



European Securities and  
Markets Authority

# Final Report

**Draft implementing technical standards under MiFID II**





European Securities and  
Markets Authority

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# 1. Executive Summary

## Reasons for publication

Directive 2014/65/EU and Regulation (EU) No 600/2014 (MiFID II and MiFIR) require ESMA to develop a multitude of Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS). With this report ESMA publishes its final proposals for a total of 8 draft technical standards.

## Contents

This final report deals with technical standards from the following areas:

- 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 **[ITS 1]**
- format and timing of the communications and the publication regarding the suspension and removal of financial instruments from trading on a Regulated Market (RM), a Multilateral Trading Facility (MTF) or an Organised Trading Facility (OTF) **[ITS 2]**
- standard forms, templates and procedures for the authorisation of data reporting services providers **[ITS 3]**
- position reporting (Article 58(5)) **[ITS 4]**
- format and timing of weekly position reports (Article 58(7)) **[ITS 5]**
- standard forms, templates and procedures for competent authorities to cooperate in supervisory activities, on-site verifications, and investigations and for the exchange of information **[ITS 6]**
- standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation **[ITS 7 IPISC]**
- procedures and forms for submitting information on sanctions and measures **[ITS 8]**

It describes the feedback received in the public consultations and the rationale behind ESMA's final proposals.

Annexed to this final report are the draft technical standards themselves.

## Next Steps

The final report has been submitted to the European Commission on 11 December 2015. The Commission has three months (this period can be extended by one additional month) to decide whether to endorse the technical standards.



## 2. Substantial importance of a trading venue in a host Member State

### Background/Mandate/Empowerment

1. Article 79(2) of MiFID II regulates the establishment of proportionate cooperation arrangements between home and host Member State Authorities when, taking into account the situation of the securities markets in the host Member State, the operation of a trading venue has become of substantial importance for the functioning of the securities markets and the protection of investors in that host Member State.
2. Article 79(9) of MiFID II requires ESMA to develop draft ITS to establish standard forms, templates and procedures for these cooperation arrangements referred to in paragraph 2.

### Article 79(9) of MiFID II

9. *ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation arrangements referred to in paragraph 2.*

*ESMA shall submit those draft implementing technical standards to the Commission by 3 January 2016.*

*Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.*

3. Recital 154 of MiFID II introduces an element of flexibility by providing that these cooperation arrangements should take the appropriate form amongst possible cooperation modalities (such as ad hoc or periodic information sharing, consultation and assistance) between the home and host Member State Authorities, proportionate to the need for cross-border supervisory cooperation and the investor protection in the host Member State.

### Analysis

4. MiFID II establishes a general framework of cooperation between National Competent Authorities (NCAs) for the implementation of its provisions. Articles 80, 81 and 84 of MiFID II foresee procedures to cooperate in supervisory activities, for on-site verifications or for investigations, exchange of information and the consultation before authorizing an investment firm.

5. In that context, Article 79(2) of MiFID II addresses the specific case of a trading venue having a substantial impact on the functioning of securities markets and the protection of investors in a Member State which is not the one having direct supervisory powers on that venue. As opposed to the above mentioned cases, the starting point is a different one since these arrangements are likely to be prolonged in time or more intense than the ones foreseen in Articles 80, 81 and 84 of MiFID II.
6. The European Commission has to set out the circumstances in which the operations of a trading venue shall be considered to be of substantial importance for the functioning of securities markets and the protection of investors in a host Member State.
7. ESMA's advice to the Commission in this respect<sup>1</sup> was that this would be the case when either:
  - i. the host Member State used to be the home Member State of the trading venue in question; or
  - ii. the trading venue in question has acquired through a merger, takeover or any other form of transfer the whole or part of the business of a trading venue which was previously operated by a market operator or investment firm registered in the host Member State.
8. ESMA's advice indicated that if the trading venue subject to one of the cases described above is an MTF or an OTF, it should only be deemed to be of substantial importance if at least one of the following additional criteria apply:
  - i. before one of the cases described in the paragraph above occurred it had a market share of at least 10% of trading in terms of total turnover in monetary terms in on-venue trading and systematic internaliser trading in the host Member State in at least one asset class subject to MiFIR transparency obligations;
  - ii. it is registered as a SME growth market.
9. So as to facilitate the supervisory activity of the host Member State Authority with respect to the MiFID II and MiFIR provisions, Article 79(2) of MiFID II provides for an obligation for the home and host Member State Authorities to establish proportionate cooperation arrangements for which ESMA has to develop standard forms, templates and procedures. MiFID II is not prescriptive with respect to those arrangements, which may take different forms, including but not limited to periodic information sharing, consultation and assistance.

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[http://www.esma.europa.eu/system/files/2014-1569\\_final\\_report-esmas\\_technical\\_advice\\_to\\_the\\_commission\\_on\\_mifid\\_ii\\_and\\_mifir.pdf](http://www.esma.europa.eu/system/files/2014-1569_final_report-esmas_technical_advice_to_the_commission_on_mifid_ii_and_mifir.pdf), page 377



10. ESMA considers that the development of these templates, forms and procedures should be consistent with the existing practice set out in the Multilateral Memorandum of Understanding on Cooperation Arrangements and Exchange of Information (ESMA/2014/608)<sup>2</sup>.
11. Given the wide range of possible cooperation arrangements that can be established between authorities ESMA has opted for a flexible approach. Accordingly, home and host Member State Authorities shall use the standard templates in Annex I, Annex II and Annex III of the draft ITS as a basis for their agreement, but not as rigid instruments. Therefore, NCAs should adapt these forms to their specific needs and circumstances to be able to reflect the specific case they are dealing with and the type and level of cooperation that is sought by the parties to any specific cooperation arrangement.
12. The need for cross-border supervisory cooperation is dependent on the nature and scale of the operations or structure of trading venues. As the scope of these arrangements shall be the duties that NCAs have to discharge under MiFID II and MiFIR, the draft ITS provide a non-exhaustive list of events where NCAs may take supervisory action.
13. Home and host Member State Authorities should agree on procedures for sending and processing ad-hoc requests for cooperation, on procedures for continuous information sharing, on procedures for consultation and on procedures for providing assistance. However, the templates, forms and procedures provided do not prevent other forms of cooperation, such as coordination of decision-making in case it is agreed between the relevant authorities.
14. A request for assistance, in the form of taking a statement, opening an investigation or carrying out an on-site inspection, should be justified by a clear explanation of how it is needed to discharge a duty effectively falling within the competence of a Requesting Authority. Annex I of the draft ITS clarifies that potential Requesting Authorities should ensure that such requests for assistance are only used in cases where a simple information request would not provide the necessary level of cooperation.
15. Annex I of the draft ITS mentions as the sole circumstance that would justify declining a request for cooperation the case where accepting the request would imply taking a measure contrary to Union law or contrary to national law to the extent that the national law complies with Union law. The justification of such refusal to cooperate is not the same as those in Article 83 of MiFID II, which are specific for investigations, on-the-spot verification or supervisory activities (under Article 84 of MiFID II) or for generic exchanges of information (under Article 81 of MiFID II).
16. Annex I of the draft ITS also reflects the obligation set out in Article 76 of MiFID II whereby any information that is exchanged between NCAs is subject to the professional

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<sup>2</sup> [http://www.esma.europa.eu/system/files/2014-608\\_mmou\\_on\\_cooperation\\_arrangements\\_and\\_information\\_exchange.pdf](http://www.esma.europa.eu/system/files/2014-608_mmou_on_cooperation_arrangements_and_information_exchange.pdf)

secrecy provisions. A Requested or Requesting Authority should defer to these provisions when exchanging information. Furthermore, Article 78 of MiFID II states that the processing of personal data collected in or for the exercise of the supervisory powers including investigatory powers in accordance with this Directive shall be carried out in accordance with national law transposing Directive 95/46/EC and with Regulation (EC) No 45/2001 where applicable.

17. ESMA wishes to clarify that where the cooperation arrangements between NCAs involve the exchange of information, cooperation in investigation, supervision and enforcement activities related to market abuse, those arrangements should take place in accordance with the formats, templates and procedures set out in Article 25 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (MAR) as specified by [Regulation on implementing technical standards for the procedures and forms for exchange of information and assistance according to Article 25 of MAR].

### **3. Format and timing of the communication and the publication of the suspension and removal of financial instruments from trading on a regulated market, an MTF or an OTF**

#### **Background/Mandate/Empowerment**

1. Article 52(1) of MiFID II empowers a market operator (MO) to suspend or remove from trading financial instruments which no longer comply with the rules of the RM, unless such a step would be likely to cause significant damage to investors' interests or the orderly functioning of the market.
2. According to Article 52(2) of MiFID II the NCA in whose jurisdiction the suspension or removal originated has to decide whether one of the three reasons to extend the suspension process (suspected market abuse, a take-over bid or the non-disclosure of inside information about the issuer or financial instrument in breach of the Market Abuse Regulation (MAR) Articles 7 and 17) to other regulated markets, MTFs, OTFs and SIs in its jurisdiction, applies.
3. If the suspension is due to one of the three reasons and in the event of a suspension originating from a MO, Article 52(2) of MiFID II details the process that must then be followed:
  - i. The MO suspends the derivatives where this is necessary to support the objectives of the suspension or removal of the underlying financial instrument.
  - ii. The MO makes public its decision to suspend the financial instrument and any related derivatives and communicates relevant information to its relevant NCA.
  - iii. If the competent authority comes to the conclusion that the suspension is due to suspected market abuse, a take-over bid or non-disclosure of inside information about the issuer or financial instrument in breach of Article 7 and 17 of MAR, the NCA orders suspension of the financial instrument and any related derivatives on other RMs, MTFs, OTFs and SIs in its jurisdiction trading the suspended instruments or any related derivatives, unless this could cause significant damage to investors' interests or the orderly functioning of the market.
  - iv. The NCA makes public such a suspension decision and communicates it to ESMA and other NCAs ('notified NCAs') including an explanation if the decision was not to follow the suspension.
  - v. The notified NCAs order suspension of trading on other RMs, MTFs, OTFs and SIs in their jurisdictions trading the suspended instruments or any related derivatives, unless this could cause significant damage to investors' interests or the orderly functioning of the market in the notified NCAs jurisdiction.

- vi. The notified NCAs communicate their decision on whether to follow the suspension to ESMA and other NCAs, including an explanation if the decision was not to follow the suspension.
4. The process detailed above also applies – in general - in the case of removal of a financial instrument and any related derivatives from trading and when a suspension is lifted.
5. Article 52(2) of MiFID II also stipulates that the above notification process applies in the case where the decision to suspend or remove a financial instrument from trading is taken by the NCA pursuant to Article 69(2) of MiFID II.
6. Article 32 of MiFID II applies the same notification procedure as outlined above where the operator of an MTF or OTF suspends or removes a financial instrument and related derivatives from trading. All the explanations and statements in this section in respect of Article 52 shall be read as applying to Article 32 as well.
7. This regime is without prejudice to the power of NCAs to initiate a suspension or removal from trading at their own initiative under Article 69(2)(m) and (n) of MiFID II.

#### **Article 52(2) of MiFID II**

*2. In order to ensure that the obligation to suspend or remove from trading such derivatives is applied proportionately, ESMA shall develop draft regulatory technical standards to further specify the cases in which the connection between a derivative relating or referenced to a financial instrument suspended or removed from trading and the original financial instrument implies that the derivative are also to be suspended or removed from trading, in order to achieve the objective of the suspension or removal of the underlying financial instrument.*

*ESMA shall develop draft implementing technical standards to determine the format and timing of the communications and publications referred to in Paragraph 2.*

8. ESMA had already published first proposals in respect of this ITS in its MiFID II Discussion Paper published in May 2014<sup>3</sup> and had published a Consultation Paper, including a draft standard, in August 2015<sup>4</sup>. The proposals from stakeholders in response to those two consultations have been taken into account in this final report.

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<sup>3</sup> <http://www.esma.europa.eu/content/Discussion-Paper-MiFID-II-MiFIR>.

<sup>4</sup> <http://www.esma.europa.eu/content/Consultation-Paper-Draft-implementing-technical-standards-under-MiFID-II>.

9. ESMA notes that Article 52 of MiFID II requires determining the format and timing of communications and publications in ten distinct scenarios:
  - i. the communication by MOs to NCAs of the decision to suspend/remove a financial instrument and any derivatives related to the originally suspended instrument;
  - ii. the publication by MOs of a suspension or a removal of a financial instrument and any derivatives related to the originally suspended instrument;
  - iii. the communication by the NCA to ESMA and to other NCAs of a decision to suspend or remove or a decision not to suspend/remove (including an explanation if the decision was not to follow the suspension) in respect of the same and/or related instruments traded on another trading venue or SI in the same jurisdiction;
  - iv. the publication by the NCA of a decision to suspend or remove or a decision not to suspend/remove (including an explanation if the decision was not to follow the suspension) in respect of the same and/or related instruments traded on another trading venue or SI in the same jurisdiction;
  - v. the communication of the decision by notified NCAs whether to follow the suspension or removal to ESMA and to other NCAs, including an explanation if the decision was not to follow the suspension;
  - vi. the communication of the lifting of a suspension by MOs to NCAs (following a communication under i);
  - vii. the publication of the lifting of a suspension (following a publication under ii);
  - viii. the communication of the lifting of a suspension by a NCA to ESMA and other NCAs (following a communication under iii);
  - ix. the publication by a NCA of the lifting of a suspension (following a publication under iv); and
  - x. the communication of the decision by notified NCAs whether to also lift a suspension to ESMA and other NCAs (following a communication under v).
10. According to Article 52(2)(subparagraph 6) of MiFID II, the whole notification procedure shall also apply if the original decision of suspension or removal had been taken by a NCA pursuant to Article 69(2)(m) and (n) of MiFID II. Therefore a NCA would need to communicate such suspension or removal to ESMA and other NCAs and the other NCAs would need to communicate to ESMA and other NCAs whether they also suspend/remove the financial instrument and any derivatives related to the originally suspended instrument. The same applies to the lifting of the initial suspension.

#### **Analysis following feedback from stakeholders**

### Format and timing of communications

11. ESMA needs to set forth the timing and format of communications of suspensions, removals and the lifting of suspensions by trading venue operators to competent authorities and the publications by trading venue operators of such suspensions, removals and lifting of suspensions.
12. Regarding the timing, based on views voiced in response to the DP and the CP, ESMA maintains the proposal that the communication to a competent authority as well as the publication of a suspension, removal or lifting of a suspension shall be effected immediately after taking the decision as respondents to the public consultation were broadly in agreement with that proposal.
13. Regarding the format, ESMA has further developed its proposal, which was widely supported in the two rounds of public consultations, that the publication of the suspension, removal or lifting of a suspension shall be published on the website of the trading venue operator. Furthermore:
  - i. A description of the relevant fields was updated following feedback; in this regard the fields named “started on” and “ended on” were renamed to “effective from” and “effective to”, respectively, so as to enable the possibility of communicating all the elements of a suspension that is limited in time.
  - ii. The field related to the issuer identification was split in two, also according to a suggestion received.
  - iii. ESMA did not follow a suggestion to enable the publication and communication of “all related securitised derivatives”, as such a possibility would not be in line with the MiFID II, which requires the communication to be related either to financial instruments or to “sufficiently related derivatives”. In both cases there is a reasonable degree of certitude regarding what instruments are suspended (either a declaration by the trading venue or a relationship expressed in an RTS). Creating a third category would violate MiFID II, and would create more uncertainty than the one purporting to resolve, as derivatives that relate to a single underlying asset are already caught as “sufficiently related derivatives”.
14. As the publication of the decisions can occur through a variety of additional means, e.g. other communications systems operated by trading venues or by data reporting services providers, it is important to ensure that the suspensions and removals are not disseminated before the relevant publication of the decision on the website, except in exceptional circumstances.
15. Regarding the format of the communications to the competent authorities, ESMA considers it useful to request the submission of information in a format which ensures a quick and seamless processing by competent authorities so they can easily take their decisions in respect of the suspension, removal or lifting of suspensions in respect of the

derivatives instruments and effect follow-up communications and publications, therefore, an electronic format was proposed in the CP and welcomed by respondents.

16. Articles 32 and 52 of MiFID II mandate the mandatory suspension and removal of “sufficiently related derivatives”. According to the RTS developed under those Articles a derivative is sufficiently related with an instrument, where that instrument is its sole underlying. As it may be appropriate to extend a suspension or removal to other instruments, it is useful to include a field called “other related instruments” so that the notification and the publication of the relevant action could encompass a removal or suspension of other instruments, related to the first ones.
17. These “other related instruments” are not sufficiently related instruments, but a field which a competent authority may use for communicating suspensions of financial instruments that follow should be suspended as well. From a legal point of view the suspension of these instruments is a suspension on its own.

