



*Commission de Surveillance  
du Secteur Financier*

## PRESS RELEASE 17/47

### APPLICATION OF MIFID II/MIFIR AS OF 3 JANUARY 2018

#### Context

Directive 2014/65/EU of 15 May 2014 on markets in financial instruments (hereinafter, "MiFID II"), Regulation (EU) No 600/2014 of 15 May 2014 on markets in financial instruments (hereinafter, "MiFIR") and the related legal instruments adopted at the level of the European Union put into place a new framework that strengthens regulation of trading activities on financial markets and enhances investor protection. The new framework replaces the existing framework that was established by Directive 2004/39/EC (MiFID I) and implemented in Luxembourg by the Law of 5 April 1993 on the financial sector (hereinafter, the "Law on the Financial Sector") and the Law of 13 July 2007 on markets in financial instruments (hereinafter, the "Markets in Financial Instruments Law").

One of the distinctive features of the new framework is a more detailed and sometimes more stringent regulation of the existing rules and obligations.

- MiFID II/MiFIR reinforces investor protection by introducing more stringent organisational requirements regarding client asset protection or product governance, while also strengthening the role of management bodies. The new regime also provides for reinforced conduct rules such as an extended scope for the appropriateness tests and reinforced information to clients. Independent advice is clearly distinguished from non-independent advice and limitations are imposed on the receipt of commissions (inducements).
- MiFID II/MiFIR introduces a market structure framework which enhances transparency, notably by closing loopholes and ensuring that trading, wherever appropriate, takes place on regulated platforms. To this end, it subjects shares and non-equity instruments to a trading obligation. It further introduces a new multilateral trading venue, the Organised Trading Facility (OTF), for non-equity instruments to trade on organised multilateral trading platforms.
- MiFID II/MiFIR introduces trading controls for algorithmic trading activities. These safeguards include the requirement for all algorithmic traders to be properly regulated and to provide liquidity when pursuing a market-making strategy.
- MiFID II/MiFIR provides for strengthened supervisory powers and a harmonised position-limits regime for commodity derivatives to improve transparency, support orderly pricing and prevent market abuse for these instruments.

MiFID II, MiFIR and the related legal instruments adopted at the level of the European Union have been published in the Official Journal of the European Union and are also available on the homepage of the CSSF.

This press release purports to clarify certain points concerning the application of MiFID II and MiFIR in Luxembourg as from 3 January 2018, in the context that the draft law N° 7157 transposing MiFID II into Luxembourg law has not yet been adopted.

#### Application of MiFID II/MiFIR as of 3 January 2018

Regardless of the fact that Luxembourg has not yet replaced the Markets in Financial Instruments Law and amended the Law on the Financial Sector by a law incorporating the new framework established by MiFID II and MiFIR, the provisions of MiFIR, by virtue of Article 288 of the Treaty on the Functioning of the European Union, are binding and directly applicable in Luxembourg from 3 January 2018 (with the exception of the provisions of Article 37 of MiFIR which

shall apply from 3 January 2020) and will immediately replace the corresponding provisions of the Markets in Financial Instruments Law. Therefore, as from 3 January 2018, credit institutions, investment firms and trading venue operators shall respect the provisions of MiFIR and no longer the corresponding provisions of the Markets in Financial Instruments Law or the Law on the Financial Sector respectively, which have been replaced by MiFIR.

Furthermore, the CSSF highlights that, in accordance with the fundamental principles of EU law (notably the principle of direct effect of EU law, the principle of precedence of EU law and the obligation to interpret national law in conformity with EU law), MiFID II provisions which confer new rights or which are more favorable than the applicable national rules and regulations shall apply from 3 January 2018 and existing provisions of the Law on the Financial Sector and of the Markets in Financial Instruments Law shall be interpreted accordingly. This is notably the case for provisions of MiFID II which strengthen investor protection, such as the more stringent rules regarding organisational requirements, inducements and research.

In this context, the CSSF wants to highlight that the same principles set out above also apply to secondary EU legislation, i.e. the various Commission delegated acts adopted under the MiFID II/MiFIR framework.

### **Use of approved reporting mechanisms (ARMs) under MiFIR**

Without prejudice to applicable Luxembourg legislation, the use of an approved reporting mechanism as foreseen by Article 26(7) of MiFIR will be authorised as from 3 January 2018.

### **ESMA FAQs on MiFID II and MiFIR**

The CSSF wishes to remind that one of the tasks conferred upon ESMA is to contribute to the consistent application of legally binding acts adopted at the level of the European Union. This task is also relevant when it comes to MiFID II and MiFIR.

In light of the above, the CSSF wishes to highlight the publication by ESMA of frequently asked questions on MiFID II and MiFIR. The documents are available under the following Internet address: <https://www.esma.europa.eu/questions-and-answers>.

ESMA has recently published guidance on the topic of continuity of cross-border provision of investment services in the transition between MiFID I and MiFID II, including in the event that there is late transposition of the Directive by some Member States: <https://www.esma.europa.eu/press-news/esma-news/esma-provides-guidance-cross-border-investment-services-and-mifid-transposition>.

### **CSSF circulars and FAQs on MiFID II and MiFIR in Luxembourg**

The application of the new markets in financial instruments framework by the CSSF in Luxembourg has been detailed in CSSF circulars and/or frequently asked questions. Further CSSF circulars and/or frequently asked questions may follow.

The CSSF circulars and FAQs on MiFID II and MiFIR are available under the following Internet address:

<http://www.cssf.lu/en/supervision/mifid2mifir/>

Luxembourg, 29 December 2017