No. 510

MINISTRY FOR FINANCE AND EMPLOYMENT

Explanatory Notes - Financial Markets Act (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers) (Amendment) Regulations, 2022

1. Introduction

The title of these Regulations is the Financial Markets Act (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers) (Amendment) Regulations, 2022 ('the Regulations'). The Regulations amend both Subsidiary Legislation 330.12 and Subsidiary Legislation 345.22. Both such subsidiary laws were originally published as Legal Notice 392 of 2017 and such Legal Notice was issued under both the Malta Financial Services Authority Act (Cap. 330) and the Financial Markets Act (Cap. 345).

The Regulations will enable the Malta Financial Services Authority ('MFSA') to, take administrative measures in relation to Approved Reporting Mechanisms ('ARMs') and Approved Publication Arrangements ('APAs') but only insofar as they benefit from a derogation under Article 2(3) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May, 2014 on markets in financial instruments and amending Regulation(EU) No 648/2012 (commonly known as 'MiFIR').

These Regulations are made by the Minister for Finance and Employment, acting on the advice of the MFSA, which is the competent authority for the purposes of the Financial Markets Act (Cap. 345) and the Malta Financial Services Authority Act (Cap. 330).

2. Summary and background

2.1. Background

Directive 2014/65/EU[1] ('MIFID II') and MiFIR seek to promote transparency in the financial markets and integrate European financial markets. One of the ways in which these aims are achieved is through the designation of entities which are responsible for the publication and reporting requirements which investment firms and operators of trading venues are obliged to fulfil in terms of MiFIR. These entities are known as data reporting service providers ('DRSPs'). There are three types of DRSPs, namely the following, which are defined in regulation 2 of the Regulations:

- **Approved Publication Arrangements** ('APAs') which are the entities responsible for the publication of post-trade reports on behalf of investment firms;
- **Approved Reporting Mechanisms** ('ARMs') which report details of transactions to the competent authorities or to European regulatory authorities or the European Securities and Markets Authority ('ESMA') on behalf of investment firms; and
- **Consolidated Tape Providers** ('CTPs') which are persons authorised to provide the service of collecting trade reports for certain financial instruments from regulated markets, multilateral trading facilities ('MTFs'), organised trading facilities ('OTFs') and APAs, and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument.

The responsibility for the authorisation and ongoing supervision of DRSPs, and the power to gather data were initially delegated to the national competent authorities, such as the MFSA. However, there were concerns at EU level that the

[1]Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

delegation of the authorisation and supervision to national competent authorities could have an adverse effect on the quality of trading data and the tasks of DRSPs in view of potential divergences in supervisory practices of different competent authorities. Furthermore, it was considered that there were a number of benefits to having one central competent authority responsible for entities handling trading data. Such benefits include economies of scale, ensuring the consistent quality of trading data, and ensuring an even approach when supervising the tasks carried out by all DRSPs, irrespective of where these may be registered.

In this respect, it was deemed appropriate at EU level to transfer the responsibility for the authorisation and supervision of DRSPs, and the respective data gathering powers from the national competent authorities onto ESMA. However, since some APAs and ARMs are deemed to be of limited relevance for the EU internal market, a derogation was provided whereby the authorisation and supervision of such APAs and ARMs would still rest with the national competent authorities – in Malta's case, with the MFSA.

2.2. Aims and Objectives

Originally, the provisions pertaining to the operational requirements for and the competences of competent authorities with respect to DRSPs were set out in MiFID II. In order to transfer the authorisation and supervision of DRSPs to ESMA, the aforementioned provisions set out in MiFID II were deleted and subsequently reintroduced in MiFIR.

Therefore, the authorisation and supervision of APAs and ARMs which benefit from a derogation under MIFIR will also be catered for under the amendments to MiFIR.

The principal scope of the Regulations is to remove references to the administrative penalties and measures which could be issued in terms of the now deleted provisions under MiFID II dealing with DRSPs, and to include provisions setting out the new legal basis for such administrative penalties and measures, namely MiFIR. In essence, therefore, insofar as APAs and ARMs are concerned, the MFSA (as competent authority under the Regulations) will now only have the power to impose administrative penalties and impose administrative measures on those APAs and ARMs benefiting from a MiFIR derogation as above-described.

