



Directive 2014/65/EU and Regulation (EU) No 600/2014

MiFID II/ MiFIR

& MiFID Delegated Directive

These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union

DG FISMA, Securities Markets Unit
9 April 2019

Legal Framework

The Markets in Financial Instruments Directive

Directive 2014/65/EU – MIFID II

The Markets in Financial Instruments Regulation

Regulation (EU) 600/2014 - MIFIR

Commission delegated acts

Conditions and empowerments listed under Article 89

Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITSs)

The list of delegated and implementing acts can be found here:
https://ec.europa.eu/info/law/markets-financial-instruments-mifid-ii-directive-2014-65-eu/amending-and-supplementary-acts/implementing-and-delegated-acts_en

MIFID II: main objectives

- **Close loopholes** and achieve more efficient markets by shifting trade on to multilateral and transparent platforms in line with G20 consensus
- Improve oversight and transparency of **commodity derivative markets to ensure their function for hedging and price discovery**
- Ensure fair competition and **efficient markets**
- Updates required in light of developments in **market structures and technology**
- Raise **investor protection** in specific areas to support confidence
- Increase supervisory convergence across the single market and harmonise third country regime;
- **Improve capital markets to the benefit of the real economy**

Key achievements

Scope:

Transparency
Algorithmic trading/HFT
Commodities

Market Structure:

OTF
Trading obligation for derivatives / shares
SME Growth Markets

Investor protection:

Cost disclosures
Inducements
Safeguarding of Client assets

Key Elements of the Framework

1. Market Structure

- **OTF:** The introduction of a new multilateral trading venue, the Organised Trading Facility (OTF), for non-equity instruments to trade on an organised multilateral trading platform ensures a level playing field with Regulated Markets and Multilateral Trading Facilities.
- **Trading Obligation:** Introduction of a trading obligation for derivatives that are eligible for clearing under EMIR and that are sufficiently liquid. Trading obligation for shares and obligation for multilateral systems on equities to be authorised as MTFs.
- **SME Growth Market**

2. Transparency – improve quality of data

- **Scope extended to cover non-equity instruments**,
i.e. shares, depositary receipts, exchange traded funds,
certificates and similar instruments (considered equity-like
instruments) and bonds, structured finance products,
emission allowances and traded derivatives (the
non-equity instruments).
Applies to financial instruments that are admitted to
trading or traded on a trading venue.
- **Increases Equity market transparency**
Introduction of a double volume cap mechanism which limits
the use of reference price waivers and negotiated price
waivers.
Large in scale waivers and order management waivers
continue to exist.

3. Investor protection

- **Better organisational requirements:**
 - Strengthened role of management bodies,
 - client asset protection and
 - product governance.
- **Strengthened conduct rules:**
 - extended scope for the appropriateness tests and
 - reinforced information to clients.

4. Scope: Algorithmic trading/High Frequency Trading

- Trading controls to ensure that trading systems can meet the challenges of technological development.
- High frequency trading must not be allowed if it undermines the stability of the systems;
- Emphasis on the individual responsibility of the traders themselves introducing market making obligations.

5. Scope: Commodities (G20)

- **Exemptions:** have been reduced (same activity, same requirements).
- **Position limits:** Strengthened supervisory powers and a harmonised position-limits regime for commodity derivatives to improve transparency, support orderly pricing and prevent market abuse.
 - Position-reporting obligation by category of trader.
 - Methodology further specified in Commission Delegated Regulation (EU) 2017/591 (RTS 21)

6. Non-discriminatory access

- Establishment of a harmonised EU regime for non-discriminatory access to trading venues, CCPs and benchmarks used for trading and clearing.
- Allows for enhanced competition and more effective and stable capital markets for the benefit of investors.

7. Sanctions and supervisory powers

- Effective and harmonised administrative sanctions.
- Strengthened cooperation between authorities.
- Intervention powers for competent authorities and ESMA to prohibit or restrict the marketing and distribution of certain financial instruments in well-defined circumstances.

9. Third country regime

- Harmonised EU-wide regime for granting access to EU markets for firms based in third countries
- Applies only to the cross-border provision of investment services and activities provided to professional and eligible counterparties.
- Requires the adoption of an equivalence decision by the Commission following of the assessment of third country jurisdictions.
- For three years after the equivalence decision is made, Member States are allowed to apply national rules for provision of services and activities by third country investment firms.

MiFID Delegated Directive

Directive supplementing the MiFID II Directive regarding the safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits (inducements)

Structure and obligations under the directive

Rules apply to investment firms, and to management companies as further defined under the Undertakings for the Collective Investment in Transferable Securities (UCITS) and the Alternative Investment Fund Managers' (AIFMD) Directives

Rules covering

Safeguarding of client financial instruments and funds

Product governance requirements

Inducements (the rules with which an investment firm has to comply when providing or receiving fees, commissions or any monetary or non-monetary benefits).

Thank you for your attention

DG FISMA / Unit C3 securities markets

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