



European Securities and
Markets Authority

Consultation Paper

Draft technical standards on the provision of investment services and activities in the Union by third-country firms under MiFID II and MiFIR



Responding to this paper

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

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

ESMA will consider all comments received by **31 March 2020**.

All contributions should be submitted online at 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 under the heading [Legal Notice](#).

Who should read this paper

This paper is primarily of interest to third-country firms providing investment services and activities in the Union either (i) on a cross-border basis according to the national law of their host Member State or (ii) through a branch in accordance with Chapter IV (*Provision of investment services and activities by third country firms*) of Title II (*Authorisation and operation conditions for investment firms*) of Directive 2014/65/EU of the European Parliament and of the Council (MiFID II), and their third-country competent authorities.

This paper may also be of interest to competent authorities in the Union and firms that are subject to MiFID II and MiFIR.

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1. Executive Summary

Reasons for publication

In accordance with Article 16(2) of the ESMA Regulation, this paper sets out for consultation draft technical standards on the provision of investment services and activities in the Union by third-country firms under Chapter IV (*Provision of investment services and activities by third country firms*) of Title II (*Authorisation and operation conditions for investment firms*) of MiFID II or under Title VIII (*Provision of services and performance of activities by third-country firms following an equivalence decision with or without a branch*) of Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (MiFIR).

The input from stakeholders will help ESMA finalise these draft technical standards. Respondents to this consultation are encouraged to provide the relevant data to support their arguments or proposals.

Contents

Section 2 explains the background to the proposals.

Annex I lists all the questions set out in the consultation paper; Annex II contains the cost-benefit analysis; Annex III contains the draft technical standards.

Next Steps

ESMA will consider the responses it receives to this consultation paper in Q2 2020 and expects to publish the draft technical standards and send the final report to the European Commission for endorsement in **Q3 2020**.

2. Background

Overview

2.1. Changes to the MiFIR regime for third-country firms providing investment services and activities throughout the Union to eligible counterparties and *per se* professional clients (without any establishment in the Union)

The existing MiFIR regime for third-country firms

1. Currently, Article 46 of MiFIR allows third-country firms to provide investment services and activities to eligible counterparties and *per se* professional clients (within the meaning of Section I of Annex II of MiFID II) across the Union if they are registered in the register of third-country firms held by ESMA in accordance with Article 48 of MiFIR (the “ESMA register”).
2. According to Article 46(2) of MiFIR, a third-country firm applying for the provision of investment services or activities throughout the Union under Article 46 of MiFIR shall be registered in the ESMA register where certain conditions are met:
 - a) a decision of the European Commission declares the third-country where the firm is established as equivalent (in accordance with Article 47(1) of MiFIR);
 - b) the third-country firm is authorised in the jurisdiction where its head office is established to provide the investment services or activities to be provided in the Union and it is subject to effective supervision and enforcement ensuring a full compliance with the requirements applicable in that third-country;
 - c) cooperation arrangements have been established between ESMA and the relevant third-country competent authorities (pursuant to Article 47(2) of MiFIR).
3. Under Article 46(4) of MiFIR, the applicant third-country firm shall provide ESMA with all information necessary for its registration.
4. Under Article 46(7) of MiFIR, ESMA was given a mandate to develop draft regulatory technical standards to specify the information that the applicant third-country firm shall provide to ESMA in its application for registration in accordance with Article 46(4) of MiFIR. Commission Delegated Regulation No. 2016/2022 (the “existing Article 46 RTS”) was adopted as a result. It provides for the list of information that applicant third-country firms must provide to ESMA for the purpose of the registration in the ESMA register (Article 1 of the existing Article 46 RTS).
5. Under Article 49 of MiFIR, ESMA shall withdraw the registration of a third-country firm in the ESMA register in a number of (limited) circumstances (for instance, where ESMA has well-founded reasons based on documented evidence to believe that, in the provision of investment services and activities in the Union, the third-country firm is acting in a manner which is clearly prejudicial to the interests of investors or the orderly functioning of markets).
6. In the absence of an equivalence decision by the Commission under Article 47(1) of MiFIR, the existing MiFIR third-country regime has, so far, not been triggered.

The new MiFIR regime for third-country firms

7. Regulation (EU) No 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (the “IFR”) introduces changes to, *inter alia*, the existing MiFIR regime for third-country firms that intend to provide investment services and activities to eligible counterparties and *per se* professional clients.
8. Such changes include a significant reporting flow from third-country firms to ESMA, on an annual basis. Indeed, under Article 46 of MiFIR, as amended by the IFR, third-country firms providing investment services and activities in the Union in accordance with Article 46 of MiFIR will be required to report granular information on such services and activities to ESMA, on an annual basis, and to provide ESMA with access to relevant data.
9. More specifically, such third-country firms will be required to provide ESMA annually with detailed information about:
 - a) the scale and scope of the services and activities carried out by them in the Union, including the geographical distribution across Member States;
 - b) for a third-country firm performing activity referred to in point (3) of Section A of Annex I of MiFID II (dealing on own account), its monthly minimum, average and maximum exposure to EU counterparties;
 - c) for a third-country firm providing services referred to in point (6) of Section A of Annex I of MiFID II (underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis), the total value of financial instruments originating from EU counterparties underwritten or placed on a firm commitment basis over the last twelve months;
 - d) the turnover and the aggregated value of the assets corresponding to the services and activities referred to in point (a);
 - e) whether investor protection arrangements have been taken, and a detailed description thereof;
 - f) the risk management policy and arrangements applied by the third-country firm to the carrying out of the services and activities referred to in point (a);
 - g) the governance arrangements, including key function holders for the activities of the third-country firm in the Union; and
 - h) any other information necessary to enable ESMA or the competent authorities to carry out their tasks in accordance with MiFIR.
10. The IFR also gives ESMA the power to ask third-country firms registered in the ESMA register to provide the data relating to all orders and all transactions in the Union, whether on own account or on behalf of a client, for a period of five years (Article 46(6b) of MiFIR).

11. The IFR requires ESMA to share information, upon request, with the competent authorities of the Member States where a third-country firm is providing investment services and activities in accordance with Article 46 of MiFIR and enables such competent authorities to request information to ESMA (Article 46(6a) of MiFIR).
12. The IFR also gives ESMA the power to conduct on-site inspections (Article 47(2) of MiFIR).
13. In addition to the powers described under paragraph 5 above, ESMA may temporarily prohibit or restrict the provision of investment services or activities in the Union by a third-country firm under Article 46 of MiFIR where:
 - a) the third-country firm has failed to comply with product intervention measures taken by ESMA or the EBA or the competent authorities of a Member State under Articles 40 to 42 of MiFIR; or
 - b) the third-country firm has failed to comply with its annual reporting obligations to ESMA under Article 46(6a) of MiFIR or with a request for information from ESMA under Article 46(6a) or (6b) of MiFIR; or
 - c) the third-country firm has not cooperated with an investigation or an on-site inspection carried out by ESMA in accordance with Article 47(2) of MiFIR.
14. To take into account the above described changes, ESMA is mandated to prepare draft technical standards in relation to the revised third-country regime under MiFIR.
15. In accordance with Article 46(7) and (8) of MiFIR, ESMA shall develop:
 - a) regulatory technical standards, in consultation with EBA, to specify the information that third-country firms have to provide to ESMA for the registration in the ESMA register of third-country firms (Article 46(4) of MiFIR) and for the information that third-country firms have to report annually to ESMA (Article 46(6a) of MiFIR);
 - b) implementing technical standards to specify the format in which the information for the registration of the firm (Article 46(4) of MiFIR) and for the annual report to ESMA should be submitted (Article 46(6a) of MiFIR).
16. The existing Article 46 RTS was delivered by ESMA in 2016 in circumstances where the MiFIR regime applicable to third-country firms was simpler and ESMA's responsibilities were more limited. In developing the new draft regulatory technical standards and implementing technical standards under Article 46(7) and (8) of MiFIR, ESMA should thus take into account ESMA's new responsibilities under the MiFIR third-country regime.

2.2. Changes to the MiFID II regime for third-country firms providing investment services and activities to retail clients and professional clients within the meaning of Section II of Annex II of MiFID II through a branch

17. This relates to the provision of investment services and activities by third-country firms to retail clients and professional clients within the meaning of Section II of Annex II of MiFID II, through branches authorised under Article 39 of MiFID II (where a Member State requires third-country firms to establish a branch in their jurisdiction to provide investment services and activities to retail clients and professional clients within the meaning of Section II of Annex II of MiFID II).

18. The branch of a third-country firm authorised under Article 39 of MiFID II remains under the exclusive supervisory responsibility of the competent authorities of the Member State where it has been authorised.
19. However, under Article 41(2) of MiFID II, as mandated by Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (the “IFD”), ESMA is newly mandated to publish annually a list of branches of third-country firms active in the Union, based on information collected from national competent authorities.
20. In addition, the IFD amends MiFID II to provide for further reporting obligations on the branch of a third-country firm authorised under Article 39 of MiFID II and the competent authorities of the Member State where such branch is established. Indeed, pursuant to Article 41 of MiFID II, as amended by the IFD:
 - a) the competent authorities of Member States where branches of third-country firms authorised under Article 39 of MiFID II are established shall notify ESMA, on an annual basis, of the list of branches of third-country firms active in their territory;
 - b) the branch of a third-country firm authorised under Article 39 of MiFID II shall report annually to the competent authorities of the Member State where it is established information about:
 - i. the scale and scope of the services and activities carried out by the branch in that Member State;
 - ii. for firms performing activity referred in point (3) of Section A of Annex I to Directive 2014/65/EU, their monthly minimum, average and maximum exposure to EU counterparties;
 - iii. for firms providing services referred to in point (6) of Section A of Annex I to Directive 2014/65/EU, the total value of financial instruments originating from EU counterparties underwritten or placed on a firm commitment basis over the last twelve months;
 - iv. the turnover and the aggregated value of the assets corresponding to the services and activities referred to in point (a);
 - v. a detailed description of the investor protection arrangements available to the clients of the branch, including the rights of those clients resulting from the investor-compensation scheme referred to in Article 39(2)(f) of MiFID II;
 - vi. the risk management policy and arrangements applied by the branch for the services and activities referred to in point (a).
 - vii. the governance arrangements, including key function holders for the activities of the branch;
 - viii. any other information considered by the competent authority necessary to enable comprehensive monitoring of the activities of the branch.

21. In accordance with Article 41(5) of MiFID II, ESMA shall develop implementing technical standards to specify the format in which the information referred to above in paragraph 20b) is to be reported (the “**draft Article 41 ITS**”).
22. This consultation paper explains the approach followed by ESMA when developing the regulatory technical standards and implementing technical standards under Articles 46(7) and (8) of MiFIR and Article 41(5) of MiFID II.

3. Provision of services and performance of activities by third-country firms to eligible counterparties and *per se* professional clients on a cross-border basis following an equivalence decision

3.1. Background/mandate

Article 46(7) of MiFIR (as amended by the IFR)

ESMA, in consultation with EBA, shall develop draft regulatory technical standards to specify the information that the applicant third-country firm is to provide in the application for registration referred to in paragraph 4 and the information to be reported in accordance with paragraph 6a.

[...]

Article 46(8) of MiFIR (as amended by the IFR)

ESMA shall develop draft implementing technical standards to specify the format in which the application for registration referred to in paragraph 4 is to be submitted and the information referred to in paragraph 6a is to be reported.

[...]

3.2. Analysis

1. MiFIR offers the possibility for third-country firms to provide investment services or perform investment activities throughout the Union to eligible counterparties and professional clients *per se* on a cross-border basis after registration with ESMA.
2. According to Article 46(4) of MiFIR, the third-country firm may only submit its application to ESMA after the adoption by the European Commission of a decision in accordance with Article 47 of MiFIR determining that the legal and supervisory arrangements of that third country where the third-country firm is authorised meet all the requirements of Article 47(1) of MiFIR. The applicant third-country firm shall provide ESMA with all information necessary for its registration. Within thirty working days of receipt of the application, ESMA shall assess whether the application is complete. If the application is not complete, ESMA shall set a deadline by which the applicant third-country firm is to provide additional information.
3. Once registered on the ESMA register, the third-country firm providing investment services or performing investment activities in the Union in accordance with Article 47 of MiFIR will also have to report to ESMA, on an annual basis, with the list of information set out in Article 46(6a) of MiFIR.

3.3. Proposal

4. Article 46(2) of MiFIR requires ESMA to register a third-country firm that has applied for the provision of investment services or performance of activities throughout the Union only where the following conditions are met:

- a) the European Commission has adopted a decision in accordance with Article 47(1) of MiFIR;
 - b) the third-country firm is authorised in the jurisdiction where its head office is established to provide the investment services or activities to be provided in the Union and it is subject to effective supervision and enforcement ensuring a full compliance with the requirements applicable in that third-country;
 - c) cooperation arrangements have been established pursuant to Article 47(2) of MiFIR; and
 - d) the third-country firm has established the necessary arrangements and procedures to report the information set out in Article 46(6a) of MiFIR (annual reporting obligation to ESMA).
5. Condition (d) above has been added by the IFR.
6. Once registered on the ESMA register, in accordance with Article 46(6a) of MiFIR, a third-country firm providing investment services or performing investment activities in accordance with Article 46 of MiFIR shall, on an annual basis, inform ESMA about the following:
- a) the scale and scope of the services and activities carried out by the third-country firm in the Union, including the geographical distribution across Member States;
 - b) for a third-country firm performing activity referred to in point (3) of Section A of Annex I of MiFID II (dealing on own account), its monthly minimum, average and maximum exposure to EU counterparties;
 - c) for a third-country firm providing services referred to in point (6) of Section A of Annex I of MiFID II (underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis), the total value of financial instruments originating from EU counterparties underwritten or placed on a firm commitment basis over the last twelve months;
 - d) the turnover and the aggregated value of the assets corresponding to the services and activities referred to in point (a);
 - e) whether investor protection arrangements have been taken, and a detailed description thereof;
 - f) the risk management policy and arrangements applied by the third-country firm to the carrying out of the services and activities referred to in point (a);
 - g) the governance arrangements, including key function holders for the activities of the third-country firm in the Union; and

- h) any other information necessary to enable ESMA or the competent authorities to carry out their tasks in accordance with MiFIR.

3.4. ESMA's mandate under Article 46(7) of MiFIR – draft regulatory technical standards (“draft Article 46 RTS”)

Information to be provided at point of registration

7. In accordance with its mandate in Article 46(7) of MiFIR, ESMA must develop draft regulatory technical standards to specify:
 - a) the information that an applicant third-country firm is to provide in its application for registration (referred to in Article 46(4) of MiFIR); and
 - b) the information to be reported to ESMA on an annual basis in accordance with Article 46(6a) of MiFIR.
8. Article 46 of MiFIR does not provide a specific list of information that an applicant third-country firm has to provide to ESMA at point of registration.
9. While recognising that ESMA's powers at the registration point appear relatively limited under Article 46(2) of MiFIR¹, ESMA considers that (i) ESMA's increased responsibilities under the new MiFIR third-country regime (please refer to section 2 above for more details) and (ii) the list of information that a third-country firm has to provide on an annual basis under Article 46(6a) of MiFIR should be taken into consideration. As such, ESMA is of the view that Article 1 (*Information necessary for the registration*) of the draft Article 46 RTS should:
 - a) require a larger set of information to be provided by an applicant third-country firm than the current list in the existing Article 46 RTS;
 - b) attempt to align as much as possible the information provided at the registration stage with the information provided on an annual basis.
10. This would also enable ESMA to plan and calibrate timely its subsequent oversight of a third-country firm.
11. Consequently, ESMA considers that the following information should be required from an applicant third-country firm:
 - a) information identifying the third-country firm;
 - b) name and contact details of the person in charge of the application;

¹ As Article 46(2) of MiFIR does not provide for a typical authorisation process and ESMA's discretion regarding the decision not to register an applicant third-country firm seems rather limited if the conditions under Article 46(2) of MiFIR are all met.

