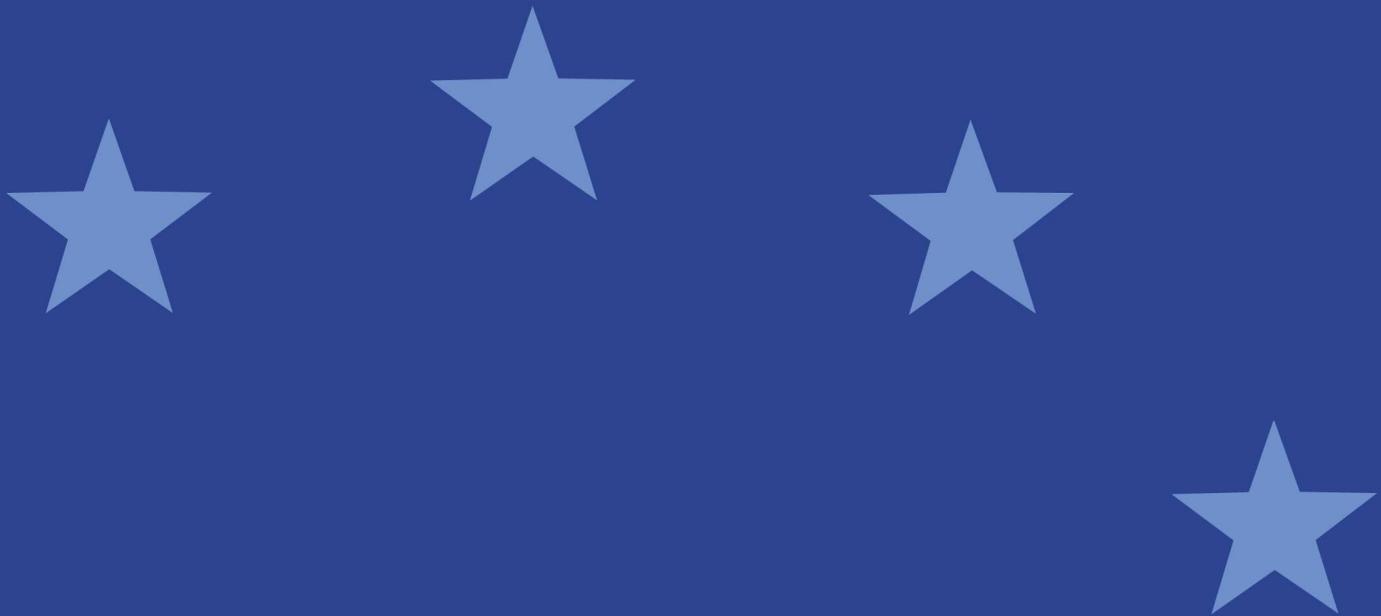




European Securities and  
Markets Authority

# Consultation Paper

**Review of the technical standards under Article 34 of MiFID II**



## Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

1. respond to the question stated;
2. indicate the specific question to which the comment relates;
3. contain a clear rationale; and
4. describe any alternatives ESMA should consider.

ESMA will consider all comments received by 3 months after publication.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Your input - Consultations'.

### Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

### Data protection

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading '[Data protection](#)'.

### Who should read this paper?

This paper is primarily of interest to competent authorities and investment firms that are subject to Directive 2014/65/EU of the European Parliament and of the Council (MiFID II). In particular, this paper is addressed to investment firms providing or that may in the future provide

investment services and activities on a cross-border basis in accordance with Article 34 of MiFID II.



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# 1 Executive Summary

## Reasons for publication

Article 34 of MiFID II requires ESMA to develop draft regulatory (RTS) and implementing technical standards (ITS) to (i) specify the information to be notified by, inter alia, firms wishing to provide cross-border services without the establishment of a branch and (ii) establish standard forms, templates and procedures for the transmission of information in this respect.

ESMA delivered its Final Report with both the RTS and ITS on 29 June 2015<sup>1</sup>. Following endorsement and publication in the Official Journal of the EU, they applied from 3 January 2018.

ESMA has worked on ensuring the consistent application of MiFID II and its RTS and ITS. The practical implementation of the freedom to provide services under Article 34 of MiFID II (FPS) showed some shortcomings and highlighted instances where improvements could usefully be made to the RTS and ITS to better help home national competent authorities (NCAs) to fulfil their supervisory objectives.

## Contents

The background to the proposals is explained in section 2 of the CP. Section 3 sets out the analysis of the proposals, including the questions ESMA poses to stakeholders. A complete list of all questions posed is provided in Annex I. Annex II shows ESMA's legislative mandate. Annex III includes the draft cost-benefit analysis. The full text of the draft RTS and ITS is included, respectively, in Annexes IV and V.

## Next Steps

ESMA will consider the feedback it received to this consultation and expects to publish a final report and submission of the draft technical standards to the European Commission for endorsement by the end of 2023.

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<sup>1</sup> ESMA/2015/1006.

