

Deloitte regulatory news alert

Potential implementation delay of MiFID II / MiFIR

23 November 2015

On 17 November 2015, the European Securities and Markets Authority (ESMA) released a note suggesting a potential delay in the implementation of certain provisions of MiFID II / MiFIR. The note follows a recent study conducted by ESMA on the feasibility to have certain systems required under MiFID II / MiFIR ready by the implementation deadline in January 2017.

Timing of IT systems implementation vs. legislative calendar

Provisions under MiFID II / MiFIR not only require updates of existing systems but also the development of a new set of systems in order to retrieve, consolidate and report data. This, in practice, is a lengthy process, which often exceeds a year and which also needs to account for requirements lay down in both Level 1 texts (i.e. Regulation and Directive) and Level 2 texts (i.e. RTS/ITS). However, even when considering the shortest delay in the legislative cycle (e.g. objection period from the EU Parliament and Council), final Level 2 texts are not expected to be published in the Official Journal before March 2016. Given a nine months timeframe at best, it has become evident that ESMA, National Competent Authorities (NCAs) as well as market players will face challenges to deploy all new requirements for 3 January 2017.

Transaction reporting and data availability

When looking at the reporting of data on financial instruments, reference data play a key role as it is the baseline which many IT systems point or refer to. Under MiFID II the scope of financial instruments to be reported has been enlarged beyond Regulated Markets (e.g. ETFs, derivatives). Current data references only exist for shares and bonds, and NCAs as well as Trading Venues are already expecting delay in the publication of new reference data, affecting therefore the availability of data in early 2017.

Transparency and position reporting

Transparency and position reporting are both data-heavy obligations that are narrowly linked to the implementation of reference data systems and the availability of all required data by early 2017. Alongside traditional regulated markets and Multilateral Trading Facilities (MTFs), transparency will also be organised around a third type of multilateral system, known as Organised Trading Facility (OTF).

Maintain the momentum

While the European Commission has acknowledged that a delay may be needed to ensure a smooth and effective implementation, others including some representatives of the EU Parliament believe that any delay will put at risk the overall legislation. At this stage, no official decision has been taken, but one can reasonably anticipate the postponement of some Level 2 provisions, namely with respect to market trading for non-equity instruments and financial transactions reporting. The continuous discussions between the industry, the ESMA and the European Commission reflect the inherent complexity and regulatory issues at stake.

Despite the need to monitor the potential delays in the entry into force, we believe it is appropriate to maintain the momentum on the currently on-going design, analysis, development and implementation of your MiFID 2 solutions.

For your reference, you may [read the ESMA note available](#) in English.

Should you have any question on the matter, do not hesitate to contact our MiFID 2 experts.

Thank you once again for your interest, and we look forward to discussing this further with you.

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