

# Navigating change.

## Linklaters

### MiFID II Gap Analysis



In early 2014, the European Parliament and Council adopted new legislation that will overhaul the Markets in Financial Instruments Directive (MiFID). The revised Directive (MiFID II) and new Regulation (MiFIR) represent a comprehensive and profound set of reforms which will lead to a reshaping of the financial markets, the products and services that banks provide and the relationship between banks and their customers. Both MiFID II and MiFIR entered into force on 2 July 2014 and must generally apply within Member States by 3 January 2018.

Developed by Linklaters' Financial Regulation Group, our Gap Analysis tool outlines the current MiFID II/MiFIR provisions, allowing you to track the latest legislation and the key implications for MiFID-regulated businesses.

Delivered via an online platform, the tool contains:

- > each of the provisions contained within MiFID II and MiFIR, including the recitals
- > the equivalent MiFID I provision and Level 2 measures
- > a summary of the key differences between MiFID I and MiFID II/MiFIR
- > commentary highlighting the key implications of the MiFID II/MiFIR provisions
- > cross-references to all Level 2 provisions that are relevant to each Level 1 article, with a brief summary of each.

The online platform gives users the option to view this information, for any individual provision, in an easy-to-read, printable format.

#### **Thematic tagging system and customised views**

A number of features are easily accessible through the delivery of the tool and its built-in tagging system:

- > each provision has been tagged with specific "thematic" identifiers
- > relevant provisions have also been assigned a tag for the following product areas:
  - > equities
  - > fixed income
  - > commodities
- > the tool is fully searchable across themes and product areas

The tagging system allows users to view articles relevant to a specific product area and further filter within that view by theme, or by word search. Tagging can be customised to meet your specific needs.

#### **Local law analysis**

Local law analysis is available, as an optional supplement to the online tool, for the following six jurisdictions:

**UK, Germany, France, Italy, Spain and Luxembourg.**

Subscribers can select one or more jurisdictions to be added to their online view. The analysis will indicate how the existing local regulatory regime interacts with MiFID II.



Abu Dhabi | Amsterdam | Antwerp | Bangkok | Beijing | Berlin | Brisbane\* | Brussels | Cape Town\*\*\* | Delhi<sup>Δ</sup> | Dubai  
Düsseldorf | Frankfurt | Hanoi\* | Ho Chi Minh City\* | Hong Kong | Jakarta\*\* | Johannesburg\*\*\* | Lisbon | London  
Luxembourg | Madrid | Melbourne\* | Milan | Moscow | Mumbai<sup>Δ</sup> | Munich | New York | Paris | Perth\* | Port Moresby\*  
Rome | São Paulo | Seoul | Shanghai | Singapore | Stockholm | Sydney\* | Tokyo | Ulaanbaatar\* | Warsaw | Washington, D.C.

