

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2016/0033(COD) Procedure completed
Markets in financial instruments: certain dates Amending Directive 2014/65/EU 2011/0298(COD)	
Subject 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 2.50.08 Financial services, financial reporting and auditing 2.50.10 Financial supervision	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 ECON Economic and Monetary Affairs	 FERBER Markus	04/02/2016
		Shadow rapporteur	
		 DODDS Anneliese	
		 SWINBURNE Kay	
		 VAN NIEUWENHUIZEN Cora	
		 GIEGOLD Sven	
	 KAPPEL Barbara		
Council of the European Union European Commission	Committee for opinion	Rapporteur for opinion	Appointed
	 DEVE Development	The committee decided not to give an opinion.	
	 ITRE Industry, Research and Energy	The committee decided not to give an opinion.	
	 JURI Legal Affairs	The committee decided not to give an opinion.	
	Commission DG Financial Stability, Financial Services and Capital Markets Union	Commissioner HILL Jonathan	

Key events			
10/02/2016	Legislative proposal published	COM(2016)0056	Summary
25/02/2016	Committee referral announced in Parliament, 1st reading		
07/04/2016	Vote in committee, 1st reading		
07/04/2016	Committee decision to open interinstitutional negotiations with report adopted in committee		
11/04/2016	Committee report tabled for plenary, 1st reading	A8-0126/2016	Summary
24/05/2016	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE604.824	
07/06/2016	Results of vote in Parliament		
07/06/2016	Debate in Parliament		
07/06/2016	Decision by Parliament, 1st reading	T8-0243/2016	Summary
21/06/2016	Act adopted by Council after Parliament's 1st reading		
22/06/2016	End of procedure in Parliament		
23/06/2016	Final act signed		
30/06/2016	Final act published in Official Journal		

Technical information	
Procedure reference	2016/0033(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 2014/65/EU 2011/0298(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 053-p1
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	ECON/8/05718

Documentation gateway					
Legislative proposal		COM(2016)0056	10/02/2016	EC	Summary
Committee draft report		PE576.962	16/02/2016	EP	
Amendments tabled in committee		PE578.558	02/03/2016	EP	
Committee report tabled for plenary, 1st reading/single reading		A8-0126/2016	11/04/2016	EP	Summary
European Central Bank: opinion, guideline, report		CON/2016/0027 OJ C 223 21.06.2016, p. 0003	29/04/2016	ECB	

Text agreed during interinstitutional negotiations	PE604.824	18/05/2016	EP	
Economic and Social Committee: opinion, report	CES1921/2016	25/05/2016	ESC	
Text adopted by Parliament, 1st reading/single reading	T8-0243/2016	07/06/2016	EP	Summary
Draft final act	00023/2016/LEX	22/06/2016	CSL	
Commission response to text adopted in plenary	SP(2016)487	14/07/2016	EC	

Final act

[Directive 2016/1034](#)
[OJ L 175 30.06.2016, p. 0008](#) Summary

Markets in financial instruments: certain dates

PURPOSE: to extend the date of entry into application of both instruments that are comprised in MiFID II on markets in financial instruments.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: [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 ([Directive 2004/39/EC](#)).

Member States need to transpose the Directive by 3 July 2016. Both MiFID and MiFIR are scheduled to apply as of 3 January 2017.

During the legislative process, the very high level of complexity of the MiFID II package and the need for a significant number of implementing measures were recognised. To this end, a period of 30 months was foreseen between the adoption and the entry into application, instead of the usual 18-24 months.

Despite this unusually long period, ESMA has made clear to the Commission that the technical implementing challenges are of such magnitude that essential data infrastructures will not be in place in time for 3 January 2017. This is a result of significant challenges in collecting the data that is necessary for the operation of the MiFID II rules.

The absence of data has ramifications across multiple areas of MiFID II. As regards market regulation, it is clear that without the foundation of reference data (instrument ID) and the additional data infrastructures for transparency calculations and position reporting in place, it will not be possible to apply the majority of the market rules.

In order to ensure legal certainty and avoid potential market disruption, urgent action is therefore needed to adjust the date of entry into application for MiFID II

CONTENT: the purpose of the draft proposal amending Directive 2014/65/EU is to extend the entry into application of both instruments that are comprised in the MiFID II package as a result of the technical implementation challenges met by the European Securities and Markets Authority ('ESMA'), national competent authorities ('NCAs') and stakeholders.

