effect of these weaknesses in corporate governance arrangements, the provisions of this Directive should be supplemented by more detailed principles and minimum standards. These principles and standards	<i>Technical group 20141028</i> (5) There is agreement among regulatory bodies at international level that weaknesses in corporate governance in a number of financial institutions, including the absence of effective checks and balances within them, have been a contributory factor to the financial crisis. Excessive and imprudent risk taking may lead to the failure of individual financial institutions and systemic problems in Member States and globally. Incorrect conduct of firms providing services to clients may lead to investor detriment and loss of investor confidence. In order to address the potentially detrimental effect of these weaknesses in corporate governance arrangements, the provisions of this Directive should be supplemented by more detailed

		COM	Council	EP	Compromise
		account the nature, scale and complexity of investment firms.	should apply taking into account the nature, scale and complexity of investment firms.	should apply taking into account the nature, scale and complexity of investment firms. <i>Notwithstanding the responsibilities of shareholders to ensure that boards carry out their responsibilities appropriately, the measures involved should include limits on the number of directorships that directors of financial institutions should hold. Those measures should be applied in a way which takes account of the demands of effectively managing such institutions, while also allowing, where appropriate, the directors of such firms to continue in particular to act as directors of not-for-profit organisations in accordance with corporate social responsibility.</i>	principles and minimum standards. These principles and standards should apply taking into account the nature, scale and complexity of investment firms. NOTE: Last part of EP text is included in recital 39
16.	Rec. 6	(6) The High Level Group on Financial Supervision in the European Union invited the European Union to develop a more harmonised set of financial regulation. In the context of the future European supervision architecture, the European Council of 18 and 19 June 2009 also stressed the need to establish a European single rule book applicable to all financial institutions in the Single Market.	(6) The High Level Group on Financial Supervision in the European Union invited the European Union to develop a more harmonised set of financial regulation. In the context of the future European supervision architecture, the European Council of 18 and 19 June 2009 also stressed the need to establish a European single rule book applicable to all financial institutions in the Single Market.	(6) The High Level Group on Financial Supervision in the European Union invited the European Union to develop a more harmonised set of financial regulation. In the context of the future European supervision architecture, the European Council of 18 and 19 June 2009 also stressed the need to establish a European single rule book applicable to all financial institutions in the Single Market.	<i>Agreed silence procedure 20131008</i> (6) The High Level Group on Financial Supervision in the European Union invited the European Union to develop a more harmonised set of financial regulation. In the context of the future European supervision architecture, the European Council of 18 and 19 June 2009 also stressed the need to establish a European single rule book applicable to all financial institutions in the Single Market.
17.	Rec. 7	(7) In the light of the above, Directive 2004/39/EC is now partly	(7) In the light of the above, Directive 2004/39/EC is now partly	(7) In the light of the above, Directive 2004/39/EC is now partly	<i>Agreed silence procedure</i>

		COM	Council	EP	Compromise
		<p>recast as this new Directive and partly replaced by Regulation (EU) No .../... (MiFIR). Together, both legal instruments should form the legal framework governing the requirements applicable to investment firms, regulated markets, data reporting services providers and third country firms providing investment services or activities in the Union. This Directive should therefore be read together with the Regulation. This Directive should contain the provisions governing the authorisation of the business, the acquisition of qualifying holding, the exercise of the freedom of establishment and of the freedom to provide services, the operating conditions for investment firms to ensure investor protection, the powers of supervisory authorities of home and host Member States, the sanctioning regime. Since the main objective and subject-matter of this proposal is to harmonise national provisions concerning the mentioned areas, the proposal should be based on Article 53(1) TFEU. The form of a Directive is appropriate in order to enable the implementing provisions in the areas covered by this Directive, when necessary, to be adjusted to any existing specificities of the particular market and legal system in each Member State.</p>	<p>recast as this new Directive and partly replaced by Regulation (EU) No .../... (MiFIR). Together, both legal instruments should form the legal framework governing the requirements applicable to investment firms, regulated markets, data reporting services providers and third country firms providing investment services or activities in the Union. This Directive should therefore be read together with the Regulation. This Directive should contain the provisions governing the authorisation of the business, the acquisition of qualifying holding, the exercise of the freedom of establishment and of the freedom to provide services, the operating conditions for investment firms to ensure investor protection, the powers of supervisory authorities of <u>Home and Host Member States</u> and the sanctioning regime. Since the main objective and subject-matter of this proposal is to harmonise national provisions concerning the mentioned areas, the proposal should be based on Article 53(1) TFEU. The form of a Directive is appropriate in order to enable the implementing provisions in the areas covered by this Directive, when necessary, to be adjusted to any existing specificities of the particular market and legal system in each Member State.</p>	<p>recast as this new Directive and partly replaced by Regulation (EU) No .../... [MiFIR]. Together, both legal instruments should form the legal framework governing the requirements applicable to investment firms, regulated markets, data reporting services providers and <i>third-country firms</i> providing investment services or activities in the European Union. This Directive should therefore be read together with the Regulation. This Directive should contain the provisions governing the authorisation of the business, the acquisition of qualifying holding, the exercise of the freedom of establishment and of the freedom to provide services, the operating conditions for investment firms to ensure investor protection, the powers of supervisory authorities of home and host Member States, the sanctioning regime. Since the main objective and subject-matter of this proposal is to harmonise national provisions concerning the areas <i>referred to</i>, the proposal should be based on Article 53(1) <i>of the Treaty on the Functioning of the European Union</i> (TFEU). The form of a Directive is appropriate in order to enable the implementing provisions in the areas covered by this Directive, when necessary, to be adjusted to any existing specificities of the particular market</p>	<p>20131008</p> <p>(7) In the light of the above, Directive 2004/39/EC is now partly recast as this new Directive and partly replaced by Regulation (EU) No .../... [MiFIR]. Together, both legal instruments should form the legal framework governing the requirements applicable to investment firms, regulated markets, data reporting services providers and <i>third-country firms</i> providing investment services or activities in the European Union. This Directive should therefore be read together with the Regulation. This Directive should contain the provisions governing the authorisation of the business, the acquisition of qualifying holding, the exercise of the freedom of establishment and of the freedom to provide services, the operating conditions for investment firms to ensure investor protection, the powers of supervisory authorities of home and host Member States <u>and</u> the sanctioning regime. Since the main objective and subject-matter of this proposal is to harmonise national provisions concerning the areas <i>referred to</i>, the proposal should be based on Article 53(1) <i>of the Treaty on the Functioning of the European Union</i> (TFEU). The form of a Directive is appropriate in order to enable the implementing provisions in the areas covered by</p>

		COM	Council	EP	Compromise
				and legal system in each Member State.	this Directive, when necessary, to be adjusted to any existing specificities of the particular market and legal system in each Member State.
18.	Rec. 8	(8) It is appropriate to include in the list of financial instruments certain commodity derivatives and others which are constituted and traded in such a manner as to give rise to regulatory issues comparable to traditional financial instruments.	(8) It is appropriate to include in the list of financial instruments certain commodity derivatives and others which are constituted and traded in such a manner as to give rise to regulatory issues comparable to traditional financial instruments.	(8) It is appropriate to include in the list of financial instruments commodity derivatives and others which are constituted and traded in such a manner as to give rise to regulatory issues comparable to traditional financial instruments. <i>Contracts of insurance in respect of activities of classes set out in Annex I of Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of business of Insurance and Reinsurance (Solvency II)¹⁸ if entered into with an insurance undertaking, reinsurance undertaking, third-country insurance undertaking or third-country reinsurance undertaking, are not derivatives or derivative contracts for the purposes of this Directive.</i>	<i>Technical group 20141028</i> (8) It is appropriate to include in the list of financial instruments commodity derivatives and others which are constituted and traded in such a manner as to give rise to regulatory issues comparable to traditional financial instruments.
18a					<i>Technical group 20140128</i> <u>Addition below “except for those already regulated under REMIT” and time period corrected to align to political agreement on Articles.</u> <i>Trilogue 20140114: Agreed to include Pres. non-paper on Annex</i>

¹⁸ OJ L 335, 17.12.2009, p. 1.

		COM	Council	EP	Compromise
					<p><i>IC6 with modifications/additions</i></p> <p><u>(8a) The scope of financial instruments will include physically settled energy contracts traded on an OTF, except for those already regulated under REMIT. Several measures have been taken to mitigate the impact of such an inclusion on firms trading these products. These firms are today exempted from own funds requirements under Regulation (EU) No 575/2013 [Capital Requirements regulation] and this issue will be the subject of a review before end of 2017 under Article 493(1) of the Capital Requirements regulation. These contracts being financial instruments, financial markets legislation requirements would apply from the onset, thus position limits, transaction reporting and market abuse requirements would apply as from the entry into application of MiFID/R. However a phase in of 42 months is foreseen for the application of the clearing obligation and the margining requirements set out in Regulation (EU) No 648/2012 (EMIR).</u></p> <p><u>(8b) The limitation of the scope concerning commodity derivatives traded on an OTF and physically settled should be</u></p>

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					<u>limited to avoid a loophole that may lead to regulatory arbitrage. It is therefore necessary to foresee a delegated act to further specify the meaning of “must be physically settled” taking into account at least the creation of an enforceable and binding obligation to physically deliver, which cannot be unwound and with no right to cash settle or offset transactions except in the case of force majeure, default or other bona fide inability to perform.</u>
19.	Rec. 9	(9) A range of fraudulent practices have occurred in spot secondary markets in emission allowances (EUA) which could undermine trust in the emissions trading schemes, set up by Directive 2003/87/EC, and measures are being taken to strengthen the system of EUA registries and conditions for opening an account to trade EUAs. In order to reinforce the integrity and safeguard the efficient functioning of those markets, including comprehensive supervision of trading activity, it is appropriate to complement measures taken under Directive 2003/87/EC by bringing emission allowances fully into the scope of this Directive and of Regulation ---/-- [Market Abuse	(9) A range of fraudulent practices have occurred in spot secondary markets in emission allowances (EUA) which could undermine trust in the emissions trading schemes, set up by Directive 2003/87/EC, and measures are being taken to strengthen the system of EUA registries and conditions for opening an account to trade EUAs. In order to reinforce the integrity and safeguard the efficient functioning of those markets, including comprehensive supervision of trading activity, it is appropriate to complement measures taken under Directive 2003/87/EC by bringing emission allowances fully into the scope of this Directive and of Regulation ----	(9) A range of fraudulent practices have occurred in spot secondary markets in emission allowances (EUAs) which could undermine trust in the emissions trading schemes, set up by Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emissions allowance trading within the Community ¹⁹ , and measures are being taken to strengthen the system of EUA registries and conditions for opening an account to trade EUAs. In order to reinforce the integrity and safeguard the efficient functioning of those markets, including comprehensive supervision of trading activity, it is	<i>Technical group 20140128</i> (9) A range of fraudulent practices have occurred in spot secondary markets in emission allowances (EUA) which could undermine trust in the emissions trading schemes, set up by Directive 2003/87/EC, of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emissions allowance trading within the Community ²⁰ , and measures are being taken to strengthen the system of EUA registries and conditions for opening an account to trade EUAs. In order to reinforce the integrity and safeguard the efficient functioning of those

¹⁹ OJ L 275, 25.10.2003, p. 32.

²⁰ OJ L 275, 25.10.2003, p. 32.

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		Regulation], by classifying them as financial instruments.	/-- [Market Abuse Regulation], by classifying them as financial instruments.	appropriate to complement measures taken under Directive 2003/87/EC by bringing emission allowances fully into the scope of this Directive and of Regulation (EU) No .../...[MAR] . By contrast it is appropriate to clarify that spot foreign exchange transactions are outside the scope of the Directive even though currency derivatives are included.	markets, including comprehensive supervision of trading activity, it is appropriate to complement measures taken under Directive 2003/87/EC by bringing emission allowances fully into the scope of this Directive and of Regulation --- /-- [Market Abuse Regulation], by classifying them as financial instruments. <i>Technical group 20140128:</i> <i>EP requested addition of following text. <u>Left open.</u></i> <i>(9a) It is appropriate to clarify that spot foreign exchange transactions are outside the scope of the Directive even though currency derivatives are included.</i> <i>Technical group 20140131</i> Note: in a spirit of compromise, EP Negotiating Team no longer insists on recital 9a
20.	Rec. 10	(10) The purpose of this Directive is to cover undertakings the regular occupation or business of which is to provide investment services and/or perform investment activities on a professional basis. Its scope should not therefore cover any person with a different professional activity.	(10) The purpose of this Directive is to cover undertakings the regular occupation or business of which is to provide investment services and/or perform investment activities on a professional basis. Its scope should not therefore cover any person with a different professional activity.	(10) The purpose of this Directive is to cover undertakings the regular occupation or business of which is to provide investment services and/or perform investment activities on a professional basis. Its scope should not therefore cover any person with a different professional activity.	<i>Agreed silence procedure 20131008</i> (10) The purpose of this Directive is to cover undertakings the regular occupation or business of which is to provide investment services and/or perform investment activities on a professional basis. Its scope should not therefore cover any person with a different professional activity.

		COM	Council	EP	Compromise
21.	Rec. 11	(11) It is necessary to establish a comprehensive regulatory regime governing the execution of transactions in financial instruments irrespective of the trading methods used to conclude those transactions so as to ensure a high quality of execution of investor transactions and to uphold the integrity and overall efficiency of the financial system. A coherent and risk-sensitive framework for regulating the main types of order-execution arrangement currently active in the European financial marketplace should be provided for. It is necessary to recognise the emergence of a new generation of organised trading systems alongside regulated markets which should be subjected to obligations designed to preserve the efficient and orderly functioning of financial markets.	(11) It is necessary to establish a comprehensive regulatory regime governing the execution of transactions in financial instruments irrespective of the trading methods used to conclude those transactions so as to ensure a high quality of execution of investor transactions and to uphold the integrity and overall efficiency of the financial system. A coherent and risk-sensitive framework for regulating the main types of order-execution arrangement currently active in the European financial marketplace should be provided for. It is necessary to recognise the emergence of a new generation of organised trading systems alongside regulated markets which should be subjected to obligations designed to preserve the efficient and orderly functioning of financial markets.	(11) It is necessary to establish a comprehensive regulatory regime governing the execution of transactions in financial instruments irrespective of the trading methods used to conclude those transactions so as to ensure a high quality of execution of investor transactions and to uphold the integrity and overall efficiency of the financial system. A coherent and risk-sensitive framework for regulating the main types of order-execution arrangement currently active in the European financial marketplace should be provided for. It is necessary to recognise the emergence of a new generation of organised trading systems alongside regulated markets which should be subjected to obligations designed to preserve the efficient and orderly functioning of financial markets and to ensure that such organised trading systems do not benefit from regulatory loopholes.	<i>Agreed silence procedure 20131008</i> (11) It is necessary to establish a comprehensive regulatory regime governing the execution of transactions in financial instruments irrespective of the trading methods used to conclude those transactions so as to ensure a high quality of execution of investor transactions and to uphold the integrity and overall efficiency of the financial system. A coherent and risk-sensitive framework for regulating the main types of order-execution arrangement currently active in the European financial marketplace should be provided for. It is necessary to recognise the emergence of a new generation of organised trading systems alongside regulated markets which should be subjected to obligations designed to preserve the efficient and orderly functioning of financial markets and to ensure that such organised trading systems do not benefit from regulatory loopholes.
22.	Rec. 12	(12) All trading venues, namely regulated markets, MTFs, and OTFs, should lay down transparent rules governing access to the facility. However, while regulated markets and MTFs should continue to be subject to highly similar requirements regarding whom they may admit as members or	(12) All trading venues, namely regulated markets, MTFs, and OTFs, should lay down transparent <u>and non-discriminatory</u> rules governing access to the facility. [...]	(12) All trading venues, namely regulated markets, <i>multilateral trading facilities</i> (MTFs), and <i>organised trading facilities</i> (OTFs), should lay down transparent rules governing access to the facility. However, while regulated markets and MTFs should continue to be subject to similar requirements	<i>Technical group 20140128</i> (12) All trading venues, namely regulated markets, MTFs, and OTFs should lay down transparent and non discriminatory rules governing access to the facility. However, while regulated markets and MTFs should continue to be

		COM	Council	EP	Compromise
		participants, OTFs should be able to determine and restrict access based inter alia on the role and obligations which their operators have in relation to their clients.		regarding whom they may admit as members or participants, OTFs should be able to determine and restrict access based inter alia on the role and obligations which <i>they</i> have in relation to their clients. <i>Trading venues should be able to allow users to specify the type of order flow that their orders interact with prior to their orders entering the system provided this is done in an open and transparent manner and does not involve discrimination by the platform operator.</i>	subject to similar requirements regarding whom they may admit as members or participants, OTFs should be able to determine and restrict access based inter alia on the role and obligations which they have in relation to their clients. In this regard, trading venues should be able to specify parameters governing the system such as minimum latency provided this is done in an open and transparent manner and does not involve discrimination by the platform operator.
22a					<i>Technical group 20140116</i> See row 103 MiFIR Place of recital to be reviewed <u>(12a) A central counterparty (CCP) is defined in Regulation (EU) No 648/2012 as a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer. CCPs are not [should not be] covered by the term OTF as defined in this Directive.</u>
23.	Rec. 12a (new)		<u>(12a) Persons having access to regulated markets or MTFs are called members or participants. Both terms may be used</u>		<i>Technical group 20140128</i> <u>(12b) Persons having access to regulated markets or MTFs are called members or participants.</u>

		COM	Council	EP	Compromise
			<u>interchangeably. These terms do not include users who only access the trading venues via direct electronic access.</u>		Both terms may be used interchangeably. These terms do not include users who only access the trading venues via direct electronic access.
24.	Rec. 13	(13) An investment firm executing client orders against own proprietary capital should be deemed a systematic internaliser, unless the transactions are carried out outside regulated markets, MTFs and OTFs on an occasional, ad hoc and irregular basis. Systematic internalisers should be defined as investment firms which, on an organised, frequent and systematic basis, deal on own account by executing client orders outside a regulated market, an MTF or an OTF. In order to ensure the objective and effective application of this definition to investment firms, any bilateral trading carried out with clients should be relevant and quantitative criteria should complement the qualitative criteria for the identification of investment firms required to register as systematic internalisers, laid down in Article 21 of Commission Regulation No 1287/2006 implementing Directive 2004/39/EC. While an OTF is any system or facility in which multiple third party buying and selling interests interact in the system, a	[...]	(13) Systematic internalisers should be defined as investment firms which, on an organised, regular and systematic basis, deal on own account by executing client orders outside a regulated market, an MTF or an OTF in a bilateral system . In order to ensure the objective and effective application of this definition to investment firms, any bilateral trading carried out with clients should be relevant and quantitative criteria should complement the qualitative criteria for the identification of investment firms required to register as systematic internalisers, laid down in Article 21 of Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards recordkeeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive ²¹ . While trading venues are facilities in which multiple third-party buying and	<i>Technical group 20140128</i> Alignment with definitions in Art 2.1(3) MIFIR (13) Systematic internalisers should be defined as investment firms which, on an organised, frequent , systematic and substantial basis, deal on own account by executing client orders outside a regulated market, an MTF or an OTF. In order to ensure the objective and effective application of this definition to investment firms, any bilateral trading carried out with clients should be relevant and quantitative criteria should complement the qualitative criteria be developed for the identification of investment firms required to register as systematic internalisers, laid down in Article 21 of Commission Regulation No 1287/2006 implementing Directive 2004/39/EC . While trading venues are facilities in which multiple third-party buying and selling interests interact in the system, a systematic internaliser should not be allowed

²¹ OJ L 241, 2.9.2006, p. 1.

		COM	Council	EP	Compromise
		systematic internaliser should not be allowed to bring together third party buying and selling interests.		selling interests interact in the system, a systematic internaliser should not be allowed to bring together third-party buying and selling interests <i>in functionally the same way as a trading venue</i> .	to bring together third-party buying and selling interests in functionally the same way as a trading venue. <i>Technical group 20140206</i> Changes above at the request of the Presidency
25.	Rec. 14	(14) Persons administering their own assets and undertakings, who do not provide investment services and/or perform investment activities other than dealing on own account should not be covered by the scope of this Directive unless they are market makers, members or participants of a regulated market or MTF or they execute orders from clients by dealing on own account. By way of exception, persons who deal on own account in financial instruments as members or participants of a regulated market or MTF, including as market makers in relation to commodity derivatives, emission allowances, or derivatives thereof, as an ancillary activity to their main business, which on a group basis is neither the provision of investment services within the meaning of this Directive nor of banking services within the meaning of Directive 2006/48/EC, should not be covered by the scope of this Directive. Technical criteria for when an activity is ancillary to such	(14) Persons administering their own assets and undertakings, who do not provide investment services and/or perform investment activities other than dealing on own account <u>in financial instruments which are not commodity derivatives, emission allowances or derivatives thereof</u> , should not be covered by the scope of this Directive unless they are market makers, <u>apply a high frequency algorithmic trading technique or deal on own account by executing client orders</u> .	(14) Persons administering their own assets and undertakings, who do not provide investment services and/or perform investment activities other than dealing on own account should not be covered by the scope of this Directive unless they are market makers, members or participants of a regulated market or <i>an</i> MTF, or they execute orders from clients by dealing on own account. By way of exception, persons who deal on own account in financial instruments as members or participants of a regulated market or <i>an</i> MTF, including as market makers in relation to commodity derivatives, emission allowances, or derivatives thereof, as an ancillary activity to their main business, which on a group basis is neither the provision of investment services within the meaning of this Directive nor of banking services within the meaning of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up	<i>Technical group 20140128</i> [Note: exemption relating to ancillary activity in relation to commodity derivatives etc addressed in next row] (14) Persons administering their own assets and undertakings, who do not provide investment services and/or perform investment activities other than dealing on own account in financial instruments which are not commodity derivatives, emission allowances or derivatives thereof , should not be covered by the scope of this Directive unless they are market makers, members or participants of a regulated market or an MTF or have direct electronic access to a trading venue, apply a high frequency algorithmic trading technique, , or deal on own account when executing client orders.

		COM	Council	EP	Compromise
		a main business should be clarified in delegated acts. [Rest moved to rows 28 and 29]		and pursuit of the business of credit institutions ²² , should not be covered by the scope of this Directive. Technical criteria for when an activity is ancillary to such a main business should be clarified in <i>regulatory technical standards, taking into account the criteria specified in this Directive which should include the scale of the activity and the extent to which it reduces risks arising from the main business.</i> [Rest moved to Council recitals 14c and 14d below]	
25a					<p><i>Technical group 20140128</i></p> <p>Moved and adapted from former recital 88</p> <p>(14a) The communiqué of G20 finance ministers and central bank governors of 15 April 2011 states that participants on commodity derivatives markets should be subject to appropriate regulation and supervision and therefore certain exemptions from MiFID I should be modified.</p>
26.	Rec. 14a (new)		(14a) <u>Persons who deal on own account, including [...] market makers, in [...] commodity derivatives, emission allowances and derivatives thereof, should not be covered by the scope of this</u>		<p><i>Technical group 20140128</i></p> <p><i>Note for lawyer-linguists: use “dealing on own account when executing client orders” throughout, cf. row 187 MiFID</i></p>

²² OJ L 177, 30.6.2006, p. 1.

		COM	Council	EP	Compromise
			<p><u>Directive, provided that this activity is an ancillary activity to their main business, which on a group basis is neither the provision of investment services within the meaning of this Directive nor of banking services within the meaning of Directive 2006/48/EC, and the persons do not deal on own account by executing client orders and do not apply a high frequency algorithmic trading technique. Technical criteria for when an activity is ancillary to such a main business should be clarified in regulatory technical standards, taking into account the criteria specified in Article 2(4). These criteria should ensure that non-financial firms dealing in financial instruments in a disproportionate manner compared with the level of investment in the main business are covered by the scope of this Directive. In doing so, these criteria should take into consideration, inter-alia, the capital employed for carrying out the ancillary activity in absolute terms; the capital employed for carrying out the ancillary activity relative to the capital employed for carrying out the main business; the size of their trading activity in financial instruments in absolute terms; and the size of their trading activity compared to the overall market trading activity in that asset class.</u></p>		<p>(14a) Persons who deal on own account, including [...] market makers, in commodity derivatives, emission allowances and derivatives thereof, or who provide investment services in commodity derivatives or emission allowances or derivatives thereof to the customers or suppliers of their main business should not be covered by the scope of this Directive, provided that this activity is an ancillary activity to their main business, which on a group basis is neither the provision of investment services within the meaning of this Directive nor of banking services within the meaning of Directive 2006/48/EC, nor market making in commodity derivatives, and the persons do not deal on own account when executing client orders and do not apply a high frequency algorithmic trading technique. Technical criteria for when an activity is ancillary to such a main business should be clarified in regulatory technical standards, taking into account the criteria specified in Article 2(4). These criteria should ensure that non-financial firms dealing in financial instruments in a disproportionate manner compared with the level of investment in the main business are covered by the scope of this Directive. In doing so, these criteria should take at least into</p>

		COM	Council	EP	Compromise
			<p><u>The activities that are deemed to be objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity and intragroup transactions should be considered in a consistent way with the Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives transactions, central counterparties and trade repositories.</u></p>		<p>consideration, the need for ancillary activities to constitute a minority of activities at group level and the size of their trading activity compared to the overall market trading activity in that asset class. It is appropriate that where the obligation to provide liquidity on a venue is required by regulatory authorities in accordance with Union or national laws, regulations and administrative provisions or by trading venues the transactions entered into to meet such an obligation are excluded in the assessment of whether the activity is ancillary.</p> <p>(14b) For the purposes of this Directive and MiFIR, which regulate both OTC and exchange traded derivatives, activities that are deemed to be objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity and intragroup transactions should be considered in a consistent way with the Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives transactions, central counterparties and trade repositories.</p>
27.	Rec. 14b (new)		<p><u>(14b) Persons providing investment services in commodity derivatives or emission allowances or</u></p>		<p><i>Technical group 20140128</i> [...]</p>

		COM	Council	EP	Compromise
			<p><u>derivatives thereof to the customers or suppliers of their main business as an ancillary activity to their main business, should not be covered by the scope of this directive, provided that the persons do not apply a high frequency algorithmic trading technique. Such services can only be considered to be ancillary to one's main business when the derivatives involved serve to cover the customer against risk relating to commodity prices resulting from non-financial contracts the person and the customer are both party to.</u></p>		
27a	Rec. 14ba (new)		<p><u>(14ba) (new) Persons that deal in commodity derivatives, emission allowance and derivatives thereof may also deal in other financial instruments as part of their commercial treasury risk management activities to protect themselves against risks, such as exchange rate risks. Therefore, it is important to clarify that exemptions apply cumulatively. For example, the exemption at Article 2(1)(i) can be used in conjunction with the exemption at Article 2(1)(d).</u></p> <p><u>However, in order to avoid any potential misuse of exemptions, market makers, persons dealing on own account by executing client orders or applying a high frequency algorithmic trading technique in financial instruments other than commodity derivatives, emission</u></p>		<p><i>Technical group 20140128</i></p> <p>(14ba) Persons that deal in commodity derivatives, emission allowance and derivatives thereof may also deal in other financial instruments as part of their commercial treasury risk management activities to protect themselves against risks, such as exchange rate risks. Therefore, it is important to clarify that exemptions apply cumulatively. For example, the exemption at Article 2(1)(i) can be used in conjunction with the exemption at Article 2(1)(d).</p> <p>However, in order to avoid any potential misuse of exemptions, market makers, persons dealing on own account by executing client orders or applying a high frequency algorithmic trading technique in financial instruments other than</p>

		COM	Council	EP	Compromise
			<u>allowances or derivatives thereof, are covered by the scope of this Directive and cannot benefit from other exemptions.</u>		commodity derivatives, emission allowances or derivatives thereof, are covered by the scope of this Directive and cannot benefit from other exemptions.
28.	Rec. 14c (new)	[Moved from row 25] Dealing on own account by executing client orders should include firms executing orders from different clients by matching them on a matched principal basis (back to back trading), which should be regarded as acting as principals and should be subject to the provisions of this Directive covering both the execution of orders on behalf of clients and dealing on own account.	(14c) Dealing on own account by executing client orders should include firms executing orders from different clients by matching them on a matched principal basis (back to back trading), which should be regarded as acting as principals and should be subject to the provisions of this Directive covering both the execution of orders on behalf of clients and dealing on own account.	Dealing on own account by executing client orders should include firms executing orders from different clients by matching them on a matched principal basis (back-to-back trading), which should be regarded as acting as principals and should be subject to the provisions of this Directive covering both the execution of orders on behalf of clients and dealing on own account.	<i>Agreed silence procedure 20131008</i> [Lawyer linguists to determine whether separate recital or part of previous recital, once decided. Wording "when executing" should stay aligned to wording in row 187] Dealing on own account when executing client orders should include firms executing orders from different clients by matching them on a matched principal basis (back-to-back trading), which should be regarded as acting as principals and should be subject to the provisions of this Directive covering both the execution of orders on behalf of clients and dealing on own account.
29.	Rec. 14d (new)	[Moved from row 25] The execution of orders in financial instruments as an ancillary activity between two persons whose main business, on a group basis, is neither the provision of investment services within the meaning of this Directive nor of banking services within the meaning of Directive 2006/48/EC should not be considered as dealing on own account by executing client	(14d) The execution of orders in financial instruments as an ancillary activity between two persons whose main business, on a group basis, is neither the provision of investment services within the meaning of this Directive nor of banking services within the meaning of Directive 2006/48/EC should not be considered as dealing on own account by executing client orders.	The execution of orders in financial instruments as an ancillary activity between two persons whose main business, on a group basis, is neither the provision of investment services within the meaning of this Directive nor of banking services within the meaning of Directive 2006/48/EC should not be considered as dealing on own account by executing client orders.	<i>Agreed silence procedure 20131008</i> [Lawyer linguists to determine whether separate recital or part of previous recital, once decided] The execution of orders in financial instruments as an ancillary activity between two persons whose main business, on a group basis, is neither the provision of investment

		COM	Council	EP	Compromise
		orders.			services within the meaning of this Directive nor of banking services within the meaning of Directive 2006/48/EC should not be considered as dealing on own account by executing client orders.
30.	Rec. 15	(15) References in the text to persons should be understood as including both natural and legal persons.	(15) References in the text to persons should be understood as including both natural and legal persons.	(15) References in the text to persons should be understood as including both natural and legal persons.	<i>Agreed silence procedure 20131008</i> (15) References in the text to persons should be understood as including both natural and legal persons.
31.	Rec. 16	(16) Insurance or assurance undertakings the activities of which are subject to appropriate monitoring by the competent prudential-supervision authorities and which are subject to Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ²³ should be excluded.	(16) Insurance or assurance undertakings the activities of which are subject to appropriate monitoring by the competent prudential-supervision authorities and which are subject to Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ⁶ should be excluded <u>from the scope of this Directive when carrying on the activities referred to in that Directive.</u>	(16) Insurance or assurance undertakings the activities of which are subject to appropriate monitoring by the competent prudential-supervision authorities and which are subject to Directive 2009/138/EC // should be excluded <i>except for certain provisions relating to insurance products used as investment vehicles. Investments are often sold to clients in the form of insurance contracts as an alternative to or substitute for financial instruments regulated under this Directive. To deliver consistent protection for retail clients, it is important that investments under insurance contracts are subject to the same conduct of business standards, in particular those</i>	<i>Technical group 20140128</i> T: align with the political decision on the inclusion of insurance products. (16) Insurance or assurance undertakings the activities of which are subject to appropriate monitoring by the competent prudential-supervision authorities and which are subject to Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ⁶ should be excluded <u>from the scope of this Directive when carrying on the activities referred to in that Directive.</u>

²³ [please add OJ reference]

⁶ [please add OJ reference]

⁶ [please add OJ reference]

		COM	Council	EP	Compromise
				<i>relating to managing conflicts of interest, restrictions on inducements, and rules on ensuring the suitability of advice or appropriateness of non-advised sales. The investor protection and conflicts of interest requirements in this Directive should therefore be applied equally to those investments packaged under insurance contracts and coordination should be ensured between this Directive and other relevant law including Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation²⁴.</i>	
32.	Rec. 17	(17) Persons who do not provide services for third parties but whose business consists in providing investment services solely for their parent undertakings, for their subsidiaries, or for other subsidiaries of their parent undertakings should not be covered by this Directive.	(17) Persons who do not provide services for third parties but whose business consists in providing investment services solely for their parent undertakings, for their subsidiaries, or for other subsidiaries of their parent undertakings should not be covered by this Directive.	(17) Persons who do not provide services for third parties but whose business consists in providing investment services solely for their parent undertakings, for their subsidiaries, or for other subsidiaries of their parent undertakings should not be covered by this Directive.	<i>Agreed silence procedure 20131008</i> (17) Persons who do not provide services for third parties but whose business consists in providing investment services solely for their parent undertakings, for their subsidiaries, or for other subsidiaries of their parent undertakings should not be covered by this Directive.
33.	Rec. 17a (new)		<u>(17a) Some local energy utilities bundle and out-source their trading activities for hedging commercial risks to non-consolidated subsidiaries. These joint venture companies do not provide any other</u>		<i>Technical group 20140128</i> <i>Council recitals (17a) and (17b) merged.</i>

²⁴ OJ L 9, 15.1.2003, p. 3.