2.3. The Regulations seek to partially transpose and implement the following EU Directive and EU Regulation, respectively:

2.3.1. Directive (EU) 2019/2177 of the European Parliament and of the Council of 18 December 2019 amending Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), Directive 2014/65/EU on markets in financial instruments and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing. ('Directive (EU) 2019/2177')

This Directive amends a number of Directives related to financial services, including MiFID II.

2.3.2. Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds. ('Regulation (EU) 2019/2175')

This EU Regulation amends a number of Regulations related to financial services, including MiFIR.

3. Overview of the structure of the instrument

The Regulations consist of 4 regulations:

Regulation 1 establishes the title and scope of the Regulations.

Regulation 2 amends regulation 2 of the Financial Markets Act (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers) Regulations (the 'Principal Regulations') setting out the applicable definitions.

Regulation 3 amends regulation 5 of the Principal Regulations by setting out MiFIR as the new legal basis upon which the withdrawal and suspension of authorisation for an APA or ARM with a derogation under MIFIR can be imposed by the competent authority.

Regulation 4 amends regulation 7 of the Principal Regulations by removing reference to provisions transposing MiFID II which have since been deleted, and introducing a new provision setting out that the breach of certain provisions under MiFIR will be tantamount to a breach in terms of the Principal Regulations.

4. Commentary on parts and articles of the legislation

Regulation No.	Meaning & Obligations placed on user
1	Regulation 1 sets out the title of the Regulations and their scope, namely to transpose Article 1(5) of Directive (EU) 2019/2177, and implement salient definitions set out in Regulation (EU) 2019/2175 in the Principal Regulations. No new obligations are placed on users.
2	Regulation 2 substitutes the current definitions of 'APA', 'ARM', and 'CTP' as set out in MiFID II since these have been deleted and replaces them with the new definitions set out in MiFIR. It should be noted that the substantive content of these definitions has not changed, and that the only changes carried out relate to the legal basis. No new obligations are placed on users.
3	Regulation 3 amends regulation 5 of the Principal Regulations. It removes reference to the Financial Markets Act as the legislation in accordance with which the withdrawal or suspension of the authorisation of an ARM, APA or CTP can be imposed, and instead sets out that the withdrawal and suspension of authorisation for an APA or ARM with a derogation under MIFIR can be imposed by the competent authority in line with Article 27e of MiFIR. No new obligations are placed on users.
4	Regulation 4 amends regulation 7 of the Principal Regulations which effectively sets out that breaches of MiFIR and certain national provisions transposing MiFID II amount to breaches under the Principal Regulations. In this respect, the reference to local provisions which transposed provisions from MiFID II which have since been deleted has been removed. Instead, two new provisions were inserted setting out that breaches of certain provisions of MiFIR by an APA or ARM benefitting from a derogation in accordance with Article 2(3) of MiFIR would be considered breaches of the Principal Regulations. No new obligations are placed on users.

5. Concluding Section

The Regulations shall come into force upon publication.

For any queries with respect to the Regulations, kindly contact the MFSA on 21441155 or by e-mail on (communications@mfsa.mt).

These Explanatory Notes should be read in conjunction with and as supplementary guidance to the Regulations, and should not be deemed to substitute a thorough reading thereof. These Explanatory Notes are not intended to be an exhaustive description of the legal instrument nor a substitute thereof or a legislative supplement to it. Moreover, these Explanatory Notes do not purport to be an authoritative ruling on the interpretation of the law. For the avoidance of any doubt, these Explanatory Notes do not have the force of law and, accordingly, in the event of any conflict between these Explanatory Notes and the Regulations, the Regulations shall in all circumstances prevail.

