Amendments to the Markets in Financial Instruments Directive (MiFID 2)

2021/0384(COD) - 16/01/2024 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 521 votes to 19, with 57 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments (MiFID 2).

The proposed directive aims to improve transparency on markets in financial instruments and to enhance the international competitiveness of the Union's capital markets.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amends the Commission's proposal as follows:

Systematic internaliser

The amended directive introduced the definition of 'systematic internaliser' to mean an investment firm which, on an organised, frequent and systematic basis, deals on own account in equity instruments by executing client orders outside a regulated market, a multilateral trading facilities (MTF) or an organised trading facility (OTF), without operating a multilateral system, or which opts in to the status of systematic internaliser.

Taking into account that Regulation (EU) No 600/2014 on markets in financial instruments is amended to exclude systematic internalisers from the scope of the pre-trade transparency requirements for non-equity instruments, the qualitative assessment of systematic internalisers should apply only to equity instruments. It should, however, be possible for an investment firm to opt in to become a systematic internaliser for non-equity instruments.

Obligation to execute orders on terms most favourable to the client

The amended text stipulated that with regard to financial instruments that are subject to the trading obligations laid down in Regulation (EU) No 600/2014, Member States should require that, following the execution of an order on behalf of a client, an investment firm inform the client of the venue where the order was executed.

In addition, Member States should require investment firms which execute client orders to monitor the effectiveness of their order execution arrangements and execution policy for the purpose of identifying and, where appropriate, correcting any deficiencies. In particular, Member States should require such investment firms to assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best possible result for the client or whether they need to make changes to their execution arrangements.

Member States should require investment firms to notify clients with whom they have an ongoing client relationship of any material changes to their order execution arrangements or execution policy.

ESMA should develop draft regulatory technical standards to specify the criteria to be taken into account in establishing and assessing the effectiveness of the order execution policy.

Organisational requirements

Member States should require the regulated markets to have at least three materially active members or users, each having the opportunity to interact with all the others in respect of price formation.

Systems resilience

Member States should require a regulated market:

- to be able to temporarily halt or constrain trading in emergency situations or in the event of a significant price movement in a financial instrument on that market or a related market during a short period and, in exceptional cases, to be able to cancel, vary or correct any transaction;

- to ensure that the parameters for halting or constraining trading are appropriately calibrated in a way which takes into account the liquidity of different asset classes and sub-classes, the nature of the market model and the types of users, and is sufficient to avoid significant disruptions to the orderliness of trading;

- to disclose publicly on its website information about the circumstances leading to the halting or constraining of trading and on the principles for establishing the main technical parameters used to do so.

Where a regulated market does not halt or constrain trading, despite the fact that a significant price movement in a financial instrument or related financial instruments has led to disorderly trading conditions on one or several markets, competent authorities should be able to take appropriate measures to re-establish the normal functioning of the markets, including using the supervisory powers.

Position limits and position management controls in commodity derivatives

Member States should ensure that an investment firm or a market operator operating a trading venue which trades in commodity derivatives or derivatives of emission allowances applies position management controls, including powers for the trading venue to obtain information, including all relevant documentation, from persons about the size and purpose of a position or exposure entered into, information about beneficial or underlying owners, any concert arrangements, and any related assets or liabilities in the underlying market.

Position reporting by categories of position holders

The investment firm or a market operator operating a trading venue which trades in commodity derivatives or in derivatives of emission allowances should make public, for trading venues where options are traded, two weekly reports (for trading venues where options are not traded, a weekly report is sufficient).

Investment firms trading in commodity derivatives or in derivatives of emission allowances outside a trading venue should provide, on at least a daily basis, the central competent authority with a complete breakdown of their positions taken in economically equivalent OTC contracts as well as of those of their clients and the clients of those clients until the end client is reached.

The Commission should, after consulting ESMA, the EBA and ACER, submit reports to the European Parliament and to the Council containing a comprehensive assessment of the markets for commodity derivatives, for emission allowances and for derivatives of emission allowances.