

**International and European Business Law**  
by Schulze / Lehmann

# **European Financial Services Law**

**Article-by-Article Commentary**

**Lehmann / Kumpan**

**Second Edition**



Lehmann / Kumpan  
European Financial Services Law

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Article-by-Article Commentary

edited by

Matthias Lehmann  
Christoph Kumpan

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## **Preface to the Second Edition**

The first edition of this book has been very well received. It has found its place on the desks of numerous practitioners and judges, and in law libraries across the world. The positive reception by both practice and academia has provided the foundation and motivation for this second edition.

In the meantime, European financial services law has continued to evolve. Many of the regulations and directives commented on in the first edition have undergone substantial amendments. Moreover, the EU entered a wholly new area with the adoption of the Markets in Crypto-Assets Regulation (MiCAR). This new regulation raises a multitude of complex questions that need to be addressed urgently. We are pleased that a new, young team of authors has taken over this task with commitment, energy and intellectual rigour.

Our sincere thanks go to all contributors and to the publisher for their continued dedication to this project. We owe a particular debt of gratitude to Fabian Schinerl, who coordinated numerous tasks. Thanks also to Susanne Brück and Julia Wachowicz for their assistance in preparing the manuscript. Finally, we warmly invite you, the readers, to provide us with feedback. Your insights and suggestions are essential to the further development of this work.

Vienna and Hamburg, October 2025

*Prof. Dr. Matthias Lehmann*  
*Prof. Dr. Christoph Kumpan*

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## List of authors

**Martin Brenncke**, Dr., LL.M. is a Senior Lecturer in Law at Aston Business School. Before he joined Aston, he was a Career Development Fellow in German and European Union Law at the Institute of European and Comparative Law at the University of Oxford and an Oberassistent (Lecturer) at the University of Zurich, Switzerland. He has been a Visiting Fellow/Researcher at the Institute of Advanced Legal Studies (London), the British Institute of International and Comparative Law (London), the University of Cambridge and the Max Planck Institute for Comparative and International Private Law (Hamburg).

Art. 21–30 MiFID II

**Diletta Blangero** is a PhD researcher at the ADA Chair in Financial law (Inclusive finance) of the University of Luxembourg. Her research focuses on sustainable finance, investment funds and capital markets law, while also touching on other topics such as FinTech and banking regulation.

UCITSD

**Susanne Brück**, Mag. iur., is a research assistant at the Department for European, International, and Comparative Law at the University of Vienna. Her research focuses on banking and capital market law, with a particular emphasis on international and European aspects. She is also a member of the Young Researchers Group at the European Banking Institute (EBI).

Art. 27–35, 46–47 MiCAR

**Thomaz De Arruda**, LL.M., is a Doctoral Researcher in the ADA Chair in Financial Law at the University of Luxembourg, Academic Fellow at Bocconi University, Co-Coordinator of the Young Researchers Group (YRG) of the European Banking Institute (EBI) and member of the European Society for Banking and Financial Law (AEDBF). He holds a Master's degree from Bocconi University and a Post-Graduate Degree in European Corporate Finance Law from Maastricht University. He has worked in both the public and private sectors with a focus on financial law, including the International Monetary Fund and the European Central Bank.

Art. 83–85 MiCAR

**Jacek Dybiński**, Dr., LL.M. is a Senior Research Fellow at the University of Luxembourg's interdisciplinary Centre for European Law and an Assistant Professor at the University of Warsaw. He holds an LL.M. from Harvard Law School and a Ph.D. in company law from Jagiellonian University (Kraków). His research focuses on EU and comparative capital markets law, company law, corporate governance, and financial regulation. He is an Associated Researcher of the European Banking Institute (EBI) and an academic member of the European Corporate Governance Institute (ECGI). He is a member of several international research groups, as well as regulatory and legislative projects, including a study for the European Commission (DG FISMA) on removing barriers in the Savings and Investment Union. He is a member of the national editorial board of the European Company Case Law Journal and a scientific editor of a series of the Financial Markets Law Commentaries.

Art. 4–12, 14 MiCAR

## List of authors

**Daniel Foà**, Dr. is a Post-Doc Research Fellow in Economic Law at the University of Bari “Aldo Moro” and he currently teaches Economic and Financial Regulation at the University of Trento. He holds a Ph.D. (cum laude) in Law and Business, Luiss Guido Carli Rome and a MSc. in Law and Finance, University of Oxford. He is member of the European Banking Institute (EBI) Young Researchers Group.

Art. 68–69, 73 MiCAR

**Carsten Gerner-Beuerle**, Prof. Dr., is a Professor of Law at the London School of Economics and Political Science and Global Distinguished Professor of Law at Notre Dame Law School. He is also a research member of the European Corporate Governance Institute (ECGI).

Art. 1–9 MAD, Art. 1–16 MAR

**Ronny Grütze**, Dipl.-jur., LL.M. oec., is a judge (Richter am Amtsgericht) currently seconded to the Ministry of Justice and Consumer Protection of Saxony-Anhalt, Germany. His academic background is in private and commercial law, with research interests shaped during his time as a research assistant under Prof. Dr. Christoph Kumpan, focusing on market soundings and insider trading regulation.

Art. 18–20, Art. 31–33, Art. 36–38 MiFID II, Credit Rating Agency Regulation

**Jörn Axel Kämmerer**, Prof. Dr. Dr. h.c. (ULisboa), Maître en droit (Aix-en-Provence/Marseille), holds the Chair of Public Law, Public International and European Law at Bucerius Law School in Hamburg, Germany. He studied law in Tübingen, where he later obtained his doctoral degree and Habilitation, and Aix-en-Provence. His research covers, inter alia, German and European Constitutional Law, Financial Markets Law and the European Economic Monetary Union, the Law of the Professions and legal aspects of privatisation.

