

Conference – MiFID: One Year On
Brussels, 13 November 2008
Summary of discussion

This is an informal summary and does not represent the views of the European Commission. Not all comments/questions from the floor are noted here. The presentations held at the conference are available under:

http://ec.europa.eu/internal_market/securities/isd/conference_en.htm

Opening remarks

David Wright, Deputy Director-General of the Directorate General for Internal Market and Services at the European Commission, opened the conference. He recalled some of the key objectives of the Markets in Financial Instruments Directive (MiFID) in terms of more competition and investor protection. He outlined the conference agenda, covering these and other topics, such as supervisory challenges and international aspects. The financial crisis made assessing the singular merits of MiFID more challenging. However, he noted that it was important to view market developments since MiFID also independently from the crisis, and vice versa.

Keynote speech: Commissioner Charlie McCreevy

Commissioner McCreevy, European Commissioner for the Internal Market and Services delivered the first keynote address. He pointed out that the importance of a sound and reliable regulatory framework was emphasised by the current financial crisis. He invited all participants to engage in a very open and direct dialogue. The preliminary assessment of MiFID indicated that although its implementation had not been perfect, this had been better than many had feared. The conference was an opportunity for market participants and regulators to raise any major concerns regarding the transposition of MiFID and its application in Member States. Commissioner McCreevy further noted that MiFID had already had an impact through the arrival of new trading venues and the reduction in trading fees. On the other hand he raised the question whether fragmentation of liquidity and reduced data transparency had had a possible negative impact. He further noted the increased level of investor protection and investor choice in MiFID and indicated that further analysis could be needed concerning the application of some conduct of business rules to professional clients. Referring to the financial crisis it was also mentioned that a working group on derivatives had been setup. This would, among other things, assess whether more transparency is needed in the trading of derivatives. Finally he called for views on the future supervisory structure in the field of financial services and underlined the importance of devising a secure global financial marketplace through international agreements.

Keynote speech: Pervenche Berès MEP, Chairwoman of the Economic and Monetary Affairs Committee of the European Parliament

MEP Pervenche Berès, Chairwoman of the Economic and Monetary Affairs Committee of the European Parliament gave the second keynote speech. She welcomed the opportunity to address the audience on MiFID, one year after its entry into force. MiFID was a major part of

the Financial Services Action Plan, and a good example of efficient legislative work by the EU institutions in the context of the Lamfalussy procedure. One year was a short time to assess the effects and success of any legislation, let alone in the turbulent times of the past year. Nonetheless, MEP Berès stressed, good legislation should hold up both in good and bad times.

While acknowledging the increase in competition in securities trading, she signalled a number of emerging concerns in relation to MiFID. The abolition of the concentration rule had given rise to challenges notably in accessing trade data from numerous trading venues, thereby also jeopardising best execution. This was further put in question by some of the ownership relations between broker-dealers and the new breed of multilateral trading facilities (MTFs). She mentioned that there were also some problems with the cost and the quality of the data provided. She furthermore questioned whether the emergence of some new venues, such as dark pools of liquidity, represented a desired or expected development. Competition should only be considered beneficial if it delivers benefits to the end-investors as well, she concluded.

Panel: Economic impacts – positive or negative so far?

Hughes Pirotte (FinMetrics SA) pointed out a number of possible shortcomings in the application of MiFID in relation to investor protection. The necessary profiling is not always done properly and is often viewed as a constraint in the relationship between the investor and the investment firm. He further argued that often inappropriate products are sold to investors due to conflict of interest and, as a related issue, in calculating performance too little focus is placed on risk, leading to a bias towards more risky instruments. MiFID has pushed for an improvement of the situation for retail clients, but further improvement of results on the ground may be necessary. In the long run everybody dealing with retail clients needs to be educated and the retail clients themselves need also to be educated. John Board (ICMA Centre) supported any move towards education and saw the increased awareness on investment decisions facilitated by provisions on investor protection as unambiguously beneficial for retail investors.

