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Seul le prononcé fait foi

Ladies and Gentlemen,

We are now 11 months into the application of MiFID II, and although, as a national regulator, I am well aware that its implementation has not been a walk in the park for the industry – nor for regulators – I do believe that I should not shy away from expressing satisfaction at some of the positive developments that such legislation has brought. Of course, this doesn't mean that I will not be somewhat more critical on some other aspects, which I will come to in a few minutes.

Partie I

If you look at MiFID II from the angle of market integrity, I believe that it does represent a very positive step forward and one to be welcomed, in the sense that it has put in place a comprehensive toolkit for national supervisors to enforce the Market Abuse Regulation.

Indeed, the transparency and reporting requirements set out in MiFIR have placed at our disposal an unprecedented amount of trading data, which is now key for our mission to identify market abuse.

Under MiFID II, our transaction reporting system has been greatly enhanced, with its scope now covering all financial instruments traded on an EU trading venue, and not just equity instruments. The reported data have become more granular. And we've made considerable progress in the sharing of transaction reports between financial regulators, to ensure that transaction data for every individual instrument is properly channeled towards the relevant competent authority. On average, there are about 500 million transaction reports exchanged each month between NCAs.

Of course, some more work still needs to be done to improve data quality - we still receive too much inconsistent data, too many incomplete declarations. The MiFID II regime will only operate fully once data is accurate and complete. It is in our common interest to reach such completeness; to this end, cooperation between NCAs and trading venues must be stepped up to improve data quality.

Although a full assessment is yet premature, there are other positive achievements with Mifid II -at this stage, for instance:

- so far, we have not observed that the new transparency regime has reduced available liquidity. This shows that this regime was calibrated more or less properly (others would say too cautiously but that's another debate) ;
- the creation of "SME growth markets", a new label for MTFs : it seemed fair to re-introduce proportionality for those platforms whose objective is to cater for the needs of SME issuers.

But it has to be more than simply a label, a re-appraisal of applicable rules is necessary to make them attractive for both issuers and investors. I support European Commission propositions on some alleviations of certain MAR requirements for issuers, as well as certain prospectus obligations, for issuers listed on SME growth markets.

These are just examples of positive aspects of MiFID II, and I could have picked up others.

Partie II

In the interest of time, I will now turn to some perhaps more debatable achievements of MiFID II, at least in my views. At AMF, we pay close attention to the feedback we receive from the firms we supervise, and I have noticed how complaints were recurrently raised towards the same aspects of MiFID II. Which leads me to wonder whether we've gone too far, at least in the granular details of our massive Level 2 rulebook.

Take the example of the Level 2 requirements on "best execution". The "best execution" obligation for investment firms has been a cornerstone of MiFID since its origins, and no one, and certainly not me, is questioning the benefits of it.

But some novelty was brought about in the Level 2 of MiFID II with very detailed specifications regarding the contents of the periodic reports which trading venues and investment firms acting as execution venues are required to produce. These reports are meant to disclose data relating to the quality of execution of transactions on these venues.

The intention is certainly laudable, but I am now keen to hear from those to whom the reports are intended (firms' clients and investment firms themselves) whether the level of granularity that is asked has actually brought significant added value.

A similar questioning will be due as regards MiFID II rules on costs and charges, whose implementation by investment firms I understand to be particularly challenging. Are they well calibrated? How to ensure that the ex-ante information provided to the client is robust and reliable enough, especially where the life span of the product is very long?

On these topics – as on several others – the jury is out. My message here is really to say that we should not consider MiFID II as an untouchable piece of legislation. If it turns out that some elements of it have had unintended consequences, contain loopholes or simply miss their goal, then let's not be afraid to fix them.

For instance, I notice that ESMA has now addressed several letters to the Commission raising awareness on certain shortcomings of MiFID II, or areas that would require urgent clarifications of the Level 1, for example on the placing of trading screens in the EU, on the scope of the MiFID II third-country regime or on the issue of reverse solicitation.