		COM	Council	EP	Compromise
			<p><u>services and perform exactly the same function as persons referred to in Recital 17. In order to ensure a level playing field, joint venture companies jointly held by local energy utilities who do not provide any services other than investment services for those local energy utilities and provided that these local energy utilities will be exempt under Article 2(1)(i) should they carry out these investment services themselves, should also be excluded from the scope of this Directive.</u></p>		<p>(17a) Some local energy utilities and some operators of industrial installations covered by the EU Emissions Trading Scheme bundle and out-source their trading activities for hedging commercial risks to non-consolidated subsidiaries. These joint venture companies do not provide any other services and perform exactly the same function as persons referred to in Recital 17. In order to ensure a level playing field, joint venture companies jointly held by local energy utilities or operators falling within Article 3(f) of Directive 2003/87/EC who do not provide any services other than investment services for those local energy utilities or operators falling within Article 3(f) of Directive 2003/87/EC and provided that these local energy utilities or operators falling within Article 3(f) of Directive 2003/87/EC will be exempt under <u>Article 2(1)(i)</u> should they carry out these investment services themselves, may also be excluded from the scope of this Directive. However to ensure the appropriate safeguards are in place and that investors are adequately protected Member States that choose to exempt such joint ventures should subject them to requirements at least analogous to the ones laid down in this Directive, notably in</p>

		COM	Council	EP	Compromise
					<p>the phase of authorisation, in the assessment of their reputation and experience and of the suitability of any shareholders, in the review of the conditions for initial authorisation and on-going supervision as well as on conduct of business obligations.</p> <p><i>Technical group 20140206</i></p> <p>Reference to operators falling within Article 3(f) of Directive 2003/87/EC inserted above, at the request of the Presidency (cf. row 224a in table 2A)</p>
34.	Rec. 17b (new)		<p><u>(17b) (new) Some operators of industrial installations covered by the EU Emissions Trading Scheme bundle and outsource their trading activities for hedging commercial risks to non-consolidated subsidiaries. These joint venture companies do not provide any other services and perform exactly the same function as persons referred to in Recital 17. In order to ensure a level playing field, joint venture companies jointly held by operators of industrial installations covered by the EU Emissions Trading Scheme who do not provide any services other than investment services for those operators of industrial installations and provided that these operators of industrial installations will be exempt under Article 2(1)(i) should they carry out these investment services them-</u></p>		<p><i>Technical group 20140128</i></p> <p>[...]</p> <p>Merged with previous recital</p>

		COM	Council	EP	Compromise
			<u>selves, should also be excluded from the scope of this Directive.</u>		
35.	Rec. 18	(18) Persons who provide investment services only on an incidental basis in the course of professional activity should also be excluded from the scope of this Directive, provided that activity is regulated and the relevant rules do not prohibit the provision, on an incidental basis, of investment services.	(18) Persons who provide investment services only on an incidental basis in the course of professional activity should also be excluded from the scope of this Directive, provided that activity is regulated and the relevant rules do not prohibit the provision, on an incidental basis, of investment services.	(18) Persons who provide investment services only on an incidental basis in the course of professional activity should also be excluded from the scope of this Directive, provided that activity is regulated and the relevant rules do not prohibit the provision, on an incidental basis, of investment services.	<i>Agreed silence procedure 20131008</i> (18) Persons who provide investment services only on an incidental basis in the course of professional activity should also be excluded from the scope of this Directive, provided that activity is regulated and the relevant rules do not prohibit the provision, on an incidental basis, of investment services.
36.	Rec. 19	(19) Persons who provide investment services consisting exclusively in the administration of employee-participation schemes and who therefore do not provide investment services for third parties should not be covered by this Directive.	(19) Persons who provide investment services consisting exclusively in the administration of employee-participation schemes and who therefore do not provide investment services for third parties should not be covered by this Directive.	(19) Persons who provide investment services consisting exclusively in the administration of employee-participation schemes and who therefore do not provide investment services for third parties should not be covered by this Directive.	<i>Agreed silence procedure 20131008</i> (19) Persons who provide investment services consisting exclusively in the administration of employee-participation schemes and who therefore do not provide investment services for third parties should not be covered by this Directive.
37.	Rec. 20	(20) It is necessary to exclude from the scope of this Directive central banks and other bodies performing similar functions as well as public bodies charged with or intervening in the management of the public debt, which concept covers the investment thereof, with the exception of bodies that are partly or wholly State-owned the role of which is commercial or linked to the	(20) It is necessary to exclude from the scope of this Directive central banks and other bodies performing similar functions as well as public bodies charged with or intervening in the management of the public debt, which concept covers the investment thereof, with the exception of bodies that are partly or wholly State-owned the role of which is commercial or linked to	(20) It is necessary to exclude from the scope of this Directive central banks and other bodies performing similar functions as well as public bodies charged with or intervening in the management of the public debt, which concept covers the investment thereof, with the exception of bodies that are partly or wholly State-owned the role of which is commercial or linked to	<i>Agreed silence procedure 20131008</i> (20) It is necessary to exclude from the scope of this Directive central banks and other bodies performing similar functions as well as public bodies charged with or intervening in the management of the public debt, which concept covers the investment thereof, with the exception of bodies that are partly

		COM	Council	EP	Compromise
		acquisition of holdings.	the acquisition of holdings.	the acquisition of holdings.	or wholly State-owned the role of which is commercial or linked to the acquisition of holdings.
38.	Rec. 21	(21) In order to clarify the regime of exemptions for the European System of Central Banks, other national bodies performing similar functions and the bodies intervening in the management of public debt, it is appropriate to limit such exemptions to the bodies and institutions performing their functions in accordance with the law of one Member State or in accordance with the legislation of the Union as well as to international bodies of which one or more Member States are members.	(21) In order to clarify the regime of exemptions for the European System of Central Banks, other national bodies performing similar functions and the bodies intervening in the management of public debt, it is appropriate to limit such exemptions to the bodies and institutions performing their functions in accordance with the law of one Member State or in accordance with the legislation of the Union as well as to international bodies of which one or more Member States are members.	(21) In order to clarify the regime of exemptions for the European System of Central Banks (<i>ESCB</i>), other national bodies performing similar functions and the bodies intervening in the management of public debt, it is appropriate to limit such exemptions to the bodies and institutions performing their functions in accordance with the law of one Member State or in accordance with the <i>European Union law</i> as well as to international bodies of which one or more Member States are members.	<i>Technical group 20140128</i> <i>Technical group proposal</i> T: align bracketed part to decision on row 191. (21) In order to clarify the regime of exemptions for the European System of Central Banks (<i>ESCB</i>), other national bodies performing similar functions and the bodies intervening in the management of public debt, it is appropriate to limit such exemptions to the bodies and institutions performing their functions in accordance with the law of one Member State or in accordance with the <i>European Union law</i> as well as to international bodies {of which two one or more Member States are members} -which have the purpose of mobilising funding and providing financial assistance to the benefit of their members that are experiencing or threatened by severe financing problems, such as the European Stability Mechanism.
39.	Rec. 22	(22) It is necessary to exclude from the scope of this Directive collective investment undertakings and pension funds whether or not coordinated at Union level, and the depositaries or managers of such	(22) It is necessary to exclude from the scope of this Directive collective investment undertakings and pension funds whether or not coordinated at Union level, and the depositaries or managers of such	(22) It is necessary to exclude from the scope of this Directive collective investment undertakings and pension funds whether or not coordinated at <i>European</i> Union level, and the depositaries or	<i>Agreed silence procedure 20131008</i> (22) It is necessary to exclude from the scope of this Directive collective investment undertakings

		COM	Council	EP	Compromise
		undertakings, since they are subject to specific rules directly adapted to their activities.	undertakings, since they are subject to specific rules directly adapted to their activities.	managers of such undertakings, since they are subject to specific rules directly adapted to their activities.	and pension funds whether or not coordinated at European Union level, and the depositaries or managers of such undertakings, since they are subject to specific rules directly adapted to their activities.
40.	Rec. 22a (new)		<p><u>(22a) It is necessary to exclude from the scope of this Directive transmission system operators as defined in Article 2(4) of Directive 2009/72/EC or Article 2(4) of Directive 2009/73/EC when carrying out their tasks under those Directives or Regulation (EC) 714/2009 or Regulation (EC) 715/2009 or network codes or guidelines adopted pursuant to those Regulations. According to the aforementioned legislation, transmission system operators have specific obligations and responsibilities, are subject to specific certification and are supervised by sector specific competent authorities.</u></p> <p><u>Transmission system operators should also benefit from such an exemption in cases where they use other persons acting as service providers on their behalf to carry out their task under the aforementioned Directives or</u></p>	<p><i>(22a) For a well-functioning internal market in electricity and natural gas, and for the carrying out of the tasks of transmission system operators (TSOs) under Directive 2009/72/EC²⁵, Directive 2009/73/EC²⁶, Regulation (EC) No 714/2009²⁷, Regulation (EC) No 715/2009²⁸, or network codes and guidelines adopted pursuant to those Regulations, it is necessary that TSOs are exempted when issuing transmission rights, in the form of either physical transmission rights or financial transmission rights, and when providing a platform for secondary trading.</i></p>	<p><i>Technical group 20140128</i></p> <p>(22a) It is necessary to exclude from the scope of this Directive transmission system operators as defined in Article 2(4) of Directive 2009/72/EC or Article 2(4) of Directive 2009/73/EC when carrying out their tasks under those Directives or Regulation (EC) 714/2009 or Regulation (EC) 715/2009 or network codes or guidelines adopted pursuant to those Regulations. According to the aforementioned legislation, transmission system operators have specific obligations and responsibilities, are subject to specific certification and are supervised by sector specific competent authorities. Transmission system operators should also benefit from such an exemption in cases where they use other persons acting as service providers on their behalf to carry</p>

²⁵ Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009, concerning common rules for the internal market in electricity (OJ L 198, 30.7.2009, p. 20).

²⁶ Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009, concerning common rules for the internal market in natural gas (OJ L 211, 14.8.2009, p. 94).

²⁷ Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity (OJ L 211, 14.8.2009, p. 15).

²⁸ Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks (OJ L 211, 14.8.2009, p. 36).

		COM	Council	EP	Compromise
			<u>Regulations or network codes or guidelines adopted pursuant to those Regulations. Transmission system operators should not be able to benefit from such an exemption when providing investment services or activities in financial instruments, including when operating a platform for secondary trading in financial transmission rights.</u>		out their task under the aforementioned Directives or Regulations or network codes or guidelines adopted pursuant to those Regulations. Transmission system operators should not be able to benefit from such an exemption when providing investment services or activities in financial instruments, including when operating a platform for secondary trading in financial transmission rights.
41.	Rec. 23	(23) In order to benefit from the exemptions from this Directive the person concerned should comply on a continuous basis with the conditions laid down for such exemptions. In particular, if a person provides investment services or performs investment activities and is exempted from this Directive because such services or activities are ancillary to his main business, when considered on a group basis, he should no longer be covered by the exemption related to ancillary services where the provision of those services or activities ceases to be ancillary to his main business.	(23) In order to benefit from the exemptions from this Directive the person concerned should comply on a continuous basis with the conditions laid down for such exemptions. In particular, if a person provides investment services or performs investment activities and is exempted from this Directive because such services or activities are ancillary to his main business, when considered on a group basis, he should no longer be covered by the exemption related to ancillary services where the provision of those services or activities ceases to be ancillary to his main business.	(23) In order to benefit from the exemptions from this Directive the person concerned should comply on a continuous basis with the conditions laid down for such exemptions. In particular, if a person provides investment services or performs investment activities and is exempted from this Directive because such services or activities are ancillary to his main business, when considered on a group basis, he should no longer be covered by the exemption related to ancillary services where the provision of those services or activities ceases to be ancillary to his main business.	<i>Agreed silence procedure 20131008</i> (23) In order to benefit from the exemptions from this Directive the person concerned should comply on a continuous basis with the conditions laid down for such exemptions. In particular, if a person provides investment services or performs investment activities and is exempted from this Directive because such services or activities are ancillary to his main business, when considered on a group basis, he should no longer be covered by the exemption related to ancillary services where the provision of those services or activities ceases to be ancillary to his main business.
42.	Rec. 24	(24) Persons who provide the investment services and/or perform investment activities covered by this Directive should be subject to	(24) Persons who provide the investment services and/or perform investment activities covered by this Directive should be subject to	(24) Persons who provide the investment services and/or perform investment activities covered by this Directive should be subject to	<i>Agreed silence procedure 20131008</i> (24) Persons who provide the

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		authorisation by their home Member States in order to protect investors and the stability of the financial system.	authorisation by their Home Member States in order to protect investors and the stability of the financial system.	authorisation by their home Member States in order to protect investors and the stability of the financial system.	investment services and/or perform investment activities covered by this Directive should be subject to authorisation by their home Member States in order to protect investors and the stability of the financial system.
43.	Rec. 25	(25) Credit institutions that are authorised under Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) ²⁹ should not need another authorisation under this Directive in order to provide investment services or perform investment activities. When a credit institution decides to provide investment services or perform investment activities the competent authorities, before granting an authorisation, should verify that it complies with the relevant provisions of this Directive.	(25) Credit institutions that are authorised under Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) ⁷ should not need another authorisation under this Directive in order to provide investment services or perform investment activities. When a credit institution decides to provide investment services or perform investment activities, the competent authorities, before granting an authorisation, should verify that it complies with the relevant provisions of this Directive.	(25) Credit institutions that are authorised under Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) ³⁰ should not need another authorisation under this Directive in order to provide investment services or perform investment activities. When a credit institution decides to provide investment services or perform investment activities the competent authorities, before granting an authorisation, should verify that it complies with the relevant provisions of this Directive.	<i>Agreed silence procedure 20131008</i> (25) Credit institutions that are authorised under Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) ³¹ should not need another authorisation under this Directive in order to provide investment services or perform investment activities. When a credit institution decides to provide investment services or perform investment activities the competent authorities, before granting an authorisation, should verify that it complies with the relevant provisions of this Directive.
44.	Rec. 26	(26) Structured deposits have emerged as a form of investment product but are not covered under any legislation for the protection of investors at Union	(26) Structured deposits have emerged as a form of investment product but are not covered under any legislation for the protection of investors at Union level, while	(26) Structured deposits have emerged as a form of investment product but are not covered under any <i>legislative act</i> for the protection of investors at European	<i>Agreed silence procedure 20131008</i> (26) Structured deposits have emerged as a form of investment product but are not covered under

²⁹ OJ L Ö 177, 30.6.2006, p.1. Ö 126, 26.5.2000, p. 1. Directive as last amended by Directive 2002/87/EC.

⁷ OJ L 177, 30.6.2006, p.1.

³⁰ OJ L Ö 177, 30.6.2006, p.1. Ö 126, 26.5.2000, p. 1. Directive as last amended by Directive 2002/87/EC.

³¹ OJ L Ö 177, 30.6.2006, p.1. Ö 126, 26.5.2000, p. 1. Directive as last amended by Directive 2002/87/EC.

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		<p>level, while other structured investments are covered by such legislation. It is appropriate therefore to strengthen the confidence of investors and to make regulatory treatment concerning the distribution of different packaged retail investment products more uniform in order to ensure an adequate level of investor protection across the Union. For this reason, it is appropriate to include in the scope of this Directive structured deposits. In this regard, it is necessary to clarify that since structured deposits are a form of investment product, they do not include deposits linked solely to interest rates, such as Euribor or Libor, regardless of whether or not the interest rates are predetermined, or are fixed or variable.</p>	<p>other structured investments are covered by such legislation. It is appropriate therefore to strengthen the confidence of investors and to make regulatory treatment concerning the distribution of different packaged retail investment products more uniform in order to ensure an adequate level of investor protection across the Union. For this reason, it is appropriate to include in the scope of this Directive structured deposits. In this regard, it is necessary to clarify that since structured deposits are a form of investment product, they do not include deposits linked solely to interest rates, such as Euribor or Libor, regardless of whether or not the interest rates are predetermined, or are fixed or variable.</p>	<p>Union level, while other structured investments are covered by such <i>legislative acts</i>. It is appropriate therefore to strengthen the confidence of investors and to make regulatory treatment concerning the distribution of different packaged retail investment products more uniform in order to ensure an adequate level of investor protection across the European Union. For this reason, it is appropriate to include in the scope of this Directive structured deposits. In this regard, it is necessary to clarify that since structured deposits are a form of investment product, they do not include <i>simple</i> deposits linked solely to interest rates, such as Euribor or Libor, regardless of whether or not the interest rates are predetermined, or <i>whether they</i> are fixed or variable. <i>Such simple deposits are therefore outside the scope of this Directive.</i></p>	<p>any <i>legislative act</i> for the protection of investors at European Union level, while other structured investments are covered by such <i>legislative acts</i>. It is appropriate therefore to strengthen the confidence of investors and to make regulatory treatment concerning the distribution of different packaged retail investment products more uniform in order to ensure an adequate level of investor protection across the European Union. For this reason, it is appropriate to include in the scope of this Directive structured deposits. In this regard, it is necessary to clarify that since structured deposits are a form of investment product, they do not include deposits linked solely to interest rates, such as Euribor or Libor, regardless of whether or not the interest rates are predetermined, or <i>whether they</i> are fixed or variable. <i>Such deposits are therefore outside the scope of this Directive.</i></p> <p><i>Technical group 13 11</i></p> <p>Revised suggestion following objection in Council ("simple" deleted above)</p>
45.	Rec. 26a (new)		<p><u>(26a) The application of this Directive to investment firms when selling or advising clients in relation to structured deposits, should be understood as when</u></p>		<p><i>Technical group 20140128</i></p> <p><u>(26a) The application of this Directive to investment firms and credit institutions when selling or</u></p>

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			<p><u>acting as intermediaries for these products issued by credit institutions that can take deposits according to Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions.</u></p>		<p><u>advising clients in relation to structured deposits, should be understood as when acting as intermediaries for these products issued by credit institutions that can take deposits according to Directive 2013/36/EU. 006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions.</u></p> <p>Note: updated reference to CRD IV</p>
46.	Rec. 26b (new)		<p><u>(26b) Central Securities Depositories [CSDs] are systemically important institutions for financial markets that ensure the initial recording of securities, the maintenance of the accounts containing the securities issued and the settlement of virtually all trades of securities. For this reason, CSDs should be specifically regulated under Union legislation and should be subject to that specific legislation. However, CSDs might, in addition to the core services [referred to in Section A of the Annex to the CSDR], provide investment services and activities which are regulated under this Directive. In order to ensure that any entities providing investment services and activities are subject to the same regulatory framework, it is appropriate to ensure that CSDs are subject to the requirements of this Directive concerning their</u></p>		<p><i>Technical group 20140128</i></p> <p><u>(26b) Central Securities Depositories [CSDs] are systemically important institutions for financial markets that ensure the initial recording of securities, the maintenance of the accounts containing the securities issued and the settlement of virtually all trades of securities. CSDs are specifically regulated under Union legislation and are subject to that specific legislation for, in particular, their authorisation and certain operating conditions. However, CSDs might, in addition to the core services [referred to in Section A and B of the Annex to the [CSDR], provide investment services and activities which are regulated under this Directive. In order to ensure that any entities providing investment services and activities are subject to the same regulatory framework, it is appropriate to ensure that CSDs</u></p>

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			<p><u>internal organisation and the operating conditions as well as Regulation [MiFIR] when they provide investment services or perform investment activities. However, it is deemed more appropriate that these requirements are defined in the forthcoming CSD legislation, rather than setting them ex-ante in this Directive and Regulation [MiFIR]. Union legislation regulating CSD [CSDR] should thus identify the provisions of this Directive and of Regulation [MiFIR] which should apply to CSDs providing investment services and activities.</u></p>		<p>are subject to the requirements of this Directive , except those relating to authorisation and certain operating conditions, when they provide investment services or perform investment activities in addition to the services listed in Section A and B of the Annex to Regulation EU No. xx/xxx[CSDR]. However, these requirements are defined in the [CSDR]</p> <p>NOTE: above text to be used if CSDR has entered into force by the time MiFID enters into force. Otherwise return to Council's way of referring to CSDR.</p>
47.	Rec. 26c (new)		<p>(26c) Persons exempted under Articles 2(1)(a), (d), (h) and (i) should comply with the provisions referred to in Articles 17(1) to (5) when they are members or participants of regulated markets and MTFs.</p>		<p><i>Technical group 20140128</i></p> <p>-</p>
48.	Rec. 27	<p>(27) In order to strengthen the protection of investors in the Union, it is appropriate to limit the conditions under which Member States can exclude the application of this Directive to persons providing investment services to clients who, as a result, are not protected under the Directive. In particular, it is appropriate to require Member States to apply requirements at least analogous to the ones laid down in this Directive to those persons,</p>	<p>(27) In order to strengthen the protection of investors in the Union, it is appropriate to limit the conditions under which Member States <u>may</u> exclude the application of this Directive to persons providing investment services to clients who, as a result, are not protected under the Directive. In particular, it is appropriate to require Member States to apply requirements at least analogous to the ones laid down in this Directive</p>	<p>(27) In order to strengthen the protection of investors in the European Union, it is appropriate to limit the conditions under which Member States can exclude the application of this Directive to persons providing investment services to clients who, as a result, are not protected under the Directive. In particular, it is appropriate to require Member States to apply requirements at least analogous to <i>those</i> laid down in this</p>	<p><i>Technical group 20140128</i></p> <p>(27) In order to strengthen the protection of investors in the Union, it is appropriate to limit the conditions under which Member States <u>may</u> exclude the application of this Directive to persons providing investment services to clients who, as a result, are not protected under the Directive. In particular, it is appropriate to require Member States to apply requirements at least analogous to</p>

		COM	Council	EP	Compromise
		notably in the phase of authorisation, in the assessment of their reputation and experience and of the suitability of any shareholders, in the review of the conditions for initial authorisation and on-going supervision as well as on conduct of business obligations.	to those persons, notably in the phase of authorisation, in the assessment of their reputation and experience and of the suitability of any shareholders, in the review of the conditions for initial authorisation and on-going supervision as well as on conduct of business obligations. <u>In addition, persons excluded from the application of this Directive should be covered under an investor compensation scheme recognised in accordance with Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes⁸ or professional indemnity insurance ensuring equivalent protection to their clients in the situations covered under Directive 97/9/EC.</u>	Directive to those persons, <i>in particular</i> in the phase of authorisation, in the assessment of their reputation and experience and of the suitability of any shareholders, in the review of the conditions for initial authorisation and on-going supervision as well as on conduct of business obligations.	the ones laid down in this Directive to those persons, notably in the phase of authorisation, in the assessment of their reputation and experience and of the suitability of any shareholders, in the review of the conditions for initial authorisation and on-going supervision as well as on conduct of business obligations. <u>In addition, persons excluded from the application of this Directive should be covered under an investor compensation scheme recognised in accordance with Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes⁸ or professional indemnity insurance ensuring equivalent protection to their clients in the situations covered under Directive 97/9/EC.</u>
49.	Rec. 28	(28) In cases where an investment firm provides one or more investment services not covered by its authorisation, or performs one or more investment activities not covered by its authorisation, on a non-regular basis it should not need an additional authorisation under this Directive.	(28) In cases where an investment firm provides one or more investment services not covered by its authorisation, or performs one or more investment activities not covered by its authorisation, on a non-regular basis it should not need an additional authorisation under this Directive.	(28) In cases where an investment firm provides one or more investment services not covered by its authorisation, or performs one or more investment activities not covered by its authorisation, on a non-regular basis it should not need an additional authorisation under this Directive.	<i>Agreed silence procedure 20131008</i> (28) In cases where an investment firm provides one or more investment services not covered by its authorisation, or performs one or more investment activities not covered by its authorisation, on a non-regular basis it should not need an additional authorisation under this Directive.
50.	Rec. 29	(29) For the purposes of this	(29) For the purposes of this	(29) For the purposes of this	<i>Agreed silence procedure</i>

⁸ OJ L 84, 26.3.1997, p. 22.

⁸ OJ L 84, 26.3.1997, p. 22.

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		Directive, the business of the reception and transmission of orders should also include bringing together two or more investors thereby bringing about a transaction between those investors.	Directive, the business of the reception and transmission of orders should also include bringing together two or more investors thereby bringing about a transaction between those investors.	Directive, the business of // reception and transmission of orders should also include bringing together two or more investors thereby bringing about a transaction between those investors.	<i>20131008</i> (29) For the purposes of this Directive, the business of // reception and transmission of orders should also include bringing together two or more investors thereby bringing about a transaction between those investors.
51.	Rec. 30	(30) Investment firms and credit institutions distributing financial instruments they issue themselves should be subject to the provisions of this Directive when they provide investment advice to their clients. In order to eliminate uncertainty and strengthen investor protection, it is appropriate to provide for the application of this Directive when, in the primary market, investment firms and credit institutions distribute financial instruments issued by them without providing any advice. For this purpose, the definition of the service of execution of orders on behalf of clients should be extended.	(30) Investment firms and credit institutions distributing financial instruments they issue themselves should be subject to the provisions of this Directive when they provide investment advice to their clients. In order to eliminate uncertainty and strengthen investor protection, it is appropriate to provide for the application of this Directive when, in the primary market, investment firms and credit institutions distribute financial instruments issued by them without providing any advice. For this purpose, the definition of the service of execution of orders on behalf of clients should be extended.	(30) Investment firms and credit institutions distributing financial instruments they issue themselves should be subject to the provisions of this Directive when they provide investment advice to their clients. In order to eliminate uncertainty and strengthen investor protection, it is appropriate to provide for the application of this Directive when, in the primary market, investment firms and credit institutions distribute financial instruments issued by them without providing any advice. For this purpose, the definition of the service of execution of orders on behalf of clients should be extended.	<i>Agreed silence procedure 20131008</i> (30) Investment firms and credit institutions distributing financial instruments they issue themselves should be subject to the provisions of this Directive when they provide investment advice to their clients. In order to eliminate uncertainty and strengthen investor protection, it is appropriate to provide for the application of this Directive when, in the primary market, investment firms and credit institutions distribute financial instruments issued by them without providing any advice. For this purpose, the definition of the service of execution of orders on behalf of clients should be extended.
52.	Rec. 31	(31) The principles of mutual recognition and of home Member State supervision require that the Member States' competent authorities should not grant or should withdraw authorisation where factors such as the content of programmes of operations, the	(31) The principles of mutual recognition and of Home Member State supervision require that the Member States' competent authorities should not grant or should withdraw authorisation where factors such as the content of programmes of operations, the	(31) The principles of mutual recognition and of home Member State supervision require that the Member States' competent authorities should not grant or should withdraw authorisation where factors such as the content of programmes of operations, the	<i>Agreed silence procedure 20131008</i> (31) The principles of mutual recognition and of home Member State supervision require that the Member States' competent authorities should not grant or should withdraw authorisation

		COM	Council	EP	Compromise
		geographical distribution or the activities actually carried on indicate clearly that an investment firm has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within the territory of which it intends to carry on or does carry on the greater part of its activities. An investment firm which is a legal person should be authorised in the Member State in which it has its registered office. An investment firm which is not a legal person should be authorised in the Member State in which it has its head office. In addition, Member States should require that an investment firm's head office must always be situated in its home Member State and that it actually operates there.	geographical distribution or the activities actually carried on indicate clearly that an investment firm has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within the territory of which it intends to carry on or does carry on the greater part of its activities. An investment firm which is a legal person should be authorised in the Member State in which it has its registered office. An investment firm which is not a legal person should be authorised in the Member State in which it has its head office. In addition, Member States should require that an investment firm's head office must always be situated in its Home Member State and that it actually operates there.	geographical distribution or the activities actually carried on indicate clearly that an investment firm has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within the territory of which it intends to carry on or does carry on the greater part of its activities. An investment firm which is a legal person should be authorised in the Member State in which it has its registered office. An investment firm which is not a legal person should be authorised in the Member State in which it has its head office. In addition, Member States should require that an investment firm's head office must always be situated in its home Member State and that it actually operates there.	where factors such as the content of programmes of operations, the geographical distribution or the activities actually carried on indicate clearly that an investment firm has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within the territory of which it intends to carry on or does carry on the greater part of its activities. An investment firm which is a legal person should be authorised in the Member State in which it has its registered office. An investment firm which is not a legal person should be authorised in the Member State in which it has its head office. In addition, Member States should require that an investment firm's head office must always be situated in its home Member State and that it actually operates there.
53.	Rec. 32	(32) Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and	(32) Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and	(32) Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 // as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector ³⁶ has provided for detailed criteria for the prudential assessment of proposed	[note: Council addition corresponds to identical Council /EP text in 13(1)(1)(b)] <i>Agreed silence procedure 20131008</i> [part in [] to be included or not depending on political decision on Article 13(1)] <i>Technical group 20140128</i>

	COM	Council	EP	Compromise
	<p>increase of holdings in the financial sector³² has provided for detailed criteria for the prudential assessment of proposed acquisitions in an investment firm and for a procedure for their application. In order to provide legal certainty, clarity and predictability with regard to the assessment process, as well as to the result thereof, it is appropriate to confirm the criteria and the process of prudential assessment laid down in Directive 2007/44/EC. In particular, competent authorities should appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria: the reputation of the proposed acquirer; the reputation and experience of any person who will direct the business of the investment firm; the financial soundness of the proposed acquirer; whether the investment firm will be able to comply with the prudential requirements based on this Directive and other Directives, notably, Directives 2002/87/EC³³ and 2006/49/EC³⁴; whether there are reasonable grounds to suspect that money laundering or terrorist</p>	<p>increase of holdings in the financial sector⁸⁹ has provided for detailed criteria for the prudential assessment of proposed acquisitions in an investment firm and for a procedure for their application. In order to provide legal certainty, clarity and predictability with regard to the assessment process, as well as to the result thereof, it is appropriate to confirm the criteria and the process of prudential assessment laid down in Directive 2007/44/EC.</p> <p>In particular, competent authorities should appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria: the reputation of the proposed acquirer; the reputation and experience of any person who will direct the business of the investment firm <u>as a result of the proposed acquisition</u>; the financial soundness of the proposed acquirer; whether the investment firm will be able to comply with the prudential requirements based on this Directive and other Directives, notably, Directives 2002/87/EC¹⁰ and 2006/49/EC¹¹; whether there</p>	<p>acquisitions in an investment firm and for a procedure for their application. In order to provide legal certainty, clarity and predictability with regard to the assessment process, as well as to the result thereof, it is appropriate to confirm the criteria and the process of prudential assessment laid down in Directive 2007/44/EC. In particular, competent authorities should appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria: the reputation of the proposed acquirer; the reputation and experience of any person who will direct the business of the investment firm; the financial soundness of the proposed acquirer; whether the investment firm will be able to comply with the prudential requirements based on this Directive and <i>on other directives, in particular on Directives 2002/87/EC³⁷ and 2006/49/EC³⁸; whether the acquisition will increase conflicts of interests; whether there are reasonable grounds to suspect that money laundering or terrorist financing</i></p>	<p><i>Aligned to decision on Art 13(1) not to include part in [].</i></p> <p>(32) Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 // as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector⁴⁰ has provided for detailed criteria for the prudential assessment of proposed acquisitions in an investment firm and for a procedure for their application. In order to provide legal certainty, clarity and predictability with regard to the assessment process, as well as to the result thereof, it is appropriate to confirm the criteria and the process of prudential assessment laid down in Directive 2007/44/EC. In particular, competent authorities should appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria: the reputation of the proposed acquirer; the reputation and experience of any person who will direct the business of the investment firm as a result of</p>

³⁶ OJ L 247 , 21/09/2007, p. 1

³² OJ L 247 , 21/09/2007, p. 1

³³ Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (OJ L 35, 11.2.2003, p. 1)..

³⁴ Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast) (OJ L 177, 30.6.2006, p. 201).

		COM	Council	EP	Compromise
		financing within the meaning of Article 1 of Directive 2005/60/EC ³⁵ is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.	are reasonable grounds to suspect that money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC ³⁵ is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.	within the meaning of Article 1 of Directive 2005/60/EC ³⁹ is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.	the proposed acquisition; the financial soundness of the proposed acquirer; whether the investment firm will be able to comply with the prudential requirements based on this Directive and on other directives, in particular on Directives 2002/87/EC ⁴¹ and 2006/49/EC ⁴² ; whether the acquisition will increase conflicts of interests; whether there are reasonable grounds to suspect that money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC ⁴³ is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.
54.	Rec. 33	(33) An investment firm authorised in its home Member State should be	(33) An investment firm authorised in its <u>H</u> ome Member State should	(33) An investment firm authorised in its home Member State should be	<i>Agreed silence procedure 20131008</i>

⁹ OJ L 247, 21/09/2007, p. 1

¹⁰ Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (OJ L 35, 11.2.2003, p. 1)..

¹¹ Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast) (OJ L 177, 30.6.2006, p. 201).

³⁷ Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (OJ L 35, 11.2.2003, p. 1)..

³⁸ Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (OJ L 177, 30.6.2006, p. 201).

⁴⁰ OJ L 247, 21/09/2007, p. 1

³⁵ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

¹² Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

³⁹ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

⁴¹ Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (OJ L 35, 11.2.2003, p. 1)..

⁴² Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (OJ L 177, 30.6.2006, p. 201).

