



EUROPEAN
COMMISSION

Brussels, **XXX**
[...](2016) **XXX** draft

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 600/2014 on markets in financial instruments, 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 depositories as regards certain dates

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Reasons for the proposal

Directive 2014/65/EU ('MiFID') together with Regulation (EU) No 600/2014 ('MiFIR') was adopted in the wake of the financial crisis. MiFID and MiFIR, collectively referred to as MiFID II, covers securities markets, investment intermediaries and trading venues. The new framework reinforces and replaces the current MiFID framework.

MiFID II extends the number of financial instruments covered by trading rules and ensures that trading takes place on regulated platforms. It introduces rules on high frequency trading. It improves the transparency and oversight of financial markets – including derivatives markets - and addresses the issue of price volatility in commodity derivatives. The new framework improves conditions for competition in the trading and clearing of financial instruments. Building on the rules already in place, the revised MiFID rules also strengthen the protection of investors by introducing robust organisational and conduct of business requirements. The MiFID II package consists of a Directive and a Regulation. Member States need to transpose the Directive by 3 July 2016. Both MiFID and MiFIR are scheduled to apply as of 3 January 2017.

The purpose of the draft proposal is to extend . B TJETTm(ext)-2(enl)5(.8uces o)-2(al of 3 Jaing)-al the i

The new framework requires trading venues and systematic internalisers to provide competent authorities with financial instrument reference data that describes in a uniform manner the characteristics of every financial instrument subject to the scope of MiFID II. Additional data are also used for other purposes, in particular for the calculation of various liquidity and transparency thresholds used for on-venue trading of all financial instruments covered by MiFID as well as for positions reporting of commodity derivatives.

In order to collect data in an efficient and harmonised manner, a new data collection infrastructure must be developed. This obliges ESMA, in conjunction with competent national authorities, to establish a Financial Instruments Reference Data System ('FIRDS'). FIRDS will need to cover the entire range of financial instruments that are included in the increased scope of MiFID II. In accomplishing this task, FIRDS will necessitate linking of data feeds between ESMA, NCAs and around 300 trading venues across the European Union. The vast majority of the new IT-systems underpinning FIRDS will need to be built from the ground, based on new parameters.

designed by reference to there being a liquid market and other transparency concepts. For other investor protection rules, aside from issues relating to the definition of financial instruments or the scope of the legislation, data inter-linkages generally do not exist, as these rules directly concern distribution and not trading. It is, therefore, recognised that an alternative approach would be to extend the date of entry into application only for the parts of the legislation directly relating to data collection.

However, after a careful analysis of that option, it appears that an extension for the whole package, including investor protection rules, as opposed to a staggered approach is preferable:

It avoids the risk of causing confusion and unnecessary costs that stakeholders would incur through a staggered implementation. Building various infrastructures simultaneously – as opposed to doing so in stages - would make the process more cost effective. For example, it avoids situations, where investment firms, involved in execution of orders, would have to set up organisational requirements/conduct rules in stages, which would be complicated, expensive and costly;

It avoids having to delineate between the areas that can be immediately implemented and those that cannot be, and, therefore, avoids the risk of causing unintended consequences which may not have been foreseen or sufficiently considered; and

It avoids the need for transitional rules, which by themselves would create new issues and divert resources of ESMA, NCAs and stakeholders from building the permanent framework.

On the basis of the above considerations, extending the entry into application for the entire MiFID II rulebook is therefore necessary and justified.

Changing the date of applicability of MiFID II does however have consequences for the applicability of other legislation, in particular Regulation (EU) 596/2014 ('MAR') and Regulation (EU) 909/2014 ('CSDR').

The market abuse framework will apply to certain definitions and concepts of MiFID II. As MAR is set to enter into application on 3 July 2016, there is already a provision in it, which ensures that before the originally foreseen date of entry into application of MiFID II, concepts and rules of MiFID I will apply. In order to ensure legal certainty for the period between the originally foreseen date of entry into application and the new date of entry into application, it is necessary to clarify in MAR that the concepts and rules as set out in MiFID I should be used until the new date of entry into application of MiFID II. MAR also refers to concepts that will be introduced by MiFID II, such as organised trading facilities ('OTFs'), small and medium-sized enterprises ('SME') growth markets, emission allowances or auctioned products based thereon. MAR sets out that its provisions shall not apply to these concepts until the originally foreseen entry into application of MiFID II. It is therefore also necessary to clarify in MAR that provisions referring to OTFs, SME growth markets, emission allowances or auctioned products based thereon shall not apply until the new date of entry into application of MiFID II.

