

## Tax & Legal Weekly Alert

8 August 2018

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#### **New rules governing the financial services and activities**

Law no. 126/2018 on markets in financial instruments that transposes in the Romanian legislation the EU Directive no. 65/2014 on markets in financial instruments (MiFID II) entered into force in July 2018. We summarized in this legal alert some of the key important provisions of the Law no. 126/2018.



## New rules governing the financial services and activities

Law no. 126/2018 on markets in financial instruments that transposes in the Romanian legislation the EU Directive no. 65/2014 on markets in financial instruments (MiFID II), entered into force in July 2018.

MiFID II and the EU Regulation no. 600/2014 on markets in financial instruments (MiFIR) were approved in 2014, and entered into force on 3 January 2018.

Since their approval, the EU legislator, together with the European Securities and Markets Authority (ESMA), have developed an extensive and comprehensive legal framework in this area, such as implementing regulations, guidelines, technical standards and opinions (together referred to as MiFID II Legal Framework).

A key aspect to be considered is that almost the entire MiFID II Legal Framework has direct applicability in all Member States and does not need any transposition.

Hence, the regulated entities falling under the scope of MiFID II Legal Framework have to follow a broad and dynamic legislation in order to fully comply with all the new requirements.

MiFID II Legal Framework aims to develop more transparent, competitive and integrated financial markets across the EU, by ensuring a less volume of trading outside the regulated markets, better investors' protection (especially for retail investors) and an extensive financial stability.

We have summarized in this legal alert some of the key provisions of the Law no. 126/2018.

### **Scope of Law no. 126/2018**

The new law applies to investment services companies (in Romanian SSIF), market operators, data reporting services providers, central securities depository, central counterparties, investment firms from another Member States operating on the Romanian territory directly or through a branch, and third country investment firms performing investment services and activities in Romania by establishing a branch.

Law no. 126/2018 regulates various topics related to the financial instruments and financial services and activities, such as the authorization and functioning conditions for the regulated entities falling under the scope of law, investors' protection rules, competence areas of the supervisory authorities, data reporting services and access to clearing and settlement arrangements.

### **Supervisory authorities**

The Financial Supervisory Authority (FSA) is the Romanian competent authority that will apply the provisions of Law no. 126/2018, MiFIR and the entire MiFID II Legal Framework.

However, the National Bank of Romania (NBR) will have special supervisory competences under the new law insofar as the investment services and activities performed by the Romanian credit institutions, as well as by the Romanian branches of credit institutions from another Member States are concerned.

Accordingly, the NBR will grant the authorization for the provision of investment services and activities by credit institutions, only after the consultation of the FSA.

Moreover, the NBR will have full supervisory competences on the investment services and activities performed by credit institutions in relation to some categories of financial instruments that are not traded on the regulated markets, such as money market instruments, derivatives related to money market instruments, currencies or interest rates.

The NBR and FSA will work closely on the common supervision of the credit institutions performing investment services and activities by implementing common regulations and cooperation protocols.

### **What is new under this legal framework?**

- **Stricter governance requirements:** stricter requirements regarding the assessment of the suitability of the members of the management body; stricter control of remuneration of staff (bonus criteria) to prevent non-compliance with the obligation to act in the best interest of clients;
- **Extended investors' protection rules:**
  - prohibition of the promotion of financial services and activities through external services providers, such as "call center" services;
  - prohibition of the marketing, selling and distribution to retail clients in certain conditions of several categories of speculative products, such as binary options, derivatives traded on electronic trading platforms, and CFDs;
  - investment firms are prohibited to accept or retain pecuniary and non-pecuniary benefits (inducements) from third parties for independent advice and discretionary asset management services;
  - periodic disclosure requirements for investment firms about the cost and charges of the services and activities provided, including information on the cost of advice, the cost of the financial instrument sold or recommended and how the client may pay for it, and an itemized breakdown of the costs upon client's request;
  - specific requirements when an investment firm offers a package of products or services: evidence of the costs and charges for each component of the package and explanation on how their interaction changes the risks, as well as a performance of the suitability/appropriateness test at the level of the package;
  - investment firms have the obligations to publish annually, for each class of financial instruments, the top five execution venues in terms of client orders in the preceding year and information on the quality of execution and are prohibited to receive any remuneration, discount or non-monetary benefits from routing orders to a particular venue for avoiding the non-compliance with the rules on conflict of interests or inducements;
  - trading venues have the obligation to make periodic reports including details about price, costs, speed and likelihood of execution for each financial instrument.
- **New concepts of algorithmic trading and high-frequency algorithmic trading are introduced along with related special requirements;**
- **New trading venue:** organized trading facility (OTF) for bonds, structured products and derivatives in order to capture the "dark pool" systems and operators;
- **Introduction of position limits for commodity derivatives:** established by the FSA based on a computation methodology provided by the ESMA regulations;
- **Extended market transparency and transaction reporting:** establishment of new entities providing data reporting services, such as approved publication arrangement (APA), approved reporting mechanism (ARM), and consolidated tape provider (CTP), each of them being subject to a prior authorization from the FSA;

- **Extra-judicial mechanism for consumers' complaints:** Investment firms have the obligation to adhere to the competent bodies for alternative resolution of disputes organized by the FSA or at the level of the banking sector.

### **Sanctions**

Law no. 126/2018 imposes strict sanctions and administrative measures for non-compliance with its provisions and MiFID II Legal Framework' provisions, that may be applied by the FSA; in case of legal entities, the pecuniary fines may amount up to RON 22,000,000 or 10% of the last financial year net turnover.

### **Transitional provisions**

Within maximum 6 months from the date of entry into force of Law no. 126/2018, the SSIFs, credit institutions, investment advisors, market operators, regulated markets and alternative trading systems have the obligation:

- to amend and/or to supplement the initial file submitted with the FSA for obtaining their initial authorization or, as the case may be, the registration with the public registry held by the FSA, and to submit it again for notification/authorization with the FSA, according to the regulations issued by the FSA; and
- to amend and/or to supplement their internal policies in order to comply with the provisions of Law no. 126/2018, MiFIR and the MiFID II Legal Framework.

The credit institutions performing investment services and activities in relation to structured deposits or distribution of fund units have the obligation to comply with the provision of the new law within maximum 6 months from the date of its entry into force.

The regulations issued by the FSA before the entry into force of Law no. 126/2018 will continue to be applied until new FSA regulations will be approved, except the case of contradictory provisions when Law no. 126/2018 will be applied with priority.

[For further questions regarding the aspects mentioned in this alert, please contact us.](#)



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