⁴³ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

		COM	Council	EP	Compromise
		entitled to provide investment services or perform investment activities throughout the Union without the need to seek a separate authorisation from the competent authority in the Member State in which it wishes to provide such services or perform such activities.	be entitled to provide investment services or perform investment activities throughout the Union without the need to seek a separate authorisation from the competent authority in the Member State in which it wishes to provide such services or perform such activities.	entitled to provide investment services or perform investment activities throughout the <i>European</i> Union without the need to seek a separate authorisation from the competent authority in the Member State in which it wishes to provide such services or perform such activities.	(33) An investment firm authorised in its home Member State should be entitled to provide investment services or perform investment activities throughout the <i>European</i> Union without the need to seek a separate authorisation from the competent authority in the Member State in which it wishes to provide such services or perform such activities.
55.	Rec. 34	(34) Since certain investment firms are exempted from certain obligations imposed by Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast) ⁴⁴ , they should be obliged to hold either a minimum amount of capital or professional indemnity insurance or a combination of both. The adjustments of the amounts of that insurance should take into account adjustments made in the framework of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation ⁴⁵ . This particular treatment for the purposes of capital adequacy should be without prejudice to any decisions	(34) Since certain investment firms are exempted from certain obligations imposed by Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast) ¹³ , they should be obliged to hold either a minimum amount of capital or professional indemnity insurance or a combination of both. The adjustments of the amounts of that insurance should take into account adjustments made in the framework of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation ¹⁴ . This particular treatment for the purposes of capital adequacy should be without prejudice to any	(34) Since certain investment firms are exempted from certain obligations imposed by Directive 2006/49/EC //, they should be obliged to hold either a minimum amount of capital or professional indemnity insurance or a combination of both. The adjustments of the amounts of that insurance should take into account adjustments made in the framework of Directive 2002/92/EC //. This particular treatment for the purposes of capital adequacy should be without prejudice to any decisions regarding the appropriate treatment of these firms under future changes to <i>European</i> Union law on capital adequacy.	<i>Agreed silence procedure 20131008</i> [Subject to legal-linguistic review. CRD IV reference to be updated (2013/36/EU)] (34) Since certain investment firms are exempted from certain obligations imposed by Directive 2006/49/EC //, they should be obliged to hold either a minimum amount of capital or professional indemnity insurance or a combination of both. The adjustments of the amounts of that insurance should take into account adjustments made in the framework of Directive 2002/92/EC //. This particular treatment for the purposes of capital adequacy should be without prejudice to any decisions regarding the appropriate

⁴⁴ OJ L 141, 11.6.1993 Ö 177, 30.6.2006, p. 201 Ö , p. 1. Directive as last amended by Directive 2002/87/EC.

⁴⁵ OJ L 9, 15.1.2003, p. 3.

¹³ OJ L 177, 30.6.2006, p. 201.

¹⁴ OJ L 9, 15.1.2003, p. 3.

		COM	Council	EP	Compromise
		regarding the appropriate treatment of these firms under future changes to Union legislation on capital adequacy.	decisions regarding the appropriate treatment of these firms under future changes to Union legislation on capital adequacy.		treatment of these firms under future changes to <i>European</i> Union law on capital adequacy.
56.	Rec. 35	(35) Since the scope of prudential regulation should be limited to those entities which, by virtue of running a trading book on a professional basis, represent a source of counterparty risk to other market participants, entities which deal on own account in financial instruments, including those commodity derivatives covered by this Directive, as well as those that provide investment services in commodity derivatives to the clients of their main business on an ancillary basis to their main business when considered on a group basis, provided that this main business is not the provision of investment services within the meaning of this Directive, should be excluded from the scope of this Directive.	(35) Since the scope of prudential regulation should be limited to those entities which, by virtue of running a trading book on a professional basis, represent a source of counterparty risk to other market participants, entities which deal on own account in financial instruments, including <u>when on an ancillary basis to their main business</u> those commodity derivatives covered by this Directive, as well as those that provide investment services in commodity derivatives to the clients of their main business on an ancillary basis to their main business when considered on a group basis, provided that this main business is not the provision of investment services within the meaning of this Directive, should be excluded from the scope of this Directive.	(35) Since the scope of prudential regulation should be limited to those entities which, by virtue of running a trading book on a professional basis, represent a source of counterparty risk to other market participants, entities which deal on own account in financial instruments, including those commodity derivatives covered by this Directive, as well as those that provide investment services in commodity derivatives to the clients of their main business on an ancillary basis to their main business when considered on a group basis, provided that this main business is not the provision of investment services within the meaning of this Directive, should be excluded from the scope of this Directive.	<i>Technical group 20140128</i> T: align to decision on scope of exemptions once taken (35) Since the scope of prudential regulation should be limited to those entities which, by virtue of running a trading book on a professional basis, represent a source of counterparty risk to other market participants, entities which deal on own account in financial instruments, including <u>when on an ancillary basis to their main business</u> those commodity derivatives covered by this Directive, as well as those that provide investment services in commodity derivatives to the clients of their main business on an ancillary basis to their main business when considered on a group basis, provided that this main business is not the provision of investment services within the meaning of this Directive, acting as a credit institution oras acting as a market maker in commodity derivatives, should be excluded from the scope of this Directive. <i>Technical group 20140206</i> Typo corrected above

		COM	Council	EP	Compromise
57.	Rec. 36	(36) In order to protect an investor's ownership and other similar rights in respect of securities and his rights in respect of funds entrusted to a firm those rights should in particular be kept distinct from those of the firm. This principle should not, however, prevent a firm from doing business in its name but on behalf of the investor, where that is required by the very nature of the transaction and the investor is in agreement, for example stock lending.	(36) In order to protect an investor's ownership and other similar rights in respect of securities and his rights in respect of funds entrusted to a firm those rights should in particular be kept distinct from those of the firm. This principle should not, however, prevent a firm from doing business in its name but on behalf of the investor, where that is required by the very nature of the transaction and the investor is in agreement, for example stock lending.	(36) In order to protect an investor's ownership and other similar rights in respect of securities and his rights in respect of funds entrusted to a firm those rights should in particular be kept distinct from those of the firm. This principle should not, however, prevent a firm from doing business in its name but on behalf of the investor, where that is required by the very nature of the transaction and the investor is in agreement, for example stock lending.	<p><i>Agreed silence procedure</i> 20131008</p> <p><i>Agreed silence procedure</i> 20131008</p> <p>(36) In order to protect an investor's ownership and other similar rights in respect of securities and his rights in respect of funds entrusted to a firm those rights should in particular be kept distinct from those of the firm. This principle should not, however, prevent a firm from doing business in its name but on behalf of the investor, where that is required by the very nature of the transaction and the investor is in agreement, for example stock lending.</p>
58.	Rec. 37	(37) The requirements concerning the protection of client assets are a crucial tool for the protection of clients in the provision of services and activities. These requirements can be excluded when full ownership of funds and financial instrument is transferred to an investment firm to cover any present or future, actual or contingent or prospective obligations. This broad possibility may create uncertainty and jeopardise the effectiveness of the requirements concerning the safeguard of client assets. Thus, at least when retail clients' assets are involved, it is appropriate to limit the possibility of investment firms	(37) The requirements concerning the protection of client assets are a crucial tool for the protection of clients in the provision of services and activities. These requirements can be excluded when full ownership of funds and financial instrument is transferred to an investment firm to cover any present or future, actual or contingent or prospective obligations. This broad possibility may create uncertainty and jeopardise the effectiveness of the requirements concerning the safeguard of client assets. Thus, at least when retail clients' assets are involved, it is appropriate to limit	(37) The requirements concerning the protection of client assets are a crucial tool for the protection of clients in the provision of services and activities. These requirements can be excluded when full ownership of funds and financial instrument is transferred to an investment firm to cover any present or future, actual or contingent or prospective obligations. This broad possibility may create uncertainty and jeopardise the effectiveness of the requirements concerning the safeguard of client assets. Thus, at least when retail clients' assets are involved, it is appropriate to limit	<p><i>Agreed silence procedure</i> 20131008</p> <p>(37) The requirements concerning the protection of client assets are a crucial tool for the protection of clients in the provision of services and activities. These requirements can be excluded when full ownership of funds and financial instrument is transferred to an investment firm to cover any present or future, actual or contingent or prospective obligations. This broad possibility may create uncertainty and jeopardise the effectiveness of the requirements concerning the safeguard of client assets. Thus, at</p>

		COM	Council	EP	Compromise
		to conclude title transfer financial collateral arrangements as defined under Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements ⁴⁶ , for the purpose of securing or otherwise covering their obligations.	the possibility of investment firms to conclude title transfer financial collateral arrangements as defined under Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements ⁴⁵ , for the purpose of securing or otherwise covering their obligations.	the possibility of investment firms to conclude title transfer financial collateral arrangements as defined under Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements ⁴⁷ , for the purpose of securing or otherwise covering their obligations.	least when retail clients' assets are involved, it is appropriate to limit the possibility of investment firms to conclude title transfer financial collateral arrangements as defined under Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements ⁴⁸ , for the purpose of securing or otherwise covering their obligations.
59.	Rec. 38	(38) It is necessary to strengthen the role of management bodies of investment firms in ensuring sound and prudent management of the firms, the promotion of the integrity of the market and the interest of investors. The management body of an investment firm should at all time commit sufficient time and possess adequate knowledge, skills and experience to be able to understand the business of the investment firm and its main risk. To avoid group thinking and facilitate critical challenge, management boards of investment firms should be sufficiently diverse as regards age, gender, provenance, education and professional background to present a variety of views and experiences. Gender balance is of a particular importance	(38) It is necessary to strengthen the role of management bodies of investment firms in ensuring sound and prudent management of the firms, the promotion of the integrity of the market and the interest of investors. The management body of an investment firm should at all time commit sufficient time and possess adequate <u>collective</u> knowledge, skills and experience to be able to understand the [...] <u>investment firm's activities including the main risks.</u>	(38) It is necessary to strengthen the role of management bodies of investment firms in ensuring sound and prudent management of the firms, the promotion of the integrity of the market and the interest of investors. In the interests of a coherent approach to corporate governance it is desirable to align the requirements for investment firms as far as possible to those included in Directive .../.../EU [CRD IV] and to ensure that such requirements are proportionate to the nature, scale and complexity of their business. <i>To prevent conflicts of interest an executive member of the management body of investment firms should not also be an executive member of the management body of a trading venue but could be a non-</i>	<i>Technical group 20140128</i> (38)- It is necessary to strengthen the role of management bodies of investment firms, regulated markets and data reporting services providers in ensuring sound and prudent management of the firms, the promotion of the integrity of the market and the interest of investors. The management body of an investment firm, regulated markets and data reporting services providers should at all time commit sufficient time and possess adequate collective knowledge, skills and experience to be able to understand the [...] <u>investment firm's [institution's] activities including the main risks.</u> - To avoid group thinking and

⁴⁶ OJ L 168, 27.6.2002, p. 43.

⁴⁵ OJ L 168, 27.6.2002, p. 43.

⁴⁷ OJ L 168, 27.6.2002, p. 43.

⁴⁸ OJ L 168, 27.6.2002, p. 43.

		COM	Council	EP	Compromise
		to ensure adequate representation of demographical reality.		<p><i>executive member of such a management body, for example in order to provide user participation in decision-making.</i> The management body of an investment firm should at all time commit sufficient time and possess adequate knowledge, skills and experience to be able to understand the business of the investment firm and its main risk. To avoid group thinking and facilitate critical challenge, management boards of investment firms should be sufficiently diverse as regards age, gender, provenance, education and professional background to present a variety of views and experiences. Gender balance is of a particular importance to ensure adequate representation of demographical reality. <i>Where practiced, employee representation in the management body should also be seen as a positive way of enhancing diversity, by adding a key perspective and genuine knowledge of the internal workings of the institution. Furthermore mechanisms are needed to ensure that members of management bodies can be held accountable in case of severe mismanagement.</i></p>	<p><u>facilitate independent opinions and critical challenge, management bodies should therefore be sufficiently diverse as regards age, gender, geographical provenance and educational and professional background to present a variety of views and experiences. Employee representation in management bodies could also, by adding a key perspective and genuine knowledge of the internal workings of firms/institutions, be seen as a positive way of enhancing diversity. Therefore, diversity should be one of the criteria for the composition of management bodies. Diversity should also be addressed in firms'/institutions' recruitment policy more generally. Such a policy should, for instance, encourage institutions to select candidates from shortlists including both genders.</u></p> <p>- In the interests of a coherent approach to corporate governance it is desirable to align the requirements for investment firms as far as possible to those included in Directive 2013/36/EU.</p> <p>Note:</p> <p>1. inclusion of reference to regulated markets and data</p>

		COM	Council	EP	Compromise
					reporting services providers 2. the EP part on the combination of directorships moved to recital 39. 3. the rest of the inclusions is in line with recital 60 CRD IV
60.	Rec. 39	(39) In order to have an effective oversight and control over the activities of investment firms, the management body should be responsible and accountable for the overall strategy of the investment firm, taking into account the investment firm's business and risk profile. The management body should assume clear responsibilities across the business cycle of the investment firm, in the areas of the identification and definition of the strategic objectives of the firm, of the approval of its internal organization, including criteria for selection and training of personnel, of the definition of the overall policies governing the provision of services and activities, including the remuneration of sales staff and the approval of new products for distribution to clients. Periodic monitoring and assessment of the strategic objectives of investment firms, their internal organization and their policies for the provision of services and activities should ensure their continuous ability to deliver sound and prudent management, in the interest of the integrity of the	(39) In order to have an effective oversight and control over the activities of investment firms, the management body should be responsible and accountable for the overall strategy of the investment firm, taking into account the investment firm's business and risk profile. The management body should assume clear responsibilities across the business cycle of the investment firm, in the areas of the identification and definition of the strategic objectives, <u>risk strategy and internal governance</u> of the firm, of the approval of its internal organization, including criteria for selection and training of personnel, of <u>effective oversight of senior management</u> , of the definition of the overall policies governing the provision of services and activities, including the remuneration of sales staff and the approval of new products for distribution to clients. Periodic monitoring and assessment of the strategic objectives of investment firms, their internal organization and their policies for the provision of services and	(39) In order to have an effective oversight and control over the activities of investment firms, the management body should be responsible and accountable for the overall strategy of the investment firm, taking into account the investment firm's business and risk profile. The management body should assume clear responsibilities across the business cycle of the investment firm, in the areas of the identification and definition of the strategic objectives of the firm, of the approval of its internal <i>organisation</i> , including criteria for selection and training of personnel, of the definition of the overall policies governing the provision of services and activities, including the remuneration of sales staff and the approval of new products for distribution to clients. Periodic monitoring and assessment of the strategic objectives of investment firms, their internal <i>organisation</i> and their policies for the provision of services and activities should ensure their continuous ability to deliver sound and prudent management, in the interest of the	<i>Technical group 20140128</i> (39) In order to have an effective oversight and control over the activities of investment firms, regulated markets and data reporting services providers , the management body should be responsible and accountable for the overall strategy of the investment firm, taking into account the investment firm's business and risk profile. The management body should assume clear responsibilities across the business cycle of the investment firm, in the areas of the identification and definition of the strategic objectives, <u>risk strategy and internal governance</u> of the firm, of the approval of its internal organisation, including criteria for selection and training of personnel, of <u>effective oversight of senior management</u> , of the definition of the overall policies governing the provision of services and activities, including the remuneration of sales staff and the approval of new products for distribution to clients. Periodic monitoring and assessment of the strategic objectives of

		COM	Council	EP	Compromise
		markets and the protection of investors.	activities should ensure their continuous ability to deliver sound and prudent management, in the interest of the integrity of the markets and the protection of investors.	integrity of the markets and the protection of investors.	<p>investment firms, their internal organization and their policies for the provision of services and activities should ensure their continuous ability to deliver sound and prudent management, in the interest of the integrity of the markets and the protection of investors.</p> <p>Combining too high a number of directorships would preclude a member of the management body from spending adequate time on the performance of that oversight role. Therefore, it is necessary to limit the number of directorships a member of the management body of an institution may hold at the same time in different entities. However, directorships in organisations which do not pursue predominantly commercial objectives, such as non-profit-making or charitable organisations, should not be taken into account for the purposes of applying such a limit.</p> <p>- [Note: inclusion in line with EP amendment in recital 5 and with recital 58 CRD IV]</p>
61.	Rec. 39a (new)		<u>(39a) Within Member States different governance structures are used, in most cases a unitary and/or a dual board structure. The definitions used in the Directive intend to embrace all existing structures without advocating any</u>		<p><i>Technical group 20140128</i></p> <p><u>(39a) Different governance structures are used across Member States. In most cases a unitary or a dual board structure is used. The definitions used in this Directive</u></p>

		COM	Council	EP	Compromise
			<p>particular structure. They are purely functional for the purpose of setting out rules aimed at a particular outcome irrespective of the national company law applicable to an institution in each Member State. The definitions should therefore not interfere with the general allocation of competencies according to the national company law.</p>		<p>intend to embrace all existing structures without advocating any particular structure. They are purely functional for the purpose of setting out rules aimed at a particular outcome irrespective of the national company law applicable to an institution in each Member State. The definitions should therefore not interfere with the general allocation of competences according to the national company law.</p> <p><u>Note: minor drafting changes mirroring similar recital (No 55) in CRD IV</u></p>
62.	Rec. 40	<p>(40) The expanding range of activities that many investment firms undertake simultaneously has increased potential for conflicts of interest between those different activities and the interests of their clients. It is therefore necessary to provide for rules to ensure that such conflicts do not adversely affect the interests of their clients.</p>	<p>(40) The expanding range of activities that many investment firms undertake simultaneously has increased potential for conflicts of interest between those different activities and the interests of their clients. It is therefore necessary to provide for rules to ensure that such conflicts do not adversely affect the interests of their clients. <u>Firms have a duty to take effective steps to identify and manage conflicts of interest and mitigate the potential impact of these risks as far as possible. Where some residual risk of detriment to the client's interests nonetheless remains, clear disclosure to the client of the general nature and/or sources of conflicts of interest to the client and the steps taken to mitigate these risks must be made before</u></p>	<p>(40) The expanding range of activities that many investment firms undertake simultaneously has increased potential for conflicts of interest between those different activities and the interests of their clients. It is therefore necessary to provide for rules to ensure that such conflicts do not adversely affect the interests of their clients.</p>	<p><i>Technical group 20140128</i></p> <p>(40) The expanding range of activities that many investment firms undertake simultaneously has increased potential for conflicts of interest between those different activities and the interests of their clients. It is therefore necessary to provide for rules to ensure that such conflicts do not adversely affect the interests of their clients. <u>Firms have a duty to take effective steps to identify, and prevent or manage conflicts of interest and mitigate the potential impact of these risks as far as possible. Where some residual risk of detriment to the client's interests nonetheless remains, clear disclosure to the client of the general nature and/or sources of conflicts of interest to the client and the steps taken to mitigate these</u></p>

		COM	Council	EP	Compromise
			<u>undertaking business on its behalf.</u>		<u>risks must be made before undertaking business on its behalf.</u>
63.	Rec. 41	(41) Member States should ensure the respect of the right to the protection of personal data in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and of the free movement of such data and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) ⁴⁹ which govern the processing of personal data carried out in application of this Directive. Processing of personal data by ESMA in the application of this Directive is subject to Regulation (EU) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁵⁰ .	(41) Member States are required to ensure the respect of the right to the protection of personal data in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and of the free movement of such data and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) which govern the processing of personal data carried out in application of this Directive. Processing of personal data by ESMA in the application of this Directive is subject to Regulation (EU) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. <u>This protection should notably</u>		[linked to recitals 43 and 69] <i>Technical group 20140128</i> [...]

⁴⁹ OJ L 201 , 31.7.2002, p. 37

⁵⁰ OJ L 8, 12.1.2001, p. 1.

		COM	Council	EP	Compromise
			extend to any transfer of <u>personal data to third countries and to telephone and electronic recording as required under Article 16.</u>		
64.	Rec. 42	(42) Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive ⁵¹ allows Member States to require, in the context of organisational requirements for investment firms, the recording of telephone conversations or electronic communications involving client orders. Recording of telephone conversations or electronic communications involving client orders is compatible with the Charter of Fundamental Rights of the European Union and is justified in order to strengthen investor protection, to improve market surveillance and increase legal certainty in the interest of investment firms and their clients. The importance of such records is also mentioned in the technical advice to the European Commission, released by the	(42) Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive ⁴⁷ allows Member States to require, in the context of organisational requirements for investment firms, the recording of telephone conversations or electronic communications involving client orders. Recording of telephone conversations or electronic communications involving client orders is compatible with the Charter of Fundamental Rights of the European Union and is justified in order to strengthen investor protection, to improve market surveillance and increase legal certainty in the interest of investment firms and their clients. The importance of such records is also mentioned in the technical advice to the European Commission, released by the	(42) Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive ⁵² allows Member States to require, in the context of organisational requirements for investment firms, the recording of telephone conversations or electronic communications involving client orders. Recording of telephone conversations or electronic communications involving client orders is compatible with the Charter of Fundamental Rights of the European Union and is justified in order to strengthen investor protection, to improve market surveillance and increase legal certainty in the interest of investment firms and their clients. The importance of such records is also mentioned in the technical advice to the // Commission, released by the Committee of	<i>Trilogue 06 11 / Technical meeting 13 11</i> Addition to third paragraph; rest to be reviewed <u>Orders can be communicated by these clients through other channels, however such communications must be made in a durable medium such as mails, faxes, emails, documentation of client orders made at meetings. For example, the content of relevant face-to-face conversations with a client could be recorded by using written minutes or notes. Such orders will be considered equivalent to orders received by telephone.</u> <i>Technical group 20131211/1217</i> <u>Where minutes are taken of face-to-face conversations with clients Member States should ensure that appropriate safeguards are in place to ensure that the client does not lose out as a result of the minutes inaccurately recording the</u>

⁵¹ OJ L 241, 2.9.2006, p. 26.

⁴⁷ OJ L 241, 2.9.2006, p. 26.

⁵² OJ L 241, 2.9.2006, p. 26.

		COM	Council	EP	Compromise
		<p>Committee of European Securities Regulators on 29 July 2010. For these reasons, it is appropriate to provide in this Directive for the principles of a general regime concerning the recording of telephone conversations or electronic communications involving client orders.</p>	<p>Committee of European Securities Regulators on 29 July 2010. <u>Such records should ensure that there is evidence to prove the terms of any orders given by clients and its correspondence with transactions executed by the investment firms, as well as to detect any behaviour that may have relevance in terms of market abuse, including when firms deal on own account. To this end records are needed for all conversations involving a firm’s representatives when dealing, or intending to deal, on own account. Investment firms shall notify new and existing clients that telephone communications or conversations between the investment firms and clients that result or may result in transactions, will be recorded. This notification can be provided once, before the provision of investment services to new and existing clients.</u></p> <p><u>Investment firms shall not provide, by phone, investment services and activities to clients who have not been notified in advance about the recording of their telephone communications or conversations, where such investment services and activities relate to the reception, transmission and execution of client orders.</u></p> <p><u>Orders can be communicated by these clients through other</u></p>	<p>European Securities Regulators on 29 July 2010. For these reasons, it is appropriate to provide in this Directive for the principles of a general regime concerning the recording of telephone conversations or electronic communications involving client orders. <i>For communications between retail clients and financial institutions it is appropriate to allow the Member States to recognise instead appropriate written records of such communications for financial institutions established and branches located within their territory.</i></p>	<p><u>communication between the parties. Such safeguards should not imply any assumption of liability by the client. [Row 462]</u></p> <p><i>Technical group 20140128</i></p> <p>(42) Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive ⁴⁷ allows Member States to require, in the context of organisational requirements for investment firms, the recording of telephone conversations or electronic communications involving client orders. Recording of telephone conversations or electronic communications involving client orders is compatible with the Charter of Fundamental Rights of the European Union and is justified in order to strengthen investor protection, to improve market surveillance and increase legal certainty in the interest of investment firms and their clients. The importance of such records is also mentioned in the technical</p>

⁴⁷ OJ L 241, 29.2006, p. 26.

		COM	Council	EP	Compromise
			<p><u>channel's, however such communications must be made in a durable medium such as mails, faxes, emails, documentation of client orders made at meetings. Such orders will be considered equivalent to orders received by telephone.</u></p> <p><u>To provide legal certainty regarding the scope of the obligation, it is appropriate to apply it to all equipment provided by the firm or permitted to be used by the investment firm and to require the investment firms to take reasonable steps to ensure that no privately-owned equipment is used in relation to transactions. These records shall be available to competent authorities in the fulfilment of their supervisory tasks and in the performance of enforcement actions under this Directive, MiFIR, MAD and MAR in order to help competent authorities identify behaviours which are not compliant with the legal framework regulating the activity of investment firms. These records shall also be available to investment firms and to clients to demonstrate the development of their relationship with regard to orders transmitted by clients and transaction carried out by firms. Records of telephone conversations or electronic communications involving client orders shall be kept</u></p>		<p>advice to the European Commission, released by the Committee of European Securities Regulators on 29 July 2010. <u>Such records should ensure that there is evidence to prove the terms of any orders given by clients and its correspondence with transactions executed by the investment firms, as well as to detect any behaviour that may have relevance in terms of market abuse, including when firms deal on own account. To this end records are needed for all conversations involving a firm's representatives when dealing, or intending to deal, on own account. Where orders are communicated by clients through other channels than by phone, such communications must be made in a durable medium such as mails, faxes, emails, documentation of client orders made at meetings. For example, the content of relevant face-to-face conversations with a client could be recorded by using written minutes or notes. Such orders will be considered equivalent to orders received by telephone. Where minutes are taken of face-to-face conversations with clients Member States should ensure that appropriate safeguards are in place, to ensure that the client does not lose out as a result of the minutes inaccurately recording the communication</u></p>

		COM	Council	EP	Compromise
			<p>for a period of five years, which is in line with these objectives and in accordance with the general retention period for any records under Article 51 of Directive 2006/73/EC. Notwithstanding the retention period of five years, investment firms shall retain the records for longer than five but a maximum of seven years when asked to do so by their competent authorities in pursuit of their duties. For these reasons, it is appropriate to provide in this Directive for the principles of a general regime concerning the recording of telephone conversations or electronic communications involving client orders.</p>		<p>between the parties. Such safeguards should not imply any assumption of liability by the client.</p> <p>To provide legal certainty regarding the scope of the obligation, it is appropriate to apply it to all equipment provided by the firm or permitted to be used by the investment firm and to require the investment firms to take reasonable steps to ensure that no privately owned equipment is used in relation to transactions. These records shall be available to competent authorities in the fulfilment of their supervisory tasks and in the performance of enforcement actions under this Directive, MiFIR, CSMAD and MAR in order to help competent authorities identify behaviours which are not compliant with the legal framework regulating the activity of investment firms. These records shall also be available to investment firms and to clients to demonstrate the development of their relationship with regard to orders transmitted by clients and transaction carried out by firms. Records of telephone conversations or electronic communications involving client orders shall be kept for a period of five years, which is in line with these objectives and in accordance with the general retention period for any records under Article 51 of Directive</p>

		COM	Council	EP	Compromise
					<p>2006/73/EC. Notwithstanding the retention period of five years, investment firms shall retain the records for longer than five but a maximum of seven years when asked to do so by their competent authorities in pursuit of their duties.</p> <p>For these reasons, it is appropriate to provide in this Directive for the principles of a general regime concerning the recording of telephone conversations or electronic communications involving client orders.</p> <p>Note: inclusion of Council recital, but for the parts which are identical to Article 16(7) + inclusion of suggested and agreed drafting for written minutes</p>
65.	Rec. 43	(43) Member States should ensure the right to the protection of personal data in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and of the free movement of such data and Directive 2002/58/EC. This protection should notably extend to telephone and electronic recording as required under Article 13.	[...]	(43) Member States should ensure <i>respect for the</i> right of protection of personal data in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and of the free movement of such data ⁵³ and Directive 2002/58/EC <i>of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of</i>	[linked to recitals 41 and 69] <i>Technical group 20140128</i> [...]

⁵³ OJ L 281, 23.11.1995, p. 31.

		COM	Council	EP	Compromise
				<p><i>privacy in the electronic communications sector⁵⁴ which govern the processing of personal data carried out in application of this Directive.</i> This protection should, <i>in particular</i>, extend to telephone and electronic recording. <i>Processing of personal data by the European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁵⁵ in the application of this Directive is subject to Regulation (EU) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁵⁶.</i></p>	
66.	Rec. 44	<p>(44) The use of trading technology has evolved significantly in the past decade and is now extensively used by market participants. Many market participants now make use of algorithmic trading where a computer algorithm automatically determines aspects of an order with minimal or no human intervention. A specific subset of algorithmic trading is high frequency trading</p>	<p>(44) The use of trading technology has evolved significantly in the past decade and is now extensively used by market participants. Many market participants now make use of algorithmic trading where a computer algorithm automatically determines aspects of an order with minimal or no human intervention. <u>An investment firm that engages in algorithmic trading pursuing a</u></p>	<p>(44) The use of trading technology has evolved significantly in the past decade and is now extensively used by market participants. Many market participants now make use of algorithmic trading where a computer algorithm automatically determines aspects of an order with minimal or no human intervention. A specific subset of algorithmic trading is high-frequency trading</p>	<p><i>Technical group 20140128 / 29</i> Cf. row 478 (44) The use of trading technology has evolved significantly in the past decade and is now extensively used by market participants. Many market participants now make use of algorithmic trading where a computer algorithm automatically determines aspects of an order with</p>

⁵⁴ OJ L 201, 31.7.2002, p. 37.

⁵⁵ OJ L 331, 15.12.2010, p. 84.

⁵⁶ OJ L 8, 12.1.2001, p. 1.

