

Europe Post-MiFID: Capital Markets in a State of Flux

***Summary of the event held at CEPS on 24th October 2007
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The landscape of Europe's securities market is due to change for ever this week with the entry into force on Thursday, November 1, of the MiFID Directive. This cornerstone of the Financial Services Action Plan of the European Commission aims to iron out the existing differences between national regulatory regimes, harmonize investor protection rules across Europe, enhance greater competition and increase the transparency of securities transactions. Even more ambitiously, MiFID is meant to inject some dynamism into the EU financial services industry, allowing firms to trade across borders with a single EU 'passport'. Competition will be boosted with investment banks allowed to muscle onto territory previously dominated by traditional securities exchanges such as the LSE, Paris-based Euronext and Frankfurt-based Deutsche Börse. Investor confidence is to be strengthened with new consumer protection requirements aimed at ensuring clients get the best possible deal. However, all these changes will not and cannot occur overnight: the MiFID's entry into force will not bring about the big bang previously predicted by experts. Such are the levels of disarray among firms and supervisors; it seems that the regulation will properly come into being only after a long and tortuous process of legal trial and error.

On 24 October CEPS - in cooperation with the European Capital Markets Institute - organized a half day seminar, chaired by Carmine Di Noia (Deputy Director-General, Assonime and Member of the European Securities Markets Expert Group), to promote an open discussion on the future of investing in a Europe "post-MiFID". The event has brought together representatives from European institutions and advisory bodies (notably David Wright, Director, DG Market, European Commission and Carlo Comporti newly appointed Secretary General of the Committee of European Securities Regulators), private-sector financial institutions (Anso Thiré, Head of Public Affairs and Strategy at Euroclear, Jorge Yzaguirre Scharfhausen from BME and Jean-Baptiste de Franssu, CEO of Invesco Continental Europe) to share their views on the MiFID's implications.

From the outset, it was made clear that the new regime will affect several market participants (not only investment banks, stock brokers and broker-dealers, but also asset managers, stock exchanges, corporate finance firms, many futures and options firms and some commodity firms) representing for all of them either a business opportunity or a threat. The main concern of the industry, as stemming from the debate, is mainly related to a sort of "patchy" implementation across Europe. Notably, only three Member States – UK, Romania and Ireland – out of 27 met the January 31, 2007 deadline to transpose MiFID into national legislation; others have since passed the required laws but some, including Italy, Poland, Spain, Hungary, Finland, the Netherlands and the Czech Republic, have not. Hence, delays in adopting the MiFID Directive have left many firms

ill-prepared for what is being touted as a new era for financial markets.¹ This patchy implementation is thus a source of major concerns for the financial services industry, which has had to absorb the costs of adapting to burdensome new rules.² Strikingly enough, though, the entire compliance effort still being made by the industry to play the game according to the new rules (aiming at the establishment of a level playing-field) is now facing further differences in Member States' interpretation of the rules that could create unbearable legal chaos.

As a response to this *status quo*, David Wright and Carlo Comporti outlined respectively the European Commission and CESR's post-MiFID agenda.

The first speaker – recently described in an interesting column of the *Financial Times* as “a believer in more open financial markets, who had the often unenviable task of devising compromises that would please member states across a wide spectrum from supporters of a free-market liberal MiFID to those who saw it as an opportunity to introduce restrictive investor-protection rules and thinly disguised protectionist measures”³ – agreed with the industry's concerns, declaring that countries who fail to transpose the legislation in time will definitely harm firms. Hence, the EU has already started legal proceedings against Member States that would not be ready in time (while still wishing that the cases could be resolved before reaching the European Court of Justice).⁴

Moreover, to strengthen the impact of MiFID as a “ground-breaking piece of legislation”, the Commission will: (i) engage itself in two major reviews on commodities and extension of the MiFID's transparency requirements to non-equities markets; (ii) further investigate the interface between the MiFID and UCITS regulatory regimes; (iii) focus on the post-trading, with specific regard to the issue of clearing and settlement; (iv) assess the role to be played by Credit Rating Agencies (taking into account a possible extension of the MiFID conflict of interest package) and, last but not least, (v) strengthen the transatlantic dialogue with the US on securities regulation.

Almost on the same line of reasoning was the CESR's response to the above-described *status quo*. The Committee of European Securities Regulators, in fact, published on 22 October measures aimed at clearing up last-minute concerns and ensuring smoother implementation of the MiFID Directive. One of the main issues covered was the supervision of cross-border firms, a task that will be jointly undertaken by home regulators and by host regulators based in countries with branch operations. CESR

¹ For information on Transposition please refer to the [Commission's MiFID Transposition State of Play](#) in the Internal Market's Commission Website.

² It has been estimated by the UK Financial Services Authority that MiFID's implementation will entail one-off costs of £900m to £1.2bn for firms, ongoing costs of £100m a year but benefits of up to £200m a year.

³ Peter Norman, *Five figures central to shaping directive*, *Financial Times*, October 28 2007.

⁴ Already at the end of June 2007, the European Commission formally requested a total of 24 Member States – all except the United Kingdom, Ireland and Romania – to write into national law the Markets in Financial Instruments Directive ("MiFID") and its implementing Directive. These requests took the form of 'reasoned opinions', the second stage of the infringement procedure under Article 226 of the EC Treaty.

advocated collaboration between supervisors, with structures for requesting regulatory assistance where necessary. CESR also welcomed progress in MiFID implementation, while issuing practical arrangements to ease transition for firms. This statement is contained within the revised version of the CESR recommendations on the passport under MIFID published originally in May 2007. The guiding principle of the statement is to provide business continuity and minimize the potential disruption to business that might be caused by late transposition of MiFID.

Indeed, CESR itself addressed concerns about uneven implementation among Member States, announcing that firms from countries which have not yet transposed the Directive will be allowed to continue using 'passports' granted under MiFID's predecessor, the 1993 ISD. Moreover, on the occasion of the seminar organized by CEPS and ECMI, Carlo Comporti confirmed CESR's strong commitment to provide necessary guidance to Member States and to the industry. It was thus acknowledged that there is still a lot of detail to work out and implementation will require a lot of continued efforts, nevertheless CESR and the Commission's representatives adopted an optimistic approach, focusing more on the achievements made so far in the right direction.

To offer corroboration of the scope and extent of its mandate, CESR's future Secretary General made reference to the MiFID work-programme for 2007/2008. CESR will continue during 2008 to undertake its function to provide technical advice to the European Commission and will assist with a number of Commission's reviews (including for example further work in relation to commodities, tied-agents and recording of phone conversations). Work will continue in respect to the common implementation of MiFID Level 2 Regulation, and CESR also plans to create a MiFID Q&A facility to address the practical questions that will arise as we move from the transposition phase to the implementation phase for MiFID, similar to the Q&A facility CESR implemented on Prospectuses. Finally, CESR will continue to work together with CEBS and CEIOPS over the course of 2007 and 2008, and is requested by the Third Energy Package adopted by the European Commission to develop a closer working relationship with the future Agency for the Cooperation of Energy Regulators.

Hence, looking ahead, Carlo Comporti gave the audience an update on the work to implement the various databases necessary for MIFID to function. This includes for example, its work to develop a transaction reporting mechanism (to be operational on November 2), a database of liquid shares to facilitate market transparency and a database of systemic internalizers. Comporti also announced that CESR will work on developing a guide for retail investors to explain the new legislative framework and to raise their awareness of MiFID's new rules and protections.