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Commission Implementing Regulation (EU) 2017/1944 of 13 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm in accordance with Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1944

of 13 June 2017

laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm in accordance with Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC[(1)], and in particular the sixth subparagraph of Article 10a(8) thereof,

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[(2)], and in particular Article 12(9) thereof,

Whereas:

(1) It is appropriate to set out common standard forms, templates and procedures to ensure the accurate assessment by Member States' competent authorities of notifications of proposed acquisitions or increases of qualifying holdings in an investment firm. In those cases, the relevant competent authorities should consult and provide each other with any essential or relevant information.

(2) To facilitate the cooperation between them and ensure efficiency in their exchange of information, competent authorities designated in accordance with Article 48 of Directive 2004/39/EC should designate contact persons specifically for the purpose of the consultation process provided for in Article 10(4) of Directive 2004/39/EC and a centralised list of those contact persons should be maintained by the European Securities and Markets Authority (ESMA).

(3) Consultation procedures containing clear timing constraints should be set up in order to ensure the timely and efficient cooperation between competent authorities. A clear

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cooperation procedure should include a preliminary notice to be sent by the requesting authority to the requested authority, to inform the requested authority of the ongoing assessment.

(4) The procedures should also aim at ensuring that competent authorities cooperate and work towards the improvement of the process by promoting the exchange of feedback on the quality and relevance of the information received.

(5) Any exchange or transmission of information between competent authorities, other authorities, bodies or persons should be in accordance with the rules on personal data as laid down in Directive 95/46/EC of the European Parliament and of the Council[(3)].

(6) Regulation (EC) No 45/2001 of the European Parliament and of the Council[(4)] applies to the processing of personal data by ESMA in the application of this Regulation.

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

(8) ESMA did not publicly consult or analyse the potential related costs and benefits of introducing the standard forms, templates and procedures for the consultation process between relevant competent authorities, as this was considered disproportionate in relation to their scope and impact.

(9) Directive 2014/65/EU entered into force on 2 July 2014. Article 12(9) of Directive 2014/65/EU replaces Article 10a(8) of Directive 2004/39/EC and contains empowerments to ESMA for the development of implementing technical standards which are identical to those provided for under Article 10a(8) of Directive 2004/39/EC. Furthermore, the content of Articles 10b(4) and Article 10(4) of Directive 2004/39/EC is also identical to the content of Article 13(4) and Article 11(2) of Directive 2014/65/EU. In accordance with Article 94(1) of Directive 2014/65/EU, Directive 2004/39/EC will be repealed with effect from 3 January 2017. The adoption of the technical standards by the Commission in accordance with Article 10a(8) of Directive 2004/39/EC should also be considered in compliance with Article 12(8) of Directive 2014/65/EU with the consequence that the technical standard will continue to apply after 3 January 2018 without the need for further amendment,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down the standard forms, templates and procedures for the exchange of information during the consultation process between the competent authority of the target entity (the 'requesting authority'), and the competent authority of the proposed acquirer or of an authorised entity which is either a subsidiary of or controlled by the proposed acquirer (the 'requested authority').

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Article 2

Designated contact persons

1 Competent authorities designated in accordance with Article 48 of Directive 2004/39/EC shall designate contact persons for communication for the purposes of this Regulation and shall notify ESMA of those persons.

2 ESMA shall maintain and update the list of the designated contact persons for the use of the competent authorities as referred to in paragraph 1.

Article 3

Preliminary notice

1 A requesting authority shall send a preliminary notice to the requested authority within three working days of the receipt of a notification by the proposed acquirer in accordance with Article 10(3) of Directive 2004/39/EC.

2 The requesting authority shall send the preliminary notice by completing the template set out in Annex I and shall include all the information set out therein.

Article 4

Consultation notice

1 The requesting authority shall send a consultation notice to the requested authority as soon as possible after receipt of a notification by the proposed acquirer in accordance with Article 10(3) of Directive 2004/39/EC and not later than 20 working days after receipt of such notification.

2 The requesting authority shall send the consultation notice referred to in paragraph 1 in writing by post, facsimile or secure electronic means, and address it to the designated contact person of the requested authority unless otherwise specified by the requested authority in its reply to the preliminary notice referred to in Article 3.

3 The requesting authority shall send the consultation notice referred to in paragraph 1 by completing the template set out in Annex II, identifying in particular issues relating to the confidentiality of information that may be obtained by the requesting authority, and specifying details of the relevant information that the requesting authority asks from the requested authority.

Article 5

Acknowledgement of receipt of a consultation notice

The requested authority shall send an acknowledgement of receipt of a consultation notice, within two working days of receiving it, including any additional contact details of its designated contact person and, where possible, an estimated date of response.

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Article 6

Response from a requested authority

1 A response to a consultation notice shall be made in writing by post, facsimile or secure electronic means. It shall be addressed to the designated contact persons unless otherwise specified by the requesting authority.

2 The requested authority shall provide the requesting authority with the following information as soon as possible and not later than 20 working days of receipt of the consultation notice:

a the relevant information requested in the consultation notice, including any views or reservations in relation to the acquisition by the proposed acquirer;

b any other essential information that may influence the assessment, on its own initiative.

3 Where the requested authority is not able to meet the time limit set out in paragraph 2, it shall inform the requesting authority of this circumstance, indicating the reasons for the delay and an estimated date of response. The requested authority shall provide regular feedback on the progress made to provide the information requested.

4 In providing information in accordance with paragraph 2, the requested authority shall use the template set out in Annex III.

Article 7

Procedures for consultation

1 The requesting authority and the requested authority shall communicate in relation to a consultation notice and the response using the most expedient means from among those set out in Article 4(2) and Article 6(1), taking due account of confidentiality considerations, correspondence times, the volume of material to be communicated and the ease of access to the information by the requesting authority. The requesting authority shall respond promptly to any clarifications requested by the requested authority.

2 Where the information requested is or may be held by an authority of the same Member State other than the requested authority, the requested authority shall collect the information promptly and transmit it to the requesting authority in accordance with Article 6.

3 The requested authority and the requesting authority shall cooperate to resolve any difficulties that may arise in executing a request, including resolving any cost issues if the costs of providing assistance are estimated to be excessive for the requested authority.

4 Where new information or a need for further information arises during the assessment period, the requesting authority and the requested authority shall cooperate to ensure that all additional relevant information is exchanged in accordance with this Regulation.

5 By way of derogation from Article 4(2) and Article 6(1), where information is being exchanged within the last 15 working days before the end of the assessment period referred to in the second subparagraph of Article 10a(1) of Directive 2004/39/EC, it may be provided verbally. In those cases, that information shall subsequently be confirmed in accordance with Article 4(2) and Article 6(1) unless the competent authorities involved agree otherwise.

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6 The requested authority and the requesting authority shall provide feedback to each other on the outcome of the assessment in relation to which the consultation occurred and, where appropriate, on the usefulness of information or other assistance received or any problems encountered in providing such assistance or information.

Article 8

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13 June 2017.

For the Commission

The President

Jean-Claude JUNCKER