Art. 67–88 MiFID II, Art. 10 MAD, Art. 22–34 MAR

**Andreas Kerkemeyer**, Prof. Dr., holds the chair for Legal Policy regarding the Digital Financial Sector at the Technical University of Darmstadt. His research covers Capital Markets Law, European Law, German Constitutional Law, and Legal Theory. Before joining the Technical University of Darmstadt he completed his postdoctoral studies at Bucerius Law School, Hamburg.

Art. 67–88 MiFID II, Art. 10 MAD, Art. 22–34 MAR

**Ilya Kokorin**, Dr., is an Assistant Professor of Law at Leiden University (the Netherlands) and a supervisory officer at the Dutch Authority for the Financial Markets (AFM). His research interests lie at the intersection of financial, insolvency, and corporate law. He gives lectures on banking and finance transactions, capital markets and digital finance. He is a member of the Digital Assets Project at the University of Oxford, International Insolvency Institute's NextGen, INSOL Early Researcher Academics (INSOL ERA) and Young Researchers Group of the European Banking Institute (EBI).

Art. 48–51, 53–58 MiCAR

## List of authors

**Felix Krysa** is a lawyer at an international law firm in Vienna. He previously worked as a university assistant at the Institute for European, International and Comparative Law at the University of Vienna. His research focuses on the conflict of laws of crypto-assets, European private international law and European data law. His dissertation, completed in 2024 at the University of Bonn (Germany), deals with the conflict of laws of European data protection.

Art. 13, 15, 26, 52, 75 MiCAR

**Christoph Kumpan**, Prof. Dr., LL.M. (Univ. of Chicago), Attorney at Law (New York) is a Professor of Private Law, Corporate Law and Capital Markets Law at Bucerius Law School in Hamburg, Germany. At Bucerius Law School he is also Director of the Institute for Corporate and Capital Markets Law, Director of the Center of the Law of Family Enterprises, Director of the Center for Interdisciplinary Research on Energy, Climate, and Sustainability, and Director of the Center for Legal Technology and Data Science. He counsels the German Ministry of Finance on matters regarding capital markets regulation and has advised the Turkish Capital Markets Board on the implementation of EU takeover law. Before joining Bucerius Law School he was a law professor at the University of Halle-Wittenberg and the Humboldt University in Berlin and a senior research fellow at the Max Planck Institute for Comparative and International Private Law in Hamburg.

Art. 18–20, 31–33, 36–38, 44–51, 52–56 MiFID II, Art. 1–23a MiFIR, Credit Rating Agency Regulation

**Matthias Lehmann**, Prof. Dr., D.E.A. (Paris II), LL.M., J.S.D. (Columbia) holds the Chair for Private, Private International and Comparative Law at the University of Vienna, Austria. He is a member of the Academic Board of the European Banking Institute (EBI) and of the Council of the European Law Institute (ELI). He has been a member of the European Commission's Expert Group on Conflict of Laws Regarding Securities and Claims as well as the Financial Market Law Committee's working group on Distributed Ledger Technology. He has also been a member of various UNIDROIT working groups, inter alia on digital assets and private law, as well as on bank insolvency.

Art. 1–4, 57–66 MiFID II, Art. 24–45 MiFIR, Settlement Finality Directive, Financial Collateral Directive

**Niccolò Lorenzotti**, LL.M., is a Policy Officer at the European Securities and Markets Authority (ESMA), in the Markets and Digital Innovation Department. Formerly, a lawyer qualified in Italy specialised in financial markets and the banking sector. He holds an LL.M. in Banking and Finance from the Law Faculty at Queen Mary University of London and is a Ph.D. candidate at the Law Faculty at the University of Rome Tor Vergata.

European Market Infrastructure Regulation

**Paola Lucantoni**, Prof. Dr., is full Professor of Financial Market Law, Law Faculty, University of Rome, Tor Vergata and lectures also Financial Market Law and Regulation, Faculty of Economics, Luiss-Guido Carli University. She holds a Ph.D. in Economic and Business Law, Law Faculty, University of Rome, La Sapienza. She has been appointed by the Minister of Economy and Finance in the Committee to reform the Italian Consolidated Law on Finance. She is an independent director of the bank Monte dei Paschi di Siena.

Prospectus Regulation, European Market Infrastructure Regulation

## List of authors

**Pier Mario Lupinu**, Dr., holds a Ph.D. in Banking and Finance Law jointly at the University of Luxembourg, where he lectured European Banking Law, and at Roma Tre University. He is currently employed as a Lecturer in Commercial Law at the University of Glasgow, Scotland, UK. Prior to this, he worked as a Banking and Finance Knowledge Lawyer at Clifford Chance Luxembourg and in legal positions for several EU institutions and agencies, such as the European Central Bank, the Single Resolution Board, the European Investment Bank and the European Commission. He has been a member of the Young Researchers Group (YRG) of the European Banking Institute (EBI) and he spent research visits at UNIDROIT in Rome, the Leibniz Institute SAFE at the Goethe University Frankfurt (DAAD funded) and the Columbia Law School in New York.

