

Flash News

Potential delays for some parts of MiFID II/MiFIR

12 November 2015

ESMA announced on 10 November 2015 that it pleaded with the Commission to delay certain parts of MiFID II/MiFIR. The entire MIFID II/MiFIR framework was supposed to be applicable as of 3 January 2017. However, all the final Level 2 texts are still not ready. The Commission hasn't yet endorsed the Final technical advice and the Final drafts of Regulatory and Implementing Technical Standards (RTS/ITS), submitted by ESMA in 2014 and 2015 respectively. ESMA has yet to prepare many others RTS/ITS in 2016.

1. Delays to some parts of MiFID II/MiFIR?

Steve Maijoor, the ESMA Chair delivered a statement to the Economic and Monetary Affairs Committee (ECON) at the European Parliament on 10 November 2015. He provided the Eurodeputies with an update on the ESMA work on MiFID II/MiFIR II and the consequences on the implementation timeline.

The ESMA Chair insisted on the fact that the delay to build the necessary – MiFID II/MiFIR compliant- IT systems is hardly compatible, and in some aspects even incompatible, with the initial regulatory timeline. Moreover, there are still some uncertainties related to what will be in some of the final texts:

“The **timing** for stakeholders and regulators alike **to implement the rules and build the necessary IT systems is extremely tight**. Even more, **there are a few areas where the calendar is already unfeasible**. This relates to the fact that it will take some time, and well into 2016, before the text of the RTS will be stable and final. [...] We have therefore raised these timing issues with the European Commission, and the fact that some IT systems will not be ready in January 2017, and the uncertainty this will create as they are needed for the execution of certain elements of MIFID 2. Related to that, **we have raised with the Commission whether this uncertainty would need a legislative response with delaying certain parts of MIFID 2, mainly related to transparency, transaction and position reporting.**”

[Steve Maijoor, Speech to ECON, 10 November 2015]

ESMA has thus suggested to the European Commission to postpone the implementation timeline for some aspects of the MiFID II/MiFIR:

1. **Transparency**
2. **Transaction reporting**
3. **Position reporting**

With respect to transaction reporting, ESMA highlights that both ESMA/ supervisors and the investment firms/trading venues need to build complex IT systems “[almost] from scratch” to allow the former to determine aggregate positions in commodity derivatives at group level, and the latter to reshape their transaction and reference data reporting systems.

When it comes to transparency and position reporting, ESMA explains that the assessment of the pre-transparency waivers and of the proposals for setting position limits will be “extremely resource-intensive” if the initial deadline is kept, “given the sheer volume of financial instruments covered”.

The EU institutions will have to decide whether to postpone these aspects of the MiFID II/MiFIR framework.

Based on the latest ECON discussions, held on 11 November 2015, **the European Commission** appears to agree with ESMA “that a delay is needed” and that “**the simplest and most legally sound approach would be a one-year delay**”. **The European Parliament**, however, appears to strongly oppose the delay. Its rapporteur, Markus Feber, mentions that “postponement of implementation of the cornerstone legislation of financial markets in the EU is not in line with G20 commitments”.

2. MiFID II/MiFIR ESMA 2016 Work programme

A month ago, on 7 October 2015, ESMA published its 2016 Work programme. The currently expected MiFID II/MiFIR related texts and their delivery due date are summarised in the table below:

		ESMA 2015 Deliverables		ESMA 2016 Work Programme	
		2015 Deliverables	Date	2016 Deliverables objectives	Due date
LEVEL 2	Delegated Acts	?	Exp. Q4	1 item of Technical advice on whether exchange trade derivatives should be temporarily excluded from access provisions in MiFIR	
	Regulatory Technical Standards	4 (third country firms) 27 (MiFIR topics)	Q2 Q3	Between 15 and 18 TS including 2 TS assessing whether certain classes of derivatives should be subject to the trading obligation	Q1 & Q4
	Implementing Technical Standards	2 (third country firms) 1 (MiFIR topics)	Q2 Q3		
LEVEL 3	Guidelines	-		Guidelines on MiFID II/MiFIR topics	Q3
	Q&A	-		Q&A on product governance & other MiFID II/MiFIR topics	Q2
Others				Info. & marketing to clients & best execution: follow-up on peer reviews	Q3
				Third country firms: 1 st batch of cooperation agreements with third country authorities	Q4
				Product intervention: Framework/ methodology	Q3
				Product intervention: Identification of areas for policy/supervisory action	Q4

3. How we can help

PwC can support you in assessing the impacts of MiFID II/MiFIR and identifying the gaps. Our qualified professionals can also directly support or re-enforce your teams in the implementation of these requirements.

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

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