

# Chapter 1

## Commission Delegated Regulation (EU) 2017/1943

Preamble

THE EUROPEAN COMMISSION,  
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Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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, and in particular Article 7(4) thereof,

01/01/2021

Whereas:

(1) In order to enable competent authorities to carry out a thorough assessment as part of the process for granting and refusing requests for authorisation of investment firms, an applicant should be required to submit to the competent authority precise information at the time of the initial request for authorisation. The competent authority should retain the right to request additional information from the applicant during the assessment process in accordance with the criteria and timelines set out in Directive 2014/65/EU.

(2) In order to ensure that the competent authority's assessment is based on accurate information, it is essential that an applicant provide copies of its corporate documents, including a certified copy of the instrument of incorporation, by-laws and the articles of association and a copy of registration of the company in the national register of companies.

(3) Information on the sources of capital available, including the means used for transferring financial resources when raising capital, should be submitted by an applicant in order to enable competent authorities to assess that all relevant requirements in the field of financial crime have been complied with.

(4) Newly established entities, when submitting an application, may only be in a position to provide information on how capital will be raised and the types and amount of capital that will be raised. However, evidence of paid-up share capital and other types of capital raised, together with information on the sources of capital, should be provided to the competent authorities, in view of obtaining authorisation, before authorisation is granted. Such evidence may include copies of relevant capital instruments and corresponding bank statements.

(5) In order to enable competent authorities to assess the reputation of any person who will direct the business of the investment firm, of the proposed shareholders and members with qualifying holdings it is important to require an applicant to provide information on these persons.

(6) In order to assess the experience of any person who will direct the business of the investment firm, competent authorities should be presented by an applicant with information on the relevant education and professional training, and professional experience of the members of the management body and persons effectively directing the business and their related powers and any proxies.

(7) Financial information concerning the investment firm should be submitted by an applicant to the competent authorities so that these may assess the financial soundness of that investment firm.

(8) Since, at time of the application, newly established firms might not be in the position to provide information on the auditors; those applicants should be exempted from providing this information to the competent authority unless the auditors have already been appointed.

(9) Information relevant to the assessment of the organisational structure of the investment firm should include details on the internal control system, on the measures to detect conflicts of interests, and on client assets safeguarding arrangements, in order to allow the competent authority to assess whether that investment firm will be able to comply with its obligations under Article 16 of Directive 2014/65/EU.

(10) National competent authorities may authorise as investment firm a natural person or a legal person managed by a single natural person. It is therefore appropriate to set out authorisation requirements applicable to the management of investment firms that are natural persons or legal persons managed by a single natural person.

(11) In order to provide legal certainty, clarity and predictability with regards to the authorisation process, it is appropriate that the criteria against which competent authorities appraise the suitability of the shareholders or members with qualifying holdings, when authorising an investment firm, are the same criteria set out by Article 13 of Directive 2014/65/EU for the assessment of a proposed acquisition. In particular, competent authorities should appraise the suitability of the shareholders or members with qualifying holdings and the financial soundness of the firm taking into account criteria relating to the reputation, experience of the persons directing the business of the investment firm and the financial soundness of the firm.

(12) In order to identify obstacles that could prevent effective exercise of the supervisory functions, competent authorities should consider the complexity and transparency of group structure of investment firm, the geographical location of the entities of the group and the activities the group entities perform.

(13) Directive 95/46/EC of the European Parliament and of the Council applies to the processing of personal data by the Member States in the application of this Regulation.

(14) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date.

(15) This Regulation is based on the draft regulatory technical standards submitted by European Securities and Markets Authority (ESMA) to the Commission.

(16) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council, ESMA has conducted open public consultations, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation,

HAS ADOPTED THIS REGULATION: