

Consultation on review of the technical standards under Article 34 of MiFID II

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1.- Target participants

This paper is primarily of interest to competent authorities and investment firms that are subject to Directive 2014/65/EU of the European Parliament and of the Council (MiFID II). In particular, this paper is addressed to investment firms providing or that may in the future provide investment services and activities on a cross-border basis in accordance with Article 34 of MiFID II.

2. - Information Note

According to Article 34 of MiFID II ESMA developed draft regulatory (RTS) and implementing technical standards (ITS) to (i) specify the information to be notified by, inter alia, firms wishing to provide cross-border services without the establishment of a branch and (ii) establish standard forms, templates and procedures for the transmission of information in this respect. These are applicable from 3 January 2018. ESMA has worked on ensuring the consistent application of MiFID II and its RTS and ITS, however, this application showed some shortcomings and highlighted instances where improvements could usefully be made to the RTS and ITS to better help home national competent authorities to fulfil their supervisory objective.

The main amendments proposed add the following items to the information that investment firms are required to provide at the passporting stage:

- the marketing means the firm will use in host Member States;
- the language(s) for which the investment firm has the necessary arrangements to deal with complaints from clients from each of the host Member States in which it provides services;
- in which Member States the firm will actively use its passport as well as the categories of clients targeted; and
- the investment firm's internal organisation in relation to the cross-border activities of the firm.

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

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

3.- Submission of comments

The deadline for submitting comments is **17 February 2023**.

Respondents may send their comments through ESMA's website: www.esma.europa.eu. Both the paper of this consultation and the response form are available in the section [*Consultations*](#) (place the cursor on the word to obtain the link).

Likewise, please send a copy of your answers to the CNMV to the following email address: documentosinternacional@cnmv.es

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