

**International and European Business Law**  
by Schulze / Lehmann

# European Financial Services Law

**Article-by-Article Commentary**

**Lehmann / Kumpan**



Lehmann / Kumpan  
European Financial Services Law

International and European Business Law  
by Schulze / Lehmann

---

# European Financial Services Law

Article-by-Article Commentary

edited by

Matthias Lehmann  
Christoph Kumpan

2019



*Published by*

Nomos Verlagsgesellschaft, Waldseestraße 3-5, 76530 Baden-Baden, Germany,  
email: [vertrieb@nomos.de](mailto:vertrieb@nomos.de)

*Co-published by*

Verlag C.H.Beck oHG, Wilhelmstraße 9, 80801 München, Germany,  
email: [bestellung@beck.de](mailto:bestellung@beck.de)

and

Hart Publishing, Kemp House, Chawley Park, Cumnor Hill, Oxford, OX2 9PH, United Kingdom,  
email: [orders@isbs.com](mailto:orders@isbs.com)

Published in North America (US and Canada) by Hart Publishing,  
c/o Independent Publishers Group, 814 North Franklin Street, Chicago, IL 60610, USA

ISBN 978-3-8487-3690-4 (NOMOS Print)

ISBN 978-3-8452-7989-3 (NOMOS ePDF)

ISBN 978-3-406-70870-1 (C.H.BECK)

ISBN 978-1-5099-2388-5 (HART)

First Edition 2019

© Nomos Verlagsgesellschaft, Baden-Baden 2019. Printed in Germany.

This work is subject to copyright. All rights are reserved, whether the whole or part of the material is concerned, specifically those of translation, reprinting, re-use of illustrations, broadcasting, reproduction by photocopying machine or similar means, and storage in data banks. Under § 54 of the German Copyright Law where copies are made for other than private use a fee is payable to »Verwertungsgesellschaft Wort«, Munich, Germany.

## Foreword

European regulation in the area of financial services has become increasingly voluminous and complex. Finding its way through the jungle of directives and regulations, regulatory and implementing technical standards and guidelines presents formidable challenges for the legal practitioner. Yet locating the relevant provision is insufficient; it is also necessary to be familiar with its background, interpretation and role in the broader context of EU law.

Therefore, we have decided to provide the reader with a tool to master European financial services law. This volume assembles the most important acts of the EU in this area. It contains such pivotal texts as MiFID II and MiFIR, MAR and MAD, EMIR, the UCITS-Directive and the AIFMD, to name a few. The acts have been divided into six distinct areas: (1) securities markets and services, (2) market behaviour, (3) market transparency, (4) funds, (5) securities clearing and settlement, and (6) payments. Each act is commented on article by article, explaining the provision's function, history, context and interpretation. Level 2 and Level 3 acts are listed at the beginning of each article and discussed in the context in which they are relevant. The pertinent recitals are reflected in the comments. Examples and existing case law are provided, and bibliographies invite further reading.

The method of explaining a legal act article by article may be unfamiliar to some readers, yet it has already proven its virtues in many areas. There are major advantages in explaining the law through its black letters. Understanding the relevant provision, its background, interpretation and the surrounding debate is indispensable for lawyers, who must be able to comprehend the rule's implications for concrete and often unknown problems in order to evaluate and state their case. The high level of technicality and the abundance of details in European financial services regulation makes this task particularly difficult. By making pinpointed comments for each article, we hope to provide essential assistance to regulators, counsels, judges and academics. We would like to contribute to a well-informed debate on EU regulation, which matches the sophistication of the existing texts.

Of paramount importance for our commentary has been the principle of autonomous interpretation, which is firmly established in the case law of the CJEU and requires EU law to be constructed in a uniform way, independent from the legal systems of the Member States. Bearing this principle in mind, the authors have been asked to provide a truly European view of the articles on which they comment. They had to abstain from opinions tainted by the doctrine of a particular Member State. References to national legislation or case law are made only where it is necessary and helpful to elucidate the problems and issues raised by the EU provision that is the subject of the comment.

The breadth of EU regulation in the area of financial services prevented us from including each and every act of the Union. Therefore, we have decided to omit all matters that are specific to credit institutions (banks), e.g. the Capital Requirements Directive (CRD) IV and the Capital Requirements Regulation (CRR). Furthermore, we have not commented on directives and regulations that are specific to certain actors and not of general importance, e.g. the Central Securities Depositories Regulation (CSDR). Finally, some provisions within the selected acts that are merely of a technical nature and unlikely to create issues in private litigation have been left aside, e.g. the provisions on the co-operation of Member State authorities among themselves and with ESMA.

The writing of this commentary has been a daunting task. Accomplishing such a monumental work would not have been possible without the help of others. Our first thanks go to the authors, who have worked incessantly and made great strides under

## Foreword

considerable time pressure. Furthermore, we are indebted to our assistants, in particular Eric Arbizo and Brian Thompson for reviewing the language, as well as Jannik Becker, Lena Daams, Nicolas Deising, Ronny Grütze, Karl Kulike and Finn Schmidt for their assistance in finalising the manuscripts. We would also like to thank Stefan Simonis and Matthias Knopik from Nomos for their tireless efforts in completing this book.

Bonn/London/Halle, January 2019

The editors

# Summary of contents

Foreword .....	V
List of authors .....	XXXV
Abbreviations .....	XXXIX

## 1. Security Markets and Services

Introduction to MiFID II and MiFIR .....	1
<b>Markets in Financial Instruments Directive (MiFID II)</b>	
Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (OJ L 173, 12.6.2014, p. 349-496) .....	6
<b>Markets in Financial Instruments Regulation (MiFIR)</b>	
Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (OJ L 173, 12.6.2014, p. 84-148) .....	389
<b>Consolidated Admissions and Reporting Directive (CARD)</b>	
Directive 2001/34/EC of the European Parliament and the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJ L 184, 6.7.2001, p. 1-66) .....	574

## 2. Market Behaviour

<b>Market Abuse Directive (MAD)</b>	
Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (OJ L 173, 12.6.2014, p. 179-189) .....	623
<b>Market Abuse Regulation (MAR)</b>	
Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (OJ L 173, 12.6.2014, p. 1-61) .....	644
<b>Short Selling Regulation (SSR)</b>	
Regulation (EU) No 236/2012 of the European Parliament and the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (OJ L 86, 24.3.2012, p. 1-24) .....	874

## 3. Market Transparency

<b>Prospectus Directive (PD)</b>	
Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading .....	941
<b>Packaged Retail and Insurance-based Investment Products Regulation (PRIIPR)</b>	
Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) .....	1033
<b>Transparency Directive (TD)</b>	
Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (OJ L 390, 31.12.2004, p. 38-57) .....	1099
<b>Credit Rating Agency Regulation (CRAR)</b>	
Regulation (EC) No 1060/2009 of the European Parliament and the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1-31) .....	1231

# Summary of contents

## 4. Funds

<b>Undertakings for Collective Investments in Transferable Securities Directive (UCITSD)</b> Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32-96) .....	1304
<b>Alternative Investment Fund Managers Directive (AIFMD)</b> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on alternative investment fund managers (OJ L 174, 1.7.2011, p. 1-73) .....	1466

## 5. Securities Clearing and Settlement

<b>European Markets Infrastructure Regulation (EMIR)</b> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1-59) .....	1563
<b>Settlement Finality Directive (SFD)</b> Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45-50) .....	1680
<b>Financial Collateral Directive (FCD)</b> Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ L 168, 27.6.2002, p. 43-50) .....	1710

## 6. Payments

<b>Single European Payment Area Regulation (SEPAR)</b> Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in Euro (OJ L 94, 30.3.2012, p. 22-37) .....	1745
Index .....	1785

# Contents

Foreword .....	V
List of authors .....	XXXV
Abbreviations .....	XXXIX

## 1. Security Markets and Services

Introduction to MiFID II and MiFIR .....	1
--	---

### Markets in Financial Instruments Directive (MiFID II)

#### TITLE I SCOPE AND DEFINITIONS

Article 1	Scope .....	6
Article 2	Exemptions .....	10
Article 3	Optional exemptions .....	18
Article 4	Definitions .....	22

#### TITLE II AUTHORISATION AND OPERATING CONDITIONS FOR INVESTMENT FIRMS

##### Chapter I Conditions and procedures for authorisation

Introduction to Chapter I .....	35	
Article 5	Requirement for authorisation .....	35
Article 6	Scope of authorisation .....	37
Article 7	Procedures for granting and refusing requests for authorisation .....	38
Article 8	Withdrawal of authorisations .....	41
Article 9	Management body .....	43
Article 10	Shareholders and members with qualifying holdings .....	50
Article 11	Notification of acquisitions and disposals of qualifying holdings .....	53
Article 12	Assessment procedures .....	58
Article 13	Assessment .....	61
Article 14	Membership of an authorised investor compensation scheme .....	63
Article 15	Initial capital endowment .....	64
Article 16	Organisational requirements .....	65
Article 17	Algorithmic trading .....	120
Article 18	Trading process and finalisation of transactions in an MTF and an OTF .....	134
Article 19	Specific requirements for MTFs .....	142
Article 20	Specific requirements for OTFs .....	145

