

Public Statement

Transition for the application of the MiFID II/MiFIR review

ESMA is issuing this public statement in relation to the application of certain provisions of Regulation (EU) No 600/2014 (“MiFIR”) and Directive 2014/65/EU (“MiFID II”) in light of the changes introduced by Regulation (EU) 2024/791 (the “MiFIR review”) ¹ that enter into force on 28 March 2024 and by Directive (EU) 2024/790 (the “MiFID II review”).

Article 54(3) of MiFIR as amended by the MiFIR review foresees the continued application of the delegated acts that are currently in place until these delegated acts are revised². Despite the transitional regime provided by Article 54(3), ESMA received numerous queries from stakeholders on the provisions applicable as of the date of entry into force of the MiFIR review. ESMA acknowledges that public guidance may be necessary, notably regarding the application of provisions which are not (yet) further specified in delegated regulations, in cases of substantial differences between MiFIR as amended by the MiFIR review (Level 1) and the current delegated regulations (Level 2) as well as provisions where new Level 1 requirements cannot be expected to be implemented without an appropriate lead time for IT deployments.

This statement complements the [interpretative draft notice on the transitional provision of the MiFIR review](#) issued by the European Commission on 27 March 2024³ and aims at providing practical guidance on some key areas in order to contribute to the orderly transition and consistent application of MiFIR as amended by the MiFIR review. Notably, this statement provides further guidance on the new rules that need to be supplemented by delegated regulations and those rules that are “self-executing” and do not need to be supplemented by delegated regulations to be effective.

This statement covers the following areas:

- Volume cap (double/single);
- equity transparency;

¹ Regulation (EU) 2024/791 of the European Parliament and of the Council of 28 February 2024 amending Regulation (EU) No 600/2014 as regards enhancing data transparency, removing obstacles to the emergence of consolidated tapes, optimising the trading obligations and prohibiting receiving payment for order flow and Directive (EU) 2024/790 of the European Parliament and of the Council of 28 February 2024 amending Directive 2014/65/EU on markets in financial instruments.

² Article 54(3): The provisions of the delegated acts adopted pursuant to Regulation (EU) No 600/2014 as applicable before 28 March 2024 shall continue to apply until the date of application of the delegated acts adopted pursuant to Regulation (EU) No 600/2014 as applicable from that date.

³ Commission draft notice on the interpretation and implementation of the transitional provision laid down in Regulation (EU) 2024/791 of the European Parliament and of the Council of 28 February 2024 amending Regulation (EU) No 600/2014 as regards enhancing data transparency, removing obstacles to the emergence of consolidated tapes, optimising the trading obligations and prohibiting receiving payment for order flow.

- non-equity transparency;
- the systematic internaliser (SIs) regime;
- designated publishing entities (DPEs); and
- reporting.

The annex to this statement provides an overview of the impact of the MiFID II/MiFIR review on the existing ESMA IT-systems and registers.

ESMA will proceed with developing the Commission delegated regulations in a swift and transparent manner, thereby contributing to the alignment of the delegated acts with MiFIR as amended by the MiFIR review as soon as possible.

ESMA may issue further and more detailed guidance on the topics covered in this statement at a later stage, if needed.

Finally, ESMA is planning to establish a dedicated webspace tracking the development of draft Commission delegated regulations and clarifying which provisions are applicable to market participants at a given time.

Volume cap

The MiFIR review replaces the double volume cap with a single volume cap. The MiFIR review specifies that the publication of trading data by ESMA and the monitoring of the trading subject to the single volume cap will apply from 18 months after the entry into force of the MiFIR review.

In the meantime, as explained in the draft notice of the Commission, the current double volume cap will continue applying covering both the reference price waiver and the negotiated trade waiver for liquid instruments based on the MiFIR Level 1 provisions prior to the MiFIR review and the current Level 2 as set out in Commission Delegated Regulation (EU) 2017/577 (RTS 3)⁴.

Equity transparency

Determination of liquid market

The changes introduced by the MiFIR review to the equity transparency regime are limited, with the main change consisting of the shift from using the free float to market capitalisation when determining the liquidity status of equity instruments. Such requirements are currently

⁴ https://eur-lex.europa.eu/eli/reg_del/2017/577/oj

specified in Articles 1 to 5 of Commission Delegated Regulation (EU) 2017/567⁵. Hence, ESMA will provide technical advice to the Commission on the necessary amendments to this Delegated Regulation and the changes in the MiFIR review in this respect would start applying once the amended Commission Delegated Regulation starts applying.

Pre-trade transparency waivers

There will be no changes to the opinions on pre-trade transparency waivers under equity transparency from the MiFIR review. Once the new single volume cap applies, in the terms set out above, negotiated trade waivers of type I (liquid instruments), will no longer be subject to the cap.

Non-equity transparency

Trading systems in scope of transparency regime

The MiFIR review reduces the scope of the transparency regime for non-equity instruments, in particular by limiting the scope of pre-trade transparency to central limit order book and periodic auction trading systems.