Art. 74, 79–80, 82 MiCAR

**Robin Misterek**, LL.M.oec. is a research and teaching assistant at the Chair of Civil Law, Corporate Law, and Capital Markets Law at Bucerius Law School in Hamburg, as well as a member of the Young Researchers Group (YRG) of the European Banking Institute (EBI). His research concentrates on German and European capital markets law, with a particular focus on market abuse. Within this area, he is also pursuing his doctoral thesis on the materiality criterion of inside information under the supervision of Prof. Dr. Christoph Kumpan.

Art. 86–92 MiCAR

**Milena Mitrović**, LL.M. is a Doctoral Researcher at the Luxembourg Centre for European Law (LCEL) at the University of Luxembourg, formerly Max Planck Institute Luxembourg for Procedural Law. She also serves as co-coordinator of the European Banking Institute Young Researchers Group (EBI YRG). Milena has conducted research stays at esteemed institutions, including Bocconi University School of Law (December 2024), the Institute for Law and Economics at the University of Hamburg (October 2022), the Swiss Institute of Comparative Law (December 2021), and the Max Planck Institute for Comparative and International Private Law (July 2019). Her research primarily focuses on financial regulation, company law, corporate governance, and banking law.

Art. 67, 71–72 MiCAR

**Sebastian Omlor**, Prof. Dr. iur., LL.M. (NYU), LL.M. Eur. (University of Saarland), is a Full Professor and Director of the Institute for Comparative Law at Marburg University, Germany. He holds the chair for Private Law, Commercial and Business Law, Banking Law and Comparative Law. Beside the field of international commercial law, his research focuses banking and company law, the law of payment and financial services, the law of digitalisation ([www.irdi.institute](http://www.irdi.institute)), and the legal concept of money.

SEPA Regulation

## List of authors

**Stefan L. Pankoke**, Dr. iur., Maître en droit (Aix-Marseille), has spent over 20 years at the financial market supervisory authorities in Germany and Switzerland. His expertise covers areas such as the regulation and supervision of trading venues and financial market infrastructures, crypto finance, markets in derivatives, credit rating agencies, and distribution of financial products. As deputy head for international policy during the Great Financial Crisis, he contributed extensively to international standard-setting initiatives as well as European and national legislation. He holds law degrees from the University of Tübingen and the Université d'Aix-Marseille III. Prior to his career in financial market supervision, he worked as a senior researcher at the Max-Planck-Institute for Comparative and International Privat Law in Hamburg and as an associate in an international law firm.

PRIIPR Regulation

**Alfonso Parziale**, Dr., is a lawyer at an international law firm in London. He is also teaches banking law at the Libera Università Mediterranea in Bari (Italy) and formerly post-doc researcher at the Università degli Studi di Roma Tor Vergata. He holds a Ph.D. in Law from the Università degli Studi di Roma Tor Vergata.

Prospectus Regulation

**Wolf-Georg Ringe**, Prof. Dr. iur., M.Jur. (Oxon), is Director of the Institute of Law & Economics at the University of Hamburg and Visiting Professor at the University of Oxford. In Oxford, he is a Visiting Research Fellow at the Institute of European and Comparative Law. He is also a Research Member with the European Corporate Governance Institute, Vice President of the European Banking Institute and an editor of the *Journal of Financial Regulation*.

Art. 17–21a MAR, Transparency Directive

**Niels Rogge**, Dr., is a legal scholar specializing in financial law, with a strong academic background in the EU's sustainable finance regulatory framework, capital markets, and banking law. He holds a PhD from the Financial Law Institute (Ghent University), where his research focused on the liability of banks for ESG-related damage caused by their borrowers. Before his academic career, he was admitted to the bar and practiced as an attorney-at-law. He also holds a Master's degree in Social and Political Science, complementing his legal expertise with insights into political and regulatory dynamics. He is a member of the Young European Banking Institute (Young EBI) Research Group and teaches in the financial law specialization course at Ghent University.

Art. 70, 78, 81 MiCAR

**Fabian Schinerl**, Mag. iur., is a Doctoral Researcher at the Department of European, International, and Comparative Law at the University of Vienna. His research concentrates on banking and capital markets law, with a particular focus on FinTechs and crypto-assets. In addition, he also serves as a co-coordinator of the Young Researchers Group (YRG) of the European Banking Institute (EBI) and is a member of the Centre for Comparative Corporate Finance Law (C<sup>3</sup>FL).

Art. 1–3, Art. 16–25, 36–45 MiCAR

## List of authors

**Finn Schmidt**, Dr., is Desk Officer for Money Laundering Prevention at the Gemeinsame Glücksspielbehörde der Länder – Anstalt des öffentlichen Rechts (GGL), the central licensing and supervisory authority for the German gambling market located in Halle (Saale). In his doctoral thesis, he examined insider trading risks in the context of public takeovers.

Art. 44–51, 52–56 MiFID II, Art. 1–23a MiFIR

**Jessica Schmidt**, Prof. Dr., LL.M. holds the Chair for Civil Law, German, European and International Company and Capital Markets Law at the University of Bayreuth (Germany). She is active in various national and international associations and research groups and regularly presents her research at conferences and workshops both in Germany and around the world. She has published extensively on various aspects of German and European company and capital markets law as well as on European private law, private international law and comparative law.

Art. 51a MiFID II

**Christian Schmies**, Dr., is a partner in the Frankfurt office of Hengeler Mueller Partnerschaft von Rechtsanwälten mbB. For more than 10 years he has advised clients in the financial industry on regulatory matters. The main focus of his financial regulatory work is in the asset management industry and on fund structures. He earned his Ph.D. with a dissertation on the regulation of hedge funds.