##### Chapter II Operating conditions for investment firms

###### Section 1 General provisions

Article 21	Regular review of conditions for initial authorisation .....	149
Article 22	General obligation in respect of on-going supervision .....	151
Article 23	Conflicts of interest .....	151
Foreword to Articles 24 to 30 .....	155	
Article 24	General principles and information to clients .....	157
Article 25	Assessment of suitability and appropriateness and reporting to clients .....	180
Article 26	Provision of services through the medium of another investment firm .....	193

# Contents

Article 27	Obligation to execute orders on terms most favourable to the client .....	195
Article 28	Client order handling rules .....	202
Article 29	Obligations of investment firms when appointing tied agents .....	205
Article 30	Transactions executed with eligible counterparties .....	207
Section 2 Market transparency and integrity		
Article 31	Monitoring of compliance with the rules of the MTF or the OTF and with other legal obligations .....	210
Article 32	Suspension and removal of financial instruments from trading on an MTF or an OTF .....	212
Section 3 SME growth markets		
Article 33	SME growth markets .....	217
Chapter III Rights of investment firms		
Introduction to Chapter III .....		221
Article 34	Freedom to provide investment services and activities .....	222
Article 35	Establishment of a branch .....	227
Article 36	Access to regulated markets .....	233
Article 37	Access to CCP, clearing and settlement facilities and right to designate settlement system .....	234
Article 38	Provisions regarding CCPs, clearing and settlement arrangements in respect of MTFs .....	235
Chapter IV Provision of investment services and activities by third country firms		
Section 1 Provision of services or performance of activities through the establishment of a branch		
Introduction to Chapter IV .....		237
Article 39	Establishment of a branch .....	237
Article 40	Obligation to provide information .....	239
Article 41	Granting of the authorisation .....	240
Article 42	Provision of services at the exclusive initiative of the client .....	242
Section 2 Withdrawal of authorisations		
Article 43	Withdrawal of authorisations .....	246
TITLE III REGULATED MARKETS		
Article 44	Authorisation and applicable law .....	247
Article 45	Requirements for the management body of a market operator .....	252
Article 46	Requirements relating to persons exercising significant influence over the management of the regulated market .....	262
Article 47	Organisational requirements .....	264
Article 48	Systems resilience, circuit breakers and electronic trading .....	268
Article 49	Tick sizes .....	292
Article 50	Synchronisation of business clocks .....	296
Article 51	Admission of financial instruments to trading .....	299
Article 52	Suspension and removal of financial instruments from trading on a regulated market .....	303
Article 53	Access to a regulated market .....	308

Article 54	Monitoring of compliance with the rules of the regulated market and with other legal obligations .....	312
Article 55	Provisions regarding CCP and clearing and settlement arrangements .....	315
Article 56	List of regulated markets .....	316

TITLE IV  
POSITION LIMITS AND POSITION MANAGEMENT CONTROLS IN  
COMMODITY DERIVATIVES AND REPORTING

Article 57	Position limits and position management controls in commodity derivatives ....	317
Article 58	Position reporting by categories of position holders .....	334

TITLE V  
DATA REPORTING SERVICES

Section 1

Authorisation procedures for data reporting services providers

Article 59	Requirement for authorisation .....	339
Article 60	Scope of authorisation .....	340
Article 61	Procedures for granting and refusing requests for authorisation .....	340
Article 62	Withdrawal of authorisations .....	341
Article 63	Requirements for the management body of a data reporting services provider ...	341

Section 2  
Conditions for APAs

Article 64	Organisational requirements .....	347
------------	-----------------------------------	-----

Section 3  
Conditions for CTPs

Article 65	Organisational requirements .....	349
------------	-----------------------------------	-----

Section 4  
Conditions for ARMs

Article 66	Organisational requirements .....	351
------------	-----------------------------------	-----

TITLE VI  
COMPETENT AUTHORITIES

Chapter I

Designation, powers and redress procedures

Article 67	Designation of competent authorities .....	357
Article 68	Cooperation between authorities in the same Member State .....	358
Article 69	Supervisory powers .....	358
Article 70	Sanctions for infringements .....	362
Article 71	Publication of decisions .....	368
Article 72	Exercise of supervisory powers and powers to impose sanctions .....	371
Article 73	Reporting of infringements .....	373
Article 74	Right of appeal .....	375
Article 75	Extra-judicial mechanism for consumers complaints .....	376
Article 76	Professional secrecy .....	377
Article 77	Relations with auditors .....	378
Article 78	Data protection .....	378

# Contents

Chapter II		
Cooperation between the competent authorities of the Member States and with ESMA		
Article 79	Obligation to cooperate .....	379
Article 80	Cooperation between competent authorities in supervisory activities, for on-site verifications or investigations .....	381
Article 81	Exchange of information .....	381
Article 82	Binding mediation .....	383
Article 83	Refusal to cooperate .....	383
Article 84	Consultation prior to authorisation .....	383
Article 85	Powers for host Member States .....	384
Article 86	Precautionary measures to be taken by host Member States .....	384
Article 87	Cooperation and exchange of information with ESMA .....	386

Chapter III		
Cooperation with third countries		
Article 88	Exchange of information with third countries .....	387

## Markets in Financial Instruments Regulation (MiFIR)

Foreword: The new transparency regime under MiFIR .....	389
---	-----

TITLE I		
SUBJECT MATTER, SCOPE AND DEFINITIONS		
Article 1	Subject matter and scope .....	392
Article 2	Definitions .....	396

TITLE II		
TRANSPARENCY FOR TRADING VENUES		
Chapter I		
Transparency for equity instruments		
Article 3	Pre-trade transparency requirements for trading venues in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments ...	403
Article 4	Waivers for equity instruments .....	408
Article 5	Volume Cap Mechanism .....	417
Article 6	Post-trade transparency requirements for trading venues in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments ...	423
Article 7	Authorisation of deferred publication .....	425

Chapter II		
Transparency for non-equity instruments		
Article 8	Pre-trade transparency requirements for trading venues in respect of bonds, structured finance products, emission allowances and derivatives .....	428
Article 9	Waivers for non-equity instruments .....	432
Article 10	Post-trade transparency requirements for trading venues in respect of bonds, structured finance products, emission allowances and derivatives .....	441
Article 11	Authorisation of deferred publication .....	442

Chapter III		
Obligation to offer trade data on a separate and reasonable commercial basis		
Article 12	Obligation to make pre-trade and post-trade data available separately .....	450
Article 13	Obligation to make pre-trade and post-trade data available on a reasonable commercial basis .....	451

TITLE III  
TRANSPARENCY FOR SYSTEMATIC INTERNALISERS AND  
INVESTMENT FIRMS TRADING OTC

Article 14	Obligation for systematic internalisers to make public firm quotes in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments .....	454
Article 15	Execution of client orders .....	458
Article 16	Obligations of competent authorities .....	463
Article 17	Access to quotes .....	463
Article 18	Obligation for systematic internalisers to make public firm quotes in respect of bonds, structured finance products, emission allowances and derivatives .....	465
Article 19	Monitoring by ESMA .....	471
Article 20	Post-trade disclosure by investment firms, including systematic internalisers, in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments .....	472
Article 21	Post-trade disclosure by investment firms, including systematic internalisers, in respect of bonds, structured finance products, emission allowances and derivatives .....	478
Article 22	Providing information for the purposes of transparency and other calculations ..	482
Article 23	Trading obligation for investment firms .....	487

TITLE IV  
TRANSACTION REPORTING

Article 24	Obligation to uphold integrity of markets .....	493
Article 25	Obligation to maintain records .....	494
Article 26	Obligation to report transactions .....	495
Article 27	Obligation to supply financial instrument reference data .....	498

TITLE V  
DERIVATIVES

Article 28	Obligation to trade on regulated markets, MTFs or OTFs .....	504
Article 29	Clearing obligation for derivatives traded on regulated markets and timing of acceptance for clearing .....	511
Article 30	Indirect clearing arrangements .....	513
Article 31	Portfolio compression .....	517
Article 32	Trading obligation procedure .....	519
Article 33	Mechanism to avoid duplicative or conflicting rules .....	524
Article 34	Register of derivatives subject to the trading obligation .....	526

TITLE VI  
NON-DISCRIMINATORY CLEARING ACCESS FOR FINANCIAL INSTRUMENTS

Article 35	Non-discriminatory access to a CCP .....	527
Article 36	Non-discriminatory access to a trading venue .....	529
Article 37	Non-discriminatory access to and obligation to licence benchmarks .....	531
Article 38	Access for third-country CCPs and trading venues .....	537

TITLE VII  
SUPERVISORY MEASURES ON PRODUCT INTERVENTION AND POSITIONS

Chapter 1  
Product monitoring and intervention

Introduction to Articles 39-43 .....	539	
Article 39	Market monitoring .....	541
Article 40	ESMA temporary intervention powers .....	542
Article 41	EBA temporary intervention powers .....	544
Article 42	Product intervention by competent authorities .....	549
Article 43	Coordination by ESMA and EBA .....	554