Let me be clear: I am not advocating launching MiFID III. Instead, I am making the case for a targeted and careful "REFIT" of MiFID II, based on a proper fact-finding exercise, with extensive feedback from both firms and clients, in line with the spirit of the call for evidence which the Commission had carried out in 2016.

Another example with the Systematic Internalisers (SIs): their market share in France has progressed to approximately 30% on French shares, while SI volumes were marginal prior to 2018. At the European level, there are now 120 SIs in the ESMA register (versus merely a dozen under MiFID I), and their market share on equity broadly follows the same trend as on the French market. Overall, under MiFID II, especially on equity, there has been a shift from "pure OTC" to SIs, largely driven by commercial and legal reasons, since SIs have a

priority to report under post-trade transparency and, for shares, they enable their counterparties to comply with the trading obligation.

Nevertheless, I cannot help questioning whether the level of trading reported as SI is in fact somewhat inflated. I think that the regulators will need to take a close look at trading data so as to better understand whether transactions reported as SI are fully compliant with the SI regime (i.e. involving own risk).

Another fix is already underway. I have in mind the extension to systematic internalisers (SIs) of the EU tick size regime.

Omitting SIs from the EU tick size regime was a mistake. Currently, SIs do not need to respect the "tick size" minimum increments. Unlike trading venues, they may therefore offer price improvements on shares executed through them, which undermines the level playing field between SIs and trading venues.

In order to restore a level playing field, a Level 2 amendment is ongoing (and the AMF supports it) but we all know that the issue is broader and can only be comprehensively addressed by amending the Level 1 legislation. Fortunately, a change has been proposed by the European Parliament as part of the Investment Firm Review proposal: it will require systematic internalisers to comply with the tick size regime with regard to their quotes, their price improvements on those quotes and their execution prices.

More generally, on tick size, the AMF published last March a report on the impact of the new tick size regime based on the first months of application. We concluded that the regime had not caused any disruption to traded volumes or volatility, and that, for the most liquid securities, only a slight widening of the spread had been observed. At the same time, we noticed a sharp increase in the quantity available at the best limits (market depth) and a significant reduction in the number of messages sent to the market (noise reduction). We intend to publish an updated analysis in the coming months.

Partie III

Now, let me finish this short intervention with a few words on the third-country regime of MiFIR, which is currently being debated by co-legislators in the context of the Prudential Review of Investment Firms (IFR)

The IFR proposal by the Commission introduced a number of targeted amendments to the equivalence regime of MiFIR, as part of its proposal to reform the prudential treatment of investment firms. My feeling is that these could be further complemented.

As it stands, the equivalence regime of MiFIR is based on full substituted compliance towards third-country rules and supervisors. This means that while the EU opens its wholesale market to third-country entities, it fully defers on third-country rules and supervision for all activity conducted in the EU by third-country entities.

To me, this raises some practical issues which could have direct effects on investor protection and market integrity in the EU. On top of this, my concern is that this regime may lead to situations where third-country firms would obtain more favorable treatment than EU firms.

As regards the MiFIR rules on transparency, reporting and trading obligations, the AMF view is that third-country firms operating in the EU under the equivalence regime should be required to apply them. If not, significant trading activities in the Single Market will remain unmonitored.
Finally, let me stress, that in my view, the EU27 should be open to third-country firms and existing third-country regimes should be used whenever possible to reach that objective. My concern is only to ensure that European regulators are in a position to monitor trading activity in the EU and carry out their mission of market surveillance and risk monitoring.

Having said that, I will prefer not to conclude my speech because MiFID II and MiFir are clearly "work in progress"…

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Mentions légales :
Responsable de la publication : Le Directeur de la Direction de la communication de l'AMF. Contact : Direction de la communication, Autorité des marchés financiers - 17, place de la Bourse - 75082 Paris Cedex 02