## 2 Background

1. MiFID II<sup>2</sup> and its delegated and implementing measures were adopted to offer a higher level of protection to investors and ensure the uniform application of the requirements in the European Union (EU). In this context, MiFID II recognises the importance to allow the provision of investment services across the EU through the freedom to provide services under the FPS regime. This is a key element of the single market of financial services as it fosters competition and expands the offer available to consumers who can choose among a broader number of firms and investment opportunities.
2. Article 34 of MiFID II provides a mandate for ESMA to draft RTS and ITS to (i) specify the information to be notified by firms wishing to provide cross-border services without the establishment of a branch and (ii) establish standard forms, templates and procedures for the transmission of information in this respect. In 2015, ESMA fulfilled its mandate and submitted those drafts to the Commission<sup>3</sup>, which became Commission Delegated Regulation (EU) 2017/1018<sup>4</sup> and Commission Implementing Regulation (EU) 2017/2382<sup>5</sup>. These regulations are the subject of this Consultation Paper.
3. In monitoring the provision of investment services across the EU to retail clients, ESMA and NCAs have noted the continued increase in cross-border activities provided under the MiFID II FPS regime. This increase results from several factors, including the development of the single market and the digitalisation of financial services, which further facilitates firms to provide services across borders. The pandemic has also created conditions that contributed to an increase in retail investors' exposure to securities markets, including cross border.
4. The increase in cross-border services has clear benefits for consumers and investment firms, as it fosters competition, expands the offer available to consumers and the market for firms. This is a welcome development, consistent with the objective to develop the single market for financial services in the EU. At the same time, these developments clearly require NCAs to increase their focus on the supervision of cross-border activities and on cooperation. A development of cross-border activities which is not accompanied by increased supervisory focus risks undermining investors' trust and backfiring on the achievement of the single market.
5. Effective supervision by NCAs of entities providing investment services on a cross-border basis is therefore of key importance to ensure that clients, especially retail, are

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<sup>2</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

<sup>3</sup> ESMA/2015/1006.

<sup>4</sup> Commission Delegated Regulation (EU) 2017/1018 of 29 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying information to be notified by investment firms, market operators and credit institutions (OJ L 155 17.6.2017, p. 1).

<sup>5</sup> Commission Implementing Regulation (EU) 2017/2382 of 14 December 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the transmission of information in accordance with Directive 2014/65/EU of the European Parliament and of the Council (OJ L 340, 20.12.2017, p. 6).

given the adequate level of protection regardless of the jurisdiction of origin of the entities offering these services.

6. Under MiFID II, the free provision of services in the EU (without establishment in host Member States) rests on the supervision of the home NCA and on the cooperation between home and host NCAs.<sup>6</sup> Any investment firm wishing to provide services or activities within the territory of a Member State other than its home Member State for the first time, or which wishes to change the range of services or activities so provided, shall notify its home NCA of its intention to do so through an investment services and activities passport notification (as defined in Article 2(a) of Commission Delegated Regulation (EU) 2017/1018).
7. The information the home NCA receives through the investment services and activities passport notification may thus play a key role in raising the NCA's scrutiny on an investment firm's cross-border activities or plans of cross-border activities.
8. This Consultation Paper introduces a number of changes to the current RTS and ITS by adding the following items to the information that investment firms are required to provide at the passporting stage:
  - the marketing means the firm will use in host Member States;
  - the language(s) for which the investment firm has the necessary arrangements to deal with complaints from clients from each of the host Member States in which it provides services;
  - in which Member States the firm will actively use its passport as well as the categories of clients targeted;
  - the investment firm's internal organisation in relation to the cross-border activities of the firm.
9. For detailed changes and the actual proposals please see Section 3 (Analysis) below as well as Annexes IV and V.

### **3 Analysis**

10. In the current version of the RTS and ITS, investment firms wishing to provide services or activities within the territory of another Member State for the first time, or which wishes to change the range of services or activities so provided, shall communicate the below information to the competent authorities of its home Member State:
  - a) contact details;

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<sup>6</sup> The direct intervention of host NCAs is a last resort tool, through the possibility to adopt precautionary measures under Article 86 of MiFID II.

- b) the Member State in which it intends to operate;
- c) the investment services and/or activities and ancillary services which it intends to provide in the territory of that Member State;
- d) whether it intends to use tied agents established in its home Member State as well as the intended investment services and activities to be provided by the tied agent(s).

Such information is listed in Article 3(1) of the RTS and developed in Annex I of the ITS.

11. To improve the range of information available to the home NCA and also improve its scrutiny of a firm's cross-border activities, further information should be provided at the passporting stage. Based on NCAs' experience, the following information has been added to the list of Article 3(1) of the RTS and to Annex I:

- a) an overview of the investment firm's actual cross-border activities (the host Member States where it is actively targeting clients) and whether they target retail clients and/or professional clients under Annex II of MiFID II;
- b) the marketing means the investment firm is using to actively target clients in host Member States;
- c) the language(s) for which the investment firm has the necessary arrangements to deal with complaints from clients from each of the host Member States in which it provides services;
- d) information about the internal organisation of the investment firm in relation to its cross-border activities.

