Embracing MiFID II: Liechtenstein Bankers Association discusses preparedness and the implications of the revised legislation

By Simon Tribelhorn, CEO of the Liechtenstein Bankers Association (01/01/2018)

The updated Markets in Financial Instruments Directive (MiFID II) is poised to radically impact the regulatory space in 2018. MiFID II aims to facilitate greater market oversight, transparency, and reporting requirements and impacts all firms providing services to clients linked to 'financial instruments' (including units in collective investment schemes, bonds, shares and derivatives) and the locations where those instruments are traded. IFC spoke with Simon Tribelhorn, CEO of the Liechtenstein Bankers Association to obtain his view on the advantages and challenges of the revised legislation.

IFC: MiFid II will be rolled out on 3 January 2018. Are financial service providers in Liechtenstein versed in all the rules and poised to meet its best execution requirements?

It became apparent at a very early stage that MiFID II would fundamentally change the European securities markets and have a significant impact across the whole securities value chain. It was also clear that MiFID II could offer a variety of opportunities. Against this background, the Liechtenstein Bankers Association set about defining MiFID II as one of its key regulatory priorities three years ago. We recruited a group of specialists to jointly support all of the banks, assisting them in prioritising key work-streams and helping them to identify any business impact and strategic opportunities early on. Since we had conducted the same exercise in 2007, when implementing MiFID I, we had quite a good understanding of how the landscape looks and we were aware that our members already retain high standards. This served as a good starting point – the next logical was to conduct a gap analysis to find out what MiFID II would require from our banks in addition to MiFID I.

However, as always 'the devil is in the detail.' Although primary legislation had already been published years ago, one of the main challenges was that the whole industry had to wait for the specifics, which were laid down in quite a large number of delegated acts and technical guidelines. This greatly complicated and delayed the implementation process and, as a consequence, added a lot of complexity to it. Now that we enter the final mile and have the finish line in sight, I wouldn't claim that at this point all our members have everything completely implemented and under control. The remaining time (until the end of the year) will most certainly be utilised intensively in order to meet the MiFID II deadline and, from what I hear from other countries, I dare say that our members are making excellent progress when compared to many other European banks.

IFC: Are the MiFID II rules clear? Some commentators argue that different banks (for example) will choose to interpret the rules differently, depending on their strategy.

MiFID II is a very complex and wide-ranging regulation which comprises a large number of delegated acts and guidelines. Although MiFID II is a very detailed set of rules, some provisions are unfortunately open to interpretation. In such cases, banks or other investment firms will often seek legal advice from a law firm or a specialised consulting company. Even law firms cannot always agree on the interpretation of a particular provision which leads to less harmonisation than originally intended.

IFC: What are the main uncertainties and concerns being reported around the New Year implementation of MiFID II?

According to Article 26 of the Markets in Financial Instruments Regulation (MiFIR), investment firms which execute transactions in financial instruments must report complete and accurate details of these transactions to the competent authority as quickly as possible, and no later than the close of the following working day. From a bank's perspective, large amounts of data has to be collected from clients in order to comply with such requirements in a timely manner. But also, from a technical point of view, measures have to be taken to establish connections to all necessary interfaces of supervisory authority and trading platforms. This is quite a challenge.

Another challenge is the so-called equivalence regime. The financial services sector is very interconnected. This interconnectedness goes far beyond the European Single Market. The Commission may adopt a decision in accordance with the examination procedure referred to in Article 51(2) in relation to a third country stating that the legal and supervisory arrangements of that third country ensure that firms authorised in that third country comply with legally binding prudential and business conduct requirements which have equivalent effect to the requirements set out in MiFID. At this stage, it is not yet clear, which jurisdictions will be equivalent.

IFC: Portfolio managers and buy-side professionals are to be barred from accepting free research insights as this could be viewed as an inducement under the terms of the new regulations. How will Liechtenstein's investment and asset management industry handle the costs of research?

