



INTERNATIONAL  
HELLENIC  
UNIVERSITY

**"The impact of the EU legal  
framework in investment  
services on the functioning  
of financial markets:  
Analyzing MiFID II and  
MiFIR"**

**Anastasia Katsaiti**

**SCHOOL OF ECONOMICS, BUSINESS ADMINISTRATION & LEGAL STUDIES**

A thesis submitted for the degree of

***Master of Laws (LLM) in Transnational and European Commercial law,  
Banking Law, Arbitration/Mediation***

February 2019

Thessaloniki – Greece

Student Name: Anastasia Katsaiti  
SID: 1104170014  
Supervisor: Prof. Thomas Papadopoulos

I hereby declare that the work submitted is mine and that where I have made use of another's work, I have attributed the source(s) according to the Regulations set in the Student's Handbook.

February 2019  
Thessaloniki - Greece

## **Abstract**

This dissertation was written as part of the Master of Laws (LLM) in Transnational and European Commercial law, Banking Law, Arbitration/Mediation at the International Hellenic University.

It introduces the changes brought about by the MiFID II/MiFIR legislative regime which aims to create a more efficient, transparent and integrated Financial Market that will bring the EU closer to its goal regarding the Single European Market, a target which inspires the writer to elaborate on firstly the path to be followed until its adoption, referring to the ISD, the subsequent adoption of the FSAP and the Lamfalussy legislative process, and on how they contribute to the adoption of the MiFID I; secondly on the MiFID I, which was the first complete legal regime to pursue the above goal and lay the foundations for the MiFID II/MiFIR; and third on the MiFID II/MiFIR legislative regime which is a creation/outcome of the technological development and the financial crisis of 2008, analyzing the key changes that were introduced on the market structure and transparency, on the level of investor protection, on how it adapted to the technological developments and on the strengthening of the supervisory authorities' powers, finally quoting hers (the writer's) thoughts & suggestions on the MiFID's II/MiFIR's development & on its current effect.

At this point, I would like to thank my supervisor Professor Thomas Papadopoulos, a truly charismatic and inspirational professor, whose advice was valuable for completing my work and with whom it would be an honor to cooperate in the future.

I would also like to thank my fellow students, already friends, for a remarkable cooperation and of course my University for its contribution throughout my studies.

Last but not least, I am also very grateful to my friends, brother and parents, for the strength and encouragement they offered throughout my entire effort and for constantly supporting me towards achieving my goals.

Keywords: ISD, MiFID I, MiFID II, MiFIR

Anastasia Katsaiti  
10.2.2019



## Preface

In order to navigate within the concept of the Financial System, namely in one market of it, the Capital Market, where investments in financial instruments are taking place, and where there is a constant desire to harmonize the rules on the provision of investment services in order to achieve the protection of investors throughout the whole investment process, but also to maintain the stability and orderly functioning of the market, it is crucial to get to know and understand the function of the Financial System and why it is so important that it remains stable, organized and subjected to rules.<sup>1</sup> In a well-established Financial System, all participants should co-exist harmoniously so that the market fulfills its function, which is the distribution of capital into profitable investments and the assignment of the risk of these investments to those who can bear it.<sup>2</sup> Therefore and in order to fulfill this without jeopardizing the orderly operation of the market, unsettling investor protection and market competition or adversely affecting third parties, the adopted rules should serve the enhancing of market stability and competitiveness, prevent systemic risk and strengthen investor protection, having market efficiency and integration as the ultimate goal.<sup>3</sup> Only in this way will social and economic prosperity be achieved, which is a primary objective of a sound Financial System, which is an essential public good.<sup>4</sup> Therefore regulatory intervention should lie with the competent authorities without being a product of the market itself, as there is always a risk in the case of self-regulation that financial interests override the proper functioning of the market towards the detriment of investors.<sup>5</sup> So, in the context of globalization, the unification of the adopted rules is pressing more and more to facilitate cross-border trading, which results in profits but also risks for those who are not well established so as to set

---

<sup>1</sup> Christos Gkortsos, Introduction to International Financial Law – The International Banking Law within the System of International Financial Law (Nomiki Bibliothiki, 2011), p. 58

<sup>2</sup> Chlistalla, Michael and Schweickert, Uwe and Wittner, Roland, Markets in Financial Instruments Directive - The Way Forward in European Securities Market Integration? (2006), p. 4, Available at SSRN <<https://ssrn.com/abstract=964492>>, accessed 8 February 2019

<sup>3</sup> Ibid, pp. 4-5

<sup>4</sup> Sol Picciotto, Regulating Global Corporate Capitalism (Cambridge University Press, 2011), p. 288

<sup>5</sup> Iain G Macneil, An Introduction To The Law On Financial investment (Oxford and Portland, Oregon, 2005), p. 45

forward safe investments. So, in order to promote this cross-border trading, an entire multi-participant system is created, which undertakes to serve the investor by bringing him/her in contact with the holders of the financial instruments he/she wants to invest on.

## Contents

<b>ABSTRACT .....</b>	<b>III</b>
<b>PREFACE.....</b>	<b>I</b>
<b>CONTENTS.....</b>	<b>III</b>
<b>TABLE OF ABBREVIATIONS.....</b>	<b>1</b>
<b>I. INTRODUCTION .....</b>	<b>3</b>
<b>II. TOWARDS THE SINGLE MARKET FOR INVESTMENT SERVICES AND ACTIVITIES .....</b>	<b>5</b>
<b>II. A BRIEF LOOK AT MIFID I .....</b>	<b>9</b>
1. INTRODUCTION .....	9
2. MARKET STRUCTURE.....	10
3. INVESTOR PROTECTION.....	11
4. MARKET TRANSPARENCY .....	13
5. MIFID'S IMPACT AND THE NEED FOR ITS REFORM .....	14
<b>III. THE NEW REGULATORY REGIME: MIFID II AND MIFIR .....</b>	<b>17</b>
1. INTRODUCTION .....	17
2. KEY CHANGES INTRODUCED BY MIFID II AND MIFIR.....	19
2.1. MARKET STRUCTURE.....	19
2.1.1. <i>Trading Obligation for shares and derivatives.....</i>	<i>19</i>
2.1.2. <i>A new trading venue: The Organised Trading Facility.....</i>	<i>21</i>
2.1.3. <i>SME Growth Market .....</i>	<i>23</i>
2.2. MARKET TRANSPARENCY .....	24
2.2.1. <i>Pre-trade and post-trade transparency obligations .....</i>	<i>25</i>
2.2.2. <i>Transaction Reporting .....</i>	<i>26</i>
2.2.3. <i>Dark Pools .....</i>	<i>28</i>
2.2.4. <i>Consolidated Tape Provider .....</i>	<i>29</i>
2.3. INVESTOR PROTECTION.....	30
2.3.1. <i>Rules of Conduct .....</i>	<i>31</i>
2.3.2. <i>Distinction between independent and non-independent advice.....</i>	<i>33</i>

2.3.3. <i>Ban inducements in the case of independent advice and portfolio management</i> .....	34
2.3.4. <i>Product Governance</i> .....	35
2.4. ELECTRONIC TRADING .....	37
2.4.1. <i>High Frequency Trading</i> .....	37
2.5. THE POWERS OF SUPERVISORY AUTHORITIES .....	39
2.5.1. <i>The product intervention power granted to NCAs, ESMA and EBA</i> .....	40
2.5.2. <i>Position Limits on commodity derivatives</i> .....	42
<b>IV. CRITICAL APPRAISAL OF THE EVOLUTION OF THE LEGAL REGIME .....</b>	<b>45</b>
<b>V. CONCLUSIONS .....</b>	<b>49</b>
<b>BIBLIOGRAPHY .....</b>	<b>51</b>



## Table of Abbreviations

APA	Approved Publication Arrangement
ARM	Approved Reporting Mechanism
AT	Algorithmic Trading
CESR	Committee of European Securities Regulators
CTP	Consolidated Tape Provider
DVCM	Double Volume Cap Mechanism
EBA	European Banking Authority
EC	European Commission
EEA	European Community Area
EEOTC	Economically Equivalent Over-The-Counter
ESAs	European Supervisory Authorities
ESMA	European Securities and Markets Authority
EU	European Union
FSAP	Financial Services Action Plan
HFT	High Frequency Trading
ISD	Investment Services Directive
MiFID I	Markets in Financial Instruments Directive I
MiFID II	Markets in Financial Instruments Directive II
MiFIR	Markets in Financial Instruments Regulation
MTF	Multilateral Trading Facility
NCA	National Competent Authorities
OTC	Over-The-Counter
OTF	Organized Trading Facility
RM	Regulated Market
SI	Systematic Internaliser
SMEs	Small and medium-sized enterprises

## I. Introduction

Since the establishment of the European Union (EU), its primary objective, also reflected in the EU business regime, has been the creation of a Single and Integrated Pan-European Capital Market, which forms part of the Single European Market.<sup>6</sup> To achieve this, an indispensable condition was the unrestricted and free movement of capital and services, two of the four fundamental principles enshrined in the Treaty establishing the European Community.<sup>7</sup> For this reason, since the 1960s, there has been a tendency of the EU to remove all regulatory barriers that existed until then and to create legislation that would promote a developed and economically strong Securities Market, which would facilitate the rise of capital across the EU and the provision of investment services and trading of financial products cross-border.<sup>8</sup>

In this dissertation, the way the EU has followed towards this integration will be presented, from the initial Investment Services Directive (ISD), to the adoption of the Financial Services Action Plan (FSAP), which reflects the EU's general policy towards a single financial services market and regarding the new Lamfalussy legislative process, which has helped the regulators move smoothly from theory to practice. Next, the Markets in Financial Instruments Directive (MiFID I), a creation of the FSAP and the Lamfalussy approach, and its key points, accompanied by observations on the new market landscape, will be presented. This is a prerequisite for developing the central theme of this dissertation, the Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR), which are an upgrading of MiFID I, with basically the same legal justification but adapted to the shortcomings that emerged during the implementation of the first, mainly due to the 2008 financial crisis, but also to the rapid technological advancements, which call for the according legal provisions. MiFID II/MIFIR, which aimed at greater transparency of transactions, strengthening investor protection and the role of supervisors, is

---

<sup>6</sup> Iain G Macneil, *An Introduction to The Law On Financial investment* (Oxford and Portland, Oregon, 2005), p. 45

<sup>7</sup> European Union, *Consolidated Versions of the Treaty on European Union and of the Treaty Establishing the European Community*, OJ C 325/2002, art. 49 and 56 respectively

<sup>8</sup> Nathalie Aubry and Michael McKee, *MiFID: where did it come from, where is it taking us?* (2007) 22 (4) *Journal of International Banking Law and Regulation*, pp. 1-2

presented as the medicine for the sick market. Then, some of the critical changes brought about by MiFID II/MiFIR, as selected by the writer, will be thoroughly and meticulously analyzed. Finally, the impact of the new regulatory regime on the market will be determined in its relatively short period of implementation, and some thoughts and suggestions will be given, in the writer's opinion, in order to conclude on whether MiFID II/MiFIR was finally worth daring and facing the risk. In closing, it must be emphasized that the dissertation does not intend to present the provisions of the legislation from a technical point of view as this would be impossible due to its huge volume, but to focus on the spirit of the legislation.

## II. Towards the Single Market for investment services and activities

Having the above as a guide, one of the very first attempts of the EU to reach an integrated Securities Market was in 1993, through the adoption of the ISD. Briefly, the three main innovations that the ISD brought were (a) the introduction of the concept of a 'European passport', with which an investment firm was able to access the market of others European Member States once it was authorised in one of them, being in this way able to operate and provide its services without becoming a subject to local approval by each Member State, since it was supervised by the domestic competent authorities,<sup>9</sup> (b) the ability of cross-border trading on an electronic basis for the regulated markets and (c) the adoption of common 'conduct of business' rules for investment firms,<sup>10</sup> creating cross-border, non-discriminatory and equitable competition between credit institutions and investment firms.<sup>11</sup> However, the shortcomings of the ISD, as it ceased to produce economic advantages and its contribution to integration was not satisfactory, became quickly perceptible and the necessity to adapt to the new structure of the market imperative.<sup>12</sup>

The decision to revise ISD has coincided with significant decisions on the future of the European Capital Market. The adherence to national interests and the protection of the national Securities Markets, the refusal of market participants to engage in a constructive dialogue, and the lack of understanding of modern Financial Markets, have been dealt with through a joint project, so that the to be revised and adopted rules really reflect a new era for the EU.<sup>13</sup> The year of 1999 is a milestone and the adoption of the FSAP came to disrupt the peace of the European Capital Market. This plan consisted of a series of legislative measures taken to eliminate legislative and

---

<sup>9</sup> Ryan J. Davies, *MiFID and a Changing Competitive Landscape* (2008), p. 3, Available at SSRN <<https://ssrn.com/abstract=1117232>>, accessed 8 February 2019

<sup>10</sup> Nathalie Aubry and Michael McKee, *MiFID: where did it come from, where is it taking us?* (2007) 22 (4) *Journal of International Banking Law and Regulation*, p. 2

<sup>11</sup> Emiliós Avgouleas, *EC Securities Regulation, A Single Regime for an Integrated Securities Market: Harmonized We Stand, Harmonized We Fail?* (2007) vol. 22 *Journal of International Banking Law and Regulation*, Part 1 & Part 2, p. 2

<sup>12</sup> Niamh Moloney, *EU Securities and Financial Markets Regulation* (3<sup>rd</sup> edn, Oxford EU Law Library, 2014), p. 330

<sup>13</sup> Emiliós Avgouleas, *A Critical Evaluation of the New EC Financial-Market Regulation: Peaks, Troughs, and the Road Ahead*, (2005) 18 *Transnat'l Law*, p. 181

regulatory gaps and remove obstacles<sup>14</sup> to the achievement of the two primary objectives of the FSAP, i.e. the integration of the Financial Market by harmonizing national rules, targeting a mutual recognition of national systems and activities throughout the EU and the regulation of the integrated market in general.<sup>15</sup> In order for the FSAP to be strengthened and its implementation more quickly achieved and in a successful manner as well, it was combined with the upgrading and improvement of the legislative process, by adopting the four-level approach, proposed by the Committee of Wise Men, under the chairmanship of Professor Lamfalussy, which was assigned to provide its opinion and recommendation on the issue.<sup>16</sup> This legislative process, known as the 'Lamfalussy approach' consists of:

- the first level, where a piece of legislation is adopted, in which the basic rules and principles are defined,
- the second level, where a detailed and technical clarification of the first level rules follows, in the form of implementing measures,
- the third level, where the regulatory authorities cooperate to ensure the prudent and continuous implementation of these standards and
- finally, the fourth level, under which the European Commission (EC) monitors the compliance of Member States with the EU legislation<sup>17</sup>.

