

# MiFID II and Private Law: How does it impact Investors and Financial Institutions?

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## Understanding MiFID II

In January 2018, the revised Markets in Financial Instruments Directive (MiFID II) came into effect in the European Union (EU). MiFID II is a regulatory framework that aims to enhance investor protection, promote market integrity, and increase transparency across the financial markets.



## MiFID II and Private Law: Enforcing EU Conduct of Business Rules (Hart Studies in Commercial and Financial Law)

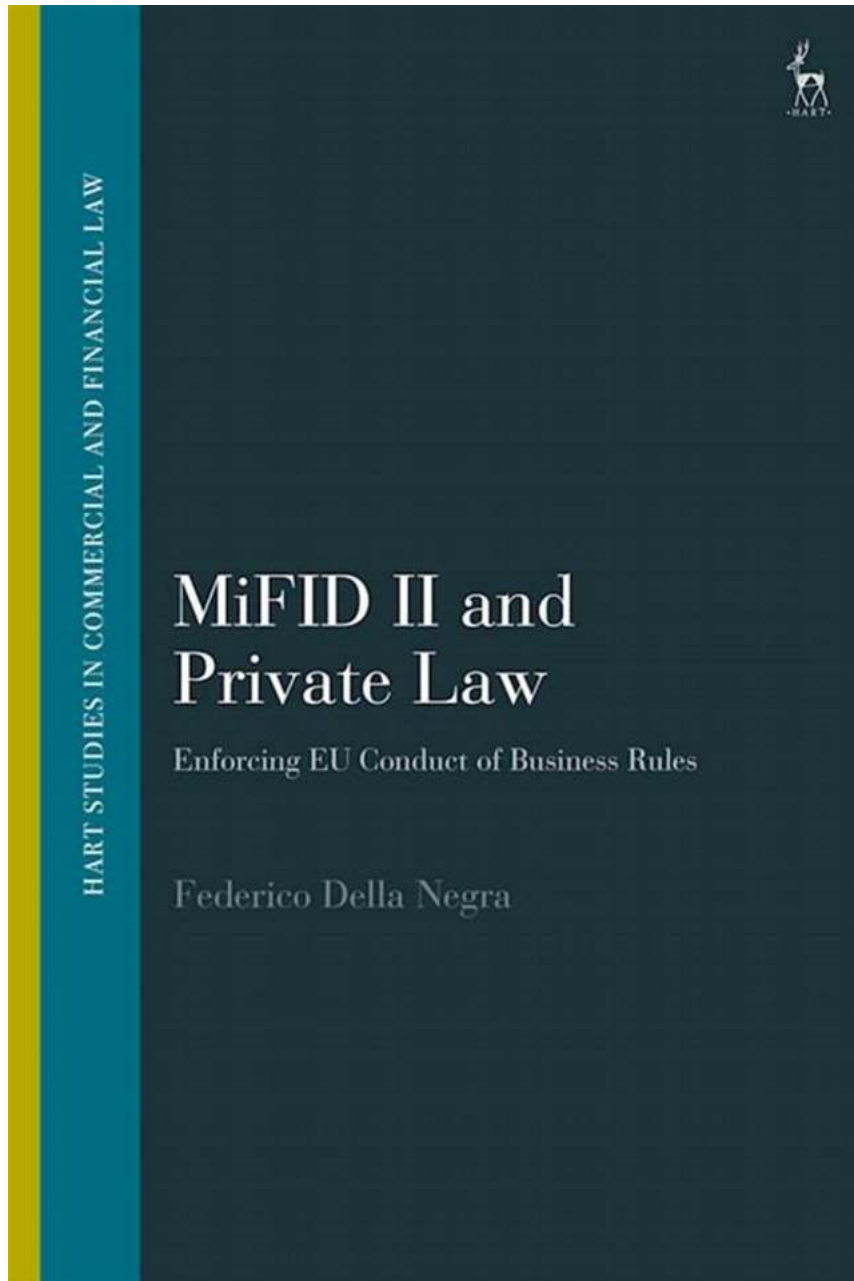
by Federico Della Negra (1st Edition, Kindle Edition)

★★★★★ 5 out of 5

Language : English  
File size : 663 KB  
Text-to-Speech : Enabled  
Screen Reader : Supported  
Enhanced typesetting : Enabled  
Print length : 444 pages



One of the critical objectives of MiFID II is to ensure that investors receive fair and clear information about financial products and services. This includes detailed disclosures regarding costs, fees, and associated risks.



## **The Connection between MiFID II and Private Law**

MiFID II has significant implications for private law, particularly in the realm of investor protection and contract law. The directive introduces new requirements and standards that must be adhered to by financial institutions.

Private law governs the relationships between individuals and entities, focusing on contracts, property rights, and liability. With MiFID II, the private law aspect

becomes relevant when considering the contractual relationship between investors and financial service providers.

The concept of "suitability" becomes pivotal under MiFID II. It states that financial institutions must ensure that their products and services are appropriate for their clients, taking into account their clients' investment objectives, risk tolerance, and financial situation.

Should a financial institution fail in fulfilling the suitability requirement, investors may have grounds for legal action under private law. They can assert claims for damages, contract termination, or seek compensation for losses incurred as a result of investments not aligned with their profile.

## **Challenges and Opportunities for Investors**

While MiFID II strengthens investor protection, it also brings both challenges and opportunities for investors. On the one hand, the increased transparency allows investors to make more informed decisions regarding their investments. The improved disclosure requirements enable a clearer understanding of costs and potential risks associated with financial products.