# Contents

	Chapter 2	
	Positions	
Article 44	Coordination of national position management measures and position limits by ESMA .....	555
Article 45	Position management powers of ESMA .....	555
	TITLE VIII	
	PROVISION OF SERVICES AND PERFORMANCE OF ACTIVITIES BY THIRD-COUNTRY FIRMS FOLLOWING AN EQUIVALENCE DECISION WITH OR WITHOUT A BRANCH	
Introduction to Title VIII .....		559
Article 46	General provisions .....	560
Article 47	Equivalence decision .....	566
Article 48	Register .....	571
Article 49	Withdrawal of registration .....	572
	<b>Consolidated Admissions and Reporting Directive (CARD)</b>	
Introduction .....		574
	TITLE I	
	DEFINITIONS AND SCOPE OF APPLICATION	
	Chapter I	
	Definitions	
Article 1 .....		576
	Chapter II	
	Scope of application	
Article 2 .....		577
	TITLE II	
	GENERAL PROVISIONS CONCERNING THE OFFICIAL LISTING OF SECURITIES	
	Chapter I	
	General conditions for admission	
Article 5 .....		580
Article 6 .....		580
Article 7 .....		581
	Chapter II	
	More stringent or additional conditions and obligations	
Article 8 .....		581
	Chapter III	
	Derogations	
Article 9 .....		583
Article 10 .....		583

Chapter IV  
Powers of the national competent authorities

Section 1  
Decision of admission

Article 11 .....	584
Article 12 .....	585
Article 13 .....	585
Article 14 .....	586
Article 15 .....	587

Section 2  
Information requested by the competent authorities

Article 16 .....	587
------------------	-----

Section 3  
Action against an issuer failing to comply with the obligations resulting from admission

Article 17 .....	588
------------------	-----

Section 4  
Suspension and discontinuance

Article 18 .....	590
------------------	-----

Section 5  
Right to apply to the courts in case of refusal of admission or discontinuance

Article 19 .....	591
Articles 20-41 were transferred into the Prospectus Directive .....	592

TITLE III  
PARTICULAR CONDITIONS RELATING TO OFFICIAL LISTINGS OF SECURITIES

Introduction to Title III .....	593
---------------------------------	-----

Chapter II  
Specific conditions for the admission of shares

Section 1  
Conditions relating to companies for the shares of which admission to  
official listing is sought

Article 42 .....	593
Article 43 .....	594
Article 44 .....	597

Section 2  
Conditions relating to the shares for which admission is sought

Article 45 .....	598
Article 46 .....	598
Article 47 .....	599
Article 48 .....	600
Article 49 .....	601
Article 50 .....	602
Article 51 .....	604

# Contents

Chapter III	
Particular conditions relating to the admission to official listing of debt securities issued by an undertaking	
Section 1	
Conditions relating to undertakings for the debt securities of which admission to official listing is sought	
Article 52 .....	604
Section 2	
Conditions relating to the debt securities for which admission to official listing is sought	
Article 53 .....	605
Article 54 .....	605
Article 55 .....	606
Article 56 .....	607
Article 57 .....	608
Section 3	
Other conditions	
Article 58 .....	609
Article 59 .....	610
Chapter IV	
Particular conditions relating to the admission to official listing of debt securities issued by a State, its regional or local authorities or a public international body	
Article 60 .....	612
Article 61 .....	612
Article 62 .....	613
Article 63 .....	613
TITLE IV	
OBLIGATIONS RELATING TO SECURITIES ADMITTED TO OFFICIAL LISTING	
Chapter I	
Obligations of companies whose shares are admitted to official listing	
Section 1	
Listing of newly issued shares of the same class	
Article 64 .....	614
Articles 65-104 were transferred into the Transparency Directive .....	615
TITLE VI	
COMPETENT AUTHORITIES AND COOPERATION BETWEEN MEMBER STATES	
Article 105 .....	616
Article 106 .....	617
Article 107 .....	618
TITLE VII	
CONTACT COMMITTEE	
Chapter I	
Composition, working and tasks of the Committee	
Article 108 .....	620

Chapter II  
Adaptation of the amount of equity market capitalisation

Article 109 .....	620
-------------------	-----

TITLE VIII  
FINAL PROVISIONS

Article 110 .....	621
Article 111 .....	621
Article 112 .....	622
Article 113 .....	622

**2. Market Behaviour**

**Market Abuse Directive (MAD)**

Article 1	Subject matter and scope .....	623
Article 2	Definitions .....	624
Article 3	Insider dealing, recommending or inducing another person to engage in insider dealing .....	627
Article 4	Unlawful disclosure of inside information .....	628
Article 5	Market manipulation .....	628
Article 6	Inciting, aiding and abetting, and attempt .....	629
Article 7	Criminal penalties for natural persons .....	637
Article 8	Liability of legal persons .....	637
Article 9	Sanctions for legal persons .....	637
Article 10	Jurisdiction .....	640

**Market Abuse Regulation (MAR)**

Introduction .....	644
--------------------	-----

Chapter 1  
General provisions

Article 1	Subject matter .....	650
Article 2	Scope .....	650
Article 3	Definitions .....	654
Article 4	Notifications and list of financial instruments .....	657
Article 5	Exemption for buy-back programmes and stabilisation .....	661
Article 6	Exemption for monetary and public debt management activities and climate policy activities .....	670

Chapter 2  
Inside information, insider dealing, unlawful disclosure of inside information and market manipulation

Article 7	Inside information .....	673
Article 8	Insider dealing .....	692
Article 9	Legitimate behaviour .....	705
Article 10	Unlawful disclosure of inside information .....	711
Article 11	Market soundings .....	718
Article 12	Market manipulation .....	730
Article 13	Accepted market practices .....	756
Article 14	Prohibition of insider dealing and of unlawful disclosure of inside information ..	767
Article 15	Prohibition of market manipulation .....	770
Article 16	Prevention and detection of market abuse .....	772

# Contents

## Chapter 3 Disclosure requirements

Article 17	Public disclosure of inside information .....	778
Article 18	Insider lists .....	799
Article 19	Managers' transactions .....	808
Article 20	Investment recommendations and statistics .....	824
Article 21	Disclosure or dissemination of information in the media .....	833

## Chapter 4 ESMA and competent authorities

Article 22	Competent authorities .....	836
Article 23	Powers of competent authorities .....	838
Article 24	Cooperation with ESMA .....	843
Article 25	Obligation to cooperate .....	844
Article 26	Cooperation with third countries .....	846
Article 27	Professional secrecy .....	849
Article 28	Data protection .....	850
Article 29	Disclosure of personal data to third countries .....	851

## Chapter 5 Administrative measures and sanctions

Article 30	Administrative sanctions and other administrative measures .....	852
Article 31	Exercise of supervisory powers and imposition of sanctions .....	863
Article 32	Reporting of infringements .....	865
Article 33	Exchange of information with ESMA .....	868
Article 34	Publication of decisions .....	869

## Short Selling Regulation (SSR)

Introduction and overview .....	875
---------------------------------	-----

### Chapter I General provisions

Overview of Articles 1-4 .....	881	
Article 1	Scope .....	881
Article 2	Definitions .....	883
Article 3	Short and long positions .....	888
Article 4	Uncovered position in a sovereign credit default swap .....	892

### Chapter II Transparency of net short positions

Overview of Articles 5-11 .....	894	
Article 5	Notification to competent authorities of significant net short positions in shares .....	895
Article 6	Public disclosure of significant net short positions in shares .....	897
Article 7	Notification to competent authorities of significant net short positions in sovereign debt .....	899
Article 8	Notification to competent authorities of uncovered positions in sovereign credit default swaps .....	902
Article 9	Method of notification and disclosure .....	903
Article 10	Application of notification and disclosure requirements .....	906
Article 11	Information to be provided to ESMA .....	906

### Chapter III Uncovered short sales

Overview of Articles 12-15 .....	908
----------------------------------	-----

Article 12	Restrictions on uncovered short sales in shares .....	910
Article 13	Restrictions on uncovered short sales in sovereign debt .....	914
Article 14	Restrictions on uncovered sovereign credit default swaps .....	918
Article 15	Buy-in procedures (deleted) .....	920

Chapter IV  
Exemptions

Article 16	Exemption where the principal trading venue is in a third country .....	921
Article 17	Exemption for market making activities and primary market operations .....	924

Chapter V  
Powers of intervention of competent authorities and of ESMA

Overview of Articles 18-31 .....	929
----------------------------------	-----

Section 1  
Powers of competent authorities

Articles 18 to 26 .....	930
-------------------------	-----

Section 2  
Powers of ESMA

Articles 27 to 31 .....	934
-------------------------	-----

Chapter VI  
Role of competent authorities

Articles 32 to 41 .....	937
-------------------------	-----

Chapter VII-IX  
Delegated acts, implementing acts, and transitional and final provisions

Articles 42 to 48 .....	939
-------------------------	-----

**3. Market Transparency**

**Prospectus Directive (PD)**

Introduction .....	944
--------------------	-----

Chapter I  
General provisions

Article 1	Purpose and scope .....	951
Article 2	Definitions .....	958
Article 3	Obligation to publish a prospectus .....	965
Article 4	Exemptions from the obligation to publish a prospectus .....	969

