























































# **Impact of MiFID II on EU conduct of business regimes**

## **United Kingdom**

October 2014

## MiFID II HEAT MAP

	Level 1 (final)	Level 2 (proposed)	Impact in UK
Client categorisation			
Client order handling			
Conflicts of interest			
Client assets			
Inducements: firms other than portfolio managers / advisers			
Inducements: portfolio managers / advisers			
Record-keeping			
Suitability			
Complaints handling			
Financial promotions			
Reporting and information			
Appropriateness / execution-only			
Best execution			
Product governance / distribution			
'Independent' advice			
Product intervention			
Recording calls			
Remuneration			

Key:  Significant change  Moderate change  Minor / no changes

## Finalised Level 1

### Client categorisation

Discreet change to treatment of municipalities and local public authorities

### Client order handling

No significant change to MiFID I

### Conflicts of interest

No significant change to MiFID I

### Client assets

No significant change to MiFID I

### Inducements: firms other than portfolio managers / independent advisers

No significant change to MiFID I

### Inducements: portfolio managers / independent advisers

- New EU wide ban on payments being received and kept
- Applies to all clients types
- Minor non-monetary benefits excluded
- Member States can gold-plate

### Suitability

Minor changes in relation to suitability reports and to the extent of information required to be obtained to assess suitability

### Complaints handling

No significant change to MiFID I

### Financial promotions

Minor changes to extend the fair, clear and not misleading requirement to ECPs

### Reporting and information

No significant change to reporting requirements but extension to ECPs

Enhancement of the information required to be provided to clients (including ongoing suitability reporting and reporting to ECPs)

### Appropriateness and execution-only

Appropriateness test is not changing

List of 'non-complex' financial instruments being narrowed

### Best execution

Significant changes:

- new transparency requirements imposed
- firms to take all "sufficient" steps
- firms that RTO/place to have policies
- policies to be more detailed

### Record-keeping

No significant change to MiFID I

### Product governance and distribution

New EU wide product governance and distribution regime being implemented

### 'Independent' advice

New concept of 'independent' advice and parameters for being independent

### Product intervention




New ability for national regulators and ESMA/EBA to temporarily ban products and services

### Recording calls

- New requirements for certain firms to record certain calls and other electronic communications.
- Record to be kept for 5 / 7 years
- File note of face-to-face meetings with clients to be kept

### Remuneration

New requirements in relation to remuneration arrangements of investment firms

Key:  Significant change compared to MiFID I  Moderate change compared to MiFID I  Minor / no changes compared to MiFID I

## Proposed Level 2

### Client categorisation

Proposes to narrow who can qualify as an elective ECP

### Client order handling

No changes proposed

### Conflicts of interest

Significant changes proposed:

- disclosure as a 'last resort';
- over-reliance on disclosure implies conflict of interest policy is deficient
- bespoke (not generic) disclosure
- warning to be included in disclosures
- policies reviewed / updated frequently
- Hot Topic: placing and underwriting

### Client assets

Significant changes proposed, including:

- new dedicated officer responsible for client assets
- further restrictions on title transfer collateral arrangements
- requirements related to securities financing transactions, diversification, intra-group deposits, custody liens, etc.

### Inducements: firms other than portfolio managers / independent advisers

Significant tweaks proposed, including:

- 'quality enhancement' test clarified
- further ESMA Recommendations and Guidelines to be developed
- 'minor non-monetary benefit' excluded as an inducement
- Hot Topic: treatment of research

### Inducements: portfolio managers / independent advisers

Proposals include:

- timing of paying over third party payments and information to clients
- minor non-monetary benefits proposed to be strictly interpreted – an exhaustive list
- Hot Topic: treatment of research

### Suitability

Enhancements proposed include:

- proposals in relation to suitability assessments
- prescribe suitability report content
- prescribe requirements for periodic suitability reports

### Complaints handling

Enhancements proposed include:

- requirements for written complaints handling procedure and specific requirements in relation to firms' handling of complaints
- ESMA potentially producing more guidelines in future
- currently applies to all clients

### Financial promotions

Significant changes proposed:

- improve communications with retail clients
- extend retail-like obligations to professional clients

### Reporting and information

Significant extensions proposed:

- prescriptive requirements for reporting to clients - ESMA proposes that ECPs can 'opt-out' from certain requirements
- content, format, extent of information provided to clients prescribed
- Hot Topic: transparency of costs – link with PRIIPs

