



MiFID 2/MiFIR QUICK FIX: co-legislators agree on the postponement in a year of the date of application. May 2016.

The onset of the last great financial crisis prompted an urgent review of MiFID, the Directive that had hitherto regulated the Union's markets in financial instruments, to improve their integration, functioning and efficiency. The review led to publication on 12 June 2014 of two different rules: first, Directive 2014/65/EU of the European Parliament and Council, of 15 May 2014, on markets in financial instruments, amending Directive 2002/92/EC and Directive 2011/61/EU (MiFID 2) and, second, Regulation (EU) 600/2014 of the European Parliament and Council, of 15 May 2014, on markets in financial instruments, amending Regulation (EU) 648/2012 (MiFIR).

The terms of these two standards originally had to be fully applied in Member States by 3 January 2017. In addition, MiFID 2, being a Directive, set a deadline for transposition into states' national law of 3 July 2016.

However, following a request from ESMA, the European Commission (EC) put a proposal to the European Union Council and Parliament (EP) to put back application of both standards by one year. In recent weeks, the three institutions involved, CE, EP and Council, have negotiated the final draft of this proposal. This, besides imposing a one-year delay in application of MiFID 2/MiFIR and Articles 4.2 and 4.3 of the Market Abuse Regulation (MAR), introduces a number of other minor amendments and changes the dates of some provisions in the MAR and Central Securities Depositories Regulation (CSDR). This package of measures has become known as the **MiFID 2/MiFIR Quick Fix**.

On 2 October 2015, ESMA reported to the EC on the convenience of postponing the application date of MiFID 2/MiFIR. Reasons given were that ESMA, the national competent authorities (NCAs) and market participants needed more time to put in place the infrastructure to meet their new obligations, first, to provide reference data for transaction reporting purposes on financial instruments listed on MiFID 2 authorised venues and, second, to report commodity derivative positions.

On 10 February 2016 the EC published a proposal postponing the date of entry into force of MiFID 2/MiFIR by one year. It also delayed application of some other articles directly linked to MiFID. These were article 39.4 of the MAR¹ and article 76 (5) 2b), and (7), of the CSD Regulation².

In addition, on 16 February 2016 the European Parliament's Committee on Economic and Monetary Affairs (ECON) proposed delaying the transposition of MiFID 2/MiFIR by a year. It subsequently proposed, on 2 March 2016, amending some aspects of these standards. Specifically, it sought to exempt repos and securities lending from the MiFID 2 pre-trade transparency rules, to bring these points into line with Regulation 2015/2364 on securities financing transactions, and the regime for packaged transactions.

It also proposed extending the MiFID 2 own-account exemption to market members or participants not involved in high frequency trading. ECON's thinking is that non-financial institutions trading on their own

account as participants in a venue should enjoy the exemption provided for in Article 2 (1)(d)(ii) of MiFID 2³. Accordingly, real economy companies engaging in hedging transactions would not be subject to the regulations on markets in financial instruments.

Finally, the negotiations of this proposal resulted in a one-year delay to the date of application for articles 4.2 and 4.3 of the MAR, but not article 4.1. This means that, as from 3 July 2016, regulated market operators and investment firms as well as operators of multilateral trading facilities or organised trading facilities must report without delay to the competent authority of the trading venue any financial instrument submitted for admission to trading, or which has been admitted for trading, or been traded for the first time. However, as organised trading facilities only come into existence on 3 January 2018 this obligation will only apply from 3 July 2016 to regulated market operators, investment firms and operators of multilateral trading facilities.

Also, the obligation on NCAs to report this information to ESMA and on ESMA to publish a list of all financial instruments traded on venues will only be binding as from 3 January 2018.

On 18 May 2016, the Permanent Representatives Committee, acting on behalf of the European Union, reached an agreement on the articles of the Quick Fix.

The final text of the proposal is expected to be approved by the European Parliament on first reading. It will then go to the Council for approval. As MiFID 2 is supposed to be transposed into Member States' national law by 3 July 2016, the Quick Fix will require approval before this date.

Links:

[Markets in financial instruments: Council confirms agreement on one-year delay](#)

[Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments as regards certain dates](#)

[Proposal for a Regulation of the European Parliament and of the Council amending Regulation \(EU\) No 596/2014 on market abuse and Regulation \(EU\) No 909/2014 on improving securities settlement in the European Union and on central securities depositaries as regards certain dates](#)

1 Article 39.4 of Regulation 596/2014 on Market Abuse: *"4. References in this Regulation to Directive 2014/65/EU and Regulation (EU) No 600/2014 shall, before 3 January 2017, be read as references to Directive 2004/39/EC in accordance with the correlation table set out in Annex IV to Directive 2014/65/EU in so far as that correlation table contains provisions referring to Directive 2004/39/EC.*

Where reference in the provisions of this Regulation is made to OTFs, SME growth markets, emission allowances or auctioned products based thereon, those provisions shall not apply to OTFs, SME growth markets, emission allowances or auctioned products based thereon until 3 January 2017."

2 Article 76.5.b) and 7 of Regulation 909/2014 on Central Securities Depositaries:

"5. The settlement discipline measures referred to in Article 7(1) to (13) and the amendment laid down in Article 72 shall apply from the date of entry into force of the delegated act adopted by the Commission pursuant to Article 7(15).

An MTF that complies with the criteria laid down in Article 33(3) of Directive 2014/65/EU shall be subject to the second subparagraph of Article 7(3) of this Regulation:

(b) where an MTF has not applied for registration under Article 33 of Directive 2014/65/EU, until 13 June 2017.

7. References in this Regulation to Directive 2014/65/EU and Regulation (EU) No 600/2014 shall, before 3 January 2017, be read as references to Directive 2004/39/EC in accordance with the correlation table set out in Annex IV to Directive 2014/65/EU in so far as that correlation table contains provisions referring to Directive 2004/39/EC."

3 Article 2(1)(d)(ii) of Directive 2014/65/EU on markets in financial instruments: *“1. This Directive shall not apply to: d) persons dealing on own account in financial instruments other than commodity derivatives or emission allowances or derivatives thereof and not providing any other investment services or performing any other investment activities in financial instruments other than commodity derivatives or emission allowances or derivatives thereof unless such persons: ii) are members of or participants in a regulated market or an MTF or have direct electronic access to a trading venue.”*