On the other hand, the complexity of MiFID II regulations may make it challenging for individual investors to navigate through the various requirements and obligations. The burden of compliance mainly falls on financial institutions, but investors must also take an active role in understanding the information provided to them and exercising their rights under private law.

Moreover, MiFID II establishes stricter rules regarding the provision of investment advice. Financial institutions must clearly disclose whether they provide independent advice or act as tied agents of specific product providers. This

ensures investors have the necessary information to assess any potential conflict of interest.



## **Implications for Financial Institutions**

MiFID II places significant obligations on financial institutions, forcing them to reassess and adapt their operations. They must ensure compliance with new rules related to product governance, investor protection, and transaction reporting. Failure to comply can result in severe penalties, reputational damage, and diminished investor trust.

Financial institutions must now conduct more thorough assessments of their clients' needs and circumstances to provide suitable recommendations. They

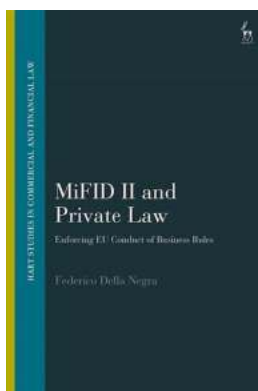
must also implement enhanced monitoring and reporting mechanisms to track transactions and trading activities accurately.

The new regulatory framework also disrupts the investment research landscape. Financial institutions are required to price and unbundle investment research from execution services. This aspect forces them to make difficult decisions regarding the valuation and cost allocation of research services.

With MiFID II, the private law aspect becomes crucial in ensuring investor protection and holding financial institutions accountable. The increased transparency and disclosure requirements enable investors to make more informed decisions, but they must also actively engage in understanding their rights and responsibilities.

For financial institutions, MiFID II poses various challenges, particularly in terms of compliance and restructuring business operations. However, embracing the changes and recognizing the opportunities can lead to a more competitive and accountable financial sector.

Overall, the of MiFID II marks a significant milestone in financial regulation, seeking to provide investors with a safer and more transparent environment while also reinforcing private law mechanisms to protect their interests.



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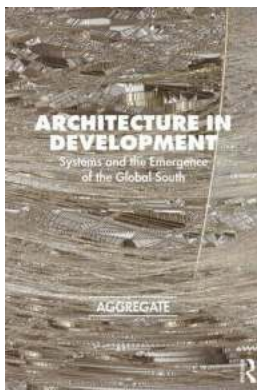
In the wake of the global financial crisis, investors have suffered significant losses as a result of breaches of conduct of business rules in the distribution of financial instruments.

MiFID II introduced new disclosure, distribution and product governance rules to strengthen the protection of investors but, like MiFID I, did not harmonise the civil law consequences for their violation.

This book asks whether, in spite of the silence of the EU legislators, the MiFID II conduct of business rules may produce civil law effects, enabling investors to enforce them against investment firms before national courts and alternative dispute resolution (ADR) mechanisms.

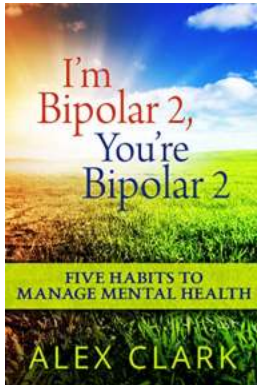
Building on the case law of the CJEU, the book shows the conditions under which the breach of MiFID II conduct of business rules should give rise to a private law remedy, and what remedies would be compatible with EU law.

MiFID II and Private Law is an essential contribution to academic research in EU and financial law and will be a key text for policy-makers and legal practitioners working in the field of investor protection regulation and mis-selling litigation.



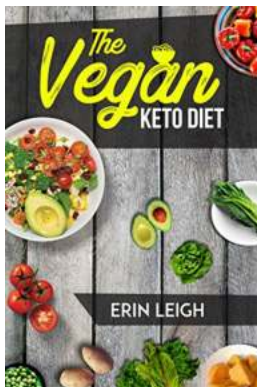
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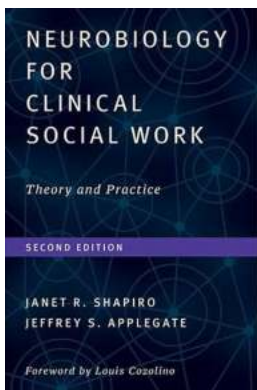
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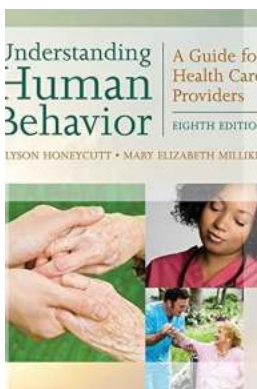
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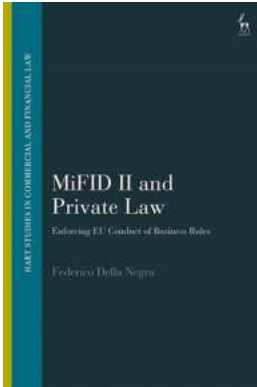
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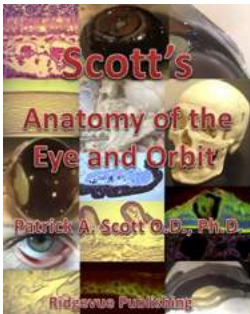
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