In the case of the above procedure, there were doubts as to whether the competent law-making bodies were indeed defenders of the interests of the market players in each Member State,<sup>18</sup> which does not seem, anyway, to be the case, judging

---

<sup>14</sup> Peter Walker, *Observations on the MiFID* (2006) vol.1, no. 3 *Irish Business Law Quarterly*, p. 1

<sup>15</sup> Niamh Moloney, *Large-Scale Reform of Investor Protection Regulation: The European Union Experience* (2007) 4 *Macquarie Journal of Business Law*, p. 148

<sup>16</sup> Christian De Visscher, Olivier Maiscoq and Frederic Varone, *The Lamfalussy Reform in the EU Securities Markets: Fiduciary Relationships, Policy Effectiveness and Balance of Power* (2008) 28 *Journal of Public Policy*, p. 20

<sup>17</sup> *Ibid*, pp. 22-23

<sup>18</sup> *Ibid*, p. 39

by its extensive use in other areas too, such as banking and insurance,<sup>19</sup> thus concluding that it has indeed fulfilled its objective and has been effective and supportive of the market integration. Thanks to the FSAP and the new law-making process, the Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, known as MiFID I, was born, considered by many to be the 'constitutional law' of the European Union in the financial services market,<sup>20</sup> the main points of which I will present below, in the second chapter of this paper, as it will help understand the importance of the current legislative framework which arose after the MiFID's I revision.

---

<sup>19</sup> Emiliou Avgouleas, EC Securities Regulation, A Single Regime for an Integrated Securities Market: Harmonized We Stand, Harmonized We Fail? (2007) vol. 22 *Journal of International Banking Law and Regulation*, Part 1 & Part 2, p. 2

<sup>20</sup> Chlistalla, Michael and Schweickert, Uwe and Wittner, Roland, Markets in Financial Instruments Directive - The Way Forward in European Securities Market Integration? (2006), p. 1, Available at SSRN <<https://ssrn.com/abstract=964492>>, accessed 8 February 2019



## II. A brief look at MiFID I

### 1. Introduction

MiFID I, which was applied by all members of the European Economic Area (EEA) since 30 April 2004 and has been implemented on the 1st of November 2007, replaced the earlier ISD and aimed to provide common and harmonized rules for the provision of investment services and activities across the EU. According to Recital 71 of MiFID I, its objective was the efficient operation of the European Financial System, which presupposes integrated financial markets that favour investor's protection according to common regulatory standards. As we can see, the basic principles on which it relied on are not far from those of its predecessor but in addition go a step further, by seeking the supra-national integration of the Securities Markets',<sup>21</sup> as I believe that even if a State is shaping a strong and efficient internal market, opening up its activities and operating outside can only be achieved if there is the necessary legislation that functions in a supportive way and creates a level playing field for all Member States. After all, competition is a driving force for development and economic growth.

To achieve its objective, the changes that MiFID I brought to the trading landscape of the EU were major, affecting many players of the Financial Market, mainly the investment firms and credit institutions, which had to adapt to the new rules. As far as its scope is concerned, it has expanded, covering new investment services and activities that would have the privileges granted by the 'European passport',<sup>22</sup> the concept of which has just been simplified and has expanded. It introduced as an investment service the operation of the Multilateral Trading Facilities and the provision of investment advice,<sup>23</sup> and covered the commodity and derivatives transactions, too.<sup>24</sup> To the above, as well as to the key changes that will be examined below, the technological revolution coupled with the increased cross-border trading

---

<sup>21</sup> Ibid, p. 3

<sup>22</sup> Michel Tison, *Financial Market Integration in the Post-Fsap Era* (2006), p. 6, Available at SSRN <<https://ssrn.com/abstract=901565>>, accessed 8 February 2019

<sup>23</sup> MiFID I, ANNEX I, Section A

<sup>24</sup> MiFID I, ANNEX I, Section C

and the appearance of alternative trading venues, the inadequate harmonisation of the ISD at national level and the lack of cooperation between the competent authorities, which is necessary for compliance with and enforcement of the rules, contributed in particular.<sup>25</sup>

Subsequently, the key changes introduced by MiFID I will be presented and divided into three categories, which are the ones that have experienced the greatest reforms, i.e. the reforms on the market structure, on the investor protection regime and on the transparency rules. After this, I will discuss the impact of MiFID I on Financial Markets and the main reasons that led to its later reform.

## **2. Market Structure**

Regarding the structure of the market, MiFID I imposed a new classification of trading services, aiming to increase competition, which was limited until then. These are the Regulated Markets (RMs), the Multilateral Trading Facilities (MTFs) and the Systematic Internalisers (SIs).<sup>26</sup> The term 'Regulated markets' was already known from the ISD and corresponds to the traditional stock exchanges, but the other two categories are put under the regulatory microscope for the first time. MTF is defined as 'a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract'<sup>27</sup> and an investment firm offering bilateral trading, so-called SI, was defined as 'an investment firm which, on an organized, frequent and systematic basis, deals on its own account by executing client orders outside a regulated market or an MTF'.<sup>28</sup>

In this way, the concentration rule that has been in force so far, namely trading orders to be executed only through the stock exchanges is abolished and the

---

<sup>25</sup> Emiliós Avgouleas, EC Securities Regulation, A Single Regime for an Integrated Securities Market: Harmonized We Stand, Harmonized We Fail? (2007) vol. 22 Journal of International Banking Law and Regulation, Part 1 & Part 2, p. 4

<sup>26</sup> Peter Gomber, Michael Chlistalla, MiFID - Catalyst for a new trading landscape in Europe? (2008), p. 1, Available at SSRN <<http://ssrn.com/abstract=1134763>>, accessed 8 February 2019

<sup>27</sup> MiFID I, art. 4, par. 1, (15)

<sup>28</sup> MiFID I, art. 4, par. 1, (7)

competition for order flow grows considerably among the new market players.<sup>29</sup> The acceptance of the MTFs as an investment service, which demonstrates the recognition of their benefits<sup>30</sup> and the ability of investment firms to internalize trades as SIs<sup>31</sup> has been driving forces to increase competition and liquidity.<sup>32</sup> However, there were also voices claiming that, under this regime, there was a risk of reducing the efficiency of the price formation process and that the liquidity would be fragmented, resulting in an increase in trading costs rather than in their desired reduction.<sup>33</sup> However, in my view, the entry of new players into the market, was a positive development as it offered new business opportunities, especially in the market of market data, where so far RMs have been dominated<sup>34</sup> and which had to redefine their position within the market to preserve their acquis, and last but not least, investors had more options for where to execute their orders, hence more likely to find the most appropriate investment service for them.

### **3. Investor Protection**

Investor protection is one of the most significant aims of MiFID I, as stated in Recital 31 and for this reason, the relationship between investor and investment firms is regulated by a set of rules, from its beginning to its end, covering all provided investment services.<sup>35</sup> MiFID's I major changes concern the 'conduct of business' regime, as reflected in articles 19-22 of MiFID I. Article 19 establishes an obligation for

---

<sup>29</sup> Ryan J. Davies, *MiFID and a Changing Competitive Landscape* (2008), p. 2, Available at SSRN <<https://ssrn.com/abstract=1117232>>, accessed 8 February 2019

<sup>30</sup> Christoph Kumpan, *Carrot and Stick - The EU's Response to New Securities Trading Systems* (2006) vol. 3, no. 4 *European Company and Financial Law Review*, p. 401

<sup>31</sup> Jean-Pierre Casey, Karel Lannoo, *The Mifid Revolution: A Policy View* (2006) vol. 7, no. 4 *Competition and Regulation in Network Industries*, p. 522

<sup>32</sup> Athanasios Panagopoulos, Ioannis Dokas, Thomas Chatzigagios, *The Main Effects of MiFID on European Capital Markets and European Integration* (2015) vol. 6, no. 5 *International Journal of Business Administration*, p. 53

<sup>33</sup> Peter Gomber, Michael Chlistalla, *MiFID - Catalyst for a new trading landscape in Europe?* (2008), pp. 21-22, Available at SSRN <<http://ssrn.com/abstract=1134763>>, accessed 8 February 2019

<sup>34</sup> Jean-Pierre Casey, Karel Lannoo, *The Mifid Revolution: A Policy View* (2006) vol. 7, no. 4 *Competition and Regulation in Network Industries*, p. 527

<sup>35</sup> Niamh Moloney, *Large-Scale Reform of Investor Protection Regulation: The European Union Experience* (2007) 4 *Macquarie Journal of Business Law*, p. 147

investment firms to act fairly towards investors, in accordance with the rules of marketing and the assessment of suitability or appropriateness, the obligation of 'knowing your client' with increased disclosure and reporting requirements as well,<sup>36</sup> which should be detailed and in a comprehensible form. Subsequently, article 21 establishes the best execution obligation, whereby investment firms should take 'all reasonable measures' to obtain 'the best possible result' for their clients, taking into account many parameters such as the price, cost, speed, probability of execution and settlement as well as the size and nature of execution, imposing at the same time on them the requirement to establish and implement an order execution policy. Finally, under article 22, investment firms have the duty to manage their clients' orders in such a way that they ensure their 'prompt, fair and expeditious' execution, in order to avoid conflicts of interest in relation to other client orders or even their own interests. These obligations, in order to be properly fulfilled, ought to be in line with the nature of each investor and the category to which they belong, that is 'professional', 'retail' and 'eligible counterparties', which are however not binding, since under certain criteria and conditions investors may apply for their 'registration' in another category.<sup>37</sup>

Some comments on the above are necessary. Initially, the purpose of the Directive is to protect investors systematically<sup>38</sup> and to strengthen their confidence in the Securities Markets. Indeed, investors' confidence, that the market is stable, can promote sustainable growth as they can entrust their capital to the market and deliver liquidity to it.<sup>39</sup> In this 'new' market, investors will have a voice and choice. Investment firms, which should operate in the interest of the investor, play also a significant role towards this. Moreover, the investor's informed choice is an important point within the new regime, but that is not enough.<sup>40</sup> This means that he/she should have the

---

<sup>36</sup> Niamh Moloney, *How to Protect Investors: Lessons from the EC and the UK* (Cambridge University Press, 2010), p. 209

<sup>37</sup> Kiran Karande, *MiFID Best Execution Benchmark* (2007), p. 7, Available at SSRN <<http://ssrn.com/abstract=982952>>, accessed 8 February 2019

<sup>38</sup> Kwangwook Lee, *Investor Protection in European Union: Post FSAP Directives and MiFID* (2009), p. 3, Available at SSRN <<https://ssrn.com/abstract=1339305>>, accessed 8 February 2019

<sup>39</sup> *Ibid*, p. 19

<sup>40</sup> Niamh Moloney, *Large-Scale Reform of Investor Protection Regulation: The European Union Experience* (2007) 4 *Macquarie Journal of Business Law*, p. 147

necessary education, so that he/she can evaluate and use the provided information properly.<sup>41</sup> All the above has been taken into account by the EU, which for the first time sets its target on retail investors and markets, seeking to strengthen them through its policy decisions.<sup>42</sup> This is simply justified by the fact that retail investors have less knowledge and experience than professionals. However, some drawbacks have also been observed, which mainly involve the best execution regime. Although it is up to each investment firm to formulate its own policy, thereby increasing competition and lowering costs for investors, however, the lack of clarity as to what is 'best execution' creates risk for investors thus restricting the possibility for them to exercise their bargaining power against firms which act monopolistically within the market.<sup>43</sup>

#### **4. Market Transparency**

Transparency is a key element in creating a sound and high-quality system. High transparency can contribute to better pricing, as the investors have a clear picture of all trading venues, reducing transaction costs, enhancing market efficiency, creating informed investors, and eliminating information asymmetries.<sup>44</sup> As regards the transparency rules, introduced by MiFID I, they have proved to be one of the most controversial issues, namely those concerning pre-trade transparency. As developed above, new trading venues have been set up, that will have to comply with the transparency rules. Regarding RMs and MTFs, which have a quite similar function, they are subject to the same pre- and post-trade transparency obligations. As for the pre-trade transparency, they are obliged to 'make public current bid and offer prices'<sup>45</sup> and as regards post-trade transparency to publish 'the price, volume and time' of

---

<sup>41</sup> Niamh Moloney, *How to Protect Investors: Lessons from the EC and the UK* (Cambridge University Press, 2010), p. 375

<sup>42</sup> Niamh Moloney, *Large-Scale Reform of Investor Protection Regulation: The European Union Experience* (2007) 4 *Macquarie Journal of Business Law*, p. 147

<sup>43</sup> Kwangwook Lee, *Investor Protection in European Union: Post FSAP Directives and MiFID* (2009), p. 17, Available at SSRN <<https://ssrn.com/abstract=1339305>>, accessed 8 February 2019

<sup>44</sup> Christoph Kumpan, *Carrot and Stick - The EU's Response to New Securities Trading Systems* (2006) vol. 3, no. 4 *European Company and Financial Law Review*, p. 394

<sup>45</sup> MiFID I, art.29, par. 1 and art. 44, par. 1

transactions carried out in their systems, but only in respect of shares that are admitted to trading on a RM.<sup>46</sup> However, the main problem has arisen regarding the pre-trade transparency obligations imposed on SIs, for which a quite strict regime finally was applied.<sup>47</sup> SIs were obliged 'to publish a firm quote in those shares admitted to trading on a regulated market for which they are systematic internalisers and for which there is a liquid market'<sup>48</sup> and only when they are dealing for sizes up to standard market size. This, however, exposes them to the risk of their competitors' strategy and development policy, since they must publish each offer although they trade on their own account.<sup>49</sup>

To conclude, these provisions were very detailed and complex, which creates further difficulties, but undoubtedly transparency is crucial as it contributes to a better price formation and increases liquidity.<sup>50</sup> It also creates new business opportunities as appropriate backup systems should be created for this whole amount of information.<sup>51</sup> The biggest short story, however, in my opinion, is that they only apply to equities, leaving other equally important markets outside the regulatory framework, and so this fact either acts as an obstacle for those who want to invest in them but fear the unknown or interacts positively if they seek more 'private' transactions without leaking details regarding them.

##### ***5. MiFID's Impact and the need for its reform***

After three years of implementation, it was judged by the EC that in general the Directive was successful and introduced many and significant changes. It established the freedom of financial intermediaries to do business in all Member States, based on the authorization of the State in which they operated and increased the competition

---

<sup>46</sup> MiFID I, art. 30, par. 1 and art. 45, par. 1

<sup>47</sup> Niamh Moloney, Financial market regulation in the post-Financial Services Action Plan era (2006) vol. 55, no. 4 International & Comparative Law Quarterly, p. 990

<sup>48</sup> MiFID I, art. 27, par. 1

<sup>49</sup> Christoph Kumpan, Carrot and Stick - The EU's Response to New Securities Trading Systems (2006) vol. 3, no. 4 European Company and Financial Law Review, p. 405

<sup>50</sup> Ryan J. Davies, MiFID and a Changing Competitive Landscape (2008), p. 6, Available at SSRN <<https://ssrn.com/abstract=1117232>>, accessed 8 February 2019

<sup>51</sup> Ibid, p. 6

between the trading venues, by eliminating the 'concentration' rule, the cost at the expense of investors decreased, as well as the time of their transactions, while the transparency, at least at the equity market improved.<sup>52</sup> Investors had new trading opportunities across the EU, and similar business opportunities were held by other market participants, such as the providers of clearing services and of market data.<sup>53</sup>

However, legislative loopholes have emerged, stemming not only from the 2007 financial crisis, but also from the market developments and rapid technological evolution, with which legislation must go hand in hand. Indicatively, some of the dark points of the post-MiFID I era must be mentioned.

