

Regulatory trends
MiFID II, IDD, MCD, PRIIPs, PSD II

PwC Nordic
FS Tax & VAT Event

OSLO, 25-26 OCTOBER 2017



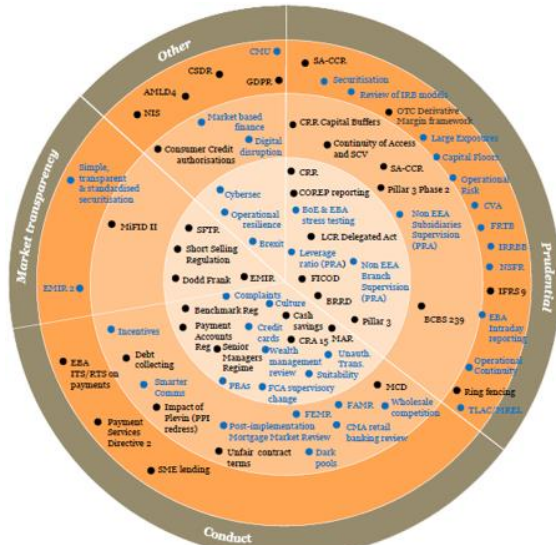
Regulatory trends

MiFID II, IDD, MCD, PRIIPs,
PSD II

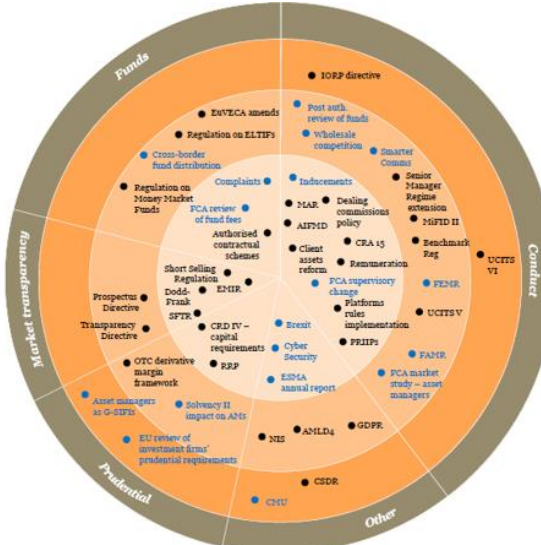
The tsunami

PwC – FS Risk and Regulation – “Regulatory Radar”:

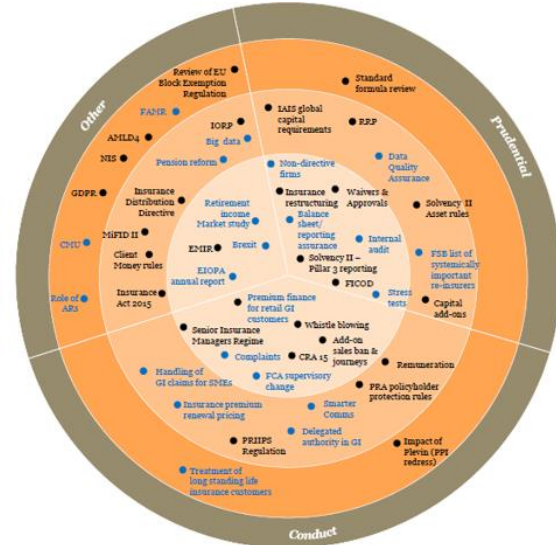
Banking



Asset Management



Insurance



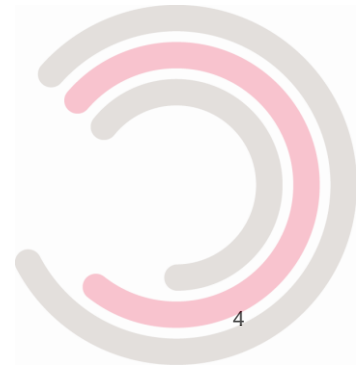
Financial Services Regulation in general

- **Main objectives**

- Financial stability
- Trust in markets
- Investor protection
- Single EU market

- **Some of the common tools**

- License (organizational demands, independent compliance function, competence requirement etc)
- Capital requirements
- Remuneration / inducements rules
- Reporting requirements
- Rules for good business conduct
- Defined and regulated services/roles (advice, portfolio management, agent)
- Product regulation
- Conflict of interest duties
- Information requirements



Today's topics - a wide (random?) selection

- Markets in Financial Instruments Directive - MiFID II
- Insurance Distribution Directive - IDD
- Packaged Retail and Insurance-based Investment Products regulation - PRIIPs

