



Brussels, 6 November 2019

## **EACB proposal for a MiFID II REFIT: *"Towards a more effective framework respecting diversity and consumer choice"***

November 2019

The **European Association of Co-operative Banks** ([EACB](http://www.eacb.coop)) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4,050 locally operating banks and 58,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 210 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 79 million members and 749,000 employees and have a total average market share of about 20%.

For further details, please visit [www.eacb.coop](http://www.eacb.coop)

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**The voice of 2.914 local and retail banks, 81 million members, 209 million customers in EU**

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## **Background**

Co-operative banks have generally been supportive of the introduction of the 'Markets in Financial Instruments Directive' (MiFID) II and its accompanying 'Markets in Financial Instruments Regulation' (MiFIR), as they are the legal basis for disclosure requirements that provide end-clients with clear, correct and comparable information on all costs and charges relating to the provision of investment services and financial instruments. Having said that, the implementation of these legal texts have not been without difficulties.

The EACB and its members have – over the past years - consistently ranked developments in MiFID II and MiFIR as key priorities in the EACB work plan, and more recently, as part of [EACB's recommendations for the European Commission's mandate '2019-2024' published in June 2019](#).

In this context it is with keen interest that the EACB is following the progress of the Commission's formal request submitted to ESMA on 23 May 2019, asking for technical advice on specific areas of MiFID II and MiFIR. The EACB has replied to a first set of related ESMA consultations, notably on ['the impact of the inducements and costs and charges disclosures requirements under MiFID II'](#) and ['the development in pre- and post-trade data prices and on the consolidated tape for equity instruments'](#). It aims to selectively reply to any further upcoming consultations.

## **Proposal for a MIFID REFIT**

Additionally, EACB members have engaged in an exercise to gather all the main issues they have experienced during the implementation of MiFID II over the almost two years since it became applicable. On 6 November, these issues were finalised in a detailed position paper with recommendations on the MiFID II/ MiFIR review backed up by quantitative and qualitative data from different jurisdictions. The conclusion of this work is that EACB members believe that the legislation in its current form is shown to be overshooting the mark in terms of its original objectives. Therefore, it is necessary to do a REFIT<sup>1</sup> of MiFID II (and in some cases considerations by ESMA from a Level 2 or 3 perspective) in a number of areas, and where necessary to go beyond the scope of the different review clauses in the Directive. Our rationale for this is the following:

- There has been an **increase in disproportionate administrative costs and burdens for co-operative banks** which stem from (i) unclear and inconsistent exemptions under the regulations which do not work for EACB members who are small and non-complex institutions (e.g. only active in financial instruments for own account purposes); (ii) a lack of harmonisation with other key securities markets legislation; and (iii) excessive transparency and supervisory reporting requirements. Quantitative explanations of how this has impacted EACB members in different countries can be found in Appendix 3;

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<sup>1</sup> As described in the Commission's resource page on ['REFIT – making EU law simpler and less costly'](#), REFIT refers to the regulatory fitness and performance programme which aims to keep EU law simple, remove unnecessary burdens and adapt existing legislation without compromising on policy objectives.

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- **Certain transparency requirements designed to safeguard clients have actually not been accepted by the same clients in practice**, and thus, do not provide the level of investor protection envisaged by the regulations. This has led to retail clients withdrawing from capital markets which is contrary to the objectives of the Commission's plan for a Capital Markets Union (CMU) within the EU; and
- There have been **specific technical issues encountered in the implementation of the regulation leading to a decrease in supply and demand of investment services (e.g. reduction in telephone transactions and/or investment advice by telephone, switch to execution-only) and less products on offer mainly in retail markets**, which is worrying in the context of co-operative banks who are key players in the real economy as their client portfolios mainly cover households and SMEs. We would also like to add that certain issues under the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation have also contributed to this effect. In particular we observe the requirement from the PRIIPs Regulation to provide retail clients with a key investor document (KID) in the official language of the Member State where the product is distributed, which has narrowed the product range for retail clients after MiFID II e.g. by 90% in Finland where English or German are not official languages.

We strongly believe that the review of MiFID II and MiFIR is a good opportunity to not only revise the mandated topics under the Directive, but also to undertake a REFIT approach to the legislation which provides an equal balance between making the legislation less complex without: (i) compromising consumer and investor protection, (ii) the CMU objectives, and (iii) the diversity of European capital markets including the banking industry, in particular co-operative banks which play a major part in retail and SME markets.

Joint to this paper you will find a set of general recommendations for a REFIT approach (appendix 1) and a set of more technical recommendations (appendix 2) and some case studies on cost and resource impacts from implementation of MIFID II (appendix 3).

#### **Contact:**

The EACB trusts that its comments will be taken into account.

For further information or questions on this paper, please contact:

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