

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

## TITLE VII

### AMENDMENTS TO OTHER DIRECTIVES

#### *Article 64*

#### **Amendments to Directive 2014/65/EU**

Directive 2014/65/EU is amended as follows:

- (1) in Article 8, point (c) is replaced by the following:
  - (c) no longer meets the conditions under which authorisation was granted, such as compliance with the conditions set out in Regulation (EU) 2019/2033 of the European Parliament and of the Council<sup>(1)</sup>;
- (2) Article 15 is replaced by the following:

#### *Article 15*

#### **Initial capital endowment**

Member States shall ensure that the competent authorities do not grant authorisation unless the investment firm has sufficient initial capital in accordance with the requirements of Article 9 of Directive (EU) 2019/2034 of the European Parliament and of the Council<sup>(2)</sup>, having regard to the nature of the investment service or activity in question.;

- (3) Article 41 is replaced by the following:

#### *Article 41*

#### **Granting of the authorisation**

- 1 The competent authority of the Member State where the third#country firm has established or intends to establish its branch shall only grant authorisation where the competent authority is satisfied that:
  - a the conditions under Article 39 are fulfilled; and
  - b the branch of the third#country firm will be able to comply with the provisions referred to in paragraphs 2 and 3.

The competent authority shall inform the third#country firm, within six months of submission of a complete application, whether or not the authorisation has been granted.

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2 The branch of the third#country firm authorised in accordance with paragraph 1 shall comply with the obligations laid down in Articles 16 to 20, 23, 24, 25 and 27, Article 28(1), and Articles 30, 31 and 32 of this Directive and in Articles 3 to 26 of Regulation (EU) No 600/2014 and the measures adopted pursuant thereto and shall be subject to the supervision of the competent authority in the Member State where the authorisation was granted.

Member States shall not impose any additional requirements on the organisation and operation of the branch in respect of the matters covered by this Directive and shall not treat any branch of third#country firms more favourably than Union firms.

Member States shall ensure that competent authorities notify ESMA on an annual basis of the list of branches of third#country firms active on their territory.

ESMA shall publish on annual basis a list of third#country branches active in the Union, including the name of the third#country firm to which the branch belongs.

3 The branch of the third#country firm that is authorised in accordance with paragraph 1 shall report to the competent authority referred to in paragraph 2 the following information on an annual basis:

- a the scale and scope of the services and activities carried out by the branch in that Member State;
- b for third#country firms performing the activity listed in point (3) of Section A of Annex I, their monthly minimum, average and maximum exposure to EU counterparties;
- c for third#country firms providing one or both of the services listed in point (6) of Section A of Annex I, the total value of financial instruments originating from EU counterparties underwritten or placed on a firm commitment basis over the previous 12 months;
- d the turnover and the aggregated value of the assets corresponding to the services and activities referred to in point (a);
- e a detailed description of the investor protection arrangements available to the clients of the branch, including the rights of those clients resulting from the investor#compensation scheme referred to in point (f) of Article 39(2);
- f their risk management policy and arrangements applied by the branch for the services and activities referred to in point (a);
- g the governance arrangements, including key function holders for the activities of the branch;
- h any other information considered by the competent authority to be necessary to enable comprehensive monitoring of the activities of the branch.

4 Upon request, the competent authorities shall communicate the following information to ESMA:

- a all the authorisations for branches authorised in accordance with paragraph 1 and any subsequent changes to such authorisations;
- b the scale and scope of the services and activities carried out by an authorised branch in the Member State;
- c the turnover and the total assets corresponding to the services and activities referred to in point (b);
- d the name of the third-country group to which an authorised branch belongs.

5 The competent authorities referred to in paragraph 2 of this Article, the competent authorities of entities that are part of the same group to which branches of third#country firms authorised in accordance with paragraph 1 belong, and ESMA and EBA shall cooperate closely to ensure that all activities of that group in the Union are subject to comprehensive, consistent and effective supervision in accordance with this Directive, Regulation (EU) No 575/2013, Regulation (EU) No 600/2014, Regulation (EU) 2019/2033, Directive 2013/36/EU, and Directive (EU) 2019/2034.

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

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

Power is conferred on the Commission to supplement this Directive by adopting the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.;

(4) Article 42 is replaced by the following:

#### *Article 42*

#### **Provision of services at the exclusive initiative of the client**

1 Member States shall ensure that where a retail client or professional client within the meaning of Section II of Annex II established or situated in the Union initiates at its own exclusive initiative the provision of an investment service or activity by a third#country firm, the requirement for authorisation under Article 39 shall not apply to the provision of that service or activity by the third#country firm to that person, including a relationship specifically relating to the provision of that service or activity.

Without prejudice to intragroup relations, where a third#country firm, including through an entity acting on its behalf or having close links with such third#country firm or any other person acting on behalf of such entity, solicits clients or potential clients in the Union, it shall not be deemed to be a service provided at the own exclusive initiative of the client.

2 An initiative by a client as referred to in paragraph 1 shall not entitle the third#country firm to market new categories of investment products or investment services to that client otherwise than through the branch, where one is required in accordance with national law.;

(5) in Article 49, paragraph 1 is replaced by the following:

1. Member States shall require regulated markets to adopt tick#size regimes in shares, depositary receipts, exchange#traded funds, certificates and other similar financial instruments and in any other financial instrument for which regulatory technical standards are developed in accordance with paragraph 4. The application of tick sizes shall not prevent regulated markets from matching orders large in scale at mid#point within the current bid and offer prices.;

(6) in Article 81(3), point (a) is replaced by the following:

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- (a) to check that the conditions governing the taking#up of the business of investment firms are met and to facilitate the monitoring of the conduct of that business, administrative and accounting procedures and internal#control mechanisms;;
- (7) the following article is inserted:

*Article 95a*

**Transitional provision on the authorisation of credit institution referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013**

Competent authorities shall inform the competent authority referred to in Article 8 of Directive 2013/36/EU where the envisaged total assets of an undertaking which has applied for authorisation pursuant to Title II of this Directive before 25 December 2019 in order to carry out the activities referred to in points (3) and (6) of Section A of Annex I are equal to or exceed EUR 30 billion, and notify the applicant thereof..

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- (1) 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).’;
- (2) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ L 314, 5.12.2019, p. 64).’;