Annex

(for the purpose of paragraph (vi) of Schedule III of Chapter 512 of the Laws of Malta)

Transposition Notes for the transposition of Directive (EU) 2019/2177 of the European Parliament and of the Council of 18 December 2019 amending Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), Directive 2014/65/EU on markets in financial instruments and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing, insofar as concerns the relevant provisions of the Directive transposed in the Regulations

The Directive's Article numbers	Transposing Principal Regulation number
Article 1(2)(b)	Regulation 2 – definition APAs, ARMs and CTPs
Article 1(5)(c)	Regulation 5(1) – inclusion of a new paragraph (h) thereto setting out the basis upon which the withdrawal and suspension of authorisation of an APA or ARM with a derogation in accordance with Article 2(3) of MiFIR can be carried out by the Authority in accordance with Article 27 e of MFIR.
Article 1(5)(a) and (b)	Regulation 7(1) and (4) – Applicability of the Principal Regulations

10th May, 2022

No. 511

MINISTRY FOR FINANCE AND EMPLOYMENT

Explanatory Notes - Investment Services Act and Banking Act (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers) (Amendment) Regulations, 2022

1. Introduction

The title of these Regulations is the Investment Services Act and Banking Act (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers) (Amendment) Regulations, 2022 ('the Regulations'). The Regulations amend both Subsidiary Legislation 370.40 and Subsidiary Legislation 371.19. Both such subsidiary laws were originally published as Legal Notice 401 of 2017 and such Legal Notice was issued under both the Investment Services Act (Cap. 370) and the Banking Act (Cap. 371).

The Regulations will enable the Malta Financial Services Authority ('MFSA') to, take administrative measures in relation to Approved Reporting Mechanisms ('ARMs') and Approved Publication Arrangements ('APAs') but only insofar as they benefit from a derogation under Article 2(3) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May, 2014 on markets in financial instruments and amending Regulation(EU) No 648/2012 (commonly known as 'MiFIR').

These Regulations are made by the Minister for Finance and Employment, acting on the advice of the MFSA, which is the competent authority for the purposes of the Investment Services Act (Cap. 370) and the Banking Act (Cap. 371).

2. Summary and background

2.1. Background

Directive 2014/65/EU[1] ('MIFID II') and MiFIR seek to promote transparency in the financial markets and integrate European financial markets. One of the ways in which these aims are achieved is through the designation of entities which are responsible for the publication and reporting requirements which investment firms and operators of trading venues are obliged to fulfil in terms of MiFIR. These entities are known as data reporting service providers ('DRSPs'). There are three types of DRSPs, namely:

- **Approved Publication Arrangements** ('APAs') which are the entities responsible for the publication of post-trade reports on behalf of investment firms;
- **Approved Reporting Mechanisms** ('ARMs') which report details of transactions to the competent authorities or to European regulatory authorities or the European Securities and Markets Authority ('ESMA'); and
- **Consolidated Tape Providers** ('CTPs') which are entities authorised to provide the service of collecting trade reports for certain financial instruments from regulated markets, multilateral trading facilities ('MTFs'), organised trading facilities ('OTFs') and APAs, and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument.

The responsibility for the authorisation and ongoing supervision of DRSPs, and the power to gather data were initially delegated to the national competent authorities, such as the MFSA. However, there were concerns at EU level that the delegation of the authorisation and supervision to national competent authorities could have an adverse effect on the quality of trading data and the tasks of DRSPs in view of potential divergences in supervisory practices of different competent authorities. Furthermore, it was considered that there were a number of benefits to having one central competent authority responsible for entities handling trading data. Such benefits include economies of scale, ensuring the consistent quality of trading data, and ensuring an even approach when supervising the tasks carried out by all DRSPs, irrespective of where these may be registered.

In this respect, it was deemed appropriate at EU level to transfer the responsibility for the authorisation and supervision of DRSPs, and the respective data gathering powers from the national competent authorities onto ESMA. However, since some APAs and ARMs are deemed to be of limited relevance for the EU internal market, a derogation was provided whereby the

[1]Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

authorisation and supervision of such APAs and ARMs would still rest with the national competent authorities – in Malta's case, with the MFSA.

2.2. Aims and Objectives

Originally, the provisions pertaining to the operational requirements for and the competences of competent authorities with respect to DRSPs were set out in MiFID II. In order to transfer the authorisation and supervision of DRSPs to ESMA, the aforementioned provisions set out in MiFID II were deleted and subsequently reintroduced in MiFIR.

Therefore, the authorisation and supervision of APAs and ARMs which benefit from a derogation under MIFIR will also be catered for under the amendments to MiFIR.