		COM	Council	EP	Compromise
		<p>where a trading system analyses data or signals from the market at high speed and then sends or updates large numbers of orders within a very short time period in response to that analysis. High frequency trading is typically done by the traders using their own capital to trade and rather than being a strategy in itself is usually the use of sophisticated technology to implement more traditional trading strategies such as market making or arbitrage.</p>	<p><u>market making strategy, or acts in a similar manner should carry out this market making continuously during a specified proportion of the trading venue’s trading hours. Regulatory technical standards should clarify what constitutes specified proportion of the trading venue’s trading hours by ensuring that such specified proportion is significant in comparison to the total trading hours.</u></p>	<p>where a trading system analyses data or signals from the market at high speed, <i>typically in milliseconds or microseconds</i>, and then sends or updates large numbers of orders within a very short time period in response to that analysis. High-frequency trading is typically done by the traders using their own capital to trade and rather than being a strategy in itself <i>can often involve</i> the use of sophisticated technology to implement more traditional trading strategies such as market making or arbitrage.</p>	<p>minimal or no human intervention. <i>Risks arising from algorithmic trading should be regulated. However, the use of algorithms in post-trade processing of executed transactions does not constitute algorithmic trading.</i> An investment firm that engages in algorithmic trading pursuing a market making strategy should carry out this market making continuously during a specified proportion of the trading venue’s trading hours. Regulatory technical standards should clarify what constitutes specified proportion of the trading venue’s trading hours by ensuring that such specified proportion is significant in comparison to the total trading hours, taking into account the liquidity, scale and nature of the specific market and the characteristics of the instrument traded.</p> <p><i>Technical group 20140206</i></p> <p>Pres to check.</p> <p>(44-a) Investment firms that pursue a market making strategy should have in place appropriate systems and controls for that activity. Pursuing a market making strategy should be understood in a way specific to this context, which is independent from other definitions such as the definition of “market making activities” in Regulation (EU) No 236/2012.</p>

		COM	Council	EP	Compromise
					<p>20140207</p> <p>Pres. does not agree to recital 44-a. EP to reconsider</p> <p>20140211</p> <p>Trilogue parties agree on the following new recital in addition to recital 44 above:</p> <p>(44-a) Investment firms that engage in algorithmic trading pursuing a market making strategy should have in place appropriate systems and controls for that activity. Such an activity should be understood in a way specific to its context and purpose. The definition of such activity is therefore independent from other definitions such as the definition of “market making activities” in Regulation (EU) No 236/2012.</p>
66a	Rec. 44a (new)		(44a) A specific subset of algorithmic trading is high frequency algorithmic trading where a trading system analyses data or signals from the market at high speed and then sends or updates large numbers of orders within a very short time period in response to that analysis. In particular, high frequency algorithmic trading may contain elements such as order initiation,		<p><i>Technical group 20140128</i></p> <p>(44a) A specific subset of algorithmic trading is high frequency algorithmic trading where a trading system analyses data or signals from the market at high speed and then sends or updates large numbers of orders within a very short time period in response to that analysis. In particular, high frequency algorithmic trading may contain</p>

		COM	Council	EP	Compromise
			<p>generating, routing and execution which are determined by the system without human intervention for each individual trade or order, short time-frame for establishing and liquidating positions, high daily portfolio turnover, high order-to-trade ratio intraday and ending the trading day at or close to a flat position. High frequency algorithmic trading is characterised, among others, by high message intra-day rates which constitute orders, quotes or cancellations. In determining what constitutes high message intra-day rates, the identity of the beneficial owner behind the activity, the length of the observation period, the comparison with the overall market activity during that period and the relative concentration or fragmentation of activity should be taken into account. High frequency algorithmic trading is typically done by the traders using their own capital to trade and rather than being a strategy in itself is usually the use of sophisticated technology to implement more traditional trading strategies such as market making or arbitrage.</p>		<p>elements such as order initiation, generating, routing and execution which are determined by the system without human intervention for each individual trade or order, short time-frame for establishing and liquidating positions, high daily portfolio turnover, high order-to-trade ratio intraday and ending the trading day at or close to a flat position. High frequency algorithmic trading is characterised, among others, by high message intra-day rates which constitute orders, quotes or cancellations. In determining what constitutes high message intra-day rates, the identity of the client ultimately behind the activity, the length of the observation period, the comparison with the overall market activity during that period and the relative concentration or fragmentation of activity should be taken into account. High frequency algorithmic trading is typically done by the traders using their own capital to trade and rather than being a strategy in itself is usually the use of sophisticated technology to implement more traditional trading strategies such as market making or arbitrage.</p>
67.	Rec. 45	(45) In line with Council conclusions on strengthening Union financial supervision of June 2009, and in order to contribute to the establishment of a single rulebook	(45) In line with Council conclusions on strengthening Union financial supervision of June 2009, and in order to contribute to the establishment of a single rulebook	(45) In line with Council conclusions on strengthening European Union financial supervision of June 2009, and in order to contribute to the	<p><i>Agreed silence procedure 20131008</i></p> <p>T: last sentence</p> <p><i>Technical group 29 08</i></p>

		COM	Council	EP	Compromise
		for Union financial markets, help further develop a level playing field for Member States and market participants, enhance investor protection and improve supervision and enforcement, the Union has committed to minimise, where appropriate, discretions available to Member States across Union financial services legislation. Besides the introduction in this directive of a common regime for the recording of telephone conversations or electronic communications involving client orders, it is appropriate to reduce the possibility of competent authorities to delegate supervisory tasks in certain cases, to limit discretions in the requirements applicable to tied agents and to the reporting from branches.	for Union financial markets, help further develop a level playing field for Member States and market participants, enhance investor protection and improve supervision and enforcement, the Union has committed to minimise, where appropriate, discretions available to Member States across Union financial services legislation. Besides the introduction in this <u>Directive</u> of a common regime for the recording of telephone conversations or electronic communications involving client orders, it is appropriate to reduce the possibility of competent authorities to delegate supervisory tasks in certain cases, to limit discretions in the requirements applicable to tied agents and to the reporting from branches.	establishment of a single rulebook for <i>European</i> Union financial markets, help further develop a level playing field for Member States and market participants, enhance investor protection and improve supervision and enforcement, the <i>European</i> Union is committed to minimise, where appropriate, discretions available to Member States across <i>European</i> Union financial services law. <i>In addition to</i> the introduction in this <i>Directive</i> of a common regime for the recording of telephone conversations or electronic communications involving client orders, it is appropriate to reduce the possibility of competent authorities to delegate supervisory tasks in certain cases, to limit discretions in the requirements applicable to tied agents and to the reporting from branches. <i>However, while competent authorities have responsibilities under this Directive to safeguard investor protection, nothing in this Directive prevents Member States from nominating authorities in addition to the competent authorities to provide additional monitoring of markets to enhance the protection of retail investors.</i>	Pres and COM do not support EP addition as risk implying that CAs do not have responsibility to carry out investor protection and monitoring. (45) In line with Council conclusions on strengthening <i>European</i> Union financial supervision of June 2009, and in order to contribute to the establishment of a single rulebook for <i>European</i> Union financial markets, help further develop a level playing field for Member States and market participants, enhance investor protection and improve supervision and enforcement, the <i>European</i> Union is committed to minimise, where appropriate, discretions available to Member States across <i>European</i> Union financial services law. <i>In addition to</i> the introduction in this <i>Directive</i> of a common regime for the recording of telephone conversations or electronic communications involving client orders, it is appropriate to reduce the possibility of competent authorities to delegate supervisory tasks in certain cases, to limit discretions in the requirements applicable to tied agents and to the reporting from branches.
68.	Rec. 46	(46) The use of trading technology has increased the speed, capacity and complexity of how investors	(46) The use of trading technology has increased the speed, capacity and complexity of how investors	(46) <i>Technical advances have enabled high-frequency trading and an evolution of business</i>	<i>Technical group 20140128</i> (46) <i>Technical advances have enabled high-frequency trading</i>

		COM	Council	EP	Compromise
		<p>trade. It has also enabled market participants to facilitate direct access by their clients to markets through the use of their trading facilities, through direct electronic access or sponsored and direct market access. Trading technology has provided benefits to the market and market participants generally such as wider participation in markets, increased liquidity, narrower spreads, reduced short term volatility and the means to obtain better execution of orders for clients. Yet, this trading technology also gives rise to a number of potential risks such as an increased risk of the overloading of the systems of trading venues due to large volumes of orders, risks of algorithmic trading generating duplicative or erroneous orders or otherwise malfunctioning in a way that may create a disorderly market. In addition there is the risk of algorithmic trading systems overreacting to other market events which can exacerbate volatility if there is a pre-existing market problem. Finally, algorithmic trading or high frequency can lend itself to certain forms of abusive behaviour if misused.</p>	<p>trade. It has also enabled market participants to facilitate direct <u>electronic</u> access by their clients to markets through the use of their trading facilities [...]. Trading technology has provided benefits to the market and market participants generally such as wider participation in markets, increased liquidity, narrower spreads, reduced short term volatility and the means to obtain better execution of orders for clients. Yet, this trading technology also gives rise to a number of potential risks such as an increased risk of the overloading of the systems of trading venues due to large volumes of orders, risks of algorithmic trading generating duplicative or erroneous orders or otherwise malfunctioning in a way that may create a disorderly market. In addition there is the risk of algorithmic trading systems overreacting to other market events which can exacerbate volatility if there is a pre-existing market problem. Finally, algorithmic trading or high frequency <u>algorithmic trading technique</u> can lend itself to certain forms of abusive behaviour if misused.</p>	<p><i>models. High-frequency trading is facilitated by the co-location of market participants' facilities in close physical proximity to a trading venue's matching engine. To ensure orderly and fair trading conditions it is essential to require trading venues to provide such co-location services on a non-discriminatory, fair and transparent basis.</i> The use of <i>high-frequency</i> trading technology has increased the speed, capacity and complexity of how investors trade. It has also enabled market participants to facilitate direct access by their clients to markets through the use of their trading facilities, through direct <i>market</i> access or sponsored access. Trading technology has provided benefits to the market and market participants generally such as wider participation in markets, <i>arguably</i> increased liquidity, <i>although doubts remain about the real depth of liquidity provided</i>, narrower spreads, reduced short term volatility and the means to obtain better <i>price formation and</i> execution of orders for clients. Yet, <i>high-frequency</i> trading technology also gives rise to a number of potential risks such as an increased risk of the overloading of the systems of trading venues due to large volumes of orders, risks of algorithmic trading generating</p>	<p><i>and an evolution of business models. High-frequency trading is facilitated by the co-location of market participants' facilities in close physical proximity to a trading venue's matching engine. To ensure orderly and fair trading conditions it is essential to require trading venues to provide such co-location services on a non-discriminatory, fair and transparent basis.</i> The use of trading technology has increased the speed, capacity and complexity of how investors trade. It has also enabled market participants to facilitate direct electronic access by their clients to markets through the use of their trading facilities, through direct market access or sponsored access. Trading technology has provided benefits to the market and market participants generally such as wider participation in markets, increased liquidity, narrower spreads, reduced short term volatility and the means to obtain better execution of orders for clients. Yet, this trading technology also gives rise to a number of potential risks such as an increased risk of the overloading of the systems of trading venues due to large volumes of orders, risks of algorithmic trading generating duplicative or erroneous orders or otherwise malfunctioning in a way that may create a disorderly market.</p>

		COM	Council	EP	Compromise
				<p>duplicative or erroneous orders or otherwise malfunctioning in a way that may create a disorderly market. In addition there is the risk of algorithmic trading systems overreacting to other market events which can exacerbate volatility if there is a pre-existing market problem. <i>Algorithmic trading or high frequency trading can, like any other form of trading, lend itself to certain forms of abusive behaviour if misused which should be prohibited under Regulation (EU) No .../... [MAR]. High-frequency trading may also, because of the information advantage provided to high-frequency traders, prompt investors to choose to execute trades in venues where they can avoid interaction with high-frequency traders. It is appropriate to subject high-frequency trading strategies which rely on certain specified characteristics to particular regulatory scrutiny. While these are predominantly strategies which rely on trading on own account such scrutiny should also apply where the execution of the trading strategy is structured in such a way as to avoid the execution taking place on own account.</i></p>	<p>In addition there is the risk of algorithmic trading systems overreacting to other market events which can exacerbate volatility if there is a pre-existing market problem. Finally, algorithmic trading or high frequency algorithmic trading technique can, <i>like any other form of trading, lend themselves to certain forms of abusive behaviour if misused, which should be prohibited under Regulation (EU) No .../... [MAR]. High-frequency trading may also, because of the information advantage provided to high-frequency traders, prompt investors to choose to execute trades in venues where they can avoid interaction with high-frequency traders. It is appropriate to subject high-frequency algorithmic trading techniques which rely on certain specified characteristics to particular regulatory scrutiny. While these are predominantly techniques which rely on trading on own account such scrutiny should also apply where the execution of the technique is structured in such a way as to avoid the execution taking place on own account.</i></p>
69.	Rec. 47	(47) These potential risks from increased use of technology are best mitigated by a combination of	(47) These potential risks from increased use of technology are best mitigated by a combination of	(47) These potential risks from increased use of technology are best mitigated by a combination of	<p><i>Technical group 20140128</i></p> <p>(47) These potential risks from</p>

		COM	Council	EP	Compromise
		<p>specific risk controls directed at firms who engage in algorithmic or high frequency trading and other measures directed at operators of trading venues that are accessed by such firms. It is desirable to ensure that all high frequency trading firms be authorised when they are a direct member of a trading venue. This should ensure they are subject to organisational requirements under the Directive and are properly supervised.</p>	<p><u>measures and specific risk controls directed at firms who engage in algorithmic or high frequency trading technique and other measures directed at operators of trading venues that are accessed by such firms. It is desirable to ensure that all high frequency algorithmic trading firms be authorised [...]. This should ensure they are subject to organisational requirements under the Directive and are properly supervised. However, entities which are authorised and supervised under the legislation of the Union regulating the financial sector and are exempted from this Directive, but which engage in algorithmic trading and high frequency algorithmic trading, should not be required to obtain an authorisation under this Directive and should only be subject to the measures and controls aimed at tackling the specific risk arising from these types of trading.</u></p>	<p>specific risk controls directed at firms who engage in algorithmic or high frequency trading and other measures directed at operators of <i>all</i> trading venues that are accessed by such firms. <i>These should reflect and build on the technical guidelines issued by ESMA in February 2012 on systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities (ESMA/2012/122) in order to strengthen the resilience of markets in the light of technological developments.</i> It is desirable to ensure that all high-frequency trading firms be authorised when they are a direct member of a trading venue. This should ensure they are subject to organisational requirements under the Directive and are properly supervised. <i>In this respect, ESMA should play an important coordinating role by defining appropriate tick sizes in order to ensure orderly markets at Union level. In addition, all orders should be subject to appropriate risk controls at source. It is therefore also appropriate to end the practice of sponsored and naked access to avoid the risk that firms with insufficient controls in place create disorderly market conditions and to ensure that market participants can be</i></p>	<p>increased use of technology are best mitigated by a combination of measures and specific risk controls directed at firms who engage in algorithmic or high frequency algorithmic trading technique, who provide direct electronic access, and other measures directed at operators of all trading venues that are accessed by such firms. <i>These should reflect and build on the technical guidelines issued by ESMA in February 2012 on systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities (ESMA/2012/122) in order to strengthen the resilience of markets in the light of technological developments.</i> It is desirable to ensure that all high frequency algorithmic trading firms be authorised [...]. This should ensure they are subject to organisational requirements under the Directive and are properly supervised. However, entities which are authorised and supervised under the legislation of the Union regulating the financial sector and are exempted from this Directive, but which engage in algorithmic trading and high frequency algorithmic trading, should not be required to obtain an authorisation under this Directive and should only be</p>

		COM	Council	EP	Compromise
				<i>identified and held accountable for any disorderly conditions for which they are responsible. It is also necessary to be able to clearly identify order flows coming from high-frequency trading. ESMA should also continue to monitor developments in technology and in methods used to access trading venues and should continue to prepare guidelines to ensure that the requirements of this Directive can continue to be effectively applied in the light of new practices.</i>	subject to the measures and controls aimed at tackling the specific risk arising from these types of trading. In this respect, ESMA should play an important coordinating role by defining appropriate tick sizes in order to ensure orderly markets at Union level.
70.	Rec. 48	(48) Both firms and trading venues should ensure robust measures are in place to ensure that automated trading does not create a disorderly market and cannot be used for abusive purposes. Trading venues should also ensure their trading systems are resilient and properly tested to deal with increased order flows or market stresses and that circuit breakers are in place to temporarily halt trading if there are sudden unexpected price movements.	(48) Both firms and trading venues should ensure robust measures are in place to ensure that automated trading does not create a disorderly market and cannot be used for abusive purposes. Trading venues should also ensure their trading systems are resilient and properly tested to deal with increased order flows or market stresses and that circuit breakers are in place to temporarily halt trading <u>or constrain it</u> if there are sudden unexpected price movements.	(48) Both firms and trading venues should ensure robust measures are in place to ensure that high-frequency and automated trading does not create a disorderly market and cannot be used for abusive purposes. Trading venues should also ensure their trading systems are resilient and properly tested to deal with increased order flows or market stresses and that circuit breakers are in place on all trading venues to temporarily halt trading if there are sudden unexpected price movements.	<i>Technical group 20140128</i> (48) Both firms and trading venues should ensure robust measures are in place to ensure that algorithmic trading or high frequency algorithmic trading techniques do not create a disorderly market and cannot be used for abusive purposes. Trading venues should also ensure their trading systems are resilient and properly tested to deal with increased order flows or market stresses and that circuit breakers are in place on trading venues to temporarily halt trading or constrain it if there are sudden unexpected price movements.
71.	Rec. 48a (new)			<i>(48a) It is also necessary to ensure that the fee structures of trading venues are transparent, non-discriminatory and fair and that</i>	<i>Technical group 20140128</i> (48a) It is also necessary to ensure that the fee structures of trading

		COM	Council	EP	Compromise
				<p><i>they are not structured in such a way as to promote disorderly market conditions. It is therefore appropriate to ensure that trading venue fee structures incentivise a lower ratio of system messages to executed trades with higher fees applying to practices such as the cancellation of high volumes or proportions of orders which could create such disorderly conditions and which require trading venues to increase the capacity of infrastructure without necessarily benefitting other market participants.</i></p>	<p>venues are transparent, non-discriminatory and fair and that they are not structured in such a way as to promote disorderly market conditions. <i>It is therefore appropriate to allow for trading venues to adjust their fees for cancelled orders according to the length of time for which the order was maintained and to calibrate the fees to each financial instrument to which they apply. Member States should also be able to allow trading venues to impose higher fees for placing orders that are subsequently cancelled or on participants placing a high ratio of cancelled orders and on those operating a high frequency algorithmic trading technique in order to reflect the additional burden on system capacity without necessarily benefitting other market participants.</i></p>
72.	Rec. 49	<p>(49) In addition to measures relating to algorithmic and high frequency trading it is appropriate to include controls relating to investment firms providing direct electronic access to markets for clients as electronic trading can be carried out via a firm providing electronic market access and many similar risks. It is also appropriate that firms providing direct electronic access ensure that</p>	<p>(49) In addition to measures relating to algorithmic and high frequency <u>algorithmic</u> trading <u>technique</u> it is appropriate to include controls relating to investment firms <u>which provide</u> direct electronic access to markets for <u>their</u> clients [...]. It is also appropriate that, <u>irrespective of the form of the direct electronic access provided</u> (such as direct market</p>	<p>(49) In addition to measures relating to algorithmic and high frequency trading it is appropriate to <i>prohibit sponsored and naked access and to</i> include controls relating to investment firms providing direct <i>market</i> access to markets for clients . It is also appropriate that firms providing direct <i>market</i> access ensure that persons using this service are</p>	<p><i>Technical group 20140129</i></p> <p>Note: concept of responsibility kept, but concept of liability not included so as not to interfere with rights for restitution under civil law by third parties</p> <p>(49) In addition to measures relating to algorithmic and high frequency algorithmic trading technique it is appropriate to ban</p>

		COM	Council	EP	Compromise
		<p>persons using this service are properly qualified and that risk controls are imposed on the use of the service. It is appropriate that detailed organisational requirements regarding these new forms of trading should be prescribed in more detail in delegated acts. This should ensure that requirements may be amended where necessary to deal with further innovation and developments in this area.</p>	<p>access, sponsored access or other <u>technical forms</u>), firms providing direct electronic access ensure that persons using this service are properly qualified [...], that risk controls are imposed on the use of the service <u>and that these firms retain responsibility and liability for trading submitted by their clients through the use of their systems or using their trading codes.</u> It is appropriate that detailed organisational requirements regarding these new forms of trading should be prescribed in more detail in delegated acts. This should ensure that requirements may be amended where necessary to deal with further innovation and developments in this area.</p>	<p>properly qualified and that risk controls are imposed on the use of the service. It is appropriate that detailed organisational requirements regarding these new forms of trading should be prescribed in more detail in delegated acts. <i>In addition to ESMA's powers to prepare updated guidelines on different forms of market access and associated controls, this</i> should ensure that requirements may be amended where necessary to deal with further innovation and developments in this area.</p>	<p>the provision of direct electronic access to markets by investment firms for their clients where this access is not subject to proper systems and controls. Irrespective of the form of the direct electronic access provided, firms providing such access should assess and review the suitability of clients using that service and ensure that persons using this service are properly qualified [...] that risk controls are imposed on the use of the service and that these firms retain responsibility for trading submitted by their clients through the use of their systems or using their trading codes. It is appropriate that detailed organisational requirements regarding these new forms of trading should be prescribed in more detail in regulatory technical standards. This should ensure that requirements may be amended where necessary to deal with further innovation and developments in this area.</p> <p><i>Technical group 20140206</i></p> <p>At the request of Parliament, wording above more closely aligned with Article 17(4) (row 482)</p>
73.	Rec. 49a (new)		<p><u>(49a) In order to ensure an effective supervision and in order to enable the competent authorities to take appropriate measures against</u></p>		<p><i>Technical group 20140128</i></p> <p>(49a) In order to ensure an effective supervision and in order to enable</p>

		COM	Council	EP	Compromise
			<p>defective or rogue algorithmic strategies in due time it is necessary to flag all orders generated by algorithmic trading. By means of flagging, competent authorities are enabled to identify and distinguish orders originating from different algorithms and to efficiently reconstruct and evaluate the strategies that algorithmic traders employ. This will mitigate the risk that orders are ambiguously attributed to an algorithmic strategy and a trader. The flagging permits the competent authorities to react efficiently and effectively against algorithmic trading strategies that behave in an abusive manner or pose risks to the orderly functioning of the market.</p>		<p>the competent authorities to take appropriate measures against defective or rogue algorithmic strategies in due time it is necessary to flag all orders generated by algorithmic trading. By means of flagging, competent authorities will be enabled to identify and distinguish orders originating from different algorithms and to efficiently reconstruct and evaluate the strategies that algorithmic traders employ. This will mitigate the risk that orders are not unambiguously attributed to an algorithmic strategy and a trader. The flagging permits the competent authorities to react efficiently and effectively against algorithmic trading strategies that behave in an abusive manner or pose risks to the orderly functioning of the market.</p>
73a	.				<p><i>Technical group 20140128</i> <i>Technical group 20140116</i> Cf. row 1407 <u>(49b) In order to ensure that market integrity is maintained in the light of technological developments in financial markets, ESMA should regularly seek input from national experts on developments related to</u></p>

		COM	Council	EP	Compromise
					<u>trading technology including high-frequency trading and new practices which could constitute market abuse, so as to identify and promote effective strategies for preventing and addressing such abuse.</u>
74.	Rec. 50	(50) There is a multitude of trading venues currently operating in the EU , among which a number are trading identical instruments. In order to address potential risks to the interests of investors it is necessary to formalise and further harmonise the processes on the consequences for trading on other venues if one trading venue decides to suspend or remove a financial instrument from trading. In the interest of legal certainty and to adequately address conflicts of interests when deciding to suspend or to remove instruments from trading, it should be ensured that if one regulated market or MTF stops trading due to non disclosure of information about an issuer or financial instrument, the others follow that decision unless continuing trading may be justified due to exceptional circumstances. In addition, it is necessary to formalise and improve the exchange of information and the cooperation of trading venues in cases of exceptional conditions in relation to a particular instrument that is traded	(50) There is a multitude of trading venues currently operating in the EU, among which a number are trading identical instruments. In order to address potential risks to the interests of investors it is necessary to formalise and further harmonise the processes on the consequences for trading on other <u>trading venues if an investment firm or a market operator operating a trading venue</u> decides to suspend or remove a financial instrument from trading. In the interest of legal certainty and to adequately address conflicts of interests when deciding to suspend or to remove <u>financial instruments from trading</u> , it should be ensured that if <u>an investment firm or a market operator operating a trading venue</u> stops trading due to <u>non-compliance any longer with their rules</u> , the others follow that decision <u>if it is decided so by their competent authorities</u> unless continuing trading may be justified due to exceptional circumstances. In addition, it is necessary to formalise and improve the exchange of information and the cooperation <u>between the competent</u>	(50) There is a multitude of trading venues currently operating in the <i>Union</i> , among which a number are trading identical instruments. In order to address potential risks to the interests of investors it is necessary to formalise and further <i>coordinate</i> the processes on the consequences for trading on other venues if one trading venue decides to suspend or remove a financial instrument from trading. In the interest of legal certainty and to adequately address conflicts of interests when deciding to suspend or to remove instruments from trading, it should be ensured that if one regulated market or MTF stops trading due to non disclosure of information about an issuer or financial instrument, the others follow that decision. In addition, it is necessary to <i>further</i> formalise and improve the exchange of information and the cooperation of trading venues in cases of exceptional conditions in relation to a particular instrument that is traded on various venues. <i>This should include arrangements to prevent trading venues using</i>	<i>Technical group 20140128</i> (50) There is a multitude of trading venues currently operating in the EU, among which a number are trading identical instruments. In order to address potential risks to the interests of investors it is necessary to formalise and further co-ordinate the processes on the consequences for trading on other trading venues if an investment firm or a market operator operating a trading venue decides to suspend or remove a financial instrument from trading. In the interest of legal certainty and to adequately address conflicts of interests when deciding to suspend or to remove financial instruments from trading, it should be ensured that if an investment firm or a market operator operating a trading venue stops trading due to non compliance any longer with their rules, the others follow that decision if it is decided so by their competent authorities unless continuing trading may be justified due to exceptional circumstances. In addition, it is necessary to formalise and improve the

		COM	Council	EP	Compromise
		on various venues.	<u>authorities in relation to suspension and removal of financial instruments from trading on a trading venue.</u>	<i>information transmitted in the context of a suspension or removal of an instrument from trading for commercial purposes.</i>	exchange of information and the cooperation between the competent authorities in relation to suspension and removal of financial instruments from trading on a trading venue. <i>These arrangements should be applied in such a way as to prevent trading venues using information transmitted in the context of a suspension or removal of an instrument from trading for commercial purposes.</i>
75.	Rec. 51	(51) More investors have become active in the financial markets and are offered a more complex wide-ranging set of services and instruments and, in view of these developments, it is necessary to provide for a degree of harmonisation to offer investors a high level of protection across the Union. When Directive 2004/39/EC was adopted, the increasing dependence of investors on personal recommendations required to include the provision of investment advice as an investment service subject to authorisation and to specific conduct of business obligations. The continuous relevance of personal recommendations for clients and the increasing complexity of services and instruments require enhancing the conduct of business obligations in order to strengthen the protection of investors.	(51) More investors have become active in the financial markets and are offered a more complex wide-ranging set of services and instruments and, in view of these developments, it is necessary to provide for a degree of harmonisation to offer investors a high level of protection across the Union. When Directive 2004/39/EC was adopted, the increasing dependence of investors on personal recommendations required to include the provision of investment advice as an investment service subject to authorisation and to specific conduct of business obligations. The continuous relevance of personal recommendations for clients and the increasing complexity of services and instruments require enhancing the conduct of business obligations in order to strengthen the protection of investors.	(51) More investors have become active in the financial markets and are offered a more complex wide-ranging set of services and instruments and, in view of these developments, it is necessary to provide for a degree of harmonisation to offer investors a high level of protection across the European Union. When Directive 2004/39/EC was adopted, the increasing dependence of investors on personal recommendations required to include the provision of investment advice as an investment service subject to authorisation and to specific conduct of business obligations. The continuous relevance of personal recommendations for clients and the increasing complexity of services and instruments require enhancing the conduct of business obligations in order to strengthen the protection of investors.	<i>Agreed silence procedure 20131008</i> (51) More investors have become active in the financial markets and are offered a more complex wide-ranging set of services and instruments and, in view of these developments, it is necessary to provide for a degree of harmonisation to offer investors a high level of protection across the European Union. When Directive 2004/39/EC was adopted, the increasing dependence of investors on personal recommendations required to include the provision of investment advice as an investment service subject to authorisation and to specific conduct of business obligations. The continuous relevance of personal recommendations for clients and the increasing complexity of services and instruments require enhancing the conduct of business

		COM	Council	EP	Compromise
					obligations in order to strengthen the protection of investors.
76.	Rec. 51a (new)			<p><i>(51a) While enhanced conduct of business obligations for advisory services are necessary they are not sufficient to ensure appropriate investor protection. In particular, Member States should ensure that where investment firms design investment products or structured deposits for sale to professional or retail clients those products are designed to meet the needs and characteristics of an identified target market within the relevant category of clients. Moreover, Member States should ensure that the investment firm takes reasonable steps to ensure that the investment product is marketed and distributed to clients within the target group. However, this should not relieve third-party distributors of responsibility where they market or distribute the product outside the target group without the knowledge or consent of the firm that designed the product. Producers should also periodically review the performance of their products, to assess whether the products have performed in accordance with their design and to establish whether their target market for the product remains correct. Investors also need appropriate information about products and in particular</i></p>	<p><i>Technical group 20140128</i></p> <p><i>(51a) Member States should ensure that investment firms act in accordance with the best interests of their clients and are able to comply with their obligations under this Directive. Investment firms should accordingly understand the features of the financial instruments and structured deposits offered or recommended and establish and review effective policies and arrangements to identify the category of clients to whom products and services are to be provided. Member States should ensure that the investment firms which manufacture financial instruments and structured deposits ensure that those products are manufactured to meet the needs of an identified target market of end clients within the relevant category of clients, take reasonable steps to ensure that the financial instruments and structured deposits are distributed to the identified target market and periodically review the identification of the target market of and the performance of the products they offer.</i></p> <p><i>Investment firms offering or recommending to clients financial</i></p>

		COM	Council	EP	Compromise
				<p><i>information on a consistent basis about the cumulative impact of different layers of charges on the investment return. The provisions of Article 80(8) of Directive 2006/48/EC should be taken into account in this regard.</i></p>	<p>instruments and structured deposits not manufactured by them should also have appropriate arrangements in place to obtain and understand the relevant information concerning the product approval process, including the identified target market and the characteristics of the product they offer or recommend. This obligation should apply without prejudice to any assessment of appropriateness or suitability to be subsequently carried out by the investment firm in the provision of investment services to each client, on the basis of their personal needs, characteristics and objectives.</p> <p>In order to ensure that financial instruments and structured deposits will be offered or recommended only when this is in the interest of the client, investment firms offering or recommending the product manufactured by firms which are not subject to the product governance requirements set out in this Directive or manufactured by third-country firms should also have appropriate arrangements to obtain sufficient information about the financial instruments and structured deposits.</p> <p>Note: drafting reflects the agreed</p>

		COM	Council	EP	Compromise
					<p>terminology (manufacture instead of design) and the idea that distributors’ duties should also cover products which have not undergone the product governance processes as the “manufacturer/issuer” is not a MiFID regulated entity.</p> <p>Drafting agreed at political level as part of the package on product governance [See row 448]</p>
77.	Rec. 52	<p>(52) In order to give all relevant information to investors, it is appropriate to require investment firms providing investment advice to clarify the basis of the advice they provide, notably the range of products they consider in providing personal recommendations to clients, whether they provide investment advice on an independent basis and whether they provide the clients with the on-going assessment of the suitability of the financial instruments recommended to them. It is also appropriate to require investment firms to explain their clients the reasons of the advice provided to them. In order to further define the regulatory framework for the provision of investment advice, while at the same time leaving choice to investment firms and clients, it is appropriate to establish the conditions for the provisions of this service when firms inform</p>	<p>(52) <u>Investment firms providing investment advice to clients should take into account the variety of needs that the investment firms’ potential clients may possess, in terms of knowledge and experience, financial situation and investment objectives. These elements may result in differences concerning factors such as complexity, levels of risks and holding periods that the investment firms should consider in recommending an investment to a client in order to comply with the obligation to provide suitable advice. In order to further define the regulatory framework for the provision of investment advice, while at the same time leaving choice to investment firms and clients, it is appropriate to require investment firms providing investment advice to clarify the basis of the advice they provide, notably the range of products they</u></p>	<p>(52) In order to give all relevant information to investors, it is appropriate to require investment firms providing investment advice to clarify the basis of the advice they provide, <i>in particular</i> the range of products they consider in providing personal recommendations to clients, <i>the cost of the advice or, where the cost of fees and inducements cannot be ascertained prior to the provision of the advice, the manner in which the cost will be calculated,</i> whether <i>the investment advice is provided in conjunction with the acceptance or receipt of third-party inducements</i> and whether <i>the investment firms provide the clients with the periodic assessment of the suitability of the financial instruments recommended to them.</i> It is also appropriate to require investment firms to explain their clients the reasons of the advice</p>	<p><i>Technical group 20140128 / 29</i></p> <p>(52) A. In order to give all relevant information to investors, it is appropriate to require investment firms providing investment advice to disclose the cost of the advice, to clarify the basis of the advice they provide, <i>in particular</i> the range of products they consider in providing personal recommendations to clients, whether they provide investment advice on an independent basis <u>or not</u> and whether they provide the clients with the <u>periodic</u> assessment of the suitability of the financial instruments recommended to them. It is also appropriate to require investment firms to explain to their clients the reasons for the advice provided to them.</p> <p>B. In order to further define the regulatory framework for the provision of investment advice, while at the same time leaving</p>

		COM	Council	EP	Compromise
		<p>clients that the service is provided on an independent basis. In order to strengthen the protection of investors and increase clarity to clients as to the service they receive, it is appropriate to further restrict the possibility for firms to accept or receive inducements from third parties, and particularly from issuers or product providers, when providing the service of investment advice on an independent basis and the service of portfolio management. In such cases, only limited non-monetary benefits as training on the features of the products should be allowed subject to the condition that they do not impair the ability of investment firms to pursue the best interest of their clients, as further clarified in Directive 2006/73/EC.</p>	<p>consider in providing personal recommendations to clients, whether they provide investment advice on an independent basis <u>or not</u> and whether they provide the clients with the <u>periodic</u> assessment of the suitability of the financial instruments recommended to them. <u>In relation to this</u> it is appropriate to establish the conditions for the provision of investment advice <u>when investment firms inform clients that the service is provided on an independent basis. When advice is provided on an independent basis a sufficient range of different product providers' products shall be assessed prior to making a personal recommendation.</u></p> <p><u>It is not necessary for the advisor, however, to assess investment products available on the market by all product providers or issuers, but the range of financial instruments should not be limited to financial instruments issued or provided by entities having close links with the investment firm or any other strict relationships, such as contractual relationship, potentially able to impair the independent basis of the advice provided.</u> In order to strengthen the protection of investors and increase clarity to clients as to the service they receive, it is appropriate to further restrict the possibility for firms to</p>	<p>provided to them. <i>Guidelines by ESMA could be useful in ensuring effective and consistent application of these provisions.</i> In order to further define the regulatory framework for the provision of investment advice, while at the same time leaving choice to investment firms and clients, it is appropriate to establish the conditions for the provisions of this service when firms inform clients that the <i>advice</i> is provided <i>in conjunction with the acceptance or receipt of third-party inducements.</i> When providing <i>discretionary</i> portfolio management, the <i>investment firm</i> should, <i>prior to the agreement, inform the client about the expected scale of inducements, and periodic reports should disclose all inducements paid or received. Given the need to ensure that such third-party inducements do not prevent the investment firm from acting in the best interests of the client, provision should also be made to allow under certain conditions a prohibition on the receipt of such inducements or to require them to be transferred to the client.</i></p>	<p>choice to investment firms and clients, it is appropriate to establish the conditions for the provisions of this service when firms inform clients that the service is provided on an independent basis.</p> <p><u>When advice is provided on an independent basis a sufficient range of different product providers' products shall be assessed prior to making a personal recommendation. It is not necessary for the advisor, however, to assess investment products available on the market by all product providers or issuers, but the range of financial instruments should not be limited to financial instruments issued or provided by entities having close links with the investment firm or any other legal or economic relationships, such as contractual relationship, so close as to be potentially able to impair the independent basis of the advice provided.</u></p> <p>C. In order to strengthen the protection of investors and increase clarity to clients as to the service they receive, it is also appropriate to further restrict the possibility for firms providing the service of investment advice on an independent basis and the service of portfolio management to accept and retain fees, commissions or any monetary and non-monetary</p>

