

**Opinion of the European Economic and Social Committee 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**

**(COM(2016) 56 final — 2016/0033 (COD))**

**and on the**

**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**

**(COM(2016) 57 final — 2016/0034 (COD))**

(2016/C 303/12)

**Rapporteur: Mr Daniel MAREELS**

On 25 February 2016, the European Parliament decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, 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*

(COM(2016) 56 final — 2016/0033 (COD)).

On 25 February 2016, the European Parliament and the Council decided to consult the European Economic and Social Committee, under Articles 114 and 304 of the Treaty on the Functioning of the European Union, on the:

*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*

(COM(2016) 57 final — 2016/0034 (COD)).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 May 2016.

At its 517th plenary session, held on 25 and 26 May 2016 (meeting of 26 May), the European Economic and Social Committee adopted the following opinion by 132 votes to 2 with 1 abstention.

## **1. Conclusions and recommendations**

1.1 In view of the circumstances outlined in the body of the opinion, the Committee accepts the Commission's proposals, postponing the application of the entire MiFID II rulebook by one year from 3 January 2017 to 3 January 2018. This postponement is supposedly justified by a number of significant technical — and IT — challenges and by the fact that a partial postponement would be far from straightforward, as it would in turn raise a number of other difficult issues with regard to clarity, legal certainty, the potential for market disruption, additional costs and investments, etc. Nonetheless, the Committee calls for every effort to be made to avoid postponing the implementation of MiFID II any further and to ensure that the investor protection rules are not compromised in practice during the postponement period. Until the new rules are implemented, the current rules under MiFID I must, where necessary, also continue to apply in full.

1.2 This recommendation by the Committee is particularly apposite given that it has in the past called for certain reforms to the financial markets<sup>(1)</sup> and urged that they be implemented quickly, as, for example, when MiFID II was adopted in 2014. MiFID II refers to the revised and strengthened version of the European directive introduced in 2007, MiFID I<sup>(2)</sup>, and the introduction of MiFIR<sup>(3)</sup>. In short, MiFID II aims to make Europe's financial markets more transparent and efficient and to provide greater protection for investors.

1.3 When consulted specifically on the review and strengthening of MiFID, the Committee stated: 'The overarching objective of the directive is to increase the transparency and efficiency of trading and limit market volatility, but also to increase the integrity of intermediaries and protection of investors and open European markets up to genuine competition in financial services provision. The EESC supports these objectives and sees the proposal as a whole as a step in the right direction'<sup>(4)</sup>. Those objectives, and the implementation of the new texts, must not be jeopardised in any way by the proposed postponement.

## 2. Background

2.1 The regulation of financial markets has taken a new direction since MiFID I was drawn up in 2007 with the ultimate aim of promoting fair and transparent markets. The directive primarily made improvements in terms of competition and closer integration of Europe's financial markets. MiFID I has resulted in a liberalisation of the market for order execution. Competition between trading platforms has increased, and the market has become more fragmented. Rules were also introduced to protect investments and market integrity.

2.2 In response to the financial crisis, there were calls for more and closer supervision, and shortcomings were identified with regard to investor protection and in the operation and transparency of financial markets. It was also necessary to take account of a number of new technical developments on the market, for example concerning high-frequency and algorithmic trading.

2.3 This resulted in the existing framework being replaced and strengthened, a process that culminated in 2014 with MiFID II and, associated with that, the introduction of MiFIR. These texts replace MiFID I. The aim of MiFID II is to make Europe's financial markets more transparent and efficient and to provide greater protection for investors.

2.4 MiFID II covers more financial instruments and ensures that trading takes place on regulated platforms. It improves the transparency and oversight of financial markets, as well as the conditions for competition in the trading and clearing of financial instruments. The revised MiFID rules also strengthen the protection of investors by introducing robust organisational and conduct of business requirements.

2.5 When the texts were drafted in 2014, it was stipulated that they should be transposed into national law<sup>(5)</sup> by 3 July 2016 and should enter into application by 3 January 2017.