AIFMD

**Klaus Ulrich Schmolke**, Prof. Dr., is Professor of Private Law, Commercial, Company and Business Law at the Friedrich-Alexander-University Erlangen-Nuremberg (since April 2013). He studied law at the University of Trier, Lausanne and obtained a doctorate (Dr. iur.) at the University of Mainz (2003) as well as an LL.M. at NYU School of Law (2006). Before joining the FAU law faculty he worked as a Senior Research Fellow at the Max Planck Institute for Comparative and International Private Law in Hamburg (2009–2012) and as an acting Professor at the Philipps-University of Marburg (2012/13). In 2017 he was a Visitor to the Faculty of Law in the University of Cambridge. He has worked and published extensively on corporate law and financial markets law.

Short Selling Regulation

**Jonas Schürger**, Dr., is a lawyer with the law firm Sernetz Schäfer Rechtsanwälte in Düsseldorf. He advises on all aspects of banking and financial regulatory law. Another focus of his practice is capital markets law. Dr Schürger obtained his PhD in Bonn with a thesis on equivalence and substituted compliance in financial markets law and regularly publishes in these areas. He currently is a member of the Associated Researchers of the European Banking Institute.

Art. 59–66 MiCAR

**Giulio Soana**, Dr., LL.M., holds a PhD in Law by Luiss University and KU Leuven on the AML Regulation of Crypto-assets. Giulio currently works as a Manager in the Group Regulatory Affairs Department of Raiffeisen Bank International. Within the team he is lead for Digital topics following all regulatory evolutions at the EU level with relevance for the banking sector.

Art. 76–77 MiCAR

## List of authors

**Luca Anna Topp**, Dr., is an attorney at the Düsseldorf office of Sernetz Schäfer Rechtsanwälte. She primarily advises on banking and financial regulatory law as well as capital markets law. Dr. Topp obtained her PhD in Hannover with a thesis on electronic securities in Germany, in particular electronic shares.

Art. 59–66 MiCAR

**Dirk Zetzsche**, Prof. Dr. iur., LL.M. (University of Toronto), holds the ADA Chair in Financial Law (inclusive finance) at the University of Luxembourg; he is also a Director of the Center for Business and Corporate Law at Heinrich-Heine-University in Düsseldorf, Germany. His research focuses on investment, securities, banking and company law, the law of payment and financial services, financial technologies and financial inclusion.

Art. 5–17, Art. 34–35, Art. 39–43 MiFID II, Art. 46–49 MiFIR, UCITSD

# 1. Security Markets and Services

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## I. Overview

- 1 The Markets in Financial Instruments Directive (MiFID) is the **cornerstone of EU securities law**. It spans over a wide range of issues, covering trading venues and various types of investment service providers, such as financial advisers, stockbrokers and portfolio managers. To illustrate its importance, it is useful to draw a comparison to US law: MiFID combines the rules to be found in the US Securities Act, Securities Exchange Act, Investment Adviser's Act and in large parts those of the Dodd-Frank Act. It is therefore no exaggeration to say that MiFID is the "constitution" of the European market in financial services.
- 2 The **predecessor – MiFID I** – was adopted in 2004 and applied as of 1 November 2007.<sup>1</sup> The current second version of MiFID (**MiFID II**) is in force since 3 January 2018. MiFID II brings a number of changes with regard to MiFID I. The most visible of those is that it is now accompanied by a regulation, the **MiFIR** (Markets in Financial Instruments Regulation).<sup>2</sup> While MiFID needs to be transposed into the national law of the Member States, MiFIR applies directly throughout the European Union. This marks a significant strengthening of the uniformity of the market governance.
- 3 The substantive rules of MiFID II and MiFIR as well depart in many ways from those of MiFID I. While the fundamental pillars have been left untouched, a number of innovations have been introduced. They include, inter alia:
  - (1) the introduction of Organised Trading Facilities (**OTF**) as a new form of alternative trading venues;
  - (2) the inclusion of **emission allowances** and **structured deposits** into the Directive's scope of application;
  - (3) increased pre- and post-trade **transparency requirements for non-equity instruments**;
  - (4) an obligation to trade certain **derivatives on trading venues**;
  - (5) rules on non-discriminatory **access to clearing**;
  - (6) the possibility to impose **position limits for commodity derivatives**;
  - (7) the increased regulation of **trading on own account**, especially in the case of **high frequency trading**;
  - (8) the prohibition of **inducements**;
  - (9) the clear distinction between **independent and non-independent advice**;
  - (10) the prohibition of **non-paid research by investment services**;
  - (11) rules on **product governance and product intervention**;
  - (12) a partly harmonised **third-country regime**.
- 4 MiFID II and MiFIR are complemented by around 100 delegated and implementing acts that have been adopted by the Commission on **Level 2**. These acts are binding and directly applicable for authorities and courts in the Member States. Furthermore, there are around 300 non-binding guidelines, opinion, recommendations and questions and

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<sup>1</sup> Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments [2004] OJ L145/1.

<sup>2</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, [2014] OJ L 173/84.

## Introduction to MiFID II and MiFIR

answers (Q&A) published by ESMA on **Level 3** that are necessary to understand the legislation on the upper levels and to ensure their uniform application.<sup>3</sup>

The implementation of the revised rules presents a significant challenge to firms and supervisors alike. Because of this, the introduction of MiFID II and MiFIR, which was originally scheduled for 2017, had been **postponed by one year**. Initially, there was great uncertainty due to the delay in adopting the Level 2 acts foreseen at Level 1. Most of these acts have now been adopted.

