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Commission Delegated Regulation (EU) 2016/1437 of 19 May 2016 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on access to regulated information at Union level (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2016/1437

of 19 May 2016

supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on access to regulated information at Union level

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC[(1)], and in particular Article 22 thereof,

Whereas:

(1) In order to ensure fast access to regulated information on a non-discriminatory basis and make that information available to end users, the European Securities and Markets Authority (ESMA) has an obligation to develop and operate a European Electronic Access Point (EEAP). The EEAP should be conceived as a web portal accessible through ESMA's website and, given its centralising role, should not assume the functions of official appointed mechanisms (OAMs) in respect of storage of regulated information. The EEAP should provide access to regulated information stored by all OAMs, avoid the duplication of data storage and minimise the risks to security of data exchange.

(2) In order to facilitate the search for regulated information and to ensure fast access to that information, the EEAP should offer end users the possibility to search by reference to the identity of an issuer, the home Member State or the type of regulated information. At the same time, the EEAP should enable end users to access the regulated information requested by them through hyperlinks to OAMs' websites where that information is stored.

(3) The proper functioning of the EEAP and its connection with OAMs depend on the security, effectiveness, efficiency and adaptability of the supporting communication technologies. The Hypertext Transfer Protocol Secure should be used by the EEAP and OAMs to connect with each other. However, given the continuous developments in communication technologies and the need to ensure the integrity and security of the exchange of metadata on regulated information, ESMA and the OAMs should cooperate

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in identifying and implementing alternative communication technologies in the future. Furthermore, where ESMA considers, according to objective technical criteria, that cooperation required for that purpose is ineffective, ESMA should be able to indicate what alternative communication technologies are to be used by the EEAP and OAMs.

(4) In order to enable cross-border searches and accurate search results, an OAM should use a unique identifier for each issuer of securities admitted to trading on a regulated market. Harmonisation of the unique identifiers used by OAMs should enable end users of the EEAP to identify more readily the issuers in respect of whom the end users seek information. Moreover, given the integration of financial markets at international level, the unique identifiers to be used by OAMs should be accepted internationally, be suitable to be assigned to any issuer, be consistent in time, have a limited financial impact on issuers and OAMs, and take into account future developments in this area. Therefore, OAMs should use legal entity identifiers as the unique identifier for issuers of securities admitted to trading on a regulated market.

(5) Harmonisation of the format used to exchange information between the EEAP and the OAMs is necessary in order to ensure the effective functioning of the EEAP. Accordingly, the identification of the appropriate format for exchange of information should take into account the security exchange and validation attributes of the most common standard formats used on the market. As the EEAP should not assume the functions of OAMs in respect of storage of regulated information, the format for exchange of regulated information should determine the metadata on regulated information to be enabled by an OAM to ensure a focussed search and fast access to regulated information by end users.

(6) Setting out a common list of types of regulated information should enable investors to have a better understanding of the information which is subject to the requirements of accuracy, comprehensiveness and timely dissemination by issuers under Directive 2004/109/EC. The common labelling and classification of regulated information by OAMs for the purpose of end users seeking to access regulated information via the EEAP should enable the end users to focus their search requests on the types of information of interest to them and should give rise to efficiencies for investors in their decision making processes.

(7) Visualisation or downloading of documents containing regulated information by end users is subject to OAMs' pricing policies in accordance with national law of each Member State. However, OAMs should not charge the EEAP for the delivery of metadata on regulated information.

(8) It is necessary to provide OAMs and issuers with sufficient time to implement the legislative and technological changes required to ensure the use of legal entity identifiers as the unique identifier for issuers of securities admitted to trading on a regulated market. It is also necessary to provide OAMs and issuers with sufficient time to implement the legislative and technological changes that are necessary for the storage and tagging of information for the purposes of classification of regulated information.

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

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(10) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council[(2)], in developing the draft regulatory technical standards on which this Regulation is based, ESMA has conducted open public consultations, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of that Regulation. At the same time, ESMA has taken into account the technical requirements for the system of interconnection of central, commercial and companies registers established by Directive 2012/17/EU of the European Parliament and of the Council[(3)],

HAS ADOPTED THIS REGULATION:

Article 1

The European Electronic Access Point

The European Securities and Markets Authority (ESMA) shall set up as a web portal, the European Electronic Access Point (EEAP), to regulated information to enable end users to search for regulated information stored by official appointed mechanisms (OAMs). The web portal shall be accessible through the website of ESMA.

Article 2

EEAP communication technologies, availability and support level

1 The security and integrity of the metadata on regulated information exchanged between OAMs and the EEAP shall be guaranteed. The EEAP and each OAM shall use the Hypertext Transfer Protocol Secure (HTTPS) to connect with each other.