		COM	Council	EP	Compromise
			<p>accept <u>and retain fees, commissions or any monetary and non-monetary benefits from or to third parties, and particularly from issuers or product providers, when providing the service of investment advice on an independent basis and the service of portfolio management. [...]</u></p> <p><u>This implies that an investment firm that receives fees, commissions or any monetary and non-monetary benefits from a third party while providing the service of portfolio management or independent investment advice must pass on in full any monetary benefit received by a third party to a client. Only minor non-monetary benefits such as training on the features of the products and, for firms providing portfolio management, services related to research should be allowed subject to the conditions that they are clearly disclosed to the client, that they are capable of enhancing the quality of the service provided and that they do not, or are not likely to, impair the ability of investment firms to act in the best interest of their clients [...]. This Directive provides for conditions and procedures for Member States to comply with when planning to impose additional requirements. Such requirements may include prohibiting or further restricting the</u></p>		<p><u>benefits from third parties, and particularly from issuers or product providers. This implies that all fees, commissions and any monetary benefits paid or provided by a third party must be returned in full to the client as soon as possible after receipt of those payments by the firm and the firm should not be allowed to offset any third-party payments from the fees due by the client to the firm. The client should be accurately and, where relevant, periodically, informed about all fees, commissions and benefits the firm has received in connection with the investment service provided to the client and transferred to him. Firms providing independent advice or portfolio management should also set up a policy, as part of their organisational requirements, to ensure that third party payments received are allocated and transferred to the clients.</u></p> <p><u>Only minor non-monetary benefits should be allowed subject to the conditions that they are clearly disclosed to the client, that they are capable of enhancing the quality of the service provided and that they do not, or are not likely to, impair the ability of investment firms to act in the best interest of their clients.</u></p>

		COM	Council	EP	Compromise
			<p><u>offer or acceptance of fees, commissions or any monetary or non-monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of service to clients. Member States may retain any requirements additional to this Directive which have been notified under Article 4 of Directive 2006/73/EC at the time this Directive enters into force. To protect consumers further, it is appropriate to ensure investment firms do not remunerate or assess the performance of their staff in a way that conflicts with the firms' duty to act in the best interests of their clients, for example by creating a benefit for staff to favour recommending or selling one particular financial instrument when another product may better meet the client's needs.</u></p>		<p>D. When providing the service of investment advice on an independent basis and the service of portfolio management, fees, commissions or non-monetary benefits paid or provided by a person on behalf of the client are allowed only as far as the person is aware that such payments have been made on his behalf and that the amount and frequency of any payment is agreed between the client and the investment firm and not determined by a third party. Cases which would satisfy this requirement include where a client pays a firm's invoice directly or it is paid by an independent third party who has no connection with the investment firm regarding the investment service provided to the client and is acting only on the instructions of the client and cases where the client negotiates a fee for a service provided by an investment firm and pays that fee. This would generally be the case for accountants or lawyers acting under a clear payment instruction from the client or where the person is acting as a mere conduit for the payment.</p> <p><u>E. This Directive provides for conditions and procedures for Member States to comply with when planning to impose additional requirements. Such requirements</u></p>

		COM	Council	EP	Compromise
					<p><u>may include prohibiting or further restricting the offer or acceptance of fees, commissions or any monetary or non-monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of service to clients.</u></p> <p>Note:</p> <p>1. for clarity purposes recital should be broken into</p> <p>A) general info</p> <p>B) independent advice and range of financial instruments</p> <p>C) inducements and non-monetary benefits</p> <p>D) clarification of payments on behalf of the client (this partly based on CESR guidelines on inducements and part of Council's recital 54a)</p> <p>E) reference to additional national requirements</p> <p>2. last Council idea covered in recital 52a below as it deals with remuneration and not inducements.</p>
78.	Rec. 52a (new)		<p><u>To protect consumers further, it is appropriate to ensure investment firms do not remunerate or assess the performance of their staff in a way that conflicts with the firms' duty to act in the best interests of their clients, for example by</u></p>	<p><i>(52a) To further protect consumers, it is also appropriate to ensure investment firms do not remunerate or assess the performance of their own staff in a way that conflicts with the firm's duty to act in the best interests of</i></p>	<p><i>Technical group 20140128</i></p> <p><i>(52a) To further protect consumers, it is also appropriate to ensure investment firms do not remunerate or assess the performance of their own staff in a way that conflicts with the firm's</i></p>

		COM	Council	EP	Compromise
			<p><u>creating a benefit for staff to favour recommending or selling one particular financial instrument when another product may better meet the client's needs.</u></p>	<p><i>their clients. Remuneration of staff selling or advising on investments should therefore not be solely dependent on sales targets or the profit to the firm from a specific financial instrument as this would create incentives to deliver information which is not fair, clear and not misleading and to make recommendations which are not in the best interests of clients.</i></p>	<p><i>duty to act in the best interests of their clients, for example through remuneration, sales targets or otherwise which incentivise recommending or selling one particular financial instrument when another product may better meet the client's needs.</i></p>
78a					<p>Technical group 20140206</p> <p>Recital was agreed to be included, see row 565 in table 2B</p> <p><i>(52aa) Where sufficient information in relation to the costs and associated charges or to the risks in respect to the financial instrument or the structured deposit itself is provided in conformity with other EU legislation that information should be regarded as appropriate for the purposes of providing information to clients under this Directive. However, investment firms or credit institutions distributing that financial instrument or structured deposit should additionally inform their clients about all the other costs and associated charges related to their provision of investment services in relation to that financial instrument or structured deposit.</i></p>
79.	Rec.			<i>(52b) Given the complexity of</i>	Technical group 20140128

		COM	Council	EP	Compromise
	52b (new)			<i>investment products and the continuous innovation in their design, it is also important to ensure that staff who advise on or sell investment products to retail clients possess an appropriate level of knowledge and competence in relation to the products offered. Investment firms need to allow their staff sufficient time and resources to achieve this knowledge and competence and to apply it in providing services to clients.</i>	<i>(52b) Given the complexity of investment products and the continuous innovation in their design, it is also important to ensure that staff who advise on or sell investment products to retail clients possess an appropriate level of knowledge and competence in relation to the products offered. Investment firms need to allow their staff sufficient time and resources to achieve this knowledge and competence and to apply it in providing services to clients.</i>
80.	Rec. 53	(53) Investment firms are allowed to provide investment services that only consist of execution and/or the reception and transmission of client orders, without the need to obtain information regarding the knowledge and experience of the client in order to assess the appropriateness of the service or the instrument for the client. Since these services entail a relevant reduction of clients' protections, it is appropriate to improve the conditions for their provision. In particular, it is appropriate to exclude the possibility to provide these services in conjunction with the ancillary service consisting of granting credits or loans to investors to allow them to carry out a transaction in which the investment firm is involved, since this increases	[...]	(53) Investment firms are allowed to provide investment services that only consist of execution and/or the reception and transmission of client orders, without the need to obtain information regarding the knowledge and experience of the client in order to assess the appropriateness of the service or the instrument for the client. Since these services entail a relevant reduction of clients' protections, it is appropriate to improve the conditions for their provision. In particular, it is appropriate to exclude the possibility to provide these services in conjunction with the ancillary service consisting of granting credits or loans to investors to allow them to carry out a transaction in which the investment firm is involved, since	<i>Technical group 20140128</i> (53) Investment firms are allowed to provide investment services that only consist of execution and/or the reception and transmission of client orders, without the need to obtain information regarding the knowledge and experience of the client in order to assess the appropriateness of the service or the instrument for the client. Since these services entail a relevant reduction of clients' protections, it is appropriate to improve the conditions for their provision. In particular, it is appropriate to exclude the possibility to provide these services in conjunction with the ancillary service consisting of granting credits or loans to investors to allow them to carry out a transaction in which the

		COM	Council	EP	Compromise
		<p>the complexity of the transaction and makes more difficult the understanding of the risk involved. It is also appropriate to better define the criteria for the selection of the financial instruments to which these services should relate in order to exclude the financial instruments, including collective investment in transferable securities (UCITS), which embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved.</p>		<p>this increases the complexity of the transaction and makes more difficult the understanding of the risk involved. It is also appropriate to better define the criteria for the selection of the financial instruments to which these services should relate in order to exclude the financial instruments which embed a derivative <i>unless that derivative does not increase the risk to the client</i>, or incorporate a structure which makes it difficult for the client to understand the risk involved.</p>	<p>investment firm is involved, since this increases the complexity of the transaction and makes more difficult the understanding of the risk involved. It is also appropriate to better define the criteria for the selection of the financial instruments to which these services should relate in order to exclude the financial instruments, including those which embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved, shares in non-UCITS collective investment undertakings and structured UCITS as referred to in Article 36(1) subparagraph 2 of Commission Regulation 583/2010. The treatment of certain UCITS as complex products is <u>without prejudice to future Union legislation defining the scope of and the rules applicable to such products.</u></p>
81.	Rec. 54	<p>(54) Cross-selling practices are a common strategy for retail financial service providers throughout the Union. They can provide benefits to retail clients but can also represent practices where the interest of the client is not adequately considered. For instance, certain forms of cross-selling practices, namely tying practices where two or more financial services are sold together in a package and at least one of</p>	[...]	<p>(54) Cross-selling practices are a common strategy for retail financial service providers throughout the European Union. They can provide benefits to retail clients but can also represent practices where the interest of the client is not adequately considered. For instance, certain forms of cross-selling practices, namely tying practices where two or more financial services are sold together</p>	<p><i>Technical group 20140128</i></p> <p>(54) Cross-selling practices are a common strategy for retail financial service providers throughout the European Union. They can provide benefits to retail clients but can also represent practices where the interest of the client is not adequately considered. For instance, certain forms of cross-selling practices, namely tying</p>

		COM	Council	EP	Compromise
		<p>those services is not available separately, can distort competition and negatively affect clients' mobility and their ability to make informed choices. An example of tying practices can be the necessary opening of current accounts when an investment service is provided to a retail client. While practices of bundling, where two or more financial services are sold together in a package, but each of the services can also be purchased separately, may also distort competition and negatively affect customer mobility and clients' ability to make informed choices, they at least leave choice to the client and may therefore pose less risk to the compliance of investment firms with their obligations under this directive. The use of such practices should be carefully assessed in order to promote competition and consumer choice.</p>		<p>in a package and at least one of those services is not available separately, can distort competition and negatively affect clients' mobility and their ability to make informed choices. An example of tying practices can be the necessary opening of current accounts when an investment service is provided to a retail client. While practices of bundling, where two or more financial services are sold together in a package, but each of the services can also be purchased separately, may also distort competition and negatively affect customer mobility and clients' ability to make informed choices, they at least leave choice to the client and may therefore pose less risk to the compliance of investment firms with their obligations under this <i>Directive</i>. The use of such practices should be carefully assessed in order to promote competition and consumer choice.</p>	<p>practices where two or more financial services are sold together in a package and at least one of those services is not available separately, can distort competition and negatively affect clients' mobility and their ability to make informed choices. An example of tying practices can be the necessary opening of current accounts when an investment service is provided to a retail client. While practices of bundling, where two or more financial services are sold together in a package, but each of the services can also be purchased separately, may also distort competition and negatively affect customer mobility and clients' ability to make informed choices, they at least leave choice to the client and may therefore pose less risk to the compliance of investment firms with their obligations under this Directive. The use of such practices should be carefully assessed in order to promote competition and consumer choice.</p>
82.	Rec. 52a (new) [Council]		<p><u>(52a) When providing investment advice, the investment firm should specify in a written statement on suitability how the advice given meets the preferences, needs and other characteristics of the retail client. The statement must be provided in a durable medium including electronic form and does</u></p>		<p><i>Technical group 20140128</i></p> <p><u>(52a) When providing investment advice, the investment firm should specify in a written statement on suitability how the advice given meets the preferences, needs and other characteristics of the retail client. The statement must be</u></p>

		COM	Council	EP	Compromise
			<p>not have to be signed in person by the advisor.</p>		<p>provided in a durable medium including electronic form . <u>The responsibility to undertake the suitability assessment and to provide an accurate suitability report to the client lies with the investment firm and appropriate safeguards should be in place to ensure that the client does not lose out as a result of the report presenting in an inaccurate or unfair manner the personal recommendation, including how the recommendation provided is suitable for the client and what the disadvantages of the recommended course of action are.</u></p> <p><u>Note: concerns in relation to written minutes could also be transposed to the written suitability report. Some national with suitability reports in writing have revealed a potential risk for investors that written suitability reports are used against the client. We therefore suggest that recital 52a on suitability reports could clarify (similar to the one introduced for written minutes where accepted as an alternative to telephone recordings) that clients do not lose out as a result of the suitability reports.</u></p> <p><u>+ numbering of the paras might need to be changed as indeed this sits better after recital 52</u></p>

		COM	Council	EP	Compromise
83.	Rec. 53 [Council]		(53) <u>In determining what constitutes the provision of information in good time before a time specified in this Directive, an investment firm should take into account, having regard to the urgency of the situation, the client's need for sufficient time to read and understand it before taking an investment decision. A client is likely to require more time to review information given on a complex or unfamiliar product or service, or a product or service a client has no experience with than a client considering a simpler or more familiar product or service, or where the client has relevant prior experience.</u>		<i>Technical group 20140128</i> <u>(53) In determining what constitutes the provision of information in good time before a time specified in this Directive, an investment firm should take into account, having regard to the urgency of the situation, the client's need for sufficient time to read and understand it before taking an investment decision. A client is likely to require more time to review information given on a complex or unfamiliar product or service, or a product or service a client has no experience with than a client considering a simpler or more familiar product or service, or where the client has relevant prior experience.</u>
84.	Rec. 54 [Council]		(54) <u>Nothing in this Directive obliges investment firms to provide all required information about the investment firm, financial instruments, costs and associated charges, or concerning the safeguarding of client financial instruments or client funds immediately and at the same time, provided that they comply with the general obligation to provide the relevant information in good time before the time specified in this Directive. Provided that the information is communicated to the client in good time before the provision of the service, nothing in</u>		<i>Technical group 20140128</i> <u>(54) Nothing in this Directive obliges investment firms to provide all required information about the investment firm, financial instruments, costs and associated charges, or concerning the safeguarding of client financial instruments or client funds immediately and at the same time, provided that they comply with the general obligation to provide the relevant information in good time before the time specified in this Directive. Provided that the information is communicated to the</u>

		COM	Council	EP	Compromise
			<u>this Directive obliges firms to provide it either separately or by incorporating the information in a client agreement.</u>		<u>client in good time before the provision of the service, nothing in this Directive obliges firms to provide it either separately or by incorporating the information in a client agreement.</u>
85.	Rec. 54a (new) [Council]		<u>(54a) When arranging payment for investment advice that it is provided on an independent basis, acceptable payments are limited to those which are paid or provided by or on behalf of the client. While third parties such as banks may be involved in transferring money from clients to advisers, it is important that such firms do so only on the instructions of the client – the amount and frequency of any payments for the services of the firm giving investment advice must not be determined by a third party, but must be agreed between the client and the firm providing investment advice.</u>		<i>Technical group 20140128</i> [...] Included in recital 52 above.
86.	Rec. 55	(55) A service should be considered to be provided at the initiative of a client unless the client demands it in response to a personalised communication from or on behalf of the firm to that particular client, which contains an invitation or is intended to influence the client in respect of a specific financial instrument or specific transaction. A service can be considered to be provided at the initiative of the client notwithstanding that the client	(55) A service should be considered to be provided at the <u>own exclusive</u> initiative of a client unless the client demands it in response to a personalised communication from or on behalf of the firm to that particular client, which contains an invitation or is intended to influence the client in respect of a specific financial instrument or specific transaction. A service can be considered to be provided at the <u>own exclusive</u> initiative of the	(55) A service should be considered to be provided at the initiative of a client unless the client demands it in response to a personalised communication from or on behalf of the firm to that particular client, which contains an invitation or is intended to influence the client in respect of a specific financial instrument or specific transaction. A service can be considered to be provided at the initiative of the client notwithstanding that the	<i>Technical group 20140129</i> Deletion of “own exclusive” below to align with language used in Article 25. <i>Agreed silence procedure 20131008</i> [“own exclusive initiative” used in EP text in MiFIR row 519 and Council MiFID row 840] (55) A service should be considered to be provided at the initiative of a

		COM	Council	EP	Compromise
		demands it on the basis of any communication containing a promotion or offer of financial instruments made by any means that by its very nature is general and addressed to the public or a larger group or category of clients or potential clients.	client notwithstanding that the client demands it on the basis of any communication containing a promotion or offer of financial instruments made by any means that by its very nature is general and addressed to the public or a larger group or category of clients or potential clients.	client demands it on the basis of any communication containing a promotion or offer of financial instruments made by any means that by its very nature is general and addressed to the public or a larger group or category of clients or potential clients.	client unless the client demands it in response to a personalised communication from or on behalf of the firm to that particular client, which contains an invitation or is intended to influence the client in respect of a specific financial instrument or specific transaction. A service can be considered to be provided at the initiative of the client notwithstanding that the client demands it on the basis of any communication containing a promotion or offer of financial instruments made by any means that by its very nature is general and addressed to the public or a larger group or category of clients or potential clients.
87.	Rec. 56	(56) One of the objectives of this Directive is to protect investors. Measures to protect investors should be adapted to the particularities of each category of investors (retail, professional and counterparties). However, in order to enhance the regulatory framework applicable to the provision of services irrespective of the categories of clients concerned, it is appropriate to make it clear that principles to act honestly, fairly and professionally and the obligation to be fair, clear and not misleading apply to the relationship with any clients.	(56) One of the objectives of this Directive is to protect investors. Measures to protect investors should be adapted to the particularities of each category of investors (retail, professional and counterparties). However, in order to enhance the regulatory framework applicable to the provision of services irrespective of the categories of clients concerned, it is appropriate to make it clear that principles to act honestly, fairly and professionally and the obligation to be fair, clear and not misleading apply to the relationship with any clients.	(56) One of the objectives of this Directive is to protect investors. Measures to protect investors should be adapted to the particularities of each category of investors (retail, professional and counterparties). However, in order to enhance the regulatory framework applicable to the provision of services irrespective of the categories of clients concerned, it is appropriate to make it clear that principles to act honestly, fairly and professionally and the obligation to be fair, clear and not misleading apply to the relationship with any clients.	<i>Agreed silence procedure 20131008</i> (56) One of the objectives of this Directive is to protect investors. Measures to protect investors should be adapted to the particularities of each category of investors (retail, professional and counterparties). However, in order to enhance the regulatory framework applicable to the provision of services irrespective of the categories of clients concerned, it is appropriate to make it clear that principles to act honestly, fairly and professionally and the obligation to be fair, clear and not misleading apply to the relationship

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					with any clients.
87a	.				<p><i>Trilogue 20140114: agreed to include recital below subject to technical comments on third sentence. Location to be confirmed.</i></p> <p><i>Technical group 20140129: Pres. requested to change "the same conduct of business standards" and delete "detailed". EP tech team could not accept. <u>Left open.</u></i></p> <p>(57) Investments that involve contracts of insurance are often made available to customers as potential alternatives or substitutes to financial instruments subject to this Directive. To deliver consistent protection for retail clients and insure a level playing field between similar products, it is important that insurance-based investment products are subject to appropriate requirements the same conduct of business standards, in particular those relating to restrictions on detailed information requirements, inducements, product governance and rules on ensuring the suitability of advice or appropriateness of non-advised sales. Whereas the investor protection requirements in this Directive should therefore be applied equally to those investments packaged under insurance contracts, their different market structures and</p>

		COM	Council	EP	Compromise
					<p>product characteristics make it more appropriate that the detailed requirements are set out in the ongoing review of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation rather than setting them in this Directive. Future Union legislation regulating the activities of insurance intermediaries and insurance undertakings should thus appropriately ensure a consistent regulatory approach concerning the distribution of different financial products which satisfy similar investor needs and therefore raise comparable investor protection challenges. EIOPA and ESMA should work together to achieve as much consistency as possible in the conduct of business standards for these investment products. These new requirements for insurance-based investment products should be laid down in Directive 2002/92/EC.</p> <p>(116) In order to align the rules pertaining to conflicts of interests, general principles and information to customers and to allow Member States to place restrictions on the remuneration of insurance</p>

		COM	Council	EP	Compromise
					<p>intermediaries, Directive 2002/92/EC⁵⁷ should be amended accordingly.</p> <p>(117) (new) Insurance-based investment products that do not offer investment opportunities and deposits solely exposed to interest rates should be excluded from the scope of this Directive. Individual and occupational pension products, having the primary purpose of providing the investor an income in retirement, are excluded from the scope of this Directive, in consideration of their peculiarities and objectives.</p> <p><i>Technical group 20140206</i></p> <p>At Pres. request text above in Recital 57 amended. Pres. to test wording proposed by EP.</p> <p>Commission suggest to use instead “equivalent conduct of business standards”</p> <p><i>20140207</i> Pres. agrees with the wording above.</p>
88.	Rec. 57	(57) By way of derogation from the principle of home country authorisation, supervision and enforcement of obligations in respect of the operation of branches, it is appropriate for the competent	(57) By way of derogation from the principle of <u>Home Member State</u> authorisation, supervision and enforcement of obligations in respect of the operation of branches, it is appropriate for the	(57) By way of derogation from the principle of home country authorisation, supervision and enforcement of obligations in respect of the operation of branches, it is appropriate for the	<p><i>Agreed silence procedure 20131008</i></p> <p>(57) By way of derogation from the principle of home <u>Member State</u> authorisation, supervision and</p>

⁵⁷ Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002, (OJ L 9, 15.1.2003, p.3)

		COM	Council	EP	Compromise
		authority of the host Member State to assume responsibility for enforcing certain obligations specified in this Directive in relation to business conducted through a branch within the territory where the branch is located, since that authority is closest to the branch, and is better placed to detect and intervene in respect of infringements of rules governing the operations of the branch.	competent authority of the <u>H</u> ost Member State to assume responsibility for enforcing certain obligations specified in this Directive in relation to business conducted through a branch within the territory where the branch is located, since that authority is closest to the branch, and is better placed to detect and intervene in respect of infringements of rules governing the operations of the branch.	competent authority of the host Member State to assume responsibility for enforcing certain obligations specified in this Directive in relation to business conducted through a branch within the territory where the branch is located, since that authority is closest to the branch, and is better placed to detect and intervene in respect of infringements of rules governing the operations of the branch.	enforcement of obligations in respect of the operation of branches, it is appropriate for the competent authority of the host Member State to assume responsibility for enforcing certain obligations specified in this Directive in relation to business conducted through a branch within the territory where the branch is located, since that authority is closest to the branch, and is better placed to detect and intervene in respect of infringements of rules governing the operations of the branch.
89.	Rec. 58	(58) It is necessary to impose an effective ‘best execution’ obligation to ensure that investment firms execute client orders on terms that are most favourable to the client. This obligation should apply to the firm which owes contractual or agency obligations to the client.	(58) It is necessary to impose an effective ‘best execution’ obligation to ensure that investment firms execute client orders on terms that are most favourable to the client. This obligation should apply to the firm which owes contractual or agency obligations to the client.	(58) It is necessary to impose an effective ‘best execution’ obligation to ensure that investment firms execute client orders on terms that are most favourable to the client. This obligation should apply to the firm which owes contractual or agency obligations to the client.	<i>Agreed silence procedure 20131008</i> (58) It is necessary to impose an effective ‘best execution’ obligation to ensure that investment firms execute client orders on terms that are most favourable to the client, including by ensuring that investment firms are not remunerated for routing client orders to a particular trading venue or execution venue unless this is compatible with their obligations in relation to conflicts of interest, inducements and best execution. This obligation should apply to the firm which owes contractual or agency obligations to the client. <i>Technical group 20140206</i>

		COM	Council	EP	Compromise
					<p>Modification made above at the request of Parliament</p> <p>20140211</p> <p>Trilogue parties agree to undo the change made by the Technical group on 6 Febr. Recital 58 thus reads:</p> <p>(58) It is necessary to impose an effective ‘best execution’ obligation to ensure that investment firms execute client orders on terms that are most favourable to the client. This obligation should apply to the firm which owes contractual or agency obligations to the client.</p>
90.	Rec. 58a (new)			<p><i>(58a) In order to contribute to a wider shareholder base across the Union, the best execution framework should be enhanced for retail investors so they can access the wider range of execution venues that are now available across the Union. Advances in technology for monitoring best execution should be considered when applying the best execution framework.</i></p>	<p><i>Technical group 20140128</i></p> <p>(58a) Given that a wider range of execution venues are now available in the Union, it is appropriate to enhance the best execution framework for retail investors. <i>Advances in technology for monitoring best execution should be considered when applying the best execution framework.</i></p> <p>20140211</p> <p>Trilogue parties agree on the following:</p> <p>(58a (new)) Given that a wider range of execution venues are now available in the Union, it is appropriate to enhance the best</p>

		COM	Council	EP	Compromise
					execution framework for retail investors. <i>Advances in technology for monitoring best execution should be considered when applying the best execution framework in line with Art. 27 – para 1 – subpara 1a (new) [row 619].</i>
90a					<p><i>Technical group 20140128 / 29</i></p> <p><i>[Note: previously agreed to include recitals 71 to 73 of current MiFID implementing directive at Council request in connection with change to Art 27, row 619](58b) For the purposes of determining best execution when executing retail client orders, the costs related to execution should include an investment firm's own commissions or fees charged to the client for limited purposes, in cases where more than one venue listed in the firm's execution policy is capable of executing a particular order. In such cases, the firm's own commissions and costs for executing the order on each of the eligible execution venues should be taken into account in order to assess and compare the results for the client that would be achieved by executing the order on each such venue. However, it is not intended to require a firm to compare the results that would be achieved for its client on the basis of its own execution policy and its own</i></p>

		COM	Council	EP	Compromise
					<p><i>commissions and fees, with results that might be achieved for the same client by any other investment firm on the basis of a different execution policy or a different structure of commissions or fees. Nor is it intended to require a firm to compare the differences in its own commissions which are attributable to differences in the nature of the services that the firm provides to clients.</i></p> <p><i>(58c) The provisions of this Directive that provide that costs of execution should include an investment firm's own commissions or fees charged to the client for the provision of an investment service should not apply for the purpose of determining what execution venues must be included in the firm's execution policy for the purposes of Article 27(4) of MiFID (old Article 21(3) of Directive 2004/39/EC).</i></p> <p><i>(58d) It should be considered that an investment firm structures or charges its commissions in a way which discriminates unfairly between execution venues if it charges a different commission or spread to clients for execution on different execution venues and that difference does not reflect actual differences in the cost to the firm of executing on those venues.</i></p>
91.	Rec. 59	(59) In order to enhance the conditions under which investment	(59) In order to enhance the conditions under which investment	(59) In order to enhance the conditions under which investment	Agreed <i>silence</i> <i>procedure</i> 20131008

		COM	Council	EP	Compromise
		<p>firms comply with their obligation to execute orders on terms most favourable to their clients in accordance with this Directive, it is appropriate to require execution venues to make available to the public data relating to the quality of execution of transactions on each venue.</p>	<p>firms comply with their obligation to execute orders on terms most favourable to their clients in accordance with this Directive, it is appropriate to require execution venues to make available to the public data relating to the quality of execution of transactions on each venue.</p>	<p>firms comply with their obligation to execute orders on terms most favourable to their clients in accordance with this Directive, it is appropriate to require execution venues to make available to the public data relating to the quality of execution of transactions on each venue.</p>	<p>(59) In order to enhance the conditions under which investment firms comply with their obligation to execute orders on terms most favourable to their clients in accordance with this Directive, it is appropriate to require execution venues to make available to the public data relating to the quality of execution of transactions on each venue.</p> <p>Note: wording of this recital needs to be adapted in light of final agreement on row 621</p> <p>In order to enhance the conditions under which investment firms comply with their obligation to execute orders on terms most favourable to their clients in accordance with this Directive, it is appropriate to require <u>that for instruments subject to the trading obligation in Articles 20c and 24 MiFIR that each trading venue and systematic internaliser and for other instruments that each</u> execution venues makes available to the public data relating to the quality of execution of transactions on each venue.</p> <p><i>Technical group 20140206</i></p> <p>Text completed above</p>
92.	Rec. 60	<p>(60) Information provided by investment firms to clients in relation to their order execution policies often are generic and</p>	<p>(60) Information provided by investment firms to clients in relation to their [...] execution <u>policy</u> often are generic and</p>	<p>(60) Information provided by investment firms to clients in relation to their order execution policies often are generic and</p>	<p><i>Technical group 20140128</i></p> <p>(60) Information provided by investment firms to clients in</p>

		COM	Council	EP	Compromise
		<p>standard and do not allow clients to understand how an order will be executed and to verify firms' compliance with their obligation to execute orders on term most favourable to their clients. In order to enhance investor protection it is appropriate to specify the principles concerning the information given by investment firms to their clients on the order execution policies and to require firms to make public, on an annual basis, for each class of financial instruments, the top five execution venues where they executed client orders in the preceding year.</p>	<p>standard and do not allow clients to understand how an order will be executed and to verify firms' compliance with their obligation to execute orders on term most favourable to their clients. In order to enhance investor protection it is appropriate to specify the principles concerning the information given by investment firms to their clients on the [...] execution policy and to require firms to make public, on an annual basis, for each class of financial instruments, the top five execution venues where they executed client orders in the preceding year.</p>	<p>standard and do not allow clients to understand how an order will be executed and to verify firms' compliance with their obligation to execute orders on term most favourable to their clients. In order to enhance investor protection it is appropriate to specify the principles concerning the information given by investment firms to their clients on the order execution policies and to require firms to make public, on a quarterly basis, for each class of financial instruments, the top five execution venues where they executed client orders in the preceding year and to take account of that information and information published by trading venues on execution quality in their policies on best execution.</p>	<p>relation to their [...] execution policy often are generic and standard and do not allow clients to understand how an order will be executed and to verify firms' compliance with their obligation to execute orders on term most favourable to their clients. In order to enhance investor protection it is appropriate to specify the principles concerning the information given by investment firms to their clients on the [...] execution policy and to require firms to make public, on an annual basis, for each class of financial instruments, the top five execution venues where they executed client orders in the preceding year and to take account of that information and information published by execution venues on execution quality in their policies on best execution.</p> <p>Note: cf comment above on recital 59 and the use of trading venues</p>
93.	Rec. 61	<p>(61) When establishing the business relationship with the client the investment firm might ask the client or potential client to consent at the same time to the execution policy as well as to the possibility that his orders may be executed outside a regulated market MTF, OTF or systematic internaliser.</p>	<p>(61) When establishing the business relationship with the client, the investment firm might ask the client or potential client to consent at the same time to the execution policy as well as to the possibility that his orders may be executed outside a regulated market, MTF, OTF or systematic internaliser.</p>		<p><i>Technical group 20140128</i></p> <p>(61) When establishing the business relationship with the client, the investment firm might ask the client or potential client to consent at the same time to the execution policy as well as to the possibility that his orders may be executed outside a regulated market, MTF, OTF or systematic internaliser.</p>

		COM	Council	EP	Compromise
					Note: to be kept, cf row 625
94.	Rec. 62	(62) Persons who provide investment services on behalf of more than one investment firm should not be considered as tied agents but as investment firms when they fall under the definition provided in this Directive, with the exception of certain persons who may be exempted.	(62) Persons who provide investment services on behalf of more than one investment firm should not be considered as tied agents but as investment firms when they fall under the definition provided in this Directive, with the exception of certain persons who may be exempted.	(62) Persons who provide investment services on behalf of more than one investment firm should not be considered as tied agents but as investment firms when they fall under the definition provided in this Directive, with the exception of certain persons who may be exempted.	<i>Agreed silence procedure 20131008</i> (62) Persons who provide investment services on behalf of more than one investment firm should not be considered as tied agents but as investment firms when they fall under the definition provided in this Directive, with the exception of certain persons who may be exempted.
95.	Rec. 63	(63) This Directive should be without prejudice to the right of tied agents to undertake activities covered by other Directives and related activities in respect of financial services or products not covered by this Directive, including on behalf of parts of the same financial group.	(63) This Directive should be without prejudice to the right of tied agents to undertake activities covered by other Directives and related activities in respect of financial services or products not covered by this Directive, including on behalf of parts of the same financial group.	(63) This Directive should be without prejudice to the right of tied agents to undertake activities covered by other Directives and related activities in respect of financial services or products not covered by this Directive, including on behalf of parts of the same financial group.	<i>Agreed silence procedure 20131008</i> (63) This Directive should be without prejudice to the right of tied agents to undertake activities covered by other Directives and related activities in respect of financial services or products not covered by this Directive, including on behalf of parts of the same financial group.
96.	Rec. 64	(64) The conditions for conducting activities outside the premises of the investment firm (door-to-door selling) should not be covered by this Directive.	(64) The conditions for conducting activities outside the premises of the investment firm (door-to-door selling) should not be covered by this Directive.	(64) The conditions for conducting activities outside the premises of the investment firm (door-to-door selling) should not be covered by this Directive.	<i>Agreed silence procedure 20131008</i> (64) The conditions for conducting activities outside the premises of the investment firm (door-to-door selling) should not be covered by this Directive.
97.	Rec. 65	(65) Member States' competent authorities should not register or should withdraw the registration where the activities actually carried	(65) Member States' competent authorities should not register or should withdraw the registration where the activities actually carried	(65) Member States' competent authorities should not register or should withdraw the registration where the activities actually carried	<i>Agreed silence procedure 20131008</i> (65) Member States' competent authorities should not register or

