
Banking, Finance and Capital Markets

Legal Flash | Portugal

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I. Law no. 35/2018, of July 20 (Law no. 35/2018)

Today Law no. 35/2018 was published, amending the rules on the marketing of financial products and on the organization of financial intermediaries, and transposing Directives (EU) 2014/65/EU (MiFID II), 2016/1034 (“*Quick fix*”) and 2017/593.

Law no. 35/2018 undertakes several amendments to the Portuguese legal order, amending the following pieces of legislation:

- a) Securities Code;
- b) General Framework for Credit Institutions and Financial Companies;
- c) General Framework for Undertakings for Collective Investment;
- d) Legal Framework for the Access and Exercise of the Insurance and Reinsurance;
- e) Legal Framework for Auditing Supervision;
- f) Framework for Asset Management Companies;
- g) Framework for Broker and Broker-Dealer Companies;

Moreover, the following legal frameworks have been approved:

- a) Legal Framework for the Design, Marketing and Supply of Advice Services regarding Structured Deposits;
- b) Legal Framework for Packaged Retail Investment Products and Insurance-Based Investments;
- c) Legal Framework for Central Securities’ Depositories.

The transposition of MiFID II takes the main stage in this legislative amendment, due to its central importance in the regulation of investment services. Therefore, we mention below some of the most relevant matters covered by the transposition.

II. Transposition of Directive on Markets in Financial Instruments Directive II (MiFID II)

Differently from its predecessor – Directive 2004/39/EC – the legislative package on markets in financial instruments includes, within level 1 legislative acts, a Directive (MiFID II) and a Regulation (MiFIR).

MiFID II aims at strengthening the rules applicable to the financial markets and investment services. It intends to increase the protection of investors in financial instruments, to regulate the organization and the activities of financial intermediaries and to add improvements in matters such as derivatives markets, high frequency trading or negotiation platforms.



MiFID II transposition deadline – already extended by Directive (UE) 2016/1034 – was July 3, 2017, with entry into force in January 3, 2018, same as MiFIR.

The Portuguese Republic – who had together with other Member States already been urged by the European Commission earlier in January this year, through a reasoned opinion, to transpose MiFID II – has now concluded the transposition process of this important European legislative act.

Within the amendments to financial intermediation activities, we would highlight the change in the list of exclusions from financial intermediation activities, notably regarding dealers on own account as well as traders in commodity derivatives, excluding from the exemption in both cases those who develop an activity of high frequency trading.

Regarding financial intermediation services, a set of changes intended to strengthen investors' protection has been incorporated in the law. For example, recording of clients' orders, additional information duties on cross sales and special duties of adequacy of knowledge, skills and experience of employees who provide investment advice services or provide information to investors.

Besides this, the law now foresees reinforced duties for financial intermediaries to ensure clients' operations are commensurate to their knowledge and profile. It also establishes more restrictive regimes applicable to research activities (unbundling) and to the benefits, remuneration or commissions (inducements) received from third parties, namely under portfolio management (prohibition) or investment advice services (only available for non-independent advice).

These matters are in line with MiFID II, as the Portuguese Republic chose within the discretion afforded by the Directive not to foresee additional requirements concerning protection of investors or the safeguard of clients' funds and assets.

Regarding the internal organization of financial intermediaries, an obligation to lay down a set of relevant internal policies, such as policies on employees' and tied agents' performance evaluation and remuneration that do not conflict with clients' interests, policies on conflicts of interest or on approval and distribution of financial intermediaries.

As for trading platforms, organized trading facilities (OTF) are now added to the set of trading venues, with additional oversight powers being granted to CMVM. Also, making use of the discretion conferred upon by the Directive, the law foresees the possibility by regulated markets to impose higher commissions under certain circumstances, such as the need to address order cancellations and high frequency trading techniques.

The amendments - largely expected by financial operators - bring only minor deviations from the matters regulated under MiFID II and strengthen the Portuguese legal framework,



allowing for greater legal certainty and harmonization of rules in line with other Member States.

These are, as such, good news before summer vacations!

III. Entry into force

The amendments introduced by Law no. 35/2018 enter into force on August 1, 2018.

However, the obligation by consolidated tape provider to disclose to the public the elements set forth in Article 48-G (5) of Decree-Law no. 357-C/2007 of October 31 will only come into force on September 3, 2019.



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