

EBA/CP/2021/04

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24 February 2021

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# Consultation Paper

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## Draft Regulatory Technical Standards

on information exchange between competent authorities of home and host Member States in accordance with Article 13(7) of Directive (EU) 2019/2034 (Investment Firms Directive)

and

## Draft Implementing Technical Standards

on information exchange between competent authorities of home and host Member States in accordance with Article 13(8) of Directive (EU) 2019/2034 (Investment Firms Directive)

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# 1. Responding to this consultation

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The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 6.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

## Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by **23 April 2021**. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

## Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public 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 the EBA's Board of Appeal and the European Ombudsman.

## Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

## 2. Executive Summary

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The draft regulatory technical standards (RTS) developed in accordance with the mandate from Article 13(7) of Directive (EU) 2019/2034 (Investment Firms Directive, IFD) specify the information that host Member State competent authorities and home Member State competent authorities shall exchange with each other.

The draft implementing technical standards (ITS) developed in accordance with the mandate from Article 13(8) of IFD establish standard forms, templates and procedures for the information sharing requirements which are likely to facilitate the monitoring of institutions which operate through a branch or through its freedom to provide services in one or more Member States other than those in which their head offices are situated. The ITS apply in relation to the information specified in RTS.

The draft RTS and ITS concern the information exchanged in relation to an investment firm, which operates through a branch or through its freedom to provide services in one or more Member States other than those in which it is incorporated. The standards relate to the exchange of information between competent authorities and do not concern requests for information from the supervised institutions.

The draft RTS are structured in three major parts: (i) information exchange regarding investment firms operating through the branch to be provided by competent authorities of the home Member State regarding institutions which operate through branches in other Member States, (ii) information categories regarding branches to be provided by the competent authorities of host Member States where such branches operate and (iii) information exchange regarding investment firms that provide services on a cross-border basis in other Member State.

The draft RTS specify information categories for the topics provided in Article 13, and also supplements with additional information deemed to be essential and relevant for supervisors in order to perform their tasks.

The draft ITS set out procedures, including the timelines, contact lists and common formats and templates, for regular exchange of information regarding compliance with own funds, concentration risk and liquidity requirements and regarding findings of supervision of investment firms, linking the frequency of exchanging such information with the outcomes of the SREP assessments, where relevant. The draft ITS establish a more expedited procedure for information exchange regarding issues of non-compliance with regulatory requirements and application of supervisory administrative penalties or other administrative measures. The draft ITS also set out the procedure for information requests regarding institutions providing services in other Member States through the freedom to provide services and for ad hoc information requests. The draft ITS are supplemented by Annex, containing templates and explaining the formats to be used for regular exchange of quantitative and qualitative information.

The draft RTS and ITS have been developed having regards to the similar RTS and ITS currently in force under the CRD framework and the concrete experience in their implementation.

Taking into account that the draft RTS and ITS concern exchange of supervisory information between the competent authorities and do not have any impact on investment firms, a shorter consultation period of two months is proposed.

The draft RTS and draft ITS will be finalised following the completion of the public consultation and delivered to the European Commission by the end of June 2021.

## 3. Background and rationale

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Article 13 of Directive (EU) 2019/2034 (Investment Firms Directive, IFD) sets out the requirement for the competent authorities to cooperate and exchange information regarding investment firms operating in other Member States through a branch and through the freedom to provide services. Article 13(7) of that Directive mandates the EBA to develop regulatory technical standards (RTS) specifying the types of information that competent authorities of the home and host Member States should exchange, and Article 13(8) of that Directive mandates the EBA to develop implementing technical standards (ITS) establishing standard forms, templates and procedures for the information sharing between the competent authorities of home and host Member States. The technical standards should be developed in consultation with ESMA.

Supervisory cooperation between the competent authorities of home and host Member States is an important aspect of ensuring the single market and protecting the interest of consumers and investors across the Union. In order to ensure efficient cooperation between competent authorities, information exchange should be two-way, within the supervisory competences of those authorities.

The draft RTS and ITS aim at introducing structure and consistency in information exchange, ensuring equal access for competent authorities of host Member States to supervisory information regarding investment firm operating through a branch or through the freedom to provide services in other Member States, especially through the introduction of regular and structured provision of key supervisory information as opposed to unstructured and uncoordinated ad hoc information requests.

The draft RTS, therefore, specify information concerning investment firms and, where relevant, affecting the functioning of their branches, to be provided by the competent authorities of the home Member State to the competent authorities of the host Member State, as well as information regarding the branches, to be provided by competent authorities of host Member States to the competent authorities of the home Member States. The RTS also further specifies the information to be provided regarding investment firms operating in other Member States through the freedom to provide services by the competent authorities of the home Member State to the competent authorities of the host Member State.

The draft RTS follow the structure of Article 13 of the IFD and specify information provided by the competent authorities of the home Member State concerning investment firms' operating through branches, in particular: (1) information concerning management and ownership; (2) information about compliance with own funds requirements; (3) information concerning concentration risk requirements and liquidity requirements; (4) information concerning administrative and accounting procedures; (5) information concerning internal control mechanisms; (6) information concerning other factors identified through supervisory review and evaluation process (SREP) of an investment firm that may influence the risk posed by the investment firm.

Furthermore, building on the supervisory experience in order to ensure the effective and efficient cooperation between the competent authorities the draft RTS require the competent authorities of the home Member state to also share information regarding (1) issues of general non-compliance of an investment firm with applicable legislation; (2) information regarding supervisory measures, or administrative sanctions or measures; and (3) preparations for emergency situations. All of this information should be available to the competent authorities from the regular supervisory reporting by the investment firm or identified through the course of regular supervisory activities.

The draft RTS also specify the requirements for the competent authorities of a host Member State to provide information regarding the branch to the competent authority of the home Member State. In particular, this relates to the information regarding issues of non-compliance of a branch with applicable legislation and any potential problems and risks posed by a branch to the protection of clients or the stability of the financial system in the host Member State.

The EBA notes that the information exchange between competent authorities of home and host Member States is not limited to the types of information specified in Article 13 of Directive (EU) 2019/2034, and therefore to the types of information specified in this Regulation. In particular, Article 14 of Directive (EU) 2019/2034 sets out a separate provision for exchange of information regarding on-the-spot verification of branches. Furthermore, cooperation and information exchange requirements regarding notifications of the exercise of the right of establishment and freedom to provide services are set out in Articles 34 and 35 of Directive 2014/65/EU which also set out requirements for cooperation between competent authorities responsible for supervision of markets and instruments in supervisory activities, for on-site verifications or investigations information exchange requirements are set out in Article 80 of Directive 2014/65/EU and further specified in the Commission Delegated Regulation (EU) 2017/586. This Regulation does not therefore specify any exchange of information requirements in those areas.