		COM	Council	EP	Compromise
		on indicate clearly that a tied agent has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within the territory of which it intends to carry on or does carry on the greater part of its activities.	on indicate clearly that a tied agent has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within the territory of which it intends to carry on or does carry on the greater part of its activities.	on indicate clearly that a tied agent has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within the territory of which it intends to carry on or does carry on the greater part of its activities.	should withdraw the registration where the activities actually carried on indicate clearly that a tied agent has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within the territory of which it intends to carry on or does carry on the greater part of its activities.
98.	Rec. 66	(66) For the purposes of this Directive eligible counterparties should be considered as acting as clients.	(66) For the purposes of this Directive eligible counterparties should be considered as acting as clients.	(66) For the purposes of this Directive eligible counterparties should be considered as acting as clients.	<i>Agreed silence procedure 20131008</i> (66) For the purposes of this Directive eligible counterparties should be considered as acting as clients.
99.	Rec. 67	(67) The financial crisis has shown limits in the ability of non-retail clients to appreciate the risk of their investments. While it should be confirmed that conduct of business rules should be enforced in respect of those investors most in need of protection, it is appropriate to better calibrate the requirements applicable to different categories of clients. To this extent, it is appropriate to extend some information and reporting requirements to the relationship with eligible counterparties. In particular, the relevant requirements should relate to the safeguarding of client financial instruments and monies as well as information and reporting requirements concerning more complex financial instruments	(67) The financial crisis has shown limits in the ability of non-retail clients to appreciate the risk of their investments. While it should be confirmed that conduct of business rules should be enforced in respect of those investors most in need of protection, it is appropriate to better calibrate the requirements applicable to different categories of clients. To this extent, it is appropriate to extend some information and reporting requirements to the relationship with eligible counterparties. In particular, the relevant requirements should relate to the safeguarding of client financial instruments and <u>funds</u> as well as information and reporting requirements concerning more	(67) The financial crisis has shown limits in the ability of non-retail clients to appreciate the risk of their investments. While it should be confirmed that conduct of business rules should be enforced in respect of those investors most in need of protection, it is appropriate to better calibrate the requirements applicable to different categories of clients. To this extent, it is appropriate to extend some information and reporting requirements to the relationship with eligible counterparties. In particular, the relevant requirements should relate to the safeguarding of client financial instruments and monies as well as information and reporting requirements concerning more	<i>Technical group 20140128</i> (67) The financial crisis has shown limits in the ability of non-retail clients to appreciate the risk of their investments. While it should be confirmed that conduct of business rules should be enforced in respect of those investors most in need of protection, it is appropriate to better calibrate the requirements applicable to different categories of clients. To this extent, it is appropriate to extend some information and reporting requirements to the relationship with eligible counterparties. In particular, the relevant requirements should relate to the safeguarding of client financial instruments and <u>funds</u> as well as

		COM	Council	EP	Compromise
		and transaction. In order to better define the classification of municipalities and local public authorities, it is appropriate to clearly exclude them from the list of eligible counterparties and of clients who are considered to be professionals while still allowing these clients to ask a treatment as professional clients on request.	complex financial instruments and transaction. In order to better define the classification of municipalities and local public authorities, it is appropriate to clearly exclude them from the list of eligible counterparties and of clients who are considered to be professionals while still allowing these clients to ask a treatment as professional clients on request.	complex financial instruments and transaction. In order to better <i>reflect the functions</i> of municipalities and local public authorities, <i>which should not be making a business out of speculative instruments</i> , it is appropriate to clearly exclude them from the list of eligible counterparties and of clients who are considered to be professionals while still allowing these clients <i>to request</i> treatment as professional clients <i>where stringent conditions established by Member States are met</i> .	information and reporting requirements concerning more complex financial instruments and transactions. In order to better define the classification of municipalities and local public authorities, it is appropriate to clearly exclude them from the list of eligible counterparties and of clients who are considered to be professionals while still allowing these clients to ask for treatment as professional clients on request. Note: last part of EP recital not needed in light of agreement on AnnexII (MS <i>may</i> adopt criteria).
100.	Rec. 68	(68) In respect of transactions executed between eligible counterparties, the obligation to disclose client limit orders should only apply where the counter party is explicitly sending a limit order to an investment firm for its execution.	(68) In respect of transactions executed between eligible counterparties, the obligation to disclose client limit orders should only apply where the <u>counterparty</u> is explicitly sending a limit order to an investment firm for its execution.	(68) In respect of transactions executed between eligible counterparties, the obligation to disclose client limit orders should only apply where the counter party is explicitly sending a limit order to an investment firm for its execution.	<i>Agreed silence procedure 20131008</i> (68) In respect of transactions executed between eligible counterparties, the obligation to disclose client limit orders should only apply where the counter party is explicitly sending a limit order to an investment firm for its execution.
101.	Rec. 69	(69) Member States shall protect the right to privacy of natural persons with respect to the processing of personal data in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and of the free movement of such	(69) Member States shall protect the right to privacy of natural persons with respect to the processing of personal data in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and of		<i>Technical group 20140128</i> (69) Member States should ensure the respect of the right to the protection of personal data in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and of

		COM	Council	EP	Compromise
		data. ⁵⁸	the free movement of such data ¹⁸¹⁶ .		the free movement of such data and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) ⁵⁹ which govern the processing of personal data carried out in application of this Directive. Processing of personal data by ESMA in the application of this Directive is subject to Regulation (EU) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁶⁰ . Note: see note included above under recitals 41 and 43.
102.	Rec. 70	(70) Investment firms should all have the same opportunities of joining or having access to regulated markets throughout the Union . Regardless of the manner in which transactions are at present organised in the Member States, it is important to abolish the technical and legal restrictions on access to regulated	(70) Investment firms should all have the same opportunities of joining or having access to regulated markets throughout the Union. Regardless of the manner in which transactions are at present organised in the Member States, it is important to abolish the technical and legal restrictions on access to	(70) Investment firms should all have the same opportunities of joining or having access to regulated markets throughout the European Union. Regardless of the manner in which transactions are at present organised in the Member States, it is important to abolish the technical and legal restrictions on	<i>Agreed silence procedure 20131008</i> (70) Investment firms should all have the same opportunities of joining or having access to regulated markets throughout the European Union. Regardless of the manner in which transactions are at

⁵⁸ OJ L 281, 23.11.1995, p. 31.

¹⁸¹⁶ OJ L 281, 23.11.1995, p. 31.

⁵⁹ OJ L 201 , 31.7.2002, p. 37

⁶⁰ OJ L 8, 12.1.2001, p. 1.

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		markets.	regulated markets.	access to regulated markets.	present organised in the Member States, it is important to abolish the technical and legal restrictions on access to regulated markets.
103.	Rec. 71	(71) In order to facilitate the finalisation of cross-border transactions, it is appropriate to provide for access to clearing and settlement systems throughout the Union by investment firms, irrespective of whether transactions have been concluded through regulated markets in the Member State concerned. Investment firms which wish to participate directly in other Member States' settlement systems should comply with the relevant operational and commercial requirements for membership and the prudential measures to uphold the smooth and orderly functioning of the financial markets.	(71) In order to facilitate the finalisation of cross-border transactions, it is appropriate to provide for access to clearing and settlement systems throughout the Union by investment firms, irrespective of whether transactions have been concluded through regulated markets in the Member State concerned. Investment firms which wish to participate directly in other Member States' settlement systems should comply with the relevant operational and commercial requirements for membership and the prudential measures to uphold the smooth and orderly functioning of the financial markets.	(71) In order to facilitate the finalisation of cross-border transactions, it is appropriate to provide for access to clearing and settlement systems throughout the European Union by investment firms, irrespective of whether transactions have been concluded through regulated markets in the Member State concerned. Investment firms which wish to participate directly in other Member States' settlement systems should comply with the relevant operational and commercial requirements for membership and the prudential measures to uphold the smooth and orderly functioning of the financial markets.	<i>Agreed silence procedure 20131008</i> (71) In order to facilitate the finalisation of cross-border transactions, it is appropriate to provide for access to clearing and settlement systems throughout the European Union by investment firms, irrespective of whether transactions have been concluded through regulated markets in the Member State concerned. Investment firms which wish to participate directly in other Member States' settlement systems should comply with the relevant operational and commercial requirements for membership and the prudential measures to uphold the smooth and orderly functioning of the financial markets.
104.	Rec. 72	(72) The provision of services by third country firms in the Union is subject to national regimes and requirements. These regimes are highly differentiated and the firms authorised in accordance with them do not enjoy the freedom to provide services and the right of establishment in Member States other than the one where they are established. It is appropriate to introduce a common regulatory	(72) The provision of services by third country firms in the Union is subject to national regimes and requirements. These regimes are highly differentiated and <u>it is appropriate to introduce a common regulatory framework at Union level. The regime should provide for a level of financial stability safeguards and protection for investors in regard of third country firms providing services through</u>	(72) The provision of services by <i>third-country firms</i> in the European Union is subject to national regimes and requirements. These regimes are highly differentiated and the firms authorised in accordance with them do not enjoy the freedom to provide services and the right of establishment in Member States other than the one where they are established. It is appropriate to	<i>Technical group 20140128: text added to align to Articles.</i> <i>Trilogue 20140114: Agreed to include Pres. non-paper on third countries</i> <i>(71a) When implementing the provisions of this Directive, Member States should take due account of the recommendations by the Financial Action Task Force (FATF) on jurisdictions that have</i>

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		<p>framework at Union level. The regime should harmonize the existing fragmented framework, ensure certainty and uniform treatment of third country firms accessing the Union, ensure that and equivalence assessment has been carried out by the Commission in relation to the regulatory and supervisory framework of third countries and should provide for a comparable level of protections to investors in the EU receiving services by third country firms.</p>	<p><u>the establishment of a branch, comparable to that for EU firms.</u></p>	<p>introduce a common regulatory framework at <i>European</i> Union level <i>for third-country firms, including both investment firms and market operators. In order to provide a basis for third-country firms to benefit from a passport enabling them to provide investment services and carry out investment activities throughout the EU, the</i> regime should harmonise the existing fragmented framework, ensure certainty and uniform treatment of <i>third-country firms</i> accessing the <i>European</i> Union, ensure that an <i>effective</i> equivalence assessment <i>is</i> carried out by the Commission, <i>prioritising the assessment of the EU's largest trading partners and areas within the scope of the G20 programme,</i> in relation to the regulatory and supervisory framework of third countries and should provide for a comparable level of protections to investors in the EU receiving services <i>provided</i> by <i>third-country firms.</i></p>	<p><i>strategic anti-money laundering and countering the financing of terrorism deficiencies and to which counter-measures apply or jurisdictions with strategic anti-money laundering and countering the financing of terrorism deficiencies that have not made sufficient progress in addressing the deficiencies or have not committed to an action plan developed with the FATF to address the deficiencies;</i></p> <p><u>(72) The provision of services by third-country firms in the European Union is subject to national regimes and requirements. Firms authorised in accordance with them do not enjoy the freedom to provide services and the right of establishment in Member States other than the one where they are established. Therefore where a Member State considers that the appropriate level of protection for its retail clients or retail clients who have requested to be treated as professional clients can be achieved through the establishment of a branch by the third country firm it is appropriate to introduce a minimum common regulatory framework at European Union level with respect to the requirements applicable to those</u></p>

		COM	Council	EP	Compromise
					<u>branches and in light of the principle that third-country firms should not be treated in a more favourable way than EU firms.</u> [...]
105.	Rec. 73	(73) The provision of services to retail clients should always require the establishment of a branch in the Union. The establishment of the branch shall be subject to authorisation and supervision in the Union. Proper cooperation arrangements should be in place between the competent authority concerned and the competent authority in the third country. Sufficient initial capital should be at free disposal of the branch. Once authorised the branch should be subject to supervision in the Member State where the branch is established; the third country firm should be able to provide services in other Member States through the authorised and supervised branch, subject to a notification procedure. The provision of services without branches should be limited to eligible counterparties. It should be subject to registration by ESMA and to supervision in the third country. Proper cooperation arrangements should be in place between ESMA and the competent authorities in the third country.	(73) The provision of <u>investment services and/or activities as well as ancillary services to retail clients, including retail clients who have requested to be treated as professional clients in a Member State by a third country firm</u> should always require the establishment of a branch in the <u>Member State</u> . The establishment of the branch shall be subject to authorisation and supervision in <u>that Member State</u> . Proper cooperation arrangements should be in place between the competent authority concerned and the competent authority in the third country. Sufficient initial capital should be at free disposal of the branch. Once authorised the branch should be subject to supervision in the Member State where the branch is established [...].	(73) The provision of services to retail clients <i>or to clients who have chosen to waive certain protections in order to be treated as professional clients</i> should always require the establishment of a branch in the <i>European</i> Union. The establishment of the branch shall be subject to authorisation and supervision in the <i>European</i> Union. Proper cooperation arrangements should be in place between the competent authority concerned and the competent authority in the third country. Sufficient initial capital should be at free disposal of the branch. Once authorised the branch should be subject to supervision in the Member State where the branch is established; the third-country firm should be able to provide services in other Member States through the authorised and supervised branch, subject to a notification procedure. The provision of services <i>into the Union</i> without branches should be limited to eligible counterparties <i>and professional clients other than those who have waived protections</i>	<i>Trilogue 20140114: Agreed to include Pres. non-paper on third countries</i> [...]

		COM	Council	EP	Compromise
				<i>in order to be treated as professional clients. Except where provided only at the own exclusive initiative of the client, it should be subject to registration by ESMA and to supervision in the third country. Proper cooperation arrangements should be in place between ESMA and the competent authorities in the third country.</i>	
106.	Rec. 74	(74) The provision of this directive regulating the provision of services by third country firms in the Union should not affect the possibility for persons established in the Union to receive investment services by a third country firm at their own exclusive initiative. When a third country firm provides services at own exclusive initiative of a person established in the Union, the services should not be deemed as provided in the territory of the Union. In case a third country firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union, it should not be deemed as a service provided at the own exclusive initiative of the client.	(74) The provision of this Directive regulating the provision of services by third country firms in the Union should not affect the possibility for persons established in the Union to receive investment services by a third country firm at their own exclusive initiative. When a third country firm provides services or engages in activities at the own exclusive initiative of a person established or situated in the Union, the services or activities should not be deemed as provided in the territory of the Union. After a person has, at its own exclusive initiative, initiated the provision of an investment service or activity with a third country firm, the exemption applies for the duration of their entire relationship in respect to that service or activity. The exemption should not apply in relation to the provision of any other services or activities unless initiated by a person at their own exclusive initiative on the same basis. In case a third country firm	(74) The provision of this Directive regulating the provision of investment services or activities by third-country firms in the European Union should not affect the possibility for persons established in the Union to receive investment services by a third-country firm at their own exclusive initiative. Where a third-country firm provides services at the own exclusive initiative of a person established in the Union, the services should not be deemed as provided in the territory of the Union. Where a third-country firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union, it should not be deemed as a service provided at the own exclusive initiative of the client.	<i>Trilogue 20140114: Agreed to include Pres. non-paper on third countries</i> <u>(74) The provision of this Directive regulating the provision of investment services or activities by third-country firms in the European Union should not affect the possibility for persons established in the Union to receive investment services by a third-country firm at their own exclusive initiative. Where a third-country firm provides services at the own exclusive initiative of a person established in the Union, the services should not be deemed as provided in the territory of the Union. Where a third-country firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union, it should not be deemed as a service provided at the own exclusive initiative of the</u>

		COM	Council	EP	Compromise
			solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union, it should not be deemed as a service provided at the own exclusive initiative of the client.		<u>client.</u>
107.	Rec. 75	(75) The authorisation to operate a regulated market should extend to all activities which are directly related to the display, processing, execution, confirmation and reporting of orders from the point at which such orders are received by the regulated market to the point at which they are transmitted for subsequent finalisation, and to activities related to the admission of financial instruments to trading. This should also include transactions concluded through the medium of designated market makers appointed by the regulated market which are undertaken under its systems and in accordance with the rules that govern those systems. Not all transactions concluded by members or participants of the regulated market, MTF or OTF are to be considered as concluded within the systems of a regulated market, MTF or OTF . Transactions which members or participants conclude on a bilateral basis and which do not comply with all the obligations established for a regulated market, an MTF or an OTF under this Directive should be	(75) The authorisation to operate a regulated market should extend to all activities which are directly related to the display, processing, execution, confirmation and reporting of orders from the point at which such orders are received by the regulated market to the point at which they are transmitted for subsequent finalisation, and to activities related to the admission of financial instruments to trading. This should also include transactions concluded through the medium of designated market makers appointed by the regulated market which are undertaken under its systems and in accordance with the rules that govern those systems. Not all transactions concluded by members or participants of the regulated market, MTF or OTF are to be considered as concluded within the systems of a regulated market, MTF or OTF. Transactions which members or participants conclude on a bilateral basis and which do not comply with all the obligations established for a regulated market, an MTF or an OTF under this Directive should be	(75) The authorisation to operate a regulated market should extend to all activities which are directly related to the display, processing, execution, confirmation and reporting of orders from the point at which such orders are received by the regulated market to the point at which they are transmitted for subsequent finalisation, and to activities related to the admission of financial instruments to trading. This should also include transactions concluded through the medium of designated market makers appointed by the regulated market which are undertaken under its systems and in accordance with the rules that govern those systems. <i>Given the importance of market makers to the orderly and efficient functioning of markets trading venues should have written agreements in place with market makers clarifying their obligations and ensuring that in all but exceptional circumstances they fulfil their commitment to provide liquidity to the market.</i> Not all transactions concluded by members or participants of the regulated	<i>Technical group 20140128</i> (75) The authorisation to operate a regulated market should extend to all activities which are directly related to the display, processing, execution, confirmation and reporting of orders from the point at which such orders are received by the regulated market to the point at which they are transmitted for subsequent finalisation, and to activities related to the admission of financial instruments to trading. This should also include transactions concluded through the medium of designated market makers appointed by the regulated market which are undertaken under its systems and in accordance with the rules that govern those systems. Not all transactions concluded by members or participants of the regulated market, MTF or OTF are to be considered as concluded within the systems of a regulated market, MTF or OTF. Transactions which members or participants conclude on a bilateral basis and which do not comply with all the obligations established for a

		COM	Council	EP	Compromise
		considered as transactions concluded outside a regulated market, an MTF or an OTF for the purposes of the definition of systematic internaliser. In such a case the obligation for investment firms to make public firm quotes should apply if the conditions established by this Directive are met.	considered as transactions concluded outside a regulated market, an MTF or an OTF for the purposes of the definition of systematic internaliser. In such a case the obligation for investment firms to make public firm quotes should apply if the conditions established by this Directive are met.	market, MTF or OTF are to be considered as concluded within the systems of a regulated market, MTF or OTF. Transactions which members or participants conclude on a bilateral basis and which do not comply with all the obligations established for a regulated market, an MTF or an OTF under this Directive should be considered as transactions concluded outside a regulated market, an MTF or an OTF for the purposes of the definition of systematic internaliser. In such a case the obligation for investment firms to make public firm quotes should apply if the conditions established by this Directive are met.	regulated market, an MTF or an OTF under this Directive should be considered as transactions concluded outside a regulated market, an MTF or an OTF for the purposes of the definition of systematic internaliser. In such a case the obligation for investment firms to make public firm quotes should apply if the conditions established by this Directive and [MiFIR] are met.
108.			<u>(75a) Nothing in this Directive requires competent authorities to approve or examine the content of the written agreement between the regulated market and the investment firm that is required from the participation in a market making scheme. However, neither does it prevent them from doing so, insofar as any such approval or examination is based only on the regulated markets' compliance with their obligations under Article 51.</u>		<i>Technical group 20140128</i> Note: Intention is to refer to the specific “market making strategy” referred to in Art 17(4) [row 480], which may be used by investment firms which engage in algorithmic trading. <i>(75a) Given the importance of liquidity provision to the orderly and efficient functioning of markets, investment firms that engage in algorithmic trading to pursue a market making strategy should have written agreements in place with trading venues clarifying their obligations to provide liquidity to the market.</i>

		COM	Council	EP	Compromise
					<u>(75b) Nothing in this Directive requires competent authorities to approve or examine the content of the written agreement between the regulated market and the investment firm that is required from the participation in a market making scheme. However, neither does it prevent them from doing so, insofar as any such approval or examination is based only on the regulated markets' compliance with their obligations under Article 51.</u>
109.	Rec. 76	(76) The provision of core market data services which are pivotal for users to be able to obtain a desired overview of trading activity across Union markets and for competent authorities to receive accurate and comprehensive information on relevant transactions should be subject to authorisation and regulation to ensure the necessary level of quality.	(76) The provision of core market data services which are pivotal for users to be able to obtain a desired overview of trading activity across Union markets and for competent authorities to receive accurate and comprehensive information on relevant transactions should be subject to authorisation and regulation to ensure the necessary level of quality.	(76) The provision of core market data services which are pivotal for users to be able to obtain a desired overview of trading activity across European Union markets and for competent authorities to receive accurate and comprehensive information on relevant transactions should be subject to authorisation and regulation to ensure the necessary level of quality.	<i>Agreed silence procedure 20131008</i> (76) The provision of core market data services which are pivotal for users to be able to obtain a desired overview of trading activity across European Union markets and for competent authorities to receive accurate and comprehensive information on relevant transactions should be subject to authorisation and regulation to ensure the necessary level of quality.
110.	Rec. 77	(77) The introduction of approved publication arrangements should improve the quality of trade transparency information published in the OTC space and contribute significantly to ensuring that such data is published in a way facilitating its consolidation with	(77) The introduction of approved publication arrangements should improve the quality of trade transparency information published in the OTC space and contribute significantly to ensuring that such data is published in a way facilitating its consolidation with	(77) The introduction of approved publication arrangements should improve the quality of trade transparency information published in the OTC space and contribute significantly to ensuring that such data is published in a way facilitating its consolidation with	<i>Agreed silence procedure 20131008</i> (77) The introduction of approved publication arrangements should improve the quality of trade transparency information published in the OTC space and contribute significantly to ensuring that such

		COM	Council	EP	Compromise
		data published by trading venues.	data published by trading venues.	data published by trading venues.	data is published in a way facilitating its consolidation with data published by trading venues.
111.	Rec. 78	(78) The introduction of a commercial solution for a consolidated tape for equities should contribute to creating a more integrated European market and make it easier for market participants to gain access to a consolidated view of trade transparency information that is available. The envisaged solution is based on an authorisation of providers working along pre-defined and supervised parameters which are in competition with each other in order to achieve technically highly sophisticated and innovative solutions, serving the market to the greatest extent possible.	(78) The introduction of a commercial solution for a consolidated tape for equities should contribute to creating a more integrated European market and make it easier for market participants to gain access to a consolidated view of trade transparency information that is available. The envisaged solution is based on an authorisation of providers working along pre-defined and supervised parameters which are in competition with each other in order to achieve technically highly sophisticated and innovative solutions, serving the market to the greatest extent possible.	(78) <i>Now that a market structure is in place which allows for competition between multiple trading venues it is essential that an effective and comprehensive consolidated tape is in operation as soon as possible.</i> The introduction of a commercial solution for a consolidated tape for equities and equity-like instruments should contribute to creating a more integrated European market and make it easier for market participants to gain access to a consolidated view of trade transparency information that is available. The envisaged solution is based on an authorisation of providers working along pre-defined and supervised parameters to ensure that consistent and accurate market data is made available which are in competition with each other in order to deliver technically highly sophisticated and innovative solutions, serving the market to the greatest extent possible. In order to facilitate the early development of a viable consolidated tape, the Commission should adopt delegated acts specifying certain details concerning the information obligation on consolidated tape providers (CTPs) as soon as	<i>Technical group 20140128</i> (78) <i>Now that a market structure is in place which allows for competition between multiple trading venues it is essential that an effective and comprehensive consolidated tape is in operation as soon as possible.</i> The introduction of a commercial solution for a consolidated tape for equities and equity-like instruments should contribute to creating a more integrated European market and make it easier for market participants to gain access to a consolidated view of trade transparency information that is available. The envisaged solution is based on an authorisation of providers working along pre-defined and supervised parameters which are in competition with each other in order to achieve technically highly sophisticated and innovative solutions, serving the market to the greatest extent possible and ensuring that consistent and accurate market data is made available. By requiring all CTPs to consolidate data from all APAs and trading venues it will be assured that competition will take place on the basis of quality of service to clients rather than

		COM	Council	EP	Compromise
				<p><i>possible. By requiring all CTPs to consolidate all APA data it will be assured that competition will take place on the basis of quality of service to clients rather than breadth of data covered. Nevertheless it is appropriate to make provision now for a public solution to be developed if the commercial solution does not lead to the timely delivery of an effective and comprehensive consolidated tape.</i></p>	<p><i>breadth of data covered. Nevertheless it is appropriate to make provision now for a consolidated tape to be put in place through a public procurement process if the mechanism envisaged does not lead to the timely delivery of an effective and comprehensive consolidated tape for non-equity instruments.</i></p> <p><i>Technical group 20140206</i></p> <p><i>Reference to “non-equity” corrected to “equity” above</i></p> <p><i>Move recital 113 (row 149) here, after recital 78</i></p>
112.	Rec. 79	(79) Revision of Directive 2006/49/EC should fix the minimum capital requirements with which regulated markets should comply in order to be authorised, and in so doing should take into account the specific nature of the risks associated with such markets.	(79) Revision of Directive 2006/49/EC should fix the minimum capital requirements with which regulated markets should comply in order to be authorised, and in so doing should take into account the specific nature of the risks associated with such markets.	(79) Revision of Directive 2006/49/EC should fix the minimum capital requirements with which regulated markets should comply in order to be authorised, and in so doing should take into account the specific nature of the risks associated with such markets.	<p><i>Agreed silence procedure 20131008</i></p> <p>(79) Revision of Directive 2006/49/EC should fix the minimum capital requirements with which regulated markets should comply in order to be authorised, and in so doing should take into account the specific nature of the risks associated with such markets.</p>
113.	Rec. 80	(80) Operators of a regulated market should also be able to operate an MTF in accordance with the relevant provisions of this Directive.	(80) <u>Market operators</u> of a regulated market should also be able to operate an MTF in accordance with the relevant provisions of this Directive.	(80) Operators of a regulated market should also be able to operate an MTF in accordance with the relevant provisions of this Directive.	<p><i>Technical group 20140128</i></p> <p><i>"Or OTF" added to align to relevant Article.</i></p> <p><i>Agreed silence procedure 20131008</i></p> <p>(80) Operators of a regulated market should also be able to operate an MTF or OTF in accordance with the relevant</p>

		COM	Council	EP	Compromise
					provisions of this Directive.
114.	Rec. 81	(81) The provisions of this Directive concerning the admission of instruments to trading under the rules enforced by the regulated market should be without prejudice to the application of Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities ⁶¹ . A regulated market should not be prevented from applying more demanding requirements in respect of the issuers of securities or instruments which it is considering for admission to trading than are imposed pursuant to this Directive.	(81) The provisions of this Directive concerning the admission of instruments to trading under the rules enforced by the regulated market should be without prejudice to the application of Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities ⁴⁹¹⁷ . A regulated market should not be prevented from applying more demanding requirements in respect of the issuers of securities or instruments which it is considering for admission to trading than are imposed pursuant to this Directive.	(81) The provisions of this Directive concerning the admission of instruments to trading under the rules enforced by the regulated market should be without prejudice to the application of Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities ⁶² . A regulated market should not be prevented from applying more demanding requirements in respect of the issuers of securities or instruments which it is considering for admission to trading than are imposed pursuant to this Directive.	<i>Agreed silence procedure 20131008</i> <i>Technical group 28 08</i> [Technical correction proposed by Commission] (81) The provisions of this Directive concerning the admission of instruments to trading under the rules enforced by the regulated market should be without prejudice to the application of Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities ⁶³ and of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading (OJ L 345, 31.12.2003, p. 64, Directive as last amended by European Parliament and Council Directive 2010/73/EU) . A regulated market should not be prevented from applying more demanding requirements in respect of the

⁶¹ OJ L 184, 6.7.2001, p. 1. Directive as last amended by European Parliament and Council Directive 2003/71/EC (OJ L 345, 31.12.2003, p. 64.).

⁴⁹¹⁷ OJ L 184, 6.7.2001, p. 1. Directive as last amended by European Parliament and Council Directive 2003/71/EC (OJ L 345, 31.12.2003, p. 64.).

⁶² OJ L 184, 6.7.2001, p. 1. Directive as last amended by European Parliament and Council Directive 2003/71/EC (OJ L 345, 31.12.2003, p. 64.).

⁶³ OJ L 184, 6.7.2001, p. 1. Directive as last amended by European Parliament and Council Directive 2003/71/EC (OJ L 345, 31.12.2003, p. 64.).

		COM	Council	EP	Compromise
					issuers of securities or instruments which it is considering for admission to trading than are imposed pursuant to this Directive.
115.	Rec. 82	(82) Member States should be able to designate different competent authorities to enforce the wide-ranging obligations laid down in this Directive. Such authorities should be of a public nature guaranteeing their independence from economic actors and avoiding conflicts of interest. In accordance with national law, Member States should ensure appropriate financing of the competent authority. The designation of public authorities should not exclude delegation under the responsibility of the competent authority.	(82) Member States should be able to designate different competent authorities to enforce the wide-ranging obligations laid down in this Directive. Such authorities should be of a public nature guaranteeing their independence from economic actors and avoiding conflicts of interest. In accordance with national law, Member States should ensure appropriate financing of the competent authority. The designation of public authorities should not exclude delegation under the responsibility of the competent authority.	(82) Member States should be able to designate different competent authorities to enforce the wide-ranging obligations laid down in this Directive. Such authorities should be of a public nature guaranteeing their independence from economic actors and avoiding conflicts of interest. In accordance with national law, Member States should ensure appropriate financing of the competent authority. The designation of public authorities should not exclude delegation under the responsibility of the competent authority.	<i>Agreed silence procedure 20131008</i> (82) Member States should be able to designate different competent authorities to enforce the wide-ranging obligations laid down in this Directive. Such authorities should be of a public nature guaranteeing their independence from economic actors and avoiding conflicts of interest. In accordance with national law, Member States should ensure appropriate financing of the competent authority. The designation of public authorities should not exclude delegation under the responsibility of the competent authority.
116.			<u>(82a) In order to ensure that the communication between competent authorities of suspensions, removals, disruptions, disorderly trading conditions and circumstances that may indicate market abuse is achieved in an efficient and timely way, an effective communication and co-ordination process between national competent authorities is necessary, which will be achieved via arrangements developed by ESMA.</u>		<i>Technical group 20140128</i> (82a) In order to ensure that the communication between competent authorities of suspensions, removals, disruptions, disorderly trading conditions and circumstances that may indicate market abuse is achieved in an efficient and timely way, an effective communication and co-ordination process between national competent authorities is necessary, which will be achieved via arrangements developed by ESMA.

