Commission Implementing Regulation (EU) 2020/1406 of 2 October 2020 laying down implementing technical standards with regard to procedures and forms for exchange of information and cooperation between competent authorities, ESMA, the Commission and other entities under Articles 24(2) and 25 of Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2020/1406

of 2 October 2020

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC[(1)], and in particular the third subparagraph of Article 24(3) and the third subparagraph of Article 25(9) thereof,

Whereas:

(1) Article 24(2) of Regulation (EU) No 596/2014 requires competent authorities to provide the European Securities and Markets Authority (ESMA) with all necessary information to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(2)]. Article 25 of Regulation (EU) No 596/2014 requires competent authorities to cooperate and exchange information with each other and with ESMA, with the Commission (in relation to commodities which are agricultural products listed in Annex I to the Treaty), with the Agency for the Cooperation of Energy Regulators (ACER) and national regulatory authorities (in relation to wholesale energy products), and with relevant national and third-country regulatory authorities responsible for related spot markets, including, in relation to emission allowances, the auction monitor and competent authorities, registry administrators, including the Central Administrator, and other public bodies charged with supervision of the greenhouse gas allowance trading scheme.

(2) Commission Implementing Regulation (EU) 2018/292[(3)] has already established procedures and forms for exchange of information and assistance between competent authorities, pursuant to Article 25 of Regulation (EU) No 596/2014. It is expected that separate rules with regard to cooperation with third-country regulatory authorities

responsible for related spot markets will be established. This Regulation should therefore cover for cooperation and for exchange of information with ESMA under Article 24(2) of that Regulation, and cooperation with other entities under Article 25 of that Regulation.

(3) Information should normally be exchanged in writing. However, oral communications should be possible in appropriate cases, including in particular before a written request for cooperation or exchange of information is sent, to provide information about that upcoming request for cooperation or to discuss any issues that might make it difficult to carry out that request. In urgent cases, it should also be possible for a request for cooperation to be communicated orally, provided such urgency is not simply due to a delay on the part of the requesting party.

(4) A request should contain sufficient information about the subject matter of the cooperation, including the reasons for the request and its context, to enable the requested authority to process the request easily and efficiently. Indicating the facts giving rise to suspicion should not be considered as a precondition for a requesting authority to receive assistance where that requested information is necessary for that authority to fulfil its duties.

(5) Where ESMA and ACER jointly specify a secure communication interface to be used by competent authorities and ESMA for exchanging information with ACER and national regulatory authorities, the use of that particular interface should be required for the relevant specified purposes.

(6) The procedures and forms for the exchange of information and the provision of cooperation should ensure that any information exchanged or transmitted is kept confidential, and that rules with regard to the processing of personal data and the free movement of personal data are complied with.

(7) This Regulation is based on the draft implementing technical standards submitted to the Commission by ESMA.

(8) ESMA did not conduct open public consultations on the draft implementing technical standards on which this Regulation is based, nor did it analyse the potential related costs and benefits of introducing the procedures and forms to be used by the authorities and entities to which this Regulation applies as this would have been disproportionate in relation to the scope and impact of those draft implementing technical standards, taking into account that this Regulation would only affect those authorities and entities and would not affect market participants.

(9) ESMA has requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION:

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2020/1406. (See end of Document for details)*

Article 1

Scope

This Regulation shall apply to cooperation and exchanges of information between the following bodies (referred to in this Regulation as 'specified bodies') under the following provisions:

(a) between competent authorities and ESMA under Article 24(2) or Article 25(1), (5) or (7) of Regulation (EU) No 596/2014;

(b) between competent authorities and the Commission under the second subparagraph of Article 25(1) of that Regulation, in relation to commodities which are agricultural products;

(c) between competent authorities and the Agency for the Cooperation of Energy Regulators (ACER) or national regulatory authorities under Article 25(3) or (5) of that Regulation, in relation to wholesale energy products;

(d) between ESMA and ACER or national regulatory authorities under Article 25(3) and (5) of that Regulation, in relation to wholesale energy products;

(e) between competent authorities and relevant national regulatory authorities responsible for related spot markets under the first subparagraph of Article 25(8) of that Regulation;

(f) between competent authorities and the entities referred to in points (a) and (b) of the second subparagraph of Article 25(8) of that Regulation, in relation to emission allowances.