The draft RTS is supplemented by the ITS establishing standard forms, templates and procedures for information sharing requirements aimed at facilitating the supervision of investment firms. The draft ITS are supplemented by Annex, containing templates and explaining the formats to be used for quantitative and qualitative information to be exchanged on a regular basis. The draft ITS also state several cases of non-quantitative information regarding management and ownership, non-compliance with regulatory requirements, the application of supervisory and other administrative measures that is to be provided in the format deemed appropriate by the respective competent authority. The ITS also specifies the procedure for information exchange between the competent authorities of home and host Member States regarding investment firms providing services through the freedom to provide services.

Both RTS and ITS are published together for public consultation and are expected to be delivered to the European Commission by 26 June 2021.

## 4. Draft regulatory technical standards

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### COMMISSION DELEGATED REGULATION (EU) No .../..

of **XXX**

[...]

**supplementing Directive (EU) 2019/2034 of the European Parliament and of the Council with regard to regulatory technical standards for specifying the types and nature of the information competent authorities of home and host Member States supply to one another**

THE EUROPEAN COMMISSION,

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

Having regard to Directive (EU) 2019/2034 of 27 November 2019 of the European Parliament and of the Council 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 and in particular to Article 13(7) thereof,

Whereas:

- (1) In order to ensure efficient cooperation between competent authorities of home and host Member States information exchange should be two-way, within the respective supervisory competences of those authorities. It is therefore necessary to specify which information concerning investment firms, and where relevant, concerning the functioning of their branches, should be provided by the competent authorities of the home Member State to the competent authorities of the host Member State, as well as which information regarding branches needs to be provided by competent authorities of host Member States to the competent authorities of the home Member State.
- (2) Exchange of information between competent authorities of home and host Member States should be seen in a wider context of supervision of cross-border investment firm groups and, where relevant, information could be provided at the consolidated level. In particular, if an investment firm has an ultimate parent undertaking in the Member State where it has its head office, and the competent authority concerned is also the group supervisor, possibilities should be made available to provide information at the consolidated level rather than at the level of an investment firm operating through a branch. However, in this case the competent authority should notify competent authorities of host Member States that the information is provided at the consolidated level of the investment firm group.



- (3) Information exchange between competent authorities of home and host Member States is not limited to the types of information specified in Article 13 of Directive (EU) 2019/2034, and therefore to the types of information specified in this Regulation. In particular, Article 14 of Directive (EU) 2019/2034 sets out a separate provision for exchange of information regarding on-the-spot verification of branches.
- (4) Cooperation and information exchange requirements regarding notifications of the exercise of the right of establishment and freedom to provide services are set out in Articles 34 and 35 of Directive 2014/65/EU, so are requirements for cooperation between competent authorities responsible for supervision of markets and instruments in supervisory activities, for on-site verifications or investigations are set out in Article 80 of Directive 2014/65/EU and further specified in the Commission Delegated Regulation (EU) 2017/586. This Regulation does not therefore specify any requirements for exchange of information in those areas.
- (5) This Regulation should also address exchange of information in relation to the carrying on of activities in a host Member State by way of the provision of cross-border services. It is essential to specify in detail what information needs to be exchanged for the purposes of ensuring the protection of clients and safeguarding stability of the financial system in the host Member State. When doing so, duplication of information exchange should be avoided having regard to the fact that information will already be available to the competent authorities through the mechanism to be established in accordance with Article 6 (2) of Directive (EU) 2019/2034 for exchange of information between these competent authorities and the authorities designated under Article 67 of Directive 2014/65/EU in a particular Member State where these authorities differ, and also through the application of Article 80 of Directive 2014/65/EU and the Commission Delegated Regulation (EU) 2017/586.
- (6) It is necessary to lay down requirements for the information to be exchanged between competent authorities of home and host Member States in order to harmonise regulatory and supervisory practices across the Union. This information should cover all the areas specified in Article 13 of Directive (EU) 2019/2034, namely information about the management and ownership structure of the investment firm, information about compliance with own funds requirements by the investment firm, information about compliance with the concentration risk requirements and liquidity requirements of the investment firm, information about the administrative and accounting procedures and internal control mechanisms of the investment firm, any other relevant factors that may influence the risk posed by the investment firm. In order to facilitate the monitoring of investment firms, the competent authorities of host and home Member States should keep each other informed about identified situations of non-compliance with national or Union law as well as about supervisory measures and sanctions imposed on an investment firm. Furthermore, additional information regarding preparation for emergency situations should be included into the scope of information to be exchanged between competent authorities of home and host Member States so that the latter are able to monitor investment firms in an efficient way.
- (7) To ensure that the relevant information is exchanged within reasonable limits while avoiding situations where the competent authorities of a home Member State are obliged to forward any information about an investment firm, regardless of its nature and importance, to all competent authorities of host Member States, in specific cases, only information that is relevant to a particular branch should be transmitted exclusively to the competent authorities in charge of supervising this branch. For similar purposes, in a number of specific areas, only information regarding identified situations of non-compliance should be exchanged between competent authorities of home and host Member States, meaning that no information should be exchanged where the investment firm is in conformity with national and Union law.
- (8) This Regulation is based on the draft regulatory technical standards developed by the European Supervisory Authority (European Banking Authority, EBA) in consultation with the European Securities Markets Authority (ESMA) and submitted by the EBA to the Commission.

- (9) EBA 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 Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010.

HAS ADOPTED THIS REGULATION:

## **CHAPTER I**

### **GENERAL PROVISIONS**

#### *Article 1*

##### *Subject matter and scope*

- (1) This Regulation specifies requirements for the type and nature of the information about investment firms that the competent authorities of host and home Member States shall exchange in accordance with Article 13 of Directive (EU) 2019/2034.
- (2) This Regulation lays down rules on the information to be exchanged in relation to an investment firm, which operates, through a branch or in the exercise of the freedom to provide services, in one or more Member States other than those in which its head office is situated.

#### *Article 2*

##### *Information on a consolidated basis*

Where the ultimate parent investment firm is established in the same Member State as that in which the investment firm has its head office, and the competent authority of the investment firm's home Member State is also the group supervisor determined in accordance with Article 46 of Directive (EU) 2019/2034, that competent authority shall, where appropriate in accordance with the requirements laid down in Regulation (EU) 2019/2033 and Directive (EU) 2019/2034, provide information regarding this investment firm at the consolidated level for the investment firm group and shall inform the competent authorities of host Member States that the information is provided at the consolidated level.

## **CHAPTER II**

### **INFORMATION EXCHANGE REGARDING INVESTMENT FIRM OPERATING THROUGH A BRANCH**

#### *Article 3*

##### *Information about management and ownership*

- (1) The competent authorities of the home Member State shall provide the competent authorities of a host Member State with the organisational structure of an investment firm including its business lines and its relationships to entities within the group.