Chapter II  
Drawing up of the prospectus

Article 5	The prospectus .....	974
Article 6	Responsibility attaching to the prospectus .....	984
Article 7	Minimum information .....	987
Article 8	Omission of information .....	990
Article 9	Validity of a prospectus, base prospectus and registration document .....	994
Article 10	Information .....	995

# Contents

Article 11	Incorporation by reference .....	995
Article 12	Prospectuses consisting of separate documents .....	997

## Chapter III Arrangements for approval and publication of the prospectus

Article 13	Approval of the prospectus .....	999
Article 14	Publication of the prospectus .....	1004
Article 15	Advertisements .....	1007
Article 16	Supplements to the prospectus .....	1009

## Chapter IV Cross-border offers and admission to trading

Article 17	Community scope of approvals of prospectuses .....	1013
Article 18	Notification .....	1014

## Chapter V Use of languages and issuers incorporated in third countries

Article 19	Uses of languages .....	1016
Article 20	Issuers incorporated in third countries .....	1018

## Chapter VI Competent authorities

Article 21	Powers .....	1020
Article 22	Professional secrecy and cooperation between authorities .....	1023
Article 23	Precautionary measures .....	1025

## Chapter VII Implementing measures

Article 24	Committee procedure .....	1027
Article 24 a	Exercise of the delegation .....	1027
Article 24 b	Revocation of the delegation .....	1028
Article 24 c	Objections to delegated acts .....	1028
Article 25	Sanctions .....	1029
Article 26	Right of appeal .....	1030

## Chapter VIII Transitional and final provisions

Article 27	Amendments .....	1031
Article 28	Repeal .....	1031
Article 29	Transposition .....	1031
Article 30	Transitional provision .....	1031
Article 31	Review .....	1032
Article 31 a	Staff and resources of ESMA .....	1032
Article 32	Entry into force .....	1032
Article 33	Addressees .....	1032

# Packaged Retail and Insurance-based Investment Products Regulation (PRIIPR)

## Chapter I Subject matter, scope and definitions

Article 1	.....	1033
Article 2	.....	1036
Article 3	.....	1038

Article 4 .....	1039
<p>Chapter II Key information document</p> <p>Section I Drawing up the key information document</p>	
Article 5 .....	1046
<p>Section II Form and content of the key information document</p>	
Article 6 .....	1048
Article 7 .....	1051
Article 8 .....	1054
Article 9 .....	1063
Article 10 .....	1065
Article 11 .....	1067
Article 12 .....	1072
<p>Section III Provision of the key information document</p>	
Article 13 .....	1073
Article 14 .....	1081
<p>Chapter III Market monitoring and product intervention powers</p>	
Article 15 .....	1086
Article 16 .....	1086
Article 17 .....	1087
Article 18 .....	1089
<p>Chapter IV Complaints, redress; cooperation and supervision</p>	
Article 19 .....	1089
Article 20 .....	1089
Article 21 .....	1090
<p>Chapter V Administrative penalties and other measures</p>	
Article 22 .....	1090
Article 23 .....	1091
Article 24 .....	1091
Article 25 .....	1092
Article 26 .....	1092
Article 27 .....	1092
Article 28 .....	1093
Article 29 .....	1093
<p>Chapter VI Final provisions</p>	
Article 30 .....	1095
Article 31 .....	1096
Article 32 .....	1096
Article 33 .....	1096
Article 34 .....	1097

# Contents

## Transparency Directive (TD)

Chapter I		
General provisions		
Article 1	Subject matter and scope .....	1100
Article 2	Definitions .....	1104
Article 3	Integration of securities markets .....	1114
Chapter II		
Periodic information		
Article 4	Annual financial reports .....	1118
Article 5	Half-yearly financial reports .....	1124
Article 6	Report on payments to governments .....	1131
Article 7	Responsibility and liability .....	1135
Article 8	Exemptions .....	1137
Chapter III		
Ongoing information		
Section I		
Information about major holdings		
Article 9	Notification of the acquisition or disposal of major holdings .....	1140
Article 10	Acquisition or disposal of major proportions of voting rights .....	1148
Article 11	Annual financial reports .....	1155
Article 12	Procedures on the notification and disclosure of major holdings .....	1156
Article 13	.....	1163
Article 13 a	Aggregation .....	1172
Article 14	.....	1174
Article 15	.....	1176
Article 16	Additional information .....	1177
Section II		
Information for holders of securities admitted to trading on a regulated market		
Article 17	Information requirements for issuers whose shares are admitted to trading on a regulated market .....	1179
Article 18	Information requirements for issuers whose debt securities are admitted to trading on a regulated market .....	1183
Chapter IV		
General obligations		
Article 19	Home Member State control .....	1187
Article 20	Languages .....	1189
Article 21	Access to regulated information .....	1193
Article 21 a	European electronic access point .....	1197
Article 22	Access to regulated information at Union level .....	1199
Article 23	Third countries .....	1200
Chapter V		
Competent authorities		
Article 24	Competent authorities and their powers .....	1204
Article 25	Professional secrecy and cooperation between Member States .....	1208
Article 26	Precautionary measures .....	1210

Chapter VI

Delegated acts and implementing measures

Article 27	Committee procedure .....	1211
Article 27 a	Revocation of the delegation .....	1214
Article 27 b	Objections to delegated acts .....	1215

Chapter VIA

Sanctions and measures

Article 28	Administrative measures and sanctions .....	1216
Article 28 a	Breaches .....	1219
Article 28 b	Sanctioning powers .....	1219
Article 28 c	Exercise of sanctioning powers .....	1222

Chapter VIB

Publication of decisions

Article 29	Publication of decisions .....	1223
------------	--------------------------------	------

Chapter VII

Transitional and final provisions

Article 30	Transitional provisions .....	1226
Article 31	Transposition .....	1227
Article 32	Amendments .....	1228
Article 33	Review .....	1228
Article 34	Entry into force .....	1229
Article 35	Addressees .....	1230

**Credit Rating Agency Regulation (CRAR)**

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1	Subject matter .....	1232
Article 2	Scope .....	1234
Article 3	Definitions .....	1236
Article 4	Use of credit ratings .....	1242
Article 5	Equivalence and certification based on equivalence .....	1246
Article 5 a	Over-reliance on credit ratings by financial institutions .....	1248
Article 5 b	Reliance on credit ratings by the European Supervisory Authorities and the European Systemic Risk Board .....	1249
Article 5 c	Over-reliance on credit ratings in Union law .....	1249

TITLE II

ISSUING OF CREDIT RATINGS

Article 6	Independence and avoidance of conflicts of interest .....	1252
Article 6 a	Conflicts of interest concerning investments in credit rating agencies .....	1257
Article 6 b	Maximum duration of the contractual relationship with a credit rating agency ...	1258
Article 7	Rating analysts, employees and other persons involved in the issuing of credit ratings .....	1261
Article 8	Methodologies, models and key rating assumptions .....	1263
Article 8 a	Sovereign ratings .....	1269
Article 8 b	Information on structured finance instruments .....	1271
Article 8 c	Double credit rating of structured finance instruments .....	1273
Article 8 d	Use of multiple credit rating agencies .....	1274
Article 9	Outsourcing .....	1276
Article 10	Disclosure and presentation of credit ratings .....	1277
Article 11	General and periodic disclosures .....	1280

# Contents

Article 11 a	European rating platform .....	1281
Article 12	Transparency report .....	1283
Article 13	Public disclosure fees .....	1283

## TITLE III SURVEILLANCE OF CREDIT RATING ACTIVITIES

### Chapter I Registration procedure

Articles 14 to 20 .....	1284
-------------------------	------

### Chapter II Supervision by ESMA

Articles 21 to 25 a .....	1288
---------------------------	------

### Chapter III Cooperation between ESMA, competent authorities and sectoral competent authorities

Articles 26 to 32 .....	1291
-------------------------	------

### Chapter IV Cooperation with third countries

Articles 34 to 35 .....	1293
-------------------------	------

## TITLE IIIA CIVIL LIABILITY OF CREDIT RATING AGENCIES

Article 35 a	Civil Liability .....	1294
--------------	-----------------------	------

## TITLE IV PENALTIES, COMMITTEE PROCEDURE, REPORTING AND TRANSITIONAL AND FINAL PROVISIONS

### Chapter I Penalties, committee procedure and reporting

Articles 36 to 39 .....	1301
-------------------------	------

### Chapter II Transnational and final provisions

Articles 40 to 41 .....	1303
-------------------------	------

## 4. Funds

### Undertakings for Collective Investments in Transferable Securities Directive (UCITS)

#### Chapter I Subject matter, scope and definitions

Article 1	Scope and UCITS definition .....	1305
Article 2	Definitions .....	1317
Article 3	Exclusions from the scope .....	1323
Article 4	Home member state assumption .....	1324

