Changes to legislation: *There are outstanding changes not yet made to Commission Implementing Regulation (EU) 2017/980. 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. 980 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) 2017/980 of 7 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for cooperation in supervisory activities, for on-site verifications, and investigations and exchange of information between competent authorities in accordance with Directive 2014/65/EU of the European Parliament and of the Council (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2017/980

of 7 June 2017

laying down implementing technical standards with regard to standard forms, templates and procedures for cooperation in supervisory activities, for on-site verifications, and investigations and exchange of information between competent authorities 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 Articles 80(4) and 81(4) thereof,

Whereas:

(1) Directive 2014/65/EU sets out obligations for the cooperation and exchange of information between competent authorities. As part of that procedure, a competent authority may request the cooperation of the competent authority of another Member State for an on-the-spot verification or in an investigation.

(2) In order to ensure that competent authorities are able to cooperate and exchange information in an efficient and timely manner for the purposes of Directive 2014/65/EU and provide each other full mutual assistance, it is appropriate to lay down procedures as well as templates and forms to be used by competent authorities for such cooperation and exchanges of information, including for the submission of requests for cooperation or exchange of information, acknowledgements of receipt and replies to such requests.

(3) To ensure that requested authorities process requests for cooperation or information efficiently and expeditiously, each request should clearly set out the reason for the request for cooperation or exchange of information. Beyond the use of templates and forms for requests for cooperation or requests for information and replies to such requests, the procedures for cooperation and exchange of information should allow and facilitate the communication, consultation and interaction between the requesting authority and the requested authority, throughout the process.

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(4) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

(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 provisions laid down in Directive 2014/65/EU apply from the same date.

(6) This Regulation is based on the draft implementing technical standards submitted by the 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 the potential related costs and benefits of introducing the standard forms, templates and procedures to be used by the relevant competent authorities, as this would have been disproportionate in relation to the scope and impact of those standards, taking into account that their addressees 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 Competent authorities shall designate contact points for the communication of requests for cooperation or for exchange of information pursuant to Articles 80 and 81 of Directive 2014/65/EU respectively. They shall publish the details of the contact points on their websites.

2 The competent authorities shall communicate the details of their contact points to ESMA. ESMA shall maintain and update a list of the contact points designated in accordance with paragraph 1, for the use of the competent authorities.

Article 2

Request for cooperation or exchange of information

1 A requesting authority shall make a request for cooperation or exchange of information in paper form or by electronic means, using the form set out in Annex I. It shall address the request to the contact point of the requested authority.

2 In urgent cases, the requesting authority may make the request for cooperation or exchange of information verbally provided that subsequent confirmation of the request is made in writing within a reasonable timeframe, unless the requested authority agrees otherwise.

3 The requesting authority may attach to the request any document or supporting material deemed necessary to support the request.

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Article 3

Acknowledgement of receipt

Within 10 working days of receipt of the request for cooperation or exchange of information by the contact point of the requested authority, that authority shall send an acknowledgement of receipt to the requesting authority, using the form set out in Annex II.

Article 4

Reply to a request for cooperation or exchange of information

1 The requested authority shall respond to a request for cooperation or exchange of information in paper form or by electronic means, using the form set out in Annex III. Unless otherwise specified by the requesting authority, the reply shall be addressed to the contact point of the requesting authority.

2 The requested authority shall execute requests for cooperation or exchange of information in a manner which ensures any necessary regulatory action shall proceed without undue delay, taking into account the complexity of the request and the necessity to involve third parties or another authority.

Article 5

Procedures for sending and processing a request for cooperation or exchange of information

1 The requesting authority and the requested authority shall communicate in relation to the request for cooperation or exchange of information either in paper form or electronically, depending on which of the two is the most expeditious, and 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. In particular, the requesting authority shall respond promptly to any clarifications asked by the requested authority.

2 The requested authority shall notify the requesting authority where it anticipates a delay of more than 5 working days beyond the estimated date of response specified in the acknowledgement of receipt.

3 Where the request has been qualified by the requesting authority as urgent, the requested authority and the requesting authority shall agree on the frequency with which the requested authority will update the requesting authority on its handling of the request and on the date when it expects to provide a response.