- c) competent authorities of the third country that are responsible for the supervision of the third-country firm;
- d) information on which investment services, investment activities and ancillary services the third-country firm is authorised to provide in the third-country where it is established, together with the list of any other services or activities provided;
- e) information on the investment services, investment activities and ancillary services to be provided in the Union, together with the expected numbers of clients and/or counterparties and total net turnover;
- f) information on how the activities of the third-country firm in the Union will contribute to the strategy of the third-country firm or, where relevant, its group;
- g) description of the governance arrangements of the third-country firm, including:
 - i. the members of the management body of the third-country firm and any other persons who effectively direct the business of the third-country firm;
 - ii. information on the key function holders for the activities of the third-country firm in the Union with, notably, the CFO and CEO when they are not members of the management body, the heads of internal control functions responsible for the oversight of the activities of the third-country firm in the Union and the individuals responsible for the day-to-day operations of the third-country firm in the Union; and
 - iii. the reporting lines between the key function holders and the senior management and management body of the third-country firm;
- h) description of the marketing strategy that the third-country firm plans to use for the investment services, investment activities and ancillary services provided in the Union;
- i) description of the investor protection arrangements of the third-country firm, including:
 - i. details on the planned use of languages by the third-country firm with its clients in the Union
 - ii. details on the arrangements of the third-country firm to comply with its information requirements under Article 46 of MiFIR;
 - iii. where the third-country firm provides services (4) or (5) of Section A of Annex I of MiFID II, the arrangements of the third-country firm to ensure that such investment services and activities provided to its clients are suitable;
 - iv. where the third-country firm executes orders for its clients, the arrangements of the third-country firm to execute such orders on terms most favourable to the client;

- v. where the third-country firm executes orders on behalf of clients, the arrangements of the third-country firm for the prompt, fair and expeditious execution of client orders;
 - vi. where the third-country firm manufactures financial instruments for sale to clients, the product governance arrangements of the third-country firm, including the arrangements of the third-country firm to identify target investors and for the ongoing monitoring of distribution activities;
 - vii. the arrangements of the third-country firm to identify, prevent and manage conflicts of interest;
 - viii. the arrangements of the third-country firm to handle complaints;
 - ix. the membership of the third-country firm in an investor compensation scheme;
 - x. the arrangements of the third-country firm to protect and manage the funds and assets of its clients;
 - xi. any other arrangements that the third-country firm may deem relevant to the provision of investment services and performance of its investment activities in the Union in an honest, fair and professional manner that promotes the interests of clients;
- j) information on the outsourcing arrangements of the third-country firm, with a focus on the operations of the third-country firm in the Union;
 - k) information on the structure, organisation of and monitoring by the compliance function (or equivalent) of the third-country firm;
 - l) information on the structure, organisation of and monitoring by the internal audit function (or equivalent) of the third-country firm;
 - m) information on the structure, organisation of and monitoring by the risk management function (or equivalent) of the third-country firm;
 - n) whether the firm has established the necessary arrangements and procedures to report the information set out in Article 46(6a) of MiFIR to ESMA, with a brief description thereto; and
 - o) any other information that the third-country firm considers to be relevant to ESMA.

Q1: Do you agree with the list of information to be requested by ESMA from applicant third-country firms for registration in the ESMA register? If no, which items should be added or deleted and for which reasons? Please provide detailed answers.

Information to be provided on an annual basis

12. Article 46(6a) of MiFIR provides a non-exhaustive list of information that a third-country firm providing investment services and performing investment activities in accordance

with Article 46 of MiFIR has to provide to ESMA on an annual basis. However, Article 46(7) of MiFIR gives a mandate to ESMA, in collaboration with the EBA, to specify the information to be reported in accordance with paragraph 46(6a).

13. In addition, Article 46(7) of MiFIR, as amended by the IFR, does not anymore include a mandate for ESMA to specify the format of the information that third-country firms providing investment services and performing investment activities in accordance with Article 46 of MiFIR shall provide under Article 46(5)². As such, ESMA considers that Article 3 of the existing Article 46 RTS should not be reprinted in the draft Article 46 RTS.
14. Article 2 of the draft Article 46 RTS lists information that third-country firms providing investment services and performing investment activities in the Union in accordance with Article 46 of MiFIR should report to ESMA on an annual basis.
15. ESMA considers that the following information should be provided by third-country firms to ESMA on an annual basis:
 - a) the reporting period;
 - b) any change to the information provided by the third-country firm under Article 1, paragraph 1(a) (information identifying the third-country firm);
 - c) the name and contact details of the person in charge of submitting the information;
 - d) any change to the information provided by the third-country firm under Article 1, paragraph 1(c) (competent authorities of the third-country firm);
 - e) any change to the information provided by the third-country firm under Article 1, paragraph 1(d) (investment services and activities for which the third-country firm is authorised in its jurisdiction and other services or activities provided);
 - f) any material change to the information provided by the third-country firm under Article 1, paragraph 1(f) (how the activities of the third-country firm in the Union will contribute to the strategy of the third-country firm or its group);
 - g) any change to the information provided by the third-country firm under Article 1, paragraph 1(g) (persons with a qualifying holding in the third-country firm);
 - h) any change to the information provided by the third-country firm under Article 1, paragraph 1(h) (governance arrangements of the third-country firm);
 - i) any material change to the information provided by the third-country firm under Article 1, paragraphs 1(k) to (n) (information on the outsourcing arrangements, compliance function, internal audit function, and risk management function of the third-country firm);

² Third-country firms providing investment services in accordance with Article 46 shall, inform clients established in the Union, before the provision of any investment services, that they are not allowed to provide services to clients other than eligible counterparties and *per se* professional clients and that they are not subject to supervision in the Union.

- j) for each Member State where the third-country firm provides investment services, investment activities or ancillary services, the list of investment services, investment activities and ancillary services provided by the third-country firm, together with the number of clients and total net turnover;
- k) the total number of clients and counterparties of the third-country firm globally;
- l) the total net turnover of the third-country firm globally;
- m) where the third-country firm performs the activity referred to in point (3) of Section A of Annex I of MiFID II, information on the exposure of the third-country firm to counterparties in the Union, together with a breakdown of such number per Member State where the third-country firm carries out dealing on own account;
- n) where the third-country firm provides the services referred to in point (6) of Section A of Annex I of MiFID II, the total value of financial instruments originating from counterparties in the Union and underwritten or placed on a firm commitment basis, together with a breakdown of such number per Member State where the third-country firm carries out underwriting or placing on a firm commitment basis;
- o) where the third-country firm provides the service referred to in point (4) of Section A of Annex I of MiFID II, information about the value of the assets under management for clients in the Union, together with a breakdown of such number per Member State where the third-country firm provides portfolio management services;
- p) where the third-country firm provides the service referred to in point (5) of Section A of Annex I of MiFID II, information about the value of the assets under advice for clients in the Union, together with a breakdown of such number per Member State where the third-country firm provides investment advice;
- q) where the third-country firm provides the ancillary service referred to in point (1) of Section B of Annex I of MiFID II or is holding client funds, information on the value of the assets (including cash) held by the third-country firm for clients in the Union, together with a breakdown of such number per Member State where the third-country firm provides investment advice;
- r) information about complaints received by the third-country firm in the Union;
- s) information on the marketing activities of the third-country firm in the Union;
- t) information on the activities of the compliance function (or equivalent) of the third-country firm, with a focus on the operations of the third-country firm in the Union;
- u) information on the activities of the internal audit function (or equivalent) of the third-country firm, with a focus on the operations of the third-country firm in the Union;
- v) information on the activities of the risk management function (or equivalent) and the risk management policy of the third-country firm, with a focus on the operations of the third-country firm in the Union;
- w) any other information that the third-country firm deems relevant to ESMA.

Q2: Taking into account the list of information in Article 46(6a) of MiFIR, as amended by the IFR, do you agree with the list of information that third-country firms providing investment services and investment activities in the Union in accordance with Article 46 of MiFIR should report to ESMA on an annual basis? If no, which items should be added or deleted and for which reasons? Please provide detailed answers.

Relevant annex:

Annex III: Draft regulatory technical standards under Article 46(7) of MiFIR

3.5. ESMA’s mandate under Article 46(8) of MiFIR – draft implementing technical standards (“draft Article 46 ITS”)

16. ESMA believes that it is appropriate to provide as much clarity as possible to applicant third-country firms and third-country firms providing investment services and performing investment activities in the Union under Article 46 of MiFIR about the format of the information detailed in the draft Article 46 RTS.
17. Further operational technical details on the machine-readable electronic format and interfaces provided by the information technology system that will be set up by ESMA to collect and manage the information set out in the draft regulatory technical standards will be provided at a later stage through further guidance.

Q3: Do you have any comments about the format details provided in the draft implementing technical standards under Article 46(8) of MiFIR? If no, what would you add, delete or amend and for which reasons? Please provide detailed answers.

Relevant annex:

Annex IV: Draft implementing technical standards under Article 46(8) of MiFIR

4. Provision of services and performance of activities by third-country firms through a branch

4.1. Background/mandate

Article 41(5) of MiFID II (as amended by the IFD)

ESMA shall develop draft implementing technical standards to specify the format in which the information referred to in paragraphs 3 and 4 is to be reported.

ESMA shall submit those draft implementing technical standards to the Commission by 26 September 2020.

4.2. Analysis

18. Article 39 of MiFID II provides that a Member State may require that a third-country firm intending to provide investment services or performing investment activities with or without ancillary services to retail clients or to professional clients within the meaning of Section II of Annex II of MiFID II may only do so through the establishment of a branch. In such case, the branch shall acquire prior authorisation by the competent authorities of that Member State, subject to meeting the conditions set out in Article 39(2) of MiFID II.
19. Article 40 of MiFID II provides the minimum list of information that applicant third-country firms shall provide to the relevant competent authorities of their host Member State.
20. Article 41(3) of MiFID II, as amended by the IFD, provides that the branch of a third-country firm that is authorised in accordance with Article 41(1) of MiFID II shall report to the competent authorities of its host Member State, on an annual basis, the following information:
 - a) the scale and scope of the services and activities carried out by the branch in that Member State;
 - b) for firms performing the activity listed in point (3) of Section A of Annex I of MiFID II, their monthly minimum, average and maximum exposure to EU counterparties;
 - c) for firms providing the services listed in point (6) of Section A of Annex I of MiFID II, the total value of financial instruments originating from EU counterparties underwritten or placed on a firm commitment basis over the last twelve months;
 - d) the turnover and the aggregated value of the assets corresponding to the services and activities referred to in point (a);
 - e) a detailed description of the investor protection arrangements available to the clients of the branch, including the rights of those clients resulting from the investor-compensation scheme referred to in Article 39(2)(f) of MiFID II;
 - f) their risk management policy and arrangements applied by the branch for the services and activities referred to in point (a).

- g) the governance arrangements, including key function holders for the activities of the branch;
 - h) any other information considered by the competent authority necessary to enable comprehensive monitoring of the activities of the branch.
21. ESMA believes that it is appropriate to set out common standards of information requirements across Member States to ensure a common understanding and enforcement among Member States' national competent authorities of the annual reporting obligations of third-country firms providing investment services and activities through a branch to retail clients and professional clients within the meaning of Section II of Annex II of MiFID II.

4.3. Proposal

22. ESMA believes that it is appropriate to provide details on the information requirements set out in Article 41(3) of MiFID II of the draft implementing technical standards by establishing standard forms to provide as much clarity as possible to third-country firms providing investment services and activities through a branch to retail clients and professional clients within the meaning of Section II of Annex II of MiFID II.
23. As the list of information to be provided by the branch of a third-country firm under Article 41(3) of MiFID II is highly similar to the list of information to be provided by third-country firms under Article 46(6a) of MiFIR, ESMA considers that the draft implementing technical standards under Article 41(5) of MiFID II should be aligned, as much as possible, with the draft implementing technical standards under Article 46(8) of MiFIR with respect to information to be provided annually, but adapted to the provision of investment services and investment activities by a branch.
24. Further operational technical details on the interfaces (if any) to be used for reporting that information may be set up by the national competent authorities of host Member States to collect and manage the information set out in Article 41(3) of MiFID II and further detailed in the draft implementing technical standards.
25. Article 47(3) of MiFIR provides that third-country firms established in a country declared equivalent and which have a branch authorised in a Member State in accordance with Article 39 of MiFID II are allowed to provide investment services and activities to eligible counterparties and *per se* professional clients in other Member States without the need to establish new branches. By way of exception to the lack of passport of branches of third-country firms, Article 47(3) of MiFIR thus gives passporting rights to third-country firms when certain conditions are fulfilled without the need to register in the ESMA register.
26. Such third-country firms are, however, not subject to the information requirements (at the point of registration and after that, annually) of Article 46 of MiFIR. Article 47(3) further provides that the branch shall remain subject to the supervision of the competent authority of the Member State where it is established.

27. For this reason, ESMA considers that it is appropriate to also include in the draft implementing technical standards under Article 41(5) of MiFID II information on the activities that the branch is carrying out on a cross-border basis in the Union by virtue of Article 47(3) of MiFIR. This is because it is the responsibility of the competent authorities of the host Member State of the branch to also supervise the activities of that branch in other Member States.

Q4: Do you agree with the additional details provided in the draft implementing technical standards under Article 41(5) of MiFID II? If no, what would you add, delete or amend and for which reasons? Please provide detailed answers.

Relevant annex:

Annex IV: Draft implementing technical standards under Article 41(5) of MiFID II

Q5: Do you agree with the cost benefit analysis as it has been described in Annex II?

Relevant annex:

Annex II: Cost-benefit analysis

Q6: Are there any additional comments that you would like to raise and/or information that you would like to provide?

3. Annexes

Annex I - Summary of questions

- Q1: Do you agree with the list of information to be requested by ESMA from applicant third-country firms for registration in the ESMA register? If no, which items should be added or deleted and for which reasons? Please provide detailed answers.**
- Q2: Taking into account the list of information in Article 46(6a) of MiFIR, as amended by the IFR, do you agree with the list of information that third-country firms providing investment services and investment activities in the Union in accordance with Article 46 of MiFIR should report to ESMA on an annual basis? If no, which items should be added or deleted and for which reasons? Please provide detailed answers.**
- Q3: Do you have any comments about the format details provided in the draft implementing technical standards under Article 46(8) of MiFIR? If no, what would you add, delete or amend and for which reasons? Please provide detailed answers.**
- Q4: Do you agree with the additional details provided in the draft implementing technical standards under Article 41(5) of MiFID II? If no, what would you add, delete or amend and for which reasons? Please provide detailed answers.**
- Q5: Do you agree with the cost benefit analysis as it has been described in Annex II?**
- Q6: Are there any additional comments that you would like to raise and/or information that you would like to provide?**

Annex II - Cost-benefit analysis

- I. MiFIR regime for third-country firms providing investment services and activities throughout the Union to eligible counterparties and *per se* professional clients (without any establishment in the Union)**
1. The new MiFIR third-country regime, which will result from the changes introduced by IFR to MiFIR, includes a new and significant reporting flow from third-country firms to ESMA, on an annual basis, and gives ESMA more powers to request information as well as to temporarily restrict or prohibit the provision of investment services or activities in the Union by a third-country firm.
 2. Indeed, third-country firms providing investment services and activities in the Union in accordance with Article 46 of MiFIR will be required to report, on an annual basis, granular information to ESMA on their activities in the Union such as: information about the scale and scope of such activities, specific figures regarding their dealing on own account and underwriting and placing activities, the turnover and aggregated value of the assets corresponding to their activities in the Union, their investor protection and risk management arrangements, their governance arrangements and any other information necessary to enable ESMA or the competent authorities to carry out their tasks in accordance with MiFIR.
 3. The IFR also gives ESMA the power to:
 - a) ask third-country firms registered in the ESMA register to provide (i) any further information in respect of their operations (where necessary for the accomplishment of the tasks of ESMA or the competent authorities in accordance with MiFIR) (last sub-paragraph of Article 46(6a) of MiFIR) and (ii) the data relating to all orders and all transactions in the Union, whether on own account or on behalf of a client, for a period of five years (Article 46(6b) of MiFIR); and
 - b) conduct on-site inspections (Article 47(2) of MiFIR).
 4. In addition to ESMA's powers to withdraw the registration of a third-country firm in the ESMA register, the new MiFIR third-country regime gives ESMA the power to temporarily prohibit or restrict the provision of investment services or activities in the Union by a third-country firm under Article 46 of MiFIR where:
 - a) the third-country firm has failed to comply with product intervention measures taken by ESMA or the EBA or the competent authorities of a Member State under Articles 40 to 42 of MiFIR; or
 - b) the third-country firm has failed to comply with its annual reporting obligations to ESMA under Article 46(6a) of MiFIR or with a request for information from ESMA under Article 46(6a) or (6b); or
 - c) the third-country firm has not cooperated with an investigation or an on-site inspection carried out by ESMA in accordance with Article 47(2) of MiFIR.
 5. To take into account the enhanced flow of information that firms have to report and ESMA's new powers and role in the new third-country regime under MiFIR, ESMA is

mandated to prepare draft technical standards in relation to the revised third-country regime under MiFIR.

6. The existing Article 46 RTS was delivered by ESMA in 2016 in circumstances where the MiFIR regime applicable to third-country firms was simpler and ESMA's responsibilities were more limited. In developing the new draft technical standards under Article 46(7) and (8) of MiFIR, ESMA is taking into account ESMA's new responsibilities under the MiFIR third-country regime as well as the increased set of information that third-country firms have to provide to ESMA on an annual basis under Article 46(6a) of MiFIR.

