



EUROPEAN
COMMISSION

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ANNEX

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to the

Communication to the Commission

Approval of the content of a draft Commission 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

Draft Commission 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

1. SCOPE OF THIS NOTICE

Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (“MiFIR”) is amended by Regulation (EU) 2024/791 (the “MiFIR review”). This interpretative notice aims to clarify the transitional arrangement set out in Article 54(3) of MiFIR as amended by the MiFIR review. The below references refer to Articles in MiFIR as amended by the MiFIR review.

The notice does not extend in any way the rights and obligations deriving from the MiFIR review nor does it introduce any additional requirements for the operators concerned and competent authorities. Statements and opinions provided in this document reflect the view of the European Commission. According to the Treaty on the Functioning of the EU, the Court of Justice has the sole jurisdiction to interpret the acts of the institutions of the European Union.

2. THE COMMISSION’S READING OF ARTICLE 54(3) MiFIR

The MiFIR review will enter into force on 28 March and apply as of that date. Several provisions in the MiFIR review need to be supplemented by Commission delegated regulations to become fully operational. For the transitional period, Article 54(3) MiFIR provides that “[t]he provisions of the delegated acts adopted pursuant to Regulation (EU) No 600/2014 [i.e. MiFIR] 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 [i.e. MiFIR as amended by the MiFIR review] as applicable from that date”.

Article 54(3) MiFIR aims to ensure continuity for market participants while the new Commission delegated regulations are being prepared. Pursuant to Article 54(3) MiFIR, the existing Commission delegated regulations continue to apply. In some cases, the new MiFIR provisions are to be supplemented by new or amended Commission delegated regulations to become fully operational and cannot be supplemented adequately by the existing Commission delegated regulations, due to the differences between the new MiFIR provisions and the MiFIR provisions that the existing Commission delegated regulations supplement, as applicable before 28 March 2024. In those cases, it follows from Article 54(3) MiFIR that the existing delegated regulations continue to apply together with the MiFIR provisions that they supplement, as applicable before 28 March 2024.

For the areas identified below this means the following:

The volume cap mechanism (Article 5 MiFIR)

Article 5 MiFIR on the single volume cap mechanism sets the threshold below which equity trading under the reference price waiver is allowed. Article 5 MiFIR is to be supplemented by

a Commission delegated regulation defining how ESMA collates, calculates and publishes the transaction data required to calculate the single volume cap¹. As the single volume cap is calculated on the basis of a data set that is different from the data set used for the calculation of the double volume cap, the new single volume cap cannot be supplemented adequately by Commission delegated regulation (EU) 2017/577 (“RTS 3”). In consequence, pursuant to Article 54(3) MiFIR, the rules on the double volume cap, as specified in RTS 3, continue to apply. The single volume cap will become applicable as from the date of application of the Commission delegated regulation adopted pursuant to Article 5(9) MiFIR.

Deferred publication of the details of transactions in respect of bonds, structured finance products or emission allowances and deferred publication of the details of transactions in respect of derivatives (Articles 11 and 11a MiFIR)

Articles 11 and 11a MiFIR set out rules concerning the deferred publication of the details of transactions executed in respect of bonds, structured finance products, emission allowances and derivatives. Articles 11 and 11a MiFIR are to be supplemented by Commission delegated regulations defining the calibration of the deferral schedules². As the MiFIR review has significantly amended the criteria to define such calibration, Articles 11 and 11a MiFIR cannot be supplemented adequately by Commission delegated regulation (EU) 2017/583 (“RTS 2”). In consequence, pursuant to Article 54(3) MiFIR, the deferral rules as applicable before 28 March 2024, as specified in RTS 2, continue to apply. The new deferral schedules for bonds, structured finance products, emission allowances and derivatives will apply as of entry into application of the Commission delegated regulations adopted pursuant to Articles 11(4) and 11a(3) MiFIR respectively.

Obligation to make pre-trade and post-trade data available on a reasonable commercial basis (Article 13 MiFIR)

Article 13 MiFIR requires market operators, investment firms operating a trading venue, approved publication arrangements, consolidated tapes and systematic internalisers (SIs) to make the pre-trade and post-trade information on transactions in financial instruments available to the public on a reasonable commercial basis and to ensure non-discriminatory access to that information. Article 13 MiFIR is to be supplemented by a Commission delegated regulation specifying a number of elements, in particular what is to be included in the calculation of cost and reasonable margin³. As the MiFIR review introduces a new principle according to which users cannot be charged based on the value that the data represents to them, Article 13 MiFIR cannot be supplemented adequately by Commission delegated regulation (EU) 2017/565 and Commission delegated regulation (EU) 2017/567. In consequence, pursuant to Article 54(3) MiFIR, the obligation to make pre- and post-trade data available on a reasonable commercial basis as applicable before 28 March 2024, as specified in the relevant provisions of Commission delegated regulation (EU) 2017/565, Commission delegated regulation (EU) 2017/567 and ESMA guidelines (ESMA70-156-4263), continues to apply. The amended obligation to make pre-trade and post-trade data available on a reasonable commercial basis will apply as of entry into application of the Commission delegated regulation adopted pursuant to Article 13(5) MiFIR.

¹ Article 5(9) MiFIR.

² Articles 11(4) and 11a(3) MiFIR.

³ Article 13(5) MiFIR.

Quotation rules for SIs in equity instruments (Article 14 MiFIR)

Article 14 MiFIR delegates to a new Commission delegated regulation the definition of the minimum quote size as well as of the threshold below which pre-trade transparency rules apply to SIs in equity instruments⁴. Commission delegated regulation (EU) 2017/587 only defines the methods to determine the standard market size. However, it does not contain any indication as to the minimum quote size and the threshold below which pre-trade transparency rules apply to equity SIs (both elements being defined in Article 14 as applicable before 28 March). Article 14 MiFIR therefore cannot be supplemented adequately by Commission delegated regulation (EU) 2017/587. In consequence, pursuant to Article 54(3) MiFIR, the quotation rules for SIs in equity instruments, as applicable before 28 March 2024, as specified in the relevant provisions of Commission delegated regulation (EU) 2017/587, continue to apply. The new quotation rules for SIs will apply as of entry into application of the Commission delegated regulation adopted pursuant to Article 14(7) MiFIR.

The obligation to report transactions (Article 26 MiFIR)

Article 26 MiFIR sets out rules on the obligation for investment firms which execute transactions in financial instruments to report the details of such transactions to the competent authority. Article 26 MiFIR is to be supplemented by a Commission delegated regulation that will specify which financial instruments that have an index as the underlying need to be reported as well as modify certain details of the transactions to be reported⁵. Article 26 MiFIR therefore cannot be supplemented adequately by Commission delegated regulation (EU) 2017/590 (“RTS 22”). In consequence, pursuant to Article 54(3) MiFIR, the rules on transaction reporting as applicable before 28 March 2024, as specified in RTS 22, continue to apply. The new transaction reporting rules apply as of entry into force of the Commission delegated regulation adopted pursuant to Article 26(9) MiFIR.

⁴ Article 14(7) MiFIR.

⁵ Article 26(9) MiFIR.