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Regulatory News Alert

MiFID II, 9 months after: Where do we stand in Luxembourg?

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MiFID II, live across the EU since 3 January 2018, became officially live in Luxembourg with the law and Grand-Ducal Regulation/Decree of 30 May 2018 on markets in financial instruments (the "Law"), which was published in the Luxembourg Mémorial A on 31 May 2018.

Since the go-live date on 3 January, the major event is that there were no big disruptions or breaks. MiFID II's first day escaped the big disruption that had been feared, at least on the surface. However, are we ready at the Luxembourg market level? We haven't yet reached our destination on the MiFID journey. As with all things regarding regulation, there is always more to do. As we know, where there are rules, more often follow.

Based on regulatory publications and statements, there are nevertheless at least three areas to highlight:

1. Areas where revisions to MiFID II are already planned or underway;
2. Areas where medium-term revisions to MiFID II are possible; and finally
3. The key areas of MiFID II over which supervisors are expected to focus.

1/ Areas where revisions to MiFID II are already planned or underway:

- Suitability: on 24 May, the European Commission proposed new rules that will affect investment advice. The rule will require investment firms providing investment advice and portfolio management to introduce questions in their profile and suitability assessment that would help identify the client's investment objectives in terms of environmental, social, and governance (ESG) preferences. The final recommendations to the client should reflect both the financial objectives and, where relevant, the ESG preferences of that client. This is likely to contaminate the entire asset management industry through second layer effects.
- Review of the prudential framework for investment firms: the European Commission published its plans for a regulation and directive; the overhaul aim is to introduce more proportionate and risk-sensitive rules for investment firms.
- Revised third country rules: in response to Brexit, it has also proposed changes to the MiFID II third country regime.

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2/ Areas where medium-term revisions to MiFID II are possible:

- Payment for research: the European Commission has launched an impact assessment on the payment for research rules, looking in particular at the impact on fixed income instruments and SMEs' access to finance—the outcome of which will certainly lead to a review of the current rule.
- Third-country regime: Steven Maijoor, ESMA Chair, has spoken about the need for a "comprehensive regime for third country trading venues," as about 40 percent of trading in shares issued in the EU27 currently takes place on UK trading venues. While MiFID II creates specific equivalence regimes for third-country venues for the purposes of the trading obligations, it does not provide harmonization for some areas of remote access, including the conditions under which third-country venues may access EU liquidity through the placing of trading screens (namely the direct access to a US stock exchange). As such, Maijoor would "welcome an initiative by the Commission with respect to third country trading venues" that would solve this issue pending since MIFID I.[1]

3/ Overview of MiFID II supervisory activity:

Contrary to other European local supervisory authorities, the CSSF *"Commission de Surveillance du Secteur Financier"* did not specifically announce information regarding its intentions and focus area, even though its counterparts in other Member States have already planned or arranged visits and missions.

Deloitte has undertaken a review of the planned MiFID II supervisory activities for 2018-19 across ten EU countries[2], including ESMA (the European Securities and Markets Authority). We identified eleven supervisory priorities across the different countries, with many of the topics being looked at by regulators in more than one country. The top trio for supervisors appears to be **transaction reporting, followed by payment for research and inducements** (including enhancement of service), and **retail investment distribution** covering areas such as suitability, appropriateness, client reporting, and product governance.

Further detail on each country's planned supervisory activities can be found in the Annex.

[1] Speech by Steven Maijoor, ESMA Chair, MiFID II Implementation – Achievements and Current Priorities, June 2018.

[2] Belgium, Cyprus, Czech Republic, France, Germany, Ireland, Luxembourg, Spain, Sweden, and the UK. The Czech, Luxembourg, and Swedish regulators have so far not publicly indicated areas of planned MiFID II supervisory activities, although the Luxembourg regulator has now started firm visits.

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