The impact of the draft Article 46 RTS and draft Article 46 ITS

7. MiFIR introduced a Union harmonised regime for granting access to third-country firms providing investment services or activities to eligible counterparties and professional clients *per se* that are established in the Union. Access to the internal market is conditional on the European Commission adopting an equivalence decision and on ESMA registering the third-country firm.
8. As described above, once an equivalent decision is taken, the requirements to which third-country firms are subject for registration in the ESMA register are rather limited. Indeed, once registered in the ESMA register, the third-country firm is not subject to periodic reporting requirements and ESMA may not request additional information from the third-country firm.
9. However, the existing MiFIR third-country regime has, so far, never been used due to the lack of any equivalence decision taken by the European Commission.
10. As stated in the IFR, it is important that the assessment of equivalence is done on the basis of the relevant applicable Union law and that effective tools to monitor that the conditions under which equivalence is granted are in place. For those reasons, third-country registered firms should be required to report annually to ESMA information concerning the scale and scope of services provided, and activities carried out, in the Union.
11. In addition, it is essential that ESMA's monitoring of the activities of third-country firms in the Union (i) ensures that clients serviced by third-country firms receive a comparable level of protection compared to clients services by firms authorised in the Union and (ii) does not prevent issuers or investors in the Union from investing or obtaining funding from third-country firms.
12. Therefore, ESMA's objectives in drafting the draft Article 46 RTS and draft Article 46 ITS are to ensure (i) that it is able to monitor the scale and scope of the activities of third-country firms in the Union; (ii) investor protection as well as the integrity and the stability of financial markets in the Union; (iii) certainty for the market and the uniform treatment of third-country firms accessing the Union; (iv) a comparable level of protection to clients receiving services by third-country firms (compared to those receiving services from firms established in the Union); as well as (v) that the new MiFIR third-country regime does not prevent investors and issuers from investing in or obtaining funding from third-country firms.
13. In addition, under Article 47(5) of MiFIR (as amended by the IFR) ESMA shall monitor the regulatory and supervisory developments, the enforcement practices and other

relevant market developments in third countries for which equivalence decisions have been adopted by the Commission in order to verify that the conditions on the basis of which those decisions have been taken are still fulfilled. ESMA shall submit a confidential report on its findings to the Commission on an annual basis. This ESMA report to the Commission shall also reflect the trends observed on the basis of the data collected under Article 46(6a) (in particular as regards firms providing services or performing the activities referred to in points (3) and (6) of Section A of Annex I of MiFID II). The information collected by ESMA from third-country firms is thus also essential to the fulfilling of such task by ESMA.

Benefits

14. It is possible to illustrate the main benefits linked to the draft Article 46 RTS and draft Article 46 ITS as follows:
 - a) harmonised regime for granting third-country firms access to the Union;
 - b) certainty for third-country firms applying to access the Union;
 - c) uniform treatment of third-country firms accessing the Union;
 - d) contributing to safeguard investors' confidence in the financial markets;
 - e) contributing to protect investors in the Union which are being serviced by third-country firms through the collection of relevant information by third-country firms;
 - f) contributing to ensure the integrity and stability of financial markets in the Union through the collection of relevant information by third-country firms;
 - g) allowing ESMA to collect the relevant information so as to be able to monitor the cross-border activities of third-country firms in the Union and fulfil the new responsibilities assigned to it by the IFD and IFR;
 - h) allowing national competent authorities to get information about the cross-border activities of third-country firms in their jurisdiction (since they can request information from ESMA).

Costs

15. As no equivalence decision has been taken so far, third-country firms have been relying on national third-country regimes in each jurisdiction of the Union in which they are providing investment services or activities. They thus never relied on the existing MiFIR third-country regime.
16. Once an equivalence decision has been taken by the European Commission, third-country firms from the relevant jurisdiction will be able to continue relying on national third-country regimes of the Union for three years after the adoption of the equivalence decision. Those third-country firms will thus be given sufficient time to transition from national third-country regimes to the harmonised regime granting them access to the Union by applying for registration in the ESMA register.
17. In light of what has been said, it can be reasonably expected that those firms already providing investment services and activities in the Union, on a cross-border basis, by

relying on national third-country regimes may incur costs when putting in place the necessary arrangements to register with ESMA and report annually to ESMA pursuant to Article 46 of MiFIR. However, those costs may be compensated by the introduction of an harmonised regime giving them access to eligible counterparties and professional clients *per se* of the entire Union, sparing them the costs of having to monitor national third-country regimes of all jurisdictions where they provide investment services and carry out investment activities to eligible counterparties and professional clients *per se* on a cross-border basis.

18. ESMA considers that potential and incremental costs that firms will face when implementing the draft Article 46 RTS and draft Article 46 ITS under the new MiFIR third-country regime might have both a one-off and an ongoing nature, arguably linked to:
 - a) (direct) costs linked to the assessment of their existing reporting arrangements in relation to their operations in the Union; and
 - b) (direct) initial and ongoing IT costs.
19. However, ESMA believes that the draft Article 46 RTS and draft Article 46 ITS provide the most cost-efficient solution to achieving the general objectives described above.
20. ESMA will also incur costs, both of a on-off and ongoing nature, to implement Article 46 RTS and Article 46 ITS. Those costs will cover, for instance, (i) the putting in place of the necessary IT system to collect and manage the information required from third-country firms and (ii) the hiring of new staff to fulfil the new responsibilities assigned to ESMA by the IFD and IFR.
21. However, ESMA considers that such costs directly ensue from the new responsibilities and powers given to ESMA by the IFD and IFR. The information required under the draft Article 46 RTS and draft Article 46 ITS are, in ESMA's view, the minimum information requirements necessary for ESMA to be able to fulfil its new responsibilities and exercise its new powers under the MiFIR third-country regime.

Conclusions

22. In light of what has been illustrated above, ESMA believes that the overall (compliance) costs associated with the implementation of the new MiFIR third-country regime, including the draft Article 46 RTS and draft Article 46 ITS, are fully justified by the objectives described above and will be largely compensated by the benefits for third-country firms to have access to an harmonised regime giving them access to the Union.
23. ESMA is also of the view that the costs that it will incur due to the implementation of the draft Article 46 RTS and draft Article 46 ITS are necessary and ensue directly from its new responsibilities and powers under the new MiFIR third-country regime and are, thus, unavoidable.

II. Changes to the MiFID II regime for third-country firms providing investment services and activities to retail clients and professional clients within the meaning of Section II of Annex II of MiFID II through a branch

24. The branch of a third-country firm authorised under Article 39 of MiFID II remains under the exclusive supervisory responsibility of the competent authorities of the Member State where it has been authorised.
25. The IFD amends MiFID II to provide for further reporting obligations on the branch of a third-country firm authorised under Article 39 of MiFID II and the competent authorities of the Member State where such branch is established. Indeed, pursuant to Article 41 of MiFID II, as amended by the IFD:
 - a) the competent authorities of Member States where branches of third-country firms authorised under Article 39 of MiFID II are established shall notify ESMA, on an annual basis, of the list of branches of third-country firms active in their territory;
 - b) the branch of a third-country firm authorised under Article 39 of MiFID II shall report annually to the competent authorities of the Member State where it is established information about (i) the scale and scope of the services and activities carried out by the branch in that Member State; (ii) certain figures relating to the branch's activities of dealing on own account and underwriting and placing on a firm commitment basis; (iii) the turnover and the aggregated value of the assets corresponding to the activities of the branch in the Member State where it is established; (iv) a detailed description of the investor protection and risk management arrangements of the branch; (v) its governance arrangements and (vi) any other information considered by the competent authority necessary to enable the monitoring of the activities of the branch.
26. To take into account this newly harmonised flow of information that the branch of a third-country firm has to report to the competent authority of the Member State where it is established, ESMA is mandated to develop , in accordance with Article 41(5) of MiFID II, implementing technical standards to specify the format in which the information referred to above in paragraph 25b) is to be reported.
28. In accordance with Article 47(3) of MiFIR, third-country firms established in a country declared equivalent and which have a branch authorised in a Member State in accordance with Article 39 of MiFID II are allowed to provide investment services and activities to eligible counterparties and *per se* professional clients in other Member States without the need to establish new branches. By way of exception to the lack of passport of third-country firms' branches, Article 47(3) of MiFIR thus gives passporting rights to third-country firms when certain conditions are fulfilled without the need to register in the ESMA register.
29. Such third-country firms are, therefore, not subject to the information requirements (at the point of registration and after that, annually) of Article 46 of MiFIR. Article 47(3) further provides that the branch shall remain subject to the supervision of the competent authority of the Member State where it is established.

27. For this reason, ESMA considers that it is appropriate to also include in the draft implementing technical standards under Article 41(5) of MiFID II information on the activities that the branch is carrying out on a cross-border basis in the Union by virtue of Article 47(3) of MiFIR. This is because it is the responsibility of the competent authorities of the host Member State of the branch to also supervise the activities of that branch in other Member States.

The impact of the draft Article 41 ITS

28. The draft Article 41 ITS under Article 41 of MiFID II, as amended by IFD, introduces a minimum level of harmonisation in an area where there was none before (as MiFID II currently does not provide the minimum list of information to be reported by branches of third-country firms authorised under Article 39 of MiFID II).
29. Therefore, ESMA's objectives in drafting the draft Article 41 ITS are to ensure (i) that competent authorities continue to be able to supervise the activities of branches of third-country firms established in their jurisdiction; (ii) investor protection as well as the integrity and the stability of financial markets in the Union; and (iii) certainty for the market and the uniform treatment of third-country firms accessing the Union.

Benefits

30. It is possible to illustrate the main benefits linked to the draft Article 41 ITS as follows:
 - i) harmonised annual reporting regime for third-country firms with a branch or branches in one or more Member States of the Union;
 - j) certainty for branches of third-country firms reporting to the competent authorities of the Member States where they are established;
 - k) uniform treatment of branches of third-country firms established in different Member States;
 - l) safeguarding investors' confidence in the financial markets and protecting investors in the Union which are being serviced by branches of third-country firms established in the Union by ensuring that national competent authorities across the Union have the necessary information to supervise those branches;
 - m) ensuring the integrity and stability of financial markets in the Union.

Costs

31. It can be reasonably expected that branches of third-country firms already authorised under Article 39 of MiFID II and already reporting to the relevant national competent authorities may incur costs when putting in place the necessary arrangements to report annually the list of information provided in the draft Article 41 ITS, if such information is not absolutely in line with what they are currently asked to provide by their national competent authority or authorities. However, those costs should be largely compensated by the introduction of an harmonised annual reporting regime, sparing third-country firms the costs of having to monitor national reporting regimes for each of their branches established in the Union.

32. ESMA considers that potential and incremental costs that firms will face when implementing the draft Article 41 ITS might have both a one-off and an ongoing nature, arguably linked to:
 - a. (direct) costs linked to the assessment of their existing reporting arrangements in relation to their operations in the Union; and
 - b. (direct) initial and ongoing IT costs.
33. ESMA is of the view that the same applies to costs that national competent authorities may incur when implementing the draft Article 41 ITS and that, depending on the existing information requirements of each national competent authority, such costs may be linked to:
 - a) (direct) costs linked to the assessment of their existing reporting requirements in relation to third-country firms operating through a branch in their Member States; and
 - b) (direct) initial and ongoing IT costs to update their existing IT system (if any).
34. However, ESMA believes that the draft ITS provides the most cost-efficient solution to achieving the general objectives described above.

Conclusions

35. In light of what has been illustrated above, ESMA believes that the overall (compliance) costs associated with the implementation of the new MiFID II third-country annual reporting regime, including the draft Article 41 ITS, are fully justified by the objectives described above and will be largely compensated by the benefit for third-country firms with multiple branches established in the Union to have an harmonised annual reporting regime.

Annex III - Draft regulatory technical standards concerning the information for registration of third- country firms and the information to be reported annually by third-country firms registered with ESMA and repealing Commission Delegated Regulation (EU) 2016/2022

COMMISSION DELEGATED REGULATION (EU) [●]/[●]

of [●]

with regard to regulatory technical standards concerning the information for registration of third- country firms and the information to be reported annually by third-country firms registered with ESMA and repealing Commission Delegated Regulation (EU) 2016/2022

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 ⁽¹⁾, and in particular Article 46(7) thereof,

Whereas:

- (1) Regulation (EU) No 600/2014 sets out a harmonised framework for the treatment of third-country firms providing investment services and performing investment activities, without the establishment of a branch, to eligible counterparties and to professional clients within the meaning of Section 1 of Annex II to Directive 2014/65/EU established throughout the Union.
- (2) Commission Delegated Regulation (EU) 2016/2022⁽²⁾ sets out the information that a third-country firm applying for the provision of investment services or performance of investment activities throughout the Union should provide to the European Securities and Markets Authority (ESMA).

¹ OJ L 173, 12.6.2014, p. 84.

² Commission Delegated Regulation (EU) 2016/2022 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards concerning the information for registration of third-country firms and the format of information to be provided to the clients (OJ L 313, 19.11.2016, p. 11).

- (3) The amendments to Regulation (EU) No 600/2014 by Regulation (EU) 2019/2033 of the European Parliament and of the Council³ require third-country firms providing investment services or performing investment activities in accordance with Article 46 of Regulation (EU) No 600/2014 to report annually to ESMA.
- (4) To enable ESMA and the relevant competent authorities to monitor the scale and scope of investment services and investment activities provided by third-country firms in the Union in accordance with that Article 46 of Regulation (EU) No 600/2014, in addition to the information listed in Article 46(6a) of Regulation (EU) No 600/2014, ESMA should be provided with information on the competent authorities of the third-country responsible for the supervision of the third-country firm, how the activities of the third-country firm in the Union will contribute to the strategy of the third-country firm or that of its group, the outsourcing arrangements of the third-country firm in relation to its operations in the Union, the structure, organisation and monitoring activities of the control functions of the third-country firm, the number of clients and counterparties of the third-country firm globally and in the Union, the number of complaints received by the third-country firm in relation to its operations in the Union as well as its marketing activities.
- (5) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission.
- (6) 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 opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council (⁴).
- (7) Since this Delegated Regulation replaces Commission Delegated Regulation (EU) 2016/2022, the latter should be repealed.
- (8) This Delegated Regulation supplements provisions of Regulation (EU) No 600/2014 that have been amended by Regulation (EU) 2019/2033 with effect from 26 June 2021. It is therefore necessary to defer the application of this Delegated Regulation to the same date.

³ Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014.

⁴ 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

Information necessary for the registration

1. A third-country firm applying for registration to provide investment services or perform activities throughout the Union in accordance with the second subparagraph of Article 46(4) of Regulation (EU) No 600/2014 shall submit the following information to ESMA:

- a) information identifying the third-country firm;
- b) name and contact details of the person in charge of the application;
- c) competent authorities of the third country that are responsible for the supervision of the third-country firm;
- d) information on which investment services, investment activities and ancillary services the third-country firm is authorised to provide in the third country where it is established;
- e) information on the investment services, investment activities and ancillary services to be provided in the Union, together with the expected numbers of clients and counterparties and total net turnover;
- f) information on how the activities of the third-country firm in the Union will contribute to the strategy of the third-country firm or, where relevant, that of its group;
- g) description of the governance arrangements of the third-country firm;
- h) description of the marketing strategy that the third-country firm plans to use for the investment services, investment activities and ancillary activities provided in the Union;
- i) description of the investor protection arrangements of the third-country firm.
- j) information on the outsourcing arrangements of the third-country firm, with a focus on the operations of the third-country firm in the Union;
- k) information on the arrangements (including IT arrangements) set up by the third-country firm for algorithmic trading, for high frequency trading (HFT) and for direct electronic access (DEA);
- l) information on the structure, organisation of and monitoring by the compliance function (or equivalent) of the third-country firm;
- m) information on the structure, organisation of and monitoring by the internal audit function (or equivalent) of the third-country firm;
- n) information on the structure, organisation of and monitoring by the risk management function (or equivalent) of the third-country firm;
- o) whether the firm has established the necessary arrangements and procedures to report the information set out in Article 2, with a brief description thereto; and
- p) any other information that the third-country firm considers to be relevant to ESMA.

2. For the purposes of point (g) of paragraph 1, the description of the governance arrangements must include at least information on:

- a) the members of the management body of the third-country firm and any other persons who effectively direct the business of the third-country firm;
- b) information on the key function holders for the activities of the third-country firm in the Union with, notably, the CFO and CEO when they are not member of the management body, the heads of internal control functions responsible for the oversight of the activities of the third-country firm in the Union and the individuals responsible for the day-to-day operations of the third-country firm in the Union; and
- c) the reporting lines between the key function holders reported under point (b) above and the senior management and management body of the third-country firm.

3. For the purposes of point (i) of paragraph (1), the detailed description of the investor protection arrangements of the third-country firm must include at least the following information:

- a) details on the planned use of languages by the third-country firm with its clients in the Union;
- b) details on the arrangements of the third-country firm to comply with its information requirements under Article 46 of Regulation (EU) 600/2014;
- c) where the third-country firm provides the services referred to in points (4) or (5) of Section A of Annex I to Directive 2014/65/EU of the European Parliament and of the Council⁵, the arrangements of the third-country firm to ensure that such investment services provided to its clients are suitable;
- d) where the third-country firm executes orders for its clients, the arrangements of the third-country firm to execute such orders on terms most favourable to the client;
- e) where the third-country firm executes orders on behalf of clients, the arrangements of the third-country firm for the prompt, fair and expeditious execution of client orders;
- f) where the third-country firm manufactures financial instruments for sale to clients, the product governance arrangements of the third-country firm;
- g) the arrangements of the third-country firm to identify, prevent and manage conflicts of interest;
- h) the arrangements of the third-country firm to handle complaints;
- i) the membership of the third-country firm in an investor compensation scheme;
- j) the arrangements of the third-country firm to protect and manage the funds and assets of its clients;

⁵ 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).

- k) any other arrangements that the third-country firm may deem relevant to the provision of investment services and performance of its investment activities in the Union in an honest, fair and professional manner that promotes the interests of clients.

In its description of points (a) to (k) of paragraph 3, the third-country firm should notably address issues that may arise due to the cross-border nature of the services provided or activities performed and how the third-country firm plans on addressing these issues, including, without limitation, organisational and technological aspects.

4. The information provided to ESMA under paragraph 1(d) shall be provided through a written declaration issued by the competent authority of the third-country firm that provided the authorisation.

5. The information to be provided to ESMA under paragraphs (1) to (4) of this Article are described in more details in Annex 1 hereto.