Investor (customer) protection
Common general objectives

- Mortgage Credit Directive - MCD
- Payment Services Directive - PSD II

Coordinated Norwegian implementation

- Content / scope
- Objectives
- Examples of practical consequences



Investor protection regime - continual tightening of “regulatory product gaps”

Product type A	Product type B	Product type C	Product type D	Product type E	Product type F
“Financial instruments”	Funds	Partnerships	Alternative Investment Funds	Insurance-based	Pension

2007

MiFID I

2009

UCITS

2013

(Norwegian specific: inclusion of “partnerships” into financial instruments with regards to inv. services)

2014

AIFMD

2018

MiFID II

PRIIPS

IDD



MiFID II – new inducement rules (third parties)

Starting point: all investment services:

- Third-party inducements are only allowed if they
 - Does not impair compliance with the firms duty to act in the client's best interest
 - Is designed to enhance the quality of the service
- Are disclosed to the client – records are kept of inducements received and used
- Quality enhancement test:
 - Strict examples given in level II documents
 - Proportionality
 - Recurring inducements require a continuous quality enhancement to client



What entities are regulated?

- All investment firms or entities that provide «investment services» in accordance with MiFID II definitions
- Asset Managers (AIF or UCITS) and banks as a starting point are not regulated, however these entities often provide investment services as well
- Payments from the client (as long as the client is not a regulated entity) are not regulated



MiFID II - investment advice and portfolio management

- With MiFID II a division between independent and non-independent advice is introduced
- Portfolio management must always be independent - for investment advice there is a choice.
- A firm can operate both independent and non-independent, but not from the same group of employees



Independent advice and portfolio management

- To be allowed to categorize the advice given as «independent» the investment firm must
 1. assess a sufficient range of diverse financial instruments,
 - not limited to those issued or provided by the investment firm itself or by entities having close links or close legal or economic relationships with the investment firm as to pose a risk of impairing the independent basis of the advice
 2. not accept and retain inducements paid or provided by any third party or a person acting on behalf of a third party (except minor non-monetary benefits under certain conditions)

Inducements paid are allowed, subject to the “quality enhancement test”

Research services

- Research is considered as an inducement as a starting point
- Consequently, both receiving and giving research services is comprised by the inducement regulations
- The objective: to break up the link between transaction services and research services

Research services are not considered an inducement if it is...

- Paid out of the firm's own resources

or

- It is paid from a separate «Research Payment Account» - followed by strict conditions:
 - Specific research charge
 - Separate budget for research, regularly assessed
 - Firm responsible for the administration of account
 - Regular assessment of the quality of research bought
 - Disclosure to clients

Effects?

- Payments from and to regulated entities needs to be segregated
 - For example, transaction services - nominee and custody services - research
 - Regulated entities must decide on a policy – most asset managers will need to comply with «independence requirements»
 - Use of external research expected to fall
- Investment firms that choose to give «independent» advice will need to price services differently
 - «Platform» pricing / subscriptions?
 - For what services are the payment? (the transactions themselves, advice, nominee/custody)

MiFID II – market transparency – new types of licenses and services

- **Approved Reporting Mechanism (ARM): reporting to authorities**

A legal person authorised to provide the service of reporting details of transactions to competent authorities or ESMA on behalf of investment firms.

- **Approved Publication Authority (APA): OTC trades market reporting**

A person authorised to provide the service of publishing trade reports on behalf of investment firms.

- **Consolidated Tape Provider (CTP): all market data reporting**

A person authorised to provide the service of collecting trade reports from Regulated Markets, MTFs, OTFs and APAs and consolidating them into a continuous electronic live data stream providing real time price and volume data per financial instrument.

IDD – Level playing field for distribution channels and stricter requirement of customer protection

- All distributors of insurance products regulated
- Requirements for pre-contractual information
- MiFID II-like categorizations of services:
 - Distribution with advice (“personal recommendation”)
 - Requirement to provide the client with written explanation of why and how it best meets his/her needs
 - Independent advice own category (intermediaries)
 - Distribution without advice (“execution only”)
 - Even if no advice is offered, proposed products should meet the clients needs

IDD – Level playing field for investment products

- Stricter requirements for Insurance Based Investment Products (“IBIP”s):
- MiFID II-like categorizations of services:
 - Distribution with advice (“personal recommendation”)
 - Suitability test (including appropriateness)
 - Suitability statement
 - Distribution without advice (“execution only”)
 - Appropriateness test (exclusions possible for non-complex products)
 - Norwegian proposal for implementation is not to allow “execution only”

IDD adopts other “known categories” of requirements as well...