### Appropriateness and execution-only

Minor extension to include a further two criteria for determining when an instrument is 'non-complex'

### Best execution

Significant enhancements proposed including:

- additional transparency and disclosure requirements
- customised best execution policies
- separate summary sheet for retail clients
- no clarity on test of 'all sufficient steps'

### Record-keeping

Proposed extension of regime to codify CESR's Level 3 guidance from 2007, including:

- minimum, non-exhaustive list of the types of records to be kept
- content of records prescribed
- policies to be kept in writing

### Product governance and distribution

Substantial extension of the regime proposed, to make it more prescriptive

### 'Independent' advice

Number of additional proposals in relation to 'independence'

Tweaks to exclusions from definition of advice (e.g. when provided through distribution channels)

### Product intervention

ESMA / EBA developing factors national regulators to consider when deciding to use product intervention powers

### Recording calls




Significant extension including:

- content of records for face-to-face meetings with clients
- in a 'durable medium'
- extends to third country branches
- operational procedures

### Remuneration

Proposed extension to elevate CESR's Level 3 guidance, including:

- non-financial remuneration to be included as remuneration
- involvement of compliance function
- design criteria for remuneration policies
- balance between fixed and variable
- focus on best interest and conflicts

Key:  Significant change compared to Level 1/MiFID I  Moderate change compared to Level 1/MiFID I  Minor / no changes compared to Level 1/MiFID I

# Impact in UK

## Client categorisation

Impact on firms who deal with municipalities, local public authorities and elective ECPs

## Client order handling

No change for UK firms

## Conflicts of interest

Depending on a firm's existing practices, either moderate change or significant:

- review existing prevention measures
- update policies
- create disclosure documents for different client types/investment strategies
- consider how to ensure disclosure is used as a 'last resort' / balance against common law disclosure requirements

## Client assets

UK regime is already super equivalent

New Client Assets Rules from PS14/9 already in force and coming into force Dec 2014 and June 2015 already represent significant impact to UK firms

## Inducements: firms other than portfolio managers / independent advisers

Significant impact:

- effectively 'killing' free research
- COBS 2.3 table to align to ESMA table

## Inducements: portfolio managers / independent advisers

Significant impact:

- new ban on UK portfolio managers
  - permitted genuine Non-RDR Payments may not match ESMA's 'minor non-monetary benefits'
  - extending RDR ban to professional clients
  - effectively killing 'free' research
- Plus:** FCA Thematic Review and Discussion Paper on use of dealing commission and unbundling research

## Suitability

Minor impact on UK firms – required to update suitability assessment material, review client facing documentation and consider whether 'churning'

## Complaints handling

Impact on UK firms:

- if ESMA applies complaints handling process to retail clients only, little impact for UK firms but if applied to professional clients as well, moderate changes. Questionable if workable in practice
- no clarity on what amounts to a "complaint"

## Financial promotions

Impact on UK firms:

- communications to professional clients will be almost indistinguishable from communications to retail clients
- communications with ECPs will need to be assessed to be fair, clear and not misleading

## Reporting and information

Significant impact:

- more detailed information provided more frequently to professional / retail clients
- new information / reports to ECPs
- PRIIPs: more disclosure (KIDs)

**Tension:** FCA separated cost of advice from product charges with RDR – Level 2 and PRIIPs associates them

## Appropriateness and execution-only

Impact on UK firms who provide execution-only services – reassess what amounts to a non-complex instrument

## Best execution

Significant impact:

- additional transparency requirements and data / reporting requirements
  - customised best execution policies
  - separate summary for retail clients
  - additional disclosure, recordkeeping
  - no clarity on test of 'all sufficient steps'
- Plus:** FCA Thematic Review on Best execution (July 2014)

## Record-keeping

Minor changes to existing record-keeping requirements may be needed once Level 2 finalised but UK super equivalent already

## Product governance and distribution

UK regime already super equivalent:

- UK Product Governance Guidance and RPPD regime, will be codified into rules
- ESMA's proposals do represent some extension of the UK regime – extension to professional clients

## 'Independent' advice

- Not new to the UK - introduced by RDR
- Difference in terminology: non-independent advice (ESMA) referred to as 'restricted' advice (UK)
- Slight differences in how UK regime assesses 'independence'