Article 2

Information to be provided to ESMA annually

1. A third-country firm providing investment services or performing investment activities in the Union in accordance with Article 46 of Regulation (EU) No 600/2014 shall, on an annual basis, submit the following information to ESMA:

- a) the reporting period;
- b) any change to the information provided by the third-country firm under Article 1, paragraph 1(a);
- c) name and contact details of the person in charge of submitting the information;
- d) any change to the information provided by the third-country firm under Article 1, paragraph 1(c);
- e) any change to the information provided by the third-country firm under Article 1, paragraph 1(d);
- f) any material change to the information provided by the third-country firm under Article 1, paragraph 1(f);
- g) any change to the information provided by the third-country firm under Article 1, paragraph 1(g);
- h) any material change to the information provided by the third-country firm under Article 1, paragraphs 1(j) to (n);
- i) any material change to other information provided by the third-country firm under Article 1, paragraph 1(p);
- j) for each Member State where the third-country firm provides investment services, investment activities or ancillary services, the list of investment services, investment

activities and ancillary services provided by the third-country firm, together with the number of clients and counterparties and total net turnover

- k) the total number of clients and counterparties of the third-country firm globally;
- l) the total net turnover of the third-country firm globally;
- m) where the third-country firm performs the activity referred to in point (3) of Section A of Annex I to Directive 2014/65/EU, the exposure of the third-country firm to counterparties in the Union, together with a breakdown of such number per Member State where the third-country firm carries out dealing on own account;
- n) where the third-country firm provides the service referred to in point (6) of Section A of Annex I to Directive 2014/65/EU, the total value of financial instruments originating from counterparties in the Union and underwritten or placed on a firm commitment basis, together with a breakdown of such number per Member State where the third-country firm carries out underwriting or placing on a third-country firm commitment basis activity;
- o) where the third-country firm provides the service referred to in point (4) of Section A of Annex I to Directive 2014/65/EU, information about the value of the assets under management for clients in the Union, together with a breakdown of such number per Member State where the third-country firm provides portfolio management services;
- p) where the third-country firm provides the service referred to in point (5) of Section A of Annex I to Directive 2014/65/EU, information about the value of the assets in relation to which that service has been provided, together with a breakdown of such number per Member State where the third-country firm provides investment advice;
- q) where the third-country firm provides the ancillary service referred to in point (1) of Section B of Annex I to Directive 2014/65/EU or is holding client funds, information on the value of the assets (including cash) held by the third-country firm for clients in the Union, together with a breakdown of such number per Member State where the third-country firm provides investment advice;
- r) information about complaints received by the third-country firm in the Union;
- s) information on the marketing activities of the third-country firm in the Union;
- t) information on the activities of the compliance function (or equivalent) of the third-country firm, with a focus on the operations of the third-country firm in the Union;
- u) information on the activities of the internal audit function (or equivalent) of the third-country firm, with a focus on the operations of the third-country firm in the Union;
- v) information on the activities of the risk management function (or equivalent) and the risk management policy of the third-country firm, with a focus on the operations of the third-country firm in the Union;
- w) any other information that the third-country firm deems relevant to ESMA.

2. For the purposes of point (r) of paragraph 1, the information on the marketing activities of the third-country firm in the Union must include, at least:

- a) the description of the marketing strategy of the third-country firm in the Union, including its geographical scope and details about the marketing means the third-country firm is using or plans to use (such as any agents, roadshows, telephone calls, websites...);
- b) the list of trading names to be used by the third-country firm in the Union together with the Member States in which they will be used, the investment services and activities and financial instruments in respect of which they will be used as well as the categories of clients in relation to which the third-country firm will use them;
- c) for any agents or similar used by the third-country firm in the Union, the name of the individual or entity; and
- d) the website(s) that will be used by the third-country firm in the Union, together with the relevant weblink(s).

3. For the purposes of point (s) of paragraph 1, the information on the activities of the compliance function (or equivalent) of the third-country firm must include, at least:

- a) any relevant regulatory changes;
- b) the manner of monitoring and reviewing of the compliance function;
- c) the findings of the compliance function;
- d) an overview of the correspondence between the compliance function of the third-country firm and competent authorities; and
- e) information as regards any deviation by senior management from important recommendations or assessments issued by the compliance function.

4. For the purposes of point (t) of paragraph 1, the information on the activities of the audit function (or equivalent) of the third-country firm must include, at least:

- a) information on the controls carried out by the internal audit function (or equivalent) of the third-country firm; and
- b) information on the findings of the internal audit function (or equivalent) of the third-country firm.

5. For the purposes of point (u) of paragraph 1, the information on the activities of the risk management function (or equivalent) and the risk management policy of the third-country firm must include at least:

- a) information on the risk management policy of the third-country firm;
- b) the manner of monitoring and reviewing of the risk management function; and
- c) information on the findings of the risk management function (or equivalent) of the third-country firm.

6. The information to be provided under paragraphs (3) to (5) of this Article should be focused on the operations of the third-country firm in the Union.

7. The information to be provided to ESMA under paragraphs (1) and (2) of this Article are described in more details in Annex 2 hereto.



8. The information referred to in paragraph 1 shall be submitted by 31 March of each year and shall cover the period from 1 January to 31 December of the preceding calendar year.”

Article 4

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from the date referred to in Article 66(2) of Regulation (EU) 2019/2033.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [●].

For the Commission

The President

Ursula VON DER LEY

ANNEX I

Information to be provided to ESMA under Article 1 (*Information necessary for the registration*)

Field		Sub-field		Description
1	Information identifying the third-country firm	1	Registration date and time	Date and time when the third-country firm applied for registration to ESMA
		2	LEI	Legal entity identifier of the third-country firm
		3	Full legal name	Full legal name of the third-country firm
		4	Legal form	Legal form of incorporation under national legislation
		5	Registered address	Registered address of the head office

Field		Sub-field		Description
		6	Country of the head office	Country of the head office
		7	Postal address	Postal address, if different from the registered address of the head office
		8	Country of the postal address	Country of the postal address, if different from the country of the head office
		9	National ID	National identifier of the third-country firm
2	Name and contact details of the person in charge of the application	1	Contact person full name	Full first name(s) and surname(s) of the contact person.
		2	Contact address person	

Field		Sub-field		Description
		3	Contact person telephone number	
		4	Contact person email address	
		5	Contact person function	Function and/or title of the contact person within the third-country firm
3	Information on the competent authorities of the third-country responsible for the supervision of the third-country firm	If more than one NCA is responsible for the supervision of the third-country firm, sub-fields 1 to 5 below should be repeated and completed for each NCA.		
		1	NCA name	Name of the national competent authority (NCA) of the third-country responsible for the supervision of the third-country firm

Field		Sub-field		Description
		2	NCA address	Address of the NCA
		3	NCA country	Country of the NCA
		4	NCA competences	In case multiple NCAs are responsible for the supervision of the third-country firm, details of the area(s) of competence of the relevant NCA
		5	NCA register	The URL to the register showing the details of the third-country firms, individuals and other bodies that are authorised and/or supervised by the relevant NCA

Field		Sub-field		Description
4	Information on investment services, investment activities and ancillary services the third-country firm is authorised to provide in the third-country where it is established	1	Investment services, activities and ancillary activities outside the EU	The list of investment services, activities and ancillary activities (as defined in Sections A and B of Annex I of Directive 2014/65/EU) the third-country firm is authorised to provide in the third-country where it is established
		2	Financial instruments	The list of financial instruments (as defined in Section C of Annex I of Directive 2014/65/EU) in relation to which such investment services, activities and ancillary services may be performed.

Field		Sub-field	Description
5	Information on the investment services, investment activities and ancillary services to be provided in the Union, together with the expected number of clients and counterparties and total net turnover	If the third-country firm plans to be active in more than one country of the Union, sub-fields 1-6 should be repeated and completed for each country	
		1	Member State

Field		Sub-field		Description
		2	Investment services, activities and ancillary services	The list of investment services, activities and ancillary activities (as defined in Sections A and B of Annex I of Directive 2014/65/EU) the third-country firm intends to provide in the relevant Member State.
		3	Financial instruments	Categories of financial instruments (as defined in Section C of Annex I of Directive 2014/65/EU) in relation to which such services and activities should be performed

Field		Sub-field		Description
		4	Number of clients	The expected number of clients in the relevant Member State.
		5	Expected total net turnover	The amount of the expected total net turnover.

Field		Sub-field		Description
		6	Currency of the total net turnover	The third-country firm shall indicate the currency in which the amount of the expected total net turnover is expressed.
6	Information on how the activities of the third-country firm in the Union will contribute to the strategy of the third-country firm or, where relevant, that of its group	n/a	n/a	Information on how the activities of the third-country firm in the Union will contribute to the strategy of the third-country firm or its group (if relevant), including the reasoning behind the choice of the third-country firm or of its group (if relevant) to provide services in the Union on a cross-border basis instead rather than to establish branches or subsidiaries.
7	Members of the management body of the third-country firm	Sub-fields 1-7 should be repeated and completed for each of the members of the management body of the third-country firm		

Field		Sub-field		Description
		1	Full name	Full first name(s) and surname(s) of the relevant member of the management body.
		2	Country of domicile	Country of the domicile of the relevant member of the management body.
		3	Postal address	If different from the address of its domicile, the postal address of the relevant member of the management body.
		4	Country of postal address	If the postal address of the relevant member of the management body is different from that of its domicile, the country of the postal address.
		5	Telephone number	Telephone number of the relevant member of the management body.

Field		Sub-field		Description
		6	Email address	Email address of the relevant member of the management body.
		7	Position	Position at which the relevant member of the management body is/will be appointed
8	Other persons who effectively direct the business	Sub-fields 1-7 should be repeated and completed for each of the other persons who effectively direct the business of the third-country firm		
		1	Full name	Full first name(s) and surname(s) of the relevant person who effectively direct the business.
		2	Country of domicile	Country of the domicile of the relevant person who effectively directs the business.
		3	Postal address	If different from the address of its domicile, the postal address of the relevant person who effectively directs the business.
		4	Country of postal address	If the postal address of the relevant person who effectively directs the business is different from that of its domicile, the country of the postal address.

Field		Sub-field		Description
		5	Telephone number	Telephone number of the relevant person who effectively directs the business.
		6	Email address	Email address of the relevant person who effectively directs the business
		7	Position	Position at which the person who effectively directs the business is/will be appointed
9	Key function holders for the activities of the third-country firm in the Union	Sub-fields 1-8 should be repeated and completed for each of the key function holders for the activities of the third-country firm in the Union		
		1	Full name	Full first name(s) and surname(s) of the relevant key function holder.
		2	Country of domicile	Country of the domicile of the relevant key function holder.
		3	Postal address	If different from the address of its domicile, the postal address of the relevant key function holder.
		4	Country of postal address	If the postal address of the relevant key function holder is different from that of its domicile, the country of the postal address.

Field		Sub-field		Description
		5	Telephone number	Telephone number of the relevant key function holder.
		6	Email address	Email address of the relevant key function holder
		7	Position	Position at which the of the relevant key function holder is/will be appointed.
		8	Reporting line	The description of the reporting lines between the key function holders and the third-country firm's senior management and management body
10	Description of the planned marketing strategy of the third-country firm in the Union	1	Planned marketing strategy -summary	A brief summary of the planned marketing strategy of the third-country firm in the Union
		2	Planned marketing strategy – Full description	The full description of the planned marketing strategy of the third-country firm in the Union, including its geographical scope and details about the marketing means the third-country firm is using or plans to use (such as any agents, roadshows, telephone calls, websites...)

Field		Sub-field	Description
		3	Planned marketing strategy - websites The list of websites that the third-country firm intends to use to market its services in the Union.
		Sub-fields 4-7 should be repeated and completed for each of the trading and commercial names that the third-country firm intends to use in the Union	
		4	Trading and commercial name The relevant trading or commercial name to be used by the third-country firm in the Union
		5	Trading/commercial name country The list of Member States in which the relevant trading or commercial name will be used by the third-country firm in the Union.

Field		Sub-field		Description
		6	Trading/commercial name – type of investment services and activities	The list of investment services, activities and ancillary activities (as defined in Sections A and B of Annex I of Directive 2014/65/EU) for which the relevant trading or commercial name will be used in the Union
		7	Trading/commercial name – categories of clients	The list of categories of clients with whom the relevant trading or commercial name will be used in the Union
11	Languages the third-country firm plans to use with its clients in the Union	Sub-fields 1-2 should be repeated and completed for each language that the third-country firm intends to use with its clients in the Union.		
		1	Language	The relevant language the third country firm intends to use with its clients in the Union.
		2	Description of the types of clients and services and activities for which this language will be used	A description of the types of clients and in relation to which of its services and activities in the Union the third-country firm will be using such language.

Field		Sub-field		Description
12	Arrangements of the third-country firm to comply with the information requirements under Article 46 of Regulation (EU) 600/2014	n/a	Description of arrangements of the third-country firm to comply with the information to clients requirements of Article 46 of Regulation (EU) 600/2014	The description of the arrangements the third-country firm has in place to comply with the first and second paragraphs of Article 46(5) and with Article 46(6) of Regulation (EU) No 600/2014.
13	Where the third-country firm provides the services referred to in points (4) or (5) of Section A of Annex I to Directive 2014/65/EU, the arrangements of the third-country firm to ensure that such investment services provided to its clients are suitable	1	Description of the scope of the suitability arrangements of the third-country firm	The description of the investment services, activities and financial instruments giving rise to an assessment by the third-country firm to ensure that such services, activities and financial instruments are suitable, together with the categories of clients for whom such assessment applies and, if relevant, the different (levels of) assessment carried out
		2	Description of the information collected by the third-country firm for the suitability assessment	The description of what kind of information is collected by the third-country firm from its clients to ensure that the investment services, activities and financial instruments provided to clients are fitting, together with the means used by the third-country firm to collect such information

Field		Sub-field		Description
		3	Description of the arrangements of the firm to manage the information collected	The description of the arrangements of the third-country firm to ensure that the information collected from its clients is reliable, proportionate and up-to-date
		4	Description of the suitability assessment process	The description of the arrangements of the third-country firm to ensure that a specific investment service, activity or financial instrument selected is fitting
		5	Description of the information provided to the client about the suitability assessment	The description of the information provided to the client about the results of the assessment carried out by the third-country firm (report, warnings...) and what happens if the assessment carried out by the third-country firm is negative
		6	Description of the record-keeping arrangements in relation to suitability assessment of the third-country firm	The description of the arrangements of the third-country firm to maintain adequate record-keeping arrangements in relation to all material aspects of the assessment process to ensure that the investment services, activities and financial instruments selected are fitting to clients

Field		Sub-field		Description
14	Where the third-country firm executes orders for its clients, the arrangements of the third-country firm to execute such orders on terms most favourable to the client	1	The arrangements of the firm to obtain the best result when executing client orders	The description of the processes and/or procedures of the third-country firm that enables to obtain, when executing orders, the best possible result for its clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order.
		2	Information on the trading venues used	For each class of financial instruments, information on the different venues where the investment third-country firm executes its client orders and the factors affecting the choice of execution venue. This description shall at least include those venues that the investment third-country firm uses to enable to obtain on a consistent basis the best possible result for the execution of client orders.
		3	Information on the monitoring arrangements of the third-country firm regarding its best execution processes and policy	Description of the process/procedures the third-country firm has put in place to monitor the effectiveness of their order execution arrangements and execution policy, including the processes to correct any deficiencies.

Field		Sub-field		Description
15	Where the third-country firm executes orders on behalf of clients, the arrangements of the third-country firm for the prompt, fair and expeditious execution of client orders	n/a	Client order handling arrangements	Description of the procedures and arrangements which provide for the prompt, fair and expeditious execution of client orders, relative to other client orders or the trading interests of the investment third-country firm. Including a description how these procedures and arrangements allow for the execution of otherwise comparable client orders in accordance with the time of their reception by the investment third-country firm.
16	Where the third-country firm manufactures financial instruments for sale to clients, the product governance arrangements of the third-country firm	1	Arrangements of the third-country firm to identify the target market	Description of the processes/procedures of the third-country firm to identify/assess the target market and negative target market (i.e. end clients for whose needs and objectives the products are intended and clients for whom the product is incompatible) of the products the third-country firm manufactures or distributes.