Initially, the new challenges and benefits introduced by the Directive were not diverted to the final recipients, the investors.<sup>54</sup> Additionally, the entry of the new trading venues brought competition but also led to market fragmentation, reducing part of its transparency due to the difficulty of collecting transaction data from them.<sup>55</sup> In addition, there was a strong need to create an upgraded post-trade transparency regime and to extend the transparency rules to cover other instruments, hence markets, too.<sup>56</sup> Significant changes have also been made in the derivatives market, which has largely developed but remained under an incomplete and turbulent regulatory framework.<sup>57</sup> In addition, the financial crisis has affected the way in which many financial instruments are negotiated, and technological development has created new ones, more complex, which posed a threat even to the most well-

---

<sup>52</sup> European Commission, Public Consultation, Review of the Markets in Financial Instruments Directive (MiFID), Directorate General Internal Market and Services, Financial Services Policy and Financial Markets, Securities markets, 8 December 2010, pp. 5-6

<sup>53</sup> Ibid

<sup>54</sup> European Commission, Proposal for a Directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (Recast), Brussels, 20.10.2011, COM/2011/0656 final - 2011/0298 (COD), Explanatory Memorandum, p. 2

<sup>55</sup> Ibid

<sup>56</sup> Eddy Wymeersch, The Reforms of the European Financial Supervisory System: An Overview (2010) vol. 7, no. 2 European Company and Financial Law Review, p. 242

<sup>57</sup> Ibid

informed investors.<sup>58</sup> At the same time, technology has undermined and rendered unnecessary certain provisions and has highlighted the need to adjust them, covering, for example, electronic trading and high frequency trading (HFT), which should be immediately regulated and supervised.<sup>59</sup> Finally, there was strong growth in Over-The-Counter (OTC) trading, i.e. trading outside the regulated market, which operates without or with minimal regulatory framework, making it attractive not only for large transactions by professional investors, but also for small in volume transactions by retail investors.<sup>60</sup>

In response to the above weaknesses that emerged, in December 2008, the EC published a consultation paper to comment on the MiFID I regime. The response from the market participants was enormous, while many counseling documents were also published by the Committee of European Securities Regulators (CESR).<sup>61</sup> These were considered by the EC, which finally published on October the 20<sup>th</sup> of 2011, proposals for a Directive and a Regulation to replace MiFID I.<sup>62</sup>

---

<sup>58</sup> European Commission, Proposal for a Directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (Recast), Brussels, 20.10.2011, COM/2011/0656 final - 2011/0298 (COD), Explanatory Memorandum, p. 2

<sup>59</sup> Eddy Wymeersch, The Reforms of the European Financial Supervisory System: An Overview (2010) vol. 7, no. 2 European Company and Financial Law Review, p. 242

<sup>60</sup> Peter Gomber, Benjamin Clapham, Jeans Laused, Sven Panz, The MiFIR Trading Obligation: Impact on Trading Volume and Liquidity (2018), p. 5, Available at SSRN <<https://ssrn.com/abstract=3133161>>, accessed 8 February 2019

<sup>61</sup> Now the European Securities and Markets Authority (ESMA)

<sup>62</sup> Dr Graeme Baber, From MiFID to MiFID II: a steady transition (2012) 33 (10) Company Lawyer, p. 1

### III. The new regulatory regime: MiFID II and MiFIR

#### 1. Introduction

The new legislative framework consists of the Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, and the Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, known respectively as MiFID II and MiFIR. Their main difference is that the Directive, which amends the previous MiFID I, needs to be transposed into national legislation, while the Regulation, as defined in Article 288 of the Treaty on the Functioning of the European Union 'shall be binding in its entirety and directly applicable in all Member States.' It is therefore not subject to any condition in its application, reducing the risk of divergent interpretations by the Member States.<sup>63</sup> MiFID II/MiFIR came into force on July/2/2014 and was applied on January/3/2018' as far as the Directive is concerned it should be incorporated into national law by July/3/2017.<sup>64</sup>

The revised legislative regime, which is again applied following the Lamfalussy process, consists of hundreds of pages, including delegated and implementing acts, it is highly technical and complex, and the financial actors will have to pay close attention to its application. The difficulty in collecting all the necessary data for a steady and smooth transition to this new revised era was one of the reasons why, at ESMA's request, the EC agreed, so as to avoid possible volatility and market disturbance, to delay the application of the legislative package for exactly one year.<sup>65</sup>

---

<sup>63</sup> Nis Jul Clausen, Karsten Engsig Sørensen, Reforming the regulation of trading venues in the EU under the proposed (MiFID II) – levelling the playing field and overcoming market, Nordic & European Company Law Working Paper No. 10-23, p. 5, Available at SSRN <<https://ssrn.com/abstract=2021079>>, accessed 8 February 2019

<sup>64</sup> Official website of European Commission, Available at <[https://ec.europa.eu/info/law/markets-financial-instruments-mifid-ii-directive-2014-65-eu/law-details\\_en](https://ec.europa.eu/info/law/markets-financial-instruments-mifid-ii-directive-2014-65-eu/law-details_en)>, accessed 8 February 2019, and <[https://ec.europa.eu/info/law/markets-financial-instruments-mifir-regulation-eu-no-600-2014/law-details\\_en](https://ec.europa.eu/info/law/markets-financial-instruments-mifir-regulation-eu-no-600-2014/law-details_en)>, accessed 8 February 2019

<sup>65</sup> European Commission, Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments as regards certain dates, Brussels, 10.2.2016, COM (2016) 56 final-2016/0033(COD), Explanatory Memorandum, p. 5

Firstly, regarding the scope of MiFID II, it is expanded by adding a new investment service and activity, the one of the Organized Trading Facility (OTF),<sup>66</sup> creating a new set of data reporting services<sup>67</sup> and covering yet another category of financial instruments, emission allowances,<sup>68</sup> but also structured deposits, although not a financial instrument.<sup>69</sup> Both laws, which are creations of the technological progress and the financial crisis, which could be said to have been the element that formed them, are introducing key changes in the functioning of the financial sector, covering Securities Markets, investment intermediaries and trading venues, and affecting all participants within them.<sup>70</sup> Each piece of legislation focuses on different points. As for MiFID II, it ensures that trading takes place on organized platforms, improves transparency on the equity and non-equity (especially derivatives) markets, improves the oversight of the financial market, strengthens investor protection, embodies 'conduct of business' requirements for all market participants, introduces rules on electronic trading and HFT and on the powers available to the competent authorities as well.<sup>71</sup> Concerning MiFIR, it focuses mainly on transparency issues, such as the disclosure of data transactions to the market and to the competent supervisory and regulatory authorities, contains rules for mandatory trading of derivatives on organized platforms and grants additional supervisory powers about specific financial instruments and positions in derivatives to the competent authorities.<sup>72</sup>

---

<sup>66</sup> MiFID II, ANNEX I, SECTION A

<sup>67</sup> MiFID II, ANNEX I, SECTION D

<sup>68</sup> MiFID II, ANNEX I, SECTION C

<sup>69</sup> MiFID II, Recital 39

<sup>70</sup> European Commission, Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments as regards certain dates, Brussels, 10.2.2016, COM (2016) 56 final-2016/0033(COD), Explanatory Memorandum, p. 1

<sup>71</sup> Nis Jul Clausen, Karsten Engsig Sørensen, Reforming the regulation of trading venues in the EU under the proposed (MiFID II) – levelling the playing field and overcoming market, Nordic & European Company Law Working Paper No. 10-23, p. 4, Available at SSRN <<https://ssrn.com/abstract=2021079>>, accessed 8 February 2019

<sup>72</sup> Official website of European Commission, Available at <[https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-markets/securities-markets/investment-services-and-regulated-markets-markets-financial-instruments-directive-MiFID\\_en#MiFID-2-and-MiFIR](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-markets/securities-markets/investment-services-and-regulated-markets-markets-financial-instruments-directive-MiFID_en#MiFID-2-and-MiFIR)>, accessed 8 February 2019

## **2. Key changes introduced by MiFID II and MiFIR**

The key changes brought about by the new legislation will next be analyzed. To achieve this, they have been divided into five categories, which in turn deal with issues relating to effective market structure, enhanced transparency, stronger investor protection, adaptation to technological developments and strengthening of the supervisory powers. These are the areas that have undergone most of the modifications, the grid of which I will try to present, so even the most inexperienced reader, to realize the importance of the new European legal framework for the markets for financial instruments.

### **2.1. Market Structure**

The changes to the structure of the market reflect international initiatives as incorporated into the G20 reform agenda.<sup>73</sup> The EU Reform Agenda, which follows these guidelines, aims to establish a 'single rulebook' for the Single European Market.<sup>74</sup> Regulatory reforms should therefore lead to European integration and economic growth.<sup>75</sup> So, as we will discuss below, a set of requirements seeks to bring back trading in organized, open, and transparent trading venues, especially for shares and derivatives, and to reduce trading in OTC space.<sup>76</sup> In support of these initiatives, another trading venue, which exclusively deals with the trading of non-equity financial products, was introduced, and finally, in order to boost capital movement, the SME Growth Market was created, which seeks to bring small and medium-sized enterprises (SMEs) back into a path of economic development. The structure of the market is inextricably linked to its performance, as the better the structure, the better the market performance, so it must be built with special care and attention.

#### **2.1.1. Trading Obligation for shares and derivatives**

The financial crisis has highlighted weaknesses in the securities and derivatives markets. The former became more complex and unpredictable in terms of financial

---

<sup>73</sup> Niamh Moloney, *EU Securities and Financial Markets Regulation* (3rd edn, Oxford EU Law Library, 2014), p. 31

<sup>74</sup> *Ibid.*, p. 33

<sup>75</sup> *Ibid.*, p. 37

<sup>76</sup> *Ibid.*, p. 461

instruments and activities taking place within it, and the latter had grown too much, but lacked enough regulation and supervision, since for several years the reins remained in the hands of the financial industry.<sup>77</sup> These phenomena posed a systemic risk to the financial market, which must be adequately addressed, while contributing to the development and strengthening of OTC trading, which should be limited.<sup>78</sup> To deal with the above, the trading obligation for shares and derivatives was introduced, which aims to restore trading in organized venues and to fire competition among them in order to achieve better price formation and liquidity. Among many individuals, these obligations have been characterized as being another ‘concentration rule’, which goes much further than that introduced by the ISD.<sup>79</sup>

Under article 23 of MiFIR, the wider market trend becomes apparent, as reflected in the legislative texts, to allocate shares trading within the formal and regulated markets and venues and to reduce the OTC market.<sup>80</sup> Investment firms are obliged to ensure that trading of shares admitted to trading on a regulated market or traded on trading venues will take place on RMs, MTFs, SIs or an equivalent trading venue in a third country, unless they are subject to two exceptions, they are i.e. ‘non-systematic, ad hoc, irregular and infrequent, or are carried out between eligible and/or professional counterparties and do not contribute to the discovery process’.<sup>81</sup> At the same time, by addressing the extensive OTC trading, the positive results will be evident

---

<sup>77</sup> Guido Ferrarini, Paolo Saguato, *Regulating Financial Market Infrastructures*, European Corporate Governance Institute - Law Working Paper No 259/2014, p. 3, Available at SSRN <<https://ssrn.com/abstract=2450095>>, accessed 8 February 2019

<sup>78</sup> Peter Gomber, Benjamin Clapham, Jeans Laused, Sven Panz, *The MiFIR Trading Obligation: Impact on Trading Volume and Liquidity* (2018), p. 1, Available at SSRN <<https://ssrn.com/abstract=3133161>>, accessed 8 February 2019

<sup>79</sup> Danny Busch, *MiFID II and MiFIR: stricter rules for the EU financial markets* (2017), p. 23, Available at SSRN <<https://ssrn.com/abstract=3086604>>, accessed 8 February 2019

<sup>80</sup> Niamh Moloney, *MiFID II: Reshaping the Perimeter of EU Trading Market Regulation* (2012) vol. 6, no. 5 *Law and Financial Markets Review*, p. 327

<sup>81</sup> MiFIR, art.23, par. 1

both in the transparency of these transactions and in the quality of the price discovery process, ultimately increasing the liquidity of the market.<sup>82</sup>

Furthermore, the trading obligation extends to derivatives as part of the new single EU rulebook on derivatives markets,<sup>83</sup> as influenced and shaped by global initiatives in the Financial System. The G20 Summit held in Pittsburgh on 25 September 2009 included in its agenda the need to strengthen the international financial regulatory system and to achieve this goal proposed the improving of the OTC derivatives markets,<sup>84</sup> by transferring the trading of standardized OTC derivative contracts to electronic platforms or exchanges, wherever appropriate.<sup>85</sup> In response to these proposals, the EMIR and MiFIR, which are interconnected and regulate the first the central clearing and the second the trading of derivatives on regulated markets and platforms, have been adopted.<sup>86</sup> Now, under the new legislative regime and according to article 28 of MiFIR, derivatives falling under the EMIR Regulation and the central counterparty clearing requirements should be traded in organized venues such as RMs, MTFs and OTFs or in equivalent trading venues of third countries.<sup>87</sup> Finally, the very establishment of the OTF, which will be discussed below has the ultimate aim of repatriating the trading of derivatives to formal and organized venues, in full harmony with the G20 agenda.<sup>88</sup>

### **2.1.2. A new trading venue: The Organised Trading Facility**

Following the above, MiFID II introduces another trading venue named OTF, in response to the EU's efforts to reduce the OTC trading and to place the non-equity

---

<sup>82</sup> Peter Gomber, Benjamin Clapham, Jeans Laused, Sven Panz, The MiFIR Trading Obligation: Impact on Trading Volume and Liquidity (2018), p. 7, Available at SSRN <<https://ssrn.com/abstract=3133161>>, accessed 8 February 2019

<sup>83</sup> Niamh Moloney, Resetting the location of regulatory and supervisory control over EU financial markets: lessons from five years on (2013) 62 (4) International & Comparative Law Quarterly, p. 959

<sup>84</sup> G20 Information Centre, Available at <<http://www.g20.utoronto.ca/2009/2009communique0925.html>>, accessed 8 February 2019

<sup>85</sup> MiFIR, Recital 25

<sup>86</sup> Danny Busch, MiFID II and MIFIR: stricter rules for the EU financial markets (2017) 2-3 Law and Financial Markets Review, p. 136

<sup>87</sup> Niamh Moloney, MiFID II: Reshaping the Perimeter of EU Trading Market Regulation (2012) vol. 6, no. 5 Law and Financial Markets Review, p. 328

<sup>88</sup> Ibid

instruments into an organized and well-regulated regime.<sup>89</sup> The OTF ‘means a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with Title II of this Directive’.<sup>90</sup> But although the intention was to equalize the trading venues, having the same rules of transparency and similar organizational rules, however, between the RMs and MTFs on the one hand, and the OTFs on the other there is a fundamental difference. Beyond the financial instruments traded within OTFs, which are only non-equity instruments, the former offer non-discretionary execution of orders and access into their system, while the latter are characterized by a discretionary element, controlling the entry and placement of financial instruments in their execution system as well as the order matching.<sup>91</sup> This is due to the roots of the OTF, as it comes from bilateral trading, so it inherently acts with distinction,<sup>92</sup> but it is not allowed to be combined with Systematic Internalisation<sup>93</sup> nor is it permitted under article 20 of MiFID II to execute orders against its own proprietary capital. This is because the ability to operate discriminatory can create a conflict of interests between the investor and the operator of an OTF or in case of executing orders against their own capital it would impair the stability and liquidity of the OTF itself.<sup>94</sup>

However, the paradox of the OTF is its dual nature, as it is an organized venue on which the same rules as RMs and MTFs are imposed, and on the other hand the OTF operator is an investment firm and is bound by pre- and post-trade transparency

---

<sup>89</sup> The Markets in Financial Instruments Directive (MiFID II) (2017) 59 *Scottish Private Client Law Review*, p. 1

<sup>90</sup> MiFID II, art. 4, par. 1, (23)

<sup>91</sup> Niamh Moloney, *MiFID II: Reshaping the Perimeter of EU Trading Market Regulation* (2012) vol. 6, no. 5 *Law and Financial Markets Review*, pp. 1-2

<sup>92</sup> Guido Ferrarini, Paolo Saguato, *Reforming Securities and Derivatives Trading in the EU: from EMIR to MiFIR* (2014), p. 32, Available at SSRN <<https://ssrn.com/abstract=2386290>>, accessed 8 February 2019

<sup>93</sup> Danny Busch, *MiFID II and MiFIR: stricter rules for the EU financial markets* (2017), p. 5, Available at SSRN <<https://ssrn.com/abstract=3086604>>, accessed 8 February 2019

<sup>94</sup> Guido Ferrarini, Paolo Saguato, *Reforming Securities and Derivatives Trading in the EU: from EMIR to MiFIR* (2014), p. 45, Available at SSRN <<https://ssrn.com/abstract=2386290>>, accessed 8 February 2019

obligations and 'conduct of business' rules.<sup>95</sup> It is a hybrid as it has been widely characterized, which raises doubts as to the accuracy of its operation and the information it provides.<sup>96</sup> The OTF came to capture trading that does not take place in other venues, to be a regulated platform for non-equity instruments and derivatives, in response to the changing financial market landscape. However, the market was hostile to this change, mainly because it believed that regulators should focus on the existing trading venues, and because its entry would bring less flexibility to the market, leaving no space for OTC trading.<sup>97</sup> Nevertheless, in my opinion, the OTF brings new challenges, rearranging forces within the market, widening the game and increasing the competitiveness of both the trading venues between themselves and of the European market across the financial world.