- (2) In addition to information specified in paragraph 1, the competent authorities of the home Member State supervising investment firms, not identified as small and non-interconnected in accordance with Article 12 of Regulation (EU) 2019/2033, shall provide the competent authorities of a host Member State with the following information in relation to an investment firm:
- (a) the structure of the management body and senior management, including the allocation of responsibility for the oversight of a branch;
  - (b) the list of shareholders and members with qualifying holdings.

#### *Article 4*

##### *Information about compliance with own funds requirements*

- (1) The competent authorities of the home Member State shall inform the competent authorities of a host Member State about whether an investment firm is compliant with the following requirements:
- (a) the own fund requirements laid down in Article 11 of Regulation (EU) No 2019/2033, taking into account the transitional arrangements laid down in Article 57 of that Regulation;
  - (b) where applicable, any additional own funds requirements imposed in accordance with Article 39(2)(a) of Directive (EU) 2019/2034, and,
  - (c) where applicable, any guidance on additional own funds imposed in accordance with Article 41 of Directive (EU) 2019/2034.
- (2) The competent authorities of the home Member State shall provide the competent authorities of host Member States with the following information regarding own funds requirements applicable to an investment firm, in particular
- (a) the value of the own fund requirements laid down in Article 11 of Regulation (EU) No 2019/2033;
  - (b) whether the value provided in point (a) was set on the basis of Article 11(1)(a), (b) or (c) of regulation of Regulation (EU) No 2019/2033;
  - (c) where applicable, the value of any additional own funds requirements imposed in accordance with Article 39(2)(a) of Directive (EU) 2019/2034, and the basis for its calculation;
  - (d) where applicable, the value of any guidance on additional own funds imposed in accordance with Article 41 of Directive (EU) 2019/2034.
- (3) The competent authorities of the home Member State shall provide the competent authorities of a host Member State with information regarding any situation in respect of which the competent authorities of the home Member State have determined that an investment firm has not complied with applicable own funds requirements. The information provided shall explain the situation and supervisory measures taken or planned to be taken.
- (4) Where the application of Part Two of Regulation (EU) No 2019/2033 has been waived under Articles 6(1) of that Regulation, the competent authorities of the home Member State shall provide the information set out in paragraphs 1 and 2 at the consolidated level in accordance with Article 6(1)(b)(ii) of that Regulation.

- (5) Where an investment firm has received permission to apply the treatment referred to in Article 8 of Regulation (EU) No 2019/2033, the competent authorities of the home Member State shall inform the competent authorities of a host Member State about whether an investment firm is compliant with the own funds requirements laid down in Articles 8(3) and 8(4) of that Regulation.

#### *Article 5*

##### *Information about compliance with concentration risk requirements and liquidity requirements*

- (1) The competent authorities of the home Member State shall inform the competent authorities of a host Member State about whether an investment firm is compliant with the concentration risk requirements laid down in Part Four of Regulation (EU) No 2019/2033. The competent authorities of the home Member State shall provide the competent authorities of a host Member State with information regarding any situation in respect of which the competent authorities of the home Member State have determined that an investment firm has not complied with applicable concentration risk requirements. The information provided shall explain the situation and supervisory measures taken or planned to be taken.
- (2) The competent authorities of the home Member State shall inform the competent authorities of a host Member State about whether an investment firm is compliant with the liquidity requirements laid down in Part Five of Regulation (EU) No 2019/2033, taking into account the transitional arrangements laid down in Article 57(1) of that Regulation and the application of any exemptions in accordance with Article 43(1) of that Regulation.
- (3) The competent authorities of the home Member State shall provide the competent authorities of a host Member State with information regarding any situation in respect of which the competent authorities of the home Member State have determined that an investment firm has not complied with applicable liquidity risk requirements. The information provided shall explain the situation and supervisory measures taken or planned to be taken.
- (4) The competent authorities of the home Member State shall provide the competent authorities of a host Member State with their overall assessment of an investment firm's liquidity risk profile and risk management, taking into account the transitional arrangements laid down in Article 57(1) of Regulation (EU) No 2019/2033 and the application of any exemptions in accordance with Article 43(1) of that Regulation.
- (5) Where the competent authorities have waived the application of Part Five of Regulation (EU) No 2019/2033 to an investment firm in accordance with Article 6(3) of that Regulation, the competent authorities of the home Member State shall provide the information referred to in paragraph 2 at the consolidated level.

#### *Article 6*

##### *Information about administrative and accounting procedures*

- (1) The competent authorities of the home Member State shall provide the competent authorities of a host Member State with information regarding any situation where the competent authorities of the home Member State have determined that an investment firm has not complied with applicable accounting standards and procedures to which the investment firm is subject in accordance with Regulation (EC) No 1606/2002. The information to be provided shall explain the situation and supervisory measures taken or planned to be taken.
- (2) Where the information specified in paragraph 1 is relevant to a particular branch only, the competent authorities of the home Member State shall only provide the information to the competent authorities of the host Member State in which that branch is established.

## *Article 7*

### *Information about internal control mechanisms*

- (1) The competent authorities of the home Member State shall provide to the competent authorities of a host Member State information regarding any situation in respect of which the competent authorities of the home Member States have determined that an investment firm has not complied with requirements concerning internal control mechanisms, including risk management, risk control and internal audit arrangements pursuant to Regulation (EU) 2019/2033 and Directive (EU) 2019/2034. The information to be provided shall explain the situation and the supervisory measures taken or planned to be taken.
- (2) Where the information specified in paragraph 1 is relevant to a particular branch only, the competent authorities of the home Member State shall only provide the information to the competent authorities of the host Member State in which that branch is established.

## *Article 8*

### *Information about other factors that may influence the risk posed by the investment firm*

- (1) Without prejudice to Article 13(2) of Directive (EU) 2019/2034, the competent authorities of the home Member State shall provide to the competent authorities of a host Member State information regarding any material risks and their supervisory assessment as revealed by the supervisory review and evaluation process carried out in accordance with Article 36 of Directive (EU) 2019/2034, or through any other supervisory activity carried out by the competent authorities of the home Member State.
- (2) Where the information specified in paragraph 1 is relevant to a particular branch only, the competent authorities of the home Member State shall only provide the information to the competent authorities of the host Member State in which that branch is established.