Field		Sub-field		Description
		2	Arrangements of the third-country firm to define the distribution strategy for the products it manufactures	Description of how the third-country firm defines the distribution strategy for the products to ensure their distribution to the defined target market (for example choice of distributors, channels, investment service(s) through which the product should be sold).
17	The arrangements of the third-country firm to identify, prevent and manage conflicts of interest	n/a	Description of the conflict prevention and management policies of the third-country firm	Description of the measures the third-country firm has put in place to identify and to prevent or manage conflicts of interest that arise in the course of providing investment and ancillary services.
18	The arrangements of the third-country firm to handle complaints	1	Clients complaint procedure	Description of the procedure clients of the third-country firm in the Union need to follow to lodge a complaint
		2	Department of the third-country firm responsible for handling complaints from clients in the Union	The brief description of the department responsible for handling the complaints of clients of the third-country firm in the Union and how many persons of that department are assigned to such task

Field		Sub-field		Description
		3	Languages	The list of languages in which clients have to lodge their complaints and the third-country firm will respond to clients' complaints
		4	Competent court(s)	The list of competent courts (in case of litigation) the third-country firm's contract terms and conditions point at
		5	Alternative Dispute Resolution	The Alternative dispute resolution (ADR) entity/ies competent to deal with cross-border disputes involving clients in the Union
19	Membership of the third-country firm in an investor compensation scheme	n/a	Investor compensation scheme	The description of the membership of the third-country firm in an investor compensation scheme including whether EU clients and counterparties of the third-country firm will be eligible to such scheme, its scope, a description of the eligibility conditions and the amounts and financial instruments covered by the scheme

Field		Sub-field		Description
20	Arrangements of the third-country firm to protect and manage the funds and assets of its clients	n/a	Client assets and funds safeguarding arrangements	The description of any client asset safeguarding arrangements (in particular, where financial instruments and funds are held in a custodian, the name of the custodian, and related contracts)
21	Other arrangements that the third-country firm may deem relevant to the provision of services and performance of its activities in the Union in an honest, fair and professional manner that promotes the interests of clients	n/a	Other investor protection arrangements	The description of any other arrangements that the third-country firm may deem relevant to the provision of services and performance of its activities in the Union in an honest, fair and professional manner that promotes the interests of clients
22	Information on the outsourcing arrangements of the third-country firm, with	Sub-fields 1-2 below should be repeated and completed for each critical or important operational function outsourced (or intended to be outsourced) by the third-country firm		

Field		Sub-field		Description
	a focus on the operations of the third-country firm in the Union	1	Critical or important operational function outsourced	The relevant critical or important operational function outsourced (or intended to be outsourced) by the third-country firm, together with its description
		2	Resources allocated to the control of outsourced functions	The description of the resources (in particular, human and technical, and the internal control system) allocated to the control of the relevant critical or important outsourced function, service or activitie
23	Information on the structure, organisation of and monitoring by the compliance function (or equivalent) of the third-country firm	1	Compliance function - summary	A brief summary of the structure of the compliance function (or equivalent) of the third-country firm as well as how the compliance function monitors EU operations and how possible risks of failures by the third-country firm or its staff are discovered at an early stage
		2	Compliance function structure – full description	The full description of the structure of the compliance function (or equivalent) of the third-country firm, including the number of staff in charge of EU operations, their qualifications and reporting lines

Field		Sub-field		Description
		3	Number of staff in charge of EU operations	The number of staff of the compliance function (or equivalent) of the third-country firm which are in charge of EU operations
		4	Monitoring and risks	The full description of how the compliance function monitors EU operations and how possible risks of failures by the third-country firm or its staff are discovered at an early stage
24	Information on the structure, organisation of and monitoring by the internal audit function (or equivalent) of the third-country firm	1	Internal audit function - summary	A brief summary of the structure of the internal audit function (or equivalent) of the third-country firm as well as how the internal audit function monitors EU operations and how possible risks of failures by the third-country firm or its staff are discovered at an early stage
		2	Internal audit function structure – full description	The full description of the structure of the internal audit function (or equivalent) of the third-country firm, including the number of staff in charge of EU operations, their qualifications and reporting lines

Field		Sub-field		Description
		3	Number of staff in charge of EU operations	The number of staff of the internal audit function (or equivalent) of the third-country firm which are in charge of EU operations
		4	Monitoring and risks	The full description of how the internal audit function monitors EU operations and how possible risks of failures by the third-country firm or its staff are discovered at an early stage
25	Information on the structure, organisation of and monitoring by the risk management function (or equivalent) of the third-country firm	1	Risk management function - summary	A brief summary of the structure of the risk management function (or equivalent) of the third-country firm as well as how the risk management function monitors EU operations and how possible risks of failures by the third-country firm or its staff are discovered at an early stage
		2	Risk management function structure – full description	The full description of the structure of the risk management function (or equivalent) of the third-country firm, including the number of staff in charge of EU operations, their qualifications and reporting lines

Field		Sub-field		Description
		3	Number of staff in charge of EU operations	The number of staff of the risk management function (or equivalent) of the third-country firm which are in charge of EU operations
		4	Monitoring and risks	The full description of how the risk management function monitors EU operations and how possible risks of failures by the third-country firm or its staff are discovered at an early stage
26	Arrangements and procedures to report the information set out in Annex II hereto	1	Whether the third-country firm has arrangements and procedures in place to report the information detailed in Annex II hereto	Whether the firm has established the necessary arrangements and procedures to report the information set out in Annex II hereto
		2	Arrangements and procedures of the firm to report the information detailed in Annex II hereto	The brief summary of the arrangements and procedures the firm has put in place to report the information detailed in Annex II hereto to ESMA

Field		Sub-field		Description
27	Any other information that the third-country firm deems relevant to ESMA	n/a	Additional information	The description of any information that the third-country firm deems relevant to ESMA

ANNEX II

Information to be provided to ESMA under Article 2 (*Information to be provided to ESMA annually*)

Field		Sub-field		Description
1	Reporting period	1	Reporting start date	The reporting start date for the calendar year
		2	Reporting end date	The reporting end date for the calendar year
2	Information identifying the third-country firm	Field 2 should only be filled in case of any change to the information previously reported to ESMA		
		1	LEI	Legal entity identifier of the third-country firm
		2	Full legal name	Full legal name of the third-country firm
		3	Legal form	Legal form of incorporation under national legislation

Field		Sub-field		Description
		4	Registered address	Registered address of the head office
		5	Country	Country of the head office
		6	Postal address	Postal address, if different from the registered address of the head office
		7	Country of the postal address	Country of the postal address, if different from the country of the head office
		8	National ID	National identifier of the third-country firm
3	Name and contact details of the person in charge of submitting the information	1	Contact person full name	Full first name(s) and surname(s) of the contact person.

Field		Sub-field		Description
		2	Contact address person	
		3	Contact telephone number person	
		4	Contact email address person	
		5	Contact function person	Function and/or title of the contact person within the third-country firm
4	Information on the competent authorities of the third-country responsible for the supervision of the third-country firm	Field 4 should only be filled in case of any change to the information previously reported to ESMA		

Field	Sub-field	Description
		<p>If more than one NCA is responsible for the supervision of the third-country firm, sub-fields 1 to 5 below should be repeated and completed for each NCA.</p>
	1	<p>NCA name</p> <p>Name of the national competent authority (NCA) of the third-country responsible for the supervision of the third-country firm</p>
	2	<p>NCA address</p> <p>Address of the NCA</p>
	3	<p>NCA country</p> <p>Country of the NCA</p>

Field		Sub-field		Description
		4	NCA competences	In case multiple NCAs are responsible for the supervision of the third-country firm, details of the area(s) of competence of the relevant NCA
		5	NCA register	The URL to the register showing the details of the third-country firms, individuals and other bodies that are authorised and/or supervised by the relevant NCA

Field	Sub-field	Description
5	Information on investment services, investment activities and ancillary services the third-country firm is authorised to provide in the third-country where it is established	Field 5 should only be filled in case of any change to the information previously reported to ESMA

Field		Sub-field	Description
		1 Investment services, activities and ancillary activities outside the EU	The list of investment services, activities and ancillary activities (as defined in Sections A and B of Annex I of Directive 2014/65/EU) the third-country firm provides outside of the Union.
		2 Financial instruments	The list of financial instruments (as defined in Section C of Annex I of Directive 2014/65/EU) in relation to which such investment services, activities and ancillary services may be performed.

Field		Sub-field		Description
6	Information on how the activities of the third-country firm in the Union contribute and will contribute to the strategy of the third-country firm or, where relevant, that of its group	Field 6 should only be filled in case of any material change to the information previously reported to ESMA		
		n/a	n/a	Information on how the activities of the third-country firm in the Union contribute and will contribute to the strategy of the third-country firm or its group (if relevant), including the reasoning behind the choice of the third-country firm or of its group (if relevant) to provide services in the Union on a cross-border basis instead rather than to establish branches or subsidiaries.

Field	Sub-field	Description
7	Members of the management body of the third-country firm	<p data-bbox="689 639 1957 671">Field 7 should only be filled in case of any change to the information previously reported to ESMA</p> <hr data-bbox="600 906 2045 908"/> <p data-bbox="633 1123 2016 1187">Sub-fields 1-7 should be repeated and completed for each of the members of the management body of the third-country firm</p>

Field		Sub-field		Description
		1	Full name	Full first name(s) and surname(s) of the relevant member of the management body.
		2	Country of domicile	Country of the domicile of the relevant member of the management body.
		3	Postal address	If different from the address of its domicile, the postal address of the relevant member of the management body.
		4	Country of postal address	If the postal address of the relevant member of the management body is different from that of its domicile, the country of the postal address.
		5	Telephone number	Telephone number of the relevant member of the management body.

Field		Sub-field		Description
		6	Email address	Email address of the relevant member of the management body.
		7	Position	Position at which the relevant member of the management body is/will be appointed
8	Other persons who effectively direct the business	Field 8 should only be filled in case of any change to the information previously reported to ESMA		
		Sub-fields 1-7 should be repeated and completed for each of the persons who effectively direct the business of the third-country firm		
		1	Full name	Full first name(s) and surname(s) of the relevant person who effectively direct the business.
		2	Country of domicile	Country of the domicile of the relevant person who effectively directs the business.
		3	Postal address	If different from the address of its domicile, the postal address of the relevant person who effectively directs the business.

Field		Sub-field		Description
		4	Country of postal address	If the postal address of the relevant person who effectively directs the business is different from that of its domicile, the country of the postal address.
		5	Telephone number	Telephone number of the relevant person who effectively directs the business.
		6	Email address	Email address of the relevant person who effectively directs the business
		7	Position	Position at which the person who effectively directs the business is/will be appointed
9	Key function holders for the activities of the third-country firm in the Union	Field 9 should only be filled in case of any change to the information previously reported to ESMA		
		Sub-fields 1-8 should be repeated and completed for each of the key function holders for the activities of the third-country firm in the Union		
		1	Full name	Full first name(s) and surname(s) of the relevant key function holder.
		2	Country of domicile	Country of the domicile of the relevant key function holder.

Field		Sub-field		Description
		3	Postal address	If different from the address of its domicile, the postal address of the relevant key function holder.
		4	Country of postal address	If the postal address of the relevant key function holder is different from that of its domicile, the country of the postal address.
		5	Telephone number	Telephone number of the relevant key function holder.
		6	Email address	Email address of the relevant key function holder
		7	Position	Position at which the relevant key function holder is/will be appointed.
		8	Reporting line	The description of the reporting lines between the key function holders and the third-country firm's senior management and management body
10	Information on the outsourcing arrangements of the third-country firm, with	Field 10 should only be filled in case of any material change to the information previously reported to ESMA		

Field		Sub-field	Description
	a focus on the operations of the third-country firm in the Union	Sub-fields 1-2 below should be repeated and completed for each critical or important operational function outsourced (or intended to be outsourced) by the third-country firm	
		1	Critical or important operational function outsourced The relevant critical or important operational function outsourced (or intended to be outsourced) by the third-country firm, together with its description
		2	Resources allocated to the control of outsourced functions The description of the resources (in particular, human and technical, and the internal control system) allocated to the control of the relevant critical or important outsourced function, service or activitie
11	Information on the structure, organisation of and monitoring by the compliance function (or equivalent) of the third-country firm	Field 11 should only be filled in case of any material change to the information previously reported to ESMA	

Field		Sub-field		Description
		1	Compliance function - summary	A brief summary of the structure of the compliance function (or equivalent) of the third-country firm as well as how the compliance function monitors EU operations and how possible risks of failures by the third-country firm or its staff are discovered at an early stage
		2	Compliance function structure – full description	The full description of the structure of the compliance function (or equivalent) of the third-country firm, including the number of staff in charge of EU operations, their qualifications and reporting lines
		3	Number of staff in charge of EU operations	The number of staff of the compliance function (or equivalent) of the third-country firm which are in charge of EU operations
		4	Monitoring and risks	The full description of how the compliance function monitors EU operations and how possible risks of failures by the third-country firm or its staff are discovered at an early stage

Field	Sub-field	Description									
12	Information on the structure, organisation of and monitoring by the internal audit function (or equivalent) of the third-country firm	<p>Field 12 should only be filled in case of any material change to the information previously reported to ESMA</p> <table border="1" data-bbox="600 639 2045 1367"> <tbody> <tr> <td data-bbox="600 639 801 871">1</td> <td data-bbox="801 639 1097 871">Internal audit function - summary</td> <td data-bbox="1097 639 2045 871">A brief summary of the structure of the internal audit function (or equivalent) of the third-country firm as well as how the internal audit function monitors EU operations and how possible risks of failures by the third-country firm or its staff are discovered at an early stage</td> </tr> <tr> <td data-bbox="600 871 801 1139">2</td> <td data-bbox="801 871 1097 1139">Internal audit function structure – full description</td> <td data-bbox="1097 871 2045 1139">The full description of the structure of the internal audit function (or equivalent) of the third-country firm, including the number of staff in charge of EU operations, their qualifications and reporting lines</td> </tr> <tr> <td data-bbox="600 1139 801 1367">3</td> <td data-bbox="801 1139 1097 1367">Number of staff in charge of EU operations</td> <td data-bbox="1097 1139 2045 1367">The number of staff of the internal audit function (or equivalent) of the third-country firm which are in charge of EU operations</td> </tr> </tbody> </table>	1	Internal audit function - summary	A brief summary of the structure of the internal audit function (or equivalent) of the third-country firm as well as how the internal audit function monitors EU operations and how possible risks of failures by the third-country firm or its staff are discovered at an early stage	2	Internal audit function structure – full description	The full description of the structure of the internal audit function (or equivalent) of the third-country firm, including the number of staff in charge of EU operations, their qualifications and reporting lines	3	Number of staff in charge of EU operations	The number of staff of the internal audit function (or equivalent) of the third-country firm which are in charge of EU operations
1	Internal audit function - summary	A brief summary of the structure of the internal audit function (or equivalent) of the third-country firm as well as how the internal audit function monitors EU operations and how possible risks of failures by the third-country firm or its staff are discovered at an early stage									
2	Internal audit function structure – full description	The full description of the structure of the internal audit function (or equivalent) of the third-country firm, including the number of staff in charge of EU operations, their qualifications and reporting lines									
3	Number of staff in charge of EU operations	The number of staff of the internal audit function (or equivalent) of the third-country firm which are in charge of EU operations									

Field		Sub-field		Description
		4	Monitoring and risks	The full description of how the internal audit function monitors EU operations and how possible risks of failures by the third-country firm or its staff are discovered at an early stage
13	Information on the structure, organisation of and monitoring by the risk management function (or equivalent) of the third-country firm	Field 13 should only be filled in case of any material change to the information previously reported to ESMA		
		1	Risk management function - summary	A brief summary of the structure of the risk management function (or equivalent) of the third-country firm as well as how the risk management function monitors EU operations and how possible risks of failures by the third-country firm or its staff are discovered at an early stage
		2	Risk management function structure – full description	The full description of the structure of the risk management function (or equivalent) of the third-country firm, including the number of staff in charge of EU operations, their qualifications and reporting lines

Field		Sub-field		Description
		3	Number of staff in charge of EU operations	The number of staff of the risk management function (or equivalent) of the third-country firm which are in charge of EU operations
		4	Monitoring and risks	The full description of how the risk management function monitors EU operations and how possible risks of failures by the third-country firm or its staff are discovered at an early stage
14	Any material change to other information that the third-country firm considered to be relevant and previously reported to ESMA	Field 14 should only be filled in case of any change to the information previously reported to ESMA		

Field		Sub-field		Description
		n/a	Additional information	The description of any information that the third-country firm deems relevant to ESMA
15	Information on the investment services, investment activities and ancillary services provided in the Union, together with the number of clients and counterparties and total net turnover	If the third-country firm is active in more than one country of the Union, sub-fields 1-5 should be repeated and completed for each country		

Field		Sub-field		Description
		1	Member State	Member State in which the third-country firm provides investment services, activities and ancillary activities (as defined in Sections A and B of Annex I of Directive 2014/65/EU)
		2	Investment services, activities and ancillary services	The list of investment services, activities and ancillary activities (as defined in Sections A and B of Annex I of Directive 2014/65/EU) the third-country firm provides in the relevant Member State.

Field		Sub-field		Description
		3	Financial instruments	Categories of financial instruments (as defined in Section C of Annex I of Directive 2014/65/EU) in relation to which such services and activities may be performed
		4	Number of clients and counterparties	The number of clients and counterparties in the relevant Member State.

Field		Sub-field		Description
		5	Total net turnover	The amount of the total net turnover in the relevant Member State.
		6	Currency of the total net turnover	The third-country firm shall indicate the currency in which the amount of the total net turnover for the relevant Member State is expressed.

Field		Sub-field		Description
16	Total number of clients and counterparties of the third-country firm globally	n/a	n/a	The total number of clients and counterparties of the third-country firm globally
17	Total net turnover of the third-country firm globally	1	Total net turnover of the third-country firm globally	The amount of the global total net turnover.

Field		Sub-field		Description
		2	Currency of the total net turnover	The third-country firm shall indicate the currency in which the amount of the global total net turnover is expressed.
18	Where the third-country firm performs the activity referred to in point (3) of Section A of Annex I to Directive 2014/65/EU, information on the exposure of the third country firm to	1	Monthly minimum exposure of the third-country firm to EU counterparties	The amount of the monthly minimum exposure of the third-country firm to EU counterparties.