## 4. Standard forms, templates and procedures that apply in relation to data reporting services providers

### Background/Mandate/Empowerment

#### Article 61(5) of MiFID II

5. *ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information provided for in paragraph 2 of this Article and in Article 63(4).*

[...]

1. Under Article 61(5) of MiFID II, ESMA is responsible for developing draft ITS to determine the standard forms, templates and procedures that apply in relation to data reporting services providers (DRSPs). In particular, the draft ITS shall cover the notification and provision of information by a DRSP applicant when applying to be authorised and in relation to subsequent changes to its management body.
2. Overall, the purpose of the draft ITS is to facilitate the consistent handling of DRSP applications across the Union and to help applicants to structure their applications in such a way as to enable competent authorities to more effectively assess applications.
3. In drafting the ITS, ESMA has given consideration to the draft ITS that have been prepared pursuant to Article 7(5) of MiFID II<sup>5</sup>. Those draft ITS apply to applications to become authorised as an investment firm. In ESMA's view, there are strong similarities between the procedure for applying to be authorised, the information to be provided and the notifications which must be made under the two provisions. ESMA has therefore sought to align the two sets of draft ITS to the greatest extent possible.
4. For example, in line with the investment firm draft ITS, both the competent authority and the DRSP applicant must provide the contact details of a designated contact person/point. This is to make it clear to potential applicants who they should contact at the competent authority regarding applying to become a DRSP and to allow the competent authority to directly follow up enquiries to a single point of contact at the DRSP applicant.
5. Additionally, similar notification requirements apply to DRSPs and investment firms once authorised. For example, a DRSP must notify its competent authority of changes to its management body prior to the change taking effect or where this is not possible, within 10 working days of the change taking effect. This is to allow the competent authority to

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<sup>5</sup> [http://www.esma.europa.eu/system/files/2015-esma-1006\\_-\\_mifid\\_ii\\_final\\_report\\_on\\_mifid\\_ip\\_technical\\_standards.pdf](http://www.esma.europa.eu/system/files/2015-esma-1006_-_mifid_ii_final_report_on_mifid_ip_technical_standards.pdf)



assess whether such a change would adversely impact the ability of the DRSP to continue to meet its obligations under Article 63 of MiFID II.

### **Analysis following feedback from stakeholders**

6. Respondents to the public consultation were broadly happy with the proposal. A few comments and suggestions were made, regarding which ESMA wishes to express its views. The question was raised of who was responsible for allocating the reference number required at the top of each form. The applicants are responsible for the completion of the application forms and should therefore assign an (internal) reference number. ESMA does not believe that it is necessary to specify this in the forms.
7. One respondent asked for clarification of the requirements for the designated contact person at the applicant as well as the person at the applicant in charge of preparing the application. These persons do not need to be members of the management bodies, but must have the power to bind the applicant DRSP (e.g. by an internal delegation of power). Again, ESMA does not believe that it is necessary to amend the form in this respect.
8. One respondent to the public consultation noted that the draft ITS does not reflect the ability of a market operator or an investment firm operating an MTF or an OTF to “operate the data reporting services of an APA, a CTP and an ARM, subject to the prior verification of their compliance with” Title V of MiFID II.
9. Technically and according to Article 59(2) of MiFID II a market operator or an investment firm operating an MTF or an OTF do not apply for a separate authorisation as data reporting services providers, but the scope of their original authorisation is accrued with the addition of the data reporting service they intend to operate subject to the prior verification of their compliance with the requirements of DRSPs.
10. As there is no empowerment for ESMA to specify the templates for the verification of the compliance by market operators and investment firms with the requirements of DRSPs, the proposed draft ITS cannot reflect the specificities of market operators and investment firms.
11. A suggestion was made for ESMA to anticipate the coming into application of this draft ITS as it would make sense for DRSPs to apply for an authorisation according to these provisions. ESMA was made aware of the legal obstacles to that course of action and notes that (1) DRSPs cannot be formally authorised before entry into application of the provisions transposing MiFID II, but (2) applicant DRSPs can always use the templates, even if their use is not mandatory.

## 5. Position Reporting

### Background/Mandate/Empowerment

#### Article 58 of MiFID II

1. *Member States shall ensure that an investment firm or a market operator operating a trading venue which trades commodity derivatives or emission allowances or derivatives thereof:*

- (a) make public a weekly report with the aggregate positions held by the different categories of persons for the different commodity derivatives or emission allowances or derivatives thereof traded on their trading venue, specifying the number of long and short positions by such categories, changes thereto since the previous report, the percentage of the total open interest represented by each category and the number of persons holding a position in each category in accordance with paragraph 4 and communicate that report to the competent authority and to ESMA; ESMA shall proceed to a centralised publication of the information included in those reports;*
- (b) provide the competent authority with a complete breakdown of the positions held by all persons, including the members or participants and the clients thereof, on that trading venue, at least on a daily basis.*

*The obligation laid down in point (a) shall only apply when both the number of persons and their open positions exceed minimum thresholds.*

2. *Member States shall ensure that investment firms trading in commodity derivatives or emission allowances or derivatives thereof outside a trading venue provide the competent authority of the trading venue where the commodity derivatives or emission allowances or derivatives thereof are traded or the central competent authority where the commodity derivatives or emission allowances or derivatives thereof are traded in significant volumes on trading venues in more than one jurisdiction at least on a daily basis with a complete breakdown of their positions taken in commodity derivatives or emission allowances or derivatives thereof traded on a trading venue and economically equivalent OTC contracts, as well as of those of their clients and the clients of those clients until the end client is reached, in accordance with Article 26 of Regulation (EU) No 600/2014 and, where applicable, of Article 8 of Regulation (EU) No 1227/2011.*

3. *In order to enable monitoring of compliance with Article 57(1), Member States shall require members or participants of regulated markets, MTFs and clients of OTFs to report to the investment firm or market operator operating that trading venue the details of their own positions held through contracts traded on that trading venue at least on a daily basis, as well as those of their clients and the clients of those clients until the end client is reached.*

4. *Persons holding positions in a commodity derivative or emission allowance or*

*derivative thereof shall be classified by the investment firm or market operator operating that trading venue according to the nature of their main business, taking account of any applicable authorisation, as either:*

- (a) investment firms or credit institutions;*
- (b) investment funds, either an undertaking for collective investments in transferable securities (UCITS) as defined in Directive 2009/65/EC, or an alternative investment fund manager as defined in Directive 2011/61/EC;*
- (c) other financial institutions, including insurance undertakings and reinsurance undertakings as defined in Directive 2009/138/EC, and institutions for occupational retirement provision as defined in Directive 2003/41/EC;*
- (d) commercial undertakings;*
- (e) in the case of emission allowances or derivatives thereof, operators with compliance obligations under Directive 2003/87/EC.*

*The reports referred to in point (a) of paragraph 1 shall specify the number of long and short positions by category of persons, any changes thereto since the previous report, percent of total open interest represented by each category, and the number of persons in each category.*

*The reports referred to in point (a) of paragraph 1 and the breakdowns referred to in paragraph 2 shall differentiate between:*

- (a) positions identified as positions which in an objectively measurable way reduce risks directly relating to commercial activities; and*
- (b) other positions.*

*5. ESMA shall develop draft implementing technical standards to determine the format of the reports referred to in point (a) of paragraph 1 and of the breakdowns referred to in paragraph 2.*

*ESMA shall submit those draft implementing technical standards to the Commission by 3 January 2016.*

*Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.*

*In the case of emission allowances or derivatives thereof, the reporting shall not prejudice the compliance obligations under Directive 2003/87/EC.*

*6. The Commission shall be empowered to adopt delegated acts in accordance with*

*Article 89 to specify the thresholds referred to in the second subparagraph of paragraph 1 of this Article, having regard to the total number of open positions and their size and the total number of persons holding a position.*

*7. ESMA shall develop draft implementing technical standards to specify the measures to require all reports referred to in point (a) of paragraph 1 to be sent to ESMA at a specified weekly time, for their centralised publication by the latter.*

*ESMA shall submit those draft implementing technical standards to the Commission by 3 January 2016.*

*Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.*

## 5.1. Position reporting by trading venues and investment firms

1. Article 58(1)(a) of MiFID II requires investment firms and market operators operating a trading venue to produce and publish weekly position reports (“Commitment of Trader” or “CoT” reports).
2. Article 58(2) requires investment firms trading in commodity derivatives or emission allowances or derivatives thereof outside a trading venue to provide to the competent authority of the trading venue where that contract is traded daily position breakdown reports (Position Reports) for commodity derivatives, emission allowances, and derivatives thereof.
3. Article 58(3) of MiFID II notes that data provided to competent authorities should be used to enable the monitoring of compliance with the position limits that are established under Article 57 of MiFID II. Article 58 of MiFID II sets out various requirements for the content and format of these two reports.
4. ESMA has been mandated under Article 58(5) of MiFID II to develop draft implementing technical standards to determine the format of CoT reports in Article 58(1)(a) of MiFID II and the Position Reports in Article 58(2) of MiFID II<sup>6</sup>.
5. ESMA issued a first Discussion Paper, outlining its proposals for the basis and format of the daily Position Reports in May 2014 followed by a Consultation Paper (CP), including a draft technical standard in December 2014.

### Analysis following feedback from stakeholders

#### Regarding the reporting format of the CoT reports

6. Respondents sought further clarity and guidance on how to categorise participants. ESMA notes that under its empowerment there is no room to address these questions in the ITS. However, in the case of market participants from third countries using different terminology than the one used to describe the categories stemming from European law, ESMA would expect those third country persons to be categorised as investment firms in the cases they would be considered to be an investment firm if they were based in the EU and exempt persons to be categorised as commercial undertakings. ESMA intends to provide further guidance on these issues in its future Level 3 work.
7. ESMA was made aware of the difficulties of maintaining confidentiality of position holders. They noted that this is made more difficult with positions being divided into risk reducing and other positions. MiFID II demands such a split. In order to mitigate the risk of individual position holders being identified ESMA proposed in its technical advice on position reporting thresholds, that position holders should not be included in the CoT

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<sup>6</sup> ESMA will consult on the draft ITS to be developed under Article 58(7) of MiFID in 2015.

report if there were four or fewer position holders in a given category. This topic will be addressed in a delegated act the European Commission is responsible for.

8. Several respondents suggested that the CoT reports should be consistent with CFTC rules.
9. Other respondents described the importance of preserving the distinction between risk-reducing and speculative positions. They proposed that the CoT should also distinguish between spot and other contracts and provide other supplementary reports. ESMA notes that the empowerment in Article 58(5) of MiFID II does not allow ESMA to require other reports or additional breakdown of information within the reports.

#### Regarding the reporting format of the daily Position Reports

10. Several respondents questioned the options of relying on Alternative Instrument Identifiers (AII) for the reports, and suggested relying on ISINs. ESMA reviewed its proposal and now takes a consistent approach in its technical standards of relying on LEIs and ISINs only.
11. One respondent asked whether NCAs would need the name of an economically equivalent OTC contract (EEOTC) in order to know which EEOTC contracts were being aggregated with the commodity derivative subject of a given report. This is not required in the final draft standard by ESMA as the EEOTC report shall include the Venue Product Code to which the EEOTC is related.

#### Other Position Reporting Considerations

12. The Level 1 text empowers ESMA specifically and only to produce technical standards on the format of the reports referred to in Article 58(1)(a) and (2) of MiFID II. ESMA is aware of the practical benefits of providing more detail and a greater deal of harmonisation in order to facilitate market participants establishing harmonised position reporting arrangements that can be used for an effective supervision of the position limit regime.
13. The Level 1 text does not provide a mandate for ESMA to establish a comprehensive mechanism for the practical implementation of position reporting. For example, the Level 1 text does not mandate ESMA to define the reporting format for trading venues providing daily position reports to the relevant competent authority under Article 58(1)(b) of MiFID II, notwithstanding that ESMA is mandated to define the format of the reports by investment firms to NCAs under Article 58(2) of MiFID II. ESMA's intention would be for trading venues and investment firms to use identical templates in order to facilitate automated reporting systems so that reports can be processed and aggregated efficiently. ESMA would therefore encourage trading venues also to use the reporting format established in Annex 2 of this technical standard and may address this issue in the future on Level 3.

14. ESMA may also explore at Level 3 ways in which it is possible for investment firms to meet their obligations for reporting exchange traded derivatives under Article 58(2) by delegating part of their reporting to the entities that are obliged to report the same positions in instruments to the same NCA. This would have the benefits of reducing the operational tasks of reporting whilst also avoiding the inherent duplication of position reports for commodity derivatives, emission allowances and derivatives thereof that have been traded on a trading venue that would otherwise occur.

#### Other reporting arrangements to facilitate position reporting arrangements

15. Respondents to the public consultation raised a number of other questions related to the application of MiFID II or the implementation of the position reporting regime that ESMA plans to deal with by additional guidance in the future.

#### **Final proposal**

16. Many respondents to the consultation pointed out issues they see in relation to the Level 1 text rather than ESMA's draft standard. For instance, responses to the CP made clear that some trading venues do not have a direct relationship with end-clients and will therefore be reliant on members or participants to classify the end client and provide required identification details.
17. ESMA is aware that reporting end-client positions raises confidentiality issues. However it notes that this reporting requirement is set by the Level 1 text of MiFID II and it is not empowered to submit standards on this issue.
18. ESMA reiterates that this technical standard is based on an empowerment that is very limited in scope and therefore cannot address all the issues respondents to the consultation have identified. ESMA can however assure market participants that it is aware that more work is needed in order to give market participants sufficient certainty to build their systems to comply with the position reporting obligations. ESMA will therefore continue working on this topic and intends to release additional guidance as soon as possible after publication of this technical standard.
19. ESMA has amended its CP proposal predominantly in respect of the information to be provided in the two reporting formats established.
20. The proposals in the two Annexes to the technical standard have been updated to take into account the work on regulatory technical standards published by ESMA on 28 September 2015.
21. On the one hand, the position reporting formats are now built on the technical standard proposal published by ESMA in respect of position limits. As the position reporting regime should enable the effective supervision of position limits, ESMA had to ensure that the information to do so to the extent possible can be derived from the position reports submitted to NCAs.

22. As one example, ESMA has differentiated between securitised derivatives, exotic derivatives in section C10 of the Annex I to MiFID II and other derivatives in its draft position limit standard to adequately deal with the specificities of these different types of commodity derivatives. In the standard annexed to this final report the reporting requirements have been adjusted to also take such specificities into account.
23. On the other hand, ESMA has aligned the way in which the fields have to be populated in accordance with the ESMA technical standards on transaction reporting and reference data in order to ensure that for all reporting regimes under MiFID II the same standards apply and, therefore, to reduce adaptation costs for market participants. These alignments have been executed for the formats for Commitment of Trader and for Position Reports.
24. In the format for Commitment of Trader Reports ESMA has also inserted additional fields to facilitate
  - i. the identification of the trading venue;
  - ii. the commodity derivative contract, emission allowance or derivative thereof;
  - iii. the trading venue code comprising the different ISINs in respect of which positions have been aggregated;
  - iv. the publication time of the report; and
  - v. the time period in respect of which the weekly report has been published.
25. ESMA also specifies in the format that the reports should be based on the size of positions held at the close of trading hours on Friday of each week. The Level 1 text is not specific in this respect but given that Level 1 requires weekly reports to be published ESMA considers that basing those reports on positions held at the end of the working week to be the most logical choice.
26. Concerning the format for investment firms to submit Position Reports ESMA wishes to explain a number of detailed aspects now prescribed in the Tables to Annex 2:
  - i. the field “Date of report submission” is required as a matter of record. It also enables supervision of late submissions, and repeated submissions in the case of rejections.
  - ii. the field “Reporting entity ID”, conveying the identity of the legal entity that is making the report to the NCA is to be filled with the LEI. If the reporting entity is a natural person it shall fill the report with the LEI if it has got one, otherwise with the national ID number.
  - iii. the field “Ultimate parent entity ID”, is required in order to enable aggregation of positions at a group level rather than at individual entity level. This field is necessary as the position limits regime requires aggregation of positions at group level. To



enable supervising compliance with position limits at group level ESMA saw adding this field as the only way to aggregate the positions of groups at the NCA level however ESMA is also conscious that such aggregation may have its limits when complex group structures are involved.