Chapter II		
Authorisation of UCITS		
Article 5	Authorisation requirement for the fund .....	1325
Chapter III		
Obligations regarding management companies		
Section 1		
Conditions for taking up business		
Article 6	Authorisation requirement for management company .....	1327
Article 7	Conditions for authorisation .....	1328
Article 8	Related parties .....	1331
Section 2		
Relations with third countries		
Article 9	Third country relations .....	1332
Section 3		
Operating conditions		
Article 10	Conditions for taking up business .....	1333
Article 11	Qualifying holdings .....	1333
Article 12	Prudential regulation .....	1334
Article 13	Delegation .....	1336
Article 14	Conduct of business rules .....	1337
Article 14 a	Remuneration policy .....	1338
Article 14 b	Details and proportionality of remuneration policy .....	1339
Article 15	Cross-border set up, investor complaints mechanism .....	1343
Section 4		
Freedom of establishment and freedom to provide services		
Article 16	Freedom to provide services on a cross-border basis .....	1343
Article 17	Cross-border services by virtue of a branch .....	1344
Article 18	Notification for cross-border services .....	1346
Article 19	Notification for cross-border services by virtue of a branch .....	1347
Article 20	Home member state supervision .....	1348
Article 21	Host member state supervision in case of a branch .....	1350
Chapter IV		
Obligations regarding the depositary		
Article 22	Mandatory depositary; appointment and duties of depositary .....	1353
Article 22 a	Delegation by depositary .....	1357
Article 23	Registered office, qualification and organisation of depositary .....	1359
Article 24	Liability of depositary towards UCITS and unit-holders .....	1360
Article 25	Inability to function as management company and depositary; conflicts of interests .....	1362
Article 26	Replacement of depositary .....	1363
Article 26 a	Information exchange with and among national competent authorities of depositary, UCITS and management company .....	1364
Article 26 b	Implementing acts .....	1364
Chapter V		
Obligations regarding investment companies		
Section 1		
Conditions for taking up business		
Article 27	Authorisation, legal form, registered office .....	1365

# Contents

Article 28	Limited scope of activities .....	1366
Article 29	Minimum capital, organisation, key people, authorisation and withdrawal of authorisation .....	1366
Section 2 Operating conditions		
Article 30	Internally managed investment companies, restrictions on third-party portfolio management .....	1369
Article 31	Prudential and conduct of business rules, organisational requirements for internally managed investment companies .....	1370
Section 3 Obligations regarding the depository		
Articles 32-36 removed by UCITS V		
Chapter VI Mergers of UCITS		
Section 1 Principle, authorisation and approval		
Article 37	Extension to investment compartments/sub funds .....	1371
Article 38	Enabling of cross-border mergers .....	1371
Article 39	Authorisation by merging UCITS' national competent authority; information exchange with receiving UCITS' national competent authority .....	1372
Article 40	Common draft terms of merger .....	1373
Section 2 Third-party control, information of unit-holders and other rights of unit-holders		
Article 41	Verification by depository of merging and receiving UCITS .....	1374
Article 42	Validation of valuation, merger-related payments, exchange ratio .....	1374
Article 43	Disclosures to unit-holders after merger authorisation .....	1375
Article 44	Consent by unit-holder voting .....	1376
Article 45	Extraordinary redemption right .....	1376
Section 3 Costs and entry into effect		
Article 46	Ban to impose merger costs on UCITS .....	1377
Article 47	Date of merger effect .....	1377
Article 48	Consequences of merger .....	1377
Chapter VII Obligations concerning the investment policies of UCITS		
Article 49	Compartments deemed UCITS .....	1380
Article 50	Eligible assets .....	1381
Article 50 a	Investment in securitisation positions .....	1385
Article 51	Risk management, exposure limits, reliance on credit rating agencies .....	1386
Article 52	Diversification .....	1389
Article 53	Investment limits for diversified target investments .....	1391
Article 54	Investment limits for state-backed target investments .....	1392
Article 55	Investment limits for UCI target investments .....	1393
Article 56	Prohibition of controlling stakes .....	1394
Article 57	Exemptions from Art 52, 56 in certain cases .....	1396

Chapter VIII  
Master-feeder structures

Section 1  
Scope and approval

Article 58	Definitions, investment limits, exemptions .....	1397
Article 59	Exemption procedure regarding feeder’s investments into master .....	1398

Section 2  
Common provisions for feeder and master UCITS

Article 60	Relationship between feeder and master .....	1399
------------	--	------

Section 3  
Depositaries and auditors

Article 61	Communication between feeder’s and master’s depositary .....	1401
Article 62	Communication between feeder’s and master’s auditors .....	1403

Section 4  
Compulsory information and marketing communications by the feeder UCITS

Article 63	Additional disclosures to investors and feeder’s competent authority .....	1404
------------	--	------

Section 5  
Conversion of existing UCITS into feeder UCITS and change of master UCITS

Article 64	Conversion disclosures and procedures .....	1405
------------	---	------

Section 6  
Obligations and competent authorities

Article 65	Feeder’s monitoring obligation; attribution of fees and benefits to feeder .....	1407
Article 66	Additional tasks vis-à-vis master’s competent authority .....	1407
Article 67	Duties of competent authority in case of non-compliance by master .....	1408

Chapter IX  
Obligations concerning information to be provided to investors

Section 1  
Publication of a prospectus and periodical reports

Article 68	Mandatory disclosure instruments .....	1409
Article 69	Minimum content of mandatory disclosures .....	1410
Article 70	Disclosures on categories and volatility of assets, risk management .....	1412
Article 71	Disclosure of fund rules, instruments of incorporation .....	1413
Article 72	Obligation to keep prospectus up to date .....	1414
Article 73	Audited accounting information, reproduction of auditors’ statement in annual report .....	1414
Article 74	Submission of prospectus, annual and bi-annual reports to competent authority of UCITS and management company .....	1415
Article 75	Format and availability of prospectus, annual and bi-annual reports to investors .....	1415

Section 2  
Publication of other information

Article 76	Publication of unit prices .....	1416
Article 77	Marketing communications .....	1417

# Contents

## Section 3 Key investor information

Article 78	Mandatory key investor information document for each UCITS; format and content of key investor information document .....	1418
Article 79	Consistency of key investor and regulated information; liability for key investor information disclosures .....	1421
Article 80	Use of key investor information documents when directly and indirectly marketing UCITS .....	1422
Article 81	Availability of key investor information .....	1423
Article 82	Submission of key investor information to UCITS competent authority; duty to keep key investor information up to date .....	1425

## Chapter X General obligations of UCITS

Article 83	Borrowing limits .....	1426
Article 84	Unit-holders' redemption rights .....	1427
Article 85	Valuation rules .....	1428
Article 86	Distribution and reinvestments of income .....	1429
Article 87	Issue of unit equivalent to net asset value .....	1429
Article 88	Prohibition to guarantee loans .....	1429
Article 89	Prohibition of naked short sales .....	1430
Article 90	Fees .....	1431

## Chapter XI Special provisions applicable to UCITS, which market their units in member states other than those in which they are established

Article 91	Enabling of marketing in host member states .....	1431
Article 92	Access point in host member state .....	1432
Article 93	Notification procedure .....	1433
Article 94	Same disclosures as in UCITS home state .....	1436
Article 95	Implementing legislation .....	1437
Article 96	Consistency on legal form .....	1438

## Chapter XII Provisions concerning the authorities responsible for authorisation and supervision

Article 97	Appointment and qualifications of competent authorities .....	1438
Article 98	Powers of competent authorities; inquiry rights .....	1439
Article 99	Sanctioning powers of competent authorities; minimum sanctions .....	1440
Article 99 a	Minimum sanctioning .....	1442
Article 99 b	Name and shame .....	1444
Article 99 c	Factors to be taken into account when sanctioning .....	1445
Article 99 d	Protection of whistleblowers .....	1445
Article 99 e	Reporting of penalties to ESMA .....	1447
Article 100	Consumer complaints and alternative dispute resolution .....	1448
Article 101	Cooperation and information exchange of competent authorities and ESMA; on-site visits; ESMA's dispute resolution powers .....	1449
Article 102	Professional secrecy and confidentiality; supervisory cooperation and information exchange .....	1452
Article 103	Information exchange in certain cases .....	1453
Article 104	Information exchange with monetary authorities, clearing houses; legislators ....	1454
Article 104 a	Data protection .....	1457
Article 105	Implementing legislation .....	1457
Article 106	Reporting of auditors to competent authorities .....	1458
Article 107	Reasoning of negative decisions; standing to sue of consumer protection agencies .....	1459
Article 108	Delineation of supervisory powers .....	1460
Article 109	Cross-border provision of services; collaboration .....	1462
Article 110	Cross-border services through a branch; on-site inspections .....	1463

Chapter XIII  
Delegated acts and powers of execution

Article 111	Technical amendments by European Commission .....	1464
Article 112	Involvement of European Securities Committee .....	1464
Article 112 a	Implementing legislation by European Commission .....	1465

**Alternative Investment Fund Managers Directive (AIFMD)**

Introduction .....	1466
--------------------	------

Chapter I  
General provisions

Article 1	Subject matter .....	1467
Article 2	Scope .....	1467
Article 3	Exemptions .....	1469
Article 4	Definitions .....	1471
Article 5	Determination of the AIFM .....	1477

