



Contribution to the Committee of European Securities Regulators' (CESR) consultation on Technical Advice to the European Commission in the context of the MiFID review – Investor protection and Intermediaries

The financial crisis has been a reminder of how vulnerable financial markets are to imprudent behaviour and uninformed choices of financial products by consumers and investors. Irresponsible sales practices have been a key factor in triggering the crisis. They constitute a continuous risk factor for the stability of the economy in its entirety. A new long-term orientated and risk-conscious business model should be developed that empowers customers and staff. Procedures and practices should be transparent and the way employees are motivated and constrained in performing their jobs must be clear.

Cornerstone of the Financial Services Action Plan, adopted in 2004 and modified several times, the Markets in Financial Instruments Directive (MiFID) aims at strengthening EU legislative framework for investment services and regulated markets to, among other things, protect investors and promote fair, transparent, efficient and integrated financial markets.

UNI Europa Finance welcomes the initiative of the Committee of European Securities Regulators (CESR) to launch a consultation whose aim is to provide the European Commission with its technical advice on the MiFID Review. UNI Europa Finance considers the review of the implementation of the MiFID as important to gain experience on whether the legislation has had the intended effect or not.

However, UNI Europa Finance regrets that the debate taking place in the context of the MiFID Review does not take into account finance employees' concerns. UNI Europa Finance would like to reiterate its view that consumer protection and employees' situation within the financial sector are inextricably linked to each other: consumers' objectives can only be achieved through a close and strong cooperation with and when employees and their organisations are involved. UNI Europa Finance thus calls for a much stronger involvement of employees in the policy processes at the EU level.

Employees in financial institutions do not only have knowledge on how current regulation works and first-hand experience of problems relating to practices in the financial service sector. They are also the ones to ensure that regulation will have the intended effect. Regulation, e.g. MiFID, will not improve the situation if it is not properly implemented and monitored.

As CESR mentions in its consultation on investor protection and intermediaries, since the implementation of MiFID, European financial markets have seen an important number of changes, which makes the MiFID review necessary: greater competition, high level of innovation, smart order routing or algorithmic trading. With the global financial crisis in the background, there is a strong focus on selling practices regarding certain financial instruments that have been detrimental to investor protection.

Evidence from the MiFID implementation reveals problems in this regard, simply pushing responsibility from the company to the customer and the employee without solving the inherent problem of ensuring prudent advice. Some may have felt that the banks were better protected via this directive, instead of the consumer side. This is an issue that should be looked further into.

UNI Europa Finance is of the view that It should always be ensured that the advice standards are properly implemented and do not end up as a formality simply demanding a signature from the customer.

It considers that sales targets and incentives structures are a major issue and can be detrimental to investors' protection. Incentives linked to the sale of one or several products together create conflicts of interest in the sales situation and should be avoided. The use of excessive and unrealistic sales targets on specific products is a key obstacle to qualified and objective advice and to obtaining the best coherence between the products sold and the need and risk profile of the individual investor. Moreover, excessive sales targets cause high levels of stress on employees to the detriment of employees' working conditions but also the quality of advice.

Consumers have the right to good advice; finance workers have the right to *give* good advice.

UNI Europa Finance is the European-level trade union body for the finance sector. It represents 100 unions with 1.5 millions workers in the banking and insurance industries. It is part of UNI Global Union and recognised by the European Union as a social partner.

REQUIREMENTS RELATING TO THE RECORDING OF TELEPHONE CONVERSATIONS AND ELECTRONIC COMMUNICATIONS

Question 1: Do you agree with CESR that the EEA should have a recording requirement? If not, please explain your reasoning.

The protection of privacy, including phone conversations etc. is regulated within the legal systems of most of the European countries.

If recording is considered, it should be very clearly said what kind of purposes the information is used for and how long it will be kept. The client should be informed about the recording at all times, the purposes of the recording and that the recorded material is kept for a certain period.

As the structures of products vary a lot, the period of time of this recording requirement may also be differentiated.

If such legal change is adopted, these issues should be discussed in cooperation with finance employees who will be those who will apply the new requirements.

Question 5: Do you agree that firms should be restricted to engaging in conversations and communications that fall to be recorded on equipment provided to employees by the firm?

If the alternative is that firms should not only be permitted but also required to record and archive conversations that take place on equipments that were not provided to the individual employee by the financial company, the answer for UNI Europa Finance is clearly yes: it could not be accepted that firms should be required to record and archive conversations and communications that take place on equipment not provided to employees by firm.

For UNI Europa Finance, it would not make sense that companies would be permitted to record conversations taking place on equipment that is not provided by them.

This question also raises privacy and data protection issues. One of the matters that need to be considered is whether the introduction of recording requirements might lead to a situation where the employer can keep watch over the individual employee and the way he is conducting his daily business, via the monitoring of employees and equipment. Will the company be able to observe if an employee is talking on a phone not provided by the company, and if that is the case, what would then happen?

MIFID COMPLEX VS. NON COMPLEX FINANCIAL INSTRUMENTS FOR THE PURPOSES OF THE DIRECTIVE'S APPROPRIATENESS REQUIREMENTS

Question 21: Do you have any comments about CESR's analysis and proposals as set out in this Chapter?