Upon entry into force of the MiFIR review, the provisions on pre-trade transparency will cease to apply to Request for Quote and voice trading systems. The provisions specifying the characteristics of trading systems other than Request for Quote and voice trading systems in current Commission Delegated Regulation (EU) 2017/583 (RTS 2)⁶ continue to apply until the revised RTS 2 starts applying.

Deferrals

The MiFIR review introduces significant amendments to the provisions for the deferred publication of transactions in non-equity instruments, including the removal of the provisions enabling deferrals for large-in-scale transactions, for transactions in illiquid instruments, and for transactions below the size specific to instrument threshold.

In order to ensure an orderly transition towards the new deferral regime for non-equity transactions, the current deferral regime as set out in RTS 2, and in consequence the regime specified in Level 1 prior to the MiFIR review, will continue to apply until the revised RTS 2 starts applying. In consequence, competent authorities can continue authorising deferrals until the revised RTS 2 applies.

Transparency regime for derivatives

⁵ https://eur-lex.europa.eu/eli/reg_del/2017/567/oj

⁶ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2017.087.01.0229.01.ENG&toc=OJ:L:2017:087:TOC

The MiFIR review limits the scope of the transparency regime for derivatives to exchange-traded derivatives and a subset of Over-The-Counter (OTC) derivatives.

Market participants are expected to apply the new scope of the transparency regime for derivatives. The provisions of current RTS 2 will cease to apply to derivatives that are no longer in scope of the transparency regime.

Pre-trade transparency waivers

The MiFIR review introduces significant amendments to the provisions on pre-trade transparency waivers for non-equity transactions, including the removal of the size specific to the financial instrument waiver.

ESMA expects market operators and investment firms to no longer make use of the size specific to the instrument waiver as of the date of entry into force of the MiFIR review. Moreover, market operators and investment firms operating a trading venue are not required to use waivers from pre-trade transparency for Request for Quotes and voice trading systems and for OTC-derivatives no longer subject to transparency requirements under MiFIR.

Systematic Internalisers

Equity

The MiFIR review (i) replaces the minimum quote size of Systematic Internalisers at 10% of the standard market size with the determination of a minimum quote size by means of RTS, (ii) amends the size up to which quotes should be made transparent, and (iii) extends the possibility for Systematic Internalisers to match orders at midpoint within the current bid and offer prices.

As set out in the Commission interpretative draft notice, some of these rules cannot be effectively applied in the absence of the new RTS. This is in particular the case for the minimum quoting size as well as for the size up to which quotes should be made transparent. Therefore, pending the application of the new and/or amended Commission delegated regulations in this respect, the provisions in MiFIR prior the MiFIR review and in RTS 1⁷ will continue applying, i.e. Systematic Internalisers are required to continue:

- applying the minimum quote size of 10% of the standard market size as set out in Article 14 and 15 of Level 1 prior to the MiFIR review, and

⁷ https://eur-lex.europa.eu/eli/reg_del/2017/587/oj

- complying with the provisions on the size up to which quotes should be made transparent as specified in Article 10 of current RTS 1⁸ until the revised RTS 1 starts applying.

The amendment introduced by the MiFIR review allowing Systematic Internalisers to match orders at midpoint within the current bid and offer prices is self-executing and does not require further specification in RTS. As a consequence, this amendment will apply as of 28 March 2024 and thus the restrictions related to large-in-scale orders in RTS 1 will cease to apply to Systematic Internalisers.

Non-equity

The MiFIR review deletes the quoting requirements for Systematic Internalisers in non-equity instruments in Article 18 of current MiFIR. Since this amendment does not need to be supplemented by RTS, the quoting requirements for Systematic Internalisers in non-equity instruments will cease to apply as of 28 March 2024.

Quantitative test for determining SI-status in MiFID II

The MiFID II review removed the quantitative test under Article 4(1)(20) of MiFID II as further specified in Articles 12 to 16 of Commission Delegated Regulation (EU) 2017/565⁹ for determining whether an investment firm qualifies as a Systematic Internaliser. This change will only start applying once the changes to MiFID II are transposed into national law, i.e. 18 months after entry into force of the MiFID II review.

Designated Publishing Entities – post-trade transparency

The MiFIR review introduces provisions allowing National Competent Authorities (NCAs) to grant the status of Designated Publishing Entity (DPE) to investment firms. According to Article 21a of MiFIR, DPEs, when they are party to a transaction, shall be responsible for making it public through an approved publication arrangement.

The MiFIR review does not provide for a transitional provision for the application of the DPE regime. However, taking into account that no NCA has granted the DPE status yet, it does not appear possible to apply the regime from the entry into force of the MiFIR review. In order to give NCAs the necessary time for granting the DPE status, ESMA considers that the current approach relying on Systematic Internalisers should continue applying.

⁸ Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser.

⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02017R0565-20220802>

Reporting

Transaction reporting

The MiFIR review introduces significant changes to the transaction reporting requirements. Notably, it modifies the scope of transactions to be reported (removed TOTV derivatives not executed on venue, added OTC derivatives specified under Article 8a(2)) as well as the scope of the information to be reported (added effective date, designation of the entity subject to the reporting obligation, transaction identification code, removed waivers and short selling flag).

