Markets in financial instruments; market abuse; securities settlement in the EU and central securities depositories: certain dates

2016/0034(COD) - 10/02/2016 - Legislative proposal

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: Regulation 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

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' market abuse) and Regulation (EU) 909/2014 ('CSDR' - central securities depositories regulation).

CONTENT: the purpose of the draft proposal amending Regulation (EU) No 600/2014 on markets in financial instruments 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 of application of Regulation (EU) No 600/2014 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.

In order to ensure that references in Regulation (EU) 596/2014 to organised trading facilities, small and medium-sized enterprises ('SME') growth markets, emission allowances or auctioned products based thereon do not apply until the date of application of Regulation (EU) No 600/2014 and Directive 2014/65/EU, Article 39(4) of Regulation (EU) 596/2014 stating that references to them are read as references to Directive 2004/39/EC should be adjusted taking into account the extension of the date of application of those acts.

In order to ensure that Directive 2004/39/EC is referenced in Regulation (EU) 909/2014 until the extended date of application of Regulation (EU) No 600/2014 and Directive 2014/65/EU and that the transitional provisions for MTFs applying for registration as SME growth markets under Regulation (EU) 909/2014 are maintained so as to provide sufficient time for MTFs to apply for such registration under Directive 2014/65/EU, it is proposed that Regulation (EU) 909/2014 should be amended.