2.6 The purpose of the present proposal is to postpone the entry into application of MiFID II by one year, from 3 January 2017 to 3 January 2018.

2.7 This postponement is mainly due to the technical implementation challenges met by ESMA<sup>(6)</sup>, national competent authorities (NCAs) and stakeholders, as a result of the high level of complexity of MiFID II and the significant number of implementing measures required, not least with regard to reporting obligations. The structures for this need to be created more or less from scratch, which will take longer than was originally estimated.

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<sup>(1)</sup> OJ C 143, 22.5.2012, p. 42.

<sup>(2)</sup> Markets in Financial Instruments Directive.

<sup>(3)</sup> Markets in Financial Instruments Regulation.

<sup>(4)</sup> OJ C 191, 29.6.2012, p. 80.

<sup>(5)</sup> More specifically the directive, MiFID II. MiFIR is a Regulation.

<sup>(6)</sup> European Security and Markets Authority.

### 3. Comments

3.1 When MiFID II was adopted, the intention was that it should be transposed by the Member States by 3 July 2016 and that the texts would enter into application on 3 January 2017.

3.2 Among other things, MiFID II provides for an extensive system of data collection with a view to achieving its objectives. 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) covering 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. According to the available information, the vast majority of the new IT systems underpinning FIRDS will need to be built from the ground, based on new parameters<sup>(7)</sup>.

3.3 It is claimed that given the complexity of the new framework and the need for a very large number of delegated and implementing acts, the date of applicability of MiFIR was deferred by 30 months from the date of entry into force. In spite of the aforementioned unusually long period, stakeholders, such as trading platforms, NCAs and ESMA claim not to be in a position to ensure that the necessary data infrastructures will be in place and become operational by 3 January 2017. In particular, ESMA informed the Commission before the end of 2015 that a delay in the technical implementation of MiFID II was unavoidable, claiming that this was due to the size and complexity of the data that needed to be collected and processed for the new framework to become operational, particularly in certain cases<sup>(8)</sup>, and that the absence of data collection infrastructures has implications across the entire scope of MiFID II<sup>(9)</sup>.

3.4 The Commission has accepted this situation and has therefore weighed up the possibilities of partially or completely postponing MiFID II. For the Commission, however, a partial postponement of this kind would evidently be far from straightforward, and would in any event raise a number of significant new problems, relating among other things to the risk of confusion, delineation between rules that can be immediately implemented and those that cannot, and the establishment of transitional rules — which could in turn create new issues and risk further delays. Cost-effectiveness would also have to be taken into consideration.

3.5 According to the Commission, in view of the supposed current technical and IT problems, the supposed fact that partial implementation would not be easy, and the fact that every effort should be made to avoid further delays — which could not be ruled out in the event of partial entry into force — the Commission backs the proposal to postpone the full implementation of MiFID II by one year as probably the most reasonable and acceptable option.

3.6 The EESC regrets that the Commission did not respond immediately when it was first informed about the delays in the technical implementation of the MiFID II directive, in 2015, and that it has not taken any initiatives to resolve the issue or to find another solution to the problems. This would have made it possible to improve the operating conditions of the financial markets and provide better protection for investors.

3.7 Although it has to be accepted that under present circumstances, postponement is the least negative option, the EESC considers that implementation must only be postponed once and that every effort must be made to avoid further delays in implementing MiFID II. In addition, it is also important to ensure that the rules in the new MiFID II regarding investor protection, which are not themselves affected by the current difficulties, are not jeopardised in practice pending implementation of the new rules as from 3 January 2018. Until the new rules are implemented, the current rules under MiFID I must, where necessary, also continue to apply in full.

Brussels, 26 May 2016.

*The President*  
*of the European Economic and Social Committee*  
Georges DASSIS

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<sup>(7)</sup> COM(2016) 56 final — 2016/0033 (COD), cf. recital 4.

<sup>(8)</sup> COM(2016) 57 final — 2016/0034 (COD), cf. recital 5.

<sup>(9)</sup> COM(2016) 57 final — 2016/0034 (COD), cf. recital 6.