- iv. the field “Venue product code” is to be populated with a unique and unambiguous alphanumeric identifier utilised by the trading venue grouping together different maturities in the same product where they have different ISINs. This field enables aggregation of all non-spot contracts, to allow for the supervision of the position limits regime.
- v. the field “Position type” is in most cases to be populated with specifying the type as either options or futures. ESMA has also included the special cases of emission allowances and securitised derivatives. The type of “any other contract type” should only be used in rare cases where none of the other types apply and ESMA will consider whether it is necessary to issue additional guidance on the cases in which to use this position type in the report.
- vi. the field “Indicator of whether the position is risk reducing in relation to commercial activity” refers to Article 7 of the draft regulatory technical standards on methodology for the calculation and the application of position limits for commodity derivatives traded on trading venues and economically equivalent OTC contracts published by ESMA on 28 September 2015. ESMA wishes to emphasise that any person holding risk-reducing and speculative positions in the same commodity derivative contract will have to submit two reports in respect of its positions in that contract.

## 5.2. Reporting of weekly Commitment of Trader Reports to ESMA

1. This section is covering the empowerment under Article 58(7) of MiFID II.
2. Article 58(1)(a) requires the weekly Commitment of Trader reports to be sent by trading venues to their relevant competent authority and to ESMA.
3. Article 58(7) requires ESMA to develop draft ITS in relation to sending the weekly position reports to ESMA at a specified weekly time, for their centralised publication.
4. ESMA issued a Consultation Paper, outlining its proposals in respect of this standard in August 2015.

### Analysis following feedback from stakeholders

#### Timing of reports

5. ESMA proposed in the CP that trading venues should submit their weekly reports to ESMA by 23.59 CET on Monday of each week for the previous calendar week in order to publish data on a calendar week basis.
6. Some respondents asked for a longer period of time between receiving the position reports and submitting them to ESMA. Whilst some suggested having three working days to prepare and send the reports, others asked to move the reporting deadline from 23.59 to 9.00 of the following day.
7. ESMA acknowledges that trading venues need sufficient time to collect information from their members and clients respectively, process it, validate and compile it into a report, and finally publish and send it to ESMA. These processes will consume a considerable amount of time. Therefore ESMA changed its proposed approach and is now suggesting the following:
8. Trading venues should submit weekly reports by 17.30 CET Wednesday of each week, reporting the positions held by close of trading Friday of the previous week. Where either Monday, Tuesday or Wednesday is not a working day for the trading venue, the trading venue should submit the report as soon as possible on its next working day and no later than 17.30 CET. ESMA is aware that the Level 1 does not specify a time for trading venues to publish the Commitment of Traders Reports and also Level 2 does not contain an empowerment for such specification. However, ESMA would like to point out that Article 58(1) of MiFID II foresees that trading venues have to publish the weekly report first before sending it to national NCAs and ESMA. Therefore, Wednesday 17.30 CET as the time specified for sending reports to ESMA also establishes the maximum time limit for venues to publish.
9. The need to allow trading venues and investment firms enough time to run their IT processes in order to produce the reports, also led ESMA to allow an extension of

maximum 24 hours of the delay for sending the reports to ESMA where Monday, Tuesday or Wednesday would not be working days for the trading venues and investment firms in question.

#### Format of the weekly report

10. ESMA also suggested in the CP that the data should be provided in a common, machine-readable XML format.
11. Respondents were broadly happy with using the XML format.

#### Data validation and error management

12. As stated in the CP, MiFID II does not provide for ESMA to check the reports transmitted to it for errors but ESMA considers establishing a minimum automatic validation process is a prerequisite of ensuring sound reporting, and is therefore considering the following checks:
  - i. if the transmitted file cannot be extracted by ESMA, the ESMA system will notify the sender and the sender will be required to amend and resubmit the records.
  - ii. the ESMA system will check whether the files transmitted comply with format specifications and if they do not, the ESMA system will notify the sender and the sender will be required to amend and resubmit the records.
  - iii. the ESMA system will perform some basic consistency checks, for example, the period start date and end date are valid dates, the end date is later than the start date etc. If an error is identified, the ESMA system will notify the sender and the sender will be required to amend and resubmit the records.
13. Where validation errors are identified the sent data will not be stored or published by ESMA. Where the data passes all validations, the ESMA system will send a confirmation receipt to the sender. Only reports for which a confirmation receipt has been sent will be stored and published by ESMA. Lack of either confirmation receipt or error notice would mean there has been a delivery failure which would require further investigation and resubmission by the sender.
14. ESMA received a limited number of responses regarding this issue, some of them underlining the need to preserve anonymity of traders where there are four or less traders represented. In this respect, one respondent recommended using an active way to mark a field representing four or less traders rather than leaving the field empty.
15. In the final proposal ESMA is proposing to populate the field with a symbol rather than to leave it empty.

16. The majority of the responses supported the proposal, with three stakeholders underlining the need for technical specifications as early as possible so that the industry could adapt, incl. how to handle rejected files, e.g., using error codes).

Other aspects raised in the public consultation

17. A respondent alerted ESMA to the fact that aggregation according to contracts and not discriminating across the different maturities will in some cases result in a low reported numbers as opposing positions in different maturities will be netted out. ESMA has to point out that this is an issue that cannot be addressed under the empowerment given to ESMA in Article 58(7) of MiFID II.
18. Following several questions by industry participants, ESMA notes that the ITS requires reports to be published on working days for the responsible market operator or investment firm.
19. Extending the regime to EEOTCs, as requested by a respondent, is not supported by Article 58 of MiFID II and cannot be performed in the ITS.
20. ESMA has been made aware that trading venues and investment firms may have difficulties in obtaining the information to populate the fields. ESMA notes that these entities are in this reporting capacity responsible for aggregating and reporting the information, but are not expected to question the information which has been reported to them, nor produce by themselves information that has not been reported to them.

Publishing data

21. As already described in the CP, ESMA will publish data on a weekly basis on ESMA's website. ESMA intends that users of the data will be able to search historical data on the ESMA website with a functionality to filter for example, by week or trading venue. ESMA will retain the data for a minimum of 5 years.
22. ESMA will publish the reports on its website as soon as possible after they have been received and validated.

## **6. Standard forms, templates and procedures for competent authorities to cooperate in supervisory activities, on-site verifications, and investigations and for the exchange of information**

### **Background/Mandate**

#### **Article 80(4) of MiFID II**

*4. ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for competent authorities to cooperate in supervisory activities, on-site verifications, and investigations.*

*ESMA shall submit those draft implementing technical standards to the Commission by 3 January 2016.*

#### **Article 81(4) of MiFID II**

*4. ESMA shall develop draft implementing technical standards to establish standard forms, templates, and procedures for the exchange information.*

*ESMA shall submit those draft implementing technical standards to the Commission by 3 January 2016.*

### **Analysis**

1. Article 79(1) of MiFID II requires competent authorities of different Member States to cooperate with each other where necessary for the purpose of carrying out their duties under MiFID II or under MiFIR, making use of their powers whether set out in MiFID II or in MiFIR or in national law. Furthermore, according to Article 81(1), the competent authorities of Member States shall immediately supply one another with the information required for the purposes of carrying out the duties of the competent authorities set out in the provisions adopted pursuant to MiFID II or MiFIR.
2. Article 80(4) and 81(4) of MiFID II require ESMA to develop draft ITS to establish thereto-related forms, templates and procedures. ESMA is required to submit the draft ITS to the European Commission by 3 January 2016.
3. The proposed ITS cover the general principles and procedures for forms, templates and procedures to be used by authorities when sending and processing requests for cooperation or request for information, acknowledgements of receipt, and replies to requests for cooperation or request for information. These forms, templates and

procedures will generally form part of any cooperation arrangements between authorities to facilitate the exchange of information.

4. This will include cooperation procedures in relation to supervisory activities, on site-verifications, and investigations and also includes cooperation procedures in relation to requests for (a) the taking of a statement from a person; (b) the opening of an investigation by an authority; and (c) the carrying out of an on-site verification by an authority.

## 7. Standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation

### Background/Mandate

#### Article 84(4) of MiFID II

4. *ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation.*

*ESMA shall submit those draft implementing technical standards to the Commission by 3 January 2016.*

*Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.*

### Analysis

1. Article 84(1) and (2) of MiFID II requires competent authorities to consult each other prior to granting authorisation to an investment firm which is a subsidiary of a regulated entity referred to in Article 84(1) and (2) of MiFID II or a subsidiary of the parent undertaking of such an entity, or which is controlled by the same natural or legal persons who controls such a regulated entity.
2. Article 84(4) of MiFID II requires ESMA to develop draft implementing technical standards to establish thereto-related forms, templates and procedures. ESMA is required to submit the draft implementing technical standards to the European Commission by 3 January 2016.
3. The proposed implementing technical standards cover the necessary forms, templates and procedures to be used by authorities when consulting each other prior to granting authorisation in cases referred to in Article 84(1) and (2) of MiFID II. These forms, templates and procedures will generally form part of any cooperation arrangements between authorities to facilitate the exchange of information.
4. When consulting each other prior to granting an authorisation, the competent authorities involved will exchange information regarding the suitability of shareholders or members and the reputation and experience of persons who effectively direct the business and any further information that is of relevance to the competent authorities for the granting of an authorisation as well as for the on-going assessment of compliance with operating conditions.

## 8. Procedures and forms for submitting information on sanctions and measures

### Background/Mandate

#### Article 71(7) of MiFID II

*7. ESMA shall develop draft implementing technical standards concerning the procedures and forms for submitting information as referred to in this Article.*

*ESMA shall submit those draft regulatory technical standards to the Commission by 3 January 2016.*

### Analysis

1. Article 71(4) and 71(5) of MiFID II requires national competent authorities to provide ESMA with information regarding the published criminal and administrative sanctions and measures imposed for infringements of the national provisions adopted in the implementation of MiFID II. Additionally, in cases where an administrative sanction is imposed but not published due to disproportion of the publication or risks for stability of financial markets, pursuant to Article 71(3) of MiFID II, competent authorities shall inform ESMA of those sanctions including any appeal in relation thereto and the outcome thereof. Furthermore, Article 71(3) of MiFID II requires ESMA to maintain a central database of sanctions communicated to it solely for the purpose of exchanging information between competent authorities. That database shall be accessible to NCAs only and it shall be updated on the basis of the information provided by the competent authorities.
2. MiFID II deems the publication of decisions imposing administrative sanctions and measures as an important tool for competent authorities to inform market participants of what behaviour is considered to be an infringement of the national provisions adopted in the implementation of MiFID II. However, while the main objective of the publication requirement as governed in Article 71(1) and 71(6) of MiFID II is to ensure that decisions imposing an administrative sanction or measure for infringements have a dissuasive effect on the public at large, the reporting of imposed but not published sanctions serves the only purpose of exchange of information between national competent authorities and ESMA. In addition to that, the publication of the aggregated information regarding all sanctions and measures in an annual report, as required in first subparagraph of Article 71(4) of MiFID II, shall provide market participants an overall picture of sanctions and measures imposed in the Member States.



3. Article 71(7) of MiFID II requires ESMA to develop draft ITS concerning the procedures and forms for submitting information as referred to the same Article. These ITS must be submitted to the Commission by 3 January 2016.
4. ESMA did not conduct open consultations on the draft ITS, as this would have been disproportionate in relation to their scope and impact, taking into account that the addressees of the ITS would only be national competent authorities and not market participants.

## **ANNEX I: Draft Implementing Technical Standards**

**ITS 1: Draft implementing technical standards on 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**



Brussels, **XXX**  
[...](2015) **XXX**

**COMMISSION DELEGATED REGULATION (EU) .../...**

**of **XXX****

**COMMISSION IMPLEMENTING REGULATION (EU) No .../... 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**

**of [ ]**

**(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 on markets in financial instruments<sup>1</sup>, and in particular Article 79(9) thereof,

Whereas:

- (1) It is important to facilitate the cooperation of competent authorities of home and host Member States when the operations of a trading venue have become of substantial importance in the host Member State through the establishment of standard forms, templates and procedures for proportionate cooperation arrangements.
- (2) Competent authorities should use the standard forms, templates and procedures in this Regulation as a basis for their cooperation arrangements, but should be able to adapt or complement them in the form of bilateral or multilateral agreements as appropriate for the individual circumstances of each case, so as to achieve proportionate cross-border supervisory cooperation arrangements.
- (3) In particular, home and host Member State authorities should aim at setting out procedures for sending and processing ad-hoc requests for cooperation, for continuous information sharing, for consultation and for providing assistance. However, these standard forms, templates and procedures should not be construed as preventing competent authorities from agreeing any further type of cooperation including the coordination of decision-making.
- (4) Most cooperation arrangements should take place according to modalities governed by Commission Implementing Regulation on standard forms, templates and procedures for competent authorities to cooperate in supervisory activities, on-site verifications, and investigations and for the exchange of information [*Draft ITS 6*]. The standard forms, templates and procedures laid down in this Regulation [*Draft ITS 1*] permit adapting those arrangements to achieve a higher degree of involvement of the competent authority of the host Member State in circumstances where there is a higher impact on the securities markets and the investor protection in its jurisdiction. Therefore, before submitting a request for cooperation under this Regulation [*Draft ITS 1*], competent authorities should ensure that a request for cooperation under other provisions of Directive 2014/65/EU would not provide the necessary level of cooperation.
- (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

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<sup>1</sup>OJ L 173, 12.6.2014, p. 349.

Securities and Markets Authority (ESMA)<sup>2</sup> and the related multilateral memorandum of understanding on Cooperation Arrangements and Exchange of Information<sup>3</sup>.

- (6) As cross-border supervisory cooperation is dependent on the nature and scale of changes and developments in the operations or structure of trading venues being of substantial importance, this Regulation provides a non-exhaustive list of events that would require home and host Member State competent authorities using the forms, templates and procedures provided as a starting point to engage in proportionate cooperation arrangements.
- (7) A competent authority should undertake all possible actions in its own jurisdiction prior to making a request for cooperation, unless it is not reasonably practicable to exhaust all the methods of enquiry.
- (8) 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.
- (9) This Regulation only makes reference to an authority submitting a request for cooperation (Requesting Authority) and an authority to which a request for cooperation has been sent (Requested Authority). Any additional authority or authorities for which the same trading venue has become of substantial importance should be able to join the cooperation agreement if accepted by the original parties.
- (10) Where, in exceptional circumstances, urgent action is required in order to fulfil obligations under Directive 2014/65/EU or Regulation (EU) No 600/2014<sup>4</sup>, or to ensure the stability of markets in its Member State, a competent authority might reasonably delay fulfilling its obligations under the agreement envisaged in Annex I.
- (11) The new legislation of the European Parliament and of the Council on markets in financial instruments set out in Directive 2014/65/EU and Regulation (EU) No 600/2014 applies from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date.
- (12) This Regulation is based on the draft implementing technical standards submitted by the ESMA to the Commission.
- (13) ESMA has not conducted open public consultations on the draft implementing technical standards on which this Regulation is based, nor analysed their potential related costs

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<sup>2</sup> ESMA/2014/298

<sup>3</sup> ESMA/2014/608

<sup>4</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council" with the following footnote: "Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

and benefits as this would have been disproportionate in relation to their scope and impact. 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<sup>5</sup> on the draft implementing technical standards on which this Regulation is based,

HAS ADOPTED THIS REGULATION:

#### Article 1

### **Format and use of standard templates for cooperation arrangements**

1. The home and host competent authorities of a trading venue that has become of substantial importance within the meaning of Article 79(2) of Directive 2014/65/EU ('home authority' and 'host authority') shall establish proportionate cooperation arrangements by entering into the standard cooperation agreement in Annex I.
2. The home and host authorities may adapt or complement the standard cooperation agreement 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 authorities shall send requests for ad hoc cooperation by using the format provided in Annex II and shall respond to those requests in the format provided in Annex III.

#### Article 2

### **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.

It shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission

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<sup>5</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).



The President

On behalf of the President

[Position]

ANNEX I

**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 a proportionate cooperation arrangement between **[host authority]** and **[home authority]**, it has been determined that the operations of **[trading venue]**, which falls under the jurisdiction of **[home Member State]**, are of substantial importance for the functioning of securities markets and the protection of investors in **[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 authority]** and **[host authority]** in relation to the regulation of the operations of **[trading venue]**. It may complement other cooperation arrangements between the Authorities.

