ESMA proposes extending MiFIR transaction reporting to management companies providing MiFID services.

The reporting requirements of Regulation No 600/2014 on markets in financial instruments (MiFIR) aimed to provide national competent authorities (NCAs) with a complete picture of the market to support their oversight activities by introducing a uniform and standardized EU-wide reporting regime.

MiFIR applies to investment firms, credit institutions that provide investment services and/or perform investment activities, and market operators that includes any trading venues they operate. Also within the scope of MiFIR are financial counterparties, central clearing counterparties (CCPs) and third-country firms that provide investment services or activities in the EU with or without a branch (following an applicable equivalence decision by the European Commission).

On 24 September 2020, the European Securities and Markets Authority (ESMA) published a Consultation Paper seeking stakeholders’ views on some suggested amendments to the respective MiFIR Level 1 texts. The consultation period ended on 20 November 2020.

On 30 March 2021, based on the consultation feedback received, ESMA published a final report for the European Commission that contained recommendations and possible legislative amendments to the MiFIR transaction reporting regime. ESMA’s recommendations are particularly relevant for trading venues, systematic internalizers, investment firms, data reporting service providers, and asset management companies.

EU Commission finalized its approach on the inclusion of ESG in the delegated acts on MiFID II.

The European Commission released on the 21st April two sets of documents in final version regarding the inclusion of ESG into the MiFID II regulations.

The first set of delegated acts addresses the interactions with clients and how Investment Firms have to gather information about ESG preferences of clients, these should be included in the profile of clients (advisory and discretionary management) so as to enable the IF to propose adequate products to the client. This will not only address the proposal of products but also the reports that will have to present how the client portfolio is converging towards its objectives.

The second set of rules addresses the product governance that will have to encompass the ESG specificities of products as well as invite the IF to consider in its organisation sustainability objectives.

The time line is now that these texts should be approved by the European Parliament and Council, then published in the EU Official Journal, which all in all might lead to about 6 months to which the transposition delay should be added, another 12/15 months as one text is a delegated regulation, the other a delegated directive that requires transpositions.
Management companies in scope of MiFIR reporting

ESMA’s recommendations are particularly relevant for asset management companies. Concretely, to ensure a level playing field between MiFID investment firms and AIFM/UCITS management companies, ESMA has proposed to extend the scope of reporting requirements under Article 26 of MiFIR to UCITS and AIFM firms if they provide at least one MiFID service to third parties.

Therefore, the proposed change should only affect AIFM/UCITS management companies providing one or more MiFID services that would trigger the obligation to report transactions under Article 26 of MiFIR. The proposed change will not cover transactions stemming from other activities conducted by AIFM/UCITS firms.

The inclusion of management companies in the MiFIR transaction reporting regime could mean significant challenges, from IT changes to the cost associated with increased system complexities and potential new MiFID sanctions in case of breach.

Other important amendments

ESMA proposes additional adjustments to the reporting framework that are specifically relevant to trading venues, systematic internalizers, investment firms and data reporting service providers, including:

- The replacement of the trading on a trading venue (TOTV) concept with the systematic internalizer (SI) approach for over-the-counter (OTC) derivatives;
- The removal of the short sale indicator;
- The alignment with reporting regimes such as the Market Abuse Regulation (MAR), the European Market Infrastructure Regulation (EMIR) and the Benchmark Regulation;
- The reliance on international standards, including legal entity identifiers (LEIs), international securities identification numbers (ISINs) and classification of financial instruments (CFIs); and
- The inclusion of three additional data elements to harmonize the way they are reported and avoid inconsistent and duplicate reporting of the same information at the national level. In particular, these are indicators for:
  - Buyback programs;
  - Information on MiFID II client categories; and
  - Transactions pertaining to aggregated orders.

The European Commission is expected to adopt legislative proposals based on these recommendations. ESMA is ready to provide any additional technical advice on the legislative amendments suggested in the report.
ESG preferences under MIFID II

With the final delegated acts, it is the moment when the ESG information will materialize into a MIFID obligation.

Taking ESG preferences from clients in a formal way, along the MIFID II prescription will open a series of challenges on the capture, storage and retrieval of information. On top of which convergence of portfolio might add a new challenge.

• The proposed changes under MIFID II will impact the collection of data for the client profiles, which means developing clever new sets of ESG questions, updating the current profiles.
• To this the challenge will be to present to clients on an on going basis how their portfolio converges towards the objectives that they have assigned, this will be when all ESG regulations will interact.
• The arrival of this obligation will reinforce the necessity to have access to product ESG disclosure and to be able to present it to clients.

IF will have to ensure they develop adequate questionnaires to feed the client profiles, and liaise with the product governance so that only relevant products are presented to clients.

Other important changes

The EU Commission inspired the CSSF on the need to take sustainability into consideration for the functioning of the IF

• The delegated acts add a review of the conflict of interest policies and perspectives to include aspects linked to the sustainability and possibility to propose new products or services
• IF will have to propose products in line with client’s ESG expectations
• These new texts invite IF to include in their DNA sustainability, so that sustainability is not only an external client perspective, but it also addresses how organizations are functioning.
• The product governance organisation, data management, access to information, and elements supporting the different propositions will have to be addressed and implemented both at product manager level, but also for the distributors that might have review slightly their target markets and general governance.

These two acts although not released officially in the EU Journal should not be subject to changes, hence addressing the changes and the evolution they introduce now will help be ready and prepared once the obligation comes alive.