Field		Sub-field		Description
	counterparties in the Union	2	Currency of the monthly minimum exposure of the third-country firm to EU counterparties	The third-country firm shall indicate the currency in which the amount of the monthly minimum exposure of the third-country firm to EU counterparties is expressed.
		3	Monthly average exposure of the third-country firm to EU counterparties	The amount of the monthly average exposure of the third-country firm to EU counterparties.

Field		Sub-field		Description
		4	Currency of the monthly average exposure of the third-country firm to EU counterparties	The third-country firm shall indicate the currency in which the amount of the monthly average exposure of the third-country firm to EU counterparties is expressed.
		5	Monthly maximum exposure of the third-country firm to EU counterparties	The amount of the monthly maximum exposure of the third-country firm to EU counterparties.

Field	Sub-field		Description
		6 Currency of the monthly maximum exposure of the third-country firm to EU counterparties	The third-country firm shall indicate the currency in which the amount of the monthly maximum exposure of the third-country firm to EU counterparties is expressed.
Sub-fields 7-13 shall be repeated for each Member State where the third-country firm performs activity (3) of Section A of Annex I to Directive 2014/65/EU			

Field		Sub-field		Description
		7	Member State where the third-country firm performs activity (3) of Section A of Annex I to Directive 2014/65/EU	Relevant Member State where the third-country firm performs activity (3) of Section A of Annex I to Directive 2014/65/EU.
		8	Monthly minimum exposure of the third-country firm to counterparties in the relevant Member State	The amount of the monthly minimum exposure of the third-country firm to counterparties in the relevant Member State.

Field		Sub-field		Description
		9	Currency of the monthly minimum exposure of the third-country firm to counterparties in the relevant Member State	The third-country firm shall indicate the currency in which the amount of the monthly minimum exposure of the third-country firm to counterparties in the relevant member State is expressed.
		10	Monthly average exposure of the third-country firm to counterparties in the relevant Member State	The amount of the monthly average exposure of the third-country firm to counterparties in the relevant Member State.

Field		Sub-field		Description
		11	Currency of the monthly average exposure of the third-country firm to counterparties in the relevant Member State	The third-country firm shall indicate the currency in which the amount of the monthly average exposure of the third-country firm to counterparties in the relevant member State is expressed.
		12	Monthly maximum exposure of the third-country firm to counterparties in the relevant Member State	The amount of the monthly maximum exposure of the third-country firm to counterparties in the relevant Member State.

Field		Sub-field		Description
		13	Currency of the monthly maximum exposure of the third-country firm to counterparties in the relevant Member State	The third-country firm shall indicate the currency in which the amount of the monthly maximum exposure of the third-country firm to counterparties in the relevant member State is expressed.
19	Where the third-country firm provides the service referred to in point (6) of Section A of Annex I to Directive 2014/65/EU, the total value of financial instruments originating from counterparties in	1	Total value of financial instruments	Total value of financial instruments originating from counterparties in the Union underwritten or placed on a firm commitment basis

Field		Sub-field		Description
	the Union and underwritten or placed on a firm commitment basis	2	Currency of the total value of financial instruments underwritten	The third-country firm shall indicate the currency in which the amount of the total value of financial instruments originating from counterparties in the Union underwritten or placed on a firm commitment basis is expressed
		Sub-fields 3- 5 shall be repeated for each Member State where the third-country firm performs activity (6) of Section A of Annex I to Directive 2014/65/EU		

Field		Sub-field		Description
		3	Member State where the third-country firm performs activity (6) of Section A of Annex I to Directive 2014/65/EU	Relevant Member State where the third-country firm performs activity (6) of Section A of Annex I to Directive 2014/65/EU.
		4	Total value of financial instruments	Total value of financial instruments originating from counterparties in the relevant Member State underwritten or placed on a firm commitment basis

Field		Sub-field		Description
		5	Currency of the total value of financial instruments	The third-country firm shall indicate the currency in which the amount of the total value of financial instruments originating from counterparties in the relevant Member State and underwritten or placed on a firm commitment basis is expressed
20	Where the third-country firm provides the service referred to in point (4) of Section A of Annex I to Directive 2014/65/EU, information about the value of the assets	1	Total value of assets under management for clients in the Union at the end of the reporting period	The amount of the total value of assets under management for clients in the Union at the end of the reporting period

Field		Sub-field		Description
	under management for clients in the Union	2	Currency of the total value of assets under management for clients in the Union	The third-country firm shall indicate the currency in which the amount of the total value of assets under management for clients in the Union is expressed
		3	Average value of assets under management for clients in the Union over the reporting period	The amount of the average value of assets under management for clients in the Union over the reporting period

Field	Sub-field		Description
		4	Currency of the average value of assets under management for clients in the Union
		Sub-fields 5-9 shall be repeated for each Member State where the third-country firm performs activity (4) of Section A of Annex I to Directive 2014/65/EU	

Field		Sub-field		Description
		5	Member State where the third-country firm performs activity (4) of Section A of Annex I to Directive 2014/65/EU	Relevant Member State where the third-country firm performs activity (4) of Section A of Annex I to Directive 2014/65/EU.
		6	Total value of assets under management for clients in the relevant Member State at the end of the reporting period	The amount of the total value of assets under management for clients in the relevant Member State at the end of the reporting period

Field		Sub-field		Description
		7	Currency of the total value of assets under management for clients in the relevant Member State	The third-country firm shall indicate the currency in which the amount of the total value of assets under management for clients in the relevant Member State is expressed
		8	Average value of assets under management for clients in the relevant Member State over the reporting period	The amount of the average value of assets under management for clients in the relevant Member State over the reporting period

Field		Sub-field		Description
		9	Currency of the average value of assets under management for clients in the relevant Member State	The third-country firm shall indicate the currency in which the amount of the average value of assets under management for clients in the relevant Member State is expressed
21	Where the third-country firm provides the service referred to in point (5) of Section A of Annex I to Directive 2014/65/EU, information about the value of the assets in relation to which that	1	Total value of the assets in relation to which that service has been provided to clients in the Union at the end of the reporting period	The amount of the total value of the assets in relation to which that service has been provided to clients in the Union at the end of the reporting period

Field		Sub-field		Description
	service has been provided to clients in the Union	2	Currency of the total value of the assets in relation to which that service has been provided to clients in the Union	The third-country firm shall indicate the currency in which the amount of the total value of the assets in relation to which that service has been provided to clients in the Union is expressed
		3	Average value of the assets in relation to which that service has been provided to clients in the Union over the reporting period	The amount of the average value of the assets in relation to which that service has been provided to clients in the Union over the reporting period

Field		Sub-field		Description
		4	Currency of the average value of assets under management for clients in the Union	The third-country firm shall indicate the currency in which the amount of the average value of the assets in relation to which that service has been provided to clients in the Union is expressed
Sub-fields 5-9 shall be repeated for each Member State where the third-country firm provides service (5) of Section A of Annex I to Directive 2014/65/EU				

Field		Sub-field		Description
		5	Member State where the third-country firm performs activity (5) of Section A of Annex I to Directive 2014/65/EU	Relevant Member State where the third-country firm performs activity (5) of Section A of Annex I to Directive 2014/65/EU.
		6	Total value of the assets in relation to which that service has been provided to clients in the relevant Member State at the end of the reporting period	The amount of the total value of the assets in relation to which that service has been provided to clients in the relevant Member State at the end of the reporting period

Field		Sub-field		Description
		7	Currency of the total value of the assets in relation to which that service has been provided to clients in the relevant Member State	The third-country firm shall indicate the currency in which the amount of the total value of the assets in relation to which that service has been provided to clients in the relevant Member State is expressed
		8	Average value of the assets in relation to which that service has been provided to clients in the relevant Member State over the reporting period	The amount of the average value of the assets in relation to which that service has been provided to clients in the relevant Member State over the reporting period

Field		Sub-field		Description
		9	Currency of the average value of the assets in relation to which that service has been provided to clients in the relevant Member State	The third-country firm shall indicate the currency in which the amount of the average value of the assets in relation to which that service has been provided to clients in the relevant Member State is expressed
22	Where the third-country firm provides the ancillary service referred to in point (1) of Section B of Annex I to Directive 2014/65/EU or is holding client funds, information on the	1	Total value of the assets (including cash) held by the third-country firm for clients in the Union at the end of the reporting period	The amount of the total value of the assets (including cash) held by the third-country firm for clients in the Union at the end of the reporting period

Field		Sub-field		Description
	value of the assets (including cash) held by the third-country firm for clients in the Union	2	Currency of the total value of the assets (including cash) held by the third-country firm for clients in the Union	The third-country firm shall indicate the currency in which the amount of the total value of the assets (including cash) held by the third-country firm for clients in the Union is expressed
		3	Average value of the assets (including cash) held by the third-country firm for clients in the Union over the reporting period	The amount of the average value of the assets (including cash) held by the third-country firm for clients in the Union over the reporting period

Field		Sub-field		Description
		4	Currency of the average value of assets under management for clients in the Union	The third-country firm shall indicate the currency in which the amount of the average value of the assets (including cash) held by the third-country firm for clients in the Union is expressed
<p>Sub-fields 5-9 shall be repeated for each Member State where the third-country firm provides ancillary service (1) of Section B of Annex I to Directive 2014/65/EU or is holding client funds</p>				

Field		Sub-field		Description
		5	Member State where the third-country firm provides ancillary service (1) of Section B of Annex I to Directive 2014/65/EU or is holding client funds	Relevant Member State where the third-country firm provides ancillary service (1) of Section B of Annex I to Directive 2014/65/EU or is holding client funds
		6	Total value of the assets (including cash) held by the third-country firm for clients in the relevant Member State at the end of the reporting period	The amount of total value of the assets (including cash) held by the third-country firm for clients in the relevant Member State at the end of the reporting period

Field		Sub-field		Description
		7	Currency of the total value of the assets (including cash) held by the third-country firm for clients in the relevant Member State	The third-country firm shall indicate the currency in which the amount of the total value of the assets (including cash) held by the third-country firm for clients in the relevant Member State
		8	Average value of the assets (including cash) held by the third-country firm for clients in the relevant Member State over the reporting period	The amount of the average value of the assets (including cash) held by the third-country firm for clients in the relevant Member State over the reporting period

Field		Sub-field		Description
		9	Currency of the average value of the assets (including cash) held by the third-country firm for clients in the relevant Member State	The third-country firm shall indicate the currency in which the amount of the average value of the assets (including cash) held by the third-country firm for clients in the relevant Member State is expressed
23	Information about complaints received by the third-country firm in the Union	1	Total number of complaints received by the third-country firm in the Union	Total number of complaints received by the third-country firm in the Union

Field		Sub-field		Description
		2	Most frequent topics of the complaints received by the third-country firm from clients in the Union	The five most frequent topics of the complaints received by the third-country firm from clients in the Union
		3	Financial instruments generating the highest number of complaints from clients in the Union	The five financial instruments generating the highest number of complaints from clients in the Union

Field	Sub-field		Description
			<p>If the third-country firm provided services in more than one Member State, sub-fields 4 and 5 should be repeated and completed for each country</p>
	4	Member State	Member State where the third-country firm is providing investment services and activities and ancillary activities

Field		Sub-field		Description
		5	Total number of complaints for the relevant Member State	Total number of complaints for the relevant Member State
24	Information on the marketing activities of the third-country firm in the Union	1	Marketing strategy description	A brief description of the marketing strategy of the third-country firm used in the Union, including its geographical scope and details about the marketing means the third-country firm used (such as any agents, roadshows, telephone calls, websites...)

Field	Sub-field	Description
		<p>Sub-fields 2-6 should be repeated and completed for each trading name used by the third-country firm in the Union</p>
	2	<p>Trading name</p> <p>The relevant trading name used by the third-country in the Union</p>

Field		Sub-field		Description
		3	Member States in which the relevant trading name is used	The third-country firm shall indicate the list of Member States in which the third-country firm is using the relevant trading name
		4	Investment services, activities and ancillary activities (as defined in Sections A and B of Annex I of Directive 2014/65/EU) in relation to which the relevant trading name is used	The third-country firm shall indicate the list of investment services, activities and ancillary activities (as defined in Sections A and B of Annex I of Directive 2014/65/EU) in relation to which the relevant trading name is used

Field		Sub-field		Description
		5	Financial instruments in relation to which the trading name is used	The third-country firm shall indicate the list of financial instruments (as defined in Section C of Annex I of Directive 2014/65/EU) in relation to which the relevant trading name is used
		6	Categories of clients in relation to which the trading name is used	The third-country firm shall indicate the categories of clients in relation to which the relevant trading name is used

Field	Sub-field	Description
		<p>Sub-field 6 should be repeated and completed for each agent, introducer or similar used by the third-country firm in the Union</p>
	6	<p>Full name of the relevant agent, introducer or similar</p> <p>Full first name(s) and surname(s) or, as the case may be, full legal name of the relevant agent, introducer or similar used by the third-country firm in the Union</p>

Field	Sub-field	Description
		<p>Sub-fields 7-8 should be repeated and completed for each website that is used by the third-country firm in the Union</p>
	7	<p>Relevant website used by the third-country firm in the Union</p> <p>The firm shall briefly describe the relevant website used by the third-country firm in the Union</p>

Field		Sub-field		Description
		8	Website URL	The firm shall indicate the URL of the relevant website
25	Information on the activities of the compliance function (or equivalent) – regulatory changes	1	Relevant changes and developments in regulatory requirements over the last 12 months and which impacts the investor protection arrangements of the third-country firm	The third-country firm shall indicate whether there has been any material change and relevant developments in the regulatory requirements applicable to the third-country firm that happened over the last 12 months and which impacts the investor protection arrangements of the third-country firm

Field		Sub-field		Description
		2	Description of the relevant changes and developments in regulatory requirements over the last 12 months and which impacts the investor protection arrangements of the third-country firm	The firm shall describe any material change and relevant developments in the regulatory requirements applicable to the third-country firm that happened over the last 12 months and which impacts the investor protection arrangements of the third-country firm
26	Information on the activities of the compliance function (or equivalent) – manner of monitoring and reviewing	1	Controls	The third-country firm shall provide a summary of on-site inspections or desk-based reviews performed by the compliance function and relating to EU operations

Field		Sub-field		Description
		2	Planned monitoring activities	The third-country firm shall provide a summary of the planned monitoring activities for the subsequent review of EU operations
27	Information on the activities of the compliance function (or equivalent) – findings	1	Major findings	The third-country firm shall provide a summary of the major findings of the compliance function on the operations of the third-country firm globally, with a focus on the operations of the third-country firm in the Union

Field		Sub-field		Description
		2	Actions	The third-country firm shall provide a summary of actions taken or to be taken globally (including timeline and organisational units of the third-country firm involved) to address identified failures or risks of failures of the third-country firm identified by the compliance function, with a focus on the operations of the third-country firm in the Union
		3	Measures to ensure compliance with regulatory developments	The third-country firm shall describe the measures taken or to be taken to ensure compliance with regulatory developments (including timeline and organisational units of the third-country firm involved), with a focus on the impact on the operations of the third-country firm in the Union

Field		Sub-field		Description
28	Information on the activities of the compliance function (or equivalent) – reaction to complaints	n/a	Reaction to complaints	The third-country firm shall describe the reaction of the third-country firm to complaints received by the third-country firm in the Union and any pay-out based on the complaint, as well as actions regarding specific compliance or risk issues identified in relation to the procedures adopted by the third-country firm for the provision of investment services as a result of the review of clients' complaints
29	Information on the activities of the compliance function (or equivalent) – deviation by senior management from important recommendations	n/a	Deviation by senior management from important recommendations or assessments issued by the compliance function	The third-country firm shall describe and explain any deviation by senior management from important recommendations or assessments issued by the compliance function, if also relevant to the operations of the third-country firm in the Union

Field		Sub-field		Description
30	Information on the activities of the internal audit function (or equivalent) - controls	1	Controls	The third-country firm shall provide a summary of the controls (on-site, desk-based) performed by the internal audit function and relating to the operations of the third-country firm in the Union
		2	Planned monitoring activities	The third-country firm shall provide a summary of the planned monitoring activities for the subsequent review of the operations of the third-country firm in the Union

Field		Sub-field		Description
31	Information on the activities of the internal audit function (or equivalent) - findings	1	Major findings	The third-country firm shall provide a summary of the major findings of the internal audit function on the operations of the third-country firm globally, with a focus on the operations of the third-country firm in the Union
		2	Actions	The third-country firm shall provide a summary of actions taken or to be taken globally (including timeline and organisational units of the third-country firm involved) to address failures or risks of failures of the third-country firm identified by the internal audit function, with a focus on the operations of the third-country firm in the Union

Field		Sub-field		Description
32	Information on the activities of the risk management function – risk management policy	1	Risk management policy	The third-country firm shall provide a summary of its risk management policy, including how its operations in the Union fit into such policy or are taken into account
33	Information on the activities of the risk management function – manner of identifying and managing risks	1	Risk mapping assessment	The third-country firm shall provide a summary of the risk mapping assessment for the reporting period, including the different types of risks and acceptable limits set by the third-country firm, with a focus on its operations in the Union

Field		Sub-field		Description
		2	Techniques and tools to manage risks	The third-country firm shall provide a summary of the main techniques and tools used to measure and manage the risks to which the third-country firm is exposed, with a focus on its operations in the Union
		3	Planned risk management activities	The third-country firm shall provide a summary of the planned risk management activities for the subsequent review of its operations in the Union

Field		Sub-field		Description
34	Information on the activities of the risk management function – findings	1	Major findings	A summary of major findings of the risk management function on the operations of the third-country firm globally, with a focus on the EU operations of the third-country firm
		2	Actions	The third-country firm shall provide a summary of the actions taken or to be taken globally (including timeline and organisational units of the third-country firm involved) to address failures or risks of failures of the third-country firm identified by the risk management function, with a focus on the operations of the third-country firm in the Union

Field		Sub-field		Description
35	Any other information that the third-country firm deems relevant to ESMA	n/a	Additional information	The description of any information that the third-country firm deems relevant to ESMA

Annex IV: Draft implementing technical standards for the application of Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to the format of applications for registration of third-country firms and the format of the information to be reported annually to ESMA by registered third-country firms

COMMISSION IMPLEMENTING REGULATION (EU) [●]/[●]

of [●]

laying down implementing technical standards for the application of Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to the format of applications for registration of third-country firms and the format of the information to be reported annually to ESMA by registered third-country firms

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, and in particular Article 46(8) thereof,

Whereas:

(1) It is appropriate to set out a common format for third-country firms to submit their applications for registration to the European Securities and Markets Authority (ESMA) and the annual information to be provided by registered third-country firms to ESMA in accordance with Article 46(4) and Article 46(6a) of Regulation (EU) No 600/2014.