\* Office of integrated alliance partner Allens

\*\* Office of formally associated firm Widyawan & Partners

\*\*\* Office of collaborative alliance partner Webber Wentzel

<sup>Δ</sup> Office of best friend firm TT&A

Our online tool – how it works

Email preferences

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Search sheet

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Document	MiFID II / MiFIR (Text)	MiFID I (Text)	Analysis of amendments (change/no change/new provisions/deletions)	Commentary	Business Area	Theme
Directive 2004/39/EC of the European Parliament and of the Council has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.			New recital. Provides rationale for recast Directive.	No practical impact.	Equities Fixed Income Commodities	General
Council Directive 93/22/EEC sought to establish the conditions under which authorised investment firms and banks could provide specified services or establish branches in other Member States on the basis of home country authorisation and supervision. To that end, that Directive aimed to harmonise the initial authorisation and operating requirements for investment firms including conduct of business rules. It also provided for the harmonisation of some conditions governing the operation of regulated markets.		Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field sought to establish the conditions under which authorised investment firms and banks could provide specified services or establish branches in other Member States on the basis of home country authorisation and supervision. To this end, that Directive aimed to harmonise the initial authorisation and operating requirements for investment firms including conduct of business rules. It also provided for the harmonisation of some conditions governing the operation of regulated markets.	No substantive change.	N/A	Equities Fixed Income Commodities	Cross-border Branches General Organisational requirements Authorisation Trading venues Roles
In recent years more investors have become active in the financial markets and are offered an even more complex wide-ranging set of services and instruments. In view of those developments the legal framework of the Union should encompass the full range of investor-oriented activities. To that end, it is necessary to provide for the degree of harmonisation needed to offer investors a high level of protection and to allow investment firms to provide services throughout the Union, being an internal market, on the basis of home country supervision. Directive 93/22/EEC was therefore replaced by Directive 2004/39/EC.		In recent years more investors have become active in the financial markets and are offered an even more complex wide-ranging set of services and instruments. In view of those developments the legal framework of the Community should encompass the full range of investor-oriented activities. To this end, it is necessary to provide for the degree of harmonisation needed to offer investors a high level of protection and to allow investment firms to provide services throughout the Community, being a Single Market, on the basis of home country supervision. In view of the preceding, Directive 93/22/EEC should be replaced by a new Directive.	No material change.	N/A	Equities Fixed Income Commodities	Cross-border General Investor protection
The financial crisis has exposed weaknesses in the functioning and in the transparency of financial markets. The evolution of financial markets has exposed the need to strengthen the framework for the regulation of markets in financial instruments, including where			New recital. Points out the need to strengthen the framework for the regulation of markets in financial instruments, including where	This recital helps firms understand the policy reasons for some of the changes in MiFID II and MiFIR, including increased transparency and investor protection, the	Equities Fixed Income Commodities	Commodities Derivatives Electronic trading (General)

Result page

1, 2, 3, 4, 5, 6, 7, 8, 9

Our online platform allows users to filter information by customisable themes or product areas specifically relevant to their business.

Clearly set out information highlights the differences between MiFID I and MiFID II and outlines the impact of the new regulations.

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Search sheet

Export

Print preview

Amendments (change/no change/new provisions/deletions)	Commentary
of MiFID to include data reporting service establishment of branches by	Data reporting services providers will now be subject to MiFID II. See Arts. 59-66. Third-country firms providing services to retail or opted-up professional clients may be required by Member States to establish a branch. See Arts. 39-43.
	Transparency General Cross-Border

Users have the option to print or export all or part of the information they require to an Excel spreadsheet.

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Search sheet

Advanced search

Amendments (change/no change/new provisions/deletions)	Commentary	Theme
Data reporting services providers will now be		

The “advanced search” option allows users to further filter relevant information.

Search item for

Reset

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Any of these words

Exclude these words

Created by

Select from Below

Other

Created date

From

to

(DDMMYYYY)

Modified by

Select from Below

Other

Modified date

From

to

(DDMMYYYY)

Article Reference

MiFID II / MiFIR (Text)

MiFID I (Text)

Analysis of amendments (change/no change/new provisions/deletions)

Commentary

Theme

☐ Credit Institutions
 ☐ Cross-Border
 ☐ Derivatives
 ☐ Electronic Trading

Cancel

Search

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Article Reference	Related Document	MFID II / MIFIR (Text)	MFID I (Text)	Analysis of amendments (change/no change/new provisions/deletions)	Commentary	Business Area
MFID II Rec. 1		Directive 2004/39/EC of the European Parliament and of the Council has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.		New recital. Provides rationale for recast Directive.	No practical impact.	Equities Fixed Income Commodities
MFID II Rec. 2		Council Directive 93/22/EEC sought to establish the conditions under which authorised investment firms and banks could provide specified services or establish branches in other Member States on the basis of home country authorisation and supervision. To that end, that Directive aimed to harmonise the initial authorisation and operating requirements for investment firms including conduct of business rules. It also provided for the harmonisation of some conditions governing the operation of regulated markets.	Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field sought to establish the conditions under which authorised investment firms and banks could provide specified services or establish branches in other Member States on the basis of home country authorisation and supervision. To this end, that Directive aimed to harmonise the initial authorisation and operating requirements for investment firms including conduct of business rules. It also provided for the harmonisation of some conditions governing the operation of regulated markets.	No substantive change.	N/A	Equities Fixed Income Commodities
MFID II Rec. 3		In recent years more investors have become active in the financial markets and are offered an even more complex wide-ranging set of services and instruments. In view of those developments the legal framework of the Union should encompass the full range of investor-oriented activities. To that end, it is necessary to provide for the degree of harmonisation needed to offer investors a high level of protection and to allow investment firms to provide services throughout the Union, being an internal market, on the basis of home country supervision. Directive 93/22/EEC was therefore replaced by Directive 2004/39/EC.	In recent years more investors have become active in the financial markets and are offered an even more complex wide-ranging set of services and instruments. In view of these developments the legal framework of the Community should encompass the full range of investor-oriented activities. To this end, it is necessary to provide for the degree of harmonisation needed to offer investors a high level of protection and to allow investment firms to provide services throughout the Community, being a Single Market, on the basis of home country supervision. In view of the preceding, Directive 93/22/EEC should be replaced by a new Directive.	No material change.	N/A	Equities Fixed Income Commodities
MFID II Rec. 4		The financial crisis has exposed weaknesses in the functioning and in the transparency of financial markets. The evolution of financial markets has exposed the need to strengthen the framework for the regulation of markets in financial		New recital. Points out the need to strengthen the framework for the regulation of markets in financial instruments, including where	This recital helps firms understand the policy reasons for some of the changes in MFID II and MIFIR, including increased transparency and investor protection. This	Equities Fixed Income Commodities