		COM	Council	EP	Compromise
117.	Rec. 83	(83) The G20 summit in Pittsburgh on 25 September 2009 agreed to improve the regulation, functioning and transparency of financial and commodity markets to address excessive commodity price volatility. The Commission Communications of 28 October 2009 on A Better Functioning Food Supply Chain in Europe, and of 2 February 2011 on Tackling the Challenges in Commodity Markets and Raw Materials outlined measures that fall to be taken in the context of the review of Directive 2004/39/EC.	(83) The G20 summit in Pittsburgh on 25 September 2009 agreed to improve the regulation, functioning and transparency of financial and commodity markets to address excessive commodity price volatility. The Commission Communications of 28 October 2009 on A Better Functioning Food Supply Chain in Europe, and of 2 February 2011 on ‘Tackling the Challenges in Commodity Markets and Raw Materials’ outlined measures that fall to be taken in the context of the review of Directive 2004/39/EC.	(83) The G20 summit in Pittsburgh on 25 September 2009 agreed to improve the regulation, functioning and transparency of financial and commodity markets to address excessive commodity price volatility. The Commission Communications of 28 October 2009 on A Better Functioning Food Supply Chain in Europe, and of 2 February 2011 on Tackling the Challenges in Commodity Markets and Raw Materials outlined measures that fall to be taken in the context of the review of Directive 2004/39/EC. <i>In September 2011, the International Organization of Securities Commissions published Principles for the Regulation and Supervision of Commodity Derivatives Markets. These principles were endorsed by the G20 summit in Cannes on 4 November 2011 which called for market regulators to have formal position management powers, including the power to set ex ante position limits as appropriate.</i>	<i>Technical group 20140128</i> (83) The G20 summit in Pittsburgh on 25 September 2009 agreed to improve the regulation, functioning and transparency of financial and commodity markets to address excessive commodity price volatility. The Commission Communications of 28 October 2009 on A Better Functioning Food Supply Chain in Europe, and of 2 February 2011 on ‘Tackling the Challenges in Commodity Markets and Raw Materials’ outlined measures that fall to be taken in the context of the review of Directive 2004/39/EC. <i>In September 2011, the International Organization of Securities Commissions published Principles for the Regulation and Supervision of Commodity Derivatives Markets. These principles were endorsed by the G20 summit in Cannes on 4 November 2011 which called for market regulators to have formal position management powers, including the power to set ex ante position limits as appropriate</i>
118.	Rec. 84	(84) The powers made available to competent authorities should be complemented with explicit powers to demand information from any person regarding the size and purpose of a position in derivatives	(84) The powers made available to competent authorities should be complemented with explicit powers to demand information from any person regarding the size and purpose of a position in derivatives	(84) The powers made available to competent authorities should be complemented with explicit powers to <i>obtain</i> information from any person regarding the size and purpose of a position in derivatives	<i>Agreed silence procedure 20131008</i> (84) The powers made available to competent authorities should be complemented with explicit powers to <i>obtain</i> information from any

		COM	Council	EP	Compromise
		contracts related to commodities and to request the person to take steps to reduce the size of the position in the derivative contracts.	contracts related to commodities and to request the person to take steps to reduce the size of the position in the derivative contracts.	contracts related to commodities and to request the person to take steps to reduce the size of the position in the derivative contracts.	person regarding the size and purpose of a position in derivatives contracts related to commodities and to request the person to take steps to reduce the size of the position in the derivative contracts.
119.	Rec. 85	(85) Explicit powers should be granted to competent authorities to limit the ability of any person or class of persons from entering into a derivative contract in relation to a commodity. The application of a limit should be possible both in the case of individual transactions and positions built up over time. In the latter case in particular, the competent authority should ensure that these position limits are non-discriminatory, clearly spelled out, take due account of the specificity of the market in question, and are necessary to secure the integrity and orderly functioning of the market.	(85) Explicit powers should be granted to competent authorities to limit the ability of any person or class of persons from entering into a derivative contract in relation to a commodity. The application of a limit should be possible both in the case of individual transactions and positions built up over time. In the latter case in particular, the competent authority should ensure that these position limits are non-discriminatory, clearly spelled out, take due account of the specificity of the market in question, and are necessary to secure the integrity and orderly functioning of the market.	(85) Explicit powers should be granted to trading venues and to competent authorities to limit the ability of any person or class of persons to enter into or hold a derivative contract in relation to a commodity, based on technical standards determined by ESMA, and to otherwise manage positions in such a way as to promote integrity of the market for the derivative and the underlying commodity without unduly constraining liquidity. The application of a limit should be possible both in the case of individual transactions and positions built up over time. In the latter case in particular, the competent authority should ensure that these position limits are non-discriminatory, clearly spelled out, take due account of the specificity of the market in question, and are necessary to secure the integrity and orderly functioning of the market. Such limits should not apply to positions which objectively reduce risks directly relating to commercial activities in relation to the commodity. In order to avoid unintended impacts on the	<i>Technical group 20140128 / 29</i> (85) A harmonised position limits regime is needed to ensure greater coordination and consistency in the application of this regime, especially for contracts that are traded across the EU. Therefore, explicit powers should be granted to competent authorities to establish limits, on the basis of a methodology determined by ESMA, on the positions any person can hold, at an aggregate group level, in a derivative contract in relation to a commodity at all times in order to prevent market abuse, including cornering the market, and to support orderly pricing and settlement conditions including the prevention of market distorting positions. Such limits should promote integrity of the market for the derivative and the underlying commodity without prejudice to price discovery in the market for the underlying commodity without unduly constraining liquidity and should not apply to positions which objectively reduce risks

		COM	Council	EP	Compromise
				<p><i>markets for the underlying commodity from the regulation of derivatives it is also appropriate to clarify the distinction between spot contracts and futures contracts.</i></p>	<p>directly relating to commercial activities in relation to the commodity. The distinction between spot contracts for commodities and commodity derivative contracts should also be clarified.</p> <p><i>In order to achieve the harmonised regime, it is also appropriate for ESMA to monitor the implementation of the position limits and for competent authorities to put in place cooperation arrangements, including exchange of relevant data with each other and to enable the monitoring and enforcement of the limits.</i></p> <p><i>Technical group 20140206</i></p> <p>1. Change made above at the request of Parliament, to align to the wording used in row 1011</p> <p>2. Addition made at the end at the request of the Presidency, to reflect text in Article 59 (row 1013ba)</p>
120.	Rec. 86	(86) All venues which offer trading in commodity derivatives should have in place appropriate limits or suitable alternative arrangements designed to support liquidity, prevent market abuse, and ensure the orderly pricing and settlement conditions. ESMA should maintain and publish a list containing summaries of all such measures in force. These limits or arrangements	(86) All venues which offer trading in commodity derivatives should have in place appropriate limits <u>and position management controls to manage trading on their markets</u> designed to [...] prevent market abuse, and ensure the orderly pricing and settlement conditions. <u>Monitoring their markets on an on-going basis, operators of trading venues should be able to request</u>	(86) <i>In addition to the powers made available to competent authorities, all trading</i> venues which offer trading in commodity derivatives should have in place appropriate limits <i>and such other appropriate position management arrangements as are necessary</i> to support liquidity, prevent market abuse, and ensure the orderly pricing and settlement conditions.	<p><i>Technical group 20140128</i></p> <p>(86) All venues which offer trading in commodity derivatives should have in place appropriate limits and position management controls, providing the necessary powers at least to monitor and access information about commodity derivative positions, to require the reduction or termination of such positions and to require</p>

		COM	Council	EP	Compromise
		<p>should be applied in a consistent manner and take account of the specific characteristics of the market in question. They should be clearly spelled out as regards to whom they apply and any exemptions thereto, as well as to the relevant quantitative thresholds which constitute the limits or which may trigger other obligations. The Commission should be empowered to adopt delegated acts, including with a view to avoiding any divergent effects of the limits or arrangements applicable to comparable contracts on different venues.</p>	<p><u>information from members or participants about their trading and that of their clients to help them to understand fully what lies behind patterns of trading that they observe on their markets. Where operators of venues have concerns that a position is being held with abusive intent or that a position in a contract poses a threat to the orderly pricing or settlement conditions, they should be able to intervene to cap positions or to require that a position is reduced irrespective of whether such a position exceeds or not the position limits.</u> ESMA should maintain and publish a list containing summaries of all such measures in force. These limits <u>and</u> arrangements should be applied in a consistent manner and take account of the specific characteristics of the market in question. They should be clearly spelled out as regards to <u>how</u> they apply and [...] to the relevant quantitative thresholds which constitute the limits or which may trigger other obligations. [...]</p>	<p><i>Such arrangements may include for instance identification of build-up of large position concentrations especially close to settlement, position limits, price movement limits, ordering liquidation or transfer of open positions, suspension of trading, altering delivery terms or conditions, cancelling trades and requiring delivery intentions.</i> ESMA should maintain and publish a list containing summaries of all such measures in force. <i>Limits</i> should be applied in a consistent manner and take account of the specific characteristics of the market in question. They should be clearly spelled out as regards to whom they apply and any exemptions thereto, as well as to the relevant quantitative thresholds which constitute the limits or which may trigger other obligations. <i>Given that no one trading venue can see the aggregate positions taken by its members or participants in the overall market it is also appropriate to allow for specification of the controls through regulatory technical standards,</i> including with a view to avoiding any divergent effects of the limits applicable to comparable contracts on different venues.</p>	<p>that liquidity is provided back in the market to mitigate the effects of a large or dominant position.</p> <p>ESMA should maintain and publish a list containing summaries of all position limits and position management controls in force. These limits and arrangements should be applied in a consistent manner and take account of the specific characteristics of the market in question. They should be clearly spelled out as regards to how they apply and [...] to the relevant quantitative thresholds which constitute the limits or which may trigger other obligations. [...]</p>
121.	Rec. 87	(87) Venues where the most liquid commodity derivatives are traded should publish an aggregated	(87) Venues where the most liquid commodity derivatives are traded should publish an aggregated	(87) Venues where the most liquid commodity derivatives are traded should publish an aggregated	<i>Technical group 20140128</i> (87) Trading venues should

		COM	Council	EP	Compromise
		weekly breakdown of the positions held by different types of market participants, including the clients of those not trading on their own behalf. A comprehensive and detailed breakdown both by the type and identity of the market participant should be made available to the competent authority upon request.	weekly breakdown of the positions held by different <u>categories of position holders for the different financial instruments traded on their platforms</u> . A comprehensive and detailed breakdown both by the type and identity of the market participant should be made available to the competent authority upon request.	weekly breakdown of the positions held by different types of market participants, including the clients of those not trading on their own behalf. A comprehensive and detailed breakdown both by the type and identity of the market participant should be <i>communicated</i> to the competent authority upon request, <i>taking account, where applicable, of reporting requirements already imposed under Article 8 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency</i> ⁶⁴ .	publish an aggregated weekly breakdown of the positions held by different categories of persons for the different commodity derivative contracts, emission allowances and derivatives thereof traded on their platforms. A comprehensive and detailed breakdown of the positions held by all persons should be made available to the competent authority at least daily. Arrangement for reporting under this Directive should take into account, where applicable, reporting requirements already imposed under Article 8 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency ⁶⁵ . <i>Technical group 20140206</i> <i>Addition made above at the request of the Presidency</i>
121 a.					<i>Technical meeting 20140128</i> <i>Agreed to move rec 87a and 87b after rec. 85</i> <i>Agreed Trilogue 20140114</i> (87a) While the methodology used for calculation of position

⁶⁴ OJ L 326, 8.12.2011, p. 1.

⁶⁵ OJ L 326, 8.12.2011, p. 1.

		COM	Council	EP	Compromise
					<p>limits should not create barriers to the development of new commodity derivatives, ESMA should ensure when determining the methodology for calculation that the development of new commodity derivatives cannot be used to circumvent the position limits regime.</p> <p>(87b) Position limits should be set for each individual commodity derivative contract. In order to avoid circumvention of the position limits regime through the ongoing development of new commodity derivative contracts, ESMA should ensure that the methodology for calculation prevents any circumvention by taking into account the overall open interest in other commodity derivatives with the same underlying commodity.</p>
122.	Rec. 88	(88) Considering the communiqué of G20 finance ministers and central bank governors of 15 April 2011 on ensuring that participants on commodity derivatives markets should be subject to appropriate regulation and supervision, the exemptions from Directive 2004/39/EC for various participants active in commodity derivative markets should be modified to ensure that activities by firms, which are not part of a financial group, involving the hedging of	(88) Considering the communiqué of G20 finance ministers and central bank governors of 15 April 2011 on ensuring that participants on commodity derivatives markets should be subject to appropriate regulation and supervision, the exemptions from Directive 2004/39/EC for various participants active in commodity derivative markets should be modified to ensure that activities by firms, which are not part of a financial group, involving the		<p><i>Technical group 20140128</i></p> <p><i>[...]</i></p> <p>Part of text moved before recital 14a (new)</p>

		COM	Council	EP	Compromise
		production-related and other risks as well as the provision of investment services in commodity or exotic derivatives on an ancillary basis to clients of the main business remain exempt, but that firms specialising in trading commodities and commodity derivatives are brought within this Directive.	hedging of production-related and other risks as well as the provision of investment services in commodity or exotic derivatives on an ancillary basis to clients of the main business remain exempt, but that firms specialising in trading commodities and commodity derivatives are brought within this Directive.		
123.	Rec. 89	(89) It is desirable to facilitate access to capital for smaller and medium sized enterprises and to facilitate the further development of specialist markets that aim to cater for the needs of smaller and medium sized issuers. These markets which are usually operated under this Directive as MTFs are commonly known as SME markets, growth markets or junior markets. The creation within the MTF category of a new sub category of SME growth market and the registration of these markets should raise their visibility and profile and aid the development of common pan-European regulatory standards for those markets.	(89) It is desirable to facilitate access to capital for smaller and medium sized enterprises and to facilitate the further development of specialist markets that aim to cater for the needs of smaller and medium sized issuers. These markets which are usually operated under this Directive as MTFs are commonly known as SME markets, growth markets or junior markets. The creation within the MTF category of a new sub category of SME growth market and the registration of these markets should raise their visibility and profile and aid the development of common pan-European regulatory standards for those markets.	(89) It is desirable to facilitate access to capital for small and medium-sized enterprises (<i>SME</i>) and to facilitate the further development of specialist markets that aim to cater for the needs of smaller and medium-sized issuers. These markets which are usually operated under this Directive as MTFs are commonly known as SME markets, growth markets or junior markets. The creation within the MTF category of a new sub category of SME growth market and the registration of these markets should raise their visibility and profile and aid the development of common pan-European regulatory standards for those markets. <i>Attention should be focused on how to provide future law for the further fostering and promotion of use of this market as a new asset class that will be attractive for investors. All other EU market regulation should be updated to provide a lessening of administrative burdens and to</i>	<i>Technical group 20140128</i> (89) It is desirable to facilitate access to capital for small and medium-sized enterprises (<i>SME</i>) and to facilitate the further development of specialist markets that aim to cater for the needs of smaller and medium-sized issuers. These markets which are usually operated under this Directive as MTFs are commonly known as SME markets, growth markets or junior markets. The creation within the MTF category of a new sub category of SME growth market and the registration of these markets should raise their visibility and profile and aid the development of common pan-European regulatory standards for those markets. <i>Attention should be focused on how future regulation should further foster and promote the use of this market so as to make it attractive for investors, and provide a lessening of administrative burdens and</i>

		COM	Council	EP	Compromise
				<i>provide further incentives for listing of SMEs on the SME growth markets.</i>	<i>provide further incentives for listing of SMEs to access capital markets through SME growth markets.</i> <i>Technical group 20140206</i> <i>Drafting change made above, at the request of the Presidency</i>
124.	Rec. 90	(90) The requirements applying to this new category of markets need to provide sufficient flexibility to be able to take into account the current range of successful market models that exist across Europe. They also need to strike the correct balance between maintaining high levels of investor protection, which are essential to fostering investor confidence in issuers on these markets, while reducing unnecessary administrative burdens for issuers on those markets. It is proposed that more details about SME market requirements such as those relating to criteria for admission to trading on such a market would be further prescribed in delegated acts or technical standards.	(90) The requirements applying to this new category of markets need to provide sufficient flexibility to be able to take into account the current range of successful market models that exist across Europe. They also need to strike the correct balance between maintaining high levels of investor protection, which are essential to fostering investor confidence in issuers on these markets, while reducing unnecessary administrative burdens for issuers on those markets. It is proposed that more details about SME market requirements such as those relating to criteria for admission to trading on such a market would be further prescribed in delegated acts or technical standards.	(90) The requirements applying to this new category of markets need to provide sufficient flexibility to be able to take into account the current range of successful market models that exist across Europe. They also need to strike the correct balance between maintaining high levels of investor protection, which are essential to fostering investor confidence in issuers on these markets, while reducing unnecessary administrative burdens for issuers on those markets. It is proposed that more details about SME market requirements such as those relating to criteria for admission to trading on such a market would be further prescribed in delegated acts or technical standards.	<i>Agreed silence procedure 20131008</i> (90) The requirements applying to this new category of markets need to provide sufficient flexibility to be able to take into account the current range of successful market models that exist across Europe. They also need to strike the correct balance between maintaining high levels of investor protection, which are essential to fostering investor confidence in issuers on these markets, while reducing unnecessary administrative burdens for issuers on those markets. It is proposed that more details about SME market requirements such as those relating to criteria for admission to trading on such a market would be further prescribed in delegated acts or technical standards.
125.	Rec. 91	(91) Given the importance of not adversely affecting existing successful markets the option should remain for operators of markets aimed at smaller and medium sized issuers to choose to	(91) Given the importance of not adversely affecting existing successful markets the option should remain for operators of markets aimed at smaller and medium sized issuers to choose to	(91) Given the importance of not adversely affecting existing successful markets the option should remain for operators of markets aimed at SME issuers to choose to continue to operate such	<i>Technical group 20140128</i> (91) Given the importance of not adversely affecting existing successful markets the option should remain for operators of

		COM	Council	EP	Compromise
		continue to operate such a market in accordance with the requirements under the Directive without seeking registration as an SME growth market.	continue to operate such a market in accordance with the requirements under the Directive without seeking registration as an SME growth market. <u>An issuer that is a small and medium sized enterprise should not be obliged to apply to have its financial instruments admitted to trading on an SME growth market.</u>	a market in accordance with the requirements under the Directive without seeking registration as an SME growth market.	markets aimed at smaller and medium sized issuers to choose to continue to operate such a market in accordance with the requirements under the Directive without seeking registration as an SME growth market. An issuer that is a small and medium sized enterprise should not be obliged to apply to have its financial instruments admitted to trading on an SME growth market.
126.			<u>(91a) In order for this new category of markets to benefit SMEs, at least fifty per cent of the issuers whose financial instruments are traded on a SME growth market will have to be SMEs. This assessment will be made on an annual basis. The criterion of at least fifty per cent of the issuers has to be implemented in a flexible way. A temporary failure to meet this criterion does not mean that the trading venue will have to be immediately deregistered or refused to be registered as an SME growth market if it has a reasonable prospect to meet the at least fifty per cent criterion as from the subsequent year. With respect to the assessment to determine whether an issuer is an SME enterprise, it will be made based on the market capitalisation of the previous three calendar years. This should ensure a smoother transition for these issuers from these</u>		<i>Technical group 20140128</i> (91a) In order for this new category of markets to benefit SMEs, at least fifty per cent of the issuers whose financial instruments are traded on a SME growth market should be SMEs. This assessment should be made on an annual basis. The criterion of at least fifty per cent of the issuers has to be implemented in a flexible way. A temporary failure to meet this criterion should not mean that the trading venue will have to be immediately deregistered or refused to be registered as an SME growth market if it has a reasonable prospect of meeting the at least fifty per cent criterion as from the subsequent year. With respect to the assessment to determine whether an issuer is an SME enterprise, it should be made based on the market capitalisation of the previous three calendar years. This

		COM	Council	EP	Compromise
			<u>specialists markets to the main markets.</u>		should ensure a smoother transition for these issuers from these specialist markets to the main markets.
127.	Rec. 92	(92) Any confidential information received by the contact point of one Member State through the contact point of another Member State should not be regarded as purely domestic.	(92) Any confidential information received by the contact point of one Member State through the contact point of another Member State should not be regarded as purely domestic.	(92) Any confidential information received by the contact point of one Member State through the contact point of another Member State should not be regarded as purely domestic.	<i>Agreed silence procedure 20131008</i> (92) Any confidential information received by the contact point of one Member State through the contact point of another Member State should not be regarded as purely domestic.
128.	Rec. 93	(93) It is necessary to enhance convergence of powers at the disposal of competent authorities so as to pave the way towards an equivalent intensity of enforcement across the integrated financial market. A common minimum set of powers coupled with adequate resources should guarantee supervisory effectiveness.	(93) It is necessary to enhance convergence of powers at the disposal of competent authorities so as to pave the way towards an equivalent intensity of enforcement across the integrated financial market. A common minimum set of powers coupled with adequate resources should guarantee supervisory effectiveness.	(93) It is necessary to enhance convergence of powers at the disposal of competent authorities so as to pave the way towards an equivalent intensity of enforcement across the integrated financial market. A common minimum set of powers coupled with adequate resources should guarantee supervisory effectiveness.	<i>Agreed silence procedure 20131008</i> (93) It is necessary to enhance convergence of powers at the disposal of competent authorities so as to pave the way towards an equivalent intensity of enforcement across the integrated financial market. A common minimum set of powers coupled with adequate resources should guarantee supervisory effectiveness. Cf. row 1263: add at the end of recital 93 Recital 29 MAR, and insert Recital 31a MAR as new recital 93a This Directive therefore foresees a minimum set of supervisory and investigative powers competent authorities of Member States should be entrusted with in accordance with national law. Those powers should be exercised,

		COM	Council	EP	Compromise
					<p>where the national law so requires, by application to the competent judicial authorities. When exercising their powers under this Regulation competent authorities should act objectively and impartially and remain autonomous in their decision making.</p> <p>(93a) While this Directive specifies a minimum set of powers competent authorities should have, these powers are to be exercised within a complete system of national law which guarantees the respect for fundamental rights, including the right to privacy. For the exercise of those powers, which may amount to serious interferences with the right to respect private and family life, home and communications, Member States should have in place adequate and effective safeguards against any abuse, for instance, where appropriate prior authorisation from the judicial authorities of a Member State concerned. Member States should allow the possibility for competent authorities to exercise such intrusive powers to the extent necessary for the proper investigation of serious cases where there are no equivalent means for effectively achieving the same result.</p>
128			(93a) No action taken by any		<i>Technical group 20140128</i>

		COM	Council	EP	Compromise
a			<u>competent authority or ESMA in the performance of their duties should directly or indirectly discriminate against any member state or group of member states as a venue for the provision of investment services and activities in any currency.</u>		<u>(93a) No action taken by any competent authority or ESMA in the performance of their duties should directly or indirectly discriminate against any member state or group of member states as a venue for the provision of investment services and activities in any currency.</u>
129.	Rec. 94	(94) In view of the significant impact and market share acquired by various MTFs, it is appropriate to ensure that adequate cooperation arrangements are established between the competent authority of the MTF and that of the jurisdiction in which the MTF is providing services. In order to anticipate any similar developments, this should be extended to OTFs.	(94) In view of the significant impact and market share acquired by various MTFs, it is appropriate to ensure that adequate cooperation arrangements are established between the competent authority of the MTF and that of the jurisdiction in which the MTF is providing services. In order to anticipate any similar developments, this should be extended to OTFs.	(94) In view of the significant impact and market share acquired by various MTFs, it is appropriate to ensure that adequate cooperation arrangements are established between the competent authority of the MTF and that of the jurisdiction in which the MTF is providing services. In order to anticipate any similar developments, this should be extended to OTFs.	<i>Agreed silence procedure 20131008</i> (94) In view of the significant impact and market share acquired by various MTFs, it is appropriate to ensure that adequate cooperation arrangements are established between the competent authority of the MTF and that of the jurisdiction in which the MTF is providing services. In order to anticipate any similar developments, this should be extended to OTFs.
130.	Rec. 95	(95) In order to ensure compliance by investment firms and regulated markets, those who effectively control their business and the members of the investment firms and regulated markets' management body with the obligations deriving from this Directive and from Regulation [inserted by OP] and to ensure that they are subject to similar treatment across the Union, Member States should be required to provide for administrative sanctions and measures which are	(95) In order to ensure compliance by investment firms and regulated markets, those who effectively control their business and the members of the investment firms and regulated markets' management body with the obligations deriving from this Directive and from Regulation [inserted by OP] and to ensure that they are subject to similar treatment across the Union, Member States should be required to provide for administrative sanctions and measures which are	(95) In order to ensure compliance by investment firms and regulated markets, those who effectively control their business and the members of the investment firms and regulated markets' management body with the obligations deriving from this Directive and from Regulation (EU) No .../... [MiFIR] and to ensure that they are subject to similar treatment across the European Union, Member States should be required to provide for administrative sanctions and	<i>Technical group 20140128</i> <i>Technical group proposal</i> (95) In order to ensure compliance by investment firms, market operators authorised to operate an MTF or OTE , regulated markets, APAs, CTPs or ARMs , those who effectively control their business and the members of the investment firms and regulated markets' management body with the obligations deriving from this Directive and from Regulation (EU) No .../... [MiFIR] and to

		COM	Council	EP	Compromise
		effective, proportionate and dissuasive. Therefore, administrative sanctions and measures set out by Member States should satisfy certain essential requirements in relation to addressees, criteria to be taken into account when applying a sanction or measure, publication, key sanctioning powers and levels of administrative pecuniary sanctions.	effective, proportionate and dissuasive. Therefore, administrative sanctions and measures set out by Member States should satisfy certain essential requirements in relation to addressees, criteria to be taken into account when applying a sanction or measure, publication, key sanctioning powers and levels of administrative pecuniary <u>fin</u> es.	measures which are effective, proportionate and dissuasive. Therefore, administrative sanctions and measures set out by Member States should satisfy certain essential requirements in relation to addressees, criteria to be taken into account when applying a sanction or measure, publication, key sanctioning powers and levels of administrative pecuniary sanctions.	ensure that they are subject to similar treatment across the European Union, Member States should be required to provide for sanctions and measures which are effective, proportionate and dissuasive. Administrative sanctions and measures set out by Member States should satisfy certain essential requirements in relation to addressees, criteria to be taken into account when applying a sanction or measure, publication, key sanctioning powers and levels of administrative pecuniary sanctions. <i>Technical group 13 11</i> Comment following comment in Council and EP : Wording above aligned to row 1249; final wording to be aligned to Article Check with Lawyer-linguists about definition of data reporting services providers (APA, CTP and ARM to be covered); cf. row 1056
131.	Rec. 96	(96) In particular, competent authorities should be empowered to impose pecuniary sanctions which are sufficiently high to offset the benefits that can be expected and to be dissuasive even for larger institutions and their managers.	(96) In particular, competent authorities should be empowered to impose pecuniary <u>fin</u> es which are sufficiently high to offset the benefits that can be expected and to be dissuasive even for larger institutions and their managers.	(96) In particular, competent authorities should be empowered to impose pecuniary sanctions which are sufficiently high to offset the benefits that can be expected and to be dissuasive even for larger institutions and their managers.	<i>Agreed silence procedure 20131008</i> (96) In particular, competent authorities should be empowered to impose pecuniary sanctions which are sufficiently high to offset the benefits that can be expected and to be dissuasive even for larger institutions and their managers.

		COM	Council	EP	Compromise
					<p><i>Technical group 13 11</i></p> <p>Comment following comment in Council: Final wording to be aligned to Article</p>
131 a					<p>Cf. row 1263:</p> <p>Recital 30 MAR included as new recital 96a, recital 31 MAR included as new recital 96b (with adaptation)</p> <p>(96a) It is also necessary for competent authorities to have, in accordance with national law and with the Charter of Fundamental Rights of the European Union, the ability to access to the premises of natural and legal persons. The access to such premises is necessary when there is reasonable suspicion that documents and other data related to the subject matter of an investigation exist and may be relevant to prove a breach to this Directive or [MIFIR]. Additionally the access to such premises is necessary where: the person to whom a demand for information has already been made fails (wholly or in part) to comply with it; or where there are reasonable grounds for believing that if a demand were to be made, it would not be complied with, or that the documents or information to which the information</p>

		COM	Council	EP	Compromise
					<p>requirement relates, would be removed, tampered with or destroyed. If prior authorisation is needed from the judicial authority of the Member State concerned, in accordance with national law, such power for access into premises shall be used after having obtained that prior judicial authorisation.</p> <p>(96b) Existing recordings of telephone conversations and data traffic records from investment firms executing and documenting the executions of transactions, as well as existing telephone and data traffic records from telecommunications operators constitute crucial, and sometimes the only, evidence to detect and prove the existence of market abuse as well as verify compliance by firms with investor protection and other requirements set out in this Directive or [MiFIR]. Therefore, competent authorities should be able to require existing recordings of telephone conversations, electronic communications and data traffic records held by an investment firm or credit. Access to data and telephone records is necessary for the detection and sanctioning of market abuse or of breaches of requirements set out in this Directive or [MiFIR]. In order to</p>

		COM	Council	EP	Compromise
					<p>introduce a level playing field in the Union in relation to the access to telephone and existing data traffic records held by a telecommunication operator or the existing recordings of telephone conversations and data traffic held by an investment firm, competent authorities should in conformity with national law be able to require existing telephone and existing data traffic records held by a telecommunication operator insofar as permitted under national law and existing recordings of telephone conversations as well as data traffic held by an investment firm, in those cases where a reasonable suspicion exists that such records related to the subject-matter of the inspection or investigation may be relevant to prove insider dealing or market manipulation in violation of [MAR] or violations of the requirements set out in this Directive or [MiFIR]. Access to telephone and data traffic records held by a telecommunications operator do not encompass the content of voice communications by telephone.</p>
132.	Rec. 97	(97) In order to ensure a consistent application of sanctions across Member States, when determining	(97) In order to ensure a consistent application of sanctions across Member States, [...] Member	(97) In order to ensure a consistent application of sanctions across Member States, when determining	<p><i>Technical group 20140128</i> T: align to decisions on Articles</p>

		COM	Council	EP	Compromise
		the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, Member States should be required to ensure that when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, the competent authorities take into account all relevant circumstances.	States should be required to ensure that when determining the type of administrative sanctions or measures and the level of administrative pecuniary <u>fin</u> es, the competent authorities take into account all relevant circumstances.	the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, Member States should be required to ensure that when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, the competent authorities take into account all relevant circumstances.	(97) In order to ensure a consistent application of sanctions across the Union, [...] Member States should be required to ensure that when determining the type of administrative sanctions or measures and the level of administrative pecuniary <u>fin</u> es, the competent authorities take into account all relevant circumstances.
133.	Rec. 98	(98) In order to ensure sanctions have a dissuasive effect on the public at large, sanctions should normally be published, except in certain well-defined circumstances.	(98) In order to ensure that sanctions have a dissuasive effect on the public at large, sanctions should normally be published, except in certain well-defined circumstances.	(98) In order to ensure sanctions have a dissuasive effect on the public at large, sanctions should normally be published, except in certain well-defined circumstances.	<p><i>Agreed silence procedure 20131008</i></p> <p>(98) In order to ensure sanctions have a dissuasive effect on the public at large, sanctions should normally be published, except in certain well-defined circumstances.</p> <p><i>Technical group 20140116</i></p> <p>Cf. row 1208: add the following at the end of recital 98</p> <p><u>This Directive does not require but should not prevent the publication of criminal sanctions imposed for breaches of this Directive or Regulation [MiFIR].</u></p> <p><i>Technical group 20140128</i></p> <p>New text below to align to Articles</p> <p>In order to ensure that decisions made by competent authorities have a dissuasive effect on the public at large, they should normally be published. The publication of decisions is also an important tool</p>

		COM	Council	EP	Compromise
					<p>for competent authorities to inform market participants of what behaviour is considered to be a violation of this Directive and to promote wider good behaviour amongst market participants. If such publication causes disproportionate damage to the persons involved, jeopardises the stability of financial markets or an ongoing investigation the competent authority should publish the sanctions and measures on an anonymous basis in a manner which is in conformity with national law or delay the publication. Competent authorities should have the option not to publish sanctions where anonymous or delayed publication is considered insufficient to ensure that the stability of financial markets will not be jeopardised. Competent authorities are also not required to publish measures which are deemed to be of a minor nature where publication would be disproportionate. It is appropriate to provide a mechanism for reporting unpublished sanctions to ESMA so that competent authorities can take them into account in their ongoing supervision. <u>This Directive does not require but should not prevent the publication of criminal sanctions imposed for breaches of this Directive or Regulation</u></p>

		COM	Council	EP	Compromise
					[MiFIR]. Note: this recital reflects better the Article and also MAR recital 35b.
134.	Rec. 99	(99) In order to detect potential breaches, competent authorities should have the necessary investigatory powers, and should establish effective mechanisms to encourage reporting of potential or actual breaches. These mechanisms should be without prejudice to adequate safeguards for accused persons. Appropriate procedures should be established to ensure the right of the reported person of defence and to be heard before the adoption of a final decision concerning him as well as the right to seek remedy before a tribunal against a decision concerning him.	(99) In order to detect potential breaches, competent authorities should have the necessary investigatory powers, and should establish effective mechanisms to encourage reporting of potential or actual breaches. These mechanisms should be without prejudice to adequate safeguards for accused persons. Appropriate procedures should be established to ensure the right of the reported person of defence and to be heard before the adoption of a final decision concerning him as well as the right to seek remedy before a tribunal against a decision concerning him.	(99) In order to detect potential breaches, competent authorities should have the necessary investigatory powers, and should establish effective <i>and reliable</i> mechanisms to encourage reporting of potential or actual breaches, <i>including protection of employees reporting breaches within their own institution</i> . These mechanisms should be without prejudice to adequate safeguards for accused persons. Appropriate procedures should be established to ensure the right of the reported person of defence and to be heard before the adoption of a final decision concerning him as well as the right to seek remedy before a tribunal against a decision concerning him.	<i>Technical group 20140128</i> (99) In order to detect potential breaches, competent authorities should have the necessary investigatory powers, and should establish effective <i>and reliable</i> mechanisms to encourage reporting of potential or actual breaches, <i>including protection of employees reporting breaches within their own institution</i> . These mechanisms should be without prejudice to adequate safeguards for accused persons. Appropriate procedures should be established to ensure appropriate protection of an accused person, particularly with regard the right to the protection of his personal data and procedures to ensure the right of the accused person of defence and to be heard before the adoption of a decision concerning him as well as the right to seek effective remedy before a court against a decision concerning him. Note: wording adapted to drafting of recital 36 MAR.