12. For the sake of clarity, the amendments to the RTS and ITS do not change the information required from credit institutions as referred to in Article 1(2) of the RTS. Credit institutions wishing to provide investment services or activities as well as ancillary services on a cross-border basis through tied agents established in their home Member States should notify the home national competent authorities with the identity of the tied agent as well as the investment services or activities, ancillary services and financial instruments to be provided by the latter. Other information required to be notified by investment firms wishing to provide investment services and activities on a cross-border basis are not required from credit institutions. The further information required from investment firms will therefore not affect credit institutions.

#### Overview of the investment firm's cross-border activities

13. To allow for the home NCA to appropriately supervise investment firms' cross-border activities, it is key for the home NCA to be aware of the actual cross-border activities carried out by the investment firms it supervises.

14. Newly added point (c) of Article 3 of the RTS and part 3 of Annex I of the ITS require investment firms to specify in which host Member State(s) it will actively target clients (whatever the means of marketing, reaching out to prospective clients). This is by opposition to having a passport in a host Member State where the investment firm will not actively try to attract clients but where it seeks the passport on a precautionary basis. For instance, the firm was contacted by a client domiciled in that Member State in the absence of active marketing on its part or an existing client moved to that Member State and the firm considers there is a risk that either of these changes would cause it to provide investment services and activities in that Member State without a passport.
15. An investment firm would also be required to specify from which date it intends to start targeting clients in the relevant host Member State(s) and whether it will target retail clients and/or professional clients within the meaning of Annex II of MiFID II.
16. As the information required under point (c) of Article 3(1) of the RTS and Part 3 of Annex I to the ITS is crucial for the supervision by the home NCA of an investment firm's cross-border activities, investment firms should notify their home NCA of any changes to Part 3 of Annex I of the ITS.

**Q1: Do you believe that newly added point (c) of Article 3 of the RTS and Part 3 (Overview) of Annex I of the ITS are missing any information?**

**Q2: Do you agree that investment firms should notify their home NCA in case of any change to the list of host Member States where they actively target retail clients and/or professional clients under Annex II of MiFID II?**

Marketing means used by the investment firm to actively target clients in host Member States

17. In the past, some NCAs reported instances of investment firms providing services in their jurisdiction on a cross-border basis through the use of aggressive marketing means.
18. To allow home NCAs to supervise the marketing activities of investment firms they supervise in other Member States, it is crucial they get information on the means of marketing that the firm will use to target clients in such jurisdiction(s).
19. Newly added point (d) of Article 3 of the RTS and Part 4 of Annex I to the ITS require investment firms to specify which marketing means they intend to use in the host Member State(s) where they are actively targeting clients, as well as the following details:
  - a) in relation to social media campaigns, which social media platform(s) the investment firm will use;
  - b) in relation to mobile apps, whether the investment firm will use a dedicated mobile app and its main features;

- c) in relation to calls, whether the investment firm will use a call centre, tied agents or whether calls will be placed by employees of the firm;
  - d) in relation to dedicated websites, the domain names of such websites;
  - e) what language(s) the investment firm will use to actively target clients in host Member States.
20. While such information is important to have when the investment firm notifies its intention to actively target clients, it may be burdensome for firms as well as for NCAs to request that any change to the marketing means used by the investment firm to actively target clients in the host Member State be notified. In addition, such information may be easily collected by the NCA when conducting its supervisory activities. Therefore, changes to Part 4 of Annex I of the ITS are excluded from the obligation to notify changes under Article 4 of the RTS and Article 6 of the ITS.

**Q3: Do you believe that newly added point (d) of Article 3 of the RTS and Part 4 (Marketing means) of Annex I of the ITS are missing any information?**

Complaints

21. Newly added point (e) of Article 3 of the RTS and Part 5 (Complaints) of Annex I to the ITS require firms to indicate the language(s) for which the investment firm has the necessary arrangements to deal with complaints from clients from the host Member State.
22. Cross-border activities bring supervisory challenges for the home NCA, for instance in terms of monitoring (or simply checking) communications with clients (e.g. firms' websites, marketing material) in a language other than the domestic language or English, monitoring conduct and performance (e.g. local-market news, external stakeholders' information and complaints) and the increased complexity of the firms' organisation (e.g. different business/marketing strategies).
23. In order to understand the complexity of the investment firm's cross-border activities, it is thus crucial for the home NCA to understand in which language(s) the investment firm is communicating with prospective clients when targeting them and when clients need to submit a complaint to the firm, as well as whether there exists any discrepancy between the two.
24. While such information is important to have when the investment firm notifies its intention to actively target clients, it may be burdensome for firms as well as for NCAs to request that any change to the information provided in accordance with point (e) of Article 3 of the RTS and Part 5 of Annex I to the ITS be notified. In addition, such information may be easily collected by the NCA when conducting its supervisory activities. Therefore, changes to Part 5 are excluded from the obligation to notify changes under Article 4 of the RTS and Article 6 of the ITS.