MiFID II, MiFIR and the Level 2 and 3 acts encompass a myriad of texts. Furthermore, they are closely entangled with Member State law that transposes MiFID II and which also has different levels (e.g. legislation by Parliament, ministerial decrees, interpretations by the supervisor). This mishmash of different sources increases the **complexity** of their application.

### II. Economic rationale

The original purpose and justification of MiFID, which continues to exist today in MiFID II and MiFIR, was the **opening up of national markets** for competition between financial service providers and trading venues. They were allowed to provide their services throughout the Single Market, being submitted solely to the control by their home country.<sup>4</sup> It is a fact that increased competition serves the interests of investors and issuers by **reducing transaction costs**. It also leads to **wider investor choice** and **access to finance** for companies.

Another key goal of MiFID II and MiFIR is the **protection of investors**,<sup>5</sup> in particular by overcoming **information asymmetries**. Traders often have crucial information about the issuer and the products, which investors lack. This creates inefficiencies and could deter investors from engaging on the financial market. Disclosure rules and the obligation to conduct a suitability or appropriateness tests are designed to overcome these obstacles.<sup>6</sup> Insufficient information also may affect trading. Pre- and post-trade transparency rules improve the information supplied to intermediaries and investors with regard to the most efficient trading venue.<sup>7</sup> The best execution duty obliges the intermediary to make use of them.<sup>8</sup>

Financial services rendered by an intermediary are frequently plagued by **principal-agent problems**. Service providers may be induced to recommend a product that is not fully aligned to the needs of the investor. This may lead to the inefficient allocation of capital. Therefore, the EU legislator obliges intermediaries to identify, prevent and disclose conflicts of interests, and prohibits inducements.<sup>9</sup>

Besides reasons related to the efficiency of capital markets, MiFID II and MiFIR also serve **non-financial goals**. An example are the rules on position limits for commodities derivatives, which aim to limit the negative effects of speculation on the provision with goods and services.<sup>10</sup>

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<sup>3</sup> Both numbers are as of the end of 2024.

<sup>4</sup> See Recital 2 MiFID I.

<sup>5</sup> See Recital 2 MiFID I.

<sup>6</sup> Art 25 MiFID II.

<sup>7</sup> Art 3-21 MiFIR.

<sup>8</sup> Art 27 MiFID II.

<sup>9</sup> Art 23 MiFID II.

<sup>10</sup> Part IV MiFID II.

## Introduction to MiFID II and MiFIR

### 1. Security Markets and Services

- 11 Another recent development on the EU level is the growing emphasis on financing sustainable activities, promoting **ESG** (environmental, social, governance) **standards**.<sup>11</sup> This integration of sustainability into financial law represents a paradigm shift towards recognising the role of the financial sector in achieving broader societal goals. Financial institutions are being encouraged to factor in these risks to prevent market instability caused by events such as environmental disasters.<sup>12</sup> While financial law can support sustainability goals and help address climate change, it is crucial that these efforts do not compromise market efficiency and financial stability. In particular, an excessive focus on sustainable investments may inadvertently contribute to the formation of speculative bubbles.
- 12 While the economic benefits of MiFID II and MiFIR can be hardly disputed, they must be weighed against the substantial **compliance costs** created by them. Independent studies claim that the costs of implementation in 2017 alone reach Euro 2.1 bn,<sup>13</sup> while the initial estimates of the whole (!) costs by the Commission ranged between a quarter and one third.<sup>14</sup> These costs will be pushed down by the industry and ultimately have to be borne by the investor.

### III. Key principles

- 13 It is easy to lose sight in the bewildering labyrinth of regulatory texts. Some key principles underlying MiFID II and MiFIR may serve as guiding threads.
- 14 One of them is the **country-of-origin principle**. Under this principle, investment firms, market operators and other financial service providers active on the Single Market are authorised and supervised by the authorities of their country of origin. The so-called “EU passport” allows them to render their services in any Member State of the European Economic Area (EEA), comprising besides the 27 members of the EU also Iceland, Liechtenstein and Norway. The country-of-origin principle and the European passport are key concepts of EU law. They serve to break up national markets and create an integrated European market with increased competition.
- 15 The second principle is that Member States must ensure a minimum of **investor protection**. This principle is the natural counterpart of open markets.<sup>15</sup> Its aim is to reassure investors that engage with intermediaries from other states. Investor protection is achieved by the various obligations that intermediaries must comply with when marketing financial instruments, such as the duty to act in the best interest of the customer or the obligation to conduct a suitability or appropriateness test. The obligation to avoid or disclose conflicts of interests also serves the interests of the investor by overcoming principal-agent problems.
- 16 A third principle that is pervasive in MiFID II and MiFIR is that of **transparency**.<sup>16</sup> This principle is related to investor protection as transparent markets are in the interest

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<sup>11</sup> See Schoemaker and Schramade, *Principles of Sustainable Finance* (OUP 2019) 84-85.

<sup>12</sup> See Güneward, ‘Climate Change as a Systemic Risk in Finance: Are Macroprudential Authorities Up to the Task’ in Busch, Ferrarini and Grünewald (eds), *Sustainable Finance in Europe* (2nd edn, Palgrave Macmillan 2024) 265-274.

<sup>13</sup> IHS Markit, ‘Counting the Cost of MiFID’, available at <https://cdn.ihs.com/www/pdf/counting-the-cost-of-mifid-ii.pdf> (3.2.2025).

