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#### 'I' ITEM NOTE

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From: General Secretariat of the Council

To: Permanent Representatives Committee (Part 2)

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Subject: Review of the Markets in Financial Instruments Regulation (MiFIR) and the second Markets in Financial Instruments Directive (MiFID II)

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 600/2014 as regards enhancing market data transparency, removing obstacles to the emergence of a consolidated tape, optimising the trading obligations and prohibiting receiving payments for forwarding client orders

and

Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments

- Mandate for negotiations with the European Parliament

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## **I. INTRODUCTION**

1. On 25 November 2021, the European Commission adopted a proposals for a review of the Markets in Financial Instruments Regulation (MiFIR)<sup>1</sup> and the second Markets in Financial Instruments Directive (MiFID II)<sup>2</sup>.
2. The proposals are based on Articles 114 and 53 of the Treaty on the Functioning of the European Union and are hence subject to the ordinary legislative procedure.
3. The Commission's impact assessments<sup>3</sup> of the proposals were presented in the first Working Party on Financial Services and the Banking Union (MiFID-MiFIR) on 6 December 2021. The European Economic and Social Committee adopted its opinion on 23 March 2022<sup>4</sup> and the European Central Bank delivered its opinion on 1 June 2022<sup>5</sup>.

## **II. MAIN ELEMENTS**

4. The proposals aim to empower investors, in particular smaller and retail investors, by enabling them to access market data necessary to invest in shares or bonds more easily and by making EU market infrastructures more robust. Proposed amendments are equally intended to increase market liquidity, making in turn easier for companies to get funding from capital markets. The priority areas of this legislative review are: i) improving transparency and availability of market data, ii) improving the level-playing field between execution venues and iii) ensuring that EU market infrastructures can remain competitive at international level.
5. The Working Party on Financial Services and the Banking Union (MiFID-MiFIR) has examined the proposal in 4 informal videoconferences and 10 working party meetings under the Slovenian, French and Czech Presidencies. Based on the discussions in those meetings, as well as on the written comments received, the Czech Presidency has prepared the compromise texts as set out in documents 16099/22 and 16102/22.

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<sup>1</sup> Doc. 14382/21

<sup>2</sup> Doc. 14368/21

<sup>3</sup> Doc. 14368/21 ADD1-ADD3; Doc. 14382/21 ADD1-ADD3

<sup>4</sup> Doc. 7972/22

<sup>5</sup> Doc. 10120/22

6. Furthermore, in November 2022, Member States requested the Presidency to discuss amendments of Capital Requirements Directive (CRD VI)<sup>6</sup> and the Capital Requirements Regulation (CRR III)<sup>7</sup> concerning the €30bn group assets threshold triggering the obligation for investment firms to apply for a banking license within the framework of MiFIR/MiFID II review. Consequently, these amendments were temporarily included in Article 2 of MiFID II and Article 2 of MiFIR Presidency compromise text. In order to avoid parallel discussions in a context of upcoming legislative negotiations, it is the intention of the Presidency to continue further legislative work (trilogues) regarding the proposed amendments in Article 2 of MiFID II and Article 2 of MiFIR exclusively within the main framework of the CRD VI/CRR III.
7. Following the Financial Services Attachés meeting of 8 December 2022, the Presidency proposed a set of compromise amendments with a view to reaching a negotiating mandate on MiFIR and MiFID II.
8. The Presidency's compromise text, as contained in documents 16099/22 and 16102/22, gathers the required support of delegations.

### **III. CONCLUSION**

9. In view of the above, the Permanent Representatives Committee is invited to:
  - (a) agree on the text of the mandate for negotiations with the European Parliament, as set out in documents 16099/22 and 16102/22,
  - (b) invite the Presidency to start negotiations with the European Parliament on the basis of this general approach with a view to reaching an agreement at first reading.
10. In accordance with the approach to legislative transparency endorsed by Coreper on 14 July 2020, and in full consistency with Regulation 1049/2001 and the Council's Rules of Procedure, the current document and documents 16099/22 and 16102/22 will be made public unless the Permanent Representatives Committee objects.

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<sup>6</sup> Doc. 13245/21

<sup>7</sup> Doc. 13246/21