### **2.1.3. SME Growth Market**

One of the most innovative modifications is the creation of the SME Growth Market, which will facilitate access to capital for SMEs. This change aims to improve the financing conditions for SMEs by providing alternative ways of funding, based on the available market capital and bringing the EU a step closer to the Single Market for financial services.<sup>98</sup> The SMEs, which are at the heart of the EU economy, after the financial crisis have been in a precarious financial situation. They were trapped and unable to find resources especially through bank lending.<sup>99</sup> To deal with this, under article 33 of MiFID II, the conditions to be fulfilled are provided for an MTF to be able to register as an SME Growth Market. The SME Growth Market is essentially a sub-category of MTFs. However, the real opportunity created here, is the possibility of dual listing, which can bring both the integration of European financial markets and the facilitation of cross-border liquidity. More simply, article 33 par.7 allows an SME that

---

<sup>95</sup> Niamh Moloney, *MiFID II: Reshaping the Perimeter of EU Trading Market Regulation*, (2012) vol. 6, no.5 *Law and Financial Markets Review*, p. 329

<sup>96</sup> *Ibid*, p. 329

<sup>97</sup> Guido Ferrarini, Paolo Saguato, *Reforming Securities and Derivatives Trading in the EU: from EMIR to MiFIR* (2014), p. 28, Available at SSRN <<https://ssrn.com/abstract=2386290>>, accessed 8 February 2019

<sup>98</sup> Michael Huertas, Katharina Ariane Beyersdorfer, *SME growth markets in 2018: will MiFID II/MiFIR drive greater choice of capital markets based financing option for SMEs?* (2017) 28 (11) *International Company and Commercial Law Review*, p. 407

<sup>99</sup> *Ibid*, p. 412

has been admitted to trading on an SME Growth Market to be listed in another same SME market, only if the issuer is aware of it and has no objections.<sup>100</sup> This is only achieved if the above provisions are equally incorporated and sufficiently harmonized across all EU Member States, a process which is particularly problematic due to the strong differences and ways in which the Member States interpret them.<sup>101</sup> This initiative, clearly positive, will help SMEs find financing through the Capital Market, bringing them their business growth as well and will help them overcome the barriers faced by issuers of financial instruments up to date, while maintaining at a high level the protection afforded to investors consistently, to make them re-trust the Capital Market.<sup>102</sup>

## **2.2. Market Transparency**

Market transparency is one of the primary objectives of the current legislative framework, clearly demonstrated by the fact that the rules on transparency are included in the Regulation, which does not allow Member States to differentiate their approach.<sup>103</sup> The new rules, more rigorous, detailed and extensive, fill the gaps that emerged during the financial crisis. As we will see below they aim to reduce transaction costs for the benefit of investors, increase market liquidity, improve the price formation process, strengthen the Financial System by limiting dark pools, and inform all market participants of the details of the executed transactions in order to strengthen everyone's position within it and to improve market surveillance and supervision, avoiding potential market abuse. This is only done through common and harmonized rules, which MiFIR has largely achieved.

---

<sup>100</sup> MiFID II, art. 33, par. 7

<sup>101</sup> Michael Huertas, Katharina Ariane Beyersdorfer, SME growth markets in 2018: will MiFID II/MiFIR drive greater choice of capital markets based financing option for SMEs? (2017) 28 (11) International Company and Commercial Law Review, p. 410

<sup>102</sup> Danny Busch, MiFID II and MiFIR: stricter rules for the EU financial markets (2017), p. 4, Available at SSRN <<https://ssrn.com/abstract=3086604>>, accessed 8 February 2019

<sup>103</sup> Nis Jul Clausen, Karsten Engsig Sørensen, Reforming the regulation of trading venues in the EU under the proposed (MiFID II) – levelling the playing field and overcoming market, Nordic & European Company Law Working Paper No. 10-23, p. 15, Available at SSRN <<https://ssrn.com/abstract=2021079>>, accessed 8 February 2019

### 2.2.1. Pre-trade and post-trade transparency obligations

According to the MiFIR provisions, the scope of pre- and post-trade transparency is widened. The same transparency requirements, which must be properly formulated, apply to all trading venues and to all financial instruments traded within them.<sup>104</sup> Pre-trade transparency requirements for equity and non-equity instruments require, pursuant to articles 3 and 8 of MiFIR respectively, that investment firms or market operators make public the information regarding the price and the volume at which their members wish to trade, subject to certain waivers from the pre-trade transparency regime, upon approval by the competent authorities, as set in articles 4 and 9 of MiFIR. On the other hand, as regards post-trade transparency under articles 6 and 10 of MiFIR, for equity and non-equity instruments respectively, firms are required to make public the information about the price and volume of the already executed transactions and disclose the details of these transactions as closer to real time as possible, subject to the possibility of granting deferred publication of specific types and sizes of transactions, upon approval by the competent authorities, as set out in articles 7 and 11 of MiFIR. In this respect, we note the key innovation that has been made in relation to MiFID I, as so far these requirements have only been met for shares and only for those admitted to trading on RMs.<sup>105</sup>

As far as SIs is concerned, they are also subject to pre-trade transparency requirements according to articles 14 and 18 of MiFIR, for both equity and non-equity instruments and are required to make public quotes on these instruments traded on a trading venue for which they are SIs and for which there is a liquid market.<sup>106</sup> In the case of equity instruments there is a general obligation to provide public firm quotes, and when the market is not liquid, these quotes are provided to their clients upon request.<sup>107</sup> On the other hand, in the case of non-equity instruments, even if the market is liquid or not, they provide quotes only if so requested and agreed upon.<sup>108</sup> We therefore see that the concept of 'liquid market' is crucial. This is explained by the

---

<sup>104</sup> MiFIR, Recital 10

<sup>105</sup> Niamh Moloney, *EU Securities and Financial Markets Regulation* (3rd edn, Oxford EU Law Library, 2014), p. 480

<sup>106</sup> MiFIR, art.14, par. 1 and art. 18, par. 1

<sup>107</sup> *Ibid*, art. 14, par. 2

<sup>108</sup> MiFIR, art. 18 par. 1 and 2

fact that although the intention is to be functionally equivalent to trading venues, the risk the SIs undertake with the obligation to provide increased transparency, although traded against their own capital, should be limited.<sup>109</sup> Thus, the liquidity condition and the rules set out were their means of protection.

Of the above, some important conclusions emerge regarding the importance of transparency in the market. Pre-trade transparency is necessary because it will create a kind of coherence throughout the EU,<sup>110</sup> it will contribute, through the information provided to investors, on the choice of the trading venue and the identification of the investment opportunities available.<sup>111</sup> On the other hand, post-trade transparency improves market quality by making it more transparent,<sup>112</sup> will enhance confidence in market prices,<sup>113</sup> contribute to the implementation and enforcement of the best execution regime for investment firms, and finally enable the investors to check whether it was indeed the best possible execution of their order.<sup>114</sup> Extending transparency to non-equity instruments, redefines the market itself, contributes to the evaluation of these new instruments and promotes an effective price formation process.<sup>115</sup>

### **2.2.2. Transaction Reporting**

Market integrity and stability are inextricably linked to the obligation of transparency and reporting of all details of a transaction. For this reason, investment firms and the operator of a trading venue are required under article 26 of MiFIR to

---

<sup>109</sup> Niamh Moloney, *EU Securities and Financial Markets Regulation* (3rd edn, Oxford EU Law Library, 2014), p. 488

<sup>110</sup> Guido Ferrarini, Paolo Saguato, *Reforming Securities and Derivatives Trading in the EU: from EMIR to MiFIR* (2014), p. 41, Available at SSRN <<https://ssrn.com/abstract=2386290>>, accessed 8 February 2019

<sup>111</sup> Nis Jul Clausen, Karsten Engsig Sørensen, *Reforming the regulation of trading venues in the EU under the proposed (MiFID II) – levelling the playing field and overcoming market*, Nordic & European Company Law Working Paper No. 10-23, p. 4, Available at SSRN <<https://ssrn.com/abstract=2021079>>, accessed 8 February 2019

<sup>112</sup> Guido Ferrarini, Paolo Saguato, *Reforming Securities and Derivatives Trading in the EU: from EMIR to MiFIR* (2014), p. 41, Available at SSRN <<https://ssrn.com/abstract=2386290>>, accessed 8 February 2019

<sup>113</sup> *Ibid*, p. 30

<sup>114</sup> Nis Jul Clausen, Karsten Engsig Sørensen, *Reforming the regulation of trading venues in the EU under the proposed (MiFID II) – levelling the playing field and overcoming market*, Nordic & European Company Law Working Paper No. 10-23, p. 4, Available at SSRN <<https://ssrn.com/abstract=2021079>>, accessed 8 February 2019

<sup>115</sup> Guido Ferrarini, Paolo Saguato, *Reforming Securities and Derivatives Trading in the EU: from EMIR to MiFIR* (2014), p. 48, Available at SSRN <<https://ssrn.com/abstract=2386290>>, accessed 8 February 2019

provide the National Competent Authorities (NCAs) with all the details of a transaction until the closing of the next working day.<sup>116</sup> This obligation applies to all instruments that have been admitted to trading or are already trading on a trading venue and to those that the underlying instrument is a financial instrument that falls within the above category or is an index or a basket made up of such financial instruments even if the transaction takes place outside the trading venue.<sup>117</sup> The breadth of the information provided is increasing, and it must be possible to identify the clients for whom the transaction is made and the persons or algorithms processing the transaction.<sup>118</sup> The above report may be made either by the investment firm itself, the trading venue or a third mechanism, being it an Approved Reporting Mechanism (ARM),<sup>119</sup> which will have to be licensed for that purpose.<sup>120</sup>

To achieve this, the relevant records with all the above data should be kept by the investment firms and operators of a trading venue for at least five years, as provided for in article 25 of the MiFIR, which are available to the competent authorities and ESMA, upon request. At the same time, under article 27 of MiFID II, a trading or execution venue is required to provide information to the public on an annual basis on the quality of transactions within its system, and an investment firm about where and how a client's order has been executed.<sup>121</sup>

These reporting obligations are the monitoring tools of the market's participants' activity, in order to find out if they act professionally and in the interest of investors.<sup>122</sup> Furthermore, they help to avoid a similar repetition of market abuse and

---

<sup>116</sup> MiFIR, art. 26, par. 1 and 5

<sup>117</sup> Hannah Meakin, Imogen Garner, Charlotte Henry, Gavin Punia, Wright, Iona, Matthew Gregory, Albert Weatherill, Anna Carrier, John Davison and Simon Lovegrove, 'MiFID II' (2017) 145 Compliance Officer Bulletin, p. 24

<sup>118</sup> Peter Snowdon, Hannah Meakin and Simon Lovegrove, 'MiFID II/MiFIR' (2014) 120 Compliance Officer Bulletin, p. 17

<sup>119</sup> According to MiFID II, art. 4, par. 1 (54) 'ARM' means a person authorised under this Directive to provide the service of reporting details of transactions to competent authorities or to ESMA on behalf of investment firms;

<sup>120</sup> Peter Snowdon, Hannah Meakin and Simon Lovegrove, 'MiFID II/MiFIR' (2014) 120 Compliance Officer Bulletin, p. 17

<sup>121</sup> MiFID II, art. 27, par. 3

<sup>122</sup> Danny Busch, MiFID II and MiFIR: stricter rules for the EU financial markets (2017), p. 16, Available at SSRN <<https://ssrn.com/abstract=3086604>>, accessed 8 February 2019

to suppress money laundering and terrorist financing.<sup>123</sup> The question, however, is whether, in fact, this data can make sense and realistically be exploited by ESMA in order to act, when necessary.<sup>124</sup> The doubt is understandable, but in any case, I believe that if a specific group is created, at national and European level, to process and evaluate the provided information, then yes, the use of all this information will make sense and the transparency, which is very important for the market financial services will bear fruit.