## Product intervention

UK regime already super equivalent:

- FCA's product intervention powers - used for the first time in August in relation to retail CoCos
- Some differences to UK regime

## Recording calls


Significant impact:

- not only calls and e-communications recorded, but face-to-face meetings with clients by a file note
- keep for 5 – 7 years (not 6 months)
- in 'durable medium'


## Remuneration

Little impact in the UK:

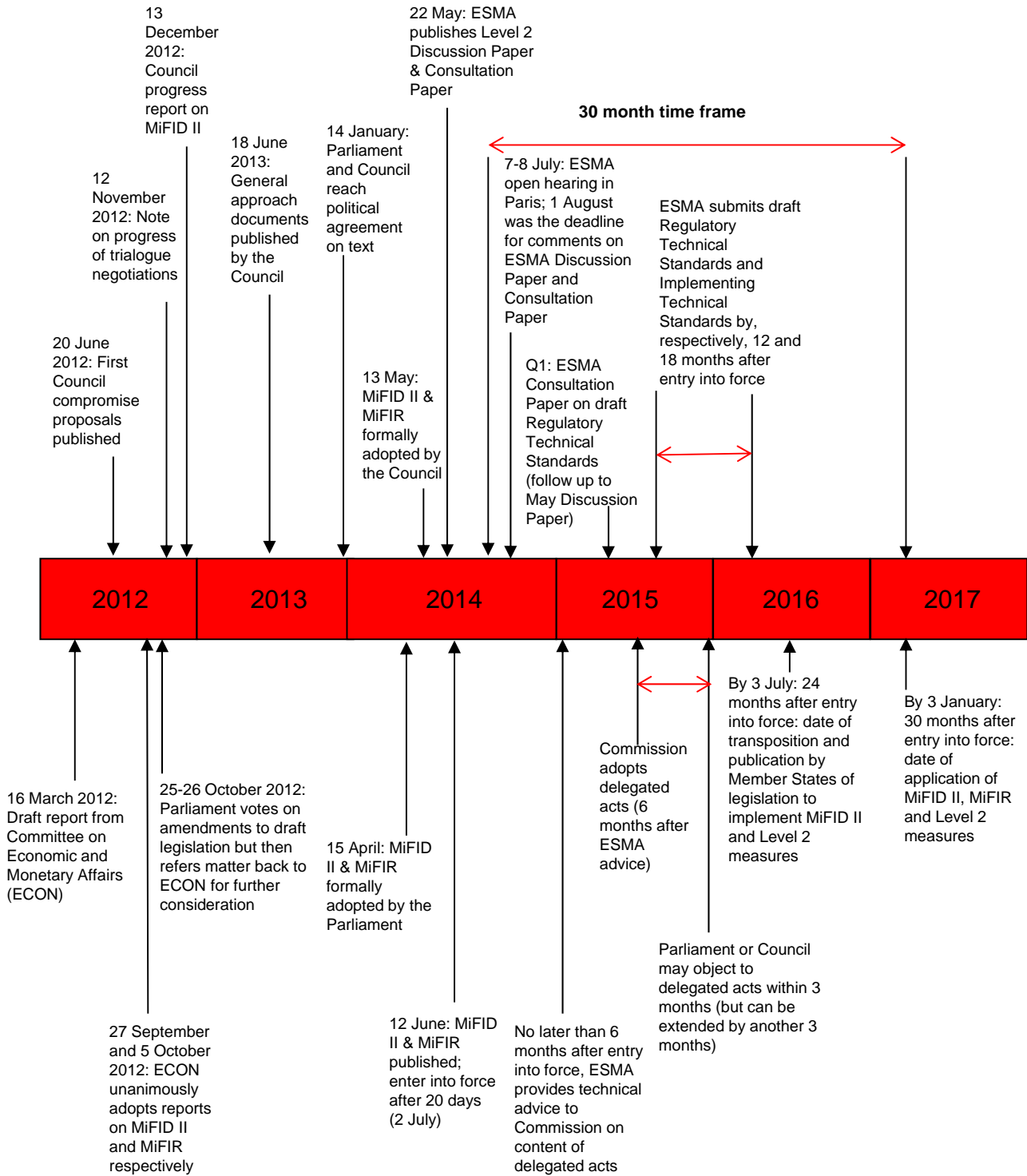
- CESR Level 3 guidelines already apply
- SYSC remuneration provisions are already in force
- FCA already focused intently in this area with client's best interests rule and conflicts