**Q4: Do you believe that newly added point (e) of Article 3 of the RTS and Part 5 (Complaints) of Annex I of the ITS are missing any information?**

Internal organisation in relation to cross-border activities of the investment firm

25. It is crucial that investment firms active on a cross-border basis are adequately structured and organised to do so. The passporting stage is the opportunity for the home NCA to gather information on the firm's internal organisation in relation to its cross-border activities in order to assess, independently of the passporting procedure, whether the investment firm is fit to do so.
26. Newly added point (f) of Article 3 of the RTS and Part 6 (Internal organisation in relation to the cross-border activities of the investment firm) of Annex I of the ITS require investment firms to provide information on the following topics:
  - a) the functional and legal reporting lines relating to the investment firm's cross-border activities;
  - b) how the investment firm ensures that the internal control functions have the capacity to control the cross-border activities (including the language capacity and/or tools); and
  - c) the procedures put in place for cross-border clients to submit a complaint to the investment firm and for the firm to deal with those.
27. As explained above, such information is crucial. As such, investment firms should notify their home NCA of any changes to the information provided in accordance with point (f) of Article 3 of the RTS and Part 6 of Annex I of the ITS.

**Q5: Do you believe that newly added point (f) of Article 3 of the RTS and Part 6 (*Internal organisation in relation to the cross-border activities of the investment firm*) of Annex I of the ITS are missing any information?**

**Q6: Do you agree that investment firms should notify their home NCA in case of any change to the internal organisation of the investment firm in relation to cross-border activities?**

**Q7: Do you believe that any other information should be requested within the scope of the RTS/ITS?**

Communication of change in the particulars of an investment services and activities passport notification

28. In order to reflect in Article 4 of the RTS and Annex III of the ITS the changes made to, respectively, Article 3(1) of the RTS and Annex I of the ITS, Article 4 and Annex III have been amended so that investment firms should also notify any changes that may have been made to the list of Member States where the investment firm is actively targeting clients and/or the categories of clients it is targeting in such Member States; as well as any changes to the investment firm's internal organisation in relation to the provision of the cross-border activities.
29. Changes made to the information provided in accordance with points (d) and (e) of Article 3(1) of the RTS and provided by the investment firm in Parts 4 and 5 of Annex I to the ITS will not be required to be notified and therefore have not been included in the list of potential changes of Annex III of the ITS.
30. At the date the new RTS and ITS become applicable, and in order to limit the impact on investment firms and NCAs the changes to the RTS and ITS have, investment firms that have already submitted one or more investment services and activities passport notification will not be required to resubmit such investment services and activities passport notification(s) using the new template provided in Annex I of the ITS. However, investment firms submitting new investment services and activities passport notifications from the date of application will have to use the new template provided in Annex I of the ITS.
31. Regarding notification of changes, investment firms will be required to use the new templates when the requirement to notify changes to their home NCA under Article 34(4) of MiFID II is triggered by a change to the information previously notified.

**Q8: Do you have any comments on the changes made to Article 4 of the RTS and Annex III of the ITS?**

**Q9: Do you have any other comment or input on the draft RTS and/or ITS?**

**Q10. What level of resources (financial and other) would be required to implement and comply with the amendments made to the RTS and ITS? When answering this question, please also provide information about the size, internal organisation and the nature, scale and complexity of the activities of your institution, where relevant.**



## **4 Annexes**

### **4.1 Annex I**

#### **Summary of questions**

**Q1: Do you believe that newly added point (c) of Article 3 of the RTS and Part 3 (*Overview*) of Annex I of the ITS are missing any information?**

**Q2: Do you agree that investment firms should notify their home NCA in case of any change to the list of home Member States where they actively target clients as well as the ones where they actively target retail clients and/or professional clients under Annex II of MiFID II?**

**Q3: Do you believe that newly added point (d) of Article 3 of the RTS and Part 4 (*Marketing means*) of Annex I of the ITS are missing any information?**

**Q4: Do you believe that newly added point (e) of Article 3 of the RTS and Part 5 (*Complaints*) of Annex I of the ITS are missing any information?**

**Q5: Do you believe that newly added point (f) of Article 3 of the RTS and Part 6 (*Internal organisation in relation to the cross-border activities of the investment firm*) of Annex I of the ITS are missing any information?**

**Q6: Do you agree that investment firms should notify their home NCA in case of any change to the internal organisation of the investment firm in relation to cross-border activities?**

**Q7: Do you believe that any other information should be requested within the scope of the RTS/ITS?**

**Q8: Do you have any comments on the changes made to Article 4 of the RTS and Annex III of the ITS?**

**Q9: Do you have any other comment or input on the draft RTS and/or ITS?**

**Q10. What level of resources (financial and other) would be required to implement and comply with the amendments made to the RTS and ITS? When answering this question, please also provide information about the size, internal organisation and the nature, scale and complexity of the activities of your institution, where relevant.**



## **4.2 Annex II**

### **Legislative mandate to develop implementing technical standards**

#### Article 34(8)

ESMA shall develop draft regulatory technical standards to specify the information to be notified in accordance with paragraphs 2, 4, 5 and 7.

