



Guidelines on the MiFID II/MiFIR obligations on market data. International Bulletin of June 2021.

The provision of market data is essential for market participants to obtain a desired overview of trading activity. Therefore, MiFID II¹/MiFIR² introduced provisions to ensure that market data are available to market participants in an easily accessible, fair and non-discriminatory manner, to decrease the average cost of the market data and to make data available to a wider range of market participants. Articles 13, 15 and 18 of MiFIR and 64 and 65 of MiFID II establish requirements that are applicable to trading venues, approved publication arrangements (APAs), consolidated tape providers (CTPs) and systematic internalisers (SIs), all of which are “market data providers”, in relation to the provision of market data on a reasonable commercial basis (RCB) and that guarantee non-discriminatory access to that information. Articles 6 to 11 of Delegated Regulation (EU) No 2017/567 and Articles 84 to 89 of Delegated Regulation (EU) No 2017/565 develop these requirements based on the cost of producing and disseminating the data, in addition to requiring that market data providers comply with a series of disclosure requirements designed to enable their users to understand how the market data is priced.

These guidelines apply to NCAs and the aforementioned market data providers (with the exception of the section on the provision of delayed data that does not apply to systematic internalisers). ESMA acknowledges that it is important to take the different nature, scale and complexity of market data providers into account.

Guideline 1 aims to clarify the regulatory provisions relating to the market data policies of providers, to ensure that they are clear and easily accessible. Thus, market data providers should publish all documents concerning their market data policy in an easily accessible format, which is user-friendly, on their website. Specifically, this policy must present in clear and unambiguous terms all relevant market data information, including the price list for market data offerings as well as any indirect services necessary for accessing and utilising said data.

Guideline 2 establishes that market data providers must have clear and documented cost accounting methodologies, in order to adjust their fees and the price of indirect services (connection fees or required software or hardware). Each methodology should also identify the costs that are attributable to the production and dissemination of market data (i.e. direct costs) and the costs that are shared with other services, such as joint costs. Where relevant, further distinction should be made between variable costs and fixed costs. The methodology must include an explanation of whether any margin is included in the prices and whether they are subject to periodic review. This guideline also specifies that direct costs should be understood as costs that are solely attributable to the production and dissemination of market data, such as dedicated staff working on these tasks or the costs for carrying out audits. It defines joint costs as costs that occur when the processing of a single input resource results simultaneously in two or more different products, such as trade execution and the production and dissemination of market data. In addition, the distribution of this last cost category should be apportioned on the basis of appropriate allocation keys (allocation principle). The guideline similarly requires a distinction to be made between variable costs and fixed costs.

Specifically, guideline 2 states that to ensure that the allocation of costs reflects the actual costs, the methodologies should include a justification of which costs are included in the fees for market data and in particular a justification of the appropriateness of the allocation principles and keys for costs that are shared with other services. Finally, this guideline states that in the case of APAs and CTPs, no joint costs are incurred.

Guideline 3 establishes that market data providers should not impose any unjustified or overly onerous penalty clauses, and they should only be applied in compliance with the principle of charging on a reasonable commercial basis. To ensure penalties are justified, market data providers can carry out, for example, an audit which establishes that customers have not complied with the terms of the market data licence agreement, and the amount of the penalty should be based on the recovery of revenues which would have been generated in case of compliance with the licence.

Guideline 4 states that market data providers should describe in their market data policy the categories of customers and how the use of data is taken into consideration to set up the categories of customers. The policy should justify any differentiation of fees and terms and conditions pertaining to each category of customers. Market data providers should also justify any amendment to their market data policy resulting in a change of the classification of customers.

Guideline 5 stipulates that the market data policy should also clarify how fees are applied when a customer potentially belongs to more than one customer category, for instance, when the customer makes different simultaneous uses of the data. In this case, market data providers are expected to charge for the provision of data only once by applying one customer category only and, as an exception, they may add a proportionate increment of the relevant fee, where there are multiple and significant different uses made by the customers of the data.