Article 2

**Scope of cooperation**

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

*[insert relevant cooperation forms].*

2. The Authorities have agreed to cooperate in particular in respect of supervisory decisions relating to any of the following events:

*[select the options below as relevant to the proportionality of the cooperation]*

alliances, mergers, major acquisitions, opening or closing of a trading venue or of a significant part of a trading venue	
the changing, granting, denying or termination of access provisions for CCPs and trading venues	
changes of ownership amounting to a change of control, corporate structure,	

corporate governance and other integration or restructuring steps	
removals or appointments to the managing or supervisory board	
significant new trading rules or modification of existing trading rules (in particular when concerning market access for investors from the host Member State or listing of securities from listed companies from the host Member State)	
significant changes to systems and controls (such as IT systems, audit controls, risk management)	
significant changes to the financial/human/technology resources afforded (including outsourcing)	
exercise of supervisory powers as described in Article 69(2) of Directive 2014/65/EU, paragraphs (e), (f), (h), (k), (l), (m), (n), (o), (p), (q), (s), and (t), having a significant and material impact on the relevant trading venue or its participants	
the imposition of sanctions for infringements in relation to Article 70 of Directive 2014/65/EU having a significant and material impact on the relevant trading venue or its participants	
<i>[insert further events as necessary]</i>	

### Article 3

#### **Procedures for sending and processing requests for (ad hoc) cooperation**

1. A request for (ad hoc) cooperation and a reply to a request for (ad hoc) cooperation shall be made in writing (by post, fax or secure electronic means). Both shall be addressed to the designated contact persons as specified below.
2. The communication between the authority submitting a request for cooperation (the Requesting Authority) and an authority to which a request for cooperation has been sent (the Requested Authority) shall be 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. In particular, the Requesting Authority shall respond promptly to any clarifications from the Requested Authority.
3. For the purpose of this agreement, the Authorities shall designate contact persons for communications.



4. A Requesting Authority shall send its request for cooperation in the format and including the information in Annex II of [INSERT OJ REFERENCE of the Commission Delegated Act setting out the standard forms, templates and procedures for cooperation arrangements between competent authorities in respect of a trading venue whose operations have become of substantial importance in a host Member State], identifying in particular the relevance of the cooperation 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.
5. A Requested Authority shall:
  - (a) acknowledge receipt of a request for cooperation as soon as possible but at least within seven calendar days of its receipt, including the contact details of a contact person and, if possible at that stage, an estimated date of response;
  - (b) request further clarifications in whatever form as soon as possible if it has any doubt in relation to the precise cooperation arrangement requested; and
  - (c) reply to the request for cooperation in the format and including the information in Annex III of *[INSERT OJ REFERENCE of the Commission Delegated Act setting out the standard forms, templates and procedures for cooperation arrangements between competent authorities in respect of a trading venue whose operations have become of substantial importance in a host Member State]*.
6. The Requested Authority shall notify the Requesting Authority as soon as a delay of more than seven calendar days beyond the estimated date of response as communicated under the previous paragraph becomes apparent, unless the request has been designated by the Requesting Authority as urgent, in which case the Authorities shall agree on the frequency of updates required.
7. The Authorities shall consult each other expeditiously to resolve any difficulties that may arise in executing a request, including costs issues.
8. To ensure constant improvement of cooperation, Authorities shall provide feedback to each other where appropriate 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 information**

1. A Requested Authority shall take all reasonable steps to provide the cooperation requested, without delay and in a manner which ensures that any necessary regulatory

action may proceed expediently, while taking into account the complexity of the request and the necessity to involve third parties or another Authority.

2. A Requested Authority may decline to act on a request for cooperation if it considers such action would involve taking a measure contrary to Union law or contrary to national law to the extent that the national law complies with Union law. In case the Requested Authority refuses to act, it shall notify the Requesting Authority using the template provided in Annex III of *[INSERT OJ REFERENCE of the Commission Delegated Act setting out the standard forms, templates and procedures for cooperation arrangements between competent authorities in respect of a trading venue whose operations have become of substantial importance in a host Member State]*, including a full description of the circumstances justifying its decision.

3. In cases where a request for cooperation is addressed, in whole or in part, to an authority within the Home Member State which is not the designated competent authority under Article 67 of Directive 2014/65/EU, the Requested Authority shall, within the scope of its competences, notify the Requesting Authority of the appropriate contacts at the other authority using the template provided in Annex III of *[INSERT OJ REFERENCE of the Commission Delegated Act setting out the standard forms, templates and procedures for cooperation arrangements between competent authorities in respect of a trading venue whose operations have become of substantial importance in a host Member State]*.

#### 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. Without prejudice to the necessary cooperation arrangements that must be established under Article 80(2) of Directive 2014/65/EU and subject to paragraph 3, if one of the events set out in Article 2(2) of this agreement occurs, the Authorities shall at least consult each other on the supervisory approach and expected outcome.

3. A Requested Authority shall notify the Requesting Authority as soon as possible about the existence of exceptional circumstances that prevent it from fulfilling its obligations under this agreement and about any action taken in that respect.

#### Article 6

### **Procedures for consultation**

The Authorities shall consult each other before taking decisions in the context of events mentioned in Article 2(2).

#### Article 7

##### **Procedures for assistance: requests for the taking of a statement from a person**

1. If the Requesting Authority intends to include within its request the taking of a statement of a person, the Authorities shall assess:

- (a) any legal limitations or constraints and any differences in procedural requirements;
- (b) the rights of the persons from which the statements will be taken, including where applicable, any self-incrimination issues;
- (c) the participation of the Requesting Authority's staff as observers or as active participants;
- (d) the role of the staff of the Requested Authority and Requesting Authority in the taking of the statement, for example to determine which person will act as the inspector, investigator or officer and the respective powers being exercised by each Authority;
- (e) whether the person from which the statement will be taken has the right to be assisted by a legal representative and, if so, the scope of the representative's intervention during the taking of the statement including in relation to any records or report of the statement;
- (f) if applicable and known, whether the statement will be taken on a voluntary or compelled basis;
- (g) if applicable and known, whether the person from which the statement will be taken is a witness or a suspect;
- (h) whether the statement could be used in criminal proceedings and, if known, whether it will be used in criminal proceedings;
- (i) the admissibility of the statement in the Requesting Authority's jurisdiction;
- (j) the recording of the statement and the applicable procedures, for example whether it will be contemporaneous or summarised written minutes or a tape recording;
- (k) procedures on the certification or confirmation of the statement by the person providing the statement, including whether that takes place after the statement is taken; and

- (l) the delivery procedure of the statement by the Requested Authority to the Requesting Authority, including the requested format and time period.
2. The Authorities shall ensure that arrangements are in place for their operational staff to proceed efficiently. In particular, the Authorities shall put in place arrangements to enable their staff to efficiently agree on:
- (a) dates;
  - (b) any additional information that may be necessary;
  - (c) the list of questions to be asked to the person from which the statement will be taken and its review;
  - (d) travelling arrangements, including ensuring that the Authorities are able to meet to discuss the matter prior to the taking of the statement; and
  - (e) if necessary, language arrangements.

#### Article 8

#### **Procedures for assistance: requests for an Authority to open an investigation or carry out an on-site inspection**

1. If a Requested Authority decides to open an investigation or carry out an on-site inspection on behalf of a Requesting Authority, the supervisory and investigative steps taken by the Requested Authority shall remain the responsibility and within the overall control of the Requested Authority. The Requesting Authority and the Requested Authority may consult on the best way to give useful effect to the request. The Requested Authority is expected to keep the Requesting Authority informed of the progress of the investigation or on-site inspection and will deliver its findings in good time.
2. The Authorities shall consult each other on the merits of conducting a joint investigation or a joint on-site inspection.
3. In deciding on whether to initiate a joint investigation or a joint on-site inspection, the Authorities shall consider as a minimum:
  - (a) any other requests for cooperation received from the Requesting Authority that might suggest that it is appropriate to carry out a joint investigation or a joint on-site inspection ;
  - (b) whether they are separately conducting their own inquiries into a matter with cross-border implications which would be more suitable for a cooperation arrangement;
  - (c) issues relating to double jeopardy;

- (d) the legal and regulatory framework in each of their jurisdictions to ensure they have a good understanding of the potential constraints and legal limitations on its conduct and any proceedings which might follow;
  - (e) the management and direction of the investigation or on-site inspection;
  - (f) prospects of agreeing a joint fact-finding;
  - (g) the allocation of resources and appointment of investigators;
  - (h) the determination of actions to be taken, jointly or individually, by the Authorities;
  - (i) whether to establish a joint action plan and timings of work by each Authority;
  - (j) mutual sharing of information gathered and reporting on the outcomes of the individual actions taken; and
  - (k) case specific issues.
4. If the Authorities decide to open a joint investigation or joint on-site inspection, those Authorities shall:
- (a) agree on procedures for its conduct and conclusion;
  - (b) engage in an ongoing dialogue to coordinate the information gathering process and the fact-findings;
  - (c) work closely and cooperate with each other as to the conduct of the joint investigation or joint on-site inspection; and
  - (d) provide assistance to each other in respect of subsequent enforcement proceedings to the extent legally permitted, including coordinating any proceedings or other enforcement action related to the outcome of the joint investigation or joint on-site inspection (administrative, civil or criminal) or, where appropriate, the prospects of a settlement.
5. Although it may not be possible to resolve all of these issues at the outset of a joint investigation or joint on-site inspection, the Authorities shall, as a minimum, consider:
- (a) the specific laws which will form the subject matter of the investigation or on-site inspection;
  - (b) the drawing up of a joint action plan (Who, What, When, Where and How), including milestones and the allocation of responsibilities in delivering the product of the work and taking into account each Authority's respective priorities;

- (c) 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;
- (d) the identification and assessment of specific legal professional privileges that may have an impact on the investigation proceedings as well as on the enforcement proceedings, for example, self-incrimination;
- (e) the public and press strategy; and
- (f) the use of information provided or exchanged.

#### Article 9

##### **Confidentiality restrictions and permissible uses of information**

1. Any information that is exchanged between the Authorities is subject to the professional secrecy and data protection provisions of Directive 2014/65/EU. The Authorities should defer to these provisions when exchanging information.
2. The Authorities shall, subject to applicable law and regulations in the relevant Member State, keep any non-public information related to the provision of cooperation arrangements or information exchange under this agreement confidential, including:
  - (a) the request for cooperation itself and the content of that request;
  - (b) any matter following such request, including any bilateral consultations between the Authorities and where appropriate, all the information regarding a refusal to establish cooperation arrangements; and
  - (c) unsolicited information provided by an authority and the fact that such information was provided.
3. The Authorities shall ensure that their relevant officials comply with the applicable confidentiality obligations.
4. If, in order to execute a request, the Requested Authority considers it necessary or desirable to disclose the fact that the Requesting Authority has made the request, the Requested Authority shall only make that disclosure after it has discussed the nature and extent of the disclosure required with the Requesting Authority and obtained its consent to the disclosure. If the Requesting Authority does not provide its consent to the disclosure, the Requesting Authority shall instead be given the option of withdrawing its request.

#### Article 10

### **Amendment, supplementary provisions and review of this agreement**

1. With the consent of all of the Authorities that are parties to this agreement, it may be amended or supplemented.
2. The Authorities shall regularly monitor and review the implementation of this agreement and carry out consultations with each other in order to improve its operation and to resolve possible difficulties.

#### Article 11 **Additional parties**

An authority which becomes a host authority after the entry into effect of this agreement may request becoming a party to it.

#### Article 12 **Resolution of disputes**

The Authorities shall endeavour to resolve any disputes between them on the cooperation requested or provided under this agreement or on the application of the procedures set out in it. If disputes in relation to the cooperation requested or provided cannot be resolved between the Authorities, the Authorities shall resolve them under the non-binding mediation mechanism foreseen in Article 31(c) of Regulation 1095/2010/EU establishing ESMA.

#### Article 13 **Termination**

1. This agreement shall be concluded for an unlimited period of time but shall terminate in the event that the trading venue to which it relates ceases to be of substantial importance in the host Member State or States.
2. An Authority seeking to withdraw from this agreement shall provide at least thirty calendar days prior written notice to the other Authority or Authorities party to it before doing so.
3. Any requests for information communicated before the effective date of its withdrawal will be processed under this agreement unless the withdrawing Authority requests otherwise.
4. Following an Authority's withdrawal from this agreement, that Authority shall continue to apply the confidentiality protections set out in this agreement.

Article 14  
**Publication**

The Authorities agree to publish this Cooperation Arrangement on their respective websites. Any amendments or supplements made under Article 10 shall also be published.

Article 15  
**Entry into effect**

This agreement shall be effective from the date of signature of the home and host authorities.

**Signatures**

*[home authority]*

*[host authority]*



ANNEX II  
Standard format for a request for cooperation

Reference number: .....

Date: .....

**General information**

FROM:

Member State:

Requesting Authority:

Legal address:

(Contact details of the designated contact person)

Name:

Telephone:

Email:

TO:

Member State:

Requested Authority:

Legal address:

(Contact details of the designated contact person)

Name:

Telephone:

Email:

Dear *[insert appropriate name]*

In accordance with Article ... of the *[INSERT OJ REFERENCE of the Commission Delegated Act setting out the standard forms, templates and procedures for cooperation arrangements between competent authorities in respect of a trading venue whose operations have become of substantial importance in a host Member State]* your assistance is sought in relation to the matter(s) set out in further detail below.

I would be grateful for the above assistance by *[insert indicative date for the reply and in case of an urgent request insert deadline for the information to be provided by]* or, if that is not possible, for an indication as to when you anticipate being in a position to provide the

assistance which is sought.

**Type of request for assistance**

Please tick the appropriate box(es)

- (1) Provision of information
- (2) Taking of a statement
- (3) Opening of an investigation
- (4) On-site inspection
- (5) Other

**Reasons for the request for assistance**

.....  
.....  
.....

*[insert provision(s) of the sectoral legislation under which the Requesting Authority is competent to deal with the matter]*

The request concerns assistance in

.....  
.....  
.....  
.....  
.....

*[insert description of the subject matter of the request, the purpose for which the assistance is sought, facts underlying the investigation which form the basis of the request and explanation for its helpfulness]*

Further to

.....  
.....  
.....  
.....

*[if applicable, insert details of the previous request in order to enable it to be identified]*

1. Provision of information

- (a) Please provide a detailed description of the specific information sought with reasons why that information will be of assistance and, if known, a list of the persons considered possessing the information sought or the places where such information may be obtained.

.....  
.....  
.....  
.....

- (b) If the request concerns information relating to a transaction or order in a specific financial instrument, please provide the following information.

Product ID:.....

*[insert precise description of the financial instrument, including the ISIN code]*

Person ID:.....

*[insert the identity of any person connected with the transaction or order, including a person dealing in the financial instrument or on whose behalf the dealing is considered to have taken place]*

Dates: .....

*[insert the dates between which transactions or orders in those financial instruments took place including in the case of a significant period of time, reasons why the entirety of the time period is beneficial]*

- (c) If the request concerns information relating to the business or activities of a person, please provide information as precise as possible to enable that person to be identified.

.....  
.....  
.....

.....

(d) If there are special considerations on the sensitivity of the information sought, please provide an indication of the sensitivity of the information contained in the request and any special precautions that have to be taken in collecting the information due to investigatory considerations.

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.....

(e) Please provide any additional information.

.....  
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.....  
.....

*[Whether the Requesting Authority has been or will be in contact with any other Authority or law enforcement agency in our Member State in relation to the subject matter of the request or any other Authority which the Requesting Authority is aware that has an active interest in the subject matter of the request]*

(f) In case of an urgent request and the setting of any deadlines, please provide full explanation of the urgency of the request and an explanation of any deadlines that the Requesting Authority has asked for the information to be provided by.

.....  
.....  
.....  
.....

## 2. Taking of a statement

Please indicate:

(a) Statement under: oath  / affirmation

(b) Need and purpose of the taking of a statement:

.....  
.....

.....  
.....  
(c) Name of person(s) from whom the statement is to be obtained:  
.....  
.....  
.....

*[insert details of the persons from which the statement will be taken to enable the Requested Authority to begin the summoning process where applicable]*

(d) Detailed description of the information sought, including a preliminary list of questions (if available at the time of the request).  
.....  
.....  
.....  
.....

(e) Any additional information which may be useful:  
.....  
.....  
.....  
.....

*[Whether the Requesting Authority's staff is requesting participation in the taking of the statement, details of the participating officials of the Requesting Authority, where appropriate, description of any legal and procedural requirements that must be complied with to ensure the admissibility of statements made in the interview in the jurisdiction of the Requesting's Authority]*

### 3. The opening of an investigation or a joint-investigation

If the request concerns the opening of an investigation on behalf of the Requesting Authority, please provide information to enable the Requested Authority to assess whether it may have an interest in entering into a joint investigation, including the Requesting Authority's proposal for the investigation, its reasoning and the perceived benefits to the Requested Authority.  
.....  
.....  
.....  
.....

*[including all relevant information required by the Requested Authority to enable the latter to*

*provide the necessary assistance by opening an investigation or a joint investigation, as appropriate]*

4. The opening of an on-site inspection or a joint inspection

If the request concerns the opening of an on-site inspection on behalf of your Authority, please provide information to enable the Requested Authority to assess whether it may have an interest in entering into a joint on-site inspection, including the Requesting Authority's proposal for the inspection, its reasoning and the perceived benefits to the Requested Authority.