As explained in the Commission draft notice the set of rules applicable to transaction reporting will become applicable as soon as the revised RTS start applying and in the meantime the rules both in Level 1 prior to the MiFIR review and in RTS 22 will continue applying.

Reference data

The MiFIR review changes significantly the framework for reporting of financial instruments reference data. First of all, the revised Article 27(1) clarifies that the reference data are reported also for the purpose of the transparency requirements, thus setting the expectation to streamline and align reference data for transparency and transaction reporting. Such alignment and streamlining of reference data are in line with the objectives of the Strategy on supervisory data in EU financial services¹⁰, however it will require changes in Level 2 and Level 3, and also has substantial impact on IT systems.

Furthermore, the MiFIR review specifies that OTC derivatives' identifying reference data shall be based on a globally agreed identifier and any other identifying reference data and provides that the Commission shall adopt within 3 months a delegated act to specify the identifying reference data for the purpose of transparency and that it may adopt delegated acts to specify the identifying reference data for the purpose of transaction reporting. Any potential change in the identifying reference data would have a critical impact on IT systems. Lastly, according to Article 27(1) of revised MiFIR, DPEs are required to provide ESMA with the identifying reference data on OTC-derivatives that are not captured by the first subparagraph of Article 27(1) and fall within the scope of Article 26(2).

In line with the clarifications provided by the Commission draft notice, the set of rules applicable to reference data reporting, and the requirements to DPE in this respect, should become applicable as soon as the revised RTS start applying and in the meantime the rules, both in Level 1 prior to the MiFIR review and in RTS 23 will continue applying.

¹⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0798>

Annex – Impact on ESMA IT-systems and registers

Volume cap

ESMA will continue publishing the double volume cap results as previously. ESMA will in parallel develop the necessary amendments for replacing the double volume cap by the single volume cap 18 months after the entry into force of MiFIR in order to ensure a smooth transition.

Registers

ESMA together with the NCAs will proceed with the development of a practical solution for the introduction of the DPE register taking into account the implementation timeline required by the impacted stakeholders. ESMA will inform stakeholders ahead of the register going live.

Consolidated Tape Provider (CTP) calculations

Given that the MiFIR review overhauls the approach for the establishment of the CTP, ESMA will no longer continue publishing the total number of transactions and the total volume of transactions for the asset classes of bonds, emission allowances and emission allowance derivatives.

Quarterly transparency calculations

The [quarterly liquidity assessment of bonds](#) as well as the [data](#) for the quarterly systematic internaliser calculations for equity, equity-like instruments, bonds and other non-equity instruments under MiFID II and MiFIR prior the MiFID II/MiFIR review will continue to be published by ESMA. ESMA will continue publishing the quarterly publications for the quantitative systematic internaliser assessment until the changes to MiFID II by the MiFID II review are transposed into national law, i.e. 18 months after entry into force of the MiFID II review. The quarterly Systematic Internaliser publications will be discontinued afterwards.

The quarterly liquidity assessment of bonds will continue to be published taking into account the provisions of current RTS 2 until the date of application of the revised version of RTS 2 following the MiFIR review.

Annual transparency calculations – for equity and non-equity instruments

The annual transparency calculations will continue to be performed and published each year by 1 March for equity and by 1 June for non-equity according to the provisions in current RTS 1, Commission Delegated Regulation (EU) 2017/567, and RTS 2 until the revised delegated Regulations will start applying.

Reference data

Until the application of the amended revised RTS, reference data for the purpose of both transaction reporting and transparency will continue to be reported to ESMA in accordance

with the existing reporting instructions and messages.¹¹ ESMA will continue publishing the reference data with no change.

Along with the development of the revised RTS, ESMA will continue assessing the IT implications related to reference data reporting and will provide further details on the changes and the implementation timeline once available.

Transaction reporting

Until the application of the amended revised RTS, transaction data will continue to be reported to NCAs and subsequently shared between NCAs and ESMA with no change, following the existing reporting instructions and messages.¹²

Along with the development of the revised RTS, ESMA will continue assessing the impact on the reporting system and will provide further details on the changes and the implementation timeline once available.

ESMA will continue assessing the impact on MiFID and MiFIR related IT systems and will provide further clarification in the future where relevant.

Preliminary timeline for the application of IT changes

No	ESMA system/ register	IT	Timeline			
			28 March 2024			28 March 2024 publication + 18 months
1	Double Volume Cap (DVC)		Maintain			discontinued
2	Single Volume Cap (SVC)					publication and potential suspensions start
3	CTP calculations		discontinued			
4	Quarterly Systematic		Maintain			discontinued

¹¹ <https://www.esma.europa.eu/data-reporting/mifir-reporting>

¹² <https://www.esma.europa.eu/data-reporting/mifir-reporting>

	Internaliser calculations		
5	Other quarterly and annual transparency calculations	publication maintained until the date of application of the revised RTS and Commission Delegated Regulation	
6	Reference data	reporting and publication maintained as per the current specifications until the date of application of the revised RTS	
7	Transaction reporting	reporting maintained as per the current specifications until the date of application of the revised RTS	