Chapter II  
Authorisation of AIFMs

Article 6	Conditions for taking up activities as AIFM .....	1478
Article 7	Application for authorisation .....	1480
Article 8	Conditions for granting authorisation .....	1482
Article 9	Initial capital and own funds .....	1485
Article 10	Changes in the scope of the authorisation .....	1486
Article 11	Withdrawal of the authorisation .....	1487

Chapter III  
Operating conditions for AIFMs

Section 1  
General requirements

Article 12	General principles .....	1488
Article 13	Remuneration .....	1489
Article 14	Conflicts of interest .....	1492
Article 15	Risk management .....	1493
Article 16	Liquidity management .....	1496
Article 17	Investment in securitisation positions .....	1496

Section 2  
Organisational requirements

Article 18	General principles .....	1498
Article 19	Valuation .....	1499

Section 3  
Delegation of AIFM functions

Article 20	Delegation .....	1502
------------	------------------	------

Section 4  
Depositary

Article 21	Depositary .....	1504
------------	------------------	------

# Contents

	Chapter IV Transparency requirements	
Article 22	Annual report .....	1512
Article 23	Disclosure to investors .....	1514
Article 24	Reporting obligations to competent authorities .....	1517
	Chapter V AIFMs managing specific types of AIF	
	Section 1 AIFMs managing leveraged AIFs	
Article 25	Use of information by competent authorities, supervisory cooperation and limits to leverage .....	1519
	Section 2 Obligations for AIFMs managing AIFs which acquire control of non-listed companies and issuers	
Article 26	Scope .....	1521
Article 27	Notification of the acquisition of major holdings and control of non-listed companies .....	1522
Article 28	Disclosure in case of acquisition of control .....	1524
Article 29	Specific provisions regarding the annual report of AIFs exercising control of non-listed companies .....	1526
Article 30	Asset stripping .....	1527
	Chapter VI Rights of EU AIFMs to market and manage EU AIFs in the Union	
Article 31	Marketing of units or shares of EU AIFs in the home Member State of the AIFM	1529
Article 32	Marketing of units or shares of EU AIFs in Member States other than in the home Member State of the AIFM .....	1530
Article 33	Conditions for managing EU AIFs established in other Member States and for providing services in other Member States .....	1533
	Chapter VII Specific rules in relation to third countries	
Article 34	Conditions for EU AIFMs which manage non-EU AIFs which are not marketed in Member States .....	1535
Article 35	Conditions for the marketing in the Union with a passport of a non-EU AIF managed by an EU AIFM .....	1536
Article 36	Conditions for the marketing in Member States without a passport of non-EU AIFs managed by an EU AIFM .....	1539
Article 37	Authorisation of non-EU AIFMs intending to manage EU AIFs and/or market AIFs managed by them in the Union in accordance with Article 39 or 40 .....	1541
Article 38	Peer review of authorisation and supervision of non-EU AIFMs .....	1550
Article 39	Conditions for the marketing in the Union with a passport of EU AIFs managed by a non-EU AIFM .....	1552
Article 40	Conditions for the marketing in the Union with a passport of non-EU AIFs managed by a non-EU AIFM .....	1554
Article 41	Conditions for managing AIFs established in Member States other than the Member State of reference by non-EU AIFMs .....	1558
Article 42	Conditions for the marketing in Member States without a passport of AIFs managed by a non-EU AIFM .....	1560
	Chapter VIII Marketing to retail investors	
Article 43	Marketing of AIFs by AIFMs to retail investors .....	1561

5. Securities Clearing and Settlement

European Markets Infrastructure Regulation (EMIR)

Introduction .....		1567
TITLE I		
SUBJECT MATTER, SCOPE AND DEFINITIONS		
Article 1	Subject matter and scope .....	1574
Article 2	Definitions .....	1576
Article 2 a	Equivalence decisions for the purposes of the definition of OTC derivatives .....	1578
Article 3	Intragroup transactions .....	1579
TITLE II		
CLEARING, REPORTING AND RISK MITIGATION OF OTC DERIVATES		
Article 4	Clearing obligation .....	1584
Article 5	Clearing obligation procedure .....	1588
Article 6	Public register .....	1593
Article 7	Access to a CCP .....	1594
Article 8	Access to a trading venue .....	1594
Article 9	Reporting obligation .....	1596
Article 10	Non-financial counterparties .....	1600
Article 11	Risk-mitigation techniques for OTC derivative contracts not cleared by a CCP ..	1603
Article 12	Penalties .....	1611
Article 13	Mechanism to avoid duplicative or conflicting rules .....	1611
TITLE III		
AUTHORISATION AND SUPERVISION OF CCPs		
Chapter 1		
Conditions and procedures for the authorisation of a CCP		
Article 14	Authorisation of a CCP .....	1612
Article 15	Extension of activities and services .....	1613
Article 16	Capital requirements .....	1613
Article 17	Procedure for granting and refusing authorisation .....	1613
Article 18	College .....	1615
Article 19	Opinion of the college .....	1616
Article 20	Withdrawal of authorisation .....	1616
Article 21	Review and evaluation .....	1617
Chapter 2		
Supervision and oversight of CCPs		
Article 22	Competent authority .....	1621
Chapter 3		
Cooperation		
Article 23	Cooperation between authorities .....	1623
Article 24	Emergency situations .....	1623
Chapter 4		
Relations with third countries		
Article 25	Recognition of a third-country CCP .....	1623

# Contents

## TITLE IV REQUIREMENTS FOR CCPS

### Chapter 1 Organisational requirements

Article 26	General provisions .....	1628
Article 27	Senior management and the board .....	1629
Article 28	Risk committee .....	1629
Article 29	Record keeping .....	1630
Article 30	Shareholders and members with qualifying holdings .....	1631
Article 31	Information to competent authorities .....	1631
Article 32	Assessment .....	1633
Article 33	Conflicts of interest .....	1633
Article 34	Business continuity .....	1634
Article 35	Outsourcing .....	1635

### Chapter 2 Conduct of business rules

Article 36	General provisions .....	1637
Article 37	Participation requirements .....	1637
Article 38	Transparency .....	1638
Article 39	Segregation and portability .....	1638

### Chapter 3 Prudential requirements

Article 40	Exposure management .....	1643
Article 41	Margin requirements .....	1643
Article 42	Default fund .....	1644
Article 43	Other financial resources .....	1645
Article 44	Liquidity risk controls .....	1645
Article 45	Default waterfall .....	1645
Article 46	Collateral requirements .....	1646
Article 47	Investment policy .....	1647
Article 48	Default procedures .....	1647
Article 49	Review of models, stress testing and back testing .....	1649
Article 50	Settlement .....	1649

### Chapter 4 Calculations and reporting for the purposes of Regulation (EU) No 575/2013

## TITLE V INTEROPERABILITY ARRANGEMENTS

Article 51	Interoperability arrangements .....	1653
Article 52	Risk management .....	1653
Article 53	Provision of margins among CCPs .....	1654
Article 54	Approval of interoperability arrangements .....	1655

## TITLE VI REGISTRATION AND SUPERVISION OF TRADE REPOSITORIES

### Chapter 1 Conditions and procedures for registration of a trade repository

Article 55	Registration of a trade repository .....	1658
Article 56	Application for registration .....	1659
Article 57	Notification of and consultation with competent authorities prior to registration .....	1659
Article 58	Examination of the application .....	1659
Article 59	Notification of ESMA decisions relating to registration .....	1660
Article 60	Exercise of the powers referred to in Articles 61 to 63 .....	1661

Article 61	Request for information .....	1661
Article 62	General investigations .....	1662
Article 63	On-site inspections .....	1663
Article 64	Procedural rules for taking supervisory measures and imposing fines .....	1664
Article 65	Fines .....	1666
Article 66	Periodic penalty payments .....	1667
Article 67	Hearing of the persons concerned .....	1667
Article 68	Disclosure, nature, enforcement and allocation of fines and periodic penalty payments .....	1667
Article 69	Review by the Court of Justice .....	1668
Article 70	Amendments to Annex II .....	1668
Article 71	Withdrawal of registration .....	1668
Article 72	Supervisory fees .....	1669
Article 73	Supervisory measures by ESMA .....	1669
Article 74	Delegation of tasks by ESMA to competent authorities .....	1670

Chapter 2  
Relations with third countries

Article 75	Equivalence and international agreements .....	1672
Article 76	Cooperation arrangements .....	1673
Article 77	Recognition of trade repositories .....	1673

TITLE VII  
REQUIREMENTS FOR TRADE REPOSITORIES

Article 78	General requirements .....	1675
Article 79	Operational reliability .....	1675
Article 80	Safeguarding and recording .....	1676
Article 81	Transparency and data availability .....	1676
Article 82	Exercise of the delegation .....	1678
Articles 83 to 91	.....	1679

**Settlement Finality Directive (SFD)**

Section I  
Scope and definitions

Article 1	.....	1683
Article 2	.....	1684

Section II  
Netting and transfer orders

Article 3	.....	1691
Article 4	.....	1695
Article 5	.....	1695

Section III  
Provisions concerning insolvency proceedings

Article 6	.....	1697
Article 7	.....	1699
Article 8	.....	1700

Section IV  
Insulation of the rights of holders of collateral security from the effects of the insolvency of the provider