As a consequence, advisory services will get a price tag and cost transparency will be significantly higher. This means that the scope and the quality of services will therefore become even more important. However, we are convinced that customers are genuinely willing to pay a fair price for a professional service which will create an added value to them.

IFC: In a June statement, Thomas Piske, CEO of LGT Bank in Liechtenstein said of MiFID II that this was an opportunity to make lemonade out of a potential 'regulation lemon'. Do you share this same view?

Applying the maxim, 'When life gives you lemons, make lemonade out of it' to the regulatory burden associated with MiFID II means that complaining is useless – we have to implement it anyway. LGT goes even further in saying that this lemonade should taste good to everyone involved; the clients, the relationship managers and finally, the owners. I think this spirit is not only true for LGT, but of all the banks in Liechtenstein. We should concentrate on making the best out of MiFID II and turn the regulation into true added value for all parties, and our customers first and foremost. This can be done through using more sophisticated IT tools and by offering even more personalised services, which clients can configure in a way that best meets their needs in terms of scope, as well as cost. I'm personally convinced that the banks that implement MiFID II successfully will have the competitive advantage.

IFC: Do you believe that MiFID II will create a level playing field in the EU financial markets?

From a regulatory point of view that is certainly the main target of the European legislator. Accordingly, the Commission has adopted a rather large number of delegated acts which are directly applicable and do not have to be transposed into national law. However, more rules don't necessarily lead to more legal certainty and a level playing field. Therefore, it would be pertinent to evaluate whether a principle-based regulatory approach would be more effective than such a detailed approach. But also from a customers' perspective, a principle-based approach would help to avoid the huge amount of documents and paperwork which we are seeing at the moment as a result of MiFID II.

IFC: How is Liechtenstein's financial sector performing as a whole, and do you feel that Liechtenstein has successfully moved away from a traditional 'offshore' model to a specialist financial centre?

The Liechtenstein Financial Centre has indeed gone through a challenging but decisive transformation process. The Liechtenstein Declaration in 2009 was clearly a very important milestone in this process. As a consequence, Liechtenstein has fully implemented the internationally applicable rules of transparency and tax compliance. For some time now, Liechtenstein has been on the path towards stronger international integration and cooperation in tax matters and follows, as well as pursues, a consistent strategy in tax compliance. Liechtenstein will continue on this path not least because it is a committed early adopter of the implementation of the OECD standard on the Automatic Exchange of Information for tax purposes, with a first exchange of data in 2017.

Today, Liechtenstein provides a lean, citizen-oriented political system, efficient administrative channels and a stable social, legal and economic environment. It is one of only a few countries worldwide with no public debt and a balanced state budget. It is a small country with an open, competitive and highly diversified economy. As a result, Standard & Poor's has repeatedly awarded the top 'Triple-A with stable outlook' rating to the Principality. Liechtenstein has been turned into a safe haven for both clients and service providers. As a small and specialist financial centre, Liechtenstein combines many years of practical experience with in-depth expertise in wealth management. In addition, Liechtenstein financial services providers benefit from the advantages of membership to the Swiss economic area and the EEA and access to the European Single Market, as well as to highly trained specialists from neighbouring countries. Hence, Liechtenstein has proven itself as, not only a credible and reliable partner to the international community, but also to its financial centre clients, offering 150 years of expertise and a long-term and sustainable focus. The facts speak for themselves – in 2016, Liechtenstein banks managed an all-time high of CHF 235 billion, with high volumes of net new money inflows in particular.

IFC: Last, but not least. What does Liechtenstein offer banking clients today that other financial centres do not?

To put it in a nutshell: Liechtenstein's advantages are its political stability, legal certainty, many years of private banking experience and a high quality of services. This means that there is not one unique selling point which makes Liechtenstein stand out from other financial centres – it is the combination of these factors which makes Liechtenstein unique and a go-to financial centre and location of choice.