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RESOLUTION BY THE 6TH STANDING COMMITTEE

(Finance and the Treasury)

(Rapporteur MOLINARI)

approved at the session of 21 April 2016

CONCERNING

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)

AND CONCERNING

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 NO 909/2014 ON IMPROVING
SECURITIES SETTLEMENT IN THE EUROPEAN UNION AND
ON CENTRAL SECURITIES DEPOSITORIES AS REGARDS
CERTAIN DATES (COM (2016) 57 FINAL)

in accordance with Article 144(1) and (6) of the Rules of Procedure of the Senate

Sent to the President's Office on 22 April 2016

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The Committee,
having examined the acts COM (2016)
56 and 57,
whereas

– Directive 2014/65/UE (hereinafter 'MiFID') and Regulation (EU) No 600/2014 (hereinafter 'MiFIR') were adopted following the financial crisis. MiFID and MiFIR, referred to jointly as MiFID II, covers securities markets, investment intermediaries and trading venues. The new regulatory framework reinforces and replaces the current MiFID framework;

– the Member States must transpose the Directive by 3 July 2016, and MiFID and MiFIR will apply from 3 January 2017;

– the purpose of the proposed legislation in question is to delay the the application date of both the instruments constituting the MiFID II package as a result of the technical implementation challenges faced by the European Securities and Markets Authority (ESMA), national competent authorities and stakeholders, in particular through the need for a large number of implementation measures. These challenges are of such a magnitude, as ESMA informed the European Commission on 2 October 2015, that essential data structures will not be in place by 3 January 2017, making it necessary to delay the entry into force;

– thus, in order to collect data in an efficient and harmonised manner, a new data collection infrastructure must be developed (the Financial Instruments Reference Data System, 'FIRDS'), which must cover the range of financial instruments falling within the scope of MiFID II. FIRDS will necessitate the linking of data feeds between ESMA, national competent authorities and about 300 trading venues throughout the EU. The vast majority of the new IT systems underpinning FIRDS will need to be built from the ground, on the basis of new parameters;

– the scale and complexity of the data that need to be collected and processed for MiFID II to become operational are due, in particular, to transaction reporting, transparency calculations and reporting of positions on commodity derivatives and microstructural regulation;

– this means that if the application date remains unchanged, there will be legal uncertainty and possible market disruption. For these reasons, the instruments in question will delay the application date of both instruments constituting the MiFID II package, namely Directive 2014/65EU (under COM (2016) 56) and Regulation (EU) No 600/2014 (under COM

(2016) 57) by one year year, to 3 January 2018, and will also delay a number of terms (also under COM(2016) 57) of Regulation (EU) No. 596/2014 (MAR) and Regulation (EU) No 909/2014 (CSDR);

– the extension, moreover, concerns not only the parts of the legislation that are directly connected to the collection of data, but the entire package, making it possible to avoid the risk of creating confusion and costs that the stakeholders would have to bear in the event of staggered implementation and also to avoid having to distinguish between measures that can be implemented immediately and other measures, and obviates the need for transitional measures;

whereas

– the proposed measures have the same legal basis as the basic instruments, namely Article 53(1) of the Treaty on the Functioning of the European Union (TFEU) for COM(2016) 56 and Article 114 TFEU for COM(2016) 57;

– the principle of subsidiarity is complied with, in that the two proposed measures confine themselves to delaying an instrument of the European Union, which is therefore under the competence of Union bodies;

– the principle of proportionality seems to be complied with since it was ESMA that drew attention to the need for an extension in order to provide for efficient and orderly planning by all the stakeholders;

decides in favour of the proposals, while making the following comments.

The proposals in question, as stated above, grant an extension in view of the technical complexity of implementing the MiFID II regulatory package, but no provision is made for extension of the terms imposed on the Member States for the transposition of Directive 2014/65/EU and Directive 2014/57/EU (Market Abuse Directive). These terms are laid down in Article 93(1) of the first Directive and Article 13 of the second Directive as 3 July 2016. To these terms are also linked the delegation contained in Articles 1, 9 and 11 of Act No 114 of 9 July 2015 (2015 European Delegation Act), with a view to their transposition, also for the purposes of implementation of Regulation (EU) No 600/2014 and Regulation (EU) No 596/2014.

