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Commission Implementing Regulation (EU) 2017/988 of 6 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for cooperation arrangements in respect of a trading venue whose operations are of substantial importance in a host Member State (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2017/988

of 6 June 2017

laying down implementing technical standards with regard to standard forms, templates and procedures for cooperation arrangements in respect of a trading venue whose operations are of substantial importance in a host Member State

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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[(1)], and in particular Article 79(9) thereof,

Whereas:

(1) In order to allow the competent authorities of home and host Member States to efficiently carry out their duties under Directive 2014/65/EU in relation to the operations of a trading venue that have become of substantial importance in the host Member State, it is important to facilitate the cooperation between those authorities through the provision of standard forms, templates and procedures for establishing proportionate cooperation arrangements.

(2) Competent authorities should use standard forms, templates and procedures as a basis for their cooperation arrangements, but should be able to adapt them in the form of bilateral or multilateral agreements to the individual circumstances of each case in order to set out appropriate supervisory cooperation.

(3) The competent authorities of home and host Member States should follow standardised procedures for sending and processing requests for cooperation, for continuous information sharing, for consultation and for providing assistance, without prejudice to any further type of cooperation that those competent authorities may agree upon, including the coordination of decision-making.

(4) Most cooperation arrangements should take place according to modalities governed by Commission Delegated Regulation (EU) 2017/589[(2)]. Standard forms, templates and procedures that permit adapting those arrangements should be laid down to achieve a higher degree of involvement of the competent authority of the host Member State

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where there is a higher impact on the securities markets and the investor protection in its jurisdiction.

(5) The cooperation arrangements should build on best practices, including the principles set out in the guidelines on cooperation arrangements and information exchange between competent authorities and between competent authorities and the European Securities and Markets Authority (ESMA)[(3)] and the related multilateral memorandum of understanding on Cooperation Arrangements and Exchange of Information[(4)] to ensure that all areas relevant to efficient cooperation between competent authorities are encompassed and to draw from the expertise established by competent authorities and ESMA in ascertaining seamless cross-border cooperation.

(6) As the degree of supervisory cooperation is dependent on the nature and scale of changes and developments in the operations or structure of the relevant trading venues, it is appropriate to provide for a minimum number of events for which the use of standardised forms, templates and procedures between home and host competent authorities should be the starting point to engage in proportionate cooperation arrangements.

(7) Competent authorities should, when requesting assistance in the form of the taking of a statement, the opening of an investigation or carrying out of an on-site inspection, provide a clear explanation on why such assistance is needed to discharge a competent authority's duty.

(8) In order to allow for the involvement of all relevant competent authorities, additional competent authorities should have the possibility to request becoming a party to an existing cooperation agreement in case the trading venue in respect of which that cooperation agreement has been concluded, due to subsequent commercial developments, becomes of substantial importance in additional host Member States.

(9) Where, in exceptional circumstances, urgent action is required in order to fulfil obligations under Directive 2014/65/EU or Regulation (EU) No 600/2014 of the European Parliament and of the Council[(5)], or to ensure the stability of markets in its Member State, standard agreements for cooperation arrangements should allow for a competent authority to reasonably delay fulfilling its obligations under such agreements.

(10) 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.

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

(12) ESMA has requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(6)] on the draft implementing technical standards on which this Regulation is based,

HAS ADOPTED THIS REGULATION:

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Article 1

Format and use of standard forms, templates and procedures for cooperation arrangements

1 The home and host competent authorities of a trading venue whose operations have become of substantial importance within the meaning of Article 79(2) of Directive 2014/65/EU shall establish proportionate cooperation arrangements by a cooperation agreement as set out in Annex I.

2 The home and host competent authorities may adapt or complement the standard cooperation agreement set out in Annex I to ensure that its provisions are proportionate to the particular circumstances giving rise to the need for cooperation.

3 The home and host competent authorities shall send requests for cooperation by using the format provided for in Annex II and shall respond to those requests in the format provided for in Annex III.