Article 9	.....	1702
-----------	-------	------

# Contents

## Section V Final provisions

Article 10 .....	1706
Article 10 a .....	1706
Article 11 .....	1708
Article 12 .....	1708
Article 13 .....	1709
Article 14 .....	1709

## Financial Collateral Directive (FCD)

Introduction .....	1710
Article 1 Subject matter and scope .....	1711
Article 2 Definitions .....	1720
Article 3 Formal requirements .....	1722
Article 4 Enforcement of financial collateral arrangements .....	1724
Article 5 Right of use of financial collateral under security financial collateral arrangements .....	1728
Article 6 Recognition of title transfer financial collateral arrangements .....	1731
Article 7 Recognition of close-out netting provisions .....	1732
Article 8 Certain insolvency provisions disappplied .....	1734
Article 9 Conflict of laws .....	1739
Article 9 a Directives 2008/48/EC and 2014/59/EU .....	1743
Article 10 Report by the Commission .....	1743
Article 11 Implementation .....	1744
Article 12 Entry into force .....	1744
Article 13 Addressees .....	1744

## 6. Payments

### Single European Payment Area Regulation (SEPAR)

Article 1 Subject matter and scope .....	1745
Article 2 Definitions .....	1751
Article 3 Reachability .....	1755
Article 4 Interoperability .....	1756
Article 5 Requirements for credit transfer and direct debit transactions .....	1759
Article 6 End-dates .....	1765
Article 7 Validity of mandates and right to a refund .....	1766
Article 8 Interchange fees for direct debit transactions .....	1768
Article 9 Payment accessibility .....	1770
Article 10 Competent authorities .....	1771
Article 11 Penalties .....	1773
Article 12 Out-of-court complaint and redress procedures .....	1774
Article 13 Delegation of power .....	1776
Article 14 Exercise of the delegation .....	1777
Article 15 Review .....	1778
Article 16 Transitional provisions .....	1778
Article 17 Amendments to Regulation (EC) No 924/2009 .....	1782
Article 18 Entry into force .....	1784

Index .....	1785
-------------	------

## List of authors

**Martin Brenncke**, Dr., LL.M. is a Lecturer in Law at Aston Business School. Before he joined Aston, he was a Career Development Fellow in German and European Union Law at the Institute of European and Comparative Law at the University of Oxford and an Oberassistent (Lecturer) at the University of Zurich, Switzerland. He has been a Visiting Fellow/Researcher at the Institute of Advanced Legal Studies (London), the British Institute of International and Comparative Law (London), the University of Cambridge and the Max Planck Institute for Comparative and International Private Law (Hamburg).

**Svend Gerhards** is Head of Compliance of a global index provider. Previously to that he was a Senior Counsel in the legal department of a global universal bank with more than 10 years professional experience. During that time, he was advising on all aspects of the manufacturing and distribution of structured products to retail clients as well as to professional clients. Furthermore, he supported the implementation of new regulations, such as MiFID II. In his current position he is supporting the implementation of the Benchmark Regulation.

**Carsten Gerner-Beuerle**, Prof. Dr., is a Professor of Commercial Law at University College London and a research member of the European Corporate Governance Institute (ECGI).

**Ronny Grütze**, Dipl.-jur., LL.M. oec. works as a research assistant at the Chair for Private Law, Commercial Law, International and Comparative Private Law at the Martin-Luther-University of Halle-Wittenberg, Germany. He is currently writing his doctoral thesis on market soundings and insider trading law under the supervision of Prof. Dr. Christoph Kumpan.

**Jörn Axel Kämmerer**, Prof. Dr., holds the Chair of Public Law, Public International and European Law at Bucerius Law School in Hamburg, Germany. He studied law in Tübingen, where he later obtained his doctoral degree and Habilitation, and Aix-en-Provence. His research covers, inter alia, German and European Constitutional Law, Financial Markets Law and the European Economic Monetary Union, the Law of the Professions and legal aspects of privatisation.

**Christoph Kumpan**, Prof. Dr., LL.M. (Univ. of Chicago), Attorney at Law (New York) is a Professor of Private Law, Commercial, Corporate and Financial Law, Comparative and International Private Law and Director of the Institute of Economic Law at the University of Halle-Wittenberg, Germany. He counsels the German Ministry of Finance on matters regarding capital markets regulation and has advised the Turkish Capital Markets Board on the implementation of EU takeover law. Before joining the University of Halle-Wittenberg he was a professor at the Humboldt University in Berlin and a senior research fellow at the Max Planck Institute for Comparative and International Private Law in Hamburg.

**Matthias Lehmann**, Prof. Dr., D.E.A. (Paris II), LL.M., J.S.D. (Columbia) holds the Chair for German, European and International Civil and Business Law and is the Director of the Institute for Private International and Comparative Law at the University of Bonn, Germany. He is a member of the Academic Board of the European Banking Institute (EBI), and has been a member of the European Commission's Expert Group on Conflict of Laws Regarding Securities and Claims as well as the Financial Market Law

## List of authors

Committee's working group on Distributed Ledger Technology. He has been visiting the London School of Economics and Political Science and Oxford University.

**Paola Lucantoni**, Assoc. Prof. Dr., is an Associate Professor of Financial Market Law, Law Faculty, University of Rome, Tor Vergata and lectures also Financial Market Law and Regulation, Faculty of Economics, Luiss-Guido Carli University. She holds a Ph.D. in Economic and Business Law, Law Faculty, University of Rome, La Sapienza.

**Dominik Nast**, Mag. jur., is a legal trainee (Rechtsreferendar) at the Higher Regional Court Stuttgart. He worked as a research associate at the University of Liechtenstein, Institute for Financial Services and Heinrich Heine University, Faculty of Law, Düsseldorf.

**Sebastian Omlor**, Prof. Dr. iur., LL.M. (NYU), LL.M. Eur. (University of Saarland), is a Full Professor and Director of the Institute for Comparative Law at Marburg University, Germany. He holds the chair for Private Law, Commercial and Business Law, Banking Law and Comparative Law. Beside the field of international commercial law, his research focuses banking and company law, the law of payment and financial services, the law of digitalisation ([www.irdi.institute](http://www.irdi.institute)), and the legal concept of money.

**Wolf-Georg Ringe**, Prof. Dr., is Director of the Institute of Law & Economics at the University of Hamburg and Visiting Professor at the University of Oxford. In Oxford, he is a Visiting Research Fellow at the Institute of European and Comparative Law and an associate member of the Oxford-Man Institute of Quantitative Finance. He is also a Research Member with the European Corporate Governance Institute and a Fellow Academic Member at the European Banking Institute and an editor of the *Journal of Financial Regulation*.

**Finn Schmidt**, Dipl.-iur., works as a Research Assistant at the Chair for Private Law, Commercial Law, International and Comparative Private Law at the Martin-Luther-University of Halle-Wittenberg, Germany. In addition, he is writing his doctoral thesis on the correlation between takeovers and insider dealing under the supervision of Prof. Dr. Christoph Kumpan.

**Jessica Schmidt**, Prof. Dr., LL.M. holds the Chair for Civil Law, German, European and International Company and Capital Markets Law at the University of Bayreuth (Germany). She is active in various national and international associations and research groups and regularly presents her research at conferences and workshops both in Germany and around the world. She has published extensively on various aspects of German and European company and capital markets law as well as on European private law, private international law and comparative law.

**Christian Schmies**, Dr., is a partner in the Frankfurt office of Hengeler Mueller Partnerschaft von Rechtsanwälten mbB. For more than 10 years he has advised clients in the financial industry on regulatory matters. The main focus of his financial regulatory work is in the asset management industry and on fund structures. He earned his Ph.D. with a dissertation on the regulation of hedge funds.

**Klaus Ulrich Schmolke**, Prof. Dr., is Professor of Private Law, Commercial, Company and Business Law at the Friedrich-Alexander-University Erlangen-Nuremberg (since April 2013). He studied law at the University of Trier, Lausanne and obtained a doctorate (Dr. iur.) at the University of Mainz (2003) as well as an LL.M. at NYU School of Law (2006). Before joining the FAU law faculty he worked as a Senior Research Fellow at the

Max Planck Institute for Comparative and International Private Law in Hamburg (2009–2012) and as an acting Professor at the Philipps-University of Marburg (2012/13). In 2017 he was a Visitor to the Faculty of Law in the University of Cambridge. He has worked and published extensively on corporate law and financial markets law.

**Kay Rothenhöfer**, Dr., is Senior Counsel in the Legal Department of a global universal bank. Since more than 10 years he is advising on banking and regulatory aspects of the distribution of financial instruments to retail clients as well as to wealth management clients. He is especially focusing on implementation of new European and German regulations, such as MiFID II. Furthermore, he is deeply involved in the digitalization of financial services.