Article 2

Definition

For the purposes of this Regulation, 'electronic means' are means of electronic equipment for the processing (including digital compression), storage and transmission of data, employing wires, radio, optical technologies, or any other electromagnetic means.

Article 3

Contact points

1 By 26 November 2020 ESMA shall ask each of the other specified bodies to provide ESMA with details of one or more contact points designated by that body for the purposes of cooperation and exchange of information referred to in Articles 24 and 25 of Regulation (EU) No 596/2014, and to keep ESMA informed of any subsequent changes to those details.

2 ESMA shall ask each of the other specified bodies to confirm or update the details provided by them under paragraph 1 at least once a year.

3 ESMA shall maintain an up-to-date list of the details provided or updated under paragraphs 1 and 2, together with details of ESMA's own contact points designated for the

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purposes of this Regulation, and shall circulate the up-to-date list to each of the other specified bodies.

4 The most recent list circulated under paragraph 3 shall be used by the specified bodies for the purposes of cooperation and exchanges of information falling within the scope of this Regulation.

Article 4

Means of communication

1 Except where otherwise stated in this Regulation, any communications to be made for the purposes of cooperation or exchanges of information falling within the scope of this Regulation shall be made either by post, fax or electronic means.

2 When determining the most appropriate means of communication in any particular case, due account shall be taken of confidentiality considerations, the time necessary for correspondence, the volume of material to be communicated and the ease of access to the information.

3 Without limiting the generality of paragraph 2, where electronic means are used, the electronic means shall be one that ensures the completeness, integrity and confidentiality of the information during its transmission.

4 If ESMA and ACER jointly specify the use of a particular electronic system for communications with ACER and the national regulatory authorities falling within the scope of this Regulation, that system shall be used for the purposes so specified.

Article 5

Requests for information or cooperation

1 When requesting cooperation or exchange of information falling within the scope of this Regulation, the requesting body shall use the form set out in Annex I and shall:

a specify details of the information or cooperation that it is seeking; and

b identify, where appropriate, any issues relating to the confidentiality of any information that may be obtained.

2 The requesting body may attach to the request any document or supporting material deemed necessary to support that request.

3 In urgent cases, the requesting body may make the request orally. Unless the specified body to whom the oral request is made ('the requested body') agrees otherwise, that oral request shall subsequently be confirmed in writing without undue delay.

Article 6

Acknowledgement of receipt

Within the period specified in the written request or in the written confirmation confirming an oral request made in accordance with Article 5 or, where no period is specified, within 10 working days after receipt of that written request or written confirmation, the requested body shall acknowledge receipt to the requesting body. The

acknowledgement of receipt shall be made using the form set out in Annex II and shall include, where possible, an indication of the estimated date of reply for responding to the request.

Article 7

Reply to a request

1 If the requested body requires clarification of a request made in accordance with Article 5, it shall seek that clarification from the requesting body, without undue delay, using any means appropriate, either orally or in writing. The requesting body shall provide the clarification without undue delay.

2 In executing a request made in accordance with Article 5, the requested body shall:

a use the form set out in Annex III;

b take all reasonable steps within its powers to provide the requested cooperation or information; and

c act without delay and in a manner which ensures that any necessary regulatory action can proceed expediently taking into account the complexity of the request concerned and whether it is necessary to involve third parties.

3 If the requested body is a competent authority who refuses to act on the request, in full or in part, in one of the exceptional circumstances listed in Article 25(2) of Regulation (EU) No 596/2014, it shall inform the requesting body without delay using any means appropriate, either orally or in writing. It shall subsequently confirm its decision in writing, indicating which of those exceptional circumstances it has relied upon for its refusal.

Article 8

Procedures for processing pending requests

1 Where the requested body becomes aware of circumstances that may lead to its estimated date of reply having to be deferred by more than 10 working days, it shall notify the requesting body without undue delay.

2 Where appropriate, the requested body shall provide the requesting body with regular updates on the progress of a pending request, including revised estimates of the targeted date of reply.

3 Where the request has been marked as urgent, the requested body shall consult with the requesting body on the frequency of updates that are required.

4 The Specified bodies shall cooperate with each another in order to solve any difficulties that may arise in executing a request.

Article 9

Unsolicited cooperation or exchange of information

1 For the purposes of any cooperation or exchange of information falling within the scope of this Regulation that is not the subject of a specific request, including any subsequent communications relating to it, the form set out in Annex IV shall be used.