

MiFID II - New Draft to be Implemented

Berlin, October 2016 – On 29 September 2016, the German Federal Ministry of Finance (BMF) sent the "draft of a second law to amend financial market regulations based on European legislation" to affected market participants and organisations.

In particular, the draft serves to ensure the implementation of the new financial market guideline MiFID II, as well as the delegated guidelines of the EU Commission dated 7 April 2016. It follows the principle of "1:1 implementation" explicitly. Content includes a comprehensive revision of the German Securities Trading Act (WpHG) and the Investment Services Behaviour and Organisation Ordinance (WpDVerOV).

The following topics have central significance:

- The existing national arrangements for the product information sheet will be maintained.
- The new suitability statement is intended to take the place of the previous advisory protocol.
- Incentives which were previously regulated as "Contributions" in § 31d WpHG will be regulated under the heading "Contributions and Fees" in the new § 60 WpHG. There will be further specifications included in the new § 6 WpDVerOV ("Contributions"). There, you will find the statements regarding "smaller, non-monetary benefits" as well as regarding the future demands of quality improvement. In both respects, it

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seems that the text of the delegated guidelines has basically been adopted.

- The new requirements regarding product governance can be found in § 55 subsections 3 and 4 of the new WpHG, as well as in § 11 ("Product Monitoring Obligations for Creators of Financial Instruments") and § 12 of the new WpDVerOV ("Product Monitoring Obligations for Distributors"). As far as can be seen at first glance, the detailed rules in the WpDVerOV correspond to the specifications of the delegated guidelines to the greatest possible extent.
- The recording of telephone conversations and electronic communications is re-regulated in § 72 subsections 3 to 10 of the new WpHG. It is emphasized that the recording should take place "for the purposes of securing evidence" and should "contain especially those parts of the ... communication", "in which risks, the income opportunities, or the development of financial instruments or financial services are discussed". This includes consultation as well. Moreover, advice-free transactions are to be covered.
- Apparently, no changes are intended for the activities of financial asset intermediaries in accordance with the German Trade Regulations Act (GewO) or Financial Asset Agent Ordinance (FinVermV). Thus, an implementation of article 3, subsection 2 of MiFID II seems to still be pending.

Challenges

The MiFID changes are full of challenges, but there are customer-oriented and commercially successful solutions. All financial service providers with an advisory focus, whether in retail or

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private banking, insurance or bancassurance, are centrally affected by the expanded requirements. "Our experiences in the implementation of MiFID I in line with different software projects in Europe have shown that approximately 1.5 years are needed to fully implement the change process. The goal of a project should be to integrate the new requirements in the consulting and distribution process such that no declines in sales and profit occur, but rather that the MiFID creates an even better sales starting position," said Erich Borsch, of the management board of aixigo AG.

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