## *Article 9*

### *Information about general non-compliance*

- (1) Without prejudice to the information exchange carried out in accordance with Directive 2014/65/EU and Commission Delegated Regulation (EU) 2017/586, the competent authorities of the home Member State shall provide the competent authorities of a host Member State with information regarding any situations in respect of which they have determined that an investment firm has not complied with national or Union law or with requirements in relation to the prudential supervision of investment firms, other than the requirements referred to in Articles 3 to 7 of this Regulation, including the requirements laid down in Regulation (EU) 2019/2033, and, where relevant, Regulation (EU) No 575/2013, Directive (EU) 2019/2034, and, where relevant, Directive 2013/36/EU and national legislation adopting those Directives and Directive 2014/59/EU and national legislation adopting this Directive, where such situation presents potential problems and risks posed by an investment firm to the protection of clients or the stability of the financial system in the host Member State.
- (2) The information specified in paragraph 1 shall explain the situation of non-compliance and the supervisory measures taken or planned to be taken.
- (3) Where the information specified in paragraph 1 is relevant only to a particular branch, the competent authorities of the home Member State shall only provide the information to the competent authorities of the host Member State in which that branch is established.

## *Article 10*

### *Communication of supervisory measures and sanctions*

- (1) The competent authorities of the home Member State shall inform the competent authorities of a host Member State of any administrative sanctions or administrative measures, or supervisory measures imposed on an investment firm related to breaches of Regulation (EU) 2019/2033 or national provisions transposing Directive (EU) 2019/2034 and which affect the operations of a branch.
- (2) Where the information specified in paragraph 1 is relevant only to a particular branch, the competent authorities of the home Member State shall only provide the information to the competent authorities of the host Member State in which that branch is established.

## *Article 11*

### *Information about the arrangements for preparing for emergency situations*

Without prejudice to the requirements of Article 47 of Directive (EU) 2019/2034, the competent authorities of the home Member State and the competent authorities of a host Member State shall exchange information regarding the arrangements for preparing for emergency situations. In particular, they shall keep one another informed of the following:

- (a) the emergency contact details of persons within the competent authorities who are responsible for handling emergency situations;
- (b) the communication procedures that shall apply in emergency situations.

## **CHAPTER III**

### **INFORMATION EXCHANGE REGARDING BRANCHES**

## *Article 12*

### *Information from authorities of a host Member State*

Without prejudice to the information exchange requirements following inspections of branches pursuant to Article 14 of Directive (EU) 2019/2034, the competent authorities of a host Member State shall provide the competent authorities of the home Member State with the following information:

- (a) a description of any situation in respect of which the competent authorities of the host Member State have determined that a branch has not complied with any national or Union laws or regulatory requirements which relate to the prudential supervision of investment firms, including the requirements of Regulation (EU) 2019/2033, and, where relevant, Regulation (EU) No 575/2013, Directive (EU) 2019/2034, and, where relevant, Directive 2013/36/EU and national legislation adopting those Directives and Directive 2014/59/EU and national legislation adopting this Directive, together with an explanation of the supervisory measures taken or planned to be taken to address the non-compliance;
- (b) any information and findings about any potential problems and risks posed by the branch or its activities in the host Member State having significant impact on the protection of clients or the stability of the financial system in the host Member State as identified by the competent authorities of a host Member State.

## **CHAPTER IV**

### **INFORMATION EXCHANGE REGARDING CROSS-BORDER SERVICE PROVIDERS**

#### *Article 13*

##### *Information about cross-border service providers*

Upon receiving a request for information from the competent authorities of a host Member State in relation to an investment firm that is carrying on its activities in the exercise of the freedom to provide services in that host Member State, the competent authorities of the home Member State shall provide to them information specified in Article 4(1) and 4(3), Articles 5(1) to 5(3), Article 6(1), Article 7(1) and Article 9 of this Regulation.

## **CHAPTER V**

### **FINAL PROVISIONS**

#### *Article 14*

##### *Entry into force*

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

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

Done at Brussels,

*For the Commission*

*The President*

# 5. Draft implementing technical standards

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## COMMISSION IMPLEMENTING REGULATION (EU) No .../...

(6) of **XXX**

**laying down implementing technical standards with regard to establishing standard forms, templates and procedures for the information sharing between the competent authorities of home and host Member States, according to Directive (EU) 2019/2034 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Directive (EU) 2019/2034 of 27 November 2019 of the European Parliament and of the Council 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, and in particular to Article 13(8) thereof,

Whereas:

- (1) In order to ensure efficient and timely cooperation between competent authorities of home and host Member States information exchange should be two-way, within the respective supervisory competences of those authorities. Standard forms, templates and operating procedures, including timelines, should therefore be established for the exchange of information. To ensure that the most up-to-date information is exchanged, competent authorities should nevertheless exchange information as early as is practicable without waiting until the expiry of maximum remittance dates.
- (2) Without prejudice to procedures for standard information exchange established in this Regulation, competent authorities of home or host Member States should inform each other without undue delay about any potential situation affecting the financial stability or functioning of a branch and provide all essential and relevant information regarding that situation.



- (3) To ensure an efficient transmission of information to the relevant persons as well as the confidentiality of the information, the competent authorities should establish, share and regularly update lists of contact persons.
- (4) Information exchange between competent authorities of home and host Member States is not limited to the types of information specified in Article 13 of Directive (EU) 2019/2034, and therefore to the types of information specified in this Regulation. In particular, Article 14 of Directive (EU) 2019/2034 set out a separate provision for exchange of information regarding on-the-spot verification of branches.
- (5) Cooperation and information exchange requirements regarding notifications of the exercise of the right of establishment and freedom to provide services are set out in Articles 34-35 of Directive 2014/65/EU. The requirements for cooperation between competent authorities responsible for supervision of markets and instruments in supervisory activities, for on-site verifications or investigations are set out in Article 80 of Directive 2014/65/EU and further specified in the Commission Delegated Regulation (EU) 2017/586. This Regulation does not therefore specify any exchange of information requirements in those areas.
- (6) This Regulation should also address the procedure for exchange of information in relation to the carrying on of activities in a host Member State by way of the provision of cross-border services. It is essential to specify the establishing of standard forms, templates and procedures for such information sharing requirements. When doing so, duplication of information exchange should be avoided having regard to the fact that information will already be available to the competent authorities through the mechanism to be established in accordance with Article 6 (2) of Directive (EU) 2019/2034 for exchange of information between these competent authorities and the authorities designated under Article 67 of Directive 2014/65/EU in a particular Member State where these authorities differ, and also through the application of Article 80 of Directive 2014/65/EU and the Commission Delegated Regulation (EU) 2017/586.
- (7) Given the fact that the type of information to be exchanged between competent authorities is detailed in **Delegated Regulation (EU) No XXXX/XXXX**, this Implementing Regulation should be considered the necessary corollary to **Delegated Regulation (EU) No XXXX/XXX**.
- (8) This Regulation is based on the draft implementing technical standards developed by the European Supervisory Authority (European Banking Authority, EBA) in consultation with the European Securities Markets Authority (ESMA) and submitted by the EBA to the Commission.
- (9) EBA 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 Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010.

