

Directive (EU) 2019/2177 of the European Parliament and of the Council of 18 December 2019 amending Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), Directive 2014/65/EU on markets in financial instruments and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing (Text with EEA relevance)

DIRECTIVE (EU) 2019/2177 OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

of 18 December 2019

amending Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), Directive 2014/65/EU on markets in financial instruments and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) and 62 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee⁽²⁾,

Acting in accordance with the ordinary legislative procedure⁽³⁾,

Whereas:

- (1) Directive 2014/65/EU of the European Parliament and of the Council⁽⁴⁾ creates a regulatory framework for data reporting services providers (DRSPs) and requires a post-trade data reporting services provider to be authorised as an approved publication arrangement (APA). In addition, a consolidated tape provider (CTP) is required to offer consolidated trading data covering all trades in both equity and non-equity instruments throughout the Union, in accordance with Directive 2014/65/EU. Directive 2014/65/EU also formalises transaction reporting channels to the competent authorities by requiring a third party that reports on behalf of investment firms to be authorised as an approved reporting mechanism (ARM).
- (2) The quality of trading data and of the processing and provision of such data, including cross-border data processing and provision, is of paramount importance for achieving the main objective of Regulation (EU) No 600/2014 of the European Parliament and of the Council⁽⁵⁾, which is to strengthen the transparency of financial

markets. Accurate trading data provide users with an overview of trading activity across Union financial markets and provide competent authorities with accurate and comprehensive information on relevant transactions. Given the cross-border dimension of data handling, the benefits of pooling data-related competences, including potential economies of scale, and the adverse impact of potential divergences in supervisory practices on both the quality of trading data and on the tasks of DRSPs, it is therefore appropriate to transfer the authorisation and supervision of DRSPs, as well as data gathering powers, from the competent authorities to the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁽⁶⁾ (ESMA), other than with respect to ARMs or APAs that benefit from a derogation under Regulation (EU) No 600/2014.

- (3) To achieve the consistent transfer of such powers, it is appropriate to delete provisions pertaining to the operational requirements for DRSPs and the competences of competent authorities with respect to DRSPs set out in Directive 2014/65/EU, and to introduce those provisions in Regulation (EU) No 600/2014.
- (4) The transfer of the authorisation and supervision of DRSPs, other than with respect to APAs or ARMs that benefit from a derogation under Regulation (EU) No 600/2014, to ESMA is congruent with ESMA's tasks. More specifically, the conferral of data gathering powers, authorisation and supervision from competent authorities to ESMA is instrumental to other tasks that ESMA performs under Regulation (EU) No 600/2014, such as market monitoring, temporary intervention powers and position management powers, and ensures consistent compliance with pre-trade and post-trade transparency requirements.
- (5) Directive 2009/138/EC of the European Parliament and of the Council⁽⁷⁾ provides that, in accordance with the risk-oriented approach to the Solvency Capital Requirement, it is possible in specific circumstances for insurance and reinsurance undertakings and groups to use internal models for the calculation of that requirement, instead of using the standard formula.
- (6) Directive 2009/138/EC provides for a country component in the volatility adjustment. In order to ensure that this country component mitigates exaggerations of bond spreads in the relevant country effectively, an appropriate threshold for the risk-corrected country spread should be set for the activation of the country component.
- (7) In view of increased cross-border insurance activities, it is necessary to enhance the convergent application of Union law in cases of cross-border insurance activity, especially at an early stage. For this purpose, information exchange and cooperation between supervisory authorities and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council⁽⁸⁾ (EIOPA), should be strengthened. In particular, notification requirements in the case of significant cross-border insurance activity or a crisis situation, as well as conditions for setting up cooperation platforms, should be provided for where the envisaged cross-border insurance activity is significant. The significance of the cross-border insurance activity

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should be assessed in terms of the annual gross written premium subscribed in the host Member State compared to the total annual gross written premiums of the insurance company, in terms of the impact on the policyholder protection in the host Member State and in terms of the impact of the branch or activity of the respective insurance company on the market of the host Member State in terms of freedom to provide services. Cooperation platforms are an effective tool to achieve stronger and timely cooperation between supervisory authorities and thus to enhance consumer protection. However, authorisation, supervision and enforcement decisions are and remain within the competence of the supervisory authority of the home Member State.

- (8) Where cross-border insurance activities are significant with respect to the market of the host Member State and require close collaboration between the supervisory authorities of the home Member State and the host Member State, especially where an insurer might risk being in financial difficulties to the detriment of policyholders and third parties, EIOPA should set up and coordinate collaboration platforms.
- (9) To take account of the replacement of the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) by EIOPA, the references to CEIOPS in Directive 2009/138/EC should be deleted.
- (10) Following changes to Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁽⁹⁾, the European Supervisory Authority (European Banking Authority), established by that Regulation (EBA), will have a new role in the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and subsequent changes will need to be made to Directive (EU) 2015/849 of the European Parliament and of the Council⁽¹⁰⁾.
- (11) Directives 2009/138/EC, 2014/65/EU and (EU) 2015/849 should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2014/65/EU