### **2.2.3. Dark Pools**

According to surveys and market data, OTC trading and the increased appearance of dark pools affected liquidity, as no pre-trade information was provided.<sup>125</sup> Indeed, two types of dark pools were observed, which were the waiver-based one and related to equity instruments, mainly shares, and the OTC dark pool.<sup>126</sup> The first, due to the expanded waiver system of the previous regulatory regime, which allowed these markets to thrive,<sup>127</sup> was relatively more transparent and better organized, while the second was totally dark, giving it an avant-garde profile.<sup>128</sup> Dark pools were mainly driven by market fragmentation, caused by the entry of new trading services, which had an impact on its liquidity and reduced trading in organized venues.<sup>129</sup> In order to address these problems, the new OTF which deals with non-equity financial instruments was introduced, and the obligations of transparency and reporting of transactions were broadened, including other financial instruments than

---

<sup>123</sup> Ibid, p. 16

<sup>124</sup> Danny Busch, MiFID II and MiFIR: stricter rules for the EU financial markets (2017), p. 16, Available at SSRN <<https://ssrn.com/abstract=3086604>>, accessed 8 February 2019

<sup>125</sup> Peter Gomber, Benjamin Clapham, Jeans Laused, Sven Panz, The MiFIR Trading Obligation: Impact on Trading Volume and Liquidity (2018), p. 5, Available at SSRN <<https://ssrn.com/abstract=3133161>>, accessed 8 February 2019

<sup>126</sup> Guido Ferrarini, Paolo Saguato, Reforming Securities and Derivatives Trading in the EU: from EMIR to MiFIR (2014), p. 26, Available at SSRN <<https://ssrn.com/abstract=2386290>>, accessed 8 February 2019

<sup>127</sup> Ibid, p. 41

<sup>128</sup> Ibid, p. 26

<sup>129</sup> Danny Busch, MiFID II and MiFIR: stricter rules for the EU financial markets (2017), p. 11, Available at SSRN <<https://ssrn.com/abstract=3086604>>, accessed 8 February 2019

shares traded in RMs.<sup>130</sup> Further, the rules of the present regime stand out for their rigor, with regard to the possibility of providing pre-trade transparency waivers in case of equity instruments, aiming at combating dark pools directly, in conjunction with the introduction of the double volume cap mechanism (DVCM).<sup>131</sup>

Article 4 of MiFIR lists four pre-trade transparency waivers for equity, which are: reference price, negotiated transactions, large in scale transactions and order management facilities. Further, article 5 of MiFIR imposes a DVCM for transactions occurring under the use of reference prices and negotiated transactions waivers. This mechanism aims at a better price formation and the maintenance of market liquidity<sup>132</sup> by limiting the transactions in dark pools of a financial instrument traded in a trading venue to 4% and for the total EU trading in a financial instrument to 8% of the total volume of trading in that financial instrument on all trading venues across the Union over the previous 12 months. We are therefore observing that these arrangements do not attempt to eliminate dark trading but to constrain it, stabilize it and put it under control in order to attract more liquidity into the market and to restore the credibility of the price formation process.<sup>133</sup>

#### **2.2.4. Consolidated Tape Provider**

The above pre- and post-trade transparency obligations aimed at reducing dark pools and foster a more reliable price formation with the goal of enhancing market credibility and investor's confidence in the market.<sup>134</sup> This can only be achieved if all market participants have access to this kind of information. Thus, new organized entities have been introduced, known as data service providers, who must meet the

---

<sup>130</sup> Emiliios Avgouleas, *Regulating Financial Innovation: A Multifaceted Challenge to Financial Stability, Consumer Protection, and Growth* (Oxford Handbook of Financial Regulation, Oxford University Press, 2015), p. 29

<sup>131</sup> Peter Gomber, Benjamin Clapham, Jeans Laused, Sven Panz, *The MiFIR Trading Obligation: Impact on Trading Volume and Liquidity* (2018), p. 6, Available at SSRN <<https://ssrn.com/abstract=3133161>>, accessed 8 February 2019

<sup>132</sup> Peter Gomber, Ilya Gvozdevskiy, *Dark trading under MIFID II*, in D. Busch and G. Ferrarini, *Regulation of the EU Financial Markets: MIFID II and MIFIR* (Oxford University Press, 2017), p. 383

<sup>133</sup> Danny Busch, *MiFID II and MiFIR: stricter rules for the EU financial markets* (2017), p. 19, Available at SSRN <<https://ssrn.com/abstract=3086604>>, accessed 8 February 2019

<sup>134</sup> Danny Busch, *MiFID II and MIFIR: stricter rules for the EU financial markets* (2017) 2-3 *Law and Financial Markets Review*, p. 133

authorization conditions as defined in MiFID II provisions, which will collect and disclose to the competent authorities and to the public this data. The most important of these providers is the CTP,<sup>135</sup> which collects information published by an Approved Publication Arrangement (APA)<sup>136</sup> or a trading venue for all financial instruments, consolidates them into an electronic data system and communicates them to the market the closest to the real time of the transaction and on a reasonable commercial basis.<sup>137</sup>

In this way the undesirable effects of the hitherto fragmented market will be reduced, the quality of the available data will be improved, as well as the access to it, investors will be able to compare the prices and volume of the traded financial instruments and make better investment decisions, while NCAs and ESMA will develop a stronger market surveillance practice.<sup>138</sup> Data services providers also make a significant contribution to this by facilitating investment firms, as they themselves undertake compliance with reporting and transparency obligations, while saving extra time and money that investment firms would lose to respond to their obligations. It is remarkable that it was left to the market itself to create this CTP, so whether or not it will ultimately react is in direct relationship with whether it considers it a positive, negative or even complicated change to be able to manage it.

### **2.3. Investor Protection**

The structure of the financial market after the financial crisis has changed a lot. It is characterized by intense complexity and the presence of many participants,

---

<sup>135</sup> According to MiFID II, art. 4, par. 1 (53) 'CTP' means a person authorised under this Directive to provide the service of collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12 and 13, 20 and 21 of Regulation (EU) No 600/2014 from regulated markets, MTFs, OTFs and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument;

<sup>136</sup> According to MiFID II, art. 4, par. 1 (52) 'APA' means a person authorised under this Directive to provide the service of publishing trade reports on behalf of investment firms pursuant to Articles 20 and 21 of Regulation (EU) No 600/2014

<sup>137</sup> Peter Snowdon, Hannah Meakin and Simon Lovegrove, 'MiFID II/MiFIR' (2014) 120 Compliance Officer Bulletin, p. 18

<sup>138</sup> Nis Jul Clausen, Karsten Engsig Sørensen, Reforming the regulation of trading venues in the EU under the proposed (MiFID II) – levelling the playing field and overcoming market, Nordic & European Company Law Working Paper No. 10-23, pp. 16-18, Available at SSRN <<https://ssrn.com/abstract=2021079>>, accessed 8 February 2019

who have developed new investment plans that better respond to the increased competition that globalization has brought.<sup>139</sup> A typical example is that of banks, which have radically changed their business plan, offering not only simple banking but also investment products.<sup>140</sup> Within this setting, the presence of investors and their activity is intense, hence the protection of their interests is of prime importance.<sup>141</sup> The services and financial instruments offered to them, which are now more complex and the inability of even the most informed investors to assess the risk to which they are exposed, have led to the introduction of strict ‘code of conduct’ obligations for the investment firms and of entirely new obligations, covering the areas of manufacturing and distribution of financial products.<sup>142</sup> We note therefore, that a total change of the existing rules does not occur, but instead they are adapted to current developments, creating a more stringent regulatory framework for market participants.

### **2.3.1. Rules of Conduct**

The categories of investors under MiFID II/MiFIR are those of ‘retail’, ‘professional’ and ‘eligible counterparties’. Depending on the category to which an investor belongs and on the type of the investment services provided to him/her,<sup>143</sup> the level of protection afforded towards him/her is formulated, as well the principles that must be firmly observed by investment firms.<sup>144</sup> Before any reference to these rules of conduct is made, it should be stressed that regardless of the category to which an investor belongs, in which the regulatory measures must be adjusted each time, the provision of investment services must be fair, clear and not misleading for all of them<sup>145</sup> and an investment firm should act honestly, fairly and professionally in accordance with the best interests of its clients’.<sup>146</sup> In contrast to MiFID I, which did

---

<sup>139</sup> Matthias Haentjens, Pierre de Gioia-Carabellese, *European Banking and Financial Law* (Routledge, 2015), p. 65

<sup>140</sup> *Ibid*

<sup>141</sup> *Ibid*

<sup>142</sup> Professor D. Christos Gortsos, *Stricto sensu investor protection under the “MiFID II”: A systemic overview of Articles 24-30* (2017), p. 19, Available at SSRN <<https://ssrn.com/abstract=2983776>>, accessed 8 February 2019

<sup>143</sup> Danny Busch, *MiFID II: Stricter Conduct of Business Rules for Investment Firms* (2017), p. 7, Available at SSRN <<https://ssrn.com/abstract=3063236>>, accessed 8 February 2019

<sup>144</sup> Matthias Haentjens, Pierre de Gioia - Carabellese, *European Banking and Financial Law* (Routledge, 2015), p. 68

<sup>145</sup> MiFID II, Recital 86

<sup>146</sup> MiFID II, art.24, par. 1

not provide for this general obligation to be applicable to the eligible counterparties, on the ground that they are able to negotiate their standards of protection, now the protection of this category is strengthened, too.<sup>147</sup> As far as the rules of conduct, they mainly concern the obligation of information, reporting and execution. According to article 24 of MiFID II, information provided to investors should be clear, fair and secure, not to create misunderstandings with investors, including that relating to communications which take place during the pre-contractual period. Subsequently, article 25 of MiFID II includes the obligation for investment firms to act in competence and knowledge, i.e. to assure the competent authorities that the natural persons responsible for providing investment advice and information meet the criteria of knowledge and suitability and that they are worthy of their position of responsibility they possess, and lays down the obligation to 'know your client'. Under this obligation and for an investment firm to comply with it, the client must provide all information regarding his/her personal financial condition and his/her investment objectives so that the firm can make the right and appropriate investment on his/her behalf. Finally, article 27 of MiFID II introduces the obligation to execute orders on terms most favorable to the client, i.e. to ensure best execution of investor instructions. What is apparent from these provisions is that in general, the 'conduct of business' rules for investment firms does not change dramatically in comparison with those of MiFID I. It appears that the information obligation is again dominant and wider, and investment firms are obliged to provide more details for investors to make informed decisions.<sup>148</sup> At the same time, the amount of information is growing, which has risen doubts regarding how much of it can be exploited by the investor.<sup>149</sup> However, in my view, the amount of information and the fear of their ruthless exploitation should not be taken into account, because the provision of less information will have negative implications for the level of investor protection. Additionally, as we have seen above, there should be adequate training for investors to invest successfully, otherwise investors with little capacity of understanding the products they are invited to invest on, will not be

---

<sup>147</sup> Danny Busch, MiFID II: Stricter Conduct of Business Rules for Investment Firms (2017), p. 11, Available at SSRN <<https://ssrn.com/abstract=3063236>>, accessed 8 February 2019

<sup>148</sup> Ibid, p. 38

<sup>149</sup> Ibid

protected. There are therefore a number of factors that need to be combined with precision to produce the desired result.

### **2.3.2. Distinction between independent and non-independent advice**

One of the major changes in MiFID II is the separation between independent and non-independent advice and the obligation for investment services to inform clients of the type of the advice they provide.<sup>150</sup> It was discovered that, in the context of the financial crisis, the quality of advice provided by investment firms suffered, as they were not obliged to explain and account for the advice they offered, resulting in poor trading quality and to the destruction of many investors.<sup>151</sup> Thus, although the provision of personal recommendations to a client, at his request or at the initiative of the investment firm, was already established as an investment service in favor of investors seeking guidance in this complex Financial System,<sup>152</sup> in the current regulatory framework, this obligation has gone a step further.

An investment advice is offered on an independent basis, when an investment firm evaluates a sufficiently wide range of financial instruments available on the market which must be sufficiently different in terms of their type and issuers or product providers and is not limited to the financial instruments issued or provided by the firm itself or entities with which the firm has close links or legal or economic relations.<sup>153</sup> Although this separation was introduced for the benefit of the investor and with the best intentions by the legislative bodies, there are also opposing voices. Some argue that it would be better to introduce some general prerequisites for any kind of advice which, anyway, should be of good quality.<sup>154</sup> The supporters of this

---

<sup>150</sup> Professor D. Christos Gortsos, *Stricto sensu investor protection under the “MIFID II”*: A systemic overview of Articles 24-30 (2017), p. 45, Available at SSRN <<https://ssrn.com/abstract=2983776>>, accessed 8 February 2019

<sup>151</sup> European Commission, *Impact Assessment Accompanying the document Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in financial instruments [Recast] and the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in financial instruments*, Brussels, 20.10.2011, SEC (2011) 1226 final, p. 116, Available at <[http://ec.europa.eu/smart-regulation/impact/ia\\_carried\\_out/docs/ia\\_2011/sec\\_2011\\_1226\\_en.pdf](http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2011/sec_2011_1226_en.pdf)>, accessed 8 February 2019

<sup>152</sup> MiFID II, Recital 70

<sup>153</sup> MiFID II, art. 24, par. 7

<sup>154</sup> Danny Busch, *MiFID II: Stricter Conduct of Business Rules for Investment Firms* (2017), p. 14, Available at SSRN <<https://ssrn.com/abstract=3063236>>, accessed 8 February 2019

position consider that there is a risk of this separation, that the interests between the adviser and the investor may collide and that the former's will prevail over the latter's and investors will be charged with unsuitable advice.<sup>155</sup> However, they also acknowledge that this is quite difficult because of the general loyalty obligation of investment firms, with which view I totally agree, as the new framework is so rigorous, with many traps for investment firms, which leaves no room for tricks.

### **2.3.3. Ban inducements in the case of independent advice and portfolio management**

Paying incentives, in the form of inducements to investment firms clearly affects the choice of products promoted to investors,<sup>156</sup> creating fears that they will be affected by other interests rather than investors'.<sup>157</sup> As a rule, inducements may not be accepted and maintained by an investment firm unless the quality of the services offered is increased and it does not conflict with its general obligation to act in the best interests of the investor.<sup>158</sup> So, in avoidance of situations of conflict of interest between investment firms and investors, the provision of inducements was prohibited as reflected in the combination of articles 24 and 23 MiFID II.<sup>159</sup> However, the regulatory landscape is now tighter and more rigid regarding services of independent advice and portfolio management. This means that an adviser or portfolio manager should not accept and retain inducements from a third party for the services he/she offers unless it is a small non-monetary benefit of such nature and size that it does not cause a conflict of interest.<sup>160</sup> This benefit should also contribute to improving the quality of the service offered while at the same time the investor should be aware of

---

<sup>155</sup> Ibid, p. 14

<sup>156</sup> European Commission, Impact Assessment Accompanying the document Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in financial instruments [Recast] and the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in financial instruments, Brussels, 20.10.2011, SEC (2011) 1226 final, p. 16, Available at <[http://ec.europa.eu/smart-regulation/impact/ia\\_carried\\_out/docs/ia\\_2011/sec\\_2011\\_1226\\_en.pdf](http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2011/sec_2011_1226_en.pdf)>, accessed 8 February 2019

<sup>157</sup> Danny Busch, MiFID II: Stricter Conduct of Business Rules for Investment Firms (2017), p. 35, Available at SSRN <<https://ssrn.com/abstract=3063236>>, accessed 8 February 2019

<sup>158</sup> Norton Rose Fulbright, MiFID II (2018) 158 Compliance Officer Bulletin, p. 19

<sup>159</sup> Ibid

<sup>160</sup> MiFID II, art. 24, par. 7 (b) and 8

this kind of payment.<sup>161</sup> The ban of inducements in the above two cases is aimed at enhancing investor protection, which will be achieved through absolute transparency of the imposed costs, but also requires new business plans for investment advisers and portfolio managers who will have to adapt to the new regime in fear of their disappearance if their operation was based solely on the payment of inducements.<sup>162</sup>

#### **2.3.4. Product Governance**

In the context of the general obligation on investment firms to inform investors, they should trace the target market and indicate to them the most appropriate financial products based on the client category they belong to.<sup>163</sup> This is only possible if common harmonized rules are imposed on the firms that create and sell the financial products. In this way, the products will be built according to the needs and the profile of the investors and will be sold by those who understand them through appropriate sales strategies.<sup>164</sup> Indeed, for the above reasons, obligations for manufacturers and distributors of financial products were introduced under the MiFID II.

