

MIFID II /MIFIR

Reference documents:

- Directive 2014/65/EU of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC (insurance mediation) and directive 2011/61/EU (AIFMD) EUOJ L 173/349 12/6/2014
- Regulation 600/2014 of 15 May 2014 on markets in financial instruments and amending Regulation 648/2012 (EMIR) EUOJ L 173/84 12/6/2014

Link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_173_R_0009&from=EN

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_173_R_0005&from=EN

[http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/0298\(COD\)&l=EN](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/0298(COD)&l=EN)

<http://www.europarl.europa.eu/oeil/popups/summary.do?id=1350811&t=f&l=en>

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2017:087:FULL&from=EN>

https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-markets/securities-markets/investment-services-and-regulated-markets-markets-financial-instruments-directive-mifid_en

<https://www.esma.europa.eu/press-news/esma-news/esma-highlights-importance-lei-mifidiimifir-compliance>

Entry into force: 2/07/2014 (level 1)

Entry into application: 3/01/2018

Presentation

The proposed texts are a revision of the Markets in Financial Instruments Directive (MiFID), which came into force in November 2007. After 3 and half years of implementation, this update had been expected, especially since the current MiFID had given rise to various interpretations in its transposition into national laws, resulting in over-regulation in certain Member States.

Moreover, the Commission wanted to adapt the Directive to the changes having taken place in the financial markets over recent years: new trading venues, new products, innovations stemming from technological developments such as high-frequency trading.

It also wanted to draw the lessons from the 2008 financial crisis and integrate the recommendations made by the G20 in Pittsburgh in September 2009 concerning the need to improve the transparency and surveillance of certain markets, which were less regulated at the time, such as OTC derivatives markets.

As a reminder, the initial version of MiFID laid down a regulatory framework for the provision of investment services to investors (such as brokerage, consulting, trading, portfolio management, underwriting, etc.) by banks and investment companies (investment service providers), but also for the operation of regulated markets, in particular equity markets, by market operators. It also aimed to promote and control the provision of cross-border investment services via the granting of a European passport to investment companies, enabling them to provide their services across the EU either through the free provision of services or through the set-up of a branch. Another significant provision – the rule concerning the concentration of orders on a particular regulated market – authorises investment companies to choose their preferred trading venue(s), in particular the one enabling them to offer their clients the best execution guarantee.

The proposed revision consists of a Regulation (MiFIR) which will be applicable directly and "as is" in the Member States, and a Directive (MiFID II) which will require transposition in the Member States.

The 2 texts (the Directive and the Regulation) must be read jointly as they jointly form the legal framework governing the requirements applicable to Investment Companies (ICs), Regulated Markets (RMs) and providers of data reporting services.

For more information please refer the European Parliament (Legislative Observatory); links are indicated in the Link paragraph of this document

Current Situation:

- Entry into application

MIF II has entered into application on the 3rd of January 2018 (one year delay). The operational launch went well.

- Transposition of the level 1 & level 2

Member States had until the 3rd July 2017 to transpose the level 1 and level 2 Directives (due to the one year delay). French regulators decided to maintain the momentum. The level 1 has been transposed (publication in the French JO on the 23rd of June) except for the Title VI (Competent Authorities) for which a specific mandate was required (is included in the Loi Sapin2). The transposition in the local regulation has been achieved. Now asset managers ruled by AIFMD or UCITS are no more considered as Investment Firms but remain submitted to parts of MIFID2 requirements. In November 2017, the AMF has started its cleaning process (negative transposition). It has to remove from the French texts requirements that are in the EU regulations. To be noted the transposition was not done at the end of 2017 in some countries.

The French regulator (AMF) has start a process of reviewing its policy in the context of MIF II. This will be done in a new format (as of today the policy was disseminated in a variety of formats, including guides, Q&As, positions, guidelines, news releases and annual reports...).

- Level 3

Level 3 is made of Q&A and Guidelines.

