



Call recording under MiFID II regulations

How to prepare your company for MiFID II

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The initial situation

From 03 January 2018 onwards, the Markets in Financial Instruments Directive (MiFID II) requires security traders that operate within the EU to record all calls that involve acceptance, conveyance and/or execution of customer orders and store these recordings in full encryption for five years. Affected security traders and banks naturally seek qualified call recording solutions that cover their needs. Furthermore, if call recording solutions are already in operation, they might not fully cover the legal demands and thus their continuous use past the deadline may become illegal. Given the profound requirements, deciding on one solution may be a tough challenge. The MiFID II guideline can be interpreted on various forms and solutions cannot be selected based on the guidelines only, as other factors such as data protection or labour regulation still need to be covered. This White Paper has been designed to cover the relevant requirements and provide technical solutions based on our product OfficeMaster CallRecording.

List of content

1. The initial situation.....	2
2. The legal requirements.....	3
3. Economical requirements.....	4
4. When is the best time to act?.....	5
5. About Ferrari electronic.....	6

In order to judge whether a call recording solution is MiFID II compatible, its legal requirements need to be analysed. These consist of the MiFID II guideline, the consultation papers managed by ESMA and the respective laws on data protection and labour regulation. Lastly, individual requirements that have been instituted by the company itself need to be in accordance with comfort and economic efficiency.

The legal requirements

Mandatory recording of calls:

The regulation dictates that all calls that consist of certain security paper services shall be recorded. This obligation encompasses incoming and outgoing calls that involve acceptance, conveyance and/or execution of customer orders, independent on (un)-successful trades.

There are two versions that need to be differentiated when approaching the topic of call recording solutions: **on-demand** recordings and **automatic** recordings:

on-demand recordings do not automatically start recording calls; they need to be manually activated at the beginning of each call.

automatic recordings record every call autonomously. Filters may be applied that prevent the solution to record unwanted calls such as calls that are received within a specified time period or from certain numbers.

An automatic solution is not obligatory according to MiFID II. A dictating machine could literally be put in-between calls and act as recording solution. As every employee has to manually activate this machine prior taking a call, this "solution" may be challenged by a court judge if recordings are missing or incomplete. The dictating machine example clearly highlights the challenge companies face in search for a MiFID II compliant solution: Many of them are promoted as MiFID II compliant and providers tend to devolve legal responsibility away from the actual solution down to the user. The following statement applies: **The use of an on-demand system requests a more complex definition of work- and organization procedures in order to comply with MiFID II.** This unavoidably leads to faulty recordings and law infringements.

On-demand call recording solutions are prone to handling mistakes and manipulation given the fact that these recordings need to be triggered manually. Companies therefore place themselves in high risk when resorting to this form. All these vulnerabilities are eliminated by using an autonomous

recording trigger (automatic recordings) and forgetting to activate a recording will no more be an issue. To stay MiFID II compliant is additionally crucial as the sentences for not keeping the legal guideline are particularly heavy. It may also not be very expedient revenue-wise to burden the employees with an additional task on top of their everyday obligations. Therefore, we highly recommend to resort to an automatic recording solution

Staying in law with data protection and labour regulation:

At times, two laws may collide with each other and exceptions need to be defined in order to cover both. MiFID II is such an exception as its guideline demands full recordings of counselling interviews, but data protection and labour regulation laws forbid these recordings in many countries. On the one side, MiFID II looks with sharp eye on the compliance of their guideline, on the other data protection observers examine whether companies do not record one bit more than required by MiFID II. It is, as mentioned above, crucial to move just in between this space as judicial consequences are enormous if laws on either sides are breached. Automatic recording solutions need to be configured in a way that they autonomously detect if or if not a call needs to be recorded.

OfficeMaster CallRecording uses configurable "prefilters" to cover these demands. Numbers, time intervals and more can be set as triggers. Whole calling numbers or calling number bases can be excluded from a recording. In practical, the list of exclusions would cover calls to and from the local employee organisation, legal department or any calls that are handled beyond the usual business hours.

