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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 29.6.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying information to be notified by investment firms, market operators and credit institutions

Delegations will find attached document C(2016) 3917 final.

Encl.: C(2016) 3917 final



Brussels, 29.6.2016
C(2016) 3917 final

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

of 29.6.2016

**supplementing Directive 2014/65/EU of the European Parliament and of the Council on
markets in financial instruments with regard to regulatory technical standards
specifying information to be notified by investment firms, market operators and credit
institutions**

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The Markets in Financial Instruments Directive (Directive 2014/65/EU, MiFID II) empower the European Securities and Markets Authority (ESMA), under Articles 34(8) and 35(11) of MiFID II, to develop an exhaustive list of information to be notified to the relevant competent authority by investment firms and credit institutions exercising their rights under the freedom to provide services or the freedom of establishment.

The objective of these regulatory technical standards is to enhance clarity, certainty and predictability in the notification process for investment firms and to facilitate internal process within competent authorities through the use of harmonised documents

In accordance with Articles 10 to 15 of Regulation No (EU) 1095/2010 establishing ESMA, the Commission shall decide within three months of receipt of the draft standards whether to endorse them. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

ESMA has carried out a public consultation on the draft regulatory technical standards in accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1095/2010. In addition to this ESMA sought the views of the Securities and Markets Stakeholder Group (SMSG) set up in accordance with Article 37 of Regulation (EU) No 1095/2010. The SMSG chose not to provide advice on these issues due to the technical nature of the standards.

The ESMA final report sets out the feedback statement to the Consultation Paper which provided an analysis of responses to the consultation, described any material changes (or confirmed that there have been no material changes), and explained the reasons for this in the light of feedback received.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The objective of this regulatory technical standard is to develop an exhaustive list of information to be notified to the relevant competent authority by investment firms and credit institutions exercising their rights under the freedom to provide services or the freedom of establishment.

These standards will provide certainty, clarity and predictability in the passport notification process and will facilitate the review by competent authorities. More effective exercise of supervisory functions serves investment firms, investor protection and market integrity. Moreover, they are based significantly on the existing CESR (ESMA's predecessor) work on the passport under MiFID ("Protocol on MiFID Passport Notifications"). Therefore, as there are no fundamental changes, the costs implied by these rules are not expected to be significant.

Articles 1 defines the scope of application of the delegated act.

Article 2 provides relevant definitions for the purposes of the delegated act.

Articles 3 to 7 sets out the information that investment firms, market operators and, when foreseen, credit institutions should notify to the competent authorities of their home Member State when they wish to provide investment services or perform investment activities as well as ancillary services in another Member State.

Article 8 provides that the Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal.

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

of 29.6.2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying information to be notified by investment firms, market operators and credit institutions

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU¹, and in particular the third subparagraph of Articles 34(8) and the third subparagraph of Article 35(11) thereof,

Whereas:

- (1) It is important to specify the information that investment firms, market operators and, where required by Directive 2014/65/EU, credit institutions should notify to the competent authorities of their home Member State when they wish to provide investment services or perform investment activities as well as ancillary services in another Member State, in order to establish uniform information requirements and to benefit from the possibility to provide services throughout the Union.
- (2) The scope and the content of information to be communicated to the home competent authority by investment firms, credit institutions or market operators wishing to provide investment services or activities as well as ancillary activities or arrangements to facilitate access and trading vary according to the purpose and the form of the passport rights. For reasons of clarity it is therefore appropriate to define different types of passport notification for the purposes of this Regulation.
- (3) For the same reasons, it is also important to clarify the information that investment firms or market operators, operating a multilateral trading facility ("MTF"), or organised trading facility ("OTF"), should submit when they wish to facilitate, within the territory of another Member State, access to and trading on those systems by remote users, members or participants established in that other Member State.
- (4) Competent authorities of home and host Member States should receive updated information in case of any change in the particulars of a passport notification,

¹ OJ L 173, 12.6.2014, p. 349.

including any withdrawal or cancellation of the authorisation to provide investment services and activities. That information should ensure those competent authorities are able to make an informed decision that is consistent with their powers and responsibilities.