The rules applicable to manufacturers are extended throughout the life cycle of a financial product and their interaction with distributors, while those applicable to distributors are mainly concerned with assessing the suitability and appropriateness of these products with investor's needs. Before the marketing or distribution of financial products, an approval process should be carried out, in which the possible target market will be identified at the discretion of the manufacturer, and the risks inherent in it. Then it should be ensured that product distribution strategy is compatible with

---

<sup>161</sup> Ibid

<sup>162</sup> European Commission, Impact Assessment Accompanying the document Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in financial instruments [Recast] and the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in financial instruments, Brussels, 20.10.2011, SEC (2011) 1226 final, pp. 68-69, Available at <[http://ec.europa.eu/smart-regulation/impact/ia\\_carried\\_out/docs/ia\\_2011/sec\\_2011\\_1226\\_en.pdf](http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2011/sec_2011_1226_en.pdf)>, accessed 8 February 2019

<sup>163</sup> Danny Busch, MiFID II: Stricter Conduct of Business Rules for Investment Firms (2017), p. 12, Available at SSRN <<https://ssrn.com/abstract=3063236>>, accessed 8 February 2019

<sup>164</sup> Norton Rose Fulbright, MIFID II (2018) 158 Compliance Officer Bulletin, p. 27

the target market.<sup>165</sup> All this information and the characteristics of the financial products should then be made available to the distributors as well.<sup>166</sup> Manufacturers should at this stage assure that the products meet the needs of investors as they appear in the target market as well as the needs of the target market itself, and that the products will indeed be distributed on that market.<sup>167</sup> Finally, distributors need to understand the products offered or proposed, to assess their compatibility with the needs of investors and to identify the target market, based on its previous determination by the manufacturers.<sup>168</sup>

In this new setting, the key element is the recognition of the target market, for which there is no clear definition and only recently some guidelines and five criteria to be taken into account for its recognition have been given by the ESMA, which are:

- The type of clients targeted by the financial products
- Their level of knowledge and experience
- Their financial situation
- Tolerance of the risk and compatibility of the product with the target market
- Client's needs and goals.<sup>169</sup>

The extension of the obligations to firms that operate as a manufacturer and distributor of investment products, in my opinion, creates a more structured environment for investor protection, as there is greater transparency over the life of the financial products, from their creation to their marketing, which is necessary, because the same have become more complex as well as the environment in which they are traded. So, the client may have a general oversight of the new situation and be more suspicious of the difficult investment decisions he/she is required to take,

---

<sup>165</sup> Gaëtane Schaeken Willemaers, Client Protection on European Financial Markets - From Inform Your Client to Know Your Product and Beyond: An Assessment of the PRIIPs Regulation, MiFID II/MiFIR and IMD 2 (2014), p. 11, Available at SSRN <<https://ssrn.com/abstract=2494842>>, accessed 8 February 2019

<sup>166</sup> Ibid

<sup>167</sup> Dr Bernd M. Geier, Laura Druckenbrodt, Legislative Comment, Product governance (2015) 30 (4) Journal of International Banking Law and Regulation, p. 3

<sup>168</sup> Ibid, pp. 4-5

<sup>169</sup>ESMA, Guidelines on MiFID II product governance requirements, 5.2.2018, pp. 6-7, Available at <[https://www.esma.europa.eu/sites/default/files/library/esma35-43-](https://www.esma.europa.eu/sites/default/files/library/esma35-43-620_guidelines_on_mifid_ii_product_governance_requirements_0.pdf)

620\_guidelines\_on\_mifid\_ii\_product\_governance\_requirements\_0.pdf>, accessed 8 February 2019

while the investment firms will make targeted and more effective investment proposals to investors.

## **2.4. Electronic Trading**

As history has proven, finance is nothing more but a series of innovations, which has gradually led to the creation of innovative financial products and processes to redistribute wealth and manage risk.<sup>170</sup> But it is also true that financial innovation is in line with major economic developments, as in the case of algorithmic trading (AT), which is an innovative process in which trading strategies should be adapted to the use of technology.<sup>171</sup> In practice, AT refers to the process in which a computer algorithm is used to process orders without or with minimum involvement of the human factor.<sup>172</sup> A special type of AT and the most problematic one is that of HFT which we will see below.

### **2.4.1. High Frequency Trading**

HFT uses computer algorithms to execute strategic orders while taking advantage of specific computer hardware and mathematical models, resulting in extremely high speed of trading times.<sup>173</sup> Historically, the first algorithmic trading samples were back in 1971 when Nasdaq offered an electronic quotation, and by the late 1990s most public stock exchanges had provided a fully automated trading process.<sup>174</sup> At European level, the MiFID I, leaving space for the proliferation of dark pools, helped develop automatic execution within the alternative trading venues and highlighted the need to regulate markets that came up because of the AT and HFT. The

---

<sup>170</sup> Emiliós Avgouleas, *Regulating Financial Innovation: A Multifaceted Challenge to Financial Stability, Consumer Protection, and Growth* (Oxford Handbook of Financial Regulation, Oxford University Press, 2015), p. 1

<sup>171</sup> *Ibid*, p. 4

<sup>172</sup> European Commission, *Impact Assessment Accompanying the document Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in financial instruments [Recast] and the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in financial instruments*, Brussels, 20.10.2011, SEC (2011) 1226 final, p. 72, Available at <[http://ec.europa.eu/smart-regulation/impact/ia\\_carried\\_out/docs/ia\\_2011/sec\\_2011\\_1226\\_en.pdf](http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2011/sec_2011_1226_en.pdf)>, accessed 8 February 2019

<sup>173</sup> Tilen Cuk and Arnaud Van Waeyenberge, *European Legal Framework for Algorithmic and High Frequency Trading (Mifid 2 and MAR) - A Global Approach to Managing the Risks of the Modern Trading Paradigm* (2018) 9 *European Journal of Risk Regulation*, p. 146

<sup>174</sup> *Ibid*, pp. 147-148

above, combined with the so-called 'flash crash' that took place in the American financial market on May 2010, put the market participants in suspicion as to how good or bad the HFT is.<sup>175</sup> The views heard, varied, some were in favor and others against, but it is certain that neither side, despite the risks it brought to the financial market, did not regard prohibition as a solution, thus, adjusting the market structure to new technological risks seemed preferable.<sup>176</sup> The willingness to regulate financial innovations has increased especially since the outbreak of the financial crisis in mid-2008.

About AT and especially HFT, at a European level, MiFID II has decided to allow it under strict surveillance rules, due to the intense risk involved.<sup>177</sup> New rules for automatic trading control have been introduced, which create stringent conditions for the operation of algorithms through frequent testing, and circuit breakers that are applied when there is widespread trading volatility.<sup>178</sup> The MiFID II contains specific rules regarding authorization and transparency obligations of investment firms that deal with HFT. Indeed, an investment firm that engages in AT and HFT should obtain authorization as an investment firm, be subject to supervisory controls and have such an internal organization as to ensure the resilience and adequacy of its trading system and that it does not send out erroneous orders to execution.<sup>179</sup> Subsequently, regarding post-trade monitoring, at the request of the relevant competent authority, an HFT investment firm may be required to provide all its following strategy information, so it should keep a record of all the above information to allow the competent supervisory authorities to monitor its compliance with the requirements imposed by MiFID II.<sup>180</sup> In addition, HFT investment firms acting as market makers

---

<sup>175</sup> Danny Busch, *MiFID II: Regulating high frequency, other forms of algorithmic trading and direct electronic market access* (2017), p. 1, Available at SSRN <<https://ssrn.com/abstract=3068104>>, accessed 8 February 2019

<sup>176</sup> Tilen Cuk and Arnaud Van Waeyenberge, *European Legal Framework for Algorithmic and High Frequency Trading (Mifid 2 and MAR) - A Global Approach to Managing the Risks of the Modern Trading Paradigm* (2018) 9 *European Journal of Risk Regulation*, p. 149

<sup>177</sup> Danny Busch, *MiFID II: Regulating high frequency, other forms of algorithmic trading and direct electronic market access* (2017), p. 4, Available at SSRN <<https://ssrn.com/abstract=3068104>>, accessed 8 February 2019

<sup>178</sup> Emiliós Avgouleas, *Regulating Financial Innovation: A Multifaceted Challenge to Financial Stability, Consumer Protection, and Growth* (Oxford Handbook of Financial Regulation, Oxford University Press, 2015), p. 25

<sup>179</sup> MiFID II, art. 17, par. 1

<sup>180</sup> MiFID II, art. 17, par. 2

should maintain this policy throughout their time action in the trading venue and ensure that they meet the internal organizational requirements that allow them to comply with the agreement they have concluded with the trading venue. This is achieved by considering both the nature and liquidity of the market, but also the characteristics of the products being traded.<sup>181</sup> Finally, the MiFID II introduces specific rules for the trading venues to which the HFT investment firms are connected, to ensure the smooth operation of their system and the market's in general.<sup>182</sup>

As we observe, the regulatory framework to be respected is rigorous and covers a wide range of factors and operations and that is logical, because only in this way can the benefits, such as 'wider participation in markets, increased liquidity, narrower spreads, reduced short term volatility and the means to obtain better execution of orders for clients'<sup>183</sup> be attributed to the financial market. However, HFT also has drawbacks as the investor will have to compete with an algorithm that is definitely more effective than traditional human trading, and is accused of creating a kind of pseudo-liquidity that quickly disappears due to the increased trading speeds, with the result that other investors will not benefit from it.<sup>184</sup> But although there are risks, the right legislative approach is the only issue for AT and HFT, because already today and in the future, the evolution of the trading seems to me that tends to de facto use of techniques and strategies such as the HFT.

### ***2.5. The powers of supervisory authorities***

It is a fact that one of the factors that led to the financial crisis is that of weak supervision of the financial sector by the competent authorities.<sup>185</sup> With regard to ESMA, it is one of the three European Supervisory Authorities (ESAs), which was

---

<sup>181</sup> MiFID II, art. 17, par. 3

<sup>182</sup> Danny Busch, MiFID II: Regulating high frequency, other forms of algorithmic trading and direct electronic market access (2017), p. 16, Available at SSRN <<https://ssrn.com/abstract=3068104>>, accessed 8 February 2019

<sup>183</sup> MiFID II, Recital 62

<sup>184</sup> Joshua Warner, Why has high-frequency trading decreased? (IG Community, 10 October 2018) Available at <<https://www.ig.com/au/trading-opportunities/why-has-high-frequency-trading-decreased--181010>>, accessed 8 February 2019

<sup>185</sup> Aneta B. Spendzharova, Becoming a powerful regulator - The European Securities and Markets Authority (ESMA) in European financial sector governance, TARN Working Paper, (2017) 8, p. 1, Available at SSRN <<https://ssrn.com/abstract=2965429>>, accessed 8 February 2019

created following the de Larosiere reforms in 2009 and was assigned the gradual regulatory reform of the Securities Markets, within the trend, created after the financial crisis, of strengthening central supervisory authorities over national ones and of transferring the powers and responsibilities from the Member States to the EU.<sup>186</sup> ESMA aims to 'enhance investor protection and promote stable and orderly financial markets'<sup>187</sup>, and now is able to take decisions with immediate and binding force.<sup>188</sup>

Indeed, the Single Market for Securities cannot be achieved simply by rules, unless there are bodies responsible for the unified observance of them and with the power to intervene when judged necessary in order to preserve them. Obviously, in order to achieve these objectives, cooperation between NCAs and ESMA would be necessary, on a case-by-case basis. In particular, the areas that will be of concern to us are the supervisory authorities' powers to intervene in the trading of certain financial instruments and impose position limits on commodity derivatives.

### **2.5.1. The product intervention power granted to NCAs, ESMA and EBA**

Until the revision of the MiFID I, there was no possibility for national regulators to intervene by prohibiting or restricting the sale and distribution of specific financial instruments and services when this practice had negative effects on the functioning of the market, which proved to have affected especially its stability.<sup>189</sup> Moreover, there was no provision for cooperation between the competent authorities, which would facilitate pan-European market surveillance.<sup>190</sup> For this reason, rules were introduced

---

<sup>186</sup> Ibid, p. 1

<sup>187</sup> European Securities and Markets Authority, Press Release, ESMA will focus on supervisory convergence and supervision in 2019, 3.10.2018, p. 3, Available at <[https://www.esma.europa.eu/sites/default/files/library/esma71-99-1046\\_wp\\_2019\\_press\\_release.pdf](https://www.esma.europa.eu/sites/default/files/library/esma71-99-1046_wp_2019_press_release.pdf)>, accessed 8 February 2019

<sup>188</sup> Aneta B. Spendzharova, Becoming a powerful regulator - The European Securities and Markets Authority (ESMA) in European financial sector governance, TARN Working Paper, (2017) 8, p. 6, Available at SSRN <<https://ssrn.com/abstract=2965429>>, accessed 8 February 2019

<sup>189</sup> European Commission, Impact Assessment Accompanying the document Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in financial instruments [Recast] and the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in financial instruments, Brussels, 20.10.2011, SEC (2011) 1226 final, p. 15, Available at <[http://ec.europa.eu/smart-regulation/impact/ia\\_carried\\_out/docs/ia\\_2011/sec\\_2011\\_1226\\_en.pdf](http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2011/sec_2011_1226_en.pdf)>, accessed 8 February 2019

<sup>190</sup> Ibid

which allow both the NCAs and ESMA or EBA<sup>191</sup> to intervene. This is the case for the first time under the new legislative regime provided for in articles 40 to 43 of MiFIR, where under certain conditions, such as when investor protection and systemic stability are at risk, the NCAs intervene in the first instance and, when they are inactive or their action inadequate, ESMA or EBA take action. The ban or restriction, firstly, is the NCAs' responsibility and must be based on reasonable grounds. Then ESMA or EBA, should give its opinion on whether the action was justified and proportionate. The ban or restriction should be published on the website of these authorities and last up to three months. ESMA and EBA can only temporarily execute this power, but they can renew this time frame if they deem it appropriate.

At this point, some observations are critical. For this action to be effective the forces of the national and European authorities should be applied wisely, and maximum cooperation should be achieved. An overriding factor is the principle of proportionality, a key European principle since the establishment of the EU, which also plays a role here in clarifying whether the power to intervene will apply.<sup>192</sup> Furthermore, the product intervention power could be described by some as superfluous as they already exist, as we have seen above, the product governance requirements.<sup>193</sup> However, they cannot guarantee in any case that no harmful products will be placed on the market, hence the latter power of intervention, is of vital importance to society in general, since, in addition to financial costs, harmful products may incur social costs.<sup>194</sup> Finally, this direct power granted to ESMA at a second phase, is of high importance as it acts as a safeguard to ensure the smooth functioning of the market and to avoid future crises such as the one, we have experienced recently.