By selecting the article reference “view”, users can access an easy-to-read, full screen, printable version of a chosen article, complete with supporting analysis and commentary.

View item

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Print Close

Index	
General	
General	
Article Reference	MFID II Rec. 1
Related Document	
MFID II / MIFIR (Text)	Directive 2004/39/EC of the European Parliament and of the Council has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.
MFID I (Text)	
Analysis of amendments (change/no change/new provisions/deletions)	New recital. Provides rationale for recast Directive.
Commentary	No practical impact.
Business Area	Equities Fixed Income Commodities
Theme	General

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	Analysis of amendments (change/no change/new provisions/deletions)	Commentary	Country specific analysis - UK	Country specific analysis - Germany
	Member States without advocating any particular structure.			
f means the person or persons who business of the investment firm as 9(1) of Directive 2004/39/EC.	Amended. Definition conformed to CRD IV (Art. 3(1) (9)). Now refers to 'natural persons' who 'exercise executive functions' and 'are responsible, and accountable to the management body, for the day-to-day management' of an investment firm, market operator or data reporting services provider, whereas the current definition refers to 'person or persons who effectively direct the business of the investment firm'.	See MIFID II Arts. 9(3) to (5), 41(1) and (8). Investment firms, regulated markets and data reporting services providers need to review governance arrangements in light of the new definition of 'senior management' and organisational requirements.	Under UK rules, persons carrying out a 'significant influence function' or 'SIF' within an investment firm are subject to an additional set of regulatory requirements under the FCA's Approved Persons Regime. A SIF is defined as a function that is likely to enable the person responsible for its performance to exercise a significant influence on the conduct of an authorised firm's affairs, so far as it relates to their carrying on of a regulated activity (section 59(7B) FSMA).  Although persons carrying out SIFs in a UK authorised firm are typically members of its governing body or senior management, FCA guidance makes clear that whether or not a person is carrying out a SIF is a question of fact in each case (SUP 10A, Annex 1, para 6). This being the case, and given the broad wording of the definition of a SIF, the new definition under MIFID which refers to 'natural persons' who "exercise executive functions" and "are responsible... for the day-to-day management" of an investment firm is unlikely to extend beyond those individuals	No existing super equivalent rule/guidance.

Local law analysis highlights where super equivalent provisions are equally or more onerous than changes introduced pursuant to MiFID II.

### Key benefits of the gap analysis:

- > Database of all MiFID II/MiFIR provisions that can be easily grouped into themes and/or product areas
- > Fully customisable to provide alternative tagging and additional functionality as required
- > Can form a base document for a specific project plan:
  - > the obligations which need to be fulfilled
  - > those responsible for identifying compliance with rule obligations
  - > how you plan to implement MiFID II/MiFIR across your business
  - > status of such implementation proposals
  - > any specific advice that has been given by external advisers
- > Summary of key practical implications of the rule changes provides accessible legal guidance on the new requirements
- > An easy tracker for use by Internal Audit and/or to support any attestations that may need to be given by senior management
- > Historical baseline allowing you to understand why certain decisions were taken in the context of the regulations in force at the time
- > Available in a user-friendly, customisable, online format, which benefits from centralised updating and email alerts and can be exported to Excel
- > Useful documents library containing MiFID-related documents, publications and guidance

If you would like more information about our MiFID II Gap Analysis tool, including pricing options, please speak to your usual Linklaters contact or alternatively contact [online.services@linklaters.com](mailto:online.services@linklaters.com)

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