- Competency requirements for management and employees
- Product governance requirements including “target market”
- Inducements and remunerations (employees) regime – “negative restriction”
 - “does not impair compliance with...” and “does not have a negative impact on...”
- Conflict of interests
- Sanctions, including financial penalties, loss of license, personal liability, personal ban from holding positions

PRIIPs – requirement for Key Investor Information Document for products sold to retail clients only

- A PRIIP is either a:
 - Packaged Retail Investment Product = is an **investment** where the amount repayable to the retail investors is subject to **fluctuations** because of exposure to reference values or to the **performance of one or more assets which are not directly purchased by the retail investor**
 - Covers i.e.: Alternative Investment Funds, derivatives (listed and OTC), convertible bonds, structured products

OR an

- Insurance-based Investment Product (aka “IBIP”)
 - Covers any product offered under an IBIP as well
- Detailed and standardised requirements including risk, reward, recommended holding period, costs etc

IDD & PRIIPs - effects?

- Level playing field for products – less loopholes
- MiFID II-like customer protection requirements gradually flowing into (almost) all investment products, as well as insurance



MCD – more responsibilities for credit services as well

- MCD is already implemented in EU
- Stronger customer protection awarded, hereunder:
 - Stricter pre-contractual requirements: marketing, information and explanations to customers
 - Strict requirement only to issue credit where the bank's assessment of the client's creditworthiness suggests he is likely to be able to meet the obligations of the agreement
 - Non-compliance will leave the bank with no effective agreement

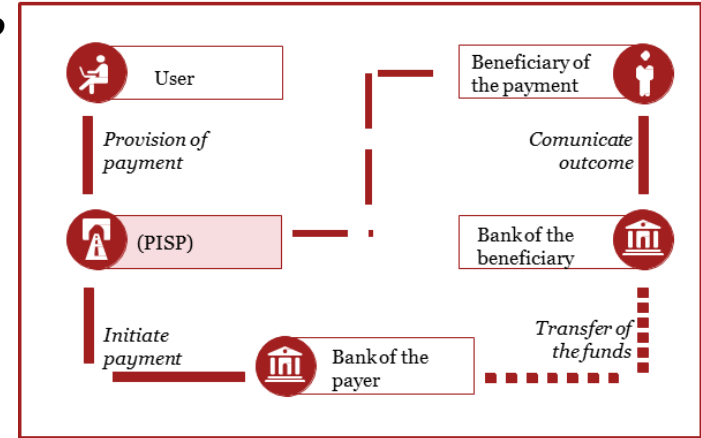
Changes til “finansavtaleloven” – Norway specific

- A suggestion for a general damages clause for non-compliance with financial services regulations is included in the recent proposal for changes in “finansavtaleloven” implementing PSD2, MCD and PAD (Payment Accounts Directive)
- No such clause has been in force in Norway, and the legal basis for such damages has therefore been the “general clause” of contract law (“avtaleloven § 36) in combination with general law of damages. The basis for liability has therefore been unclear.
- The suggestion is to establish liability based on “professional liability” if the regulated entity does not meet its obligations in accordance with relevant laws
- Could lead to more claims more damages being awarded

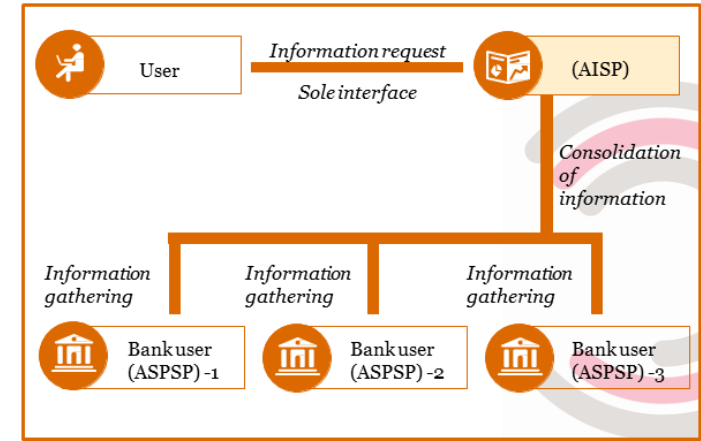
PSD 2 – payment services revolution?