.....  
.....  
.....  
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.....

*[including all relevant information required by the Requested Authority to enable the latter to provide the necessary assistance by opening an on-site inspection or an on-site inspection, as appropriate]*

.....  
.....  
.....

*[Insert any necessary confidentiality warnings or any necessary restrictions on the permissible uses of information (provided those restrictions are compliant with Union law).*

Yours sincerely,

*[signature]*



ANNEX III  
Standard format for a response to a request for cooperation

Reference number: .....

Date: .....

**General information**

FROM:

Member State:

Requested Authority:

Legal address:

(Contact details of the designated contact person)

Name:

Telephone:

Email:

TO:

Member State:

Requesting Authority:

Legal address:

(Contact details of the designated contact person)

Name:

Telephone:

Email:

Dear *[insert appropriate name]*

In accordance with *[Article ... of [INSERT OJ REFERENCE of the Commission Delegated Act setting out the standard forms, templates and procedures for cooperation arrangements between competent authorities in respect of a trading venue whose operations have become of substantial importance in a host Member State]* your request dated *[dd.mm.yyyy]* with reference *[insert request reference number]* has been processed by us.

**Information gathered**

.....  
.....  
.....  
.....

*[If the information has been gathered, please set out the information here or provide an explanation of how it will be provided]*

The information provided is confidential and is disclosed to *[insert name of the Requesting Authority]* pursuant to the *[insert provision of the applicable sectoral legislation]* and on the basis that the information shall remain confidential in accordance with *[insert provision of the applicable sectoral legislation]*.

The *[insert name of the Requesting Authority]* shall observe the requirements of the *[insert provision of the applicable sectoral legislation]* with respect to confidentiality restrictions and the permissible uses of that information.

.....  
.....  
.....

*[Insert any other necessary confidentiality warnings or any necessary restrictions on the permissible uses of information (provided those restrictions are compliant with Union law)].*

Yours sincerely,

*[signature]*



**ITS 2: Draft implementing technical standards on format and timing of the communications and the publication regarding the suspension and removal of financial instruments from trading on a Regulated Market, an MTF or an OTF**



Brussels, **XXX**  
[...](2015) **XXX**

**COMMISSION DELEGATED REGULATION (EU) .../...**

**of **XXX****

**COMMISSION IMPLEMENTING REGULATION (EU) No .../... laying down implementing technical standards with regard to the format and timing of the communications and the publication of the suspension and removal of financial instruments from trading on a regulated market, an MTF or an OTF according to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments**

**of [ ]**

**(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 15 May 2014 of the European Parliament and of the Council on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU<sup>1</sup>, and in particular Articles 32(3) and 52(3) thereof,

Whereas:

- (1) Directive 2014/65/EU establishes an elaborate system by which suspensions, their respective liftings and removals from trading are to be published and communicated in a timely and efficient manner.
- (2) Publication of the above information by trading venue operators and competent authorities on websites ensures ease of access whilst not imposing additional significant costs. Publication may also occur by additional means, simultaneously with or after publication on the website but website publication should be the primary means of publication and simultaneous dissemination of the information in the Union to ensure the information is simultaneously available to everyone.
- (3) Due to the need of speedy and accurate communication, enabling a good functioning of the exchange for information and cooperation envisaged by Directive 2014/65/EU, this implementing standard sets out uniform formats that enable all relevant information to be easily and efficiently communicated and published.
- (4) Competent authorities should use these formats for all communications except in seriously exceptional circumstances such as the closure of an entire market where competent authorities may use alternative means to ensure timely communication of suspensions.
- (5) Competent authorities should be able to suspend related financial instruments. The communication formats in the annex to this regulation differentiate between sufficiently related derivatives and other related financial instruments. Sufficiently related derivatives should be understood as those derivatives where the connection between the derivative and the suspended instrument implies that the derivative should also be suspended as specified in [insert reference to suspension RTS]. Competent authorities should be able to use an expedient means to publish and communicate suspensions of related instruments that are not sufficiently related instruments, i.e. a field identified as “other financial instruments”.
- (6) The new legislation of the European Parliament and of the Council on markets in financial instruments set out in Directive 2014/65/EU and Regulation (EU) No 600/2014 of the European Parliament and of the Council<sup>2</sup> applies from 3 January 2017. To

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<sup>1</sup> OJ L 173, 12.6.2014, p. 173

<sup>2</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84)

ensure consistency and legal certainty, this Regulation should apply from the same date.

- (7) This Regulation is based on the draft implementing technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (8) ESMA has conducted open public consultations on the draft implementing technical standards on which this Regulation is based and 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<sup>3</sup>. ESMA has not analysed potential related costs and benefits as this would have been disproportionate in relation to their scope and impact,

HAS ADOPTED THIS REGULATION:

#### Article 1 **Subject matter**

This Regulation sets down the format and timing for the following communications and publications:

- (a) publication by a market operator, an investment firm or a market operator operating an MTF or an OTF ('trading venue operator') of its decision to suspend or remove a financial instrument and, if relevant, related derivatives from trading or to lift a suspension;
- (b) communication of the decisions referred to in point (a) to the relevant competent authority;
- (c) publication by a competent authority of its decision to suspend trading or remove from trading a financial instrument and, if relevant, related derivatives or to lift a suspension;
- (d) communication by a competent authority to ESMA and other competent authorities of the decision to suspend trading or to remove from trading a financial instrument and, if relevant, related derivatives or to lift a suspension;
- (e) communication by competent authorities that have received a notification from another competent authority pursuant to Articles 32(2) or 52(2) of Directive 2014/65/EU ('notified competent authorities') of their respective decisions on whether

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<sup>3</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

to follow the decisions referred to in point (d) to ESMA and other competent authorities.

#### Article 2

##### **Format of the publication and communication by trading venue operators**

1. A trading venue operator shall publish the decisions referred to in point (a) of Article 1 on its website in the format set out in Table 2 of the Annex.
2. A trading venue operator shall communicate the decisions referred to in point (a) of Article 1 to the relevant competent authority in a standard machine readable format approved by that competent authority using the format set out in Table 2 of the Annex.

#### Article 3

##### **Timing of the publications and communications by trading venue operators**

1. A trading venue operator shall publish the decisions referred to in point (a) of Article 1 immediately.
2. A trading venue operator shall not except in exceptional circumstances, publish the decisions referred to in point (a) of Article 1 by additional means prior to publication on its website.
3. A trading venue operator shall communicate the decisions referred to in point (a) of Article 1 to the relevant competent authority simultaneously with its publication or immediately thereafter.

#### Article 4

##### **Format of the publications and communications by competent authorities**

1. A competent authority shall publish the decision referred to in point (c) of Article 1 on a website in the format set out in Table 3 of the Annex.
2. A competent authority shall, except in exceptional circumstances, communicate the decisions referred to in points (d) and (e) of Article 1 in a standard machine readable format using the formats set out in Tables 3 and 4 of the Annex.

#### Article 5

##### **Timing of the publications and communications by competent authorities**

1. A competent authority shall publish a decision referred to in point (c) of Article 1 immediately.
2. A competent authority shall communicate a decision referred to in points (d) and (e) of Article 1 simultaneously with its publication or immediately thereafter.
3. A notified competent authority shall communicate a decision referred to in point (e) of Article 1 as soon as reasonably practicable after having received a communication referred to in point (d) of Article 1 that relates to instruments admitted to trading or traded in its jurisdiction.

Article 6  
**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 2017.

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

## ANNEX

Table 1  
Symbol table (to be applied to all Tables below)

SYMBOL	DATA TYPE	DEFINITION
{ALPHANUM-n}	Up to n alphanumeric l characters	Free text field.
{COUNTRYCODE_2}	2 alphanumeric l characters	2 letter country code, as defined by ISO 3166-1 alpha-2 country code
{DATE_TIME_FORM AT}	ISO 8601 date and time format	Date and time in the following format: YYYY-MM-DDThh:mm:ss.Z.  <ul style="list-style-type: none"> <li>- 'YYYY' is the year;</li> <li>- 'MM' is the month;</li> <li>- 'DD' is the day;</li> <li>- 'T' – means that the letter 'T' shall be used</li>   <li>- 'hh' is the hour;</li> <li>- 'mm' is the minute;</li> <li>- 'ss.' is the second;</li> <li>- Z is UTC time.</li> </ul> <p>Dates and times shall be reported in UTC.</p>
{ISIN}	12 alphanumeric l characters	ISIN code, as defined in ISO 6166
{LEI}	20 alphanumeric l characters	Legal entity identifier as defined in ISO 17442
{MIC}	4 alphanumeric l characters	Market identifier as defined in ISO 10383

Table 2

**Format of the publication by a trading venue operator of its decision to suspend or remove the financial instrument and related derivatives from trading; and of its decision to lift a suspension of a financial instrument and related derivatives;**

**Format of the communication by a trading venue operator to the relevant competent authority of its decision to suspend or remove the financial instrument and related derivatives from trading; and of its decision to lift a suspension of a financial instrument and related derivatives;**

<b>FIELD</b>	<b>DETAILS TO BE REPORTED</b>	<b>FORMAT FOR REPORTING</b>
Date and time of the communication	Field to be populated with the date and time of the communication.	{DATE_TIME_FORMAT}
Action type	Field to be populated with the action type.	Suspension, removal, lifting of a suspension.
Reasons for the action	Field to be populated with the reasons for the action	{ALPHANUM-350}
Effective from	Field to be populated with the date and time from which the action is effective.	{DATE_TIME_FORMAT}
Effective to	Field to be populated with the date and time until which the action is effective.	{DATE_TIME_FORMAT}
Ongoing	Field to be populated with true if the action is ongoing or false otherwise.	“True” –Action is ongoing “False” – Action is not ongoing
Trading venue(s)	Field to be populated with the MIC or MICs of the	{MIC}

	markets or segments thereof to which the action relates.	If multiple MICs have to be provided, this field shall be populated with multiple MICs separated by comma.
Issuer name	Field to be populated with the name of the issuer of the instrument to which the action relates.	{ALPHANUM-350}
Issuer	Field to be populated with the LEI of the issuer of the instrument to which the action relates.	{LEI}
Instrument identifier	Field to be populated with the ISIN of the instrument.	{ISIN}
Instrument name full	Field to be populated with the name of the instrument.	{ALPHANUM-350}
Sufficiently related derivatives	Field to be populated with the ISINs of the sufficiently related derivatives as specified in [insert reference to RTS 18 on suspension].	{ISIN} If multiple ISINs have to be provided, this field shall be populated with multiple ISINs separated by comma.
Other related instruments	Field to be populated with the ISINs of the related derivatives also affected by the action.	{ISIN} If multiple ISINs have to be provided, this field shall be populated with multiple ISINs separated by comma.
Comments	Field to be populated with comments.	{ALPHANUM-350}



Table 3

**Format of the publication by Competent Authorities of the decision to suspend or remove a financial instrument and related derivatives from trading and to lift a suspension of a financial instrument and related derivatives**

**Format of the communication by Competent Authorities of the decision to suspend or remove a financial instrument and related derivatives from trading and to lift a suspension of a financial instrument and related derivatives**

<b>FIELD</b>	<b>DETAILS TO BE REPORTED</b>	<b>FORMAT FOR REPORTING</b>
Competent authority	Field to be populated with the acronym of the competent authority doing the communication.	{ALPHANUM-10}
Member State of the competent authority	Field to be populated with the country code of the Member State of the competent authority doing the communication.	{COUNTRYCODE_2}
Trading venue operator as initiator of the action	Field to be populated with: - true if the initiator of the action is a trading venue operator; or - false if the initiator of the action is not a trading venue operator but a competent authority.	“True” – Trading venue initiator “False” – Not a trading venue initiator
Date and time of the communication	Field to be populated with the date and time of the communication.	{DATE_TIME_FORMAT}
Action type	Field to be populated with the action type.	Suspension, removal, lifting of a suspension.
Reasons for the action	Field to be populated with	{ALPHANUM-350}

	the reasons for the action.	
Effective from	Field to be populated with the date and time from which the action is effective.	{DATE_TIME_FORMAT}
Effective to	Field to be populated with the date and time until which the action is effective.	{DATE_TIME_FORMAT}
Ongoing	Field to be populated with true if the action is ongoing or false otherwise.	“True” -Action is ongoing “False” – Action is not ongoing
Trading venue(s)	Field to be populated with the MIC or MICs of the markets or segments thereof to which the action relates.	{MIC}  If multiple MICs have to be provided, this field shall be populated with multiple MICs separated by comma.
Issuer name	Field to be populated with the name of the issuer of the instrument to which the action relates.	{ALPHANUM-350}
Issuer	Field to be populated with the LEI of the issuer of the instrument to which the action relates.	{LEI}
Instrument identifier	Field to be populated with the ISIN of the instrument.	{ISIN}
Instrument full name	Field to be populated with the name of the instrument.	{ALPHANUM-350}
Sufficiently related	Field to be populated with the ISINs of the	{ISIN}If multiple ISINs have to be provided, this field shall be

derivatives	sufficiently related derivatives as specified in [insert reference to RTS 18 on suspension].	populated with multiple ISINs separated by comma.
Other related instruments	Field to be populated with the ISINs of the related derivatives also affected by the action.	{ISIN}If multiple ISINs have to be provided, this field shall be populated with multiple ISINs separated by comma.
Comments	Field to be populated with comments.	{ALPHANUM-350}

Table 4

**Format of the communication to ESMA and other competent authorities by competent authorities of their decisions on whether to follow a suspension, a removal or a lifting of a suspension**

FIELD	DETAILS TO BE REPORTED	FORMAT FOR REPORTING
Competent authority	Field to be populated with the acronym of the competent authority that communicated the original action.	{ALPHANUM-10}
Member State of the competent authority	Field to be populated with the country code of the Member State of the competent authority that communicated the original action.	{COUNTRYCODE_2}
Competent authority initiating the current action	Field to be populated with the acronym of the competent authority following or not following the original action and initiating the current action.	{ALPHANUM-10}
Member State of the competent authority initiating the current action	Field to be populated with the country code of the Member State of the competent authority following or not following the original action and initiating the current action.	{COUNTRYCODE_2}
Original action type	Field to be populated with the type of the original action.	Suspension, removal, lifting of a suspension.

Decision to follow, if applicable	Field to be populated, if applicable, with:  - true if the action is followed; or  - false if the action is not followed.	“True” – Action is followed  “False” – Action is not followed
Reasons for the decision not to follow a removal, suspension or lifting thereof, if applicable	Field to be populated with the reasons for the decision not to follow a removal, suspension or lifting thereof, if applicable.	{ALPHANUM-350}
Date and time of the communication	Field to be populated with the date and time of the communication of the current action.	{DATE_TIME_FORMAT}
Effective from	Field to be populated with the date and time from which the current action is effective.	{DATE_TIME_FORMAT}
Effective to	Field to be populated with the date and time until which the current action is effective.	{DATE_TIME_FORMAT}
Ongoing	Field to be populated with true if the action is ongoing or false otherwise.	“True” –Action is ongoing  “False” – Action is not ongoing
Trading venue(s)	Field to be populated with the MIC or MICs of the markets or segments thereof to which the current action relates.	{MIC}  If multiple MICs have to be provided, this field shall be populated with multiple MICs separated by comma.