The consequences for the CSDR are twofold. First, there are consequences for the application of the rules on settlement discipline to multilateral trading facilities ('MTFs') applying for registration as SME growth markets in accordance with Directive 2014/65/EU. Specifically, these rules allow MTFs meeting the criteria for an SME growth market under MiFID II to apply a longer extension period for the settlement of transactions whilst their registration as an SME growth market under MiFID II is still ongoing. Second, in order to have a clear and

coherent legislative framework for trading and settlement, CSDR relies on many of the definitions and concepts of MiFID II. In order to ensure legal certainty for the period between the previous date of entry into application and the new date of entry into application, it is necessary to clarify that until the new date of entry into application, the rules set out in MiFID I should be used.

1.4. Length of the extension

An extension of one year should provide sufficient and reasonable time for ESMA, NCAs and operators to put in place the infrastructure for data collection, reporting and the transparency threshold calculations. There are five steps in the implementation process: (1) business requirements (which in this case are the necessary regulatory technical standards/implementing technical standards), (2) specifications, (3) development (4) testing and (5) deployment. ESMA estimates that it should complete these steps in relation to the reference data, transparency calculations and position reporting systems by January 2018. This assumes that there is sufficient legal clarity on the final requirements under the relevant regulatory technical standards by mid-2016. On this basis, the draft proposal therefore extends the entry into application of the whole framework until 3 January 2018 by one year.

The extension of entry into application of Regulation (EU) No 600/2014 should not impact adoption of delegated acts and technical standards under Regulation (EU) No 600/2014. The Commission should adopt these measures in accordance with the procedure envisaged in order to allow the industry to set up and adjust internal systems to ensure compliance with new requirements on the date of entry into application of Regulation (EU) No 600/2014.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- Legal basis

The proposal is based on Article 114 of the TFEU. It is complementary to the proposed regulation extending the entry into application of MiFID.

- Subsidiarity

According s09i

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

robust organisational and conduct requirements. The new rules are to apply from 3 January 2017.

- (3) The new framework introduced by Regulation (EU) No 600/2014 and Directive 2014/65/EU

that those steps should be completed by January 2018 provided that there is legal

- (3) In Article 19(1) '3 January 2019' is replaced by '3 January 2020'.
- (4) In Article 26(10) '3 January 2019' is replaced by '3 January 2020';
- (5) Article 35(5) is amended as follows:
 - (a) '3 January 2017' is replaced by '3 January 2018';
 - (b) '3 July 2019' is replaced by '3 July 2020';
- (6) In Article 37(2) '3 January 2017' is replaced by '3 January 2018';
- (7) Article 52 is amended as follows:
 - (a) in paragraph 1, '3 March 2019' is replaced by '3 March 2020';
 - (b) in paragraph 4, '3 March 2019' is replaced by '3 March 2020';
 - (c) in paragraph 5, '3 March 2019' is replaced by '3 March 2020';
 - (d) in paragraph 6, '3 March 2019' is replaced by '3 March 2020';
 - (e) in paragraph 7, '3 July 2019' is replaced by '3 July 2020';
 - (f) in paragraph 8, '3 July 2019' is replaced by '3 July 2020';
 - (g) in the first subparagraph of paragraph 9, '3 July 2019' is replaced by '3 July 2020';
 - (h) in the second subparagraph of paragraph 9, '3 July 2021' is replaced by '3 July 2022';
 - (i) in the first subparagraph of paragraph 10, '3 July 2021' is replaced by '3 July 2022';

Article 3

Regulation (EU) No 909/2014 is amended as follows:

- (1) In point (b) of the second subparagraph of Article 76(5) '13 June 2017' is replaced by '13 June 2018'.
- (2) In Article 76(7) '3 January 2017' is replaced by '3 January 2018'.

Article 4

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President