In order to enable ESMA, NCAs and stakeholders to complete the operational implementation, the Commission considered it appropriate to defer the date by which the Member States need to apply the measures transposing Directive 2014/65/EU and the date by which the repeal of Directive 2004/39/EC is to take effect by 12 months until 3 January 2018. Reports and reviews should be deferred accordingly.

The Commission stated that 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.

Markets in financial instruments: certain dates

The Committee on Economic and Monetary Affairs adopted the report by Markus FERBER (EPP, DE) on the 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.

The committee recommended that the European Parliaments position adopted at first reading following the ordinary legislative procedure should amend the Commission proposal as follows:

Exemptions: Members stated that this Directive shall not apply to 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: are either members of or participants in a regulated market or an MTF, on the one hand, or have direct electronic access to a trading venue, on the other hand, and, in either case, are engaging in a high-frequency algorithmic trading strategy on such a trading venue.

Transposition: Members proposed that the Member States are to apply the measures transposing that Directive from 3 January 2017 (as opposed to 3 July 2016).

Markets in financial instruments: certain dates

The European Parliament adopted by 502 votes to 158, with 6 abstentions, a legislative resolution on the 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.

Parliament's position, adopted at first reading following the ordinary legislative procedure, amended the Commission proposal as follows:

Exemptions: Parliament stipulated that the exemption set out in point (d) of Article 2(1) of [Directive 2014/65/EU](#) should be extended to include non-financial entities who are members of or participants in a regulated market or a multilateral trading facility (MTF), or have direct electronic access to a trading venue when executing transactions on a trading venue which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of those non-financial entities or their groups.

Third-country market: the amended text stated that a third-country market shall be considered to be equivalent to a regulated market if the requirements and the procedure laid down under the third and the fourth subparagraphs are fulfilled. At the request of the competent authority of a Member State, the Commission shall adopt equivalence decisions in accordance with the examination procedure (comitology). The competent authority shall indicate why it considers that the legal and supervisory framework of the third country concerned is to be considered equivalent and shall provide relevant information to that end.

Such a third-country legal and supervisory framework may be considered equivalent where that framework fulfils at least the following conditions:

- the markets are subject to authorisation and to effective supervision and enforcement on an ongoing basis;
- the markets have clear and transparent rules regarding admission of securities to trading so that such securities are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable;
- security issuers are subject to periodic and ongoing information requirements ensuring a high level of investor protection; and
- market transparency and integrity are ensured by the prevention of market abuse in the form of insider dealing and market manipulation.

Committee procedure: the Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC.

Transposition: Members proposed that the date of transposition of the Directive should be set at 3 July 2017 (instead of 3 July 2016).

Markets in financial instruments: certain dates

PURPOSE: to put back by one year the time limit for transposition and application of rules on markets in financial instruments (MIFID II package).

LEGISLATIVE ACT: Directive (EU) 2016/1034 of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments.

CONTENT: this Directive amends Directive 2014/65/EU (MIFID II) in order to put back the date of entry into application of the MIFID II, following difficulties encountered by the European Securities and Markets Authority (ESMA) and national competent authorities, and stakeholders in technical implementation.

The MIFID II directive, like [Regulation \(EU\) No 600/2014](#) (MiFIR) should be applied 30 months after entry into force, i.e. 3 January 2017. The date of transposition of MIFID II is 3 July 2016. However, following difficulties in technical implementation encountered by ESMA and national competent authorities, new data collection infrastructure will not be in place by 3 January 2017.

The implementation process for the data collection infrastructures involves five steps: business requirements, specifications, development, testing and deployment. ESMA estimates that those steps will be completed by January 2018.

Deferral of dates: in order to ensure legal certainty and avoid potential market disruption, the Directive defers the date by which the Member States need to transpose Directive 2014/65/EU to 3 July 2017. The new date for application of the Directive is 3 January 2018. The dates for reports and review are set back accordingly.

Exemptions: the exemption set out in point (d) of Article 2(1) of Directive 2014/65/EU is extended to include non-financial entities who are members of or participants in a regulated market or a multilateral trading facility (MTF), or have direct electronic access to a trading venue when executing transactions on a trading venue which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of those non-financial entities or their groups.

Third-country markets: the Directive provides that a third-country market shall be considered to be equivalent to a regulated market if the certain requirements laid down in the Directive are fulfilled. At the request of the competent authority of a Member State, the Commission shall adopt equivalence decisions in accordance with the examination procedure (comitology).

The Directive sets out the conditions that the third-country legal and supervisory framework must fulfil in order to be considered equivalent.

ENTRY INTO FORCE: 1.7.2016.