HAS ADOPTED THIS REGULATION:

### *Article 1*

#### *Subject matter*

This Regulation establishes standard forms, templates and procedures for the information sharing requirements, which are likely to facilitate the monitoring of investment firms that operate through a branch or freedom to provide services in one or more Member States other than those in which their head offices are situated.

This Regulation applies in relation to the information specified in **Delegated Regulation (EU) XXX/XXX**.

## Article 2

### *Remittance date and frequency of information exchange*

- (1) Information regarding any situation of non-compliance with legislative or regulatory requirements, as specified in Articles 3 to 7 and Article 9 of **Delegated Regulation (EU) XXXX/XXX**, the application of supervisory measures or other administrative sanctions or administrative measures shall be provided without undue delay and no later than 14 calendar days after the determination by the competent authorities of the non-compliance situation, or the application of the supervisory or other administrative measure, or an administrative sanction.
- (2) Qualitative and quantitative information about, compliance with own funds requirements, compliance with concentration risk requirements, compliance with liquidity requirements, administrative and accounting procedures, internal control mechanisms and any other risks posed by investment firms shall be provided by the competent authorities of the home Member State to the competent authorities of the host Member State annually and no later than 30 April of each year on the basis of the position as on the preceding 31 December.
- (3) Information regarding management and ownership shall be provided annually and no later than 30 April of each year on the basis of the most recent information available.
- (4) As a derogation from paragraph 2, in a calendar year, when the competent authorities of the home Member State complete a report summarising the findings of the supervisory review and evaluation process (SREP) for investment firms performed in accordance with Article 36 of Directive (EU) 2019/2034, information specified in paragraph 2 shall be provided no later than one month following the completion of the report.

## Article 3

### *Operational procedures for the transmission of information between competent authorities*

- (1) The competent authorities of the home Member State shall maintain and share with the competent authorities of a host Member State an up-to-date list for each investment firm containing the relevant contacts, including emergency contacts, for the exchange of information between the competent authorities of the home Member State and of the host Member States.
- (2) The competent authorities of host Member States shall inform the competent authorities of the home Member State of their contacts and of any changes in those contacts without undue delay. The competent authorities of the home Member State and of host Member States shall review the contact list each year.
- (3) The competent authorities of the home Member State and the competent authorities of the host Member State shall exchange information in written or electronic form and shall address the information to the relevant contact persons identified in the contact list referred to in paragraph 1 unless specified otherwise by a competent authority requesting information.
- (4) Where information is exchanged in electronic form, secure channels of communication shall be used unless the competent authorities providing and receiving information deem it appropriate and agree to use unsecured channels of communication.
- (5) Depending on the urgency of specific situation, where non-compliance with legislative or regulatory requirements have been identified, the following information may be first provided orally before being confirmed in written or electronic form:

- (a) information regarding non-compliance with legislative or regulatory requirements;
  - (b) information regarding the application of supervisory or other administrative measures;
  - (c) information regarding the imposition of administrative sanctions.
- (6) Upon receiving information, competent authorities shall confirm receipt. Where information has been provided in electronic form using a secure channel of communication, the confirmation of receipt shall be provided using the same channel. Confirmation shall not be required for information which has been provided orally or using a secure channel of communication which enables the sender to receive confirmation that the receiver has received the information.
- (7) Where a college of supervisors has been established in accordance with Article 48(1) of Directive (EU) 2019/2034 and the competent authorities of the home Member State and competent authorities of the host Member State take part in the college as members or other participants in accordance with the **Delegated Regulation (EU) XXXX/XXX**, paragraphs 1 to 6 of this Article shall not apply. In such cases the information shall be exchanged using the procedure set out in the written arrangements referred to in Article 48(6) of Directive (EU) 2019/2034.

#### *Article 4*

##### *Forms to be used for information exchange regarding investment firms operating through a branch*

- (1) Information regarding own funds requirements management and ownership, own funds requirements, concentration risk and liquidity requirements and other factors that may influence the risk posed by investment firms shall be exchanged using the template specified in Annex and shall be provided in the form specified in that template.
- (2) Information and findings about any potential problems and risks posed by the branch or its activities in the host Member State having significant impact on the protection of clients or the stability of the financial system in the host Member State shall be provided by the competent authorities of a host Member State in form deemed appropriate by that authority
- (3) Information regarding any situations of non-compliance with any legislative or regulatory requirements, the application of supervisory or other administrative measures or administrative sanctions as referred to in Article 2(1) of this Regulation shall be provided in the form deemed appropriate by the competent authority that provides the information.

#### *Article 5*

##### *Information requests regarding cross-border service providers*

- (1) The competent authorities of a host Member State in which an investment firm carries out its activities in the exercise of the freedom to provide services which request the competent authorities of the home Member State to provide the information regarding those services as laid down in **Delegated Regulation (EU) No XXX/XXX** shall:
  - (a) provide the request for information in written or electronic form to the relevant contact person identified in the contact list referred to in Article 3(1);
  - (b) specify a reasonable time by which the response must be provided.
- (2) The competent authorities of the home Member State receiving a request referred to in paragraph 1 shall provide the information without undue delay and shall make every effort to respond by the time indicated in the request. If that competent authority is unable to reply by the time indicated in the request it shall inform the competent authority making the request without undue delay of the time by which it will provide the information.

## *Article 6*

### *Ad-hoc requests for information*

- (1) Requests for information that is not required to be exchanged pursuant to **Delegated Regulation (EU) XXX/XXX** shall be transmitted in written or electronic form to the relevant contact persons identified in the contact list referred to in Article 3(1) of this Regulation.
- (2) A competent authority making a request as referred to in paragraph 1 shall explain how the information is likely to facilitate the supervision or monitoring of an investment firm or the protection of the stability of the financial system. That competent authority shall specify a reasonable time by which the response must be provided taking into account the nature and urgency of the request and the information requested.
- (3) A competent authority receiving a request referred to in paragraph 1 shall provide the information without undue delay and shall make every effort to respond by the time indicated in the request. If that competent authority is unable to reply by the time indicated in the request it shall inform the competent authority making the request without undue delay of the time by which it will provide the information.
- (4) If the requested information is not available, the competent authority receiving a request referred to in paragraph 1 shall accordingly inform the competent authority making the request.