As mentioned in CESR's consultation, « *It should always be required to establish whether the client has the necessary knowledge and experience to understand the risks, regardless of whether the financial instrument is complex or non-complex* ».

UNI Europa Finance considers consumer protection as of utmost importance. It should always be ensured that the consumer is provided with the necessary knowledge and has sufficient experience to understand the risks, no matter if the financial instrument is a complex or a non-complex one.

UNI Europa Finance believes that creditworthiness and/or suitability assessments should always be performed before granting consumer any financial product. The consumer shall be obliged to provide all relevant information and employees must be provided the right skills to ensure this sort of control.

In order to ensure a high quality of advice given to the consumers, employees from the financial services sector should be given the time and the opportunity to transfer their knowledge and experience. UNI Europa would like to emphasize that the recent financial crisis has been an unpleasant reminder of the major problem that inappropriate sales practices constitute in the financial sector. The use of excessive sales targets and incentive structures exclusively rewarding sales of products increase the risks of products being sold to customers, which they do not want or even cannot afford.

These remuneration practices put the employee in a stressful dilemma between selling products and giving good advice to customers. It also contributes to bad working conditions and high levels of stress. And last but not least, these practices play a major systemic role in risk management and are a potentially destabilising factor in financial markets. Such situation is counterproductive and detrimental both for employees in the finance sector and vis-à-vis consumer protection.

UNI Europa Finance is aware of complaints from consumers and investors, who have been proposed financial products that were not suitable to their needs or capacities and have at last suffered from it. As the European organisations of finance workers, we have abundant examples of predatory sales practices, in virtually any financial institution and country in Europe.

It leads to another major issue in this context: training and qualified advice. UNI Europa Finance considers that the quality of services to the consumers highly depends on the level and content of training of employees. A competent and sufficient personnel is the key to success and leads to a much fairer and more sustainable financial service sector. Adequate and continuous training of employees should be ensured in order to keep up

with the rapid innovation and increasing complexity of the financial products they sell, in particular in terms of the implication for consumers.

Regarding the categorization of products as being 'complex' or 'non-complex', it should not mean that an introduction of basic and easy-to-understand products would lead to a creation of layers, where consumers interested in simplified products would be left to conduct their own business, while the industry would focus on more 'qualified' consumers from whom it may reap benefits.

UNI Europa Finance welcomes CESR's opinion to consider any type of share that embeds a derivative, including convertible and callable shares, as 'complex' for the purpose of the appropriateness test.

However, UNI Europa Finance considers that the definition of a 'complex' and a 'non-complex' financial instrument should be clarified. This could be challenging when new products are invented

SUPERVISION OF TIED AGENTS

Question 26: Do you agree with the proposed amendments to Article 23, 31, 32 of MiFID?

CESR believes that the article 23 should be amended, so as to transform the discretion allowing investment firms authorised in their jurisdiction to appoint tied agents into a rule in order to ensure a level playing field across the EEA.

UNI Europa Finance is of the view that such amendment would strengthen investor protection, *« as there would be public register for tied agents in each EEA country »*, according to CESR. UNI Europa Finance thus strongly supports CESR's proposal.

Furthermore, CESR considers in its consultation paper that the *« home competent authority should be obliged to transmit the identity of any tied agents acting cross border to the host authority, which should then disclose the information to the public »* (Article 31).

UNI Europa Finance supports CESR's views in terms of information disclosure regarding the identity of tied agents acting cross border. Such proposal would enhance investor protection through better transparency as they would be capable of checking with their regulator whether the person/firm they are dealing with is truly a tied agent.

Finally, CESR refers in its consultation to level-playing field issues between tied agents of investment firms and tied agents of credit institutions. It considers that those issues need to be tackled by the European Commission *« by requiring that the same notification procedures apply to tied agents acting on behalf of credit institutions providing investment services, as those applying to tied agents of investment firms »*.

UNI Europa Finance considers that these issues need to be tackled as well, as it creates a situation in which investors do not have full access to details of all tied agents operating in their Member States. Thereby, their protection is affected and cannot be guaranteed. Ensuring full access to these details would promote markets transparency.

UNI Europa Finance considers transparency and clarity as key factors to ensure a true protection of consumers and a reinforcement of investor protection in the financial services sector. Improving the quality of information is a necessity.

MiFID OPTIONS AND DISCRETIONS

Question 28: Do you agree with the suggested deletions and amendments to the MiFID texts proposed in this chapter?

MiFID and its implementing measures include 41 discretions, allowing Member States to implement non-harmonised requirements at national level.

As mentioned in CESR's consultation paper, it is considering whether to propose an amendment of the MiFID text in order to transform such discretions into a rule, requiring all Member States to allow competent authorities to have the power to require certain information from all investment firms with branches within their territories, for statistical and supervisory purposes.

In order to improve investor protection, UNI Europa Finance considers that it should be ensured that competent supervisory authorities are empowered with satisfactory capacities to gather information on the activities performed by investment firms within their territory, irrespective of their status as a branch or established home Member State firm and to have a wider perception of the market as a whole.

UNI Europa Finance thus strongly supports the idea of amending the MiFID text and transforming discretions into a rule.