

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

Entry into force: 2/07/2014 (level 1) – 3/01/2018 (level 2)

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 a 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 Pittsburg 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

The entry into application of level 2 has been postponed. The new date is the 3rd of January 2018 (one year delay).

Man should also note that this postponement concerns the whole package – the Commission has concluded that a partial postponement may have undesirable effects – will have an impact on two other regulations (MAR and CSDR) since they both make reference to the “3rd January 2017”.

- 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)

- 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.

- Level 3

Level 3 is made of Q&A and Guidelines.

Regarding MIFID2, several Q&A have already been issued and could be amended / completed:

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

ESMA has published on the 7th of August an amended version of its final version of the Guidelines on transaction reporting, record keeping issued on the 10 October 2016. The translations of this document are to be issued shortly now. Guidelines on product governance have been issued on the 2nd of June 2017. ESMA has issued a Consultation Paper as regards the guidelines on suitability (answers expected for the 13th of October).

ESMA is expected to issue Q&A in relation to the reporting of Corporate Actions as well as transfers (in application of the regulatory reporting).

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).

Main steps:

- Level 1

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 voter 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 after its publication, ie. 2 July 2014

- Level 2

23/4/2014: EC Mandate to ESMA

22/5/2014: ESMA Consultations (deadline: 1^{er} august 2014)

July 2014: 2 ESMA Open hearing

19/12/2014: Publication of the ESMA technical advice

19/12/2014: publication of a Consultation paper (following the discussion paper of last summer) for the drafting of RTS/ITS. Deadline for responses: 2 march 2015.

29/06/2015: ESMA has transmitted 6 draft RTS/ITS upon third country firms

28/09/2015: ESMA has transmitted 27 RTS and 1 ITS on the 28th of September 2015, mainly on market infrastructures and transparency

11/12/2015: ESMA has transmitted 8 ITS on the 11 of December 2015 upon several topics (cooperation between competent authorities, suspension / removal of financial instrument from trading, sanctions, APA-CTP-ARM, ...)

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).

7/04/2016: the EC has published the delegated Directive related to the level 1 directive (MIFID2).

25/04/2016: the EC has published the delegated Regulation related to the level 1 directive (MIFID2).

16/05/2016 the EC has published the delegated Regulation related to the level 1 Regulation (MIFIR)

18/05/2016: the EP and the Council have approved the delay. The official agreement has be made on the 7th of June 2016.

- Level 3

23/12/2015: Consultation Paper on the future guidelines (essentially on the regulatory reporting)

Next Steps:

Foreseen

The rest of Q&A / guidelines needed to implement the new requirements
Answers to the Consultation paper on suitability (guidelines)

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