Article 2

Entry into force and application

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

It shall apply from 3 January 2018.

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

Done at Brussels, 6 June 2017.

For the Commission

The President

Jean-Claude JUNCKER

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Standard agreement for cooperation arrangements in case the operations of a trading venue become of substantial importance in a host Member State

For the purpose of establishing proportionate cooperation arrangements between **[host competent authority]** (the host authority) and **[home competent authority]** (the home authority) in relation to the operations of **[trading venue]** (the trading venue) which are of substantial importance for the functioning of securities markets and the protection of investors in **[host Member State]** (the host Member State), the home and host authorities (the Authorities) have reached the following agreement:

Article 1

Purpose and general provisions

The purpose of this agreement is to provide a framework for cooperation between **[home competent authority]** and **[host competent authority]** regarding the use of their respective powers in relation to the operations of **[trading venue]** which have become of substantial importance in **[host Member State]**. This agreement may complement other cooperation arrangements between the Authorities.

Article 2

Scope of cooperation

1 The Authorities have agreed to the following forms of cooperation:

2 The Authorities have agreed to cooperate in respect of decisions relating to any of the following events where those events are relevant for the trading venue: [select the options below as relevant to the scope of the cooperation]

Article 3

Procedures for sending and processing requests for cooperation

1 A request for cooperation and a reply to a request for cooperation shall be made in writing in a durable medium. Both shall be addressed to the contact persons designated pursuant to paragraph 3.

2 The communication between the competent authority submitting a request for cooperation (the Requesting Authority) and the competent authority to which a request for cooperation has been sent (the Requested Authority) shall be made by the most expedient means, 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.

3 For the purpose of this agreement, each Authority shall designate one or several contact persons for communication purposes.

4 The Requesting Authority shall send its request for cooperation in the format provided for in Annex II to Commission Implementing Regulation (EU) 2017/988[7] and include the information contained in that Annex, identifying in particular the relevance of the cooperation

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sought for the functioning of markets or the protection of investors in the host Member State and any issues relating to the confidentiality of information that may be obtained. The Requested Authority shall promptly provide any clarification requested pursuant to paragraph 5(b).

5 The Requested Authority shall do all of the following upon receipt of a request for cooperation:

6 As soon as a delay of more than 7 calendar days beyond the estimated date of response as communicated pursuant to paragraph 5(a) becomes apparent, the Requested Authority shall notify the Requesting Authority accordingly. Where the request has been designated by the Requesting Authority as urgent, the Authorities shall agree on the frequency of updates concerning that request.

7 The Authorities shall consult each other expeditiously in order to resolve any difficulties that may arise in executing a request, including costs issues.

8 To ensure constant improvement of cooperation, the Authorities shall, where appropriate, provide feedback to each other on the usefulness of cooperation received, the outcome of the case in relation to which the cooperation was sought and any problems encountered in providing such cooperation.

Article 4

Responding to a request for cooperation

1 The Requested Authority shall take all appropriate steps to provide the cooperation requested without delay. The Requested Authority shall ensure that any necessary action proceeds expediently, while taking into account the complexity of the request and the necessity, where appropriate, to involve third parties or another Authority.

2 The Requested Authority may decline to act on a request for cooperation where it considers that such action would involve taking a measure contrary to law. In case the Requested Authority refuses to act, it shall notify the Requesting Authority using the template provided in Annex III to Implementing Regulation (EU) 2017/988, including a full description of the circumstances justifying its decision.

Article 5

Procedures for ongoing cooperation arrangements

1 The Authorities shall establish procedures for regular and ad hoc meetings attended by the designated contact persons for the purpose of administering the cooperation arrangements in an effective way.

2 The Requested Authority shall notify the Requesting Authority as soon as possible about the existence of any exceptional circumstances that may prevent it from fulfilling its obligations under this agreement and about actions, if any, taken in that respect.