**Andy Ruzik**, Dr., is a Judge at the Regional Court in Aachen and Lecturer at the University of Aachen. He holds two master's degrees from the Universities of Austin (Texas) and Halle (Germany), in Business and Economic Law. In addition, he earned a Ph.D. with a thesis on the law of international bank insolvencies and published several articles in the fields of civil and business law.

**Dirk Zetzsche**, Prof. Dr. iur., LL.M. (University of Toronto), holds the ADA Chair in Financial Law (inclusive finance) at the University of Luxembourg; he is also a Director of the Center for Business and Corporate Law at Heinrich-Heine-University in Düsseldorf, Germany. His research focuses on investment, securities, banking and company law, the law of payment and financial services, financial technologies and financial inclusion.



## Abbreviations

ACER	Agency for the Cooperation of Energy Regulators
ADR	American Depositary Receipts
AIF	Alternative Investment Funds
AIFMD	Alternative Investment Fund Managers Directive (2011/61)
AMF	Autorité des marchés financiers (Financial Markets Regulator, France)
AML	Anti-Money Laundering
AMP	Accepted Market Practices
APA	Approved Publication Arrangement
ARM	Approved Reporting Mechanism
Art	Article
BaFin	Bundesanstalt für Finanzdienstleistungsaufsicht (Federal Financial Supervisory Authority, Germany)
BBAN	Basic Bank Account Number
BGBL	Bundesgesetzblatt (German Federal Law Gazette)
BGHSt	Entscheidungen des Bundesgerichtshofes in Strafsachen (Decisions of the German Federal Court of Justice in criminal matters)
BIC	Bank Identifier Code
BKR	Zeitschrift für Bank- und Kapitalmarktrecht (Journal)
BörsG	Börsengesetz (German Stock Exchange Act)
BRRD	Bank Recovery and Resolution Directive (2014/59)
BT-DrS	Bundestags-Drucksache (German Parliament Document)
CARD	Consolidated Admissions and Reporting Directive (2001/34)
CCP	Central Counterparty
CCZ	Corporate Compliance Zeitschrift
CDS	Credit Default Swap
CEIOPS	Committee of European Insurance and Occupational Pensions Supervisors
CESR	Committee of European Securities Regulators
CET	Central European Time
CfD	Contracts for Difference
CFREU	Charter of Fundamental Rights of the European Union
CFS	Condensed Financial Statements
CFTC	Commodity Futures Trading Commission
CISE	Channel Islands Securities Exchange
CJEU	Court of Justice of the European Union
CMLJ	Capital Markets Law Journal
CMLR	Common Market Law Review
CORE	Compensation Retail
CPV	Common Procurement Vocabulary
CR	Computer und Recht (Journal)
CRA	Credit Rating Agency
CRD	Capital Requirements Directive (2013/36)
CRR	Capital Requirements Regulation (575/2013)
CSD	Central Securities Depository
CSDR	Central Securities Depository Regulation (909/2014)
CSES	Comparative Study of Electoral Systems
CTP	Consolidated Tape Provider

## Abbreviations

DAX	Deutscher Aktienindex (German Stock Index)
DB	Der Betrieb (Journal)
DEA	Direct Electronic Access
DLT	Distributed Ledger Technology
DR	Depository Receipts
DTR	Disclosure and Transparency Rules
DvP	Delivery versus Payment
EAMP	Emission Allowance Market Participant
EBA	European Banking Authority
EBOR	European Business Organization Law Review
ECB	European Central Bank
ECFR	European Company and Financial Law Review
ECJ	European Court of Justice
ECLI	European Case Law Identifier
EDR	European Depository Receipts
EEA	European Economic Area
EIOPA	European Insurance and Occupational Pension Authority
EITI	Extractive Industry Transparency Initiative
ELRev.	European Law Review
ELTIFR	European Long-term Investment Funds Regulation (2015/760)
ELV	Elektronisches Lastschriftverfahren (electronic direct debit)
EMMI	European Money Markets Institute
EPC	European Payments Council
ERCL	European Review of Contract Law
ESEF	European Single Electronic Format
ESM	European Stability Mechanism
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
ETD	Exchange Traded Derivative
ETF	Exchange-Traded Fund
ETS	Emissions Trading Scheme
EUR	Euro(s)
EURIBOR	Euro Interbank Offered Rate
EuSEFR	European social entrepreneurship funds Regulation (346/2013)
EuVeCaR	European venture capital funds Regulation (345/2013)
FATF	Financial Action Task Force (on Money Laundering)
FIRDS	Financial Instrument Reference Data System
FLEGT	Forest Law Enforcement, Governance and Trade Action Plan
FSA	Financial Services Authority (Great Britain)
FSAP	Financial Services Action Plan
GAAP	Generally Accepted Accounting Principles
GDR	Global Depository Receipts
HMS	Home Member States
IAS	International Accounting Standard
IASR	International Accounting Standards Regulation (1606/2002)

IBAN	International Bank Account Number
ICOs	Initial Coin Offerings
IDD	Insurance Distribution Directive (2016/97)
IFLR	International Financial Law Review
IFRS	International Financial Reporting Standards
IIP	Insurance-based Investment Product
IMD	Insurance Mediation Directive (2002/92)
IORP	Occupational Retirement Provision
IOSCO	International Organization of Securities Commissions
IRD	Interim Reporting Directive (79/279)
ISDA	International Swaps and Derivatives Association
ISIN	International Securities Identification Number
ITS	Implementing Technical Standards
JCLS	Journal of Corporate Law Studies
JIBLR	Journal of International Banking Law & Regulation
JODI	Joint Organisations Database Initiative
JRF	Journal of Risk Finance
JZ	JuristenZeitung (Journal)
KID	Key Information Document
KIID	Key Investor Information Document
KWG	Kreditwesengesetz (German Banking Act)
LCD	Listing Conditions Directive (79/279)
LCIA	London Court of International Arbitration
LEI	Legal Entity Identifier
LME	London Metal Exchange
→ mn	margin number (within this Commentary)
MAR	Market Abuse Regulation (596/2014)
MIC	Market Identifier Code
MiFID I	Markets in Financial Instruments Directive (2004/39)
MiFID II	Markets in Financial Instruments Directive II (2014/65)
MiFIR	Markets in Financial Instruments Regulation (600/2014)
MMFR	Money Market Funds Regulation (2017/1131)
MMR	MultiMedia und Recht (Journal)
MREL	Minimum Requirement for Own Funds and Eligible Liabilities
MTF	Multilateral Trading Facilities
NA	Notification Authority
NAV	Net Asset Value
NCA	National Competent Authority
NJW	Neue Juristische Wochenschrift (Journal)
NZG	Neue Zeitschrift für Gesellschaftsrecht (Journal)
OAM	Officially Appointed Mechanism
OGH	Offene Handelsgesellschaft (commercial partnership under German law)
OJ	Official Journal
OLG	Oberlandesgericht (Higher Regional Court)
OTC	Over the Counter
OTF	Organised Trading Facilities
OUP	Oxford University Press

## Abbreviations

Palandt-BGB	Palandt, Bürgerliches Gesetzbuch: BGB (77 <sup>th</sup> edn, Munich 2018)
PFMI	Principles for Financial Market Infrastructures
PRIIPR	PRIIP Regulation (1286/2014)
PRIMA	Place of the Relevant Intermediary Approach
RdF	Recht der Finanzinstrumente (Journal)
REMIT	Regulation on Energy Market Integrity and Transparency (1227/2011)
RIS	Regulated Information Services
RM	Regulated Markets
RPS	Retail Payment Systems
RPT	Related Party Transactions
RTS	Regulatory Technical Standards
SDD	SEPA Direct Debit
SE Regulation	Regulation on the Statute for a European Company (SE) (2157/2001)
SEPA	Single Euro Payments Area
SFC	Small Financial Counterparties
SFD	Settlement Finality Directive (98/26)
SPV	Special Purpose Vehicles
SSR	Short Selling Regulation (236/2012)
STOR	Suspicious Transaction and Order Reporting
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TARGET	Trans-European Automated Real-time Gross Settlement Express Transfer
TD	Transparency Directive (2004/109)
TFEU	Treaty on the Functioning of the European Union
TISE	The International Stock Exchange
TOTV	Traded on a Trading Venue
TR	Trade Repositories
UCITS	Undertakings for Collective Investments in Transferable Securities
UCITSD	UCITS Directive (2009/65)
UK	United Kingdom
UNCTAD	United Nations Conference on Trade and Development
UNIFI	Universal Financial Industry message scheme
UPI	Unique Product Identifier
URD	Universal Registration Document
UTC	Coordinated Universal Time
UTI	Unique Trade Identifier
WM	Wertpapier-Mitteilungen (Journal)
WpHG	Wertpapierhandelsgesetz (German Securities Trading Act)
ZBB/JBB	Zeitschrift für Bankrecht und Bankwirtschaft / Journal for Banking Law and Banking
ZGR	Zeitschrift für Unternehmens- und Gesellschaftsrecht (Journal)
ZHR	Zeitschrift für Handels- und Unternehmensrecht (Journal)
ZIP	Zeitschrift für Wirtschaftsrecht (Journal)
ZVertriebsR	Zeitschrift für Vertriebsrecht (Journal)