For the same reasons of legal certainty as those raised by the European Commission, the Government is also considering requesting an extension of the terms for transposition, which would, moreover, affect the delegation contained in the aforementioned Articles of the 2015 European Delegation Act, which is about to expire according to the mechanism laid down in Article 31(1) of Act No 234 of 2012 (two months prior to the term for transposition according to the text preceding the amendments made by the 2014 European Act, Act No 115 of 29 July 2015, which changed the expiry dates of the delegations granted for transposition of directives to four months prior to the term for their transposition).

COMMENTS OF THE 14TH STANDING COMMITTEE
(POLICIES OF THE EUROPEAN UNION)

(Rapporteur: Molinari)

5 April 2016

The Committee, having examined the acts,

whereas

– Directive 2014/65/UE (hereinafter 'MiFID') and Regulation (EU) No 600/2014 (hereinafter 'MiFIR') were adopted following the financial crisis. MiFID and MiFIR, referred to jointly as MiFID II, cover securities markets, investment intermediaries and trading venues. The new regulatory framework reinforces and replaces the current MiFID framework;

– the Member States must transpose the Directive by 3 July 2016, and MiFID and MiFIR will apply from 3 January 2017;

– the purpose of the proposed legislation in question is to delay the application date of both the instruments constituting the MiFID II package as a result of the technical implementation challenges faced by the European Securities and Markets Authority (ESMA), national competent authorities and stakeholders, in particular through the need for a large number of implementation measures. These challenges are of such a magnitude, as ESMA informed the European Commission on 2 October 2015, that essential data structures will not be in place by 3 January 2017, making it necessary to delay the entry into force;

– thus, in order to collect data in an efficient and harmonised manner, a new data collection infrastructure must be developed (the Reference Data System, FIRDS), which must cover the range of financial instruments falling within the scope of MiFID II. FIRDS will necessitate the linking of data feeds between ESMA, national competent authorities and about 300 trading venues throughout the EU. The vast majority of the new IT systems underpinning FIRDS will need to be built from the ground, on the basis of new parameters

- the scale and complexity of the data that needed to be collected and processed for MiFID II to become operational are due, in particular, to transaction

derivatives and microstructural regulation;

– this means that if the application date remains unchanged, there will be legal uncertainty and possible market disruption. For these reasons, the instruments in question will delay the application date of both instruments constituting the MiFID II, package, namely Directive 2014/65/EU (under COM(2016) 56) and Regulation (EU) No 600/2014 (under COM(2016) 57) and will also delay a number of terms (also under COM(2016) 57) of Regulation (EU) No 596/2014 (known as 'MAR') and Regulation (EU) No. 909/2014 (known as 'CSDR');

– the extension, moreover, concerns not only the parts of the legislation that are directly connected to the collection of data, but the entire package, making it possible to avoid the risk of creating confusion and costs that the stakeholders would have to bear in the event of staggered implementation and also to avoid having to distinguish between measures that can be implemented immediately and other measures, and obviates the need for transitional measures;

whereas

– the proposed measures have the same legal basis as the basic instruments, namely Article 53(1) TFEU for COM(2016) 56 and Article 114 TFEU for COM(2016) 57;

– the principle of subsidiarity is complied with, in that the two proposed measures confine themselves to delaying an instrument of the European Union, which is therefore under the competence of Union bodies;

– the principle of proportionality seems to be complied with since it was ESMA that drew attention to the need for an extension in order to provide for efficient and orderly planning by all the stakeholders;

comments favourably on the proposals, for matters within its remit, making the following points:

the proposals in question, as stated above, grant an extension in view of the technical complexity of implementing the MiFID II regulatory package, but no provision is made for extension of the terms imposed on the Member States for the transposition of Directive 2014/65/EU and Directive 2014/57/EU (Market Abuse Directive). Those terms are laid down in Article 93(1) of the first Directive and in Article 13 of the second Directive as of 3 July 2016. To these terms are also linked the delegation contained in Articles 1, 9 and 11 of Act No 114 of 9 July 2015, (2014 European Delegation Act) with a view to their transposition, also for the purposes of implementation of Regulation (EU) No 600/2014 and Regulation (EU) No 596/2014.

Therefore, for the same reasons of legal certainty as those raised by the European Commission, the Committee is also considering requesting an extension of these terms, which would, moreover, affect

the delegation contained in the aforementioned articles of the 2014 European Delegation Act, which is about to expire according to the mechanism laid down in Article 31(1) of Act No 234 of 2012 (two months prior to the term for transposition according to the text preceding the amendments made by the 2014 European Act, Act No 115 of 29 July 2015, which changed the expiry dates of the delegations granted for transposition of directives to four months prior to the term for their transposition).