Directive 2014/65/EU is amended as follows:

- (1) Article 1 is amended as follows:
 - (a) paragraph 1 is replaced by the following:
 1. This Directive shall apply to investment firms, market operators, and third-country firms providing investment services or performing investment activities through the establishment of a branch in the Union.;
 - (b) in paragraph 2, point (d) is deleted;
- (2) in Article 4, paragraph 1 is amended as follows:
 - (a) points (36) and (37) are replaced by the following:

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- (36) “management body” means the body or bodies of an investment firm, a market operator, or a data reporting services provider as defined in point (36a) of Article 2(1) of Regulation (EU) No 600/2014, which are appointed in accordance with national law, which are empowered to set the entity’s strategy, objectives and overall direction, and which oversee and monitor management decision-making and include persons who effectively direct the business of the entity.

Where this Directive refers to the management body and, pursuant to national law, the managerial and supervisory functions of the management body are assigned to different bodies or different members within one body, the Member State shall identify the bodies or members of the management body responsible in accordance with its national law, unless otherwise specified by this Directive;

- (37) “senior management” means natural persons who exercise executive functions within an investment firm, a market operator, or a data reporting services provider as defined in point (36a) of Article 2(1) of Regulation (EU) No 600/2014, and who are responsible and accountable to the management body for the day-to-day management of the entity, including for the implementation of the policies concerning the distribution of services and products to clients by the firm and its personnel;;

- (b) points (52), (53), (54), (55)(c) and (63) are deleted;

- (3) in Article 22, the following paragraph is added:

Member States shall ensure that competent authorities, where they are in charge of authorising and supervising the activities of an approved publication arrangement (APA), as defined in point (34) of Article 2(1) of Regulation (EU) No 600/2014 with a derogation in accordance with Article 2(3) of that Regulation, or an approved reporting mechanism (ARM), as defined in point (36) of Article 2(1) of that Regulation with a derogation in accordance with Article 2(3) of that Regulation, monitor the activities of that APA or ARM so as to assess compliance with the operating conditions provided for in that Regulation. Member States shall ensure that the appropriate measures are in place to enable the competent authorities to obtain the information needed to assess the compliance of APAs and ARMs with those obligations.;

- (4) Title V is deleted;

- (5) Article 70 is amended as follows:

- (a) paragraph 3 is amended as follows:

- (i) in point (a), points (xxxvii) to (xxxx) are deleted;

- (ii) in point (b), the following point is inserted:

(xxa) Article 27f(1), (2) and (3), Article 27g(1) to (5) and Article 27i(1) to (4), where an APA or ARM has a derogation in accordance with Article 2(3);;

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- (b) in paragraph 4, points (a) and (b) are replaced by the following:
 - (a) Article 5 or Article 6(2) or Article 34, 35, 39 or 44 of this Directive;
or
 - (b) the third sentence of Article 7(1) of Regulation (EU) No 600/2014 or Article 11(1) of that Regulation, and, where an APA or ARM has a derogation in accordance with Article 2(3) of that Regulation, Article 27b of that Regulation.;
- (c) in paragraph 6, point (c) is replaced by the following:
 - (c) in the case of an investment firm, a market operator authorised to operate an MTF or OTF, or a regulated market, withdrawal or suspension of the authorisation of the institution in accordance with Articles 8 and 43 of this Directive and, where an APA or ARM has a derogation in accordance with Article 2(3) of Regulation (EU) No 600/2014, withdrawal or suspension of the authorisation in accordance with Article 27e of that Regulation.;
- (6) in Article 71, paragraph 6 is replaced by the following:

6. Where a published criminal or administrative sanction relates to an investment firm, market operator, credit institution in relation to investment services and activities or ancillary services, or a branch of third-country firms authorised in accordance with this Directive, or to an APA or ARM authorised in accordance with Regulation (EU) No 600/2014 which has a derogation in accordance with Article 2(3) of that Regulation, ESMA shall add a reference to the published sanction in the relevant register.;
- (7) in Article 77(1), first subparagraph, the introductory sentence is replaced by the following:

Member States shall provide, at least, that any person authorised within the meaning of Directive 2006/43/EC of the European Parliament and of the Council⁽¹¹⁾, performing in an investment firm, in a regulated market, or in an APA or ARM authorised in accordance with Regulation (EU) No 600/2014 which has a derogation in accordance with Article 2(3) of that Regulation, the task described in Article 34 of Directive 2013/34/EU or Article 73 of Directive 2009/65/EC or any other task prescribed by law, shall have a duty to report promptly to the competent authorities any fact or decision concerning that undertaking of which that person has become aware while carrying out that task and which is liable to.;
- (8) Article 89 is amended as follows:
 - (a) paragraphs 2 and 3 are replaced by the following:

2. The delegations of power referred to in Article 2(3), the second subparagraph of point (2) of Article 4(1), Article 4(2), Article 13(1), Article 16(12), Article 23(4), Article 24(13), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 52(4), Article 54(4), Article 58(6), and Article 79(8) shall be conferred on the Commission for an indeterminate period of time from 2 July 2014.