

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2023/1117

of 12 January 2023

supplementing Directive (EU) 2019/2034 of the European Parliament and of the Council with regard to regulatory technical standards specifying requirements for the type and nature of the information to be exchanged by competent authorities of home and host Member States

(Text with EEA relevance)

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 ⁽¹⁾, and in particular to Article 13(7), second subparagraph, thereof,

Whereas:

- (1) In order to ensure efficient cooperation between competent authorities of home and host Member States, it is necessary to specify which information concerning investment firms, and where relevant, concerning the functioning of their branches or the exercise of the freedom to provide services in one or more Member States other than those in which their head offices are situated is to be provided by the competent authorities of the home Member State to the competent authorities of the host Member State and conversely.
- (2) It is essential to see the exchange of information between competent authorities of home and host Member States in the wider context of the supervision of cross-border investment firm groups. Where relevant, it is therefore appropriate that information is provided at the consolidated level. In particular, if an investment firm operating through a branch 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, it is deemed appropriate to provide information at the consolidated level rather than at the level of the investment firm. However, in that 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) While providing the key elements that should be subject to an exchange of information between competent authorities, it would not be appropriate in the context of an efficient cooperation between competent authorities on a cross-border basis to restrict the scope of such exchange of information. In particular, Article 14 of Directive (EU) 2019/2034 sets out specific provisions for the exchange of information regarding on-the-spot verification of branches that could also be relevant in the context of Article 13 of that Directive.
- (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 of the European Parliament and of the Council ⁽²⁾, and requirements for cooperation between competent authorities responsible for supervision of markets and instruments in supervisory activities, for on-site verifications or

⁽¹⁾ OJ L 314, 5.12.2019, p. 64.

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

investigations are set out in Article 80 of Directive 2014/65/EU and are further specified in Commission Delegated Regulation (EU) 2017/586 ⁽³⁾. This Regulation does not therefore specify any requirements for exchange of information in those areas.

- (5) While the information which needs to be exchanged for the purposes of ensuring an adequate protection of clients and safeguarding the stability of the financial system in the host Member State should be specified in the context of the provision of cross-border services in a host Member State, duplication of information exchange should equally be avoided. Therefore, competent authorities should consider information already available to them, in particular through the mechanism established in accordance with Article 6(2) of Directive (EU) 2019/2034 for the exchange of information between the competent authorities and the authorities designated under Article 67 of Directive 2014/65/EU in a particular Member State, where those authorities differ, Article 80 of Directive 2014/65/EU and Delegated Regulation (EU) 2017/586.
- (6) In order to ensure a sufficient convergence of regulatory and supervisory practices across the Union and a minimum level of information exchange enabling competent authorities to fulfil their supervisory duties, it is necessary to lay down minimum requirements for the information to be exchanged between competent authorities of home and host Member States. At a minimum, that 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, compliance with own funds requirements by the investment firm, compliance with the concentration risk requirements and liquidity requirements of the investment firm, the administrative and accounting procedures and internal control mechanisms of the investment firm and any other relevant factors that may influence the risk posed by the investment firm. In order to facilitate an adequate supervision 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, where such non-compliance may affect the protection of clients or the stability of the financial system in the host Member State, as well as about supervisory measures and sanctions imposed on investment firms. Furthermore, additional information regarding preparation for emergency situations should be included in 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 efficiently.
- (7) To ensure that the relevant information is exchanged within a reasonable timeframe 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, it is appropriate in some specific cases that 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 efficiency and proportionality 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 would have to 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 submitted to the Commission by the European Banking Authority (EBA) and developed in consultation with the European Securities and Markets Authority.
- (9) The EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽⁴⁾,

⁽³⁾ Commission Delegated Regulation (EU) 2017/586 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations (OJ L 87, 31.3.2017, p. 382).

⁽⁴⁾ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

HAS ADOPTED THIS REGULATION:

Article 1

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 provide information regarding that 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.

Article 2

Information about management and ownership structure of investment firms operating through a branch

1. The competent authorities of the home Member State shall provide the competent authorities of the host Member State with the organisational structure of an investment firm, its business lines and its relationships to entities within the group.
2. In addition to the type of information referred to in paragraph 1, the competent authorities of the home Member State supervising an investment firm not identified as small and non-interconnected investment firm in accordance with Article 12 of Regulation (EU) 2019/2033 of the European Parliament and of the Council ⁽ⁱ⁾ shall provide the competent authorities of the host Member State with the following information in relation to the investment firm:
 - (a) the structure of the management body and senior management as well as a description of the allocation of responsibilities for the oversight of a branch;
 - (b) the list of shareholders and members with qualifying holdings.

Article 3

Information about compliance with own funds requirements

1. The competent authorities of the home Member State shall inform the competent authorities of the 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) 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), point (a), of Directive (EU) 2019/2034;
 - (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 the host Member State with the following information regarding own funds requirements applicable to an investment firm:
 - (a) the value of the own funds requirements laid down in Article 11 of Regulation (EU) 2019/2033;
 - (b) whether the value referred to in point (a) was set on the basis of Article 11(1), points (a), (b) or (c) of Regulation (EU) 2019/2033;

⁽ⁱ⁾ Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1).

- (c) where applicable, the value of any additional own funds requirements imposed in accordance with Article 39(2), point (a), of Directive (EU) 2019/2034, and the grounds for its imposition;
- (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 the 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 referred to in paragraph 1. The information provided shall explain the situation and supervisory measures taken or planned to be taken.

4. Where an investment firm has been exempted from the application of Part Two of Regulation (EU) 2019/2033 in accordance with Article 6(1) of that Regulation, the competent authorities of the home Member State shall provide the information referred to in paragraphs 1 and 2 of this Article at the consolidated level.

5. Where an investment firm has been allowed to apply Article 8 of Regulation (EU) 2019/2033, the competent authorities of the home Member State shall inform the competent authorities of the host Member State about whether the investment firm is compliant with the own funds requirements laid down in Article 8(3) and (4) of that Regulation.

Article 4

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 the host Member State about whether an investment firm is compliant with the concentration risk requirements laid down in Part Four of Regulation (EU) 2019/2033.

2. The competent authorities of the home Member State shall provide the competent authorities of the 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 the applicable concentration risk requirements, as laid down in Part Four of Regulation (EU) 2019/2033. The information provided shall explain the situation and supervisory measures taken or planned to be taken.

3. The competent authorities of the home Member State shall inform the competent authorities of the host Member State about whether an investment firm is compliant with the liquidity requirements laid down in Part Five of Regulation (EU) 2019/2033, taking into account the transitional provisions laid down in Article 57(1) of that Regulation and the application of any exemptions in accordance with Article 43(1), second subparagraph of that Regulation.

4. The competent authorities of the home Member State shall provide the competent authorities of the 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 requirements, as laid down in Part Five of Regulation (EU) 2019/2033. The information provided shall explain the situation and supervisory measures taken or planned to be taken.

5. The competent authorities of the home Member State shall provide the competent authorities of the host Member State with their overall assessment of an investment firm's liquidity risk profile and risk management, taking into account the transitional provisions laid down in Article 57(1) of Regulation (EU) 2019/2033 and the application of any exemptions in accordance with Article 43(1), second subparagraph of that Regulation.

6. Where the competent authorities have exempted an investment firm from the application of Part Five of Regulation (EU) 2019/2033 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 of this Article at the consolidated level.

*Article 5***Information about administrative and accounting procedures**

1. The competent authorities of the home Member State shall provide the competent authorities of the 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 of the European Parliament and of the Council ⁽⁹⁾. The information to be provided shall explain the situation and supervisory measures taken or planned to be taken.
2. Where the information referred to 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 6***Information about internal control mechanisms**

1. The competent authorities of the home Member State shall provide to the competent authorities of the 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 referred to 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 other factors that may influence the risk posed by the investment firm**

1. In addition to the information and findings provided for in accordance with Article 13(2) of Directive (EU) 2019/2034, the competent authorities of the home Member State shall provide to the competent authorities of the host Member State information regarding any material risks and their supervisory assessment as revealed by the supervisory review and evaluation 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 referred to 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 general non-compliance**

1. Where Articles 3 to 7 of this Regulation or the relevant provisions on information exchange of Directive 2014/65/EU or Delegated Regulation (EU) 2017/586 do not apply, the competent authorities of the home Member State shall provide the competent authorities of the host Member State with information regarding any situation in respect of which they have determined that an investment firm has not complied with any of the following requirements, where such non-compliance might affect the protection of clients or the stability of the financial system in the host Member State:

⁽⁹⁾ Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

- (a) requirements related to the prudential supervision of investment firms laid down in Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽⁷⁾, Directive 2013/36/EU of the European Parliament and of the Council ⁽⁸⁾, Directive 2014/59/EU of the European Parliament and of the Council ⁽⁹⁾, Regulation (EU) 2019/2033 and Directive (EU) 2019/2034;
 - (b) requirements on the basis of other relevant national law.
2. The information referred to in paragraph 1 shall explain the non-compliance and the supervisory measures taken or planned to be taken.
 3. Where the information referred to 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 9

Communication of supervisory measures and sanctions

1. The competent authorities of the home Member State shall inform the competent authorities of the host Member State of any administrative sanctions or administrative measures, or supervisory measures imposed on an investment firm related to breaches of requirements laid down in Regulation (EU) 2019/2033 or in Directive (EU) 2019/2034 and which affect the operations of its 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 10

Information about the arrangements for preparing for emergency situations

The competent authorities of the home Member State and the competent authorities of the 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.

Article 11

Information from authorities of the host Member State

The competent authorities of the host Member State shall provide the competent authorities of the home Member State with the following information:

- ⁽⁷⁾ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).
- ⁽⁸⁾ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).
- ⁽⁹⁾ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

- (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 requirements which relate to the prudential supervision of investment firms, including the requirements of Regulation (EU) No 575/2013, Directive 2013/36/EU, Directive 2014/59/EU, Regulation (EU) 2019/2033 and Directive (EU) 2019/2034, together with information on 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 the host Member State.

Article 12

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 under 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 3(1) and 3(3), Article 4(1), (2) and (3), Article 5(1), Article 6(1) and Article 8.

Article 13

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, 12 January 2023.

For the Commission
The President
Ursula VON DER LEYEN
