

16 March 2026

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

Introduction

This Circular is being addressed to all market participants falling within scope of MiFID II and MiFIR, *inter alia* investment firms and credit institutions when providing investment services and/or performing investment activities and market operators including any trading venues they operate.

Overview

The MFSA is drawing the attention of market participants to four ESMA (and joint EBA–ESMA) publications issued over the past days. This Circular summarises the key points and sets out MFSA expectations, including recommended actions and indicative timelines for entities operating in or from Malta. The publications are:

1. [Supervisory Briefing on Algorithmic Trading in the EU](#) (26 February 2026).
2. [EBA & ESMA consultation on revised suitability assessment requirements for banks and investment firms](#) (25 February 2026).
3. [ESMA simplifies MiFID II/MiFIR obligations on market data](#) by withdrawing its 2021 market-data guidelines with immediate effect (23 February 2026).
4. [ESMA publishes the list/decision on supplementary deferrals for sovereign bonds under MiFIR](#) (19 February 2026).

ESMA Supervisory Briefing on Algorithmic Trading (MiFID II / [RTS 6](#))

ESMA issued a non-binding [supervisory briefing](#) to foster consistent supervision of algorithmic trading across the EU. The briefing clarifies scope and definitions, strengthens expectations around **governance, testing** (incl. conformance and stress tests), **pre-trade controls** (PTCs) (with explicit discussion of hard and soft blocks), **outsourcing/third-party algorithms, Direct Electronic Access** (DEA), and includes a dedicated section on **AI in trading** and its interaction with **RTS 6 obligations**.

MFSA Expectations (immediate)

Investment firms (and credit institutions providing investment services) engaging in algorithmic trading should

- conduct and document a **gap analysis** against the supervisory briefing, covering (at a minimum) RTS 6 Articles 2, 4–5, 9–16, 20–22: governance and two-lines-of-defence monitoring; outsourcing due diligence and contractual controls; testing and risk-management, PTC design/calibration;; DEA oversight;; AI explainability and model change tracking.
- ensure implementation of hard blocks (non-overridable) and appropriately calibrated soft blocks for each instrument/strategy, with ongoing monitoring of related to support periodic recalibration (**Pre-trade controls**).
- integrate the expectations outlined in the briefing into the Article 9 RTS 6 **Annual self-assessment**/validation cycle and ensure senior management sign-off.
- maintain sufficient understanding, oversight, and access to testing/records where **third-party algorithms** or execution tools are used as firms remain fully responsible for compliance with applicable regulatory requirements

Investment firms or credit institutions providing investment services that do not engage in algo trading are reminded that they are also expected to establish mechanisms to prevent the submission of erroneous orders to a trading venue. Accordingly, they must implement appropriate controls, calibrate those controls in line with their risk tolerance, conduct periodic reviews to ensure their continued effectiveness, and maintain comprehensive policies – clearly defining responsibilities – governing the operation of these controls.

MFSA Supervisory Follow-Up

The MFSA will incorporate the briefing into authorisation/on-site/thematic work on algo trading and may request firms' gap-analysis and evidence of remediation on request. The Authority may, as part of its overall supervisory engagement (including upholding orderly trading), request information on the arrangements adopted by firms to ensure that erroneous orders are prevented from reaching trading venues irrespective of whether or not the firms engage in algo trading.

EBA & ESMA Consultation – Revised Joint Guidelines on Suitability (Banks & Investment Firms)

EBA and ESMA opened a [consultation on revised joint Guidelines](#) on the assessment of the suitability of members of the management body and key function holders, aligning with changes in the revised CRD and MiFID II.

The consultation closes **25 May 2026**; a public hearing is scheduled for 15 April 2026 (14:00–15:30 CET). The draft includes (*inter alia*): use of ex-ante applications where authorities conduct ex-post assessments; mandatory suitability assessments for certain roles (e.g., heads of control functions and CFOs); further guidance on third-country branches; and stronger links with AML/CFT risk indicators. Once finalised, the text will repeal the 2021 Guidelines.

Institutions and investment firms are encouraged to review the draft and, submit comments or recommendations where relevant.

MFSA expects that all stakeholders begin internal impact assessments of fit-and-proper processes, templates and governance (e.g., role coverage incl. key function holders, AML/CFT considerations, third-country branch applicability, ex-ante applications) to facilitate timely implementation once the final Guidelines are issued.

Market Data – ESMA Withdraws 2021 Guidelines; Alignment with RCB RTS

On 23 February 2026, ESMA withdrew¹ its 2021 [Guidelines on the MiFID II/MiFIR obligations on market data](#) with immediate effect, noting that the clarifications have been incorporated into [Commission Delegated Regulation \(EU\) 2025/1156 \(RTS on the obligation to make market data available on a Reasonable Commercial Basis – RCB\)](#), which entered into force on 23 November 2025.

Market-data providers authorised before that date benefit from a transition period until 22 August 2026 solely to align contractual arrangements with the RTS.

Trading venues, APAs and data vendors should

- **Cease reliance on the 2021 Guidelines** and **review/update** pricing policies, licensing terms, and disclosure artefacts to ensure full conformity with the **RCB RTS** (e.g., cost

¹ [Decision on the withdrawal of guidelines on the MiFID II/ MiFIR obligations on market data](#)

accounting methodologies, unbundling, publication of price lists/policies, non-discriminatory terms).

- **re-paper** customer contracts as needed within the transition window ending **22 August 2026**.

MFSA Supervisory Follow-Up

The Authority may as part of its overall supervisory engagement, request evidence of the gap analysis carried out and any changes implemented. Firms are expected to be mindful of the short adjustment period provided.

Sovereign Bonds – Supplementary Deferrals under MiFIR Post-Trade Transparency

ESMA, together with NCAs (all except the National Bank of Slovakia), has published the list and details of the [supplementary deferrals](#) to be applied on top of the standard MiFIR deferral regime for sovereign bonds.

For medium-size trades on liquid (**Group 1**) bonds, publication of the volume may be omitted until the end of the trading day in accordance with Article 11(3)(a) MiFIR. The measure is intended to start applying on **4 May 2026** to allow a consistent, EU-wide implementation date.

The underlying [ESMA Board of Supervisors Decision](#) confirms scope, interaction with RTS 2 categories, and effective date (4 May 2026).

Trading venues and APAs are expected to **update deferral logic, market-data flags and publication workflows** in line with the supplementary deferral (including identification of Group 1/Category 1 liquid sovereign bonds as per RTS 2 methodology) **by 4 May 2026**.

Investment firms shall ensure order/APA publication systems correctly apply the deferral and that post-trade reports are republished with volumes by end-of-day where applicable.

Actions and Indicative Timelines

Area	Required / Expected actions	Indicative date
Algorithmic trading	Complete gap analysis against ESMA briefing; plan remediation (governance, PTCs, testing, outsourcing/DEA, AI explainability). Keep records for supervisory review.	by 30 April 2026
Suitability (consultation)	Consider submitting responses; commence internal impact assessment of fit-and-proper processes (incl. ex-ante applications, key roles, AML/CFT, third-country branches).	25 May 2026 (comments deadline)
Market data	Align contractual terms, fee schedules and RCB disclosures with RTS on RCB; cease reliance on 2021 Guidelines.	by 22 August 2026 (latest for re-papering)
Sovereign bonds	Implement supplementary deferrals (medium-size, liquid Group 1; volume omission until end-of-day) in venues/APAs and firm reporting.	effective 4 May 2026

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.