---

<sup>191</sup> EBA is responsible for monitoring and intervening in the case of structured deposits according to art. 39, par. 2 and art. 41 of MiFIR

<sup>192</sup> Peter Snowdon, Hannah Meakin, Simon Lovegrove, MIFID II/MiFIR (2014) 120 Compliance Officer Bulletin, pp. 27-28

<sup>193</sup> Danny Busch, Product governance and product intervention under MiFID II/MiFIR (2016), p. 13, Available at SSRN <<https://ssrn.com/abstract=3206731>>, accessed 8 February 2019

<sup>194</sup> *Ibid*, p. 21

### 2.5.2. Position Limits on commodity derivatives

The commodity derivatives market was a market characterized by high price volatility, which was reinforced by the intense activity in this market of non-commercial investors.<sup>195</sup> At the same time, the increased flow of financial investments could not be ascertained and fought due to the lack of transparency of these markets.<sup>196</sup> Therefore, the lack of information led to inadequate supervisory powers of the competent authorities, failing to fulfill their role. That is why this market has been the target of the European policy relatively recently, and measures have been taken to promote and improve regulation and supervision, transparency and, in general, its operation.<sup>197</sup> So, it was given the NCAs responsibility to set position limits ‘on the size of a net position which a person can hold at all times in commodity derivatives traded on trading venues and economically equivalent OTC contracts (EEOTC)’<sup>198</sup> according to a calculation methodology as determined by the ESMA. Position limits are defined and published by NCAs, if ESMA has been consulted and issued its opinion, both of them having the obligation to publish these actions on their website. NCAs can adjust or even set more stringent limits, in exceptional circumstances, related to liquidity and orderly functioning of the market, and for specific time limits. This scheme applies to all persons holding a position in a commodity derivative. However, this wide range of people it covers, creates many practical issues in identifying a person within, for example, a group entity will be more time-consuming.<sup>199</sup> At the same time, with regard to the EEOTC contracts, although guidelines have been given, it remains difficult for a person entering the OTC derivatives to recognize that it is the EEOTC category, if that was not his purpose.<sup>200</sup> Finally, and for this regime to prosper, it is imperative that

---

<sup>195</sup> European Commission, Impact Assessment Accompanying the document Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in financial instruments [Recast] and the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in financial instruments, Brussels, 20.10.2011, SEC (2011) 1226 final, p. 13, Available at <[http://ec.europa.eu/smart-regulation/impact/ia\\_carried\\_out/docs/ia\\_2011/sec\\_2011\\_1226\\_en.pdf](http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2011/sec_2011_1226_en.pdf)>, accessed 8 February 2019

<sup>196</sup> Ibid

<sup>197</sup> Ibid

<sup>198</sup> MiFID II, art.57, par. 1

<sup>199</sup> Hannah Meakin, Imogen Garner, Charlotte Henry, Gavin Punia, Wright, Iona, Matthew Gregory, Albert Weatherill, Anna Carrier, John Davison and Simon Lovegrove, MIFID II (2017) 145 Compliance Officer Bulletin, p. 28

<sup>200</sup> Ibid, p. 29

members of trading venues, trading venues and investment firms report the positions held by them or their clients as provided for in article 58 of MiFID II.

Assigning this process to the competent authorities is intended to ensure that the commodity derivatives market is subject to regulatory oversight, that transparency will be enhanced, while speculation that existed until then will be reduced.<sup>201</sup> Moreover, price stability and the strengthening of orderly pricing, avoiding market abuse, are also an of great importance goal.<sup>202</sup> However, in order to be able to cope with this process, investment firms should set up systems for monitoring and supervising the position limits held by their clients, and ESMA for its part to allocate time and resources to indicate the methodology of setting position limits.<sup>203</sup> At the same time, ESMA is required to facilitate the work of NCAs, in accordance with article 44 of MiFIR, but also as a final judge, under article 45 of MiFIR to intervene when necessary by exercising the power of position management it holds. However, the market, when revising the MiFID I, expressed its doubts as to the imposition of position limits, on the main argument, that it would bring legal ambiguity, calling the limits on positions 'arbitrary and misguided'.<sup>204</sup> Time will show if these suspicions are justified or not.

---

<sup>201</sup> MiFID II, Recital 127

<sup>202</sup> Ibid

<sup>203</sup> Norton Rose Fulbright, MIFID II (2018) 158 Compliance Officer Bulletin, p. 41

<sup>204</sup> European Commission, Impact Assessment Accompanying the document Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in financial instruments [Recast] and the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in financial instruments, Brussels, 20.10.2011, SEC (2011) 1226 final, p. 45, Available at <[http://ec.europa.eu/smart-regulation/impact/ia\\_carried\\_out/docs/ia\\_2011/sec\\_2011\\_1226\\_en.pdf](http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2011/sec_2011_1226_en.pdf)>, accessed 8 February 2019



#### IV. Critical appraisal of the evolution of the legal regime

Here we will see how the legislative framework has evolved and will present some thoughts on its evolution, weaknesses and assets. Up to now, several OTFs have already been licensed, and more and more SIs are registered as such.<sup>205</sup> Thanks to the DVCM suspensions were imposed on many financial instruments and the dark pool trading declined.<sup>206</sup> However, the flow of trading is channeled to a greater extent to SIs and this raises concerns about the structure of the market and the formation of competition, as it seems that there is a risk for trading venues, to stay out of the game.<sup>207</sup> Measures should therefore be taken by ESMA in order to balance the trading of securities in these trading services and to eliminate the differences that created this inequality. This is one of the biggest thorns of the post-MiFID II/MiFIR era, as it turns out that the transition to the lit markets was not a success. Furthermore, it should be strongly clarified by all means by ESMA that although SIs are regulated as a venue-like regime,<sup>208</sup> they cannot create a network between them, similar to multilateral trading venues.

In addition, trading obligation of derivatives has indeed been applied, contributing the EU to come closer to achieving the objectives set by the G20 reform agenda.<sup>209</sup> However, one issue is that until now the EU has been infinite about issues of transparency for the derivatives market.<sup>210</sup> It should therefore continuously monitor

---

<sup>205</sup> ESMA, MiFID II Implementation – Achievements and Current Priorities, 21.6.2018, p. 2, Available at <[https://www.esma.europa.eu/sites/default/files/library/esma70-156-427\\_mifid\\_ii\\_implementation\\_-\\_achievements\\_and\\_current\\_priorities\\_steven\\_maijoor\\_fese\\_convention\\_2018\\_vienna\\_21\\_june\\_1.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-156-427_mifid_ii_implementation_-_achievements_and_current_priorities_steven_maijoor_fese_convention_2018_vienna_21_june_1.pdf)>, accessed 8 February 2019

<sup>206</sup> Ibid, p. 3

<sup>207</sup> ESMA, The state of implementation of MIFID II and preparing for Brexit, 3.10.2018, p. 6, Available at <[https://www.esma.europa.eu/sites/default/files/library/esma70-156-787\\_wfe\\_speech\\_steven\\_maijoor.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-156-787_wfe_speech_steven_maijoor.pdf)>, accessed 8 February 2019

<sup>208</sup> Niamh Moloney, EU Securities and Financial Markets Regulation (3rd edn, Oxford EU Law Library, 2014), p. 462

<sup>209</sup> ESMA, MiFID II Implementation – Achievements and Current Priorities, 21.6.2018, p. 2, Available at <[https://www.esma.europa.eu/sites/default/files/library/esma70-156-427\\_mifid\\_ii\\_implementation\\_-\\_achievements\\_and\\_current\\_priorities\\_steven\\_maijoor\\_fese\\_convention\\_2018\\_vienna\\_21\\_june\\_1.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-156-427_mifid_ii_implementation_-_achievements_and_current_priorities_steven_maijoor_fese_convention_2018_vienna_21_june_1.pdf)>, accessed 8 February 2019

<sup>210</sup> Alix Prentice, Legislative Comment, The Markets in Financial Instruments Directive (2012) 18 (1) International Trade Law & Regulation, p. 13

the provisions and their implementation to ensure that equity market problems have not spread to the derivatives market and whether this has been done to propose changes and corrections and remove misplaced settings. Lastly, the positive aspect is that MiFID II/MiFIR, coupled with other legislation, such as the EMIR, has put the derivatives market on the path for development, which needs close monitoring and supervision, so that one law does not overlap the other.<sup>211</sup>

Furthermore, with regard to the increased transparency obligations of almost all participants to provide and publish data at each stage of the trading, it is noticeable that not all the required information has yet been received by the competent authorities,<sup>212</sup> while the CTP, which concerns the provision of information to the market, although introduced as an idea, has never been created.<sup>213</sup> Additionally, the increased obligations of investment firms to archive, report and publish information, in order to fulfill their best execution obligation, has created anxiety on how they will take advantage of all the possibilities offered by MiFID II.<sup>214</sup> Thus, it should be noted that the creation of a single CTP by ESMA itself is already under discussion. The positive thing with this, in my opinion, is that ESMA will contribute to the finding of the appropriate CTP model and will ensure that this will actually work in the interest of the final recipients. However, under this case, I believe that the relevant provisions will have to be revised, because the relationship and involvement that ESMA will now have with the CTP should also be regulated. Additionally, at least for the time being, NCAs should provide more guidance on the information that companies have to provide, especially those smaller in size, which so far have perhaps not even had such an internal organization and a department dedicated to the collection and processing of this information. In any case, I believe that all participants should keep in mind that the real purpose of the legislation is that transparency must be increased because it serves

---

<sup>211</sup> Niamh Moloney, *EU Securities and Financial Markets Regulation* (3rd edn, Oxford EU Law Library, 2014), p. 501

<sup>212</sup> ESMA, *MiFID II Implementation – Achievements and Current Priorities*, 21.6.2018, p. 3, Available at <[https://www.esma.europa.eu/sites/default/files/library/esma70-156-427\\_mifid\\_ii\\_implementation\\_-\\_achievements\\_and\\_current\\_priorities\\_steven\\_maijoor\\_fese\\_convention\\_2018\\_vienna\\_21\\_june\\_1.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-156-427_mifid_ii_implementation_-_achievements_and_current_priorities_steven_maijoor_fese_convention_2018_vienna_21_june_1.pdf)>, accessed 8 February 2019

<sup>213</sup> *Ibid*, p. 6

<sup>214</sup> Matt Smith, *MiFID II – One Year On* (Finextra, 2 January 2019) Available at <<https://www.finextra.com/blogposting/16488/mifid-ii---one-year-on>>, accessed 8 February 2019

the price formation process. This means that it is not intended to provide full transparency, but only as much needed to achieve the above intended result. This will help them set priorities and better manage the volume of data, with the result of their smooth operation and the facilitation of supervisory authorities' work.

As regards the process of providing services, product creation and distribution, it should be reformed taking into account sustainability issues so that the MiFID II/MiFIR provisions are in line with the Action Plan on sustainable finance adopted by the EC.<sup>215</sup> The organizational requirements of investment firms should therefore be shaped and adapted to sustainability risks, product governance regime should also consider sustainable factors, and investment firms should propose appropriate investments to meet all the needs of the investors, even those who support sustainable development and are looking for matching investments. I see a new era, with a look at sustainable investment and an attempt to change the investment culture so far.

But, what about the ban of inducements? Will investment firms be reconciled with this ban? Will they change the provision of their services so that they are not covered by the ban? Will they find the way to fill this gap by increasing the cost of providing their services to customers? Surely the last choice is probably the most unlikely; as it will deter investors and strengthen the market position of firms which themselves bear the burden of the prohibition. This is probably the most obscure and controversial point so far in this legislation, but these provisions are legitimate, in my opinion, to complement the investor's overall spirit of protection.

Finally, electronic trading seems to be gaining ground and serving issues relating to the compliance of investment firms and trading venues with increased data retention, reporting and publishing requirements, as the concept of electronic trading implies the automatic storage of information in algorithms, which can be retrieved and

---

<sup>215</sup> ESMA, Consultation Paper On integrating sustainability risks and factors in MiFID II, 19.12.2018, p. 4, Available at <[https://www.esma.europa.eu/sites/default/files/library/2018-esma35-43-1210-\\_ipisc\\_cp\\_mifid\\_ii\\_sustainability.pdf](https://www.esma.europa.eu/sites/default/files/library/2018-esma35-43-1210-_ipisc_cp_mifid_ii_sustainability.pdf)>, accessed 8 February 2019

searched by the competent authorities if they so request.<sup>216</sup> I consider the familiarity with electronic trading and HFT particularly important, as it offers room for developing new practices and collaborations with innovative companies that can transfer their technological knowledge to both the market and the supervisory authorities.

Finally, good cooperation between NCAs and ESMA is, in my view, even more significant than the powers given to them. Every authority can impose the power it is given, but whether it is really needed and to what extent, is of greater importance. In order to ascertain this, each Member State should ensure and facilitate continuous communication, cooperation and exchange of information between NCAs and ESMA, so that any power is enforced fairly and proportionately.

To conclude, I find that the market in general adapted relatively easily and smoothly and managed to do so without losing its power. Market participants have to work constantly to meet their obligations in order to keep the quality of the market high. It is a massive, highly technical and difficult to understand legislation, so it will take time and practice to get used to it. At the same time, ESMA should have a supportive role and constantly give guidance, using to the utmost all powers given to it, especially when it sees that the true meaning of the provisions is being distorted. It's too early to talk about MiFID III, as we have not yet seen the full impact of the current regime. My concern, however, is that from an era of totally laid back regulation we have suddenly jumped to an extreme regulatory period, so intrusive, that instead of facilitating the operation of the market, perhaps it makes it even harder. It is a game of balance, which in my opinion is due to an extreme overregulation spree which has reached its libido and in which we will soon find out who will be the winner. In my opinion there is no need for more of the same tactics which just result in a recycling of the same vicious circle.

---

<sup>216</sup> Joshua Warner, Why has high-frequency trading decreased? (IG Community, 10 October 2018) Available at <<https://www.ig.com/au/trading-opportunities/why-has-high-frequency-trading-decreased--181010>>, accessed 8 February 2019

## V. Conclusions

Since its creation, the EU has been aiming to create a Single Market, seeking its integration. For this reason, it accompanied its political decisions with laws that would support cross-border activity, facilitating the transfer of capital and services across Europe, regulating the relationship between investment firms and investors, the transaction of financial instruments, the places where this occurs and the obligations of market participants, with the sole aim of full investor protection, market transparency and stability. Key milestones were the post-FSAP and post-financial crisis eras, which were highly regulatory and helped to redefine the market and its needs. MiFID I was the first complete legislative instrument and laid solid foundations to achieve the above goals, changing the market as we knew it. MiFID II/MiFIR, even more interventionist, have come to fill gaps and set stricter rules to rebuild the vulnerable from the crisis market. In any case, what must always be reminded of, regarding the crisis is that market dynamics are a continuous and uninterrupted process.<sup>217</sup> And in my opinion, these dynamics will never reach a level that will bring about the desired integration, because of the nature of man and society, which always seeks something more and that is reflected in everything around us.

To sum up, we saw shares trading returning to organized markets, non-equity instruments are now traded on the OTF, and SMEs find ways to escape financial difficulties thanks to capital funding. OTC activity is being reduced and competition is sought on a level playing field for all trading venues. Furthermore, obligations for pre- and post-trade transparency are imposed on all financial instruments, and data collection requirements in a place, where investors and competent authorities will have access, drawing information, so that the former can make more profitable investments and the latter oversee the implementation of the rules.

In addition, the investor and his protection remain at the heart of the legislation. Stricter 'conduct of business' requirements are imposed on investment firms, investment advice is divided into independent and non-independent and ban

---

<sup>217</sup> Roland Gillet, Stéphanie Ligot, Hassan Omidirouzi, The challenges and implications of the Markets in Financial Instruments Directive (MiFID) and of its revision (MiFID II, MiFIR) on the efficiency of financial markets (2017), p. 2, Available at <<https://www.researchgate.net/>>, accessed 8 February 2019

inducements are imposed on them and on the portfolio management to avoid conflicts of interest. Investment firms that manufacture and distribute financial products are also under probe and are subject to increased organizational requirements and investor information requirements.

