



MiFID II delay

A reprieve for firms but no time to pause in implementation

Following months of speculation, the European Commission published on 10 February legislative proposals to delay both the [MiFID II](#) and [MiFIR](#) implementation dates by a year to 3 January 2018. This is an important development. The delay will apply to the package in full, rather than in part, and is deemed necessary due to the “magnitude” of the data challenges.

The Commission has not proposed to extend the date by which Member States must transpose the Directive (currently set at 3 July 2016), something several Member States have called for given the delays in finalising the level two implementing measures. This should give firms more time to incorporate the local rules into implementation programmes, although Member States may seek to secure an extension to the transposition date during negotiations.

The MiFIR proposal also amends the EU Market Abuse Regulation (MAR) and the EU Central Securities Depositories Regulation (CSDR). MAR and the CSDR settlement discipline rules will still apply to firms from July 2016 and Q2 2018 respectively, but the concepts and rules as set out in MiFID I should be used until the new application date of MiFID II. Regarding MAR, new concepts introduced in MiFID II, such as provisions referring to Organised Trading Facilities (OTFs), SME growth markets, emission allowances, and auctioned products will not apply until January 2018. Regarding CSDR, there will be implications in relation to the rules on settlement failure for Multilateral Trading Facilities (MTFs) hoping to apply for registration as SME growth markets under MiFID II.

The proposals will now pass to the EU Parliament and the Council for negotiation and adoption. We expect that all parties will want the decision finalised as soon as possible to provide certainty to the European Securities and Markets Authority (ESMA), national regulators and firms. On a best case scenario this could happen within the next few weeks.

What are the potential benefits?

- Delaying the entire package in full, rather than in part, as had been rumoured, will make implementation less complex than might otherwise have been.
- A more realistic timeline will mean greater certainty for planning budgets and securing resources for MiFID II programmes, as well as enable firms to actually meet the implementation deadline and consider more strategic solutions.

What are the potential risks?

- There could be a loss of impetus for planning, implementation and decision-making. As level 2 implementing measures will be finalised over the next few months, firms should not pause in their MiFID II implementation programmes. Even under the extended timeframe, firms can only meet the 2018 MiFID II application date if work on MiFID II programmes is ongoing.
- As the proposals go through the EU negotiation process, there is a risk that amendments are introduced and / or the process is time consuming, extending the period of uncertainty for firms. While the Commission has not suggested any amendments to the content of the rules in the level 1 text, it is possible that the European Parliament or Council may seek amendments on more controversial issues or areas where they think 'quick fix' clarification changes can be made to the text. However, the desire at the EU level to provide clarity on the delay as soon as possible should mean lengthy negotiations or significant amendments are avoided.
- The delay will not be sufficient if the European authorities take too long to finalise the level 2 rules (technical standards and delegated acts). In its proposals, the Commission states that an extended application date to January 2018 is achievable only if the relevant level 2 measures are finalised by June 2016.

In addition, firms should consider and manage the overlap of the MiFID II implementation programme with other regulatory implementation programmes. MiFID II overlaps with MAR, CSDR, the EU Securities and Financing Transactions Regulation (SFTR), the EU Packaged Retail and Insurance-based Investment Products Regulation (PRIIPs), and the Insurance Distribution Directive (IDD), to name but a few.

Most firms are now well into their MiFID II implementation and have their various project teams up and running. There is a danger that, knowing there is a further year for implementation, senior management may refocus attention on other issues. Firms should not slacken the pace on MiFID II implementation – a delay will make the implementation timetable achievable, rather than easy.

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