

25 May 2023

Circular on Markets in Financial Instruments Directive ('MiFID II') and Markets in Financial Instruments Regulation ('MiFIR')

ESMA publishes Opinion on Market Outages

This circular is being addressed to investment firms, credit institutions providing investment services and/or performing investment activities and market operators including any trading venues they operate.

This circular shall be read in conjunction with Directive 2014/65/EU (['MiFID II'](#)) and Regulation (EU) 600/2014 (['MiFIR'](#)), the MiFIR Validation Rules, the delegated regulations and previous circulars issued by the Authority.

Purpose of the Circular

On 28 September 2021, ESMA published a review report on algorithmic trading where it had committed to provide guidance on how trading venues should communicate with market participants in case of an outage. As such, on 22 September 2022 ESMA published a consultation paper on its proposed guidance on market outages.

The scope of this circular is to inform the general public and market participants that the European Securities and Markets Authority (ESMA), has on 25 May 2023 published its [final report on market outages](#) including an Opinion on market outages, highlighting the importance for trading venues of having an appropriate outage plan to communicate to their members, participants, and the public. This final report contains ESMA feedback to the responses received to the consultation paper.

Despite the obligations imposed by Articles 31(2) and 54(2) of MiFID II (outlining how trading venues should communicate system disruptions to their national competent authorities), ESMA identified a gap in terms of conditions or requirements as to how trading venues should communicate to their members and participants (and the public) in the case of an outage. The absence of such requirements results in very divergent approaches of trading venues and, at least at times, leads to insufficient information being disclosed to members and participants, and the public.

Hence the opinion published by ESMA provides guidance on the requirements that NCAs should require trading venues to have in place to deal with market outages events. ESMA expects that, considering the guidance provided in this opinion, NCAs should ensure that trading venues have in place an appropriate outage plan ready to be deployed in case of an outage.

Contacts

Any queries or requests for clarifications on the contents of this Circular should be addressed to the Authority via email on MarketInfrastructures@MFSA.mt.