Mario Nava (European Commission) noted that the abolition of the concentration rule had led to an increasing amount of trading on MTFs. The panel expressed agreement on the fact that the increased competition through an increased number of trading venues inevitably leads to fragmentation and less transparency. The right approach is therefore to compare the trade-off between increased competition and less transparency. Mr Pirotte stated that a lot of transparency related data is available today, but that it is very difficult to distinguish the useful information from the misleading data and for this reason it would be necessary to specify exactly what information we need, and not just push for the generation of long reports. In addition he would support having the same transparency requirements for derivatives as those related to the underlying instrument. Both activities would generate an exposure to the underlying instrument. Mr Board noted that the so-called dealership model was under pressure as a result of the crisis. If the dealership model no longer worked, the previously presented argument that a certain degree of opacity is needed to support the market would be challenged. The alternative could be further market transparency and regulation. In addition Mr Board expressed support for further regulatory transparency, whereby positions and exposures could be calculated and monitored in aggregate to build a better picture of trading activity by players on markets.

Mario Nava raised the question whether a profound revision of OTC markets would be needed. The possibility of demanding CCP clearing for OTC derivatives generally found support by the panellists. In their view such an initiative could increase market efficiency, and improve regulatory oversight.

Panel: Institutional Impacts - The new supervisory challenges

Eddy Wymeersch (Committee of European Securities Regulators), who chaired this panel, first gave a short introduction to CESR's role. He noted that issues in relation to the competence of home and host supervisors mostly occur in the prudential field. He mentioned the Transaction Reports Exchange Mechanism (TREM) as one of the major projects of CESR in the recent past. Mr Wymeersch further stated that, in his experience MiFID is considered as a model of sorts in the world, being up-to-date and principles based.

Artur Kluczny (Polish financial markets authority) said that one supervisory challenge would be that the number of investment firms which provide services cross-border has increased. He said that there is a need for more clarity regarding the division of competences between different competent authorities, notably regarding the supervision of branches. In this respect CESR's Protocol on the supervision of branches would require the unsolicited communication of information, and would recommend the setting up of bilateral agreements between home and host supervisors. Although Mr Kluczny acknowledged that this enhanced cooperation would require more organisational work from supervisors, he concluded that cooperation between competent authorities in general works well.

According to David Lawton (UK Financial Services Authority) MiFID has clearly increased competition between regulated markets, MTFs and investment firms (systematic internalisers) offering trading services in financial instruments. The fact that each group is subject to slightly different rules would represent a challenge for supervisors. The question was raised whether the differences are always justified. Mr Lawton mentioned another challenge in the clearing and settlement area which could negatively affect the functioning of MiFID. With regard to pre and post transparency Mr Lawton said that fragmented data and delayed or multiple reporting is still sometimes a problem and supervisors should address these issues. He mentioned that due to progress in technology transparency is now better than one year ago. However, further progress would still be required and the transparency provisions could be a topic for the future MiFID review. Finally, he raised the question whether MiFID needed more provisions on transparency for non equity markets.

Hubert Reynier (French financial markets supervisor AMF) explained that MiFID introduced an obligation for European regulators to exchange information regarding transactions reported to them locally. Information exchange is required in order to allow the competent authority of the most relevant market in terms of liquidity of a given financial instrument to receive all information regarding transactions by authorized firms. In addition, the home competent authority should receive information on transactions executed by the firms' branches as reported to the host country authorities. According to Mr Reynier, EU competent authorities responded to these requirements by setting up TREM (Transaction Reporting Exchange Mechanism) through CESR. He said that a single system like TREM is much more efficient than different systems for each competent authority. Finally Mr Reynier raised the question whether TREM should be extended to cover transactions in OTC derivatives markets.

Mr Gert Luiting (Dutch financial markets supervisor AFM) gave an overview of the results of a mapping exercise on MiFID undertaken by CESR's Review Panel. The aim of the mapping exercise was to assess whether competent authorities have equivalent supervisory and sanctioning powers. The review panel that will release its report at the end of November found that the MiFID powers have been assigned in all the Member States and the supervisory outcomes appear to be consistent and equivalent between Members. However, Mr Luiting also reported that differences in respect of the administrative measures and sanctions are significant due to the fact that Member States' legal systems differ across the EU and that Member States have the discretion to decide on the types of administrative measures applicable in cases of infringement of MiFID.

