Changes to legislation: *There are outstanding changes not yet made to Commission Implementing Regulation (EU) 2017/981. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)EUR 2017 No. 981 may be subject to amendment by EU Exit Instruments made by the Financial Conduct Authority under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 1. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes*

Commission Implementing Regulation (EU) 2017/981 of 7 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation in accordance with Directive 2014/65/EU of the European Parliament and of the Council (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2017/981

of 7 June 2017

laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation in accordance with Directive 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 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 84(4) thereof,

Whereas:

(1) Article 84 of Directive 2014/65/EU provides for consultation of competent authorities prior to granting an authorisation in accordance with Article 7 of that Directive. Directive 2014/65/EU also provides for establishment of standard forms, templates and procedures for such consultation.

(2) To facilitate communication between competent authorities, they should designate a contact point specifically for the purpose of communication prior to granting an authorisation.

(3) In order to ensure that competent authorities are able to consult each other prior to granting an authorisation in an efficient and timely manner it is necessary to lay down the procedures for requests for consultation, acknowledgements of receipt and replies to requests for consultation.

(4) The standard forms, templates and procedures should allow for the information exchanged or transmitted to be kept confidential in accordance with Directive 2014/65/EU, and for the rules laid down in Union legislation on the processing of personal data and the transfer of such data to be complied with.

(5) 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.

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

(7) ESMA did not conduct open public consultations on the draft implementing technical standards on which this Regulation is based, nor did it analyse potential related costs and benefits of introducing the standard forms and procedures for the relevant competent authorities, as this would have been disproportionate in relation to their scope and impact, taking into account that the addressees of the implementing technical standards would only be the national competent authorities of the Member States and not market participants.

(8) ESMA has requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(2)],

HAS ADOPTED THIS REGULATION:

Article 1

Contact points

1 The competent authorities shall designate contact points for the communication under this Regulation and publish the information on their contact points on their websites.

2 The competent authorities shall send the information on their contact points to European Securities and Markets Authority (ESMA). ESMA shall keep up to date a list of the contact points for the use of the competent authorities and shall publish it on its website.

Article 2

Request for consultation

1 The requesting competent authority shall submit the request for consultation in paper form, or by electronic means, to the contact point of the competent authority to be consulted.

2 The requesting competent authority shall submit its request for consultation by filling in the form set out in Annex I. The requesting competent authority may attach to the request for consultation any document or supporting material deemed necessary to support the request.

Article 3

Acknowledgement of receipt

The competent authority receiving the request shall send an acknowledgement of receipt by filling in the form set out in Annex II, within five working days of receipt of the request for consultation, addressed to the contact point of the requesting competent authority.

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Article 4

Reply to a request for consultation

1 The competent authority receiving the request shall reply to a request for consultation in paper form, or by electronic means. It shall be addressed to the contact point of requesting competent authority unless otherwise specified by that authority.

2 The competent authority receiving the request shall inform the requesting competent authority of any clarification it requires in relation to the information requested.

3 The competent authority receiving the request shall provide the requesting competent authority as soon as possible by filling in the form set out in Annex III, and within 60 working days of receipt of the request for consultation at the latest with the following information:

a the information requested in the request for consultation and any views or reservations in relation to the granting of the authorisation;

b any other essential information that could influence the granting of the authorisation.

4 Where the competent authority receiving the request considers it likely not to be able to meet the time-limit set out in paragraph 3, it shall promptly inform the requesting competent authority thereof, indicating the reasons for the delay and an estimated date of response. It shall also provide information regularly on the progress of preparation of its reply.

5 Where the competent authority receiving the request is not able to meet the time-limit set out in paragraph 3 of this Article, it shall provide the information in a manner which ensures that any necessary action may proceed expeditiously, whilst complying with the time-limit set out in Article 7(3) of Directive 2014/65/EU.

Article 5

Procedures for consultation

1 The competent authorities shall communicate in relation to the request for consultation and the response using the most expeditious means from among those set out in Articles 2(1) and 4(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 competent authority. In particular, the requesting competent authority shall respond promptly to any clarifications requested by the competent authority receiving the request.

2 If the information requested is or may be held by a competent authority of a Member State other than the competent authority of the same Member State receiving the request, the competent authority receiving the request shall collect the information promptly from the other competent authority and transmit it to the requesting competent authority in accordance with Article 4.

3 The competent authorities shall cooperate to resolve any difficulties that may arise in executing a request.

4 Where new information or a need for further information arises during the procedure for granting or refusing the authorisation, the competent authorities shall cooperate to ensure that all relevant information is exchanged. The forms set out in Annexes I and II shall be used for this purpose.

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5 By way of derogation from Articles 2(1) and 4(1), where the requesting competent authority makes request for consultation during the period of the last 30 working days before the end of the assessment of the application for authorisation, it may make that request verbally, provided that subsequent confirmation of the request for consultation is made in writing, unless the competent authority receiving the request agrees otherwise.

Article 6

Use of information

1 If the information provided by the competent authority receiving the request is reproduced in the response of the requesting competent authority to the application for authorisation, the requesting competent authority shall inform the competent authority receiving the request prior to informing the applicant.

2 In the event of a demand to disclose information that a competent authority has received from another competent authority, the competent authority receiving the demand shall notify the other competent authority prior to disclosing the information and shall assert such appropriate legal exemptions or privileges with respect to that information as may be available.

Article 7

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, 7 June 2017.

For the Commission

The President

Jean-Claude JUNCKER

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ANNEX I

Form for a request for consultation

Request for consultation under Article 84 of Directive 2014/65/EU

Reference number: .....

Date: .....

General information

FROM:

Member State:

Requesting competent authority:

Address:

(Contact details of the contact point)

Name:

Telephone:

Email:

TO:

Member State:

Requested competent authority:

Address:

(Contact details of the contact point)

Name:

Telephone:

Email:

Dear [*insert appropriate name*]

In accordance with Article 84 of Directive 2014/65/EU, a request for consultation is made in relation to the matters set out in further detail below.

Please note that in accordance with Article 7(3) of Directive 2014/65/EU the time-limit for the reply to the application for authorisation is [*insert date*]. Please provide the requested information and any other essential information within 60 working days from the receipt of this request or, if that is not possible, an indication as to when you will be able to provide the requested information, taking into account the time-limit for the reply to the application for authorisation.

Information on the authorisation procedure

Subject matter

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.....

[*please provide the information here or make reference to the annexes containing the information*]