2 ESMA shall cooperate with the OAMs to identify and implement an alternative communication technology to be used instead of HTTPS and to define the timeline for its implementation.

3 Where ESMA considers, according to objective technical criteria, that the cooperation required under paragraph 2 is ineffective for the purpose of ensuring security and integrity of the exchange of metadata on regulated information, ESMA may specify a communication technology to be used instead of the HTTPS.

4 The EEAP shall be easily scalable and adaptable to changes in the volumes of search requests and metadata to be delivered by OAMs.

5 The EEAP shall be available to end users at least 95 % per month.

6 The EEAP system shall be backed up on a daily basis.

7 Service support from ESMA to EEAP end users and to OAMs shall be provided within ESMA working hours, as set by ESMA Executive Director and published on ESMA website.

Article 3

Search function

1 The following search criteria shall be offered on the EEAP:

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a the name of the issuers from whom regulated information originated;

b the unique identifier of issuers as set out in Article 7;

c the home Member States of the issuer as defined in Article 2(1)(i) of Directive 2004/109/EC;

d the classification of regulated information as set out in Article 9(2).

2 The EEAP shall enable end users to search for issuer names in all available language versions of the issuers' names stored by OAMs.

3 The EEAP shall provide search results in accordance with the search criteria selected by end users. The search results shall be in the form of a list of metadata as laid down in Section A of the Annex.

Article 4

Facilitation of access through the EEAP

1 The metadata on regulated information referred to in Section A of the Annex shall include hyperlinks to the specific webpage of OAM websites where the visualisation and the downloading of documents containing regulated information is accessible to end users. Those webpages shall include hyperlinks to all language versions of the documents containing regulated information as disseminated by issuers and stored by OAMs in accordance with Article 21(1) of Directive 2004/109/EC.

2 The EEAP shall, insofar as practicable, provide access to its search facility to end users using web-browsers, including web-browsers operated by mobile devices.

Article 5

OAM communication technologies, support and maintenance

1 Each OAM shall ensure at least 95 % availability per month of its connection with the EEAP.

2 Each OAM shall provide service support to the EEAP during its working hours in order to maintain its connections to the EEAP, and in order to enable incident escalation. Those support services shall be provided in a language customary for electronic communications**.**

Article 6

Facilitation of access by OAMs

1 Each OAM shall ensure that metadata on regulated information can be retrieved by the EEAP.

2 Each OAM shall deliver to the EEAP the metadata on regulated information stored by them in accordance with Article 21(1) of Directive 2004/109/EC.

3 The metadata shall include hyperlinks to the OAM webpages on which the visualisation and the downloading of documents containing regulated information is accessible to end users. Each OAM shall make available all language versions of such documents that are disseminated by issuers and stored by the OAM in accordance with Article 21(1) of Directive 2004/109/EC.

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4 Where any document containing regulated information is modified, the OAM concerned shall immediately update the metadata on that document.

5 OAMs shall not charge the EEAP for the delivery of metadata on regulated information.

Article 7

Unique identifier used by OAMs

Each OAM shall use legal entity identifiers (LEI) as the unique identifiers for all issuers.

Article 8

Common format for the delivery of metadata

1 Each OAM shall use an Extensible Markup Language (XML) based format to deliver metadata on regulated information to the EEAP.

2 Each OAM shall deliver metadata on regulated information to the EEAP in the format laid down in Section A of the Annex.

Article 9

Common list and classification of regulated information

1 The common list of types of regulated information shall include the following information:

a annual financial and audit reports which include all information required to be disclosed under Article 4 of Directive 2004/109/EC;

b half-year financial reports and audit reports or limited reviews including all information required to be disclosed under Article 5 of Directive 2004/109/EC;

c payments to governments which include all information required to be disclosed under Article 6 of Directive 2004/109/EC;

d choice of home Member State which include the information required to be disclosed under in Article 2(1)(i) of Directive 2004/109/EC;

e inside information which is required to be disclosed under Article 6 of Directive 2003/6/EC of the European Parliament and of the Council[(4)];

f notifications concerning voting rights which include all information required to be disclosed under Article 12 of Directive 2004/109/EC;

g acquisition or disposal of the issuer's own shares which include all information required to be disclosed under Article 14 of Directive 2004/109/EC;

h total number of voting rights and capital which include all information required to be disclosed under Article 15 of Directive 2004/109/EC;

i changes in the rights attaching to the classes of shares or securities which include all information required to be disclosed under Article 16 of Directive 2004/109/EC;

j all information not falling under points (a) to (i) but which the issuer, or any other person who has applied for the admission of securities to trading on a regulated market without the issuer's consent, is to disclose under the laws, regulations or administrative provisions of a Member State adopted under Article 3(1) of Directive 2004/109/EC.