Panel: MiFID 1, Impact on firms

Richard Britton (International Capital Market Association ICMA) chaired this panel which addressed the impact of MiFID on firms. First, Mr Spyros Capralos (Federation of European Securities Exchanges FESE) described the effects that MiFID has on regulated markets: competition between the different trading venues (regulated markets, MTFs, systematic internalisers) has been significantly enhanced. Regulated markets reacted by providing new services (e.g. data provision services) and setting up MTFs in order to respond to clients' needs. Mr Capralos said that MiFID has had both benefits (e.g. in terms of increased transparency) and downsides (e.g. shortfalls in price discovery and in creating a level playing field among different types of trading venues).

Eli Lederman (Turquoise) stated that he clearly considers MiFID as a success. While in his view it was true that increased competition can lead to more complexity on the markets, investors would nonetheless profit from new pan-European platforms representing a significant leap in cross-border efficiency. Competition would require market participants to try out new innovative market models. With regard to some of the waivers from pre-trade transparency exemplified e.g. in "dark pools", Mr Lederman claimed that post trade transparency works very efficiently to provide the necessary information to markets.

Adolfo Garcia (Santander Group) described the experience of the firm in operating in different EU Member States (mainly Spain, UK and Portugal) when implementing MiFID. He said that it has been a challenging project to implement MiFID in different markets with partly different interpretations of the Directive. Implementation had to be carried out under severe time constraints due to the late transposition in some of the Member States. Despite significant costs that Santander group had to bear in order to adapt to the new framework, Mr Garcia's overall assessment of MiFID is positive: investor protection and internal controls within firms have improved and he expects that increasing competition between trading venues will release further benefits in the future.

Matthias Bock (Goldman Sachs) explained that MiFID has significantly increased transparency for OTC trades for most European shares, which were formerly traded under national rules. In general he considered that MiFID as a pan European framework is successful. Mr Bock added that MiFID was also an important development in terms of investor protection. On the other hand, some areas like short selling would still be outside MiFID and should be further considered in the future.

With regard to transaction reporting the panellists shared the view that the situation had improved, although different approaches in the Member States would partly persist. On the question, whether there were differences in the interpretation of MiFID by the Member States, the participants said that CESR's work has contributed to convergence of interpretations. However, further work would still be necessary and in general convergence needed time to apply on the ground. Concerning the functioning of "best execution" it was said that best execution policies should be better explained to clients.

Panel: MiFID II – Internalisation; MTFs; consolidation; cross border business; data consolidation; liquidity

Judith Hardt (FESE) gave an overview of new trading venues and their obligations especially in relation to trade transparency. Peter Randall (Chi-X) provided information on the activity on Chi-X since its launch. He argued that MiFID had supported the business opportunities of MTFs and the benefits for end investors would be considerable. It is important to continue the effort in the future to further increase competition and regulatory convergence between EU Member States.

Adam Kinsley (London Stock Exchange) cautioned on concluding what the effects of MiFID had been so far. The bid/offer spread widening that has occurred as a result of the crisis makes it very difficult to assess the impact on liquidity and, at the same time, technological development had also played an important role. He also argued that many investment firms provide systematic internalisation without being registered as such. In addition the absence of quotes from systematic internalisers in the market was striking. However, he stated that MiFID is overall doing a good job, although it may have to be tweaked in the future.

Sonja Lohse (Nordea Bank AB), noted that not all platforms will be sustainable which is likely to lead to consolidation of trading venues. Connectivity to relevant systems as well as order routing will also imply an increase in cost and technology will be an increasingly important parameter in the competition.

Pierre Francotte (Euroclear SA/NV) reminded that in analysing the benefit for investors and for best execution obligations the post trade activities must be taken into account. MiFID has facilitated access to clearing facilities but the effect of this is not yet clear. He raised the question on the optimal degree of competition (and following fragmentation), and stated that in his opinion this would depend on whether it was in the area of trading, clearing or settlement.

Panel: Investors – Wider choice? Higher levels of protection? Best (or better) execution?

Peter de Proft (European Fund and Asset Management Association) opened the panel by presenting the themes: impact of MiFID for investors, information from and to clients, and best execution. The panellists were generally of the opinion that while MiFID had delivered significant improvements from the investor's point of view, many provisions of the directive were not yet completely delivering their intended aims and other areas where investor protections are lacking have come into focus.