MiFID II/MiFIR undertook also the task to adapt the market to technological breakthroughs by imposing controls on transactions completed through algorithms, wanting to anticipate developments and address the risk they pose. Finally, the supervisory powers of NCAs and ESMA, which can now intervene in the marketing and trading of financial products to protect investors and market stability, and to supervise the commodity derivatives market more closely to prevent speculation, are strengthened.

Stressing, therefore, that, in order for the legislative regime we have developed above, to be successful, it must satisfy a set of traditional aims pursued by the law, i.e. supporting and promoting market stability, integrity and transparency, high efficiency and fair functioning, and of course the investors' protection at both a national and a European level.<sup>218</sup> With all looks focused on this, there will have to be a constant struggle to eliminate the divergence between the rules, which as long as it exists is a barrier that prevents the construction and harmonious accomplishment of the Single Financial Market.

---

<sup>218</sup> Niamh Moloney, *EU Securities and Financial Markets Regulation* (3rd edn, Oxford EU Law Library, 2014), p. 41

## **Bibliography**

### **Books**

1. Christos Gkortsos, Introduction to International Financial Law – The International Banking Law within the System of International Financial Law (Nomiki Bibliothiki, 2011)
2. Danny Busch and Guido Ferrarini, Regulation of the EU Financial Markets: MIFID II and MIFIR (Oxford University Press, 2017)
3. Emilios Avgouleas, Regulating Financial Innovation: A Multifaceted Challenge to Financial Stability, Consumer Protection, and Growth (Oxford Handbook of Financial Regulation, Oxford University Press, 2015)
4. Iain G Macneil, An Introduction To The Law On Financial investment (Oxford and Portland, Oregon, 2005)
5. Matthias Haentjens, Pierre de Gioia - Carabellese, European Banking and Financial Law (Routledge, 2015)
6. Niamh Moloney, EU Securities and Financial Markets Regulation (3<sup>rd</sup> edn, Oxford EU Law Library, 2014)
7. Niamh Moloney, How to Protect Investors: Lessons from the EC and the UK (Cambridge University Press, 2010)
8. Sol Picciotto, Regulating Global Corporate Capitalism (Cambridge University Press, 2011)

### **Journal Articles**

9. Alix Prentice, Legislative Comment, The Markets in Financial Instruments Directive (2012) 18 (1) International Trade Law & Regulation
10. Athanasios Panagopoulos, Ioannis Dokas, Thomas Chatzigagios, The Main Effects of MiFID on European Capital Markets and European Integration (2015) vol. 6, no.5 International Journal of Business Administration
11. Christian De Visscher, Olivier Maiscoq and Frederic Varone, The Lamfalussy Reform in the EU Securities Markets: Fiduciary Relationships, Policy Effectiveness and Balance of Power (2008) 28 Journal of Public Policy

12. Christoph Kumpan, Carrot and Stick - The EU's Response to New Securities Trading Systems (2006) vol. 3, no. 4 *European Company and Financial Law Review*
13. Danny Busch, MiFID II and MIFIR: stricter rules for the EU financial markets (2017) 2-3 *Law and Financial Markets Review*
14. Dr Bernd M. Geier, Laura Druckenbrodt, Legislative Comment, Product governance (2015) 30 (4) *Journal of International Banking Law and Regulation*
15. Dr Graeme Baber, From MiFID to MiFID II: a steady transition (2012) 33 (10) *Company Lawyer*
16. Eddy Wymeersch, The Reforms of the European Financial Supervisory System: An Overview (2010) vol. 7, no. 2 *European Company and Financial Law Review*
17. Emiliios Avgouleas, A Critical Evaluation of the New EC Financial-Market Regulation: Peaks, Troughs, and the Road Ahead (2005) 18 *Transnat'l Law*
18. Emiliios Avgouleas, EC Securities Regulation, A Single Regime for an Integrated Securities Market: Harmonized We Stand, Harmonized We Fail? (2007) vol. 22 *Journal of International Banking Law and Regulation*, Part 1 & Part 2
19. Hannah Meakin, Imogen Garner, Charlotte Henry, Gavin Punia, Wright, Iona, Matthew Gregory, Albert Weatherill, Anna Carrier, John Davison and Simon Lovegrove, 'MIFID II' (2017) 145 *Compliance Officer Bulletin*
20. Jean-Pierre Casey, Karel Lannoo, The Mifid Revolution: A Policy View (2006) vol. 7, no. 4 *Competition and Regulation in Network Industries*
21. Michael Huertas, Katharina Ariane Beyersdorfer, SME growth markets in 2018: will MiFID II/MiFIR drive greater choice of capital markets based financing option for SMEs? (2017) 28 (11) *International Company and Commercial Law Review*
22. Nathalie Aubry and Michael McKee, MiFID: where did it come from, where is it taking us? (2007) 22 (4) *Journal of International Banking Law and Regulation*
23. Niamh Moloney, Financial market regulation in the post-Financial Services Action Plan era (2006) vol. 55, no. 4 *International & Comparative Law Quarterly*
24. Niamh Moloney, Large-Scale Reform of Investor Protection Regulation: The European Union Experience (2007) 4 *Macquarie Journal of Business Law*
25. Niamh Moloney, MiFID II: Reshaping the Perimeter of EU Trading Market Regulation (2012) vol. 6, no. 5 *Law and Financial Markets Review*

26. Niamh Moloney, Resetting the location of regulatory and supervisory control over EU financial markets: lessons from five years on (2013) 62 (4) *International & Comparative Law Quarterly*
27. Norton Rose Fulbright, MIFID II (2018) 158 *Compliance Officer Bulletin*
28. Peter Snowden, Hannah Meakin and Simon Lovegrove, 'MiFID II/MiFIR' (2014) 120 *Compliance Officer Bulletin*
29. Peter Walker, Observations on the MiFID (2006) vol. 1, no. 3 *Irish Business Law Quarterly*
30. The Markets in Financial Instruments Directive (MiFID II) (2017) 59 *Scottish Private Client Law Review*
31. Tilen Cuk and Arnaud Van Waeyenberge, European Legal Framework for Algorithmic and High Frequency Trading (Mifid 2 and MAR) - A Global Approach to Managing the Risks of the Modern Trading Paradigm (2018) 9 *European Journal of Risk Regulation*

#### **Online Journals**

32. Aneta B. Spendzharova, Becoming a powerful regulator - The European Securities and Markets Authority (ESMA) in European financial sector governance, TARN Working Paper (2017) 8 Available at SSRN <<https://ssrn.com/abstract=2965429>>, accessed 8 February 2019
33. Chlistalla, Michael and Schweickert, Uwe and Wittner, Roland, Markets in Financial Instruments Directive - The Way Forward in European Securities Market Integration? (2006) Available at SSRN <<https://ssrn.com/abstract=964492>>, accessed 8 February 2019
34. Danny Busch, MiFID II and MiFIR: stricter rules for the EU financial markets (2017) Available at SSRN <<https://ssrn.com/abstract=3086604>>, accessed 8 February 2019
35. Danny Busch, MiFID II: Regulating high frequency, other forms of algorithmic trading and direct electronic market access (2017) Available at SSRN <<https://ssrn.com/abstract=3068104>>, accessed 8 February 2019
36. Danny Busch, MiFID II: Stricter Conduct of Business Rules for Investment Firms (2017) Available at SSRN <<https://ssrn.com/abstract=3063236>>, accessed 8 February 2019

37. Danny Busch, Product governance and product intervention under MiFID II/MiFIR (2016) Available at SSRN <<https://ssrn.com/abstract=3206731>>, accessed 8 February 2019
38. Gaëtane Schaecken Willemaers, Client Protection on European Financial Markets - From Inform Your Client to Know Your Product and Beyond: An Assessment of the PRIIPs Regulation, MiFID II/MiFIR and IMD 2 (2014) Available at SSRN <<https://ssrn.com/abstract=2494842>>, accessed 8 February 2019
39. Guido Ferrarini, Paolo Saguato, Reforming Securities and Derivatives Trading in the EU: from EMIR to MiFIR (2014) Available at SSRN <<https://ssrn.com/abstract=2386290>>, accessed 8 February 2019
40. Guido Ferrarini, Paolo Saguato, Regulating Financial Market Infrastructures, European Corporate Governance Institute - Law Working Paper No 259/2014, Available at SSRN <<https://ssrn.com/abstract=2450095>>, accessed 8 February 2019
41. Kiran Karande, MiFID Best Execution Benchmark (2007) Available at SSRN <<http://ssrn.com/abstract=982952>>, accessed 8 February 2019
42. Kwangwook Lee, Investor Protection in European Union: Post FSAP Directives and MiFID (2009) Available at SSRN <<https://ssrn.com/abstract=1339305>>, accessed 8 February 2019
43. Michel Tison, Financial Market Integration in the Post-Fsap Era (2006) Available at SSRN <<https://ssrn.com/abstract=901565>>, accessed 8 February 2019
44. Nis Jul Clausen, Karsten Engsig Sørensen, Reforming the regulation of trading venues in the EU under the proposed (MiFID II) – levelling the playing field and overcoming market, Nordic & European Company Law Working Paper No. 10-23, Available at SSRN <<https://ssrn.com/abstract=2021079>>, accessed 8 February 2019
45. Peter Gomber, Benjamin Clapham, Jeans Laused, Sven Panz, The MiFIR Trading Obligation: Impact on Trading Volume and Liquidity (2018) Available at SSRN <<https://ssrn.com/abstract=3133161>>, accessed 8 February 2019
46. Peter Gomber, Michael Chlistalla, MiFID - Catalyst for a new trading landscape in Europe? (2008) Available at SSRN <<http://ssrn.com/abstract=1134763>>, accessed 8 February 2019

47. Professor D. Christos Gortsos, *Stricto sensu investor protection under the “MIFID II”*: A systemic overview of Articles 24-30 (2017) Available at SSRN <<https://ssrn.com/abstract=2983776>>, accessed 8 February 2019
48. Roland Gillet, Stéphanie Ligoit, Hassan Omidir Firouzi, *The challenges and implications of the Markets in Financial Instruments Directive (MiFID) and of its revision (MiFID II, MiFIR) on the efficiency of financial markets* (2017) Available at <<https://www.researchgate.net/>>, accessed 8 February 2019,
49. Ryan J. Davies, *MiFID and a Changing Competitive Landscape* (2008) Available at SSRN <<https://ssrn.com/abstract=1117232>>, accessed 8 February 2019

### Websites

50. G20 Information Centre, Available at <<http://www.g20.utoronto.ca/2009/2009communique0925.html>>, accessed 8 February 2019
51. Joshua Warner, *Why has high-frequency trading decreased?* (IG Community, 10 October 2018) Available at <<https://www.ig.com/au/trading-opportunities/why-has-high-frequency-trading-decreased--181010>>, accessed 8 February 2019
52. Matt Smith, *MiFID II – One Year On* (Finextra, 2 January 2019) Available at <<https://www.finextra.com/blogposting/16488/mifid-ii---one-year-on>>, accessed 8 February 2019
53. Official website of European Commission, Available at <[https://ec.europa.eu/info/law/markets-financial-instruments-mifid-ii-directive-2014-65-eu/law-details\\_en](https://ec.europa.eu/info/law/markets-financial-instruments-mifid-ii-directive-2014-65-eu/law-details_en)>, accessed 8 February 2019, and <[https://ec.europa.eu/info/law/markets-financial-instruments-mifir-regulation-eu-no-600-2014/law-details\\_en](https://ec.europa.eu/info/law/markets-financial-instruments-mifir-regulation-eu-no-600-2014/law-details_en)>, accessed 8 February 2019
54. Official website of European Commission, Available at <[https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-markets/securities-markets/investment-services-and-regulated-markets-markets-financial-instruments-directive-MiFID\\_en#MiFID-2-and-MiFIR](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-markets/securities-markets/investment-services-and-regulated-markets-markets-financial-instruments-directive-MiFID_en#MiFID-2-and-MiFIR)>, accessed 8 February 2019

## **EU Legislation**

55. Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field
56. Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, OJ L 145/2004
57. Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU Text with EEA relevance, OJ L 173/2014
58. European Union, Consolidated Versions of the Treaty on European Union and of the Treaty Establishing the European Community, OJ C 325/2002
59. Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 Text with EEA relevance, OJ L 173/2014

## **Command Papers and Law Commission Reports**

60. ESMA, Consultation Paper On integrating sustainability risks and factors in MiFID II, 19.12.2018, Available at [https://www.esma.europa.eu/sites/default/files/library/2018-esma35-43-1210-ipisc\\_cp\\_mifid\\_ii\\_sustainability.pdf](https://www.esma.europa.eu/sites/default/files/library/2018-esma35-43-1210-ipisc_cp_mifid_ii_sustainability.pdf), accessed 8 February 2019
61. ESMA, Guidelines on MiFID II product governance requirements, 5.2.2018, Available at [https://www.esma.europa.eu/sites/default/files/library/esma35-43-620\\_guidelines\\_on\\_mifid\\_ii\\_product\\_governance\\_requirements\\_0.pdf](https://www.esma.europa.eu/sites/default/files/library/esma35-43-620_guidelines_on_mifid_ii_product_governance_requirements_0.pdf), accessed 8 February 2019
62. ESMA, MiFID II Implementation – Achievements and Current Priorities, 21.6.2018, Available at [https://www.esma.europa.eu/sites/default/files/library/esma70-156-427\\_mifid\\_ii\\_implementation\\_-\\_achievements\\_and\\_current\\_priorities\\_steven\\_maijor\\_fese\\_convention\\_2018\\_viena\\_21\\_june\\_1.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-156-427_mifid_ii_implementation_-_achievements_and_current_priorities_steven_maijor_fese_convention_2018_viena_21_june_1.pdf), accessed 8 February 2019

63. ESMA, The state of implementation of MIFID II and preparing for Brexit, 3.10.2018, Available at <[https://www.esma.europa.eu/sites/default/files/library/esma70-156-787\\_wfe\\_speech\\_steven\\_maijor.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-156-787_wfe_speech_steven_maijor.pdf)>, accessed 8 February 2019
64. European Commission, Impact Assessment Accompanying the document Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in financial instruments [Recast] and the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in financial instruments, Brussels, 20.10.2011, SEC (2011) 1226 final, Available at <[http://ec.europa.eu/smart-regulation/impact/ia\\_carried\\_out/docs/ia\\_2011/sec\\_2011\\_1226\\_en.pdf](http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2011/sec_2011_1226_en.pdf)>, accessed 8 February 2019
65. European Commission, Proposal for a Directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (Recast), Brussels, 20.10.2011, COM/2011/0656 final - 2011/0298 (COD), Explanatory Memorandum
66. European Commission, Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments as regards certain dates, Brussels, 10.2.2016, COM (2016) 56 final-2016/0033(COD), Explanatory Memorandum
67. European Commission, Public Consultation, Review of the Markets in Financial Instruments Directive (MiFID), Directorate General Internal Market and Services, Financial Services Policy and Financial Markets, Securities markets, 8 December 2010
68. European Securities and Markets Authority, Press Release, ESMA will focus on supervisory convergence and supervision in 2019, 3.10.2018, Available at <[https://www.esma.europa.eu/sites/default/files/library/esma71-99-1046\\_wp\\_2019\\_press\\_release.pdf](https://www.esma.europa.eu/sites/default/files/library/esma71-99-1046_wp_2019_press_release.pdf)>, accessed 8 February 2019