#### Article 34(9)

ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 2, 3, 4, 5 and 7.

## 4.3 Annex III

### Cost-benefit analysis

1. MiFID II recognises the importance to allow the provision of investment services across the EU through the freedom to provide services under Article 34 of MiFID II. This is a key element of the single market of financial services as it fosters competition and expands the offer available to consumers who can choose among a broader number of financial institutions and investment opportunities.
2. In monitoring the provision of investment services across the EU to retail clients, ESMA and NCAs have noted the continued increase in cross-border activities provided under the MiFID II FPS regime. The increase in cross-border services has clear benefits for consumers and investment firms, as it fosters competition, expands the offer available to consumers and the market for firms.
3. At the same time, these developments clearly require NCAs to increase their focus on the supervision of cross-border activities and on cooperation. A development of cross-border activities which is not accompanied by increased supervisory focus risks undermining investors' trust and backfiring on the achievement of the single market.
4. Effective supervision by NCAs of entities providing investment services on a cross-border basis is therefore of key importance to ensure that clients, especially retail, are given the adequate level of protection regardless of the jurisdiction of origin of the entities offering these services.
5. The information provided by the investment firm at the passporting stage may play a key role in raising a NCA's scrutiny of an investment firm's cross-border activities or plans of cross-border activities.
6. The purpose of the amendments to the list of information to be provided by investment firms at the passporting stage and to the list of notification of changes that are required afterwards in case of a change to the information initially notified aim at improving the range of information that home and host NCAs receive under Article 34 of MiFID II, thus improving their awareness and supervision of investment firms' cross-border activities.

#### *Benefits*

7. The main benefits linked to the proposed changes to Commission Delegated Regulation (EU) 2017/1018 and Commission Implementing Regulation (EU) 2017/2382 are the following:
  - a) better awareness of an investment firm's cross-border activities across the EU and which categories of clients such firm is targeting;

- b) better awareness of an investment firm's organisational set-up and arrangements (including regarding complaints handling) to provide services on a cross-border basis;
- c) better awareness of an investment firm's ways of marketing its investment services and activities in host Member states;
- d) consequently, an improved supervision by the home NCA of the cross-border services provided and activities performed by the investment firms it supervises and better investor protection;
- e) host NCAs are also kept informed of incoming cross-border activities in their jurisdictions and are therefore able to also better monitor potential investor protection issues.

### *Costs*

- 8. With reference to the costs, ESMA considers that investment firms intending to provide investment services and activities on a cross-border basis will incur slightly higher costs in i) gathering the necessary information at the passporting stage as well as in ii) keeping track of the changes that may affect the information provided at the passporting stage for any future notification of changes.
- 9. However, ESMA believes that it is in the interest of the investment firm itself as well as its clients that the investment firm keeps track of such information as, ultimately, this should result in better supervision of cross-border activities and better investor protection.
- 10. Similarly, home and host NCAs will incur higher costs caused by the collection and processing of the additional information that firms have to provide. However, ESMA is of the view that the higher costs incurred will be reasonable and wholly compensated by the benefits brought on by bolstered supervision and, ultimately, better investor protection, made possible due to the changes made.
- 11. ESMA believes that the proposed options in this area provide the most cost-efficient solution to achieving the general objectives of the changes made to Commission Delegated Regulation (EU) 2017/1018 and Commission Implementing Regulation (EU) 2017/2382. This is especially true as the amendments made to the technical standards will only apply to new passporting notifications and new notifications of changes and investment firms will thus not be required to resubmit all passporting notifications previously submitted.

### *Conclusions*

- 12. In light of what has been illustrated above, ESMA believes that the overall costs associated with the implementation of the changes to Commission Delegated Regulation (EU) 2017/1018 and Commission Implementing Regulation (EU) 2017/2382 will be fully



compensated by the benefits from a strengthened supervision of cross-border activities. These benefits will interest all the market participants contributing to the consolidation of the fundamental trust in the financial markets.



## 4.4 Annex IV

### **Draft regulatory technical standards to specify the information to be notified in accordance with Article 34(2), (4), (5) and (7)**

**COMMISSION DELEGATED REGULATION (EU) .../...**

**of [•]**

**amending Commission Delegated Regulation (EU) 2017/1018 of 29 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying information to be notified by investment firms, market operators and credit institutions**

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU<sup>7</sup>, and in particular the third subparagraph of Article 34(8) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2017/1018 of 29 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying information to be notified by investment firms, market operators and credit institutions<sup>8</sup> specifies the information that investment firms, market operators, and, where required by Directive 2014/65/EU, credit institutions should notify to the competent authorities of their home Member State when they wish to provide investment services or perform investment activities as well as ancillary services in another Member State, in order to establish uniform information requirements and to benefit from the possibility to provide such cross-border services throughout the Union.
- (2) Since the adoption of Commission Delegated Regulation (EU) 2017/1018, cross-border services have increased due in part to market conditions resulting from the COVID-19

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<sup>7</sup> OJ L 173, 12.6.2014, p. 349.