<sup>14</sup> Commission, Staff Working Paper, Impact Assessment Accompanying the Document ‘Proposal for a Directive of the European Parliament and of the Council on Markets in Financial Instruments (Recast), SEC(2011) 1226 final, p. 64.

<sup>15</sup> See also → mn 18.

<sup>16</sup> See e.g. Recital 14, Art 125, Art 18(1), 47(1)(d), 51(1), 53(1) MiFID II, Recital 1, 5, 8, Title 2, 3 MiFIR.

## Introduction to MiFID II and MiFIR

of the investor, but is also justified in its own right. Besides protecting the investor, the obligations of pre- and post-trade transparency increase the overall efficiency of the market by favouring those markets that offer the best price/service ratio. Furthermore, transparent markets are usually more stable, as transparency acts as a policeman that seeks and extinguishes market imperfections and abuse. But transparency also has a cost in terms of reporting and the possible deterrence of investors to use trading venues such as dark pools, which may draw on liquidity.

A fourth principle under MiFID II and MiFIR is that of **non-discrimination**<sup>17</sup>. It applies for instance with regard to alternative trading venues and CCPs, which all must provide non-discriminatory access. This does not necessarily mean that every investor, customer or participant has to be treated in the same way. But where they are treated differently, there must be objective reasons for doing so.

### IV. Genesis

For the first time, EU investment services were regulated in the **Investment Services Directive (ISD) of 1993**.<sup>18</sup> As with many other directives of this era, the goal of the ISD was to open up the markets in the then European Economic Community for services from other Member States. As a counterpart, the Directive introduced a number of harmonisation measures aimed at securing a minimum standard of investor protection in the laws of the various member countries. Overall, the ISD did however not achieve its goal of bringing about meaningful competition of financial service providers in the Community.<sup>19</sup>

The situation changed when **MiFID I entered into force in 2007**. This was the starting point of booming competition in financial services at a European scale. Crucial for that was the abolishment of the monopoly that exchanges had been enjoying under some national laws. MiFID I also introduced new trading venues, the so-called MTF, and endowed them with the right to render their services throughout the Community. Furthermore, it strengthened and extended the rules on investor protection.<sup>20</sup>

MiFID I has been the single most important step to create a single market for financial services in Europe. However, the **global financial crisis of 2007/2008** exposed weaknesses in the functioning and the transparency of financial markets.<sup>21</sup> Examples include the selling of complex products to investors and the intransparency of trading in non-equity instruments. This sped up efforts that were already underway to overhaul MiFID I. Inter alia, the EC had to comply with commitments undertaken on the G20 level to bring more transparency into the trading of derivatives.<sup>22</sup>

The work on MiFID II and MiFIR coincided with reforms of the regulatory and supervisory process. The ISD and MiFID I had been adopted under the so-called **Lamfalussy framework**, which provided for a complex interaction between the Commission,

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<sup>17</sup> See e.g. Recital 14, 119, Art 18(3), 37(1), 47(1)(d), 48(8), 53(1), 57(9) MiFID II, Recital 28, Art 8(3) and (4), 10(2), 17(1) and (2), 18(5) and (7), 28(3), 35 MiFIR.

<sup>18</sup> Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field, OJ L 141, p. 27.

<sup>19</sup> On the ISD, see e.g. the various contributions in Ferrarini, *European Securities Markets: The Investment Services Directive and Beyond* (Kluwer Law International 1998).

<sup>20</sup> See Recital 2 MiFID I.

<sup>21</sup> See Recital 4 MiFID II.

<sup>22</sup> See G20 Heads of State, 'Leaders' Statement The Pittsburgh Summit' 9, available at <http://www.g20.utoronto.ca/2009/2009communiqu0925.html> (3.2.2025).

## Introduction to MiFID II and MiFIR

### 1. Security Markets and Services

the Council, Member States and stakeholders on four different levels.<sup>23</sup> In 2010, however, three **European Supervisory Authorities (ESAs)** were established as part of the newly created European System of Financial Supervision. ESMA, the European Markets and Services Authority, was endowed with far-reaching competences to regulate and supervise financial markets. Yet it does not directly intervene in the day-to-day business of individual service providers, but functions more like a **supervisor of supervisors**. As such, it plays an instrumental role in the interpretation and implementation of MiFID II, providing draft regulatory and implementing standards that are adopted by the Commission on Level 2, and publishing acts on Level 3 that national supervisors will generally follow even if they are non-binding.

- 22 The reform was inspired by the **De Larosière Report**.<sup>24</sup> It substantially strengthened the regulatory rules by introducing fully uniform rules under MiFIR. These rules and the transposing national law will be applied by both the ESAs and the Member States authorities working in common. This represents an important juncture between the overhaul of the institutional setup and the reform of substantive rules. It further represents the commencement of a paradigm shift in EU financial law, transitioning from Directives to fully harmonised Regulations that are applicable across the EU. But despite these measures, the objective of the **Capital Markets Union (CMU)** has not been achieved yet, as the EU still lacks a single set of rules for all aspects of trading, and there is still wide diversity in supervisory practices and interpretations of the rules.<sup>25</sup> To maintain competitiveness in the global financial market, the EU should proceed with caution. Merely enacting more detailed and intricate rules does not solve problems or make them disappear. Fundamental issues in the CMU and EU financial law may, in general, be more effectively addressed by simplifying regulation and establishing high-level guidance and basic principles.<sup>26</sup>

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<sup>23</sup> The Committee of Wise Men, 'Final Report of the Committee of Wise Men on the Regulation of European Securities Market', available at [https://www.esma.europa.eu/sites/default/files/library/2015/11/lamfalussy\\_report.pdf](https://www.esma.europa.eu/sites/default/files/library/2015/11/lamfalussy_report.pdf) (3.2.2025).