Several Q&A have already been issued and could be amended / completed (for example, dated 12th of July 2018 about investor protection and dated 26th of September on data reporting):

- Investor protection (including costs and charges)
- Transparency and market structure
- Systematic internalisers
- CFD and other speculative products
- Commodity derivatives

ESMA has issued several guidelines amongst them those on:

- transaction reporting, record keeping
- product governance
- suitability (finally issued on the 28th of May)

To be noted, ESMA publishes regularly reports regarding oversight by national competent authorities in relation to different MIFID2 requirements ("compliance table").

ESMA has proposed the EC amending the text related to the tick size calculation for financial instruments where the main pool of liquidity is located outside the EU

- Other work undertaken by ESMA

ESMA has launched its Financial Instruments Reference Data System (FIRDS) on the 16th of October 2017

In its workplan for 2018, ESMA foresees to continue its work on different topics in relation to MIF II such as:

- Standards for determining which derivatives are TOTV only (traded on a trading venue)
- Tick size for systematic internalisers quotes
- Production of different reports

Also for 2018, since MIF II is now live, ESMA intends to start supervising the effective implementation of MIFID2/MIFIR. For example, on:

- The investor protection

- The supervisory convergence on pre-trade transparency, position limits, commodity derivatives, third countries trading venues, ...)

In addition, ESMA has launched its interactive single rulebook (all the MIF II texts will be available via this tool).

- On the industry's side

As an answer to the requirements as regards product governance and costs and charges, the industry (through several associations) has established a pan-European model to be used for the description of target markets (called EMT). Several initiatives from the industry (for example RegXchange) are appearing with the aim to connect manufacturers with distributors.

The industry has reached an agreement on how to deal with the ban of inducement in case of funds.

Main steps:

- Level 1

The level 1 is made of two texts: a directive (MIFID2) and a regulation (MIFIR) and has entered into force on the 2nd of July 2014.

Main milestones:

- Publication of both EP reports (from Markus Ferber) on 16 March 2012 (MIFID II) and 27 March 2012 (MIFIR)
- Vote in ECON on 26 September 2012
- Vote in plenary on 26 October 2012 (no legislative resolution has been voted in order to let some latitude to the negotiations with the Council and the Commission (Trilog)
- 19/02/2014: Approval by the COREPER of the compromise agreement with EP
- 15/04/2014: Adoption by the EP
- 14/05/2014: Council formal approval
- 12/6/2014: Publication in the Official Journal of the European Union (entry into force: 20 days)

- Level 2

The level 2 is made of:

- 3 delegated acts – a directive and two regulations -; these texts have been written by the European Commission taking into account the Technical Advices provided by ESMA and are mostly focused on the Investor Protection part of MIFID2
- A set of Technical Standards (RTS & ITS) – around 40 -; these texts have been by ESMA and shall become delegated acts.

Level 2 texts have been published in the EU Official Journal on the 31st of March (see paragraph Links)

Main milestones:

- 23/4/2014: EC Mandate to ESMA
- 22/5/2014: ESMA Consultations (deadline: 1^{er} august 2014)
- December 2014: Publication of the ESMA technical advice and of a consultation paper (following the discussion paper of the summer) for the drafting of RTS/ITS.
- 2015 (June, September, December): ESMA has transmitted over 40 draft RTS/ITS to the European Commission
- 10/02/2016: the EC has adopted the postponement of the entry into application of the “package MIFID2/MIFIR”. The new date is the 03/01/2018 (one year delay).
- 2016 (April and May): the EC has published three proposals (a delegated directive and a delegated regulation related to the level 1 directive and a delegated regulation related to the level 1 regulation)
- 18/05/2016: the EP and the Council have approved the delay. The official agreement has been made on the 7th of June 2016
- March 2017: publication in the EU Official Journal of the three delegated acts

Next Steps:

Foreseen

Any update of the level 3
Adoption by the EC of the text modifying the tick size calculation

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