Also in relation to customer categories, **guideline 6** establishes that customers who fall within the same category should be offered the same set of options with respect to technical arrangements. In this sense, it should be ensured that technical arrangements, including latency and connectivity, neither discriminate nor create any unfair advantages.

Guideline 7 concerns the discount policies that market data providers must disclose and states that the scope of the discount should be clearly defined, along with the conditions for applications and the terms of application. In any case, the application of discounts should not be used to create additional categories of customers, nor should the discount for bundled services exceed the price of a service offered separately.

In regard to user fees, **guideline 8** addresses the “per user” concept and indicates that it should be understood as a model of charging fees for display data which enables customers to avoid multiple billing in the event that market data have been sourced through multiple data providers or subscriptions. Market data providers should use for display data the unit of count of the active user, which enables customers to pay according to the number of active users accessing the data, rather than per device or data product.

Guideline 9 goes on to establish two eligibility conditions so that customers of providers are able to feasibly apply the per user basis: (a) the customer is able to identify correctly the number of active users who will have access to the data within the organisation and (b) the customer reports to the market data provider the number of active users. Market data providers may additionally seek an initial check ex ante to validate the number of users and/or the eligibility of the customer.

However, **guideline 10** provides that when market data providers consider the per user basis as disproportionate to the cost of making the data available and are not able to offer it to customers, they should disclose the reasons by clearly indicating the specific features of their business model which make the adoption of the per user basis disproportionate and why these make the adoption of the model unfeasible.

In regard to the obligations to maintain bundled and unbundled data, provided for in the corresponding Delegated Regulations, **guideline 11** clarifies that market data providers should always inform customers that the purchase of market data is available separately from additional services (“data unbundling”). Such additional services should be understood to include the provision of data other than pre- and post-trade transparency data (e.g. ESG data or data analysis). Prices for bundled and unbundled data should be clearly disclosed in the market data policy.

In relation to transparency obligations, **guideline 12** standardises the terminology that should be used by providers in their market data policies and price lists, requiring a clear definition of these terms to be provided (Annex I of the Guidelines).

Guideline 13 establishes that providers should display the price of display data by number of active users in their market data policy and in the template. In addition, they should always make available to the customer the option to measure access to display data by the number of active users. In the event that the market data provider establishes an alternative unit of count for display data, they should explain in their market data policy how the fees are applied, while always enabling the customers to freely choose the unit of count according to their preference. Likewise, this guideline determines that providers should also clearly indicate in their market data policies the unit of count for non-display data.

Guideline 14 establishes a standardised publication format to comply with this obligation. This will ensure that the different market data providers provide the information in a consistent manner in terms of granularity.

Likewise, **guideline 15** explains that market data providers should include in the template provided in Annex II of the Guidelines a summary of how the price was set and a more detailed explanation of the cost accounting

methodology used.

The last of the guidelines relating to transparency obligations (**guideline 16**), refers to auditing practices and their terms and conditions.

In regard to the obligation to make market data available free of charge 15 minutes after its publication as indicated by the standard, **guideline 17** stipulates that free access to delayed data should be provided to any customer, including professional customers. Market data providers may require a simple registration for the purpose of monitoring who has access to the delayed data.

The delayed data publications should cover all the trading systems operated by the trading venues and the post-trade information should contain all the relevant fields for the purpose of post-trade transparency, including flags, as specified in RTS 1 and 2. For pre-trade delayed data, given the operational challenges resulting from high volumes of pre-trade data, it is considered sufficient to only include the first current best bid and offer prices available and the depth of trading interest at those prices.

Guideline 18 specifies that post-trade delayed data should be provided in a format adapted to the users' needs, and available for a sufficient period of time. Data should be available until midnight of the following business day. Pre-trade delayed data should be available until the next more recent quote is available (i.e. without historical information) or in case of lack of such an update, until midnight of the following business day.

Also in this area, the last guideline deals with data redistribution services and the added value from the creation of products based on raw data. Guideline 19 sets out the cases in which a data provider may impose a charge on a user, without prejudice to the legal precept that prohibits charging for the use of delayed data.

¹**Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.**

²**Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.**

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