4 The requested authority and the requesting authority shall cooperate to resolve any difficulties that may arise in executing a request.

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Article 6

Procedure for requests for taking a statement from a person

1 If the requesting authority includes within its request the taking of a statement of any person, the requested authority and the requesting authority shall, subject to existing legal limitations or constraints and any differences in procedural requirements, assess and take into account:

a the rights of the person or persons from which the statements are to be taken;

b the role of the staff of the requested authority and of the requesting authority in the taking of the statement;

c whether the person from whom the statement is to be taken has the right to be assisted by a legal representative and, if so, the scope of the representative's assistance during the taking of the statement, including in relation to any records or report of the statement;

d whether the statement is to be taken on a voluntary or compelled basis where that distinction exists;

e whether, based on the information that is available at the time of the request, the person from which the statement is to be taken is a witness or subject of investigation;

f whether, based on the information that is available at the time of the request, the statement could be, or is intended to be used in criminal proceedings;

g the admissibility of the statement in the requesting authority's jurisdiction;

h the recording of the statement and the applicable procedures, including whether it will be contemporaneous or summarised written minutes or an audio or audiovisual recording;

i procedures on the certification or confirmation of the statement by the persons providing the statement, including whether that takes place after the statement is taken.

2 The requested authority and the requesting authority shall ensure that arrangements are in place for their staff to proceed efficiently, including arrangements to enable their staff to agree on any additional information that may be necessary, including the following:

a planning of dates;

b the list of questions to be asked of the person from which the statement is to be taken and its review;

c travelling arrangements, including ensuring that the requested authority and the requesting authority are able to meet to discuss the matter prior to the taking of the statement;

d translation arrangements.

Article 7

Procedure for requests for an on-site verification or investigation

1 Where there is a request for carrying out an on-site verification or investigation, the requesting authority and the requested authority shall consult each other on the best way to give useful effect to the request for cooperation taking into account points (a), (b) and (c) of Article 80(1) of Directive 2014/65/EU, including on the merits of conducting a joint on-site verification or joint investigation.

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In deciding on the best way to give useful effect to the request for cooperation, the requesting authority and the requested authority shall take into account at least the following:

a the contents of any request for cooperation received from the requesting authority, including any suggestion on the appropriateness to carry out the investigation or on-site verification jointly;

b whether they are separately conducting their own inquiries into a matter with cross-border implications and whether that matter would be more suitably dealt with by joint collaboration;

c the legal and regulatory framework in each of their jurisdictions, ensuring that both authorities have a good understanding of the potential constraints and legal limitations on their conduct and on any proceedings that may follow, including any issues relating to the principle of *ne bis in idem*;

d the management and direction needed for the investigation or on-site inspection;

e the allocation of resources and appointment of staff in charge of carrying out investigation or on-site inspections;

f the possibility to establish a joint action plan and timings of work by each authority;

g the determination of actions to be taken, jointly or individually, by each authority;

h mutual sharing of information gathered and reporting on the outcomes of the individual actions taken;

i other case specific issues.

2 Where the requested authority carries out the verification or investigation itself, it shall keep the requesting authority informed of the progress of these activities and shall deliver its findings in good time.

3 Where the requesting authority and the requested authority decide to carry out a joint investigation or joint on-site verification, they shall:

a engage in ongoing dialogue to coordinate the information gathering process and the finding of facts;

b work closely and cooperate with each other when conducting the joint investigation or joint on-site inspection;

c identify the specific legal provisions that form the subject matter of the investigation or on-site inspection;

d where relevant, agree upon at least the following:

(i) the drawing up of a joint action plan specifying the substance, nature and timing of the actions to be taken, including the allocation of responsibilities in delivering the outcome of the work and taking into account each authority's respective priorities;

(ii) the identification and assessment of any legal limitations or constraints and any differences in procedures with respect to investigative or enforcement action or any other proceedings, including the rights of any person subject to investigation;

(iii) the identification and assessment of specific legal professional privileges that may have an impact on the investigation proceedings as well as the enforcement proceedings, including self-incrimination;

(iv) the public and press strategy;

(v) the intended use of information exchanged.