



**EUROPEAN COMMISSION**

Directorate General Internal Market and Services

FINANCIAL SERVICES POLICY AND FINANCIAL MARKETS  
**Securities markets**

Brussels,  
 MARKT G3 SG/bc Ares D (2010)

Mr Simon Mansell  
 MD – Temple Bar IFA  
 E-mail: s.mansell@templebar.co.uk

Dear Sir,

I refer to your email dated 6<sup>th</sup> December 2010 sent to Commissioner Barnier. The Commissioner has asked me to answer on his behalf.

In your e-mail you refer to the adoption of the “Retail distribution review” (RDR) in the UK. You mention that the requirements of the RDR would not apply to advisers providing services from Member States other than the UK and you express concerns over the legality of the RDR, since it would introduce requirements which are super-equivalent to comparable provisions in Directive 2004/39/EC (MiFID).

The MiFID harmonises the regulatory framework concerning the provision of investment services across the European Union. Article 4 of the Commission Directive 2006/73/EC Implementing MiFID provides that a Member State may retain or impose additional requirements on firms providing investment services, subject to a number of conditions. This includes the need to address specific risks which are of particular importance for the market structure of that Member State. **Another condition is that any additional requirements shall not affect the rights of investment firms providing services in that Member State on the basis of an authorisation granted by another Member State.**

In September 2007, the United Kingdom formally notified the Commission of its intention to retain certain requirements concerning the provision of investment advice, including “independent” advice, and the use of dealing commissions. This notification has been updated in March, 2010 and, in line with Article 4 of Directive 2006/73/EC, it has been accompanied by detailed justifications relating to the situation on the national market<sup>1</sup>.

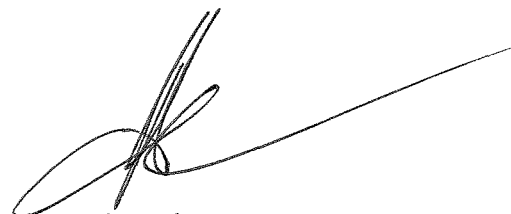
You also mention the area of professional qualifications, notably the prescription of criteria for competence for advisers. Concerning this aspect, Recital 13 of Directive 2006/73/EC clarifies that the organizational requirements established under MiFID are without prejudice to systems established by national law for the registration of individuals working within investment firms. As a consequence the MiFID does not

<sup>1</sup> Notifications from Member States under Article 4 of Directive 2006/73/EC may be found at the following address: [http://ec.europa.eu/internal\\_market/securities/isd/mifid\\_implementation\\_en.htm](http://ec.europa.eu/internal_market/securities/isd/mifid_implementation_en.htm)

harmonise the conditions for accessing a position in the financial industry and, thus, it allows Member States to opt for a flexible approach or to establish recruitment conditions in the form of registration, exams and similar (as recognised by recital 13). On the other hand, any such regimes should not be used as a tool for impeding the access to the profession by residents in other Member States; in this respect, it is worth to recall that the regulation and recognition of professional qualifications for regulated profession is governed by the provisions of the Directive 2005/36/EC on the recognition of professional qualifications.

Finally, please allow me to recall that the Commission is in the process of reviewing Directive 2004/39/EC. You can find the relevant consultation document at the following address and we encourage you to contribute to the consultation: [http://ec.europa.eu/internal\\_market/consultations/2010/mifid\\_en.htm](http://ec.europa.eu/internal_market/consultations/2010/mifid_en.htm). The Commission will continue pursuing the objective of a harmonized regulatory framework, where possible and appropriate, both in the context of the relevant sectoral directives and through the establishment of three new authorities at EU level (European Banking Authority, Securities and Markets Authority and Insurance and Occupational Pensions Authority)<sup>2</sup>.

Yours sincerely,



Maria Velentza  
Head of Unit

Contact:

Salvatore Gnoni, [salvatore.gnoni@ec.europa.eu](mailto:salvatore.gnoni@ec.europa.eu), tel. +32 2 2984697

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<sup>2</sup> You can find the legislative acts establishing the new Authorities at the following address: <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2010:331:SOM:EN:HTML>