## *Article 7*

### *Entry into force*

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

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

Done at Brussels,

*For the Commission*

*The President*

**ANNEX**

**Template for information exchange regarding investment firms to be provided by the competent authorities of the home Member State to competent authorities of a host Member State supervising a branch**

<b>Competent Authority:</b>		<i>Free text</i>
<b>Investment firm name:</b>		<i>Free text</i>
<b>Reference date (DD/MM/YYYY)</b>		<i>Reference date for the information.</i>
<b>Submission date (DD/MM/YYYY):</b>		<i>Date when the information is being provided to the competent authorities of host Member State.</i>
<b>Information provided on consolidated basis (Yes/No)</b>		<i>Please indicate 'Yes' if information in this template is provided on a consolidated basis and not at the level of the investment firm group.</i>
<b>Contact at the competent authorities of the home Member State</b>		<i>Name and contact details of a person providing information for any possible follow up questions</i>
<b>Statement on the compliance of the investment firm with the own funds requirements laid down in Article 11 of Regulation (EU) No 2019/2033, taking into the transitional arrangements laid down in Article 57 of that Regulation.</b>		<p><i>Legal reference: Article 4(1) of Delegated Regulation (EU) XXX/XXX.</i></p> <p><i>Free text answering the question at the reporting date.</i></p> <p><i>Should there be no changes compared to the previous reporting period, competent authorities may refer to already provided information or update accordingly.</i></p>
<b>Statement on the compliance of the investment firm with any additional own funds requirements imposed in accordance with Article 39(2)(a) of Directive (EU) 2019/2034</b>		<i>Please note that issues of non-compliance with minimum regulatory requirements and any supervisory measures taken by the competent authorities to address them shall be reported outside this template for regular exchange of information and in accordance with Article 2(1) of this Regulation.</i>
<b>Statement on the compliance of the investment firm with any guidance on additional own funds imposed in accordance with Article 41 of Directive (EU) 2019/2034</b>		

<p><b>The value of the own funds requirements laid down in Article 11 of Regulation (EU) No 2019/2033</b></p>		<p><i>Legal reference: Article 4(2) of Delegated Regulation (EU) XXX/XXX.</i></p> <p><i>Value from supervisory reporting.</i></p> <p><i>Should there be no changes compared to the previous reporting period, competent authorities may refer to already provided information or update accordingly.</i></p>
<p><b>Statement whether the value provided in point (a) was set on the basis of Article 11(1)(a), (b) or (c) of regulation of Regulation (EU) No 2019/2033</b></p>		<p><i>Legal reference: Article 4(2) of Delegated Regulation (EU) XXX/XXX.</i></p> <p><i>Free text providing the legal reference to the basis for the calculation of own funds requirements.</i></p> <p><i>Should there be no changes compared to the previous reporting period, competent authorities may refer to already provided information or update accordingly.</i></p>
<p><b>The value of any additional own funds requirements imposed in accordance with Article 39(2)(a) of Directive (EU) 2019/2034, and the basis for its calculation</b></p>		<p><i>Legal reference: Article 4(2) of Delegated Regulation (EU) XXX/XXX.</i></p> <p><i>Value from supervisory reporting. Free text providing the reference to the basis for the calculation of additional own funds requirements.</i></p> <p><i>Should there be no changes compared to the previous reporting period, competent authorities may refer to already provided information or update accordingly.</i></p>
<p><b>The value of any guidance on additional own funds imposed in accordance with Article 41 of Directive (EU) 2019/2034.</b></p>		<p><i>Legal reference: Article 4(2) of Delegated Regulation (EU) XXX/XXX.</i></p> <p><i>Value from supervisory reporting. Free text providing the reference to the basis for the calculation of additional own funds guidance.</i></p> <p><i>Should there be no changes compared to the previous reporting period, competent authorities may refer to already provided information or update accordingly.</i></p>
<p><b>Statement on the compliance of the investment firm with the concentration risk requirements laid down in Part Four of Regulation (EU) No 2019/2033</b></p>		<p><i>Legal reference: Article 5(1) of Delegated Regulation (EU) XXX/XXX.</i></p> <p><i>Free text answering the question at the reporting date.</i></p>

		<p><i>Should there be no changes compared to the previous reporting period, competent authorities may refer to already provided information or update accordingly. Please note that issues of non-compliance with minimum regulatory requirements and any supervisory measures taken by the competent authorities to address them shall be reported outside this template for regular exchange of information and in accordance with Article 2(1) of this Regulation.</i></p>
<p><b>Statement on the compliance of the investment firm with the liquidity requirements laid down in Part Five of Regulation (EU) No 2019/2033, taking into the transitional arrangements laid down in Article 57(1) of that Regulation</b></p>		<p><i>Legal reference: Article 5(2) of Delegated Regulation (EU) XXX/XXX</i></p> <p><i>Free text answering the question at the reporting date.</i></p> <p><i>Should there be no changes compared to the previous reporting period, competent authorities may refer to already provided information or update accordingly. Please note that issues of non-compliance with minimum regulatory requirements and any supervisory measures taken by the competent authorities to address them shall be reported outside this template for regular exchange of information and in accordance with Article 2(1) of this Regulation.</i></p>
<p><b>Summary of the overall assessment of the competent authorities of the home Member State of an investment firm’s liquidity risk profile and risk management</b></p>		<p><i>Legal reference: Article 5(4) of Delegated Regulation (EU) XXX/XXX.</i></p> <p><i>Free text answering the question at the reporting date.</i></p> <p><i>Should there be no changes compared to the previous reporting period, competent authorities may refer to already provided information or update accordingly.</i></p>
<p><b>Summary assessment of any material risks as revealed by the supervisory review and evaluation process carried out in accordance with Article 36 of Directive (EU) or through any other supervisory activity carried out by the competent authorities of the home Member State</b></p>		<p><i>Legal reference: Article 8(1) of Delegated Regulation (EU) XXX/XXX.</i></p> <p><i>Free text answering the question at the reporting date.</i></p> <p><i>Should there be no changes compared to the previous reporting period, competent authorities may refer to already provided information or update accordingly.</i></p>

**Additional information to be exchanged concerning the management and ownership of the investment firm and preparations for emergency situations**

*Legal reference:* **Article 3(1) and Article 11 of Delegated Regulation (EU) XXX/XXX.**

1. Current organisational structure of the investment firm including its business lines and its relationship to entities within the group
2. Emergency contact details of persons within the competent authorities who are responsible for handling emergency situations and communication procedures that shall apply in emergency situations

*Should there be no changes compared to the previous reporting period, competent authorities may refer to already provided information or update accordingly.*

**Additional information to be provided by the competent authorities of the home Member State supervising investment firms that are not identified as small and non-interconnected investment firms in accordance with Article 12 of Regulation (EU) 2019/2033**

*Legal reference:* **Article 3(2) of Delegated Regulation (EU) XXX/XXX.**

1. The structure of the management body and senior management, including the allocation of responsibility for the oversight of a branch
2. The list of shareholders and members with qualifying holdings

*Should there be no changes compared to the previous reporting period, competent authorities may refer to already provided information or update accordingly.*



## 6. Accompanying documents

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### 6.1 Draft cost-benefit analysis / impact assessment

1. Article 13(7) and 13(8) of the Investment Firms Directive (IFD) mandates the EBA to develop regulatory and implementing technical standards (RTS and ITS) on the exchange of information between home and host competent authorities supervising investment firms operating through branches or through the freedom to provide services.
2. As per Article 10 and 15 of Regulation (EU) No 1093/2010 (EBA Regulation), any regulatory and implementing technical standards developed by the EBA shall be accompanied by an Impact Assessment (IA), which analyses ‘the potential related costs and benefits’. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.
3. The EBA has conducted data collections to inform the impact assessment and policy choices in these draft technical standards.<sup>1</sup> The impact assessment is provided in the following section.