The principal scope of the Regulations is to remove references to the administrative penalties and measures which could be issued in terms of the now deleted provisions under MiFID II dealing with DRSPs, and to include provisions setting out the new legal basis for such administrative penalties and measures, namely MiFIR. In essence, therefore, insofar as APAs and ARMs are concerned, the MFSA (as competent authority under the Regulations) will now only have the power to impose administrative penalties and impose administrative measures on those APAs and ARMs benefiting from a MiFIR derogation as above-described.

2.3. The Regulations seek to partially transpose and implement the following EU Directive and EU Regulation, respectively:

2.3.1. Directive (EU) 2019/2177 of the European Parliament and of the Council of 18 December 2019 amending Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), Directive 2014/65/EU on markets in financial instruments and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing. ('Directive (EU) 2019/2177')

This Directive amends a number of Directives related to financial services, including MiFID II.

2.3.2. Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds. ('Regulation (EU) 2019/2175')

This EU Regulation amends a number of Regulations related to financial services, including MiFIR.

3. Overview of the structure of the instrument

The Regulations consist of 4 regulations:

Regulation 1 establishes the title and scope of the Regulations.

Regulation 2 amends regulation 2 of the Investment Services Act and Banking Act Markets Act (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers) Regulations (the 'Principal Regulations') setting out the applicable definitions.

Regulation 3 amends regulation 5 of the Principal Regulations by setting out MiFIR as the new legal basis upon which the withdrawal and suspension of authorisation for an APA or ARM with a derogation under MIFIR can be imposed by the competent authority.

Regulation 4 amends regulation 7 of the Principal Regulations by removing reference to provisions transposing MiFID II which have since been deleted, and introducing a new provision setting out that the breach of certain provisions under MiFIR will be tantamount to a breach in terms of the Principal Regulations.

4. Commentary on parts and articles of the legislation

Regulation No.	Meaning & Obligations placed on user
1	Regulation 1 sets out the title of the Regulations and their scope, namely to transpose Article 1(5) of Directive (EU) 2019/2177, and implement salient definitions set out in Regulation (EU) 2019/2175 in the Principal Regulations. No new obligations are placed on users.
2	Regulation 2 substitutes the current definitions of 'APA', 'ARM', and 'CTP' as set out in MiFID II since these have been deleted and replaces them with the new definitions set out in MiFIR. It should be noted that the substantive content of these definitions has not changed, and that the only changes carried out relate to the legal basis. No new obligations are placed on users.
3	Regulation 3 amends regulation 5 of the Principal Regulations. It removes reference to the Investment Services Act as the legislation in accordance with which the withdrawal or suspension of the authorisation of an ARM, APA or CTP can be imposed, and instead sets out that the withdrawal and suspension of authorisation for an APA or ARM with a derogation under MIFIR can be imposed by the competent authority in line with Article 27e of MiFIR. No new obligations are placed on users.

5. Concluding Section

The Regulations shall come into force upon publication.

For any queries with respect to the Regulations, kindly contact the MFSA on 21441155 or by e-mail on (communications@mfsa.mt)

These Explanatory Notes should be read in conjunction with and as supplementary guidance to the Regulations, and should not be deemed to substitute a thorough reading thereof. These Explanatory Notes are not intended to be an exhaustive description of the legal instrument nor a substitute thereof or a legislative supplement to it. Moreover, these Explanatory Notes do not purport to be an authoritative ruling on the interpretation of the law. For the avoidance of any doubt, these Explanatory Notes do not have the force of law and, accordingly, in the event of any conflict between these Explanatory Notes and the Regulations, the Regulations shall in all circumstances prevail.

Annex

(for the purpose of paragraph (vi) of Schedule III of Chapter 512 of the Laws of Malta)

Transposition Notes for the transposition of amendments to Directive 2014/65/EU in line with Directive (EU) 2019/2177 of the European Parliament and of the Council of 18 December 2019 amending Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), Directive 2014/65/EU on markets in financial instruments and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing

The Directive's Article numbers	Transposing Principal Regulation number
Article 1(2)(b)	Regulation 2 – definition APAs, ARMs and CTPs
Article 1(5)(c)	Regulation 5(1) – inclusion of a new paragraph (h) thereto setting out the basis upon which the withdrawal and suspension of authorisation of an APA or ARM with a derogation in accordance with Article 2(3) of MiFIR can be carried out by the Authority in accordance with Article 27 e of MFIR.
Article 1(5)(a) and (b)	Regulation 7(2) and (5)– Applicability of the Principal Regulations

