

ESMA consults on the new MiFIR and MiFID II regimes for third-country firms

The new Investment Firms Regulation (EU) No 2019/2033 (IFR) and Directive (EU) 2019/2034 (IFD) introduced changes to MiFIR and MiFID II regimes for the provision of investment services and activities in the EU by third-country firms.

These changes include new reporting requirements from third-country firms to ESMA on an annual basis in accordance with Article 46 of MiFIR, and also grants ESMA the power to ask third-country firms in the ESMA register to provide data relating to all orders and all transactions in the EU, whether on own account or on behalf of a client, for a period of five years.

ESMA is mandated by the IFR and the IFD to develop draft Technical Standards (1 draft RTS and 1 draft ITS under IFR and 1 ITS under IFD) setting out the functioning of this new regime. The draft Technical Standards will be submitted to the European Commission for the adoption of the final legal text.

Proposed Technical Standards

ESMA is mandated to prepare draft technical standards in relation to the revised third-country regime under MiFIR and MiFID II.

In particular, in accordance with Article 46(7) and (8) of MiFIR, ESMA will develop:

1. Draft regulatory technical standards to specify the information that third-country firms must provide to ESMA for the registration in the ESMA register of third-country firms and for the information that third-country firms have to report annually to ESMA;
2. Draft implementing technical standards to specify the format in which the information for the registration of the firm and for the annual report to ESMA should be submitted.

While branches of third-country firms authorised under Article 39 of MiFID II remain under the supervisory responsibility of the competent authorities of the Member State where they have been authorised, the IFD amends MiFID II to provide for further reporting obligations on such branches to the competent authorities of the Member State where they are established. In accordance with Article 41(5) of MiFID II, ESMA shall develop draft

1. Draft implementing technical standards to specify the format in which the new flow of information provided by MiFID II is to be reported to NCAs by branches of third-country firms.

Next Steps

ESMA will consider the responses to this consultation when developing the draft Technical Standards for the European Commission. The closing date for responses from stakeholders is 31 March 2020. Please submit your contributions online via '[Your input – Consultations](#)'.