#### Problem identification

4. IFD that entered into force on 25 December 2019 and introduced a new prudential framework for investment firms across the EU. Mirroring CRD, the IFD also introduced requirements for information exchange between competent authorities of home and host Members States thus enhancing their cooperation. These information exchange requirements specified in Article 13 of IFD are tailored to the specificities of prudential requirements applicable to investment firms as well as the risks that investment firms pose to the markets, clients and the firms themselves.
5. The existing CRD framework, and in particular information exchange requirements,<sup>2</sup> focuses on credit institutions and the risks they face and pose rather than investment firms, which is problematic as the services provided by these firms and the risks they can create are, to a large extent, not explicitly addressed by the existing rules. The IFD provides a framework which is better adapted to investment firms and, in addition, provides a more streamlined regulatory

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<sup>1</sup> Competent authorities were asked to report data for all investment firms as defined in point (22) of Article 4(1) of IFR authorised and supervised under Directive 2014/65/EU in their jurisdiction (i.e. excluding firms operating in their jurisdiction through a MiFID passport) on an individual basis. In a separate data collection, competent authorities were further asked to report data for all investment firm groups as defined in point (25) of Article 4(1) of Regulation (EU) 2019/2033 (IFR) authorised and supervised under Directive 2014/65/EU in their jurisdiction, which are subject to consolidated requirements under IFR/IFD. Competent authorities were asked report data for investment firm groups, for which they are determined as group supervisor according to Article 46 of Directive (EU) 2019/2034 (IFD).

<sup>2</sup> Article 50 of the CRD; Commission Delegated Regulation (EU) No 524/2014 of 12 March 2014; Commission Implementing Regulation (EU) No 620/2014 of 4 June 2014.

toolkit, enabling prudential supervisors to carry out their oversight more effectively and accurate.

### Policy objectives

6. The draft technical standards address supervisors of investment firms, which operate in other countries through branches. They specify requirements for the type and nature of the information about those investment firms and their branches that the competent authorities of host and home Member States are expected to exchange. In addition, they specify the type of information that needs to be provided by the competent authorities of home Member States to the competent authorities of host Member States regarding investment firms operating through the freedom to provide services.
7. In particular, the draft RTS specifies information categories that are relevant for the competent authorities of host Member States for discharge of their supervisory task in relation to branches of investment firms. The draft RTS is supplemented by the ITS, establishing standard forms, templates and procedures for the information sharing requirements.
8. The technical standards contribute to enhancing supervisory cooperation and convergence by providing more clarity on the information that are expected to be exchanged between home and host competent authorities, avoiding unnecessary and burdensome requests as well as delays caused by the provision of incomplete information.
9. The technical standards further contribute to achieve harmonisation both at the level of the content of information exchange (which is dealt with by the draft RTS) and the procedure of information exchange (which is covered by the draft ITS). The technical standards further aim to strengthen a harmonised regulatory environment, in order to foster a European level playing field across types and categories of investment firms.
10. It is important to emphasise that the draft RTS and ITS specify exchange of information that is already available to the competent authorities through their regular supervisory activities, including receiving reporting from the investment firms. The draft RTS and ITS will have no costs for investment firms, as it refers to information to be exchanged between supervisors

### Baseline scenario

11. The technical standards address home and host supervisors in relation to an investment firm, which operates through a branch, in one or more Member States other than that in which it is incorporated. Looking at the exchange of information between home and host Member States in a wider context of supervision of cross-border investment firm groups, Table 1 shows that 75 EEA groups have cross-border activities, either in another EU Member State or a third country.<sup>3</sup>

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<sup>3</sup> UK is considered third country.

Out of those 75, 51 are providing services through branches mostly located in other Member States (39).<sup>4</sup>

Table 1 Investment firm groups, by cross-border activity

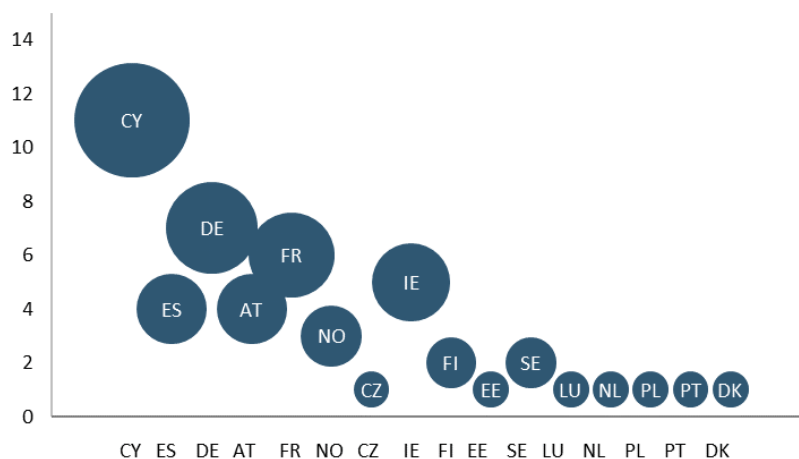
	Number of EEA IF groups	Share of EEA investment firm groups
<b>Cross-border activities</b>	<b>75</b>	<b>19.0%</b>
<i>of which: through Subsidiaries</i>	47	11.9%
<i>of which: through branches</i>	51	12.9%
<i>of which: branch in EU MS only</i>	28	7.1%
<i>of which: branch in Third countries only</i>	10	2.5%
<i>of which: branches in EU MS and Third country</i>	11	2.8%
<b>No cross-border activities</b>	<b>320</b>	<b>81.0%</b>
<b>All Groups</b>	<b>395</b>	<b>100.0%</b>

Source: EBA 2020 Data collection on investment firm groups.

Note: Sample 395 investment firm groups. \*For two investment firm groups information on third country branches are not reported.

12. Figure 1 shows that most investment firm groups with branches have their union parent located in CY (11 groups), followed by DE (7), FR (6) and IE (5).

Figure 1 Number of cross-border groups operating through branches, by country



Source: EBA 2020 Data collection on investment firm groups.