Charles-Henri Taufflieb (European Association of Corporate Treasurers) pointed out that investors have come to appreciate the certainty and opportunity afforded by key protections in MiFID, although there are indications that retail clients tend to regard aspects of the more formalised interactions it has brought about also partly as a burden.

Guillaume Prache (Fédération des Associations Indépendantes de Défense des Épargnants) mentioned that while investors are well aware of the firm's duty to deliver best execution, they are less well served by the firm's obligation to inform and advise the client about available products and services free of conflicts of interest. As regards investor protection requirements, the panellists generally expressed the view that MiFID-like obligations should extend to other financial products sold to investors, such as insurance products, and they looked forward to the Commission's next steps in this regard. As for best execution, there was a level of disappointment that it was not delivering more for investors.

Jean-Pierre Paelinck (Euroshareholders) and Didier Cahen (Eurofi) noted that the emergence of rival MTFs is not really relevant for small investors to get better prices for their orders. Guillaume Prache pointed out that for now best execution essentially plays out only in equity markets and investors in other instruments have felt little benefit from this provision so far. Practical application of inducement requirements was also mentioned as an area deserving attention.

Panel: International aspects – Mutual recognition in securities markets – myth or reality? Convergence of rulebooks – a dream?

Piia-Noora Kauppi, Member of the European Parliament (EPP-ED, FI) opened the panel by pointing out that the global financial crisis demonstrated the importance of pursuing an open transatlantic marketplace. The different regulatory options for pursuing this (convergence of rulebooks, exemptive relief etc.) should be assessed against the costs of international inaction.

Bertrand Huet (Securities Industry and Financial Markets Association) agreed by stating that mutual (or unilateral) recognition of securities firms and convergence were part of the necessary global solution to the crisis. Efforts in this direction were also to be seen in terms of restoring trust in financial markets, along with other initiatives such as providing liquidity to distressed markets and minimising systemic risks arising from relevant markets and institutions. Rene Maatman (AFM) concurred by recalling that EU achievements in financial market integration were, to a large extent, about mutual recognition between Member States. The benefits of this integration still had a long way to play out in order to deliver their full potential.

Elizabeth Jacobs (US Securities and Exchange Commission), speaking in a strictly personal capacity, recalled a number of recent international initiatives by the US SEC in the field of accounting, prospectuses and mutual recognition. She outlined the evolving approach of the SEC to cross-border issues signalling the SEC was aiming for greater cooperation with a number of foreign securities regulators in order to match the challenges posed by the international character of financial markets.

Maria Velentza (European Commission) highlighted a number of priorities from the EU side in relation to developing a global approach to and global governance of financial markets.

With the alignment of policies across jurisdictions, mutual recognition and arrangements for exemptive relief for certain operators were becoming easier to achieve. She stressed the necessity of considering the EU as a whole in international negotiations in order to avoid fragmentation or lowering of standards agreed to within the EU regulatory space.

Closing remarks

Emil Paulis, Director of financial services policy and financial markets in the Directorate-General for Internal Market and Services delivered the final remarks to close the conference. He highlighted the important contribution of the conference debate to the ongoing work on the MiFID review foreseen for 2010. He stressed that under the review it would be necessary to monitor the fulfilment of the key objectives of MiFID, in particular the effect in the markets of more competition and the achievement of better protection of investors. Concerning more competition, it was stated that it is necessary to monitor the level playing field and dynamic efficiency of the market. Concerning investor protection, it was mentioned that investors were better protected thanks to MiFID, but some areas such as best execution could deserve further attention and financial education of investors will be very important. Emil Paulis recognised that the role of CESR had been and will continue to be crucial to ensure a convergent application of MiFID; although the different level of enforcement and sanctions in Member States produce divergent effectiveness.

Concerning the impact of the financial crisis on the regulatory framework, Emil Paulis mentioned that it would be likely that, in the future, legislation will further take into account the regulation of risk in addition to competition and that it was important to consider whether it is necessary to extend MiFID to other products or to apply more of its protections to professional clients. Concerning the international aspects, he stressed the fact that the EU and US had the duty to take a lead in setting standards and principles at international level and that the G-20 agenda would be important in helping create a new structure for setting standards and supervision.

