The European Commission proposes to delay the application date of the entire MiFID II/MiFIR package until January 2018

12 February 2016

In brief

The European Commission (EC) has proposed to postpone the entry into force of the overall MiFID II/MiFIR framework by one year, until 2 January 2018. A delay in parts has been openly discussed since end 2015, as it had become clear that the "data challenge" posed by certain MiFIR elements couldn't be overcome within the initial timeframe. In the end, due to the interconnections between topics, delaying the implementation of certain parts of the package was not an option. The EU institutions now have to formally enact a legislative text to amend the date when the whole MiFID II/MiFIR framework becomes effective.

In detail

1. Rationale for the MiFID II/MiFIR delay

The decision to propose a full delay of MiFID II/MiFIR framework follows a series of discussions held at European level over the last few months.

These discussions have shed light on (i) the significant **data challenge** that regulators are currently facing with respect to some market-related aspects and (ii) the resulting **legal uncertainty**, which makes it hard for the industry to meet the initial deadline of 3 January 2017.

The data challenge - ESMA and National Competent Authorities (NCAs) still have to complete important work on data collection, primarily:

(1) *The financial instruments in scope:* ESMA and NCAs need to establish an instrument reference data by which financial instruments in scope receive "an ID" with linked key information. Without such reference data, the scope of financial instruments covered by MiFID II/MiFIR, as well as how they should be reported is unclear.

(2) *The transparency rules:* ESMA has to collect information (e.g. bid, offers, and price) on executed transactions to be able to tailor the transparency rules, and especially to determine when instruments are liquid and when waivers or deferred publication should be granted. The collected information will also be important for *algorithmic trading rules:* the tick size regime and the market making obligations will fit the liquidity rules defined under the transparency framework.

(3) *The transaction reporting:* General information on executed transactions also has to be collected for a more effective supervision from the regulators.

(4) *The position limits on commodity derivatives:* ESMA and NCAs have to set up a position reporting system. The absence of this system would hinder the detection of breaches to the position limits and thus the enforcement of the new regime.

The legal uncertainty - Stakeholders (including investment firms and trading venues) need to enhance their existing or develop new IT systems to comply with the MiFID II/MiFIR requirements. We expect the implementation of these new IT requirements to be a challenging and lengthy process. However, as long as the regulatory framework is not finalised yet, stakeholders cannot properly start the implementation work.

2. *Full delay: a result of intense inter-institutional debates*

The European Union (EU) institutions have reached an agreement to postpone the entry into force of the entire MiFID II/MiFIR framework.

The extent to which the MiFID II/MiFIR framework should be delayed has been subject to extensive debates, with ESMA initially suggesting to postpone the implementation timeline for some market-related aspects only, i.e. (1) transparency (2) transaction reporting and (3) position reporting. The European Parliament had initially opposed any delay, to adopt later a position similar to ESMA's.

After the impact assessment of a partial vs. a full delay, the EU institutions agreed that postponing the full MiFID II/MiFIR framework was the most realistic approach due to:

(1) *Complex inter-linkages and indirect impacts:* the numerous and complex interdependencies between MiFID II/MiFIR requirements make a targeted postponement extremely difficult.

(2) *Difficult delineation process:* Postponing only parts of MiFID II/MiFIR would have required to operate, provision by provision, a distinction between the parts to be delayed and the ones to be implemented and/or to identify potential transitory rules to set-up. Such a process would have been too time and resource-intensive.

    Regarding the investor protection rules, the EU institutions have estimated that, although it could be possible to apply them separately, the process of identifying the cross-references/definitions and handling the parts with different dates of entry into force dates would equally be time and resource intensive.

(3) *Other risks of a phased approach:* a targeted postponement would have carried too many risks (e.g. risk of facing new issues due to transitory rules, risk of unforeseen and unintended consequences, and risk of ambiguity in the industry).

3. *Length of the delay: one year*

The EU institutions' intention aimed for a date that would ensure that all stakeholders have the necessary time to prepare, without causing a slowdown in the industries' implementation efforts. They have therefore chosen **2 January 2018** as the new implementation deadline.

4. *Next steps*

The EU institutions have to formally adopt a legislative act to amend the date when the MiFID II/MiFIR package becomes effective. The European Parliament expects the European Commission and ESMA to provide a clear roadmap on the implementation work, especially for the set-up of IT systems.

By March 2016, the European Commission should adopt the Delegated Acts and endorse the less debated Regulatory and Implementing Technical Standards (RTS/ITS). Other more debated RTS/ITS (e.g. position limits and services exemptions) should be endorsed at a later stage in 2016. In the meantime, ESMA will continue to draft the remaining RTS/ITS and guidelines (Level 3) texts as stated in its working programme for this year.

How we can help

PwC can support you in assessing the impacts of MiFID II/MiFIR and identifying the gaps. Our team of qualified professionals can also directly support or enhance your efforts in the implementation of these requirements.

PwC will keep you informed of any updates regarding the MiFID II/MiFIR timeline.

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Let's talk

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