

Public Statement

Deprioritisation of supervisory actions on the obligation to publish RTS 28 reports in light of the agreement on the MiFID II/MiFIR review

The European Securities and Markets Authority (ESMA) is issuing this Public Statement in addition to its Public Statement released on 14 December 2022¹ (Ref: ESMA35-43-3444) on the “Deprioritisation of supervisory actions on the obligation to publish RTS 27 reports after 28 February 2023”. Through this new Public Statement, ESMA aims at promoting coordinated action by National Competent Authorities (NCAs) in relation to the obligation by investment firm to publish some reports on best execution in accordance with Article 27(6) MiFID II². In particular, Article 27(6) MiFID II requires investment firms to make public the top five execution venues where they executed client orders in the preceding year and information on the quality of execution obtained. This Public Statement is adopted in the context of the agreement on the MiFID II/MiFIR review between the Council of the European Union and the European Parliament, which results in the deletion of Article 27(6) MiFID II. This Public Statement is issued in accordance with Article 31 of the ESMA Regulation³.

On 29 June 2023, the Council of the European Union and the European Parliament reached a political agreement concerning the MiFID II/MiFIR review.⁴ In its plenary meeting on 16 January 2024, the European Parliament adopted the agreed MiFID II/MiFIR review Level 1 texts.⁵ The adopted text of the MiFID II review includes the deletion of the reporting obligation for investment firms set out in Article 27(6) of MiFID II to publish annually information on the identity of execution venues and on the quality of execution. The so-called RTS 28⁶ further specifies the content and format of this information (RTS 28 reports⁷). Originally RTS 28 reports intended to provide investors with information on the execution quality which investment firms have actually achieved. However, according to Recital 8 of the MiFID II review amending Directive, evidence and feedback from stakeholders have shown that those reports are hardly

¹ See: https://www.esma.europa.eu/sites/default/files/library/esma35-43-3444_public_statement_rts_27_reporting.pdf; Ref: ESMA35-43-3444

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).

³ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

⁴ See: <https://www.consilium.europa.eu/en/press/press-releases/2023/06/29/capital-markets-union-council-and-parliament-agree-on-proposal-to-strengthen-market-data-transparency/>

⁵ See: https://www.europarl.europa.eu/doceo/document/TA-9-2024-0003_EN.html

⁶ Commission Delegated Regulation (EU) 2017/576 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution (OJ L 87, 31.3.2017, p. 166).

⁷ For the avoidance of doubt, reference to “RTS 28 reports” includes reports to be published by investment firms that select other firms to provide order execution services in accordance with Article 65(6) of the Commission Delegated Regulation (EU) 2017/565.

read and do not enable investors or other users of those reports to make meaningful comparisons based on the information provided in them.

After the date of entry into force of the new Directive amending MiFID II, Member States will have 18 months to transpose it into national law. Consequently, despite the deletion of the RTS 28 reporting obligation on the basis of the rationale explained by Recital 8 of the amending Directive, investment firms may still need to make public these reports in 2024 and until the date of transposition of the directive in the respective Member State.

In light of the above, from today until the forthcoming transposition in national law in all Member States, ESMA expects NCAs not to prioritise supervisory actions towards investment firms relating to the periodic reporting obligation to publish the RTS 28 reports.

However, ESMA stresses the importance of the best execution requirements under both the current and the reviewed MiFID II framework. So, apart from the content of this statement, investment firms are required to strictly adhere to best execution requirements and NCAs are expected to supervise their compliance. The importance of the best execution requirements is also witnessed by the inclusion of a mandate for ESMA to develop a new draft RTS on investment firms' order execution policies in the MiFID II review amending Directive.