(2) To facilitate the processing of the information, third-country firms should submit to ESMA their applications for registration and annually report information using the interfaces provided by the information technology system set up by ESMA to manage the receipt, storage and onward sharing of that information.

(3) This Regulation is based on the draft implementing technical standards submitted to the Commission by ESMA.

(4) 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 opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽¹⁾,

(5) This Regulation implements provisions of Regulation (EU) No 600/2014 that have been amended by Regulation (EU) 2019/2033² with effect from 26 June 2021. It is therefore necessary to defer the application of this Regulation to that same date.

HAS ADOPTED THIS REGULATION:

Article 1

Format of the application for registration

Third-country firms shall submit applications for registration referred to in Article 46(4) of Regulation (EU) No 600/2014 in the format indicated in Annex I.

Article 2

Format of information to be reported annually to ESMA

Third-country firms registered in accordance with Article 46 of Regulation (EU) No 600/2014 shall submit the information to ESMA referred to in paragraph 6a thereof and [RTS] in the format indicated in Annex II.

Article 3

Common provisions on format

1. Third-country firms shall submit the applications referred to in Article 1 and the information referred to in Article 2:

- a) using the interfaces provided by the information technology system set up by ESMA to manage that information; and
- b) in the English language.

¹ 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).

² Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014.

Article 4

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from the date referred to in Article 67(2) of Regulation (EU) 2019/2033.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [●].

For the Commission

The President

Ursula VON DER LEYEN

ANNEX I

Format for applications for registration as a third-country firm providing investment services or performing investment activities throughout the Union

Field	Sub-field	Machine readability	Format
1	1	Y	ISO 8601 date and time format
	2	Y	Legal entity identifier as defined in ISO 17442 20 alphanumeric characters
	3	Y	Up to 350 alphanumeric characters
	4	Y	Up to 45 alphanumeric characters
	5	Y	Up to 2,048 alphanumeric characters
	6	Y	ISO 3166 – 2-character country code
	7	Y	Up to 2,048 alphanumeric characters
	8	Y	ISO 3166 – 2-character country code

Field	Sub-field	Machine readability	Format
	9	Y	Up to 35 alphanumeric characters
2	1	Y	Up to 280 alphanumeric characters
	2	Y	Up to 2,048 alphanumeric characters
	3	Y	ITU-T E.164 Up to 15 digits
	4	Y	Up to 400 alphanumeric characters
	5	Y	Up to 350 alphanumeric characters
	3	1	Y
2		Y	Up to 2,048 alphanumeric characters

Field	Sub-field	Machine readability	Format
	3	Y	ISO 3166- 2-character country code
	4	Y	Up to 1,500 alphanumeric characters
	5	Y	Up to 2,048 alphanumeric characters
4	1	Y	One entry for each investment service, activity or ancillary service Pre-defined drop-down list

Field	Sub-field	Machine readability	Format
	2	Y	One entry for each financial instrument Pre-defined drop-down list
5	1	Y	ISO 3166 – 2-character country code
	2	Y	One entry for each investment service, activity or ancillary service Pre-defined drop-down list
	3	Y	One entry for each financial instrument Pre-defined drop-down list

Field	Sub-field	Machine readability	Format
	4	Y	Positive number of up to 10 digits
	5	Y	Decimal number of up to 18 digits in total of which up to 5 digits can be fraction digits
	6	Y	ISO 4217 – 3 letter currency code
6	n/a	N	Free text

Field	Sub-field	Machine readability	Format
7	1	Y	UP to 280 alphanumeric characters
	2	Y	ISO 3166 – 2-character country code
	3	Y	Up to 2,048 alphanumeric characters
	4	Y	ISO 3166 – 2-character country code
	5	Y	ITU-T E.164 Up to 15 digits
	6	Y	Up to 400 alphanumeric characters
	7	Y	Up to 350 alphanumeric characters
8	1	Y	UP to 280 alphanumeric characters
	2	Y	ISO 3166 – 2-character country code
	3	Y	Up to 2,048 alphanumeric characters

Field	Sub-field	Machine readability	Format
	4	Y	ISO 3166 – 2-character country code
	5	Y	ITU-T E.164 Up to 15 digits
	6	Y	Up to 400 alphanumeric characters
	7	Y	Up to 350 alphanumeric characters
9	1	Y	UP to 280 alphanumeric characters
	2	Y	ISO 3166 – 2-character country code
	3	Y	Up to 2,048 alphanumeric characters
	4	Y	ISO 3166 – 2-character country code
	5	Y	ITU-T E.164 Up to 15 digits
	6	Y	Up to 400 alphanumeric characters
	7	Y	Up to 350 alphanumeric characters
	8	N	Free text

Field	Sub-field	Machine readability	Format
10	1	Y	Up to 1,500 alphanumeric characters
	2	N	Free text
	3	Y	One entry per website Up to 2,048 alphanumeric characters
	4	Y	Up to 1500 alphanumeric characters
	5	Y	ISO 3166 - 2-character country code Each Member State has one entry
	6	Y	One entry for each investment service, activity or ancillary service Pre-defined drop-down list
	7	Y	One entry for each category of client Pre-defined drop-down list
11	1	Y	ISO 639-1 – 2 letter code

Field	Sub-field	Machine readability	Format
	2	Y	Up to 1,500 alphanumeric characters
12	n/a	N	Free text
13	1	N	Free text
	2	N	Free text
	3	N	Free text
	4	N	Free text
	5	N	Free text

Field	Sub-field	Machine readability	Format
	6	N	Free text
14	1	N	Free text
	2	N	Free text
	3	N	Free text
15	n/a	N	Free text

Field	Sub-field	Machine readability	Format
16	1	N	Free text
	2	N	Free text
17	n/a	N	Free text
18	1	N	Free text
	2	N	Free text
	3	Y	ISO 639-1 – 2 letter code One entry per language

Field	Sub-field	Machine readability	Format
	4	N	Free text
	5	N	Free text
19	n/a	N	Free text
20	n/a	N	Free text
21	n/a	N	Free text
22	1	N	Free text
	2	N	Free text

Field	Sub-field	Machine readability	Format
23	1	Y	Up to 1,500 alphanumeric characters
	2	N	Free text
	3	Y	Positive number of up to 5 digits
	4	N	Free text
24	1	Y	Up to 1,500 alphanumeric characters
	2	N	Free text

Field	Sub-field	Machine readability	Format
	3	Y	Positive number of up to 5 digits
	4	N	Free text
25	1	Y	Up to 1,500 alphanumeric characters
	2	N	Free text
	3	Y	Positive number of up to 5 digits
	4	N	Free text

Field	Sub-field	Machine readability	Format
26	1	Y	Choice from a predefined drop-down list: "Y" – Yes "N" - No
	2	N	Free text
27	n/a	N	Free text

ANNEX II

Format for reporting information to ESMA on an annual basis

Field	Sub-field	Machine readability	Format
1	1	Y	ISO 8601 date format
	2	Y	ISO 8601 date format
2	n/a	Y	Choice from a predefined drop-down list "Y" "N"
	1	Y	Legal entity identifier as defined in ISO 17442 20 alphanumeric characters
	2	Y	Up to 350 alphanumeric characters
	3	Y	Up to 45 alphanumeric characters
	4	Y	Up to 2,048 alphanumeric characters
	5	Y	ISO 3166 – 2-character country code
	6	Y	Up to 2,048 alphanumeric characters
	7	Y	ISO 3166 – 2-character country code

Field	Sub-field	Machine readability	Format
	8	Y	Up to 35 alphanumeric characters
3	1	Y	Up to 280 alphanumeric characters
	2	Y	Up to 2,048 alphanumeric characters
	3	Y	ITU-T E.164 Up to 15 digits
	4	Y	Up to 400 alphanumeric characters
	5	Y	Up to 350 alphanumeric characters
	4	n/a	Y
1		Y	ISO 20022 4 alphanumeric characters
2		Y	Up to 2,048 alphanumeric characters

Field	Sub-field	Machine readability	Format
	3	Y	ISO 3166- 2-character country code
	4	Y	Up to 1,500 alphanumeric characters
	5	Y	Up to 2,048 alphanumeric characters
5	n/a	Y	Choice from a pre-defined drop-down list "Y" "N"

Field	Sub-field	Machine readability	Format
	1	Y	One entry for each investment service, activity or ancillary service Pre-defined drop-down list
	2	Y	One entry for each financial instrument Pre-defined drop-down list
6	n/a	Y	Choice from a pre-defined drop-down list "Y" "N"
	n/a	N	Free text

Field	Sub-field	Machine readability	Format
7	n/a	Y	Choice from a predefined drop-down list "Y" "N"
	1	Y	UP to 280 alphanumeric characters
	2	Y	ISO 3166 – 2-character country code
	3	Y	Up to 2,048 alphanumeric characters
	4	Y	ISO 3166 – 2-character country code
	5	Y	ITU-T E.164 Up to 15 digits
	6	Y	Up to 400 alphanumeric characters

Field	Sub-field	Machine readability	Format
	7	Y	Up to 350 alphanumeric characters
8	n/a	Y	Choice from a predefined drop-down list "Y" "N"
	1	Y	UP to 280 alphanumeric characters
	2	Y	ISO 3166 – 2-character country code
	3	Y	Up to 2,048 alphanumeric characters
	4	Y	ISO 3166 – 2-character country code
	5	Y	ITU-T E.164 Up to 15 digits
	6	Y	Up to 400 alphanumeric characters
	7	Y	Up to 350 alphanumeric characters
	9	n/a	Y
1		Y	UP to 280 alphanumeric characters
2		Y	ISO 3166 – 2-character country code
3		Y	Up to 2,048 alphanumeric characters

Field	Sub-field	Machine readability	Format
	4	Y	ISO 3166 – 2-character country code
	5	Y	ITU-T E.164 Up to 15 digits
	6	Y	Up to 400 alphanumeric characters
	7	Y	Up to 350 alphanumeric characters
	8	N	Free text
10	n/a	Y	Choice from a predefined drop-down list “Y” “N”
	1	N	Free text
	2	N	Free text
11	n/a	Y	Choice from a predefined dropdown list “Y” “N”

Field	Sub-field	Machine readability	Format
	1	Y	Up to 1,500 alphanumeric characters
	2	N	Free text
	3	Y	Positive number of up to 5 digits
	4	N	Free text
12	n/a	Y	Choice from a predefined drop-down list "Y" "N"
	1	Y	Up to 1,500 alphanumeric characters

Field	Sub-field	Machine readability	Format
	2	N	Free text
	3	Y	Positive number of up to 5 digits
	4	N	Free text
13	n/a	Y	Choice from a predefined drop-down list "Y" "N"
	1	Y	Up to 1,500 alphanumeric characters
	2	N	Free text

Field	Sub-field	Machine readability	Format
	3	Y	Positive number of up to 5 digits
	4	N	Free text
14	n/a	Y	Choice from a predefined drop-down list "Y" "N"
	n/a	N	Free text

Field	Sub-field	Machine readability	Format
15	1	Y	ISO 3166 – 2-character country code
	2	Y	One entry for each investment service, activity or ancillary service Pre-defined drop-down list
	3	Y	One entry for each financial instrument Pre-defined drop-down list

Field	Sub-field	Machine readability	Format
	4	Y	Positive number of up to 10 digits
	5	Y	Decimal number of up to 18 digits in total of which can be fraction digits
	6	Y	ISO 4217 – 3 letter currency code
16	n/a	Y	Positive number of up to 10 digits

Field	Sub-field	Machine readability	Format
17	1	Y	Decimal number of up to 18 digits in total of which 6 can be fraction digits
	2	Y	ISO 4217 – 3 letter currency code
18	1	Y	Decimal number of up to 18 digits in total of which 6 can be fraction digits
	2	Y	ISO 4217 – 3 letter currency code

Field	Sub-field	Machine readability	Format
	3	Y	Decimal number of up to 18 digits in total of which 15 can be fraction digits
	4	Y	ISO 4217 – 3 letter currency code
	5	Y	Decimal number of up to 18 digits in total of which 15 can be fraction digits
	6	Y	ISO 4217 – 3 letter currency code

Field	Sub-field	Machine readability	Format
	7	Y	ISO 3166 – 2-character country code
	8	Y	Decimal number of up to 18 digits in total of which 2 can be fraction digits
	9	Y	ISO 4217 – 3 letter currency code
	10	Y	Decimal number of up to 18 digits in total of which 2 can be fraction digits

Field	Sub-field	Machine readability	Format
	11	Y	ISO 4217 – 3 letter currency code
	12	Y	Decimal number of up to 18 digits in total c can be fraction digits
	13	Y	ISO 4217 – 3 letter currency code
19	1	Y	Decimal number of up to 18 digits in total c can be fraction digits

Field	Sub-field	Machine readability	Format
	2	Y	ISO 4217 – 3 letter currency code
	3	Y	ISO 3166 – 2-character country code
	4	Y	Decimal number of up to 18 digits in total of which up to 6 can be fraction digits
	5	Y	ISO 4217 – 3 letter currency code

Field	Sub-field	Machine readability	Format
20	1	Y	Decimal number of up to 18 digits in total of which 12 can be fraction digits
	2	Y	ISO 4217 – 3 letter currency code
	3	Y	Decimal number of up to 18 digits in total of which 12 can be fraction digits
	4	Y	ISO 4217 – 3 letter currency code

Field	Sub-field	Machine readability	Format
	5	Y	ISO 3166 – 2-character country code
	6	Y	Decimal number of up to 18 digits in total of which 2 can be fraction digits
	7	Y	ISO 4217 – 3 letter currency code
	8	Y	Decimal number of up to 18 digits in total of which 2 can be fraction digits

Field	Sub-field	Machine readability	Format
	9	Y	ISO 4217 – 3 letter currency code
21	1	Y	Decimal number of up to 18 digits in total of which 12 can be fraction digits
	2	Y	ISO 4217 – 3 letter currency code
	3	Y	Decimal number of up to 18 digits in total of which 12 can be fraction digits

Field	Sub-field	Machine readability	Format
	4	Y	ISO 4217 – 3 letter currency code
	5	Y	ISO 3166 – 2-character country code
	6	Y	Decimal number of up to 18 digits in total of which up to 6 can be fraction digits
	7	Y	ISO 4217 – 3 letter currency code

Field	Sub-field	Machine readability	Format
	8	Y	Decimal number of up to 18 digits in total of which 2 can be fraction digits
	9	Y	ISO 4217 – 3 letter currency code
22	1	Y	Decimal number of up to 18 digits in total of which 2 can be fraction digits
	2	Y	ISO 4217 – 3 letter currency code

Field	Sub-field	Machine readability	Format
	3	Y	Decimal number of up to 18 digits in total of which 15 can be fraction digits
	4	Y	ISO 4217 – 3 letter currency code
	5	Y	ISO 3166 – 2-character country code
	6	Y	Decimal number of up to 18 digits in total of which 15 can be fraction digits

Field	Sub-field	Machine readability	Format
	7	Y	ISO 4217 – 3 letter currency code
	8	Y	Decimal number of up to 18 digits in total of which 15 can be fraction digits
	9	Y	ISO 4217 – 3 letter currency code
23	1	Y	Positive number of up to 10 digits

Field	Sub-field	Machine readability	Format
	2	N	Free text
	3	Y	5 entries Choice from a predefined drop-down list
	4	Y	ISO 3166 – 2-character country code
	5	Y	Positive number of up to 10 digits

Field	Sub-field	Machine readability	Format
24	1	N	Free text
	2	Y	Up to 1500 alphanumeric characters
	3	Y	ISO 3166 - 2-character Each Member State has one entry
	4	Y	One entry for each investment service, activity or ancillary service Pre-defined drop-down list

Field	Sub-field	Machine readability	Format
	5	Y	One entry for each category of financial instrument Pre-defined drop-down list
	6	Y	One entry for each category of client Pre-defined drop-down list
	6	Y	Up to 280 alphanumeric characters
	7	Y	Up to 2,048 alphanumeric characters

Field	Sub-field	Machine readability	Format
	8	Y	Up to 2,048 alphanumeric characters
25	1	Y	Choice from a predefined drop-down list “Y” “N”
	2	N	Free text
26	1	N	Free text

Field	Sub-field	Machine readability	Format
	2	N	Free text
27	1	N	Free text
	2	N	Free text
	3	N	Free text

Field	Sub-field	Machine readability	Format
28	n/a	N	Free text
29	n/a	N	Free text
30	1	N	Free text
	2	N	Free text

Field	Sub-field	Machine readability	Format
31	1	N	Free text
	2	N	Free text
32	1	N	Free text
33	1	N	Free text

Field	Sub-field	Machine readability	Format
	2	N	Free text
	3	N	Free text
34	1	N	Free text
	2	N	Free text

Field	Sub-field	Machine readability	Format
35	n/a	N	Free text

Annex V: Draft implementing technical standards for the application of Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to the format of the information to be reported annually to national competent authorities by branches of third-country firms authorised in accordance with Article 41 of Directive 2014/65/EU

COMMISSION IMPLEMENTING REGULATION (EU) [●]/[●]

of [●]

laying down implementing technical standards for the application of Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to the format of the information to be reported annually to national competent authorities by branches of third-country firms authorised in accordance with Article 41 of Directive 2014/65/EU

(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 Regulation (EU) No 648/2012, and in particular Article 41(5) thereof,

Whereas:

(1) It is appropriate to set out a common format for third-country firms to submit annual information to the competent authority of a Member State where they have a branch, as referred to in Article 41 of Directive 2014/65/EU.