<sup>8</sup> OJ L 155, 17.6.2017, p. 1)

pandemic and the trend towards the digitalisation of financial services. The increased volume of cross-border services has given competent authorities additional experience of the supervision of those services as well as the cooperation between home and host authorities.

- (3) In view of this experience, to ensure that the home national competent authority receives adequate information on the cross-border plans of an investment firm, it is necessary to further specify certain particulars of the information referred to in Article 34(2) of Directive 2014/65/EU and of the changes to those particulars that must be notified in accordance with Article 34(4) thereof.
- (4) In particular, home national competent authorities should receive information on the Member States where an investment firm is actively targeting clients, how it is targeting clients and how the investment firm is organised to carry out its cross-border activities.
- (5) In accordance with Article 34(5) of Directive 2014/65/EU, credit institutions wishing to provide investment services or activities as well as ancillary services on a cross-border basis through tied agents established in their home Member States should notify the home national competent authorities with the identity of the tied agent as well as the investment services or activities, ancillary services and financial instruments to be provided by the latter. Other information required to be notified by investment firms wishing to provide investment services and activities on a cross-border basis are not required from credit institutions. The further information required from investment firms will therefore not affect credit institutions.
- (6) Commission Delegated Regulation (EU) 2017/1018 should therefore be amended accordingly.
- (7) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA).
- (8) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010<sup>9</sup>,

HAS ADOPTED THIS REGULATION

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<sup>9</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

*Article 1*

**Amendments to Commission Delegated Regulation (EU) 2017/1018**

Commission Delegated Regulation (EU) 2017/1018 is amended as follows:

(1) in Article 3, paragraph (1) is replaced by the following:

- ‘1. Investment firms shall ensure that the investment services and activities passport notification submitted pursuant to Article 34(2) of Directive 2014/65/EU includes the following information:
- (a) the name, address and contact details of the investment firm along with the name of a specified contact person at the investment firm;
  - (b) a programme of operations which includes the following items:
    - (i) details of the particular investment services, activities and ancillary services to be provided in the host Member State and the financial instruments to be used; and
    - (ii) confirmation as to whether the investment firm wishes to use tied agents, established in its home Member State, to provide services in the host Member State and, if so the name, address, contact details of such tied agents and the investment services or activities, ancillary services and financial instruments to be provided by the latter;
  - (c) the overview of the host Member States where the investment firm will actively target clients, whether the investment firm will actively target retail clients and/or professional clients and the date the investment firm intends to start actively targeting clients in the relevant host Member States;
  - (d) details of the marketing means the investment firm will use in the host Member State;
  - (e) details of the language(s) for which the investment firm has the necessary arrangements to deal with complaints from clients from the host Member State;
  - (f) details of the internal organisation in relation to the cross-border activities of the investment firm, including:
    - (i) the functional and legal reporting lines relating to the cross-border activities of the investment firm;
    - (ii) the arrangements put in place by the investment firm to ensure that the internal control functions have the capacity to control the cross-border activities (including those provided in a language other than English or the official language(s) of the home Member State); and



(iii) the procedure for cross-border clients to submit and for the firm to deal with complaints resulting from the cross-border activities of the investment firm.’;

(2) Article 4 is replaced by the following:

‘Article 4

**Information to be notified concerning the change of investment services and activities particulars**

1. Investment firms shall ensure that a notification to communicate a change in particulars, pursuant to Article 34(4) of Directive 2014/65/EU, includes details of any change to any of the information previously notified and resulting from points (a), (b), (c) and (f) of Article 3(1).

2. Such credit institutions as are referred to in Article 1(2)(a) shall ensure that a notification to communicate a change in particulars, pursuant to Article 34(4) of Directive 2014/65/EU, includes details of any change to any of the information previously notified.’.

*Article 2*

**Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [...]

[For the Commission

The President]

[On behalf of the President]



## 4.5 Annex V

### **Draft implementing technical standards with regard to standard forms, templates and procedures for the transmission of information in accordance with Directive 2014/65/EU of the European Parliament and of the Council**

**COMMISSION IMPLEMENTING REGULATION (EU) .../...**

**of [•]**

**amending Commission Implementing Regulation (EU) 2017/2382 of 14 December 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the transmission of information in accordance with Directive 2014/65/EU of the European Parliament and of the Council**

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU<sup>10</sup>, and in particular the third subparagraph of Article 34(9) thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) 2017/2382 of 14 December 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the transmission of information in accordance with Directive 2014/65/EU of the European Parliament and of the Council<sup>11</sup> provides for the common standard forms, procedures and templates for the submission of information required when investment firms, market operators, and, where required by Directive 2014/65/EU, credit institutions wish to provide investment services and perform activities in another Member State under the freedom to provide services.

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<sup>10</sup> OJ L 173, 12.6.2014, p. 349.

<sup>11</sup> OJ L 340, 20.12.2017, p. 6.