Note: Sample 395 investment firm groups. Random order of x-axis.

### Options considered, Cost-Benefit Analysis and preferred option

13. This section discusses the main policy options considered for the technical standards and the decisions made during the development process. Advantages and disadvantages, as well as

<sup>4</sup> Please note that the results presented do not include branches of EEA individual investment firms.

potential costs and benefits of the policy options and the preferred options resulting from this analysis are assessed.

### Content of information exchange

14. For the draft RTS, the EBA considered following options on the information exchange between authorities in relation to compliance with various prudential requirements specified in Article 13:

**Option 1.1:** Exchange information on compliance with prudential requirements supported with information on actual prudential indicators (e.g. capital ratios) of the investment firm.

**Option 1.2:** Exchange information on compliance with prudential requirements applicable to the investment firm.

15. Option 1.1 is in line with existing legislation under CRD to provide information on investment firm's solvency, including the reporting of capital ratios. IFR/IFD, however, are introduced *inter alia* to reduce the costs of applying the current, bank-centric prudential framework on investment firms. Considering the principle of proportionality and the specificities of the different types of prudential requirements and their calculation methods, in particular in relation to own funds requirements, provision of information on actual prudential indicators is less relevant for investment firms.

16. Under Option 1.2, host supervisors are provided with information on compliance with requirements, and additional information regarding the value and the basis for the determination of own funds requirements. It is expected that this information is sufficient for host supervisors to exercise their tasks, while reducing complexity and the reporting burden for home authorities. Option 1.2 is retained.

17. Information that are relevant for host supervisors may also include information on market conduct and issues of non-compliance of the investment firm with the requirements of Directive 2014/65/EU (MiFID). The following options were considered in relation to information overlapping with requirements under the supervision of markets and instruments under MiFID:

**Option 2.1:** Home authorities are required to provide information in relation to non-compliance with MiFID requirements.

**Option 2.2:** Home authorities are not required to provide information in relation to non-compliance with MiFID requirements.

18. Option 2.1 have the benefit to provide host supervisors with comprehensive information as part of a single package as opposed to receive and analyse information coming from different sources. However, information exchange regarding non-compliance with MiFID requirements do not fall in the remit of prudential supervisors. Any inconsistencies between the content of information required by authorities under prudential supervision and under market conduct

supervision may lead to the risk of different supervisory approaches. Notably, MiFID already sets out the requirements for the exchange of those information between the competent authorities,<sup>5</sup> which are different to those being set out in this RTS and ITS and are better suited for the specific needs of market conduct supervisors. Option 2.2 is retained.

19. With regard to investment firms carrying out activities in another Member State under the freedom to provide services, competent authorities of host Member States may also consider information regarding actual services<sup>6</sup> offered by investment firms as well as information regarding the investment firm itself, as specified in Article 13 of IFD.

**Option 3.1:** Specify the requirements for regular provision of information regarding investment firms operating through freedom to provide services in other Member States, including types of information and procedure for regular information exchange.

**Option 3.2:** Opt to specify procedure for regular information exchange regarding investment firms offering services in another Member States and introduce possibility for provision of information upon request from the competent authorities of those Member States

**Option 3.3:** Home authorities are required to provide information in relation to actual services offered by the investment firm in another Member State.

**Option 3.4:** Home authorities are required upon request to provide information regarding compliance or non-compliance with the prudential requirements of the investment firm in another Member State.

20. Competent authorities of host Member States where investment firm operates through the freedom to provide services may have justified interest in the information regarding actual services such firm provides in a host Member State. However, passport and follow up information regarding services is in the scope of MiFID do not fall in the remit of prudential supervisors, or such information would be easily available to the competent authorities of home Member State without requesting this information from the firms.

21. Regular provision of information to competent authorities of host Member States where an investment firm operates through the freedom to provide services might be too costly for the proportionality reasons given that investment firms usually passport in many jurisdictions with many activities. Actual services they provide are often significantly smaller compared to what is stated in the passports and therefore requiring regular provision of such information to competent authorities of host Member State is disproportionately and implies higher costs compared to the benefits of the host Member State. As to the information regarding the firms

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<sup>5</sup> Requirements for cooperation between competent authorities responsible for supervision of markets and instruments in supervisory activities, for on-site verifications or investigations are set out in Article 80 of Directive 2014/65/EU and further specified in the Commission Delegated Regulation (EU) 2017/586.

<sup>6</sup> Actual services offered compared to those declared in passport notifications under Article 34 and 35 of Directive 2014/65/EU.

themselves, in the interest of proportionality information regarding compliance with the requirements as provided in Article 13 of IFD could be requested by the competent authorities (provided upon request) as opposed to establishing regular information sharing process as envisaged for the investment firms operating through branches.

22. Furthermore, under Option 3.2, supervisors may request any additional information in relation to cross-border services upon ad-hoc request, which is in line with current practices. Therefore Option 3.2 and Option 3.4. are retained.

### Frequency and remittance dates

23. The technical standards aim to strike an equilibrium between the information needs of host supervisors and the potential costs for home supervisors in relation to the regular provision of information regarding investment firms and their branches. With respect to periodicity of information exchange as laid out in the ITS, following options are considered:

**Option 4.1:** Home competent authorities should provide relevant information on the investment firm to host authorities in line with frequency and timelines of the supervisory review and evaluation process (SREP) and no later than one month after completing the SREP summary report.

**Option 4.2:** Home competent authorities should provide relevant information on the investment firm to host authorities annually on a specific remittance date. In years in which the SREP is carried out, information exchange should be provided one month after completing the SREP summary report.

24. Option 4.1 has the advantage to rely on information already produced during the SREP process, which reduces the workload of home supervisors and reduces the costs of collecting and producing information and of processing data. It further allows to streamline the work carried out by supervisors.

25. On the other hand, Option 4.1 creates uncoordinated and insufficient communication between home and host supervisors, as the frequency of the SREP is investment firm specific and the SREP might not be carried out for some investment firms.

Option 4.2 is more in line with existing legislation under CRD,<sup>7</sup> which requires supervisors to provide information on a regular basis (annually and semi-annually). It provides a clear structure for the regular exchange of information. While supervisors may face higher burden than under Option 4.1, the burden is overall lower than under existing legislation under CRD and the draft ITS provides the possibility to refer to previous submission, in cases where there were no changes to the information. In addition, the coordinated communication reduces the workload through structured management and preparation of information exchange and harmonises the process for all investment firms and across Member States. Option 4.2 is retained.

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<sup>7</sup> EBA ITS 2013: Article 2 of ITS on information exchange between home and host competent authorities

## 6.2 Overview of questions for public consultation

**Question 1:** What are the stakeholders' views on the draft RTS and draft ITS?