10th May, 2022

No. 512

MINISTRY FOR FINANCE AND EMPLOYMENT

Explanatory Notes - Data Reporting Services (Amendment) Regulations, 2022

1. Introduction

The title of these Regulations is the Data Reporting Services (Amendment) Regulations, 2022 ('the Regulations'). The Regulations amend both Subsidiary Legislation 345.21 and Subsidiary Legislation 370.37. Both such subsidiary laws were originally published as Legal Notice 391 of 2017 and such Legal Notice was issued under both the Financial Markets Act (Cap. 345) and the Investment Services Act (Cap. 370).

The Regulations will enable the Malta Financial Services Authority ('MFSA') to authorise and supervise Approved Reporting Mechanisms ('ARMs') and Approved Publication Arrangements ('APAs') which benefit from a derogation under Article 2(3) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May, 2014 on markets in financial instruments and amending Regulation(EU) No 648/2012 (commonly known as 'MiFIR').

These Regulations are made by the Minister for Finance and Employment, acting on the advice of the MFSA, which is the competent authority for the purposes of the Financial Markets Act (Cap. 345) and the Investment Services Act (Cap. 370).

2. Summary and background

2.1. Background

Directive 2014/65/EU1 ('MIFID II') and MiFIR seek to promote transparency in the financial markets and integrate European financial markets. One of the ways in which these aims are achieved is through the designation of entities which are responsible for the publication and reporting requirements which investment firms and operators of trading venues are obliged to fulfil in terms of MiFIR. These entities are known as data reporting service providers ('DRSPs'). There are three types of DRSPs, namely the following, which are defined in regulation 3 of the Regulations:

- **Approved Publication Arrangements** ('APAs') which are the entities responsible for the publication of post-trade reports on behalf of investment firms;
- **Approved Reporting Mechanisms** ('ARMs') which report details of transactions to the competent authorities or to European regulatory authorities or the European Securities and Markets Authority ('ESMA') on behalf of investment firms; and
- **Consolidated Tape Providers** ('CTPs') which are persons authorised to provide the service of collecting trade reports for certain financial instruments from regulated markets, multilateral trading facilities ('MTFs'), organised trading facilities ('OTFs') and APAs, and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument.

The responsibility for the authorisation and ongoing supervision of DRSPs, and the power to gather data were initially delegated to the national competent authorities, such as the MFSA. However, there were concerns at EU level that the delegation of the authorisation and supervision to national competent authorities could have an adverse effect on the quality of trading data and the tasks of DRSPs in view of potential divergences in supervisory practices of different competent authorities. Furthermore, it was considered that there were a number of benefits to having one central competent authority responsible for entities handling trading data. Such benefits include economies of scale, ensuring the consistent quality of

[1]Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

trading data, and ensuring an even approach when supervising the tasks carried out by all DRSPs, irrespective of where these may be registered.

In this respect, it was deemed appropriate at EU level to transfer the responsibility for the authorisation and supervision of DRSPs, and the respective data gathering powers from the national competent authorities onto ESMA. However, since some APAs and ARMs are deemed to be of limited relevance for the EU internal market, a derogation was provided whereby the authorisation and supervision of such APAs and ARMs would still rest with the national competent authorities – in Malta's case, with the MFSA.

2.2. Aims and Objectives

Originally, the provisions pertaining to the operational requirements for and the competences of competent authorities with respect to DRSPs were set out in MiFID II. In order to transfer the authorisation and supervision of DRSPs to ESMA, the aforementioned provisions set out in MiFID II were deleted and subsequently reintroduced in MiFIR.

Therefore, the authorisation and supervision of APAs and ARMs which benefit from a derogation under MIFIR will also be catered for under the amendments to MiFIR.

The Regulations shall wholly amend the Data Reporting Services Regulations (namely Subsidiary Legislation 345.21 and Subsidiary Legislation 370.37, hereafter referred to as the 'Principal Regulations') in order to remove provisions which transposed provisions from MiFID II which have now been deleted, and instead implement in part certain provisions set out in MiFIR dealing with the authorisation and supervision of APAs and ARMs benefiting from a MiFIR derogation as above-described.