- (2) Since the adoption of Commission Delegated Regulation (EU) 2017/1018, cross-border services have increased due in part to market conditions resulting from the COVID-19 pandemic and the trend towards the digitalisation of financial services. The increased volume of cross-border services has given competent authorities additional experience of the supervision of those services as well as the cooperation between home and host authorities.
- (3) In view of this experience, to ensure that the home national competent authority receives adequate information on the cross-border plans of an investment firm, it is necessary to further specify certain particulars of the information referred to in Article 34(2) of Directive 2014/65/EU and of the changes to those particulars that must be notified in accordance with Article 34(4) thereof.
- (4) With Commission Delegated Regulation (EU) .../... amending Commission Delegated Regulation (EU) 2017/1018 to take into account the development of the provision of cross-border services by investment firms, Commission Implementing Regulation (EU) 2017/2382 should also be amended to ensure coherence.
- (5) It is indeed appropriate to set out common standard forms, procedures and templates for the submission of information required when investment firms wish to provide investment services and perform activities in another Member State under the freedom to provide services.
- (6) This Regulation is based on the draft implementing technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA).
- (7) ESMA has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010<sup>12</sup>.

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<sup>12</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).



HAS ADOPTED THIS REGULATION:

*Article 1*

**Amendments to Commission Implementing Regulation (EU) 2017/2382**

Commission Implementing Regulation (EU) 2017/2382 is amended as follows:

1. in Article 6, paragraph 1 is replaced by the following:

‘1. In the event of a change in any of the particulars of Parts 1 to 3 and Part 6 of an investment services and activities passport notification, the investment firm or credit institution referred to in Article 1(2)(a) shall submit a notification to the competent authority of the home Member State using the form set out in Annex I.’;
2. Annex I of Commission Implementing Regulation (EU) 2017/2382 is replaced with Annex I of this Regulation;
3. Annex III of Commission Implementing Regulation (EU) 2017/2382 is replaced with Annex II of this Regulation.

*Article 2*

**Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [...]

[For the Commission

The President]

[On behalf of the President]



**ANNEX I**

**ANNEX I**

**Form for the investment services and activities passport notification and the change of investment services and activities particulars notification per Member State <sup>(13)</sup>**

Articles 3 and 6 of Commission Implementing Regulation (EU) 2017/2382

Reference number: .....

Date: .....

**Part 1 – Contact information**

Type of notification: Investment services and activities passport notification / change of investment services and activities particulars notification

Member State in which the investment firm/credit institution intends to operate

Name of investment firm/credit institution:

Trading name(s):

Address:

Telephone number:

Email:

Name of the contact person at the investment firm/credit institution:

Home Member State:

Authorisation status: Authorised by [Home Member State Competent Authority]

Authorisation date:

**Part 2 – Programme of operations**

**Intended investment services, activities and ancillary services for which the passport notification is sought (\*)**

		Investment services and activities									Ancillary services						
		A1	A2	A3	A4	A5	A6	A7	A8	A9	B1	B2	B3	B4	B5	B6	B7
EU	C1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<sup>13</sup> For the purposes of a change of investment services and activities particulars notification please complete only the parts of the form which are relevant to the notified changes. If the intention is to make changes to the investment services, activities, ancillary services or financial instruments, please list all the investment services, activities, ancillary services or financial instruments the firm will provide.

	C2	<input type="checkbox"/>															
	C3	<input type="checkbox"/>															
	C4	<input type="checkbox"/>															
	C5	<input type="checkbox"/>															
	C6	<input type="checkbox"/>															
	C7	<input type="checkbox"/>															
	C8	<input type="checkbox"/>															
	C9	<input type="checkbox"/>															
	C10	<input type="checkbox"/>															
	C11	<input type="checkbox"/>															
(*) Please place an (x) in the appropriate boxes.																	

**Details of tied agent located in the Home Member State (\*)**

Name of the tied agent	Address	Telephone	Email	Contact
(*) Please provide separate matrices with the intended investment services for each tied agent the investment firm intends to use.				

**Intended investment services to be provided by the tied agent (\*)**

		Investment services and activities									Ancillary services						
		A1	A2	A3	A4	A5	A6	A7	A8	A9	B1	B2	B3	B4	B5	B6	B7
Financial instruments	C1	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C2	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C3	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									

C4	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>											
C5	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>											
C6	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>											
C7	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>											
C8	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>											
C9	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>											
C10	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>											
C11	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>											

(\* Please place an (x) in the appropriate box(es). If you intend to make changes to the investment services, activities or financial instruments provided by the tied agent, please list all investment services, activities or financial instruments the tied agent will provide.