Issuer name	Field to be populated with the name of the issuer of the instrument to which the action relates.	{ALPHANUM-350}
Issuer	Field to be populated with the LEI of the issuer of the instrument to which the action relates.	{LEI}
Instrument identifier	Field to be populated with the ISIN of the instrument.	{ISIN}
Instrument name full	Field to be populated with the name of the instrument.	{ALPHANUM-350}
Sufficiently related derivatives	Field to be populated with the ISINs of the sufficiently related derivatives as specified in [insert reference to RTS 18 on suspension].	{ISIN}If multiple ISINs have to be provided, this field shall be populated with multiple ISINs separated by comma.
Other related instruments	Field to be populated with the ISINs of the related derivatives also affected by the action.	{ISIN}If multiple ISINs have to be provided, this field shall be populated with multiple ISINs separated by comma.
Comments	Field to be populated with comments.	{ALPHANUM-350}

## ITS 3: Draft implementing technical standards under Article 61(5) of Directive 2014/65/EU



Brussels, **XXX**  
[...](2015) **XXX**

**COMMISSION DELEGATED REGULATION (EU) .../...**

**of **XXX****

**COMMISSION IMPLEMENTING REGULATION (EU) No .../... laying down implementing technical standards with regard to the standard forms, templates and procedures for the authorisation of data reporting services providers and related notifications according to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments**

**of [ ]**

**(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 15 May 2014 of the European Parliament and of the Council on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU<sup>(1)</sup>, and in particular Article 61(5) thereof,

Whereas:

- (1) It is appropriate to set out common standard forms, templates and procedures to ensure the common understanding and enforcement among Member States' competent authorities of the authorisation process regarding the provision of data reporting services and ensuring efficient information flows. To facilitate communications between the applicant and the competent authority, competent authorities should designate a contact point specifically for the purpose of the application process and should publish the information on the contact point on their website.
- (2) Clear time limits should be defined for the submission of information on changes to the management body of a data reporting services provider in order to allow competent authorities to assess whether the changes may pose a threat to the effective, sound and prudent management of the data reporting services provider and the adequate consideration of the interests of its clients and the integrity of the market.
- (3) Data reporting services providers should be exempt from the requirement to submit information on a change to the management body before that change takes effect, if the change is due to factors not within the control of the data reporting services provider, such as in the case of the death of a management body member.
- (4) The organisational requirements for approved publication arrangements (APAs), consolidated tape providers (CTPs) and approved reporting mechanisms (ARMs) differ from each other in some respects. As a result, an applicant should only be required to include in its application the information needed for assessing the application for the data reporting service it intends to provide.
- (5) Directive 95/46/EC of the European Parliament and of the Council<sup>(2)</sup> should apply to the processing of personal data by the Member States in the application of this Regulation.
- (6) The new legislation of the European Parliament and of the Council on markets in financial instruments set out in Directive 2014/65/EU and Regulation (EU) No

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<sup>1</sup> OJ L 173, 12.6.2014, p. 173

<sup>2</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).



600/2014<sup>(3)</sup> applies from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date.

- (7) This Regulation is based on the draft implementing technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (8) ESMA has conducted open public consultations on the draft implementing technical standards on which this Regulation is based and 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<sup>(4)</sup>. ESMA has not analysed potential related costs and benefits as this would have been disproportionate in relation to their scope and impact,

HAS ADOPTED THIS REGULATION:

#### Article 1 **Contact point**

Competent authorities shall designate a contact point for handling all information received from applicants seeking authorisation as a data reporting services provider or notifying changes of information already provided. Information on the contact point shall be made public and regularly updated on the competent authorities' websites.

#### Article 2 **Submission of the application and notification to the competent authority**

1. An applicant for authorisation to provide data reporting services shall provide all necessary information to the competent authority by filling in the application form set out in Annex I.
2. An applicant for authorisation to provide data reporting services shall notify the competent authority of all members of its management body by filling in the notification form set out in Annex II.

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<sup>3</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council" with the following footnote: "Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

<sup>4</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

3. An applicant for authorisation to provide data reporting services shall ensure that the submitted information clearly identifies which specific requirement of this Regulation it refers to and in which document that information is provided.
4. Where a requirement of this Regulation or Regulation (EU) on **[Insert reference to DRSP RTS]** is not applicable to the data reporting service that the applicant is applying for, the applicant shall state this in the application form set out in Annex I.
5. Competent authorities shall specify on their websites whether applications to provide data reporting services, notifications of the members of the management body and any related additional information may be submitted on paper, electronically, or both.

### Article 3

#### **Receipt of the application and requests for additional information**

1. Within 10 working days from the receipt of the application, the competent authority shall send on paper or by electronic means an acknowledgement of receipt to the applicant, including the contact details of the department or section or person within the competent authority to whom the applicant can direct further queries regarding the application.
2. The competent authority may send a request to the applicant indicating additional information to be provided to proceed with the assessment of the application.

### Article 4

#### **Notification of changes**

A data reporting services provider shall notify the competent authority of any change to the membership of its management body before such change takes effect, or when this is materially impossible, within 10 working days after the change, by filling in the notification form set out in Annex III.

### Article 5

#### **Entry into force and application**

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

It shall apply from 3 January 2017.

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



Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]



ANNEX I  
**Application form for a data reporting services provider**

Reference number: .....

Date: .....

FROM:

Name of the applicant:

Address:

Legal Entity Identifier(where applicable):

(Contact details of the designated contact person at the applicant)

Full Name:

Telephone:

Email:

TO:

Member State:

Competent authority:

Address:

(Contact details of the designated contact point at the competent authority)

Address:

Telephone:

Email:

Dear [insert appropriate name]

In accordance with **Article 2** of the Commission Implementing Regulation (EU) No .../... laying down implementing technical standards with regard to standard forms, templates and procedures for the authorisation of data reporting services providers please find attached the authorisation application.

• Person at the applicant in charge of preparing the application:

Full Name:

Status/position:

Telephone:

E-mail:

Date:

Signature:

• Nature of the application (tick the relevant box(es):

- Authorisation – Approved Reporting Mechanism (ARM)
- Authorisation – Approved Publication Arrangement (APA)
- Authorisation – Consolidated Tape Provider (CTP)

CONTENT

Please insert the information referred to under Commission Delegated Regulation [RTS on DRSPs]. Please set out that information under the appropriate section or make reference to the relevant annexes containing the information.

Information on the organisation (Article 2 of Commission Delegated Regulation [RTS on DRSPs])

.....

Information on corporate governance (Article 3 of Commission Delegated Regulation [RTS

on DRSPs))

.....

Information on conflicts of interest (Article 5 of Commission Delegated Regulation [RTS on DRSPs])

.....

Information on organisational requirements regarding outsourcing (Article 6 of Commission Delegated Regulation [RTS on DRSPs])

.....

Information on business continuity and back-up facilities (Article 7 of Commission Delegated Regulation [RTS on DRSPs])

.....

Information on testing and capacity (Article 8 of Commission Delegated Regulation [RTS on DRSPs])

.....

Information on security (Article 9 of Commission Delegated Regulation [RTS on DRSPs])

.....

Information on management of incomplete or potentially erroneous information by APAs and CTPs (Article 10 of Commission Delegated Regulation [RTS on DRSPs])

.....

Information on management of incomplete or potentially erroneous information by ARMs (Article 11 of Commission Delegated Regulation [RTS on DRSPs])

.....

Information on connectivity of ARMs (Article 12 of Commission Delegated Regulation [RTS on DRSPs])

.....

Information on other services provided by CTPs (Article 13 of Commission Delegated Regulation [RTS on DRSPs])

.....  
Information on publication arrangements (Chapter 3 of Commission Delegated Regulation  
[RTS on DRSPs])  
.....





ANNEX II  
**Notification form for the list of members of the management body**

Reference number: .....

Date: .....

FROM:

Name of the applicant:

Address:

Legal Entity Identifier (where applicable):

(Contact details of the designated contact person at the applicant)

Full Name:

Telephone:

Email:

TO:

Member State:

Competent authority:

Address:

(Contact details of the designated contact point at the competent authority)

Address:

Telephone:

Email:

Dear [insert appropriate name]

In accordance with **Article 2** of the Commission Implementing Regulation (EU) No .../... laying down implementing technical standards with regard to standard forms, templates and procedures for the authorisation of data reporting services providers please find attached the notification relating to the members of the management body.

• Person at the applicant in charge of preparing the application:

Full Name:

Status/position:

Telephone:

E-mail:

Date:

Signature:

List of members of the management body

Member 1

Full name.....

Date and place of birth .....

Personal national identification number or equivalent thereof.....

Private address:.....

Contact details (Telephone and email address).....

Position.....

Curriculum vitae attached to application: Yes / No

Professional experience and other relevant experience .....

Educational qualification and relevant training .....

Criminal records attached to this application OR self-declaration of good repute and authorisation to the competent authority to make enquiries under Article 4(d) of Commission Delegated Regulation [RTS on DRSPs].....

Self-declaration of good repute and authorisation to the competent authority to make enquiries under Article 4(e) of Commission Delegated Regulation [RTS on DRSPs].....

Minimum time (approximate) that will be devoted to the performance of the person's functions within the data reporting services provider.....

Declaration of any potential conflicts of interest that may exist or arise in performing the duties and how these conflicts are managed.....

Information pursuant to the guidelines developed under Article 63 (3) of Directive 2014/65/EU and any additional information necessary for the assessment that the member is of sufficiently good repute, possesses sufficient knowledge, skills and experience and commits sufficient time to perform the duties.....

.....

Effective date .....

[Please set out that information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing the information]

Member [n]

Full name.....

Date and place of birth .....

Personal national identification number or equivalent thereof.....

Private address:.....

Contact details (Telephone and email address).....

Position.....

Curriculum vitae attached to application: Yes / No

Professional experience and other relevant experience .....

Educational qualification and relevant training .....

Criminal records attached to application OR self-declaration of good repute and authorisation to the competent authority to make enquiries under Article 4(d) of Commission Delegated Regulation [RTS on DRSPs] .....

Self-declaration of good repute and authorisation to the competent authority to make enquiries under Article 4(e) of Commission Delegated Regulation [RTS on DRSPs].....

Minimum time (approximate) that will be devoted to the performance of the person's functions within the data reporting services provider.....

Declaration of any potential conflicts of interest that may exist or arise in performing the duties and how these conflicts are managed.....

Information pursuant to the guidelines developed under Article 63 (3) of Directive 2014/65/EU and any additional information necessary for the assessment that the member is of sufficiently good repute, possesses sufficient knowledge, skills and experience and commits sufficient time to perform the duties.....

.....

.....

Effective date .....



ANNEX III

**Notification form for changes to the membership of the management body**

Reference number: .....

Date: .....

FROM:

Name of the data reporting services provider:

Address:

Legal Entity Identifier (where applicable):

(Contact details of the designated contact person at the data reporting services provider)

Full name:

Telephone:

Email:

TO:

Member State:

Competent Authority:

Address:

(Contact details of the designated contact point at the competent authority)

Address:

Telephone:

Email:

Dear [insert appropriate name]

In accordance with **Article 4** of the Commission Implementing Regulation (EU) No .../... laying down implementing technical standards with regard to standard forms, templates and procedures for the authorisation of data reporting services providers please find attached the notification on changes to the membership of the management body.

• Person at the data reporting services provider in charge of preparing the notification:

Full name:

Status/position:

Telephone:

E-mail:

Date:

Signed:

Information on member(s) leaving the management body

Member 1

Full name.....

Contact details (Telephone and email address).....

Position.....

Effective date of departure from management body.....

Reasons for the departure from management body.....

Member [n]

Full name.....

Contact details (Telephone and email address).....

Position.....

Effective date of departure from management body.....

Reasons for the departure from management body.....

Information on new member(s) of the management body

Member 1

Full name.....

Date and place of birth .....

Personal national identification number or equivalent thereof.....

Private address:.....

Contact details (telephone and email address).....

Position.....

Curriculum vitae attached to application: Yes / No

Professional experience and other relevant experience .....

Educational qualification and relevant training .....

Criminal records attached to this application OR self-declaration of good repute and authorisation to the competent authority to make enquiries under Article 4(d) of Commission Delegated Regulation [RTS on DRSPs].....

Self-declaration of good repute and authorisation to the competent authority to make enquiries under Article 4(e) of Commission Delegated Regulation [RTS on DRSPs].....

Minimum time (approximate) that will be devoted to the performance of the person's



functions within the data reporting services provider.....

Declaration of any potential conflicts of interest that may exist or arise in performing the duties and how these conflicts are managed.....

Information pursuant to the guidelines developed under Article 63 (3) of Directive 2014/65/EU and any additional information necessary for the assessment that the member is of sufficiently good repute, possesses sufficient knowledge, skills and experience and commits sufficient time to perform the duties.....  
.....  
.....

Effective date .....

[Please set out that information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing the information]

Member [n]

Full name.....

Date and place of birth .....

Personal national identification number or equivalent thereof.....

Private address:.....

Position.....

Curriculum vitae attached to application: Yes / No

Professional experience and other relevant experience .....

Educational qualification and relevant training .....

Criminal records attached to this application OR self-declaration of good repute and authorisation to the competent authority to make enquiries under Article 4(d) of Commission Delegated Regulation [RTS on DRSPs].....

Self-declaration of good repute and authorisation to the competent authority to make enquiries under Article 4(e) of Commission Delegated Regulation [RTS on DRSPs].....

Minimum time (approximate) that will be devoted to the performance of the person's functions within the data reporting services provider.....

Declaration of any potential conflicts of interest that may exist or arise in performing the duties and how these conflicts are managed.....

Information pursuant to the guidelines developed under Article 63 (3) of Directive 2014/65/EU and any additional information necessary for the assessment that the member is of sufficiently good repute, possesses sufficient knowledge, skills and experience and commits sufficient time to perform the duties.....

.....

.....

Effective date .....

[Please set out that information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing the information]

Complete updated list of members of the management body

Name	Position	Effective date


## ITS 4: Draft implementing technical standards on position reporting (Article 58(5) of MiFID II)



Brussels, **XXX**  
[...](2015) **XXX**

**COMMISSION DELEGATED REGULATION (EU) .../...**

**of **XXX****

**COMMISSION IMPLEMENTING REGULATION (EU) No .../... laying down implementing  
technical standards with regard to the format of position reports by investment firms  
and market operators**

**of [ ]**

**(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<sup>1</sup> on markets in financial instruments, and in particular Article 58(5) thereof.

Whereas:

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<sup>1</sup> OJ L 173, 12.06.2014, p. 84

- (1) The format of the weekly report on aggregate positions held by different categories of persons for the different commodity derivatives or emission allowances or derivatives thereof traded on trading venues (Commitment of Trader Reports) should break positions down into positions which in an objectively measurable way reduce risks directly relating to commercial activities, other and total positions in order to provide transparency on the split between financial and non-financial related activities in such commodity derivatives, emission allowances or derivatives thereof.
- (2) The format of daily reports providing a complete breakdown of investment firms and their clients' positions in commodity derivatives or emission allowances or derivatives thereof traded on trading venues and economically equivalent OTC contracts (Position Reports) should be structured to support the monitoring and application of position limits under Article 57 of Directive 2014/65/EU. Positions should be reported gross so that competent authorities can net and aggregate positions as required by Article 57 of Directive 2014/65/EU.
- (3) Positions that have arisen as a consequence of buy and sell trades spread between different delivery dates or commodities or as a result of other complex strategies should be reported on a disaggregated basis.
- (4) To carry out their duties effectively and consistently, the relevant authorities and ESMA should be provided with data that can be compared across investment firms and market operators operating trading venues. The use of a common format across different financial market infrastructures facilitates the greater use of this format by a wide variety of market participants, thus promoting standardisation.
- (5) To facilitate straight through processing and the reduction of costs to market participants, standard formats should be used across investment firms and market operators operating trading venues.
- (6) The new legislation of the European Parliament and of the Council on markets in financial instruments set out in Directive 2014/65/EU and Regulation (EU) No 600/2014 of the European Parliament and of the Council applies from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date.
- (7) This Regulation is based on the draft implementing technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (8) ESMA has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and 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<sup>2</sup>,

HAS ADOPTED THIS REGULATION:

#### Article 1

### **Commitment of trader reports**

1. An investment firm or a market operator operating a trading venue ('trading venue operator') shall make public and communicate to the competent authority and to ESMA the weekly reports referred to in Article 58(1)(a) of Directive 2014/65/EU in the format set out in the Tables to Annex I.
2. A trading venue operator shall prepare a separate report for each commodity derivative, emission allowance or derivative thereof that is traded on that trading venue.
3. The report shall contain the aggregate of all positions held by the different persons in each of the categories set out in Table 1 to Annex I in an individual commodity derivative, emission allowance or derivative thereof that is traded on that trading venue.

#### Article 2

### **Position reports**

1. An investment firm shall provide competent authorities with a daily position report referred to in Article 58(2) of Directive 2014/65/EU in the format set out in the Tables to Annex II.
2. The report shall include details of all positions across all maturities of all contracts.
3. All positions shall be reported on a gross basis indicating whether they are long or short positions. Positions shall not be netted in the preparation or making of the reports.

#### Article 3

### **Reporting format**

Trading venue operators and investment firms shall submit the reports referred to in Articles 1 and 2 in a common standard XML format.

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<sup>2</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).



Article 4  
**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.

It shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

Annex I  
**Format for the Commitment of Trader Reports**

Table 1  
**Commitment of Trader Reports**

{Name of Trading Venue} {Trading Venue Identifier} {Date to which the Weekly Report refers} {Date of Publication} {Name of Commodity Derivative Contract, Emission Allowance or Derivative thereof } {Venue product code} {Report status}												
	Notion of the position quantity unit		Investment Firms or credit institutions		Investment Funds		Other Financial Institutions		Commercial Undertakings		Operators with compliance obligations under Directive 2003/87/EC	
			Long	Short	Long	Short	Long	Short	Long	Short	Long	Short
Number of positions		Risk Reducing directly related to commercial activities										
		Other										
		Total										
Changes since the previous report (+/-)		Risk Reducing directly related to commercial activities										
		Other										
		Total										
Percentage of the total open interest		Risk Reducing directly related to commercial activities										
		Other										
		Total										
Number of Persons holding a position in			Combined		Combined		Combined		Combined		Combined	
		Total										



each category							
------------------	--	--	--	--	--	--	--

Table 2  
Symbol table for Table 3

SYMBOL	DATA TYPE	DEFINITION
{ALPHANUM-n}	Up to n alphanumerical characters	Free text field.
{DECIMAL-n/m}	Decimal number of up to n digits in total of which up to m digits can be fraction digits	Numerical field for both positive and negative values: - decimal separator is '.' (full stop); - negative numbers are prefixed with '-' (minus).  Where applicable, values are rounded and not truncated.
{DATEFORMAT}	ISO 8601 date format	Dates shall be formatted in the following format: YYYY-MM-DD.
{DATE_TIME_FORMAT}	ISO 8601 date and time format	<ul style="list-style-type: none"> <li>- Date and time in the following format: YYYY-MM-DDThh:mm:ss.dddZ.</li> <li>- 'YYYY' is the year;</li> <li>- 'MM' is the month;</li> <li>- 'DD' is the day;</li> <li>- 'T' – means that the letter 'T' shall be used</li> <li>- 'hh' is the hour;</li> <li>- 'mm' is the minute;</li> <li>- 'ss.ddd' is the second and its fraction of a second;</li> </ul>

		<p>- Z is UTC time.</p> <p>Dates and times shall be reported in UTC.</p>
{MIC}	4 alphanumerical characters	Market identifier as defined in ISO 10383
{INTEGER-n}	Integer number of up to n digits in total	Numerical field for both positive and negative integer values.

Table 3  
Tables of fields to be reported as referred to in Article 1

FIELD	DETAILS TO BE REPORTED	FORMAT FOR REPORTING
Name of Trading Venue	Field to be populated with the full name of the trading venue.	{ALPHANUM-350}
Trading Venue Identifier	Field to be populated with the ISO 10383 segment MIC of the trading venue. Where the segment MIC does not exist, use the operating MIC.	{MIC}
Date to which the Weekly Report refers	Field to be populated with the date corresponding to the Friday of the calendar week on which the position is held.	{DATEFORMAT}
Date of Publication	Field to be populated with the date on which the report is published on the trading venue's website.	{DATE_TIME_FORMAT}
Name of Commodity Derivative Contract, Emission Allowance and Derivative thereof	Field to be populated with the name of the commodity derivative contract, emission allowance and derivative thereof identified by the venue product code.	{ALPHANUM-350}
Venue product code	Field to be populated with a unique and unambiguous alphanumeric identifier utilised by the trading venue grouping together different contracts, resulting from different maturities in the same product where they have different ISINs.	{ALPHANUM-12}

Report status	Indication as to whether the report is new or a previous report is amended.	'NEWT' - New  'AMND' – Amendment
Number of positions	Field to be populated with the position quantity held on Friday at the end of trading day. The position quantity should be expressed either in number of lots or units held in which the underlying commodity, emission allowance or derivatives thereof is traded.	{INTEGER-13}
Notion of the position quantity unit	Indication of the measurement unit in which the quantity is expressed.	'TOCD' – tons of carbon dioxide  Or  {ALPHANUM-25} otherwise
Changes since the previous report (+/-)	Field to be populated with the position quantity reflecting the increase or decrease in the position with respect to the previous Friday.  In the case of a decrease in the position the number shall be expressed as a negative number prefixed with '-' (minus).	{DECIMAL-13/0}
Percentage of the total open interest	Field to be populated with the percentage of the total open interest represented by the position.	{DECIMAL-5/2}
Number of Persons holding a position in each category	Field to be populated with the number of persons holding a position in the related category.	{INTEGER-7}  or  {ALPHANUM-1} if the field

	<p>If the number of persons holding a position in the related category is below the number specified in [insert reference to Commission Delegated Act in respect of Article 58(6) MiFID II], the field shall be populated with '!' (full stop).</p>	<p>has to be populated with '!' (full stop).</p>
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Annex II  
**Format for Position Reports by investment firms**

Table 1  
**Symbol table for Table 2**

SYMBOL	DATA TYPE	DEFINITION
{ALPHANUM-n}	Up to n alphanumerical characters	Free text field.
{DECIMAL-n/m}	Decimal number of up to n digits in total of which up to m digits can be fraction digits	Numerical field for both positive and negative values: - decimal separator is '.' (full stop); - negative numbers are prefixed with '-' (minus).  Where applicable, values are rounded and not truncated.
{DATEFORMAT}	ISO 8601 date format	Dates shall be formatted in the following format: YYYY-MM-DD.
{DATE_TIME_FORMAT}	ISO 8601 date and time format	<ul style="list-style-type: none"> <li>- Date and time in the following format:                YYYY-MM-DDThh:mm:ss.dddZ.</li> <li>- 'YYYY' is the year;</li> <li>- 'MM' is the month;</li> <li>- 'DD' is the day;</li> <li>- 'T' – means that the letter 'T' shall be used</li> <li>- 'hh' is the hour;</li> <li>- 'mm' is the minute;</li> </ul>

		<ul style="list-style-type: none"> <li>- 'ss.dddddd' is the second and its fraction of a second;</li> <li>- Z is UTC time.</li> </ul> <p>Dates and times shall be reported in UTC.</p>
{ISIN}	12 alphanumerical characters	ISIN code, as defined in ISO 6166
{LEI}	20 alphanumerical characters	Legal entity identifier as defined in ISO 17442
{MIC}	4 alphanumerical characters	Market identifier as defined in ISO 10383
{NATIONAL_ID}	35 alphanumerical characters	The ID is that set out in Article 6 and ANNEX II of [RTS 22 on transaction reporting obligations under Article 26 of Regulation (EU) No 600/2014].
{INTEGER-n}	Integer number of up to n digits in total	Numerical field for both positive and negative integer values.



Table 2  
Tables of fields to be reported as referred to in Article 2

FIELD	DETAILS TO BE REPORTED	FORMAT FOR REPORTING
Date of report submission	Field to be populated with the date and time on which the report is submitted.	{DATE_TIME_FORMAT}
Report reference number	Field to be populated with the unique identifier given by the submitter unambiguously identifying the report to both, submitter and receiving competent authority.	{ALPHANUM-52}
Date of the trading day of the reported position	Field to be populated with the date on which the reported position is held at the close of the trading day on the relevant trading venue.	{DATEFORMAT}
Report status	<p>Indication as to whether the report is new or a previously submitted report is cancelled or amended.</p> <p>Where a previously submitted report is cancelled, a new report which contains all the details of the original report should be sent and the 'Report status' should be flagged as 'CANC'.</p> <p>Where a previously submitted</p>	<p>'NEWT' - New</p> <p>'CANC' – Cancellation</p> <p>'AMND' – Amendment</p>

	<p>report is amended, a new report that contains all the details of the original report should be sent and the 'Report status' should be flagged as 'CANC'.</p> <p>Furthermore, a new report that contains all the details of the original report with all necessary details corrected should be sent and the 'Report status' should be flagged as 'AMND'.</p>	
Reporting entity ID	The identifier of the reporting investment firm. Field to be populated with the Legal Entity Identifier code (LEI) for legal entities or {NATIONAL_ID} for natural persons not having an LEI.	{LEI}  or  {NATIONAL_ID} - Natural persons
Position holder ID	Field to be populated with the Legal Entity Identifier code (LEI) for legal entities or {NATIONAL_ID} for natural persons not having an LEI. (Note: if the position is held as a proprietary position of the reporting firm, this field will be identical to field "Reporting entity ID" above).	{LEI}  or  {NATIONAL_ID} - Natural persons
Email address of position holder	Email address for notifications of position-related matters.	{ALPHANUM-256}
Ultimate parent entity ID	Field to be populated with the Legal Entity Identifier code (LEI) for legal entities or {NATIONAL_ID} for natural persons not having an LEI.	{LEI}  or

	Note: this field may be identical to field “Reporting entity ID” and/or “Position holder ID” above if the ultimate parent entity holds its own positions, or makes its own reports.	{NATIONAL_ID} - Natural persons
Identification code of contract traded on trading venues	Identifier of the commodity derivative, emission allowance or derivative thereof. See field “Trading venue identifier” below for treatment of OTC contracts that are economically equivalent to contracts that are traded on trading venues.	{ISIN}
Venue product code	Field to be populated with a unique and unambiguous alphanumeric identifier utilised by the trading venue grouping together different contracts, resulting from different maturities in the same product where they have different ISINs.	{ALPHANUM-12}
Trading venue identifier	Field to be populated with the ISO 10383 segment MIC for positions reported in respect of on-venue contracts. Where the segment MIC does not exist, use the operating MIC.  Use MIC code ‘XOFF’ for off-venue positions in economically equivalent OTC contracts.	{MIC}
Position type	Field to report whether the position is in either futures, options, emission allowances, commodity derivatives defined under	‘OPTN’ - Options ‘FUTR’ – Futures ‘EMIS’ – Emission

	point (c) of Article 4(1)(44) of Directive 2014/65/EU or any other contract type	allowances  'SDRV' - Commodity derivatives defined under point (c) of Article 4(1)(44) of Directive 2014/65/EU  'OTHR' – any other contract type
Position maturity	Indication of whether the maturity of the contract comprising the reported position relates to the spot month or to all other months. Note: separate reports are required for spot months and all other months in compliance with Article 57(1).	'SPOT' – spot month  'OTHR' – all other months
Position quantity	If the position maturity is spot months, this field shall be populated with the net quantity of the underlying commodity expressed in the unit in which the underlying commodity, emission allowance or derivatives thereof is traded.  If the position maturity is other months, this field shall be populated with number of lots held.  If the position is in cash settled derivatives which are under Section C(10) of Annex I to Directive 2014/65/EU and which have no measurable	{INTEGER-13}

	<p>deliverable supply this field shall be populated with number of lots held.</p> <p>If the position is in commodity derivatives defined under point (c) of Article 4(1)(44) of Directive 2014/65/EU this field shall be populated with the number of units held.</p>	
Delta equivalent position quantity	If the Position Type is 'OPTN', then this field shall contain the delta-equivalent quantity of the position reported in the "Position Quantity" field	{DECIMAL-15/2}
Indicator of whether position is long or short	Field to report whether the position is long or short.	'LONG' – long 'SHOR' – short
Indicator of whether the position is risk reducing in relation to commercial activity	Field to report whether the position is risk reducing.	'TRUE' –the position is risk reducing 'FALSE' –the position is not risk reducing

## **ITS 5: Draft implementing technical standards on the format and timing of weekly position reports (Article 58(7) of MiFID II)**



Brussels, **XXX**  
[...](2015) **XXX**

**COMMISSION DELEGATED REGULATION (EU) .../...**

**of **XXX****

**COMMISSION IMPLEMENTING REGULATION (EU) No .../... laying down implementing technical standards with regard to the format and the timing of position reports by investment firms and market operators of trading venues according to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments**

**of [ ]**

**(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 15 May 2014 of the European Parliament and of the Council on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU<sup>1</sup>), and in particular Article 58(7) thereof,

Whereas:

- (1) In order to bring greater transparency to markets in commodity derivatives, emission allowances and derivatives thereof, market operators and investment firms operating a trading venue on which these financial instruments trade should submit a weekly report to the European Securities and Markets Authority (ESMA) showing the aggregate number of persons holding the contract and the total open position for each commodity derivative, emission allowance or derivative thereof which exceeds the thresholds specified in [*insert reference to Commission Delegated Regulation on MiFID II*].
- (2) Timely submission of reports (already individually published by the respective trading venues) in a standard machine-readable format facilitates the timely aggregate publication by ESMA of all reports in the Union in respect of the previous calendar week.
- (3) Market operators and investment firms operating a trading venue should submit these reports to ESMA in respect of the positions held at the close of business of the previous calendar week by 17.30 CET of the Wednesday of each successive week to ensure a timely aggregate publication of all reports in the Union in respect of the previous calendar week. If any of Monday, Tuesday or Wednesday of the successive week are not a working day market operators and investment firms may submit those reports at the latest by Thursday 17.30 CET in order not to impose overly burdensome requirements. ESMA should in any case not publish these reports before they have been published individually by the respective trading venues.
- (4) The new legislation of the European Parliament and of the Council on markets in financial instruments set out in Directive 2014/65/EU and Regulation (EU) No 600/2014<sup>2</sup> applies from 3 January 2017. To ensure consistency and legal certainty, this Regulation should apply from the same date.
- (5) This Regulation is based on the draft implementing technical standards submitted by ESMA to the Commission.
- (6) ESMA has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group

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<sup>1</sup> OJ L 173, 12.6.2014, p. 173.

<sup>2</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>3</sup>,

HAS ADOPTED THIS REGULATION:

#### Article 1 **Reporting format**

Market operators and investment firms operating a trading venue which trades commodity derivatives, emission allowances or derivatives thereof shall submit to ESMA the reports required by Article 58(1)(a) of Directive 2014/65/EU in a common standard XML format, by using the template set out in the Tables to Annex I of [insert reference to Article 58(5) MiFID II position reporting ITS].

#### Article 2 **Reporting deadlines**

1. Market operators and investment firms operating a trading venue which trades commodity derivatives, emission allowances or derivatives thereof shall send the weekly aggregated position report required by Article 58(1)(a) of Directive 2014/65/EU to ESMA no later than 17.30 CET on Wednesday of each successive week.
2. In derogation to paragraph 1, if any of Monday, Tuesday or Wednesday of the successive week are not a working day for the reporting market operator or investment firm, that market operator or investment firm shall submit the report as soon as possible and no later than 17.30 CET on the following Thursday.

#### Article 3 **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 2017.

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

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<sup>3</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).





Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

**ITS 6: Draft implementing technical standards on standard forms, templates and procedures for competent authorities to cooperate in supervisory activities, on-site verifications, and investigations and for the exchange of information**



Brussels, **XXX**  
[...](2015) **XXX**

**COMMISSION DELEGATED REGULATION (EU) .../...**

**of **XXX****

**COMMISSION IMPLEMENTING REGULATION (EU) .../... 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**

**of [...]**

**(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 amending Directive 2002/92/EC and Directive 2011/61/EU<sup>1</sup>, and in particular Articles 80(4) and 81(4) thereof,

Whereas:

- (1) It is appropriate to set out standard forms, templates and procedures to ensure that competent authorities are able to efficiently cooperate and exchange information in a timely manner for the purposes of Directive 2014/65/EU in order to provide each other full mutual assistance.
- (2) Directive 2014/65/EU sets out obligations for the cooperation and exchange of information. As part of that procedure, a competent authority in making its request, may ask for the taking of a statement or for an on-site investigation to be carried out, whereas a simple request for information would not provide the necessary level of assistance. A competent authority is expected to have undertaken all actions reasonably practicable in its own jurisdiction prior to making such a request for cooperation or request for information, noting it may not be reasonably practicable to have exhausted all the methods of enquiry prior to the request.
- (3) It is appropriate to lay down the procedures as well as templates and forms to be used by to submit requests for cooperation or exchange of information, acknowledgements of receipt and replies to requests in order to ensure that competent authorities are able to cooperate and exchange information in an efficient and timely manner.
- (4) 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 request 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.
- (5) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (6) The application of this Regulation should be deferred in order to be aligned with the date of application of Directive 2014/65/EU.
- (7) This Regulation is based on the draft implementing technical standards submitted by ESMA to the Commission.

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<sup>1</sup> OJ L 173, 12.5.2014, p. 349.

- (8) 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.
- (9) 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<sup>2</sup>,

HAS ADOPTED THIS REGULATION:

#### Article 1

##### **Contact points**

1. Competent authorities shall designate contact points for the communication of requests for cooperation and exchange of information pursuant to Articles 80(4) and 81(4) of Directive 2014/65/EU and publish the details of the contact points on their websites.
2. The competent authorities shall communicate the information on their contact points to ESMA and ESMA shall maintain an update the list of contact points 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. It shall address the request to the contact point of the requested authority.
2. If the requesting authority has justified reasons to categorise its request as urgent, the requesting authority may make the request verbally provided that subsequent confirmation of the request for cooperation or exchange of information is made in writing, unless the requested authority agrees otherwise.

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<sup>2</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

3. The requesting authority shall submit its request for cooperation or exchange of information by completing the form set out in Annex I. The requesting authority may attach to the request any document or supporting material deemed necessary to support the request.