Define organisation guidelines and train employees

Even after meticulously configuring these filters, in order to maintain operation on a legal basis, it is vital that employees are thoroughly trained in accordance with MiFID II and the call recording solution. A compliance training for employees is also demanded by the legislator. Should the organisation guideline not contain instructions on call recording under MiFID II, they ought to be supplemented to them.

Notifying customers on an imminent recording:

As only a narrow gap separates recording prohibition and recording necessity, all new and existent customers need to be hinted on the fact that their call is going to be recorded and stored. In the particular case of security paper services, this notification needs to be conveyed only once for each customer and may not necessarily be of oral nature. Yet it is mandatory to use the same language that the trade is going to be held in. Voice recordings that are commonly used for the purpose of notifying customers on quality management can therefore be eliminated due to practical reasons. Thus it is suggested to distribute the notification in written form. Any recordings prior to the point of the customer's consent is unlawful in many countries (data protection). **OfficeMaster CallRecording's** "pre-filters" can be configured to assure that only these calls are recorded where customers have already given their consent.

MiFID II requires recordings to be stored for a minimum amount of five years. Financial services authorities may expand this period to a maximum of seven years:

The amount of estimated calls and data consumption should be calculated beforehand. Professional call recording solutions, such as **OfficeMaster CallRecording**, offer the opportunity to alter audio file quality at any time and thus significantly improve available data storage. Although it is recommended to permanently store the audio files in full encryption on a Network Share, each file should be temporarily stored on the local machine during a call as well. If the call is terminated, they can safely be transferred to the Network Share. By doing this, losses that would occur during a faulty transmission which in turn lead to heavy penalties can be avoided.

Furthermore, the system constantly needs to provide for sufficient available data storage to prevent it from failing to store new recordings. A quota mechanism can be used that, after reaching a predefined capacity or time, overrides local recordings once they have successfully been transferred to the Network Share.

Files that are requested by the financial services authority need to be handed over to them:

This section encompasses multiple requirements to the administration of recordings:

1. Efficient administration programme (recording finder)
2. Future-proof file format
3. Sufficient encryption during file transfer

1: To ensure that requested files can be found within millions and millions of other files, metadata need to be applied to them upon initial recording. It is suggested that the programme that is intended for these administration tasks should be able to handle various search parameters such as time, date, numbers, calling direction etc.

2: The stored files need to be in a format that ensures a swift and easy access if they are requested by an authority or customer in the future. Common file formats such as .wav is supported by most players and may be used. Furthermore, this format features various quality settings that can be selected if required.

3: A full encryption of these files is mandatory. As these files are particularly prone to unauthorised access and data theft during the process of transferral, the encryption must be applied prior transferring them. If the recordings are sent to authorised members, it must be made sure that they alone are capable of decrypting and playing them.

Recordings need to be preventively protected against manipulation. If, however manipulation does occur, these security breaches must be traceable:

A professional call recording system offers these preventive measures even before a call has been recorded. Here, a smart user administration manages access rights for various users and administrators. These access rights can be predefined. Resorting to such a system is especially beneficial as administration tasks can be transferred to employees with limited access rights without increasing the manipulation risk.

In case of unauthorised access or any general manipulation of the recordings, these actions need to be traceable. **OfficeMaster CallRecording** employs such a safeguard system, namely the finger print function. Existent call recordings are compared to a key that has been generated upon file creation. This method can, in plain expression, be compared to a second layer that is put above the original file. If these two files don't match, a symbol is displayed and the user is informed of the file modification. Hence, security gaps can be detected and actively closed.