MiFID: one year on
Thursday 13 November 2008
Hotel Metropole,
Place de Brouckere 31, Brussels

9:15 **Chairman's Opening Address – David WRIGHT**, Deputy Director General, Directorate for Internal Market and Services, European Commission

9:30 **Keynote addresses**

Commissioner McCREEVY, European Commissioner for the Internal Market and Services

Pervenche BERÈS, MEP, PSE group, Chairwoman of the ECON Committee, European Parliament

10:10 **Panel: Economic impacts – positive or negative so far?**

Moderator: **Mario NAVA**, Head of Unit G2 "Financial Markets Infrastructure", Directorate for Internal Market and Services, European Commission

Panellists:

John BOARD, Director and Professor, ICMA CENTRE, London

Hugues PIROTTE, Professor, Solvay Business School, Université Libre de Bruxelles; CEO, FinMetrics SA

Jean-René GIRAUD, Director of development & Research Associate, EDHEC Risk and Asset Management Research Centre, Nice

11:00 **Panel: Institutional impacts – The new supervisory challenges**

Moderator: **Eddy WYMEERSCH**, Chairman of the Committee of European Securities Regulators (CESR)

Panellists:

Artur K. KLUCZNY, Deputy Chairman, Komisja Nadzoru Finansowego (KNF)

David LAWTON, Head of Markets Policy, Financial Services Authority (FSA)

Hubert REYNIER, Managing Director, Regulation Policy and International Affairs Division, Autorité des marchés financiers (A.M.F)

Gert LUITING, Senior Officer, Strategy, Policy and International Affairs Department, Autoriteit Financiële Markten, (AMF)

12:00 **Panel: MiFID I: – Impact on firms; achievement of MiFID objectives; benefits & downsides; compliance challenges; interaction with CRD; transparency and transaction reporting; double reporting, duplication of legislation; conduct of business rules**

Moderator: **Richard BRITTON**, Consultant on international regulatory matters, International Capital Market Association (ICMA)

Panellists:

Matthias BOCK, Executive Director and General Counsel, Goldman, Sachs & Co. oHG

Spyros CAPRALOS, Chairman, Athens Exchange; President, Federation of European Securities Exchanges (FESE)

Adolfo GARCIA, Head of Securities Forums and MiFID coordinator for the Santander Group

Eli LEDERMAN, Chief Executive, Turquoise

13:00 – 14:00 Lunch

14:00 Panel: MiFID II – Internalisation; MTFs; consolidation; cross border business; data consolidation; liquidity

Moderator: **Judith HARDT**, Secretary General, Federation of European Securities Exchanges (FESE)

Panellists:

Pierre FRANCOTTE, Chief Executive Officer, Euroclear SA/NV

Adam KINSLEY, Director of Regulation, London Stock Exchange (LSE)

Sonja LOHSE, Head of Group Compliance, Nordea Bank AB

Peter RANDALL, Chief Executive, Chi-X

15:00 Panel: Investors – Wider choice? Higher levels of protection? Best (or better) execution?

Moderator: **Mr Peter DE PROFT**, Director General, European Fund and Asset Management Association (EFAMA)

Panellists:

Didier CAHEN, Secretary General, EUROFI

Jean-Pierre PAELINCK, General Secretary, Euroshareholders

Guillaume PRACHE, Member, FIN-USE; Vice-president, Fédération des Associations Indépendantes de Défense des Épargnants (FAIDER)

Charles-Henri TAUFFLIEB, Chairman of the Commission for « Compliance and Codes of conduct », European Associations of Corporate Treasurers (EACT)

16:00 Panel: International aspects – Mutual recognition in securities markets – myth or reality? Convergence of rulebooks – a dream?

Moderator: **Piia-Noora KAUPPI**, MEP, Group EPP-ED, European Parliament

Panellists:

Bertrand HUET, Managing Director, European Legal & Regulatory Counsel, Securities Industry and Financial Markets Association (SIFMA)

René MAATMAN, Board member responsible for securities markets surveillance, Autoriteit Financiële Markten (AFM)

Elizabeth JACOBS, Deputy Director of the Office of International Affairs, U.S. Securities and Exchange Commission (SEC)

Maria VELENTZA, Head of Unit G3 "Securities Markets", Directorate for Internal Market and Services, European Commission

17:00 **Closing remarks by Emil PAULIS, Director of financial services policy and financial markets, DG MARKT**