<sup>24</sup> The High-Level Group on Financial Supervision in the EU, 'Report': [https://ec.europa.eu/economy\\_finance/publications/pages/publication14527\\_en.pdf](https://ec.europa.eu/economy_finance/publications/pages/publication14527_en.pdf) (3.2.2025).

<sup>25</sup> Draghi Report, The Future of European Competitiveness, Part A (2024) 59–60.

<sup>26</sup> For thoughtful recommendations, see Draghi Report, The Future of European Competitiveness, Part B (2024) 283–295.

## **Markets in Financial Instruments Directive (MiFID II)**

### **Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (OJ L 173, 12.6.2014, p. 349-496)**

#### **TITLE I SCOPE AND DEFINITIONS**

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#### **Article 1 Scope**

1. This Directive shall apply to investment firms, market operators, and third-country firms providing investment services or performing investment activities through the establishment of a branch in the Union.
2. This Directive establishes requirements in relation to the following:
  - (a) authorisation and operating conditions for investment firms;
  - (b) provision of investment services or activities by third-country firms through the establishment of a branch;
  - (c) authorisation and operation of regulated markets; and
  - (d) (repealed by Directive (EU) 2019/2177)
  - (e) supervision, cooperation and enforcement by competent authorities.
3. The following provisions shall also apply to credit institutions authorised under Directive 2013/36/EU, when providing one or more investment services and/or performing investment activities:
  - (a) Article 2(2), Article 9(3) and Articles 14 and 16 to 20,
  - (b) Chapter II of Title II excluding second subparagraph of Article 29(2),
  - (c) Chapter III of Title II excluding Article 34(2) and (3) and Article 35(2) to (6) and (9),
  - (d) Articles 67 to 75 and Articles 80, 85 and 86.
4. The following provisions shall also apply to investment firms and to credit institutions authorised under Directive 2013/36/EU when selling or advising clients in relation to structured deposits:

## Art. 1 MiFID II

### 1. Security Markets and Services

- (a) Article 9(3), Article 14, and Article 16(2), (3) and (6);
  - (b) Articles 23 to 26, Article 28 and Article 29, excluding the second subparagraph of paragraph 2 thereof, and Article 30; and
  - (c) Articles 67 to 75.
5. Article 17(1) to (6) shall also apply to members or participants of regulated markets and MTFs who are not required to be authorised under this Directive pursuant to points (a), (e), (i) and (j) of Article 2(1).
6. Articles 57 and 58 shall also apply to persons exempt under Article 2.
7. (repealed by Directive (EU) 2024/790)

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## I. General overview

### 1. Purpose

- 1 The first article of MiFID defines the **scope** of the Directive.

### 2. Background

- 2 In comparison to MiFID I, the scope of MiFID II has been **considerably extended**. It now covers organised trading facilities (OTFs) and third-country firms. See → Introduction mn 3.

### 3. Context

- 3 Art 1 MiFID II is strongly connected to **Art 2 and 3 MiFID II**, which provide for exemptions from the scope of the Directive. Basic notions used in Art 1, such as ‘investment firm’ or ‘trading venue’, are defined in **Art 4 MiFID II**.

## II. Personal scope

### 1. Investment firms

- 4 The main body of the provisions of MiFID II covers **investment firms**.<sup>1</sup> The notion is defined by Art 4(1)(1) MiFID II, see the explanation in → Art 4 mn 9-13.
- 5 Many of the legal persons that render investment services or ancillary services are **banks** and as such are subject to the special legislative framework for credit institutions (CRR II<sup>2</sup> and CRD V<sup>3</sup>). When they provide investment services or ancillary services

<sup>1</sup> Title II (Art 5-43) MiFID II.

<sup>2</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms [2013] OJ L 176/1.

<sup>3</sup> Directive 2013/36/EU of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms [2013] OJ L 176/338.

or when they are selling or advising clients in relation to structured products<sup>4</sup>, they must in addition comply with certain MiFID II provisions set out in Art 1(3) and (4) MiFID II. In a nutshell, these concern the conduct requirements, whereas the organisational requirements including own funds remain subject to the CRR II, the CRD V and the national implementing legislation. The conduct requirements of MiFID II do not displace any bank specific provisions, but are ‘top up regulation’,<sup>5</sup> meaning that they apply in addition to the CRR II and CRD V.

These regulations were overly burdensome for small and medium-sized financial service providers. To better align with the principle of “same business – same risks – same rules”, the EU has restructured its regulatory landscape. Banks remain governed by the requirements of CRR II and CRD V, while investment firms are now subject to the **Investment Firm Directive (IFD)**<sup>6</sup> and its accompanying **Investment Firm Regulation (IFR)**<sup>7</sup>. Some investment firms, depending on their size and relevance to the financial system, are subject to both the old (CRR/CRD) and new rules (IFR/IFD), resulting in an intricate web of regulation.<sup>8</sup>

The Directive also encompasses legal persons that are dealing on a professional basis **on own account**, i.e. not for third parties.<sup>9</sup> The purpose is to avoid circumvention of the Directive’s rules, as it is very hard to distinguish between client related and own business.<sup>10</sup> However, Art 2(1)(d) MiFID II provides an important exception, which in practice excludes most persons dealing on own account from the Directive’s scope (see → Art 2 mn 8-14). The mechanism of simultaneous inclusion and exception puts the burden of proof on the person that invokes the exception.