(2) To facilitate the processing of the information and ensure that all required information necessary for the supervision of branches of third-country firms is received by the relevant competent authorities, branches of third-country firms should provide detailed and harmonised information.

(3) References in this Regulation to the branch of a third-country firm providing the services and activities covered by the authorisation granted in accordance with Article 39 of Directive 2014/65/EU to eligible counterparties and professional clients in Member States other than the one where the authorised branch is established shall solely be understood as the provision of investment services and activities in accordance with Article 47(3) of Regulation (EU) 600/2014.

(4) This Regulation is based on the draft implementing technical standards submitted to the Commission by ESMA.

(5) 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 opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽¹⁾,

(6) This Regulation implements provisions of Directive 2014/65/EU that have been amended by Directive (EU) 2019/2034 of the European Parliament and of the Council². Member States shall adopt and publish the measures necessary to comply with Directive (EU) 2019/2034 by 26 June 2021. They shall apply those measures from 26 June 2021. It is therefore necessary to defer the application of this Regulation to that same date.

HAS ADOPTED THIS REGULATION:

Article 1

Annual submission of information

1. The branch of a third-country firm authorised in accordance with Article 41(1) of Directive 2014/65/EU must, on an annual basis, submit to the competent authority of the Member State where the authorisation was granted the information referred to in Article 41(3) of Directive 2014/65/EU.
2. The information referred to in paragraph 1 shall be submitted to the competent authority of the Member State where the authorisation was granted in the English language and in a report file in the form set out in the Annex to this Regulation.
3. The information referred to in paragraph 1 shall be submitted by 31st of March of each year at the latest. The information provided shall be accurate as of 31 December of the preceding year.

Article 2

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

¹ 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).

² Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU.



It shall apply from the date referred to in Article 68(2) of Directive (EU) 2019/2034.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [●].

For the Commission

The President

Ursula VON DER LEYEN

ANNEX

Format for submitting information under Article 41(3) of Directive 2014/65/EU

Information under Article 41(3) of Directive 2014/65/EU shall include the following fields:

Field	Sub-fields
Reporting period	The reporting start date for the calendar year
	The reporting end date for the calendar year
Contact details of the third-country firm, including the person in charge of submitting the information	Contact person full name
	Contact person address
	Contact person telephone number
	Contact person email address
	Contact person function/title
Investment services, activities and ancillary services provided by the branch in the Member State where the branch is established	The list of investment services, activities and ancillary activities (as defined in Sections A and B of Annex I of Directive 2014/65/EU) the branch provided in the relevant Member State
	The list of categories of financial instruments (as defined in Section C of Annex I of Directive 2014/65/EU) in relation to which such services and activities have been performed
Investment services, activities and ancillary services provided by the branch in Member States other than the one where it is established	For each Member State other than the Member State where the branch is established and in which the branch provided any investment services, activities or ancillary activities, the list of investment services, activities and ancillary activities (as defined in Sections A and B of Annex I of Directive 2014/65/EU) provided
	The list of categories of financial instruments (as defined in Section C of Annex I of Directive 2014/65/EU) in relation to which such services and activities have been performed
Number of clients and counterparties of the branch in the Member State	The total number of clients and counterparties of the branch in the Member State where it is established
	The breakdown of the total number of clients and counterparties of the branch in the Member State where it is established per

where the branch is established	investment service, activity or ancillary activity provided in such Member State
	The numbers of retail clients, professional clients and eligible counterparties (as defined in Directive 2014/65/EU) to whom the branch is providing investment services, activities or ancillary services in the relevant Member State
Number of clients and counterparties of the branch in Member States other than the one where the branch is established and globally	The total number of clients and counterparties of the branch in the Union
	The total number of clients and counterparties of the third-country firm globally
	For each Member State other than the Member State where the branch is established and in which the branch provided any investment services, activities or ancillary activities, the total number of clients and counterparties of the branch in that Member State, together with: <ul style="list-style-type: none"> - a breakdown of this number per investment service, activity or ancillary activity provided in that Member State; and - a breakdown per category of client as defined in Directive 2014/65/EU.
Turnover of the branch in the Member State where the branch is established	The total net turnover generated by the branch and corresponding to the investment services, activities and ancillary services provided in the Member State where the branch is established
	The breakdown of the total net turnover of the branch in the Member State where it is established per investment service, activity or ancillary activity provided in such Member State
	The breakdown of the total net turnover of the branch in the Member State where it is established per category of client as defined in Directive 2014/65/EU
Turnover of the branch in Member States other than the one where the branch is established and of the third-country firm globally	The total net turnover of the branch in the Union
	The global total net turnover of the third-country firm
	For each Member State other than the one where the branch is established and in which the branch provided any investment

	<p>services, activities or ancillary activities, the total net turnover corresponding to such investment services, activities and ancillary activities, together with:</p> <ul style="list-style-type: none"> - a breakdown of this number per investment service, activity or ancillary activity provided in that Member State; and - a breakdown per category of client as defined in Directive 2014/65/EU.
<p>Where the branch performs activity (3) of Section A of Annex I to Directive 2014/65/EU, information on the exposure of the third-country firm to counterparties in the Union</p>	<p>The monthly minimum, average and maximum exposure to counterparties in the Member State where the branch is established</p>
	<p>For each Member State other than the one where the branch is established and in which the branch performs activity (3), the monthly minimum, average and maximum exposure to counterparties in the relevant Member State</p>
	<p>The monthly minimum, average and maximum exposure to counterparties in the Union</p>
<p>Where the branch provides service (6) of Section A of Annex I to Directive 2014/65/EU, information about the value of financial instruments originating from counterparties in the Union and underwritten or placed on a firm commitment basis</p>	<p>The total value of financial instruments originating from counterparties in the Member State where the branch is established and underwritten or placed on a firm commitment basis by the branch</p>
	<p>For each Member State other than the one where the branch is established and in which the branch provides service (6), the total value of financial instruments originating from counterparties in the relevant Member State and underwritten or placed on a firm commitment basis by the branch</p>
	<p>The total value of financial instruments originating from counterparties in the Union and underwritten or placed on a firm commitment basis by the branch</p>
<p>Where the branch provides service (4) of Section A of Annex I to Directive 2014/65/EU, information about the value of the assets under</p>	<p>The total value of the assets under management for clients in the Member State where the branch is established at the end of the reporting period</p>
	<p>For each Member State other than the one where the branch is established and in which the branch provides service (4), the total value of the assets under management for clients in the relevant Member State at the end of the reporting period</p>

management for clients in the Union	The average value of the assets under management for clients in the Member State where the branch is established over the reporting period
	For each Member State other than the one where the branch is established and in which the branch provides service (4), the average value of the assets under management for clients in the relevant Member State over the reporting period
Where the branch provides service (5) of Section A of Annex I to Directive 2014/65/EU, information about the value of the assets under advice for clients in the Union	The total value of the assets in relation to which investment advice was provided for clients in the Member State where the branch is established at the end of the reporting period
	For each Member State other than the one where the branch is established and in which the branch provides service (5), the total value of the assets in relation to which investment advice was provided for clients in the relevant Member State at the end of the reporting period
	The average value of the assets in relation to which investment advice was provided for clients in the Member State where the branch is established over the reporting period
Where the branch provides ancillary service (1) of Section A of Annex I to Directive 2014/65/EU or is holding client funds, information on the value of the assets (including cash) held by the branch in the Union	The total value of the assets (including cash) held by the branch for clients in the Member State where the branch is established at the end of the reporting period
	For each Member State other than the one where the branch is established and in which the branch provides ancillary service (1) or is holding client funds, the total value of the assets (including cash) held by the branch for clients in the relevant Member State at the end of the reporting period
	The average value of the assets (including cash) held by the branch for clients in the Member State where the branch is established over the reporting period
	For each Member State other than the one where the branch is established and in which the branch provides ancillary service (1) or is holding client funds, the average value of the assets (including

	cash) held by the branch for clients in the relevant Member State over the reporting period
Composition of the management body of the third-country firm	The list of members of the management body
	For each member of the management body, the member's full name, country of residence and contact details
	The position at which each member of the management body is appointed
Persons who effectively direct the business of the firm	The list of persons who effectively direct the business
	For each person who effectively directs the business, the person's full name, country of residence and contact details
	The position at which each person who effectively directs the business is appointed
Key function holders for the activities of the branch	The list of key function holders for the activities of the branch
	For each key function holder, the person's full name, country of residence and contact details
	The position at which each key function holder is appointed
	The reporting lines between the key function holders and the third-country firm's senior management and management body
Information about complaints received by the branch or by the third-country firm in relation to the activities of the branch in the Union	<p>The number of complaints received by the branch or by the third-country firm in relation to the activities of the branch in the Member State where it is established, together with:</p> <ul style="list-style-type: none"> - a breakdown of such number for the five financial instruments generating the highest number of complaints; and - a breakdown of such number for the five most frequent topics of the complaints.
	<p>The number of complaints received by the branch or by the third-country firm in relation to the activities of the branch in Member States other than the one where the branch is established, together with:</p> <ul style="list-style-type: none"> - a breakdown of such number per Member State; - a breakdown of such number for the five financial instruments generating the highest number of complaints; and - a breakdown of such number for the five most frequent topics of the complaints.

Description of the marketing activities of the branch or of the third-country firm in relation to the activities of the branch in the Union	A description of the marketing strategy the third-country firm used in the Union in relation to the activities of the branch, including details about its geographical scope, the marketing means the third-country firm used (such as any agents, roadshows, telephone calls, websites...)
	The list of trading names used by the third-country firm in the Union, together with, for each trading name: <ul style="list-style-type: none"> - the list of Member States in which it is used; - the investment services, activities and ancillary activities in relation to which it is used; - the financial instruments in relation to which it is used; and - the categories of clients in relation to which it is used.
	For any agents or similar used by the third-country firm in that Member State, the name of the individual or entity together with the address and contact details
	The list of websites used by the third-country firm in the Union, together with, for each website, its URL.
Description of the investor protection arrangements of the third-country firm and applicable to the operations of the branch in the Union, including the rights of those clients resulting from the investor-compensation scheme referred to in Article 39(2)(f) of Directive 2014/65/EU (to be provided as an update covering any material changes compared to last information provided in this respect)	Information and reporting to clients
	The description of the arrangements of the third-country firm to ensure that it complies with its information and reporting obligations to clients under Articles 24 and 25 of Directive 2014/65/EU and implementing measures for the operations of the branch in the Union
	The language(s) the branch will use with its clients in the Union
	Suitability and appropriateness
	The description of the arrangements of the third-country firm to ensure that it complies with its obligations to assess suitability or appropriateness, as the case may be, when the branch provides services to clients in the Union
	Best execution
Where the branch executes orders for its clients in the Union, the description of the arrangements to ensure that it executes client orders on terms most favourable to the clients	
Client order handling rules	

	<p>The description of the arrangements of the third-country firm which provide for the prompt, fair and expeditious execution of client orders, relative to other client orders or the trading interests of the investment third-country firm, with a focus on the operations of the branch in the Union</p>
	<p>Product governance arrangements</p>
	<p>The description of the arrangements of the third-country firm to ensure that it complies with its obligations under Article 24(2) of Directive 2014/65/EU and implementing measures for the operations of the branch in the Union</p>
	<p>The arrangements of the third-country firm to identify, prevent and manage conflicts of interest</p>
	<p>The description of the measures the third-country firm has put in place to identify and to prevent or manage conflicts of interest that arise in the course of providing investment and ancillary services.</p>
	<p>The arrangements of the third-country firm to handle complaints</p>
	<p>A description of the procedure clients of the branch in the Union need to follow to lodge a complaint</p>
	<p>The department responsible for handling the complaints of clients of the branch in the Union</p>
	<p>In which languages clients must lodge their complaints and the third-country firm will respond to clients' complaints</p>
	<p>The relevant courts (in case of litigation) the third-country firm's contract terms and conditions point at</p>
	<p>The Alternative dispute resolution (ADR) entity/ies competent to deal with cross-border disputes involving clients in the Union</p>
	<p>The third-country firm's membership of an investor compensation scheme</p>
	<p>The description of the third-country firm's membership of an investor compensation scheme including whether clients and counterparties of the branch in the Union will be eligible to such scheme, its scope, a description of the eligibility conditions and the amounts and financial instruments covered by the scheme</p>

	<p>The arrangements of the third-country firm to protect and manage clients' funds and assets</p>
	<p>The description of any client asset safeguarding arrangements (in particular, where financial instruments and funds are held in a custodian, the name of the custodian, and related contracts)</p>
	<p>The description of any other arrangements that the third-country firm may deem relevant to the provision of services and performance of the activities of the branch in the Union in an honest, fair and professional manner that promotes the interests of clients</p>
<p>Information on the outsourcing arrangements of the third-country firm and applicable to the operations of the branch in the Union (to be provided as an update covering any material changes compared to last information provided in this respect)</p>	<p>The list and description of the outsourced functions, services or activities (or those intended to be outsourced).</p>
	<p>The description of the resources (in particular, human and technical, and the internal control system) allocated to the control of the outsourced functions, services or activities, with a focus on the operations of the branch in the Union</p>
<p>Information on the arrangements (including IT arrangements) set up by the third-country firm and applicable to the activities of the branch for algorithmic trading, for high frequency trading (HFT) and for direct electronic access (DEA)</p>	
	<p>Regulatory changes</p>

Information on the activities of the compliance function (or equivalent)	Relevant changes and developments in regulatory requirements over the last 12 months and which impacts the third-country firm's investor protection arrangements for the activities of the branch in the Union
	Manner of monitoring and reviewing
	A summary of on-site inspections or desk-based reviews performed by the compliance function and relating to the operations of the branch in the Union
	A summary of the planned monitoring activities for the subsequent review of the operations of the branch in the Union
	Findings
	A summary of major findings of the compliance function on the operations of the third-country firm globally, with a focus on the operations of the branch in the Union
	Actions taken or to be taken globally (including timeline and organisational units of the third-country firm involved) to address identified failures or risks of failures by the third-country firm, with a focus on the operations of the branch in the Union
	Measures taken or to be taken to ensure compliance with regulatory developments (including timeline and organisational units of the third-country firm involved), with a focus on the impact of the operations of the branch in the Union
	Reaction to complaints received and any pay-out based on the complaint, as well as actions regarding specific compliance or risk issues identified in relation to the procedures adopted by the branch for the provision of investment services as a result of the review of clients' complaints
	Others
	Overview of material correspondence with competent authorities if also relevant to the operations of the branch in the Union
	Information as regards any deviation by senior management from important recommendations or assessments issued by the compliance function if also relevant to the operations of the branch in the Union

Information on the activities of the internal audit function (or equivalent)	Controls
	A summary of the controls (on-site, desk-based) performed by the internal audit function and relating to the operations of the branch in the Union
	A summary of the planned monitoring activities for the subsequent review of the operations of the branch in the Union
	Findings
	A summary of major findings of the internal audit function on the operations of the third-country firm globally, with a focus on the operations of the branch in the Union
Information on the activities of the risk management function (or equivalent) and the risk management policy of the third-country firm	Risk management policy
	A summary of the risk management policy of the third-country firm, including how the operations of the branch in the Union fit into such policy or are taken into account and with a focus on changes compared to the previous report
	Manner of identifying and managing risks
	A summary of the risk mapping assessment for the reporting period, including the different types of risks and acceptable limits set by the third-country firm, with a focus on the operations of the branch in the Union
	A summary of the main techniques and tools used to measure and manage the risks to which the third-country firm is exposed, with a focus on the operations of the branch in the Union
	A summary of the planned risk management activities for the subsequent review of the operations of the branch in the Union
	Findings
A summary of major findings of the risk management function on the operations of the third-country firm globally, with a focus on the operations of the branch in the Union	

	<p>Actions taken or to be taken globally (including timeline and organisational units of the third-country firm involved) to address identified failures or risks of failures by the third-country firm, with a focus on the operations of the branch in the Union</p>
<p>Any other information considered by the competent authority necessary to enable comprehensive monitoring of the activities of the branch in the Union</p>	