		COM	Council	EP	Compromise
135.	Rec. 100	(100) This Directive should refer to both administrative sanctions and measures in order to cover all actions applied after a violation is committed, and which are intended to prevent further infringements, irrespective of their qualification as a sanction or a measure under national law.	(100) This Directive should refer to both [...] sanctions and measures in order to cover all actions applied after a violation is committed, and which are intended to prevent further infringements, irrespective of their qualification as a sanction or a measure under national law.	(100) This Directive should refer to both administrative sanctions and measures in order to cover all actions applied after a violation is committed, and which are intended to prevent further infringements, irrespective of their qualification as a sanction or a measure under national law.	<i>Technical group 20140128</i> (100) This Directive should refer to both [...] sanctions and measures in order to cover all actions applied after a violation is committed, and which are intended to prevent further infringements, irrespective of their qualification as a sanction or a measure under national law.
136.	Rec. 101	(101) This Directive should be without prejudice to any provisions in the law of Member States relating to criminal sanctions.	(101) This Directive should be without prejudice to any provisions in the law of Member States relating to criminal sanctions. <u>In the application of this Directive, Member States should ensure that the imposition of administrative measures and sanctions in accordance with this Directive and of criminal sanctions in accordance with national law does not breach the principle of <i>ne bis in idem</i>.</u>	(101) This Directive should be without prejudice to any provisions in the law of Member States relating to criminal sanctions. <i>Without prejudice to the legal systems of the Member States, they should ensure that where it is alleged that a member of the management board of an investment firm or of a market operator has breached the provisions of or has committed an offence in matters falling within the scope of this Directive or of Regulation (EU) No .../... [MiFIR], he may be personally subject to criminal or civil proceedings.</i>	<i>Technical group 20140128</i> (101) This Directive should be without prejudice to any provisions in the law of Member States relating to criminal sanctions.
137.			(101a) <u>Even though nothing prevents Member States from laying down rules for administrative sanctions as well as criminal sanctions on the same infringements, Member States should not be required to lay down rules for administrative sanctions on the infringements of this Directive or MIFIR which are</u>		<i>Technical group 20140128</i> (101a) <u>Even though nothing prevents Member States from laying down rules for administrative sanctions as well as criminal sanctions on the same infringements, Member States should not be required to lay down rules for administrative sanctions on the infringements of this</u>

		COM	Council	EP	Compromise
			<p><u>subject to national criminal law. In conformity with national law, Member States are not obliged to impose both administrative and criminal sanctions for the same offence, but they can do so if their national law permits them. However, the maintenance of criminal sanctions instead of administrative sanctions for violations of this Directive or MIFIR should not reduce or otherwise affect the ability of competent authorities to cooperate, access and exchange information in a timely way with competent authorities in other Member States for the purposes of this Directive and MIFIR, including after any referral of the relevant infringements to the competent judicial authorities for criminal prosecution.</u></p>		<p><u>Directive or MIFIR which are subject to national criminal law. In conformity with national law, Member States are not obliged to impose both administrative and criminal sanctions for the same offence, but they can do so if their national law permits them. However, the maintenance of criminal sanctions instead of administrative sanctions for violations of this Directive or MIFIR should not reduce or otherwise affect the ability of competent authorities to cooperate, access and exchange information in a timely way with competent authorities in other Member States for the purposes of this Directive and MIFIR, including after any referral of the relevant infringements to the competent judicial authorities for criminal prosecution.</u></p> <p><u>Note: cf recital 35a in MAR and safeguard ensuring cooperation among NCAs</u></p>
138.	Rec. 102	(102) With a view to protecting clients and without prejudice to the right of customers to bring their action before the courts, it is appropriate that Member States ensure that public or private bodies are established with a view to settling disputes out-of-court, to cooperate in resolving cross-border disputes, taking into account	(102) With a view to protecting clients and without prejudice to the right of customers to bring their action before the courts, it is appropriate that Member States ensure that public or private bodies are established with a view to settling disputes out-of-court, to cooperate in resolving cross-border disputes, taking into account	(102) With a view to protecting clients and without prejudice to the right of customers to bring their action before the courts, it is appropriate that Member States ensure that public or private bodies are established with a view to settling disputes out-of-court, to cooperate in resolving cross-border disputes, taking into account	<p><i>Agreed silence procedure 20131008</i></p> <p>(102) With a view to protecting clients and without prejudice to the right of customers to bring their action before the courts, it is appropriate that Member States ensure that public or private bodies are established with a view to settling disputes out-of-court, to</p>

		COM	Council	EP	Compromise
		Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes ⁶⁶ and Commission Recommendation 2001/310/EC on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes. When implementing provisions on complaints and redress procedures for out-of-court settlements, Member States should be encouraged to use existing cross-border cooperation mechanisms, notably the Financial Services Complaints Network (FIN-Net).	Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes ¹⁸ and Commission Recommendation 2001/310/EC on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes. When implementing provisions on complaints and redress procedures for out-of-court settlements, Member States should be encouraged to use existing cross-border cooperation mechanisms, notably the Financial Services Complaints Network (FIN-Net).	Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes ⁶⁷ and Commission Recommendation 2001/310/EC on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes. When implementing provisions on complaints and redress procedures for out-of-court settlements, Member States should be encouraged to use existing cross-border cooperation mechanisms, <i>in particular</i> the Financial Services Complaints Network (FIN-Net).	cooperate in resolving cross-border disputes, taking into account Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes ⁶⁸ and Commission Recommendation 2001/310/EC on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes. When implementing provisions on complaints and redress procedures for out-of-court settlements, Member States should be encouraged to use existing cross-border cooperation mechanisms, <i>in particular</i> the Financial Services Complaints Network (FIN-Net).
139.	Rec. 103	(103) Any exchange or transmission of information between competent authorities, other authorities, bodies or persons should be in accordance with the rules on transfer of personal data to third countries as laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁶⁹ . Any exchange or	(103) Any exchange or transmission of information between competent authorities, other authorities, bodies or persons should be in accordance with the rules on transfer of personal data to third countries as laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ²⁴¹⁹ .	(103) Any exchange or transmission of information between competent authorities, other authorities, bodies or persons should be in accordance with the rules on transfer of personal data to third countries as laid down in Directive 95/46/EC // Any exchange or transmission of personal data by ESMA with third countries should be in accordance with the rules on the transfer of personal data as laid down in	<i>Agreed silence procedure 20131008</i> [Subject to legal-linguistic review] (103) Any exchange or transmission of information between competent authorities, other authorities, bodies or persons should be in accordance with the rules on transfer of personal data to third countries as laid down in Directive 95/46/EC // Any exchange or transmission of

⁶⁶ OJ L 115, 17.4.1998, p. 31.

¹⁸ OJ L 115, 17.4.1998, p. 31.

⁶⁷ OJ L 115, 17.4.1998, p. 31.

⁶⁸ OJ L 115, 17.4.1998, p. 31.

⁶⁹ OJ L 281, 23.11.1995, p. 31.

		COM	Council	EP	Compromise
		transmission of personal data by ESMA with third countries should be in accordance with the rules on the transfer of personal data as laid down in Regulation (EC) No 45/2001.	Any exchange or transmission of personal data by ESMA with third countries should be in accordance with the rules on the transfer of personal data as laid down in Regulation (EC) No 45/2001.	Regulation (EC) No 45/2001.	personal data by ESMA with third countries should be in accordance with the rules on the transfer of personal data as laid down in Regulation (EC) No 45/2001.
140.	Rec. 104	(104) It is necessary to reinforce provisions on exchange of information between national competent authorities and to strengthen the duties of assistance and cooperation which they owe to each other. Due to increasing cross-border activity, competent authorities should provide each other with the relevant information for the exercise of their functions, so as to ensure the effective enforcement of this Directive, including in situations where infringements or suspected infringements may be of concern to authorities in two or more Member States. In the exchange of information, strict professional secrecy is needed to ensure the smooth transmission of that information and the protection of particular rights.	(104) It is necessary to reinforce provisions on exchange of information between national competent authorities and to strengthen the duties of assistance and cooperation which they owe to each other. Due to increasing cross-border activity, competent authorities should provide each other with the relevant information for the exercise of their functions, so as to ensure the effective enforcement of this Directive, including in situations where infringements or suspected infringements may be of concern to authorities in two or more Member States. In the exchange of information, strict professional secrecy is needed to ensure the smooth transmission of that information and the protection of particular rights.	(104) It is necessary to reinforce provisions on exchange of information between national competent authorities and to strengthen the duties of assistance and cooperation which they owe to each other. Due to increasing cross-border activity, competent authorities should provide each other with the relevant information for the exercise of their functions, so as to ensure the effective enforcement of this Directive, including in situations where infringements or suspected infringements may be of concern to authorities in two or more Member States. In the exchange of information, strict professional secrecy is needed to ensure the smooth transmission of that information and the protection of particular rights.	<i>Agreed silence procedure 20131008</i> (104) It is necessary to reinforce provisions on exchange of information between national competent authorities and to strengthen the duties of assistance and cooperation which they owe to each other. Due to increasing cross-border activity, competent authorities should provide each other with the relevant information for the exercise of their functions, so as to ensure the effective enforcement of this Directive, including in situations where infringements or suspected infringements may be of concern to authorities in two or more Member States. In the exchange of information, strict professional secrecy is needed to ensure the smooth transmission of that information and the protection of particular rights.
141 a.					<i>Technical group 20140128</i> (104a) Where the operation of a trading venue that has established

		COM	Council	EP	Compromise
					<i>arrangements in a Host Member State has become of substantial importance for the functioning of the securities markets and the protection of the investors in that Host Member State, the proportionate cooperation arrangements to be put in place should take the appropriate form amongst possible cooperation modalities between the competent authorities of the Home and Host Member States, proportionate to the needs for cross-border supervisory cooperation in particular resulting from the nature and scale of the impact on the securities markets and the investor protection in the host member state, such as ad hoc or periodic information sharing, consultation and assistance.</i>
141.	Rec. 105	(105) The European Parliament should be given a period of three months from the first transmission of draft amendments and implementing measures to allow it to examine them and to give its opinion. However, in urgent and duly justified cases, it should be possible to shorten that period. If, within that period, a resolution is adopted by the European Parliament, the Commission should re-examine the draft amendments or measures.	(105) The European Parliament should be given a period of three months from the first transmission of draft amendments and implementing measures to allow it to examine them and to give its opinion. However, in urgent and duly justified cases, it should be possible to shorten that period. If, within that period, a resolution is adopted by the European Parliament, the Commission should re-examine the draft amendments or measures.		<i>Agreed silence procedure 20131008</i> [note: recital no longer needed, as related to previous type of implementing measures]
142.	Rec.	(106) In order to attain the	(106) In order to attain the	(106) The power to adopt acts in	<i>Technical group 20140128</i>

		COM	Council	EP	Compromise
106		objectives set out in this Directive, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of details concerning exemptions, the clarification of definitions, the criteria for the assessment of proposed acquisitions of an investment firm, the organisational requirements for investment firms, the management of conflicts of interest, conduct of business obligations in the provision of investment services, the execution of orders on terms most favourable to the client, the handling of client orders, the transactions with eligible counterparties, the SME growth markets, the conditions for the assessment of initial capital of third country firms, measures concerning systems resilience, circuit breakers and electronic trading, the admission of financial instruments to trading, the suspension and removal of financial instruments from trading, the thresholds for position reporting held by categories of traders, the cooperation between competent authorities. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and	objectives set out in this Directive, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of details concerning exemptions, the clarification of definitions, the criteria for the assessment of proposed acquisitions of an investment firm, the organisational requirements for investment firms, the management of conflicts of interest, conduct of business obligations in the provision of investment services, the execution of orders on terms most favourable to the client, the handling of client orders, the transactions with eligible counterparties, the SME growth markets, the conditions for the assessment of initial capital of third country firms, measures concerning systems resilience, circuit breakers and electronic trading, the admission of financial instruments to trading, the suspension and removal of financial instruments from trading, the thresholds for position reporting held by categories of traders, the cooperation between competent authorities. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should	accordance with Article 290 <i>TFEU</i> should be delegated to the Commission in respect of details concerning exemptions, the specification of certain definitions, the criteria for the assessment of proposed acquisitions of an investment firm, the organisational requirements for investment firms, the management of conflicts of interest, conduct of business obligations in the provision of investment services, the execution of orders on terms most favourable to the client, the handling of client orders, the transactions with eligible counterparties, the SME growth markets, the conditions for the assessment of initial capital of <i>third-country firms</i> , measures concerning systems resilience, circuit breakers and electronic trading, the admission of financial instruments to trading, the suspension and removal of financial <i>instruments</i> from trading, the thresholds for position reporting held by categories of traders, the clarification of what constitutes a reasonable commercial basis for an APA to make information public, for CTPs to provide access to data streams and for an approved reporting mechanism (ARM) to report information, the clarification of details of the information obligation on CTP, the cooperation between competent	Note: the whole list needs to be checked to ensure alignment with empowerments for DA in Articles. Not yet done. (106) In order to attain the objectives set out in this Directive, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of details concerning exemptions, the clarification of definitions, the criteria for the assessment of proposed acquisitions of an investment firm, the organisational requirements for investment firms, the management of conflicts of interest, conduct of business obligations in the provision of investment services, the execution of orders on terms most favourable to the client, the handling of client orders, the transactions with eligible counterparties, the SME growth markets, the thresholds above which the position reporting obligations apply, the conditions for the assessment of initial capital of third country firms, measures concerning systems resilience, circuit breakers and electronic trading, the admission of financial instruments to trading, the suspension and removal of financial instruments from trading, the thresholds for position reporting held by categories of traders, the cooperation between competent

		COM	Council	EP	Compromise
		appropriate transmission of relevant documents to the European Parliament and to the Council.	ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.	authorities. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.	authorities. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
143.	Rec. 107	(107) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. These powers relate to the adoption of the equivalence decision concerning third country legal and supervisory framework for the provision of services by third country firms and the sending of positions reports by categories of traders to ESMA and they should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers ⁷⁰ .	(107) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. These powers relate to the [...] sending of positions reports by categories of traders to ESMA and they should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers ²⁰ .	(107) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. These powers should relate to the adoption of the effective equivalence decision concerning third country legal and supervisory framework for the provision of services by <i>third-country firms</i> and they should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers ⁷¹ .	<i>Technical group 20140128</i> [...] Note: deletion suggested as there seems to be no IAs in the final text; to be checked

⁷⁰ OJ L 55, 28.2.2011, p. 13.

²⁰ OJ L 55, 28.2.2011, p. 13.

⁷¹ OJ L 55, 28.2.2011, p. 13

		COM	Council	EP	Compromise
144.	Rec. 108	(108) Technical standards in financial services should ensure consistent harmonisation and adequate protection of depositors, investors and consumers across the Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA, with the elaboration of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission.	(108) Technical standards in financial services should ensure consistent harmonisation and adequate protection of depositors, investors and consumers across the Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA, with the elaboration of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission.	(108) Technical standards in financial services should ensure consistent harmonisation and adequate protection of depositors, investors and consumers across the European Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA, with the elaboration of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission. <i>To ensure consistent investor and consumer protection across financial services sectors, ESMA should carry out its tasks, to the extent possible, in close cooperation with the other two European Supervisory Authorities within the framework of the Joint Committee of the European Supervisory Authorities.</i>	<i>Technical group 20140128</i> T: inclusion or not of last sentence (108) Technical standards in financial services should ensure consistent harmonisation and adequate protection of, investors, including those investing in structured deposits, and consumers across the European Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA, with the elaboration of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission. <i>To ensure consistent investor and consumer protection across financial services sectors, ESMA should carry out its tasks, to the extent possible, in close cooperation with the other two European Supervisory Authorities.</i>
145.	Rec. 109	(109) The Commission should adopt the draft regulatory technical standards developed by ESMA in Article 7 regarding procedures for granting and refusing requests for authorisation of investment firms, Articles 9 and 48 regarding requirements for management bodies, Article 12 regarding acquisition of qualifying holding, Article 27 regarding obligation to	(109) The Commission should adopt the draft regulatory technical standards developed by ESMA in Article 2 regarding exemptions that relate to activities considered to be ancillary to the main business., Article 7 regarding procedures for granting and refusing requests for authorisation of investment firms, Articles 9 and 48 regarding requirements for management	(109) The Commission should adopt the // regulatory technical standards developed by ESMA <i>specifying the criteria for determining whether an activity is ancillary to the main business,</i> // regarding procedures for granting and refusing requests for authorisation of investment firms, // regarding requirements for management bodies, // regarding	<i>Technical group 20140128</i> T: to be adapted to Articles on regulatory technical standards, once decided Note: the whole list needs to be checked to ensure alignment with empowerments for RTS in Articles. Not yet done. (109) The Commission should

		COM	Council	EP	Compromise
		<p>execute orders on terms most favourable to clients, Articles 34 and 54 regarding cooperation and exchange of information, Article 36 regarding freedom to provide investment services and activities, Article 37 regarding establishment of a branch, Article 44 regarding provision of services by third country firms, Article 63 regarding procedures for granting and refusing requests for authorisation of data reporting services providers, Articles 66 and 67 regarding organisational requirements for APAs and CTPs and Article 84 regarding cooperation among competent authorities. The Commission should adopt these draft regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.</p>	<p>bodies, Article 12 regarding acquisition of qualifying holding, Article 13 regarding the <u>assessment of a proposed acquisition</u>, Article 17 regarding <u>algorithmic trading</u>, Article 20 regarding the <u>definition of matched principal trading</u>, Article 27 regarding obligation to execute orders on terms most favourable to clients, Article 31 regarding the <u>monitoring of compliance with the rules of the MTF or the OTF and with other legal obligations</u>, Article 36 regarding freedom to provide investment services and activities, Article 37 regarding establishment of a branch, Article 44 regarding provision of services by third country firms, Article 51 regarding <u>systems resilience, circuit breakers and electronic trading</u>, Article 56 regarding the <u>monitoring of compliance with the rules of the regulated market and with other legal obligations</u>, Article 59 regarding the <u>position limits and position management controls in commodity derivatives</u>, Article 63 regarding procedures for granting and refusing requests for authorisation of data reporting services providers, Articles 66 & 67 regarding organisational requirements for [...] CTPs and APAs and Article 84 regarding cooperation among competent authorities. The Commission</p>	<p>acquisition of qualifying holding, // regarding obligation to execute orders on terms most favourable to clients, // regarding cooperation and exchange of information, // regarding freedom to provide investment services and activities, // regarding establishment of a branch, // regarding provision of services by <i>third-country firms, in regarding the limits on holdings of certain commodity derivatives and further specifying the position checks applicable to other commodity derivatives</i>, // regarding procedures for granting and refusing requests for authorisation of data reporting services providers, regarding organisational requirements for APAs and CTPs and regarding cooperation among competent authorities. The Commission should adopt <i>those</i> // regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.</p>	<p>adopt the draft regulatory technical standards developed by ESMA in Article 2 regarding <u>exemptions that relate to activities considered to be ancillary to the main business</u>, Article 7 regarding the information to be provided and certain requirements in the context of procedures for granting and refusing requests for authorisation of investment firms, Articles 9 and 48 regarding requirements for management bodies, Article 12 regarding acquisition of qualifying holding, Article 13 regarding the <u>assessment of a proposed acquisition</u>, Article 17 regarding <u>algorithmic trading</u>, Article 20 regarding the <u>definition of matched principal trading</u>, Article 27 regarding obligation to execute orders on terms most favourable to clients, Article 31 regarding the <u>monitoring of compliance with the rules of the MTF or the OTF and with other legal obligations</u>, Article 36 regarding freedom to provide investment services and activities, Article 37 regarding establishment of a branch, Article 44 regarding provision of services by third country firms, Article 51 regarding <u>systems resilience, circuit breakers and electronic trading</u>, Article 56 regarding the <u>monitoring of compliance with the rules of the regulated market and with other legal obligations</u>, Article 59</p>

		COM	Council	EP	Compromise
			should adopt these draft regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.		<p>regarding the position limits and position management controls in commodity derivatives, Article 63 regarding procedures for granting and refusing requests for authorisation of data reporting services providers, Articles 66 and 67 regarding organisational requirements for [...] CTPs and APAs and Article 84 regarding cooperation among competent authorities. The Commission should adopt these draft regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.</p> <p><i>Technical group 20140206</i></p> <p>Reference to Articles 66 and 67 added back in, as they provide for RTS</p> <p>All Article references to be checked during legal-linguistic revision</p>
146.	Rec. 110	(110) The Commission should also be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010. ESMA should be entrusted with drafting implementing technical standards for submission to the Commission with regard to Article 7 regarding procedures for granting	(110) The Commission should also be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010. ESMA should be entrusted with drafting implementing technical standards for submission to the Commission with regard to Article 7 regarding procedures for granting	(110) The Commission should also be empowered to adopt implementing technical standards developed by ESMA regarding procedures for granting and refusing requests for authorisation of investment firms, // regarding acquisition of qualifying holding, // regarding <i>the</i> trading process on finalisation of transactions in MTFs and OTFs, // regarding <i>the</i> suspension and removal of	<p><i>Technical group 20140128</i></p> <p>T: to be adapted to Articles on implementing technical standards, once decided</p> <p>Note: the whole list needs to be checked to ensure alignment with empowerments for ITS in Articles. Not yet done.</p> <p>(110) The Commission should also be empowered to adopt implementing technical standards</p>

		COM	Council	EP	Compromise
		<p>and refusing requests for authorisation of investment firms, Article 12 regarding acquisition of qualifying holding, Article 18 regarding trading process on finalisation of transactions in MTFs and OTFs, Articles 32, 33 and 53 regarding suspension and removal of instruments from trading, Article 36 regarding freedom to provide investment services and activities, Article 37 regarding establishment of a branch, Article 44 regarding provision of services by third country firms, Article 60 regarding position reporting by categories of traders, Article 78 regarding submission of information to ESMA, Article 83 regarding obligation to cooperate, Article 84 regarding cooperation among competent authorities, Article 85 regarding exchange of information and Article 88 regarding consultation prior to authorisation.</p>	<p>and refusing requests for authorisation of investment firms, Article 12 regarding acquisition of qualifying holding, Article 18 regarding trading process on finalisation of transactions in MTFs and OTFs, Articles 32 [...] and 53 regarding suspension and removal of instruments from trading, Article 36 regarding freedom to provide investment services and activities, Article 37 regarding establishment of a branch, Article 44 regarding provision of services by third country firms, Article 60 regarding position reporting by categories of traders, Article 63 regarding <u>procedures for granting and refusing requests for authorisation</u>, Article 76 regarding the exercise of supervisory and sanctioning powers, Article 83 regarding obligation to cooperate, Article 84 regarding cooperation among competent authorities, Article 85 regarding exchange of information and Article 88 regarding consultation prior to authorisation.</p>	<p>instruments from trading, // regarding freedom to provide investment services and activities, // regarding <i>the</i> establishment of a branch, // regarding provision of services by <i>third-country firms</i>, // regarding position reporting by categories of traders, // regarding <i>the</i> submission of information to ESMA, // regarding <i>the</i> obligation to cooperate, // regarding cooperation among competent authorities, // regarding exchange of information and // regarding consultation prior to authorisation. <i>The Commission should adopt those implementing technical standards by means of Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.</i></p>	<p>by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010. ESMA should be entrusted with drafting implementing technical standards for submission to the Commission with regard to Article 7 regarding procedures for granting and refusing requests for authorisation of investment firms, Article 12 regarding acquisition of qualifying holding, Article 18 regarding trading process on finalisation of transactions in MTFs and OTFs, Articles 32 [...] and 53 regarding suspension and removal of instruments from trading, Article 36 regarding freedom to provide investment services and activities, Article 37 regarding establishment of a branch, Article 44 regarding provision of services by third country firms, Article 60 regarding position reporting by categories of traders, Article 63 regarding <u>procedures for granting and refusing requests for authorisation</u>, Article 75b regarding the <u>procedures and forms for submitting information</u> for the exercise of supervisory and sanctioning powers, Article 83 regarding obligation to cooperate, Article 84 regarding cooperation among competent authorities, Article 85 regarding exchange of information and Article 88</p>

		COM	Council	EP	Compromise
					<p>regarding consultation prior to authorisation.</p> <p><i>Technical group 20140206</i></p> <p>Article reference to Article 75b to be checked, reference is to row 1202 (which is no longer Article 73)</p> <p>Drafting adapted above to row 1202</p>
147.	Rec. 111	(111) The Commission should submit a report to the European Parliament and the Council assessing the functioning of organised trading facilities, the functioning of the regime for SME growth markets, the impact of requirements regarding automated and high-frequency trading, the experience with the mechanism for banning certain products or practices and the impact of the measures regarding commodity derivatives markets.	(111) The Commission should submit a report to the European Parliament and the Council assessing the functioning of OTFs, the functioning of the regime for SME growth markets, the impact of requirements regarding automated and high-frequency trading, the experience with the mechanism for banning certain products or practices and the impact of the measures regarding commodity derivatives markets.	(111) The Commission should submit a report to the European Parliament and the Council assessing the functioning of organised trading facilities, the functioning of the regime for SME growth markets, the impact of requirements regarding automated and high-frequency trading, the experience with the mechanism for banning certain products or practices and the impact of the measures regarding commodity derivatives markets.	<p><i>Agreed silence procedure 20131008</i></p> <p>(111) The Commission should submit a report to the European Parliament and the Council assessing the functioning of organised trading facilities, the functioning of the regime for SME growth markets, the impact of requirements regarding automated and high-frequency trading, the experience with the mechanism for banning certain products or practices and the impact of the measures regarding commodity derivatives markets.</p>
147	aa.				<p><i>Trilogue 20140114: Agreed to include Pres. non-paper on Annex IC6 with additions/modifications</i></p> <p><u>(111aa) At the latest by 1 January 2018, the Commission should prepare a report assessing the potential impact on energy prices and the functioning of the energy market of the expiry of the transitional period foreseen for</u></p>

		COM	Council	EP	Compromise
					<u>the application of the clearing obligation and the margining requirements set out in Regulation (EU) No. 648/2012 (EMIR). If appropriate, the Commission should submit a legislative proposal to establish or amend the relevant legislation, including specific sectoral legislation such as Regulation (EU) No. 1227/2011 (REMIT).</u>
147 a.					<p><i>Trilogue 20131218: agreed to include changes from non-paper on AIFMD</i></p> <p>(111a) Directive 2011/61/EU allows Member States to authorise Alternative Investment Fund Managers ('AIFMs') to provide certain investment services in addition to the collective management of alternative investment funds ('AIFs'), including services of management of portfolios of investments, investment advice, safe-keeping and administration in relation to shares or units of collective investment undertakings, as well as reception and transmission of orders in relation to financial instruments. Since the requirements governing the provision of those services are harmonised within the Union, AIFMs authorised by their home competent authorities to provide those services should not be subject to any additional</p>

		COM	Council	EP	Compromise
					<u>authorisation in host Member States nor to any other measure having the same effect.</u>
147 b.					<p><i>Trilogue 20131218: agreed to include changes from non-paper on AIFMD</i></p> <p>(111b) Under the current legal framework, AIFMs authorised to provide those investment services and intending to provide them in Member States other than their home Member State must comply with additional national requirements, including the establishment of a separate legal entity. In order to eliminate obstacles in the cross-border provision of harmonised investment services and to ensure a level playing field between entities providing the same investment services under the same legal requirements, an AIFM authorised to provide those services should be able to provide them on a cross-border basis, subject to appropriate notification requirements, under the authorisation granted by the competent authorities of their home Member State.</p>
147 c.					<p><i>Trilogue 20131218: agreed to include changes from non-paper on AIFMD</i></p> <p>(111c) Directive 2011/61/EU should therefore be amended accordingly.</p>

		COM	Council	EP	Compromise
148.	Rec. 112	(112) The objective of creating an integrated financial market, in which investors are effectively protected and the efficiency and integrity of the overall market are safeguarded, requires the establishment of common regulatory requirements relating to investment firms wherever they are authorised in the Union and governing the functioning of regulated markets and other trading systems so as to prevent opacity or disruption on one market from undermining the efficient operation of the European financial system as a whole. Since this objective may be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective	(112) The objective of creating an integrated financial market, in which investors are effectively protected and the efficiency and integrity of the overall market are safeguarded, requires the establishment of common regulatory requirements relating to investment firms wherever they are authorised in the Union and governing the functioning of regulated markets and other trading systems so as to prevent opacity or disruption on one market from undermining the efficient operation of the European financial system as a whole. Since this objective may be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.	(112) <i>Since</i> the objective of <i>this Directive, namely</i> creating an integrated financial market in which investors are effectively protected and the efficiency and integrity of the overall market are safeguarded, requires the establishment of common regulatory requirements relating to investment firms wherever they are authorised in the European Union and governing the functioning of regulated markets and other trading systems so as to prevent opacity or disruption on one market from undermining the efficient operation of the European financial system as a whole <i>and can therefore, by reason of the scale and effects of this Directive, //</i> be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the <i>Treaty on European Union</i> . In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.	<i>Agreed silence procedure 20131008</i> (112) <i>Since</i> the objective of <i>this Directive, namely</i> creating an integrated financial market in which investors are effectively protected and the efficiency and integrity of the overall market are safeguarded, requires the establishment of common regulatory requirements relating to investment firms wherever they are authorised in the European Union and governing the functioning of regulated markets and other trading systems so as to prevent opacity or disruption on one market from undermining the efficient operation of the European financial system as a whole <i>and can therefore, by reason of the scale and effects of this Directive, //</i> be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the <i>Treaty on European Union</i> . In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.
149.	Rec. 113	(113) The establishment of a consolidated tape for non-equity instruments is deemed to be more difficult to implement than the consolidated tape for equity	(113) The establishment of a consolidated tape for non-equity instruments is deemed to be more difficult to implement than the consolidated tape for equity	(113) The establishment of a consolidated tape for non-equity instruments is deemed to be more difficult to implement than the consolidated tape for equity	<i>Technical group 20140128</i> [Move this recital to follow recital 104 as subsequent recitals relate to final provisions rather than

		COM	Council	EP	Compromise
		instruments and potential providers should be able to gain experience with the latter before constructing it. In order to facilitate the proper establishment of the consolidated tape for non-equity financial instruments, it is therefore appropriate to provide for an extended date of application of the national measures transposing the relevant provision.	instruments and potential providers should be able [...] to gain experience with the latter before constructing it. In order to facilitate the proper establishment of the consolidated tape for non-equity financial instruments, it is therefore appropriate to provide for an extended date of application of the national measures transposing the relevant provision.	instruments and potential providers should be able to gain experience with the latter before constructing it. In order to facilitate the proper establishment of the consolidated tape for non-equity financial instruments, it is therefore appropriate to provide for an extended date of application of the national measures transposing the relevant provision. <i>Nevertheless it is appropriate to make provision now for a public solution to be developed if the commercial solution does not lead to the timely delivery an effective and comprehensive consolidated tape.</i>	substance] Or move after row 147 which also deals with report (113) The establishment of a consolidated tape for non-equity instruments is deemed to be more difficult to implement than the consolidated tape for equity instruments and potential providers should be able [...] to gain experience with the latter before constructing it. In order to facilitate the proper establishment of the consolidated tape for non-equity financial instruments, it is therefore appropriate to provide for an extended date of application of the national measures transposing the relevant provision. <i>Nevertheless it is appropriate to make provision now for a consolidated tape to be put in place through a public procurement process if the mechanism envisaged does not lead to the timely delivery of an effective and comprehensive consolidated tape for non-equity instruments.</i> <i>Technical group 20140206</i> <i>Move this recital up after recital 78</i>
150.	Rec. 113a (new)			<i>(113a) In order to further develop the Union framework governing securities, the Commission should put forward a proposal for a regulation on securities law further specifying the definition of</i>	<i>Technical group 20140129</i> [...]

		COM	Council	EP	Compromise
				<i>safekeeping and administration of financial instruments and should also, in conjunction with ESMA, the European Supervisory Authority (European Banking Authority) and the European Systemic Risk Board promote work on standardisation of identifiers and messaging so as to enable near-real time transaction analysis and the identification of complex product structures, such as those containing derivatives or repos.</i>	
150 a.					<p><i>Trilogue 20140114: Agreed to include recital on staff and resources, cf. row</i></p> <p><u>(113b) Given the increase of tasks conferred on ESMA by this Directive and by Regulation (EU) No [MiFIR], the European Parliament, the Council and the Commission should ensure that adequate human and financial resources are made available.</u></p>
151.	Rec. 114	(114) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, notably the right to the protection of personal data, the freedom to conduct a business, the right to consumer protection, the right to an effective remedy and to a fair trial, the right not to be tried or punished twice for the same offence and has to be implemented in accordance with those rights and	(114) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, notably the right to the protection of personal data, the freedom to conduct a business, the right to consumer protection, the right to an effective remedy and to a fair trial, the right not to be tried or punished twice for the same offence and has to be implemented in accordance with those rights and	(114) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, <i>in particular</i> the right to the protection of personal data, the freedom to conduct a business, the right to consumer protection, the right to an effective remedy and to a fair trial, the right not to be tried or punished twice for the same offence and has to be implemented in accordance with	<p><i>Agreed silence procedure 20131008</i></p> <p>(114) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, <i>in particular</i> the right to the protection of personal data, the freedom to conduct a business, the right to consumer protection, the right to an effective remedy and to a fair trial, the right</p>

		COM	Council	EP	Compromise
		principles.	principles.	those rights and principles.	not to be tried or punished twice for the same offence and has to be implemented in accordance with those rights and principles.
151 a.					<p><i>Note: standard recital where the need for explanatory documents is deemed necessary and proportionate</i></p> <p><i>(114aa new)</i></p> <p>In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.</p>
152.	Rec. 114a (new)	[See row 8]		<i>(114a) The European Data Protection Supervisor has been consulted,</i>	<p><i>Agreed silence procedure 20131008</i></p> <p>[see row 8. Lawyer linguists to determine correct place to include]</p> <p><i>(114a) The European Data Protection Supervisor has been consulted,</i></p>