**Part 3 – Overview of the host Member States where the investment firm will actively target clients**

Member States where the investment firm will actively target clients (*)	From	Whether the investment firm will target retail clients (**)	Whether the investment firm will target professional clients under Annex II of MiFID II (**)
AT <input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
BE <input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
BG <input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
CZ <input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
DK <input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
DE <input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
EE <input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
IE <input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
IS <input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
EL <input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
ES <input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
FI <input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
FR <input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
HR <input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
IT <input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
CY <input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
LI <input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
LV <input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
LT <input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
LU <input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
HU <input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>

MT	<input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
NL	<input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
NO	<input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
PL	<input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
PT	<input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
RO	<input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
SE	<input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
SI	<input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
SK	<input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>	<input type="checkbox"/>
<p>(*) Please place an (x) in the appropriate box(es). Only place an (x) in the box(es) relating to the Member State(s) where the firm will be actively targeting clients (whatever the means of marketing and/or reaching out to prospective clients, for example by means of operating a website in the official language of the Member State or through a social media campaign targeting potential investors in certain jurisdictions - this is by opposition to having a passport in a host Member State where the investment firm will not actively try to attract clients but where it still feels the need to have a passport on a precautionary basis). Any other Member State where the firm starts its activities at a later stage shall be notified by means of a change to the initial notification.</p>				
<p>(**) Please place an (x) in the appropriate box(es) if the firm intends to target the relevant category of clients in the Member State.</p>				

**Part 4 – Marketing means of the investment firm in the host Member State (\*)**

<b>Means of marketing to actively target clients</b>	<input type="checkbox"/> Social media campaign	<i>(please specify on which social media platform(s), network(s) and tool(s) as well as number of influencers used by the firm, if any)</i>
	<input type="checkbox"/> Mobile app	<i>(please specify whether this is a dedicated mobile app and its main features)</i>
	<input type="checkbox"/> Roadshows	
	<input type="checkbox"/> Post	
	<input type="checkbox"/> Calls	<i>(please specify whether you will be using a call centre, tied agents or whether calls will be placed by employees of the firm)</i>
	<input type="checkbox"/> Dedicated website	<i>(please specify the domain names)</i>
	<input type="checkbox"/> Dedicated marketing material	
	<input type="checkbox"/> Webinars	
	<input type="checkbox"/> Educational material	
<input type="checkbox"/> Others	<i>(please specify)</i>	
<b>Languages used for marketing purposes</b>	<input type="checkbox"/> English <input type="checkbox"/> Official language(s) of the home Member State <input type="checkbox"/> Official language(s) of the host Member State <input type="checkbox"/> Other(s): _____	
<p>(*) Please place an (x) in the appropriate box(es). This should include any marketing means used by tied agents on behalf of the firm.</p>		

**Part 5 – Complaints**

Language(s) for which the investment firm has the necessary arrangements to deal with complaints from clients from the host Member State	<input type="checkbox"/> English <input type="checkbox"/> Official language(s) of the home Member State <input type="checkbox"/> Official language(s) of the host Member State <input type="checkbox"/> Others: _____
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**Part 6 - Internal organisation in relation to the cross-border activities of the investment firm**

(1)	Set out the main functional and legal reporting lines relating to the cross-border activities of the investment firm.
(2)	Please explain what are the main arrangements which have been put in place to ensure that the internal control functions have the capacity to control the cross-border activities (including those provided in a language other than English or the official language(s) of the home Member State).
(3)	Please explain the procedure for cross-border clients to submit and for the firm to deal with complaints resulting from the cross-border activities of the investment firm.



## ANNEX II

## ANNEX III

**Form for the communication of a change in the particulars of an investment services and activities passport notification or in a notification for the provision of arrangements to facilitate access to an MTF or OTF by the competent authority of the home Member State to the competent authority of the host Member State**

Articles 7 and 8 of Commission Implementing Regulation (EU) 2017/2382

Reference number: .....

Date: .....

**Communication in accordance with Article 34(4) or Article 34(7) of Directive 2014/65/EU <sup>(1)</sup>**

FROM:

Member State:

Competent authority of the home Member State:

Address:

Designated contact point:

Telephone number:

Email:

TO:

Member State:

Competent authority of the host Member State:

Address:

Designated contact point:

Telephone number:

Email:



In accordance with Article 34(4) of the Directive 2014/65/EU, we wish to inform you that **[name of firm]**, an investment firm/credit institution/ market operator authorised/supervised by [name of the competent authority of the home Member State], has:

- (a) amended the investment services and activities/ancillary services/financial instruments that it intends to carry on in your territory on a cross-border basis
- (b) changed its name from [old name] to [new name] with effect [date of change]
- (c) moved to the following address with effect [date of change]: [new address]
- (d) changed its other contact information with effect [date of change] to as follows: [add any changes made to the contact information of Part 1 in Annex I]
- (e) engaged an additional registered tied agent in [name of the home Member State] to provide its investment services and activities in your territory on a cross-border basis
- (f) amended the list of Member States where the firm actively targets clients and/or the type of clients in such Member States
- (g) changed its internal organisation in relation to the provision of cross-border activities
- (h) amended the arrangements provided in [name of the host Member State] in order to facilitate the access to and trading of the [name of the MTF or OTF]
- (i) ceased to provide investment services and/or perform investment activities due to the withdrawal/cancellation of its authorisation with effect [date of withdrawal/cancellation].

Please find attached a copy of the change of [investment services and activities particulars notification/particulars for the provision of arrangements to facilitate access to an MTF or OTF notification] with the relevant changes. If you have any queries, please do not hesitate to contact us.

Yours sincerely,

[signature]

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(<sup>1</sup>) Please amend as appropriate in accordance with the changes to be notified.