- (5) Changes to the name, address and contact details of investment firms in the home Member State are to be considered relevant and should therefore be notified as a change of branch particulars notification or as a change of tied agent particulars notification.
- (6) It is important for competent authorities of the home and host Member State to cooperate in addressing the threat of money laundering. This Regulation, and in particular the communication of the investment firm's programme of operations, should facilitate the assessment and supervision by the competent authority of the host Member State of the adequacy of the systems and controls to prevent money laundering and terrorist financing of a branch established in its territory, including the skill, knowledge and good character of its money laundering reporting officer.
- (7) The provisions in this Regulation are closely linked, since they deal with notifications related to the exercise of the freedom to provide investment services and activities and the exercise of the right of establishment that apply to investment firms, market operators and, where foreseen, credit institutions. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations, it is desirable to include all regulatory technical standards for notification of information required by Title II, Chapter III of Directive 2014/65/EU in a single Regulation.
- (8) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date.
- (9) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission.
- (10) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council², the European Securities and Markets Authority (ESMA) has conducted open public consultations on such draft regulatory technical standards, 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 that Regulation.

² 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
Scope

1. This Regulation shall apply to investment firms and market operators operating a multilateral trading facility ("MTF") or an organised trading facility ("OTF").
2. This Regulation shall also apply to credit institutions, authorised under Directive 2013/36/EU of the European Parliament and of the Council, which provide one or more investment services or perform investment activities, and wish to use tied agents under the following rights:
 - (a) the right of freedom to provide investment services and activities in accordance with Article 34(5) of Directive 2014/65/EU;
 - (b) the right of establishment in accordance with Article 35(7) of Directive 2014/65/EU.

Article 2
Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (a) "investment services and activities passport notification" means a notification made in accordance with Article 34(2) of Directive 2014/65/EU, or in accordance with Article 34(5) of Directive 2014/65/EU;
- (b) "branch passport notification" or "tied agent passport notification" means a notification made in accordance with Article 35(2) of Directive 2014/65/EU, or in accordance with Article 35(7) of Directive 2014/65/EU;
- (c) "notification for the provision of arrangements to facilitate access to an MTF or an OTF" means a notification made in accordance with Article 34(7) of Directive 2014/65/EU.
- (d) "passport notification" means an investment services and activities passport notification, a branch passport notification, tied agent passport notification, or a notification for the provision of arrangements to facilitate access to an MTF or an OTF.

Article 3
Information to be notified for the purposes of the investment services and activities passport notification

1. Investment firms shall ensure that the investment services and activities passport notification submitted pursuant to Article 34(2) of Directive 2014/65/EU includes the following information:

- (a) the name, address and contact details of the investment firm along with the name of a specified contact person at the investment firm;
 - (b) a programme of operations which includes the following items:
 - (i) details of the particular investment services, activities and ancillary services to be provided in the host Member State and the financial instruments to be used; and
 - (ii) confirmation as to whether the investment firm wishes to use tied agents, established in its home Member State, to provide services in the host Member State and, if so the name, address, contact details of such tied agents and the investment services or activities, ancillary services and financial instruments to be provided by the latter.
2. Credit institutions referred to in Article 1(2)(a) submitting an investment services and activities passport notification in accordance with Article 34(5) of Directive 2014/65/EU shall ensure that such notification contains the information set out in points (a) and (b)(ii) of paragraph 1.

Article 4

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

Investment firms and such credit institutions as are referred to in Article 1(2)(a) shall ensure that a notification to communicate a change in particulars, pursuant to Article 34(4) of Directive 2014/65/EU, includes details of any change to any of the information contained in the initial investment services and activities passport notification.

Article 5

Information to be notified concerning arrangements to facilitate access to an MTF or OTF

Investment firms and market operators submitting notifications regarding arrangements to facilitate access to an MTF or OTF pursuant to Article 34(7) of Directive 2014/65/EU shall ensure such notification includes the following information:

- (a) the name, address and contact details of the investment firm or the market operator, along with the name of a specified contact person at the investment firm or the market operator;
- (b) a short description of the appropriate arrangements to be in place and the date from which these arrangements will be provided in the host Member State;
- (c) a short description of the business model of the MTF or the OTF, including the type of the financial instruments traded, the type of participants, and the marketing approach of the MTF or OTF to target remote users, members or participants.