2.3. The Regulations seek to partially transpose and implement the following EU Directive and EU Regulation, respectively:

2.3.1. Directive (EU) 2019/2177 of the European Parliament and of the Council of 18 December 2019 amending Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), Directive 2014/65/EU on markets in financial instruments and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing. ('Directive (EU) 2019/2177')

This Directive amends a number of Directives related to financial services, including MiFID II.

2.3.2. Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds. ('Regulation (EU) 2019/2175')

This EU Regulation amends a number of Regulations related to financial services, including MiFIR.

3. Overview of the structure of the instrument

The Regulations consist of 11 regulations:

Regulation 1 establishes the title and scope of the Regulations.

Regulation 2 amends regulation 1 of the Principal Regulations in order to amend the scope thereof.

Regulation 3 amends regulation 2 of the Principal Regulations setting out the applicable definitions.

The Principal Regulations were divided in parts. Regulation 4 deletes the headings setting out the different parts of the Principal Regulations since these became superfluous following the amendments being carried out to the Principal Regulations.

Regulation 5 introduces a new regulation, namely regulation 2A, in the Principal Regulations which establishes the MFSA as the competent authority in Malta responsible for the authorisation and supervision of APAs and ARMs which have a derogation in accordance with Article 2(3) of MiFIR.

Regulation 6 substitutes regulation 3 of the Principal Regulations. The amended regulation 3 of the Principal Regulations deals with the authorisation of data reporting service providers.

Regulation 7 substitutes regulation 4 of the Principal Regulations. The amended regulation 4 of the Principal Regulations deals with the withdrawal of authorisation for an APA or ARM with a derogation in accordance with Article 2(3) of MiFIR.

Regulation 8 substitutes regulation 5 of the Principal Regulations. The amended Regulation 5 of the Principal Regulations empowers the MFSA to issue rules as it may deem appropriate in relation to the authorisation and ongoing supervision of DRSPs.

Regulation 9 substitutes regulation 6 of the Principal Regulations. The amended Regulation 6 of the Principal Regulations sets out the applicability of Title IVa of MiFIR to all persons acting as DRSPs in or from Malta.

Regulation 10 substitutes regulation 7 of the Principal Regulations. The amended Regulation 7 of the Principal Regulations provides that in case of any inconsistency of the Principal Regulations with the provisions set out in Title IVa of MiFIR, the latter shall prevail.

Regulation 11 deletes regulations 8, 9, 10 and 11 of the Principal Regulations.

4. Commentary on parts and articles of the legislation

Regulation No.	Meaning & Obligations placed on user
1	Regulation 1 sets out the title of the Regulations their scope, namely to transpose Article 1(4) of Directive (EU) 2019/2177, and implement in part Article 4 of Regulation (EU) 2019/2175 in the Principal Regulations.
2	Regulation 2 amends the scope of the Principal Regulations by making reference to the new provisions in MiFIR which are being implemented therein, namely points 34, 35, 36, 36a of Article 2(1), Article 27c of MiFIR and Article 22 of MiFID.
3	Regulation 3 amends regulation 2 of the Principal Regulations setting out the applicable definitions. It substitutes the definitions of 'APAs', 'ARMs', 'CTPs' and 'data reporting service provider', and deletes certain definitions which will no longer be used throughout the Principal Regulations. It should be noted that the substantive content of these definitions has not changed, and that the only changes carried out relate to the legal basis.
4	Regulation 4 deletes the headings 'Part I', 'Part II', 'Part III', 'Part IV' and 'Part V' in the Principal Regulation since the amendments being carried out make such headings superfluous.