Member States may extend the definition of investment firms to **natural persons** if they fulfil certain conditions.<sup>11</sup> They must: (1) provide a level of investor protection equivalent to that provided by legal persons, and (2) be subject to equivalent prudential requirements. If the natural person is engaging in the holding of third party funds or securities, the requirements are even more stringent.<sup>12</sup> Where these conditions are met, the natural person may be authorised as an investment firm. It has to be noted that natural persons qualifying as investment firms are in some respects subject to special rules.<sup>13</sup>

Important **exemptions** from the MiFID II rules applying to investment firms are to be found in Art 2 MiFID II. They concern, for instance, insurance undertakings, firms providing investment services to members of their corporate group, or persons trading on own account.

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<sup>4</sup> Structured deposits are bank deposits that pay a premium depending on certain circumstances such as the favourable development of a stock index or the price of a commodity. See Art 4(1)(43) MiFID II. Structured deposits were included into the scope of MiFID II because they present features similar to investment products. See Recital 39 MiFID II.

<sup>5</sup> Lieverse, ‘The Scope of MiFID II’ in Busch and Ferrarini (eds), *Regulation of the EU Financial Markets: MiFID II and MiFIR* (OUP 2017) para 2.15.

<sup>6</sup> Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms [2019] OJ L 314/64.

<sup>7</sup> Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms [2019] OJ L 314/1.

<sup>8</sup> See Art 1 IFR.

<sup>9</sup> See Art 4(1)(6) MiFID II and Annex I Section A no 3 MiFID II.

<sup>10</sup> See Ferrarini and Busch, ‘Who’s Afraid of MiFID II? An Introduction’, in Busch and Ferrarini (eds), *Regulation of the EU Financial Markets: MiFID II and MiFIR* (OUP 2017) para 1.14.; Lieverse (ibid) paras 2.37 et seq.

<sup>11</sup> Art 4(1)(1) subpara 2 MiFID II; see also → Art 4 mn 12.

<sup>12</sup> Art 4(1)(1) subpara 3 MiFID II; see also → Art. 4 mn 12.

<sup>13</sup> See Art 5(4)(b) and 9(6) MiFID II.

## Art. 1 MiFID II

### 1. Security Markets and Services

#### 2. Market operators

- 10 MiFID II also sets out standards for market operators.<sup>14</sup> These are persons that manage or operate a **regulated market**,<sup>15</sup> which is a stringently regulated and supervised segment of a stock exchange. The operation of an alternative trading venue (MTF or OTF) is an investment service, the operator is therefore not a market operator in the sense of the Directive, but an investment firm (see → Art 4 mn 10). Systematic internalisers<sup>16</sup> are also considered to be investment firms since they are executing clients' orders.

#### 3. Algorithmic traders and holders of positions in commodity derivatives

- 11 Certain provisions of MiFID II apply to persons that are neither investment firms nor market operators or third-country firms.
- 12 This concerns, first, persons that engage in **algorithmic trading**.<sup>17</sup> According to Art 1(5) MiFID II, the rules of Art 17(1)-(6) MiFID II apply to algorithmic trading regardless of whether the trader needs to be authorised as an investment firm or not. The reasoning behind this extension of MiFID to a non-investment firm are the risks of algorithmic trading,<sup>18</sup> such as 'flash crashes'. On the definition of algorithmic trading see → Art 4 mn 14-16. Recital 59 MiFID II clarifies that the use of algorithms in post-trading (e.g. clearing and settlement software or the 'blockchain') does not constitute algorithmic trading.
- 13 The second extension of MiFID II beyond investment firms, and market operators concerns the **provisions on position limits**.<sup>19</sup> These provisions also apply to persons that deal in commodities derivatives and are not covered by the rest of MiFID II because they benefit from an exemption under Art 2 MiFID II.<sup>20</sup> This extension is necessary in order to limit the engagement of financial and non-financial parties on the commodities derivatives markets, which is the key objective of position limits.<sup>21</sup> They shall apply independently of any exemption available to the firm from the other rules of MiFID II.

### III. Material scope

- 14 The Directive provides for rules regarding the **authorisation and operation** of the persons covered.<sup>22</sup> It also contains provisions on the **supervision, cooperation and enforcement** by the competent authorities.<sup>23</sup> In addition to those areas, which are explicitly mentioned in Art 1(2) MiFID II, the Directive also includes rules on **position limits** for commodities derivatives.<sup>24</sup>

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<sup>14</sup> See Title III (Art 44-56) MiFID II.

<sup>15</sup> Art 4(1)(18) MiFID II.

<sup>16</sup> On the notion 'regulated market' see Art 4(1)(21) MiFID II.

<sup>17</sup> Art 1(5) MiFID II.

<sup>18</sup> Recital 59 third sentence MiFID II.

<sup>19</sup> Art 57-66 MiFID II.

<sup>20</sup> Art 1(6) MiFID II.

<sup>21</sup> Title IV (Art 57-58) MiFID II.

<sup>22</sup> See Art 1(2)(a), (c) and (d) MiFID II. See in particular Title II (Art 5-43), Title III (Art 44-56) and Title V (Art 59-66) MiFID II.

<sup>23</sup> See Art 1(2)(e) MiFID II. See in particular Title VI (Art 67-88) MiFID II.

<sup>24</sup> Title IV (Art 57-58) MiFID II.

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