- New types of services / licenses:
- PISP (Payment Initiation Service Provider)
- AISP (Account Information Service Provider)

Overview PISP

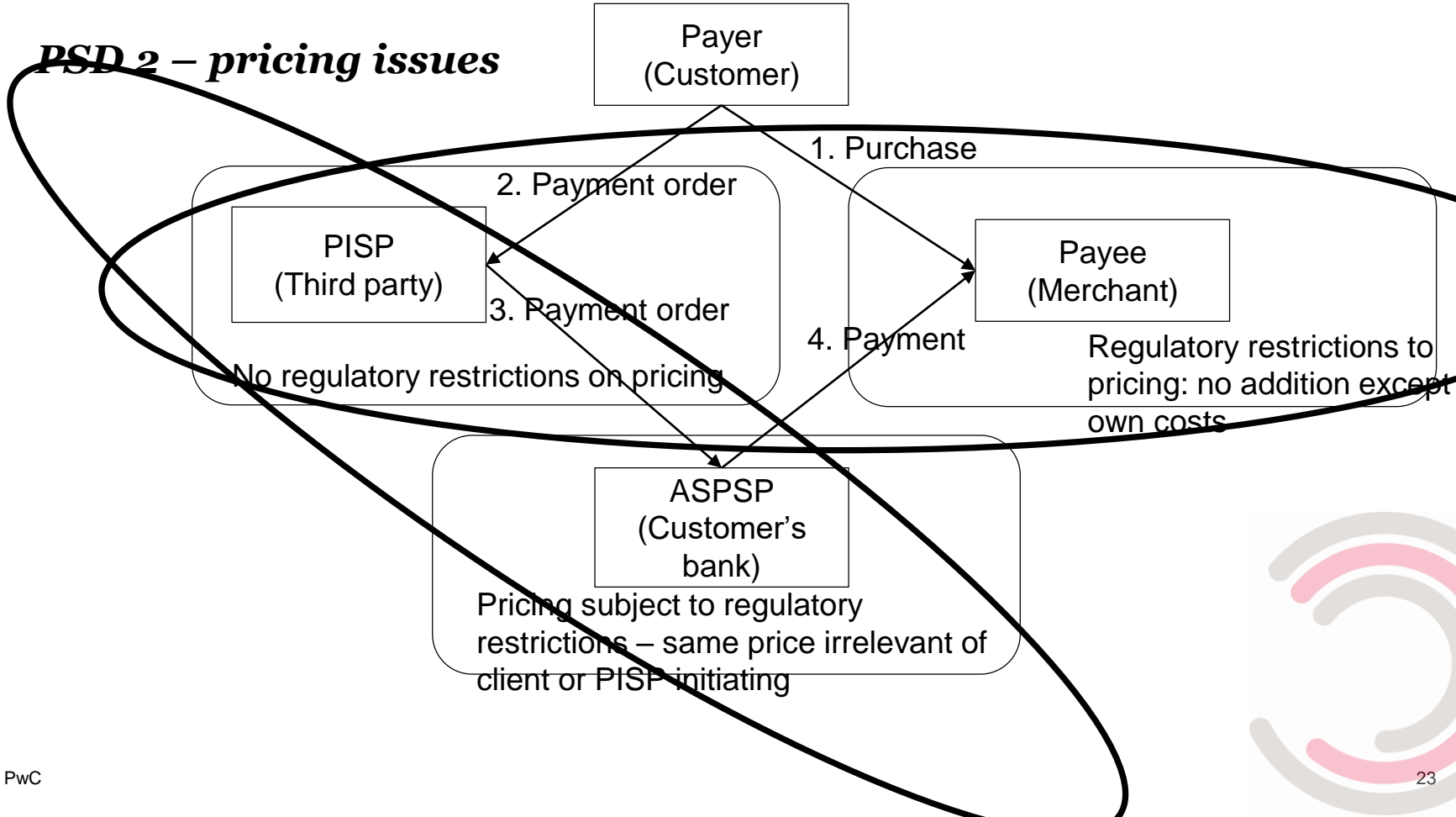


Overview AISP



- Banks risk being reduced to “infrastructure” ?

PSD 2 – pricing issues



Implementation and status

- **MiFID II: 3rd January 2018**
 - Norway: no date for implementation is set. NOU was issued in January 2017
- **IDD: 23rd February 2018**
 - Norway: no date for implementation is set. A proposal was issued in June 2017
- **PRIIPs: 31st December 2017**
 - Norway: no date for implementation is set. A proposal was issued in May 2017
- **MCD: Already in force in EU (21st March 2016)**
 - Norway: no date for implementation is set. A proposal was issued September 2017
- **PSD2: 13th January 2018**
 - Norway: no date for implementation is set. Proposals for changes in several laws were issued April and September 2017

www.finansbloggen.no
www.pwc.no/finreg-skolen

Thanks for listening!