 Regulatory Policy Committee	Opinion	
Impact Assessment (IA)	Markets in Financial Instruments Directive (MiFID) 2	
Lead Department/Agency	HM Treasury	
Stage	Consultation	
IA Number	Not provided	
Origin	European	
Expected date of implementation	3 July 2016 (SNR 12)	
Date submitted to RPC	26 March 2015	
RPC Opinion date and reference	15 May 2015	RPC15-HMT-2309(2)
Overall Assessment	GREEN	
<p>RPC comments</p> <p>The IA is fit for purpose. The impact assessment has been improved since the RPC's previous opinion. In particular, HM Treasury has now provided significantly more information in its impact assessment to explain the various requirements of the Directive and what will need to be transposed into UK law. HM Treasury has used estimates of the cost of the proposal drawn from the European Commission's impact assessment, making a number of assumptions to determine the proportion of the costs and benefits of the proposal that will fall on UK businesses. These assumptions should be tested with stakeholders at consultation. In particular, HM Treasury should use the consultation to gather more evidence to strengthen the assumptions made about the likely UK portion of the total EU costs of the proposals.</p> <p>HM Treasury has explained how businesses will be affected by the requirements of the Directive. It should use the consultation period to test the assumptions that have been made to assess the breakdown of costs to business that will arise as a result of transposition, and the costs to business arising from changes that will be made to FCA rules to meet the requirements of the Directive.</p>		
<p>Background (extracts from IA)</p> <p>What is the problem under consideration? Why is government intervention necessary?</p> <p><i>"The UK is required, as a matter of EU law, to transpose the Markets in Financial Instruments Directive 2 ("MiFID 2") by 3 July 2016; it will broadly come into effect on the 3 January 2017. The Markets in Financial Instruments Regulation ("MIFIR") will be binding on the UK from this date. As with other EU financial services legislation, MiFID 2 will be implemented in the UK through a combination of secondary legislation and FCA rules. The Government will consult on the technical drafting of</i></p>		

the secondary legislation, including (separately) secondary legislation that ensures certain binary options are regulated and supervised by the FCA rather than the Gambling Commission and the MiFID 2 third country regime.”

What are the policy objectives and the intended effects?

“The policy objective is to implement MiFID 2 so as to comply with UK requirements under EU law. The intended effect of the consultation is to enable industry and legal experts to comment on the draft legislation and to give stakeholders an opportunity to provide the Government with further submissions regarding the MiFID 2 third country regime and to ensure that binary options are appropriately regulated in accordance with MiFID and UK legislation.”

Identification of costs and benefits, and the impacts on business, civil society organisations, the public sector and individuals, and reflection of these in the choice of options

HM Treasury proposes to consult on its transposition of the requirements of the second iteration of the EU Markets in Financial Instruments Directive (MiFID 2). This includes consulting on opting out of the MiFID 2 third country regime and classifying binary options as “financial instruments” (rather than as “bets” currently) to be regulated by the FCA, in accordance with the Directive. HM Treasury explains that this Directive was introduced to take account of the evolution of financial markets since MiFID. The Directive strengthens the framework for the regulation of markets in financial instruments, including where trading in such markets takes place over-the-counter. The new provisions of MiFID 2 will:

- strengthen investor confidence;
- reduce the risks of market disorder;
- reduce systemic risks; and
- increase the efficiency of financial markets and reduce unnecessary costs for participants.

HM Treasury explains that the proposal imposes costs primarily on investment firms:

- one-off compliance costs of between approximately £160 million and £229 million in 2015 and 2016; and
- ongoing costs of between approximately £98 million and £184 million from 2017 onwards.

HM Treasury has provided significantly more information in its impact assessment to explain the various requirements of the Directive and what will need to be transposed into UK law. The costs identified by HM Treasury relate to transposing the numerous requirements – the one-off and ongoing administrative costs are expected to relate to the transparency and reporting obligations placed on business, operating requirements and investor protection requirements of the Directive. HM Treasury’s best estimate of the estimated equivalent annual net cost to business is approximately £105 million.

Robustness of the assumptions to determine the costs to business. HM Treasury draws on the European Commission's impact assessment to determine the proportion of costs that will be imposed on UK businesses. HM Treasury explains that the European Commission estimates that the Directive will impose one-off costs of between €512 million and €732 million, and ongoing costs of between approximately €184 million and €264 million, on business. HM Treasury has apportioned 36% of this cost to UK business. It explains in its impact assessment that it has used the estimate of the UK's share of European wholesale financial markets from the Government's report on the review of the balance of competences between the UK and EU on Financial Services and the Free Movement of Capital (2014). As the Commission's estimates are in Euros, HM Treasury has applied an exchange rate conversion of £0.87 to €1 on the basis of the prevailing rate on the date of publication of the Commission's impact assessment. This appears reasonable.

HM Treasury has made a number of assumptions to determine the estimates of the costs and benefits of the proposal, which should be tested with stakeholders during consultation. For example, although the Directive covers retail as well as wholesale financial services, HM Treasury's estimate of the cost of the proposal relies solely on the UK share of the European wholesale market. HM Treasury explains that this approach has been taken because of a lack of sufficient data. HM Treasury should use the consultation to gather more evidence to strengthen the assumptions made about the likely UK portion of the total EU costs of the proposals.

In addition, HM Treasury should use the consultation to gather evidence on the breakdown in costs to business that will arise as a result of the legislative changes being made by HM Treasury in transposing the Directive, and the costs to business arising from changes that will be made to FCA rules to meet the requirements of the Directive. As the FCA is financed by industry, these costs should also be included in the EANCB calculation.

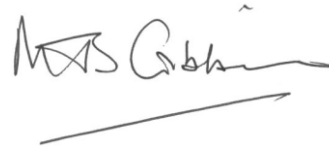
Comments on the robustness of the Small & Micro Business Assessment (SaMBA)

The proposal is EU in origin. A SaMBA is, therefore, not required.

Comments on the robustness of the OITO assessment.

The proposal is of European origin. There is no evidence that the increase in regulation would go beyond minimum requirements of the Directive or of a failure to take advantage of available derogations that would reduce the costs to business. It is therefore out of scope of One-in, Two-out, in accordance with the Better Regulation Framework Manual (paragraph 1.9.8. ii). To support balanced reporting of overall EU burdens in the Statement of New Regulation, the final stage IA should include an estimated equivalent annual net cost to business figure, with supporting evidence, for RPC validation.

Signed

A handwritten signature in black ink, appearing to read "Michael Gibbons". The signature is written in a cursive style with a long horizontal stroke at the end. There is a small mark above the "i" in "Gibbons".

Michael Gibbons, Chairman