Economical requirements

Apart from fulfilling legal requirements, efficient call recording systems help improve economical and structural operation within a company. The following requirements are commonly demanded by these systems:

Centralised administration:

Strict legal requirements cause a call recording solution to be somewhat of a highly complex system. A highly skilled administrator should be employed who covers all main maintenance and administration tasks. Additional costs for a company can literally explode the more complex these demands are and the more locations are affected. A centralised administration is the key to a cost efficient management on a secure level. For instance, **OfficeMaster CallRecording** uses a collector service that collects all call recording files, independent on location, merges them together and streams them to a Network Share. This automatism greatly reduces administration work for employees on the respective location and, in turn, reduces the possibility of potential file manipulation.

Competent partner, swift support:

Particularly upon the first implementation of a call recording solution into an existent telecommunication infrastructure, customers are naturally in need of a competent partner and, in case of system errors, require a swift support. If a call recording solution does fail, questions are quickly aroused on how to bridge the time until the system is up again while staying in law with MiFID II. If these issues are not coped with prior installation, the company can be held accountable once MiFID II guidelines are breached.

When is the best time to act?

MiFID II is a EU guideline and as such demands its guideline to be implemented into national law. Given the case of Germany, the commercial code for security paper (WpHG) has been revised and will contain the MiFID II guideline. Companies are left to decide whether they install a call recording solution before the revised WpHG comes into effect. However, as the actual security paper trade is measured by the WpHG and not MiFID II, they might want to wait until both legislations have come into effect. The introduction of MiFID II has been postponed by one year and is now scheduled to take effect on 03. January 2018. Hence, security paper traders as well as legislators in the respective states were given more time for preparations. A further postponement is unlikely. MiFID II generally covers basic national laws on security paper trade but it is expected that the German WpHG law may even extend further and demands a recording of all consultation calls apart from customer's actual orders. All preparations for at least MiFID II need to be completed and integrated into workflow by 03. January 2018. These include training of employees and per-

forming system stability tests. If security paper traders have undertaken these preparations well in advance, they might even experience a competitive advantage once the deadline has been reached.

Again as with the case in Germany, the leading provider for telecommunication, Deutsche Telekom, projects to cease communication via ISDN by 01. January 2018. If a comparable move is planned in your country, we suggest to perform the migration together with the installation of a call recording solution. Our OfficeMaster appliances have been designed to integrate these two needs in one piece of hardware which will significantly reduce migration costs.

About Ferrari electronic

Ferrari electronic is a leading German manufacturer of hard and software for Unified Communications. The OfficeMaster range integrates fax, SMS and voicemail into all existing email and application systems. The hardware seamlessly connects a company's telecommunications infrastructure with the existing information technology. Customers benefit from greater efficiency and streamlined business processes. In August 2014, Ferrari electronic acquired innoventif Ltd. and thereby expanded their portfolio by the OM CallRecording solutions. Thus call recording becomes an integral part of Ferrari electronic Unified Communications solutions. Companies can optimise their sales department, service quality and other processes with a wellrounded system. Ferrari electronic with this move gains new opportunities, customers gain additional value.

Research, development and support of Ferrari electronic AG are located entirely at the company's headquarters in Teltow

near Berlin. A pioneer in computerfax since 1989 with the product „ferrariFAX“, Ferrari electronic remains market and technology leader in this area to this day. Today, more than 50,000 companies with approx. 5 million users utilise Unified Communications products by Ferrari electronic. The customer base includes companies of all sectors and sizes. Some of the more notable companies include Allianz Suisse, Asklepios Kliniken, Boehringer Ingelheim Pharma GmbH & Co. KG, EUROVIA, European School for Management and Technology, Griesson - de Beukelaer, Österreichische Kontrollbank AG, Stadthalle Wien and Techniker Krankenkasse.

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Recording calls is a common process in many industries nowadays. In the market of banking transactions, these recordings are mandatory. Particularly practical are recording solutions that can be found within our **OfficeMaster CallRecording** portfolio. They ensure an easy and swift integration into existent IT solutions while still covering all juridical demands.