Article 6

Information to be notified in a branch passport notification or a tied agent passport notification

1. Investment firms and such credit institutions as are referred to in Article 1(2)(b) shall ensure that a branch passport notification or a tied agent passport notification submitted pursuant to Article 35(2) or Article 35(7) of Directive 2014/65/EU as applicable, includes the following information:
 - (a) the name, address and contact details of the investment firm or credit institution in the home Member State, and the name of a specified contact person at the investment firm or credit institution;
 - (b) the name, address and contact details in the host Member State of the branch or of the tied agent from which documents may be obtained;
 - (c) the name of those persons responsible for the management of the branch or of the tied agent;
 - (d) reference to the location, electronic or otherwise, of the public register where the tied agent is registered; and
 - (e) a programme of operations.
2. The programme of operations referred to in point (e) of paragraph 1 shall comprise the following items:
 - (a) a list of investment services, activities, ancillary services and financial instruments to be provided;
 - (b) an overview explaining how the branch or the tied agent will contribute to the investment firm's, credit institution's or group's strategy, and setting out whether the investment firm is a member of a group, and what the main functions of the branch or tied agent will be;
 - (c) a description of the type of client or counterparty with which the branch or tied agent will be dealing and of how the investment firm or credit institution will obtain and deal with those clients and counterparties;
 - (d) the following information on the organisational structure of the branch or tied agent:
 - (i) functional, geographical and legal reporting lines if a matrix management structure is in operation;
 - (ii) description of the manner in which the branch or the tied agent fits into the corporate structure of the investment firm or credit institution, or of the group if the investment firm or credit institution is a member of a group;
 - (iii) the rules for reporting by the branch or the tied agent to the head office;

- (e) details of individuals performing key functions with the branch or the tied agent, including the individuals responsible for day-to-day branch or tied agent operations, compliance and dealing with complaints;
 - (f) details of any outsourcing arrangements critical to the operations of the branch or the tied agent;
 - (g) summary details of the systems and controls that will be put in place, including:
 - (i) arrangements that will be put in place to safeguard client money and customer assets;
 - (ii) arrangements for the compliance with the rules of conduct of business and other obligations that fall under the responsibility of the competent authority of the host Member State according to Article 35(8) of Directive 2014/65/EU and record keeping under Article 16(6) of that Directive;
 - (iii) internal arrangements for controls on staff, which shall include controls over personal account dealing;
 - (iv) arrangements to comply with anti-money laundering obligations;
 - (v) details of controls over outsourcing and other arrangements with third parties in connection with the investment services or activities carried on by the branch or the tied agent;
 - (vi) the name, address and contact details of the accredited compensation scheme of which the investment firm or credit institution is a member;
 - (h) forecast statements for both profit and loss and cash flow, over an initial thirty-six month period.
3. When a branch is to be established in a host Member State and intends to use tied agents in that Member State, in accordance with Article 35(2)(c) of Directive 2014/65/EU, the programme of operations referred to in point (e) of paragraph 1 shall also comprise information regarding the identity, address and contact details of each such tied agent.

Article 7

Information to be notified concerning the change of branch or tied agent particulars

1. Investment firms and such credit institutions as are referred to in Article 1(2)(b) shall ensure that a notification to communicate a change in particulars, pursuant to Article 35(10) of Directive 2014/65/EU, includes details of any change to any of the information contained in the initial branch passport notification or tied agent passport notification.
2. Investment firms and such credit institutions as are referred to in Article 1(2)(b) shall ensure that any changes to the branch passport notification or tied agent passport

notification that relate to the termination of the operation of the branch, or the cessation of the use of a tied agent, shall include the following information:

- (a) the name of the person or persons who will be responsible for the process of terminating the operation of the branch or the tied agent;
- (b) the schedule of the planned termination;
- (c) the details and processes proposed to wind down the business operations, including details of how client interests are to be protected, complaints resolved and any outstanding liabilities discharged.

Article 8

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 that appears first in the second subparagraph of Article 93(1) of Directive 2014/65/EU.

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

Done at Brussels, 29.6.2016

For the Commission
The President
Jean-Claude JUNCKER