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Time for a MiFID II refit

MiFID II stands as the cornerstone of European financial markets regulation. It governs the provision of investment services and the proper functioning of markets. This sweeping piece of legislation was designed to enhance transparency and strengthen investor protection as well as pursue efforts to foster competition introduced by MiFID I.

After a year and a half of implementation, some preliminary lessons can be drawn. While MiFID II has improved transparency, the new regime has not met all expectations, especially in relation to non-equity instruments where results are mixed.

With regard to equities, dark trading has been constrained by the share trading obligation, which mandates trading on venues or systematic internalisers (SIs) and the limitation on the use of waivers in particular with tools such as the double volume cap mechanism. However, some findings raise questions. Trading on lit venues has not increased. It stagnates around 50% of total volumes while trading on SIs, which was insignificant prior to January 2018 has surged to 25% before gradually decreasing to 20%, capturing a large share of OTC trading. Regulators are keeping a close eye. The AMF 2019 Markets and Risk Outlook provides a first analysis of this trend, underlining that transparency is quite limited and only a small portion of volume traded on SIs actually contribute to price formation. Finally, there is still a significant portion of pure OTC trades (about 30%) which needs to be better understood.

In parallel, MiFID II has extended transparency requirements to non-equity instruments, with so far mixed results. Pre-trade transparency in this area is challenging due to the RFQ systems on which these instruments trade, while post-trade transparency brings useful information. Yet, some argue that post-trade publications come too late to be fully useful and that the universe of instruments considered as liquid remains too narrow.

Data is one area where improvement is tangible. MiFID II has required regulated entities to provide an unprecedented amount of data. From the angle of market integrity, this represents a positive step forward since trading and reporting data offer regulators critical information to identify, in a timely manner, market abuses and to monitor market events. For participants, trading and best execution data play a useful role to inform investment decisions. Difficulties nevertheless remain in terms of data quality and accessibility that will require further work.

While the European Commission is defining its priorities for the next 5 years, the AMF considers it would be appropriate to conduct a targeted review of MiFID II to correct the inefficiencies identified and address the challenges raised by the UK's decision to withdraw from the EU. Such an exercise should not call into question the essence of the reform but aim at ensuring MiFID II fully achieves its objectives. In that sense, we are in favour of a MIFID REFIT rather than a MIFID III.

In our June EU2024 paper[1], we sketched out a few areas that would merit reconsideration and are keen to exchange views with colleagues and stakeholders to refine and complement these avenues: transparency thresholds may require a recalibration to reflect the new perimeter of EU27 markets; the share trading obligation has proved difficult to implement and may require some streamlining. In light of experience, we may also envisage reducing the number of position limits to certain commodity derivatives, based on the type of underlying and trading volume. Such a review can be the occasion to measure the usefulness of certain provisions to analyse whether their granularity brings valuable information.

One issue to be tackled is the development of a framework to support the emergence of a European consolidated tape. Such a long-awaited tool will provide greater transparency to the market. ESMA and the EC's recent efforts to ponder the conditions of the emergence of this tape are encouraging.

More generally, it is crucial to avoid distortions of competition of the EU with the rest of the world. We could explore avenues to make sure European actors do not face an unwarranted disadvantage. ●

[1] EU2024: Shaping EU27 capital markets to meet tomorrow's challenges – Focus areas and initial proposals of the French AMF.