5	Regulation 5 introduces regulation 2A in the Principal Regulations which designates the MFSA as the competent authority in Malta responsible for the authorisation and supervision of APAs and ARMs which have a derogation in accordance with Article 2(3) of MiFIR. The new regulation also provides that the MFSA shall have the powers conferred to it in MiFID II and MiFIR as well as the Financial Markets Act and the Investment Services Act with respect to DRSPs.
6	Regulation 6 substitutes regulation 3 of the Principal Regulations and sets out the authorisation process for DRSPs. It sets out that no person in or from Malta shall provide, or hold itself as providing the service of an APA, a CTP or an ARM unless it has received prior authorisation in accordance with Article 27b of MiFIR. Furthermore, it sets out that APAs and ARMs which have a derogation in accordance with Article 2(3) of MiFIR shall need to make a request to the Authority in writing for authorisation. The amended regulation 3 also sets out formalities which must be adhered to when making such a request. Investment firms and market operators operating a trading firm will also be allowed to offer the services of an APA or an ARM with a derogation in accordance with Article 2(3) of MiFIR, subject to the prior verification of their compliance with the provisions of Title IVa of MiFIR.
7	Regulation 7 substitutes regulation 4 of the Principal Regulations. The amended regulation 4 sets out the basis on which the MFSA may withdraw the authorisation of an APA or an ARM with a derogation in accordance with Article 2(3) of MiFIR.
8	Regulation 8 substitutes regulation 5 of the Principal Regulations. The amended Regulation 5 sets out the MFSA's power to issue rules in relation DRSPs as it may deem fit in order to establish additional requirements and conditions in line with Title VI of MiFIR, provisions relating to DRSPs in MiFID II, and any other matter in connection with DRSPs.
9	Regulation 9 substitutes regulation 6 of the Principal Regulation. The amended Regulation 6 sets out the applicability of Title IVa of MiFIR to all persons acting as DRSPs in or from Malta.
10	Regulation 10 substitutes regulation 7 of the Principal Regulations. The amended Regulation 7 provides that in case of any inconsistency of the Principal Regulations with the provisions set out in Title IVa of MiFIR, the latter shall prevail.
11	Regulation 11 deletes regulations 8, 9, 10 and 11 of the Principal Regulations.

5. Concluding Section

The Regulations shall come into force upon publication.

For any queries with respect to the Regulations, kindly contact the MFSA on 21441155 or by e-mail on communications@mfsa.mt

These Explanatory Notes should be read in conjunction with and as supplementary guidance to the Regulations, and should not be deemed to substitute a thorough reading thereof. These Explanatory Notes are not intended to be an exhaustive description of the legal instrument nor a substitute thereof or a legislative supplement to it. Moreover, these Explanatory Notes do not purport to be an authoritative ruling on the interpretation of the law. For the avoidance of any doubt, these Explanatory Notes do not have the force of law and, accordingly, in the event of any conflict between these Explanatory Notes and the Regulations, the Regulations shall in all circumstances prevail.

Annex

(for the purpose of paragraph (vi) of Schedule III of Chapter 512 of the Laws of Malta)

Transposition Notes for the transposition of the following provisions of Directive (EU) 2019/2177 of the European Parliament and of the Council of 18 December 2019 amending Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), Directive 2014/65/EU on markets in financial instruments and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing

Directive (EU) 2019/2177 Article Number	MiFID II Article Number/ Provisions	Transposing Principal Regulation Number
Article 1(2)	Article 4(1) points 52, 53, 54 and 63.	Regulation 2 – the definitions of APAs, ARMs, CTPs and data reporting service providers as set out in the Principal Regulations was deleted.
Article 1(4)	Title V MiIFID II	Deletion of Title V in MiFID II led to the deletion of the corresponding provisions in the national transposing legislation, namely Parts I to V in the Principal Regulations.
Article 1(11)	Annex I, Section D	Regulation 2 – deletion of the definition 'data reporting service', following the deletion of Section D in Annex I of MiFID II.

Implementation Notes for the implementation of the following provisions in Regulation (EU) 2019/2175:

Regulation (EU) 2019/2175 Article Number	MiFIR Article Number	Implementing Regulation within Principle Regulations
Article 4 (2) (a) (iii), (iv)	Article 2	Regulation 2 – Inclusion of the Definitions APAs, ARMs, CTPs and data reporting service providers. Other definitions, namely 'home member state', 'management body' and 'systematic internaliser' were deleted since they are no longer being used in the Principal Regulations.
Article 4(2) (a) (i)	Article 2 (1) (18)	Regulation 2A - MFSA established as Competent Authority
Article 4(6)	Article 27b	Regulation 3 – Authorisation of Data Reporting Service Providers
Article 4(6)	Article 27e	Regulation 4 – power of the competent authority to withdraw authorisation.

10th May, 2022