Key:  Significant change to MiFID I as implemented in UK

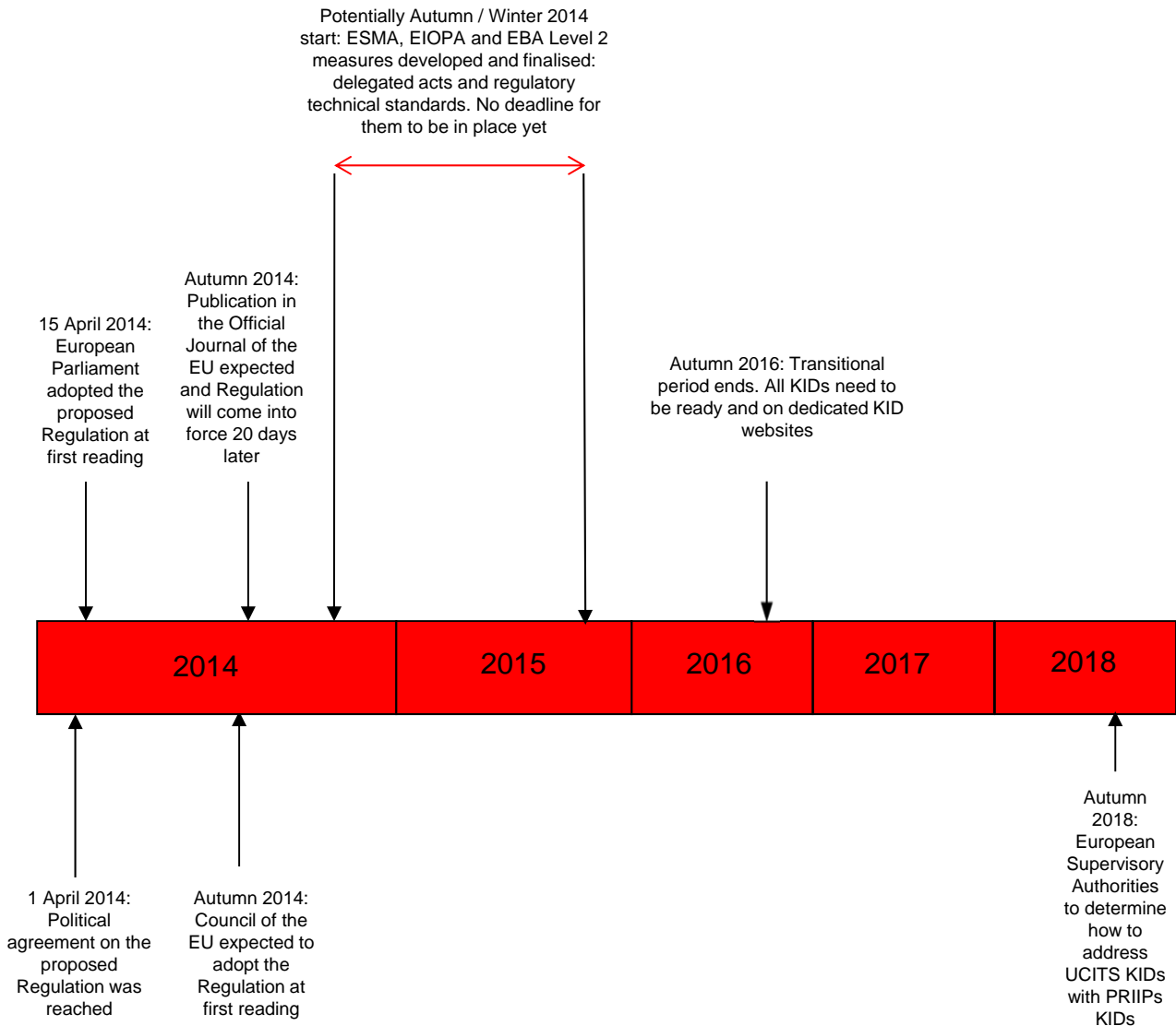
 Moderate change to MiFID I as implemented in UK

 Minor / no changes to MiFID I as implemented in UK

## Timing: MiFID II and MiFIR



## Timing: PRIIPs\*



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