#### Article 3

### **Acknowledgment of receipt**

Within 10 working days of receipt of the request for cooperation or exchange of information addressed to the contact point of the requesting authority, the requested authority shall send an acknowledgement of receipt by completing 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. It shall be addressed to the contact point unless otherwise specified by the requesting authority.

2. The requested authority shall:

- (a) inform the requesting authority of any clarification it requires in relation to the request received;
- (b) 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;
- (c) reply to the request for cooperation or exchange of information by completing the form set out in Annex III.

#### 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 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 authority. In particular, the requesting authority shall respond promptly to any clarifications requested by the requested authority.

2. The requested authority shall notify the requesting authority as soon as it becomes apparent that a delay of more than 5 working days beyond the estimated date of response may occur.
3. By way of derogation from paragraph 2, if the request has been designated by the requesting authority as urgent, the requested authority and the requesting authority shall consult each other on the frequency of updates required.
4. The requested authority and the requesting authority shall cooperate to resolve any difficulties that may arise in executing a request.

#### Article 6

##### **Procedure for requests for taking a statement from a person**

1. If the requesting authority intends to include 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:
  - (a) the rights of the persons from which the statements will be taken;
  - (b) the role of the staff of the requested authority and requesting authority in the taking of the statement;
  - (c) whether the person from whom the statement will 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 will be taken on a voluntary or compelled basis where that distinction exists;
  - (e) whether the person from which the statement will be taken is a witness or subject of investigation where that distinction is made and the information is available at the time of the request;
  - (f) whether the statement could be, or is intended to be used in criminal proceedings where that information is available at the time of the request;
  - (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 audio-visual 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, for example:
- (a) planning of dates;
  - (b) the list of questions to be asked of the person from which the statement will 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 competent authorities to open an investigation or carry out an on-site verification or investigation**

1. Where there is a request for the opening of an investigation or carrying out of 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.
2. The requested authority shall keep the requesting authority informed of the progress of the opening of an investigation or carrying out of an on-site verification or investigation and deliver its findings in good time.
3. The requesting authority and the requested authority shall consult each other on the merits of conducting a joint on-site verification or joint investigation.
4. In deciding on whether to initiate a joint on-site verification or a joint investigation, the requesting authority and the requested authority shall consider at least:
  - (a) any requests for cooperation received from the requesting authority that might suggest that it is appropriate 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 which would be more suitable for joint collaboration;

- (c) issues relating to double jeopardy;
- (d) the legal and regulatory framework in each of their jurisdictions to ensure they have a good understanding of the potential constraints and legal limitations on its conduct and any proceedings which may follow;
- (e) the management and direction of the investigation or on-site inspection;
- (f) the allocation of resources and appointment of staff in charge of carrying out investigation or on-site inspections;
- (g) whether to establish a joint action plan and timings of work by each authority;
- (h) the determination of actions to be taken, jointly or individually, by each authority;
- (i) mutual sharing of information gathered and reporting on the outcomes of the individual actions taken;
- (j) case specific issues.

5. If the requesting authority and the requested authority decide to open 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) consider at least:
  - (i) the specific laws which will form the subject matter of the investigation or on-site inspection;
  - (ii) the drawing up of a joint action plan specifying the substance, nature and timing of the actions to be taken, and including milestones and the allocation of responsibilities in delivering the outcome of the work and taking into account each authority's respective priorities;
  - (iii) 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;
  - (iv) 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;



- (v) the public and press strategy;
- (vi) the intended use of information exchanged.

#### Article 8

### **Unsolicited exchanges of information**

1. Where a competent authority has information that it believes would assist another competent authority for the purposes of carrying out its duties under Directive 2014/65/EU or Regulation (EU) No 600/2014 of the European Parliament and of the Council<sup>3</sup>, it shall transmit that information in paper form or by electronic means, addressed to the contact point of the competent authority.
2. By way of derogation from paragraph 1, if the competent authority sending the information believes the information should be sent urgently it may initially communicate the information verbally provided that subsequent transmission of information is made in writing, unless the authority receiving the information agrees otherwise.
3. An authority that sends information on an unsolicited basis shall do so in the form set out in Annex III, identifying in particular issues relating to the confidentiality of information.

#### Article 9

### **Requirement to notify competent authorities**

1. Where, pursuant to Article 80(1) of Directive 2014/65/EU, a competent authority of a regulated market addresses directly investment firms that are remote members or participants of the regulated market it shall inform the competent authority of the home Member State of the remote member or participant in paper form or by electronic means at the same time that it contacts the remote member or participant, unless otherwise specified by that competent authority, by completing the form set out in Annex IV to this Regulation.
2. If the reason for addressing the remote member or participant of the regulated market is urgent, for justified reasons, the competent authority of the regulated market may make the notification verbally provided that subsequent confirmation of the request is made in writing, unless the requested authority agrees otherwise.

#### Article 10

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<sup>3</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).



### **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*.

It shall apply from 3 January 2017.

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]



ANNEX I  
**Form for a request for cooperation or exchange of information**

Request for cooperation or exchange of information

Reference number: .....

Date: .....

**General information**

FROM:

Member State:

Requesting Authority:

Address:

(Contact details of the contact point)

Name:

Telephone:

Email:

TO:

Member State:

Requested Authority:

Address:

(Contact details of the contact point)

Name:

Telephone:

Email:

Dear *[insert appropriate name]*

In accordance with Article(s) *[80/81<sup>4</sup>]* of Directive 2014/65/EU your input is sought in relation to the matter(s) set out in further detail below.

I would be grateful to receive a response to the above request by *[insert indicative date for the reply and in case of an urgent request insert deadline for the information to be provided by]* or, if that is not possible, for an indication as to when you anticipate being in a position to provide the assistance which is sought.

Type of request

Please tick the appropriate box(es)

Supervisory Activities (Provision of information, taking of a statement)

Opening of an investigation

On-site verification

Other – please provide details below

Reasons for the request

.....  
.....  
.....

*[insert provision(s) of the sectoral legislation under which the requesting authority is competent to deal with the matter]*

The request concerns cooperation or exchange of information on

.....  
.....

---

<sup>4</sup> Please insert relevant Article of Directive 2014/65/EU.

.....  
.....  
.....  
.....

*[insert description of the subject matter of the request, the purpose for which the cooperation or exchange of information is sought, facts underlying the investigation which form the basis of the request and explanation for its helpfulness]*

Further to.....  
.....  
.....

*[if applicable, insert details of the previous request in order to enable it to be identified]*

Supervisory Activities (Provision of information, taking of a statement)

(a) Please provide a detailed description of the specific information sought with reasons why that information will be of assistance and, if known, a list of the persons considered possessing the information sought or the places where such information may be obtained.

.....  
.....  
.....

(b) If the request concerns information relating to a transaction or order in a specific financial instrument, please provide the following information.

Product ID:  
.....

*[insert precise description of the financial instrument, including the ISIN code]*

Person ID:  
.....

*[insert the identity of any person connected with the transaction or order, including a person dealing in the financial instrument or on whose behalf the dealing is considered to have taken*

*place]*

Dates: .....

*[insert the dates between which transactions or orders in those financial instruments took place including in the case of a significant period of time, reasons why the entirety of the time period is beneficial]*

(c) If the request concerns information relating to the business or activities of a person, please provide information as precise as possible to enable that person to be identified.

.....  
.....  
.....  
.....

(d) If there are special considerations on the sensitivity of the information sought, please provide an indication of the sensitivity of the information contained in the request and any special precautions that have to be taken in collecting the information due to investigatory considerations.

.....  
.....  
.....  
.....

(e) Please provide any additional information.

.....  
.....  
.....  
.....

*[Whether the requesting authority has been or will be in contact with any other authority or law enforcement agency in our Member State in relation to the subject matter of the request or any other authority which the requesting authority is aware that has an active interest in the subject matter of the request]*

(f) In case of an urgent request and the setting of any deadlines, please provide full explanation of the urgency of the request and an explanation of any deadlines that the requesting authority has asked for the information to be provided by.

.....  
.....  
.....

.....

Taking of a statement

Please indicate:

(a) Statement under: oath  / affirmation

(b) Need and purpose of the taking of a statement:

.....  
.....  
.....

(c) Name of person(s) from whom the statement is to be obtained:

.....  
.....  
.....

*[insert details of the persons from which the statement will be taken to enable the requested authority to begin the summoning process where applicable]*

(d) Detailed description of the information sought, including a preliminary list of questions (if available at the time of the request).

.....  
.....  
.....  
.....

(e) Any additional information which may be useful:

.....  
.....  
.....  
.....

*[Whether the requesting authority's staff is requesting participation in the taking of the statement, details of the participating officials of the requesting authority, where appropriate, description of any legal and procedural requirements that must be complied with to ensure the admissibility of statements made in the interview in the jurisdiction of the requesting's authority]*

The carrying out of a verification or an investigation or allowing auditors or experts to carry out the verification or investigation.

If the request concerns the opening of an investigation on behalf of the requesting authority,

please provide information to enable the requested authority to assess whether it may have an interest in entering into a joint investigation, including the requesting authority's proposal for the investigation, its reasoning and the benefits to the requested authority.

.....  
.....  
.....  
.....

*[including all relevant information required by the requested authority to enable the latter to provide the necessary assistance by opening an investigation or a joint investigation, as appropriate]*

The opening of an on-site inspection or a joint inspection

If the request concerns the opening of an on-site inspection on behalf of your authority, please provide information to enable our authority to assess whether it may have an interest in entering into a joint on-site inspection, including your authority's proposal for the inspection, its reasoning and the benefits to your authority.

.....  
.....  
.....  
.....  
.....

*[including all relevant information required by the requested authority to enable the latter to provide the necessary assistance by opening an on-site inspection or an on-site inspection, as appropriate]*

.....  
.....  
.....

*[Insert any necessary confidentiality warnings or any necessary restrictions on the permissible uses of information (provided those restrictions are compliant with Union law)].*

Yours sincerely,

[signature]





ANNEX II  
Form for the acknowledgment of receipt

Acknowledgment of receipt

Reference number: .....

Date: .....

FROM:

Member State:

Requested Authority:

Address:

(Contact details of the contact point)

Name:

Telephone:

Email:

TO:

Member State:

Requesting Authority:

Legal address:

(Contact details of the contact point)

Name:

Telephone:

Email:

Dear *[insert appropriate name]*

Following your request *[insert reference to request]* we hereby acknowledge receipt of your request for cooperation or request for information on *[insert date]*.

Estimated date of response: .....

Yours sincerely,

*[signature]*



ANNEX III

**Form for the reply to a request for cooperation or exchange of information**

Reply to a request for cooperation or exchange of information

Reference number: .....

Date: .....

**General information**

FROM:

Member State:

Requested Authority:

Legal address:

(Contact details of the contact point)

Name:

Telephone:

Email:

TO:

Member State:

Requesting Authority:

Legal address:

(Contact details of the contact point)

Name:

Telephone:

Email:

Dear *[insert appropriate name]*

We confirm that your request dated *[dd.mm.yyyy]* with reference *[insert request reference number]* has been processed by us.

**Information gathered**

.....  
.....  
.....  
.....

*[If the information has been gathered, please set out the information here or provide an explanation of how it will be provided]*

The information provided is confidential and is disclosed to *[insert name of the requesting authority]* pursuant to the *[insert provision of the applicable sectoral legislation]* and on the basis that the information shall remain confidential in accordance with *[insert provision of the applicable sectoral legislation]*.

The *[insert name of the requesting authority]* shall observe the requirements of the *[insert provision of the applicable sectoral legislation]* with respect to confidentiality restrictions and the permissible uses of that information.

.....  
.....  
.....

*[Insert any other necessary confidentiality warnings or any necessary restrictions on the permissible uses of information (provided those restrictions are compliant with Union law).*

Where relevant, please explain any clarification you may require in relation to the precise information requested:

.....  
.....  
.....

.....

Please provide, on your own initiative, any essential information that could further assist the cooperation or exchange of information for the purposes of the request:

.....

.....

.....

.....

Yours sincerely,

[signature]



Annex IV

**Form for the notification for directly addressing a remote member or participant of a regulated market**

Notification for directly addressing to a remote member or participant of a regulated market

Reference Number.....

Date.....

FROM:

Member State:

Authority of Regulated Market:

Legal address:

(Contact details of the contact point)

Name:

Telephone:

Email:

TO:

Member State:

Authority of remote member or participant of regulated market:

Legal address:

(Contact details of the contact point)

Name:

Telephone:

Email:

Dear *[insert appropriate name]*

I am notifying you of a direct approach I am making to a remote member or participant of a regulated market for which we are the home competent authority. Below are the details of the regulated market and the remote member or participant and the reasons why they are being approached.

Name of Regulated Market:

*Name of remote member or participant:*

*Contact details of the person at the remote member or participant who is being addressed:*

*Name:*

*Telephone:*

*Email:*

*Reasons for the approach to the remote member or participant*

.....  
.....  
.....  
.....

**ITS 7: Draft implementing technical standards on standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation**



Brussels, **XXX**  
[...](2015) **XXX**

**COMMISSION DELEGATED REGULATION (EU) .../...**  
**of **XXX****

**COMMISSION IMPLEMENTING REGULATION (EU) .../... 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**

**of [...]**

**(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<sup>1</sup>, 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) The application of this Regulation should be deferred in order to be aligned with the date of application of Directive 2014/65/EU.
- (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<sup>2</sup>,

---

<sup>1</sup> OJ L 173, 12.5.2014, p. 349.

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 communicate the information on their contact points to ESMA and ESMA shall maintain an update the list of contact points for the use of the competent authorities.

#### 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

##### **Acknowledgment 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.

#### 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.

---

<sup>2</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

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. Any delay shall be limited to justified cases only.
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.

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. Without prejudice to Article 76 of Directive 2014/65/EU, if the information provided by the competent authority receiving the request is cited directly 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 legally enforceable 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 2017.

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

Done at Brussels,

For the Commission

The President

On behalf of the  
President[Position]



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:

Competent authority receiving the request:

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.....  
.....  
.....  
.....

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

Information on the authorisation procedure.....  
.....  
.....

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

Information on any other competent authorities involved .....  
.....  
.....

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

Further to.....  
.....  
.....

*[if applicable, please provide information on the previous request that allows it to be identified]*

Information requested *[if any]*:

.....  
.....  
.....  
.....

*[please insert a detailed description of the specific information requested, including any relevant documents requested, with reasons why that information is necessary for the review of the application for authorisation.*

Additional information provided by the requesting competent authority.

.....  
.....  
.....  
.....

*[Information on whether the requesting competent authority has contacted or intends to contact any other authority or law enforcement agency in the Member State of the competent authority receiving the request in relation to the subject matter of the request or with any other competent authority that according to the requesting competent has an active interest in the subject matter of the request]*

Confidentiality

.....  
.....  
.....  
.....

*[Please insert any necessary confidentiality warnings or any necessary restrictions on the permissible uses of information (provided those restrictions are compliant with Union law)].*

Yours sincerely,

*[signature]*



**ANNEX II**  
**Form for acknowledgment of receipt of a request for consultation**

Acknowledgment of receipt of a request for consultation under Article 84 of Directive  
2014/65/EU

Reference number: .....

Date: .....

FROM:

Member State:

Competent authority receiving the request:

Address:

(Contact details of the contact person)

Name:

Telephone:

Email:

TO:

Member State:

Requesting competent Authority:

Address:

(Contact details of the contact person)

Name:



Telephone:

Email:

Dear [*insert appropriate name*]

In accordance with Article 84 of Directive 2014/65/EU we acknowledge receipt of your request for consultation on [*insert date*].

Estimated date of response: .....

Yours sincerely,

[signature]



ANNEX III  
**Form for reply to request for consultation**

Reply to request for consultation under Article 84 of Directive 2014/65/EU

<p>Reference number: .....</p> <p>Date: .....</p> <p>FROM:</p> <p>Member State:</p> <p>Competent authority receiving the request:</p> <p>Address:</p> <p>(Contact details of the contact point)</p> <p>Name:</p> <p>Telephone:</p> <p>Email:</p> <p>TO:</p> <p>Member State:</p> <p>Requesting competent authority:</p> <p>Address:</p> <p>(Contact details of the contact point)</p> <p>Name:</p> <p>Telephone:</p>
--

Email:

Dear *[insert appropriate name]*

In accordance with Article 84 of Directive 2014/65/EU, we examined your consultation request dated *[dd.mm.yyyy]* with reference *[insert reference number]*.

Where relevant, please explain any clarification you may require in relation to the information requested or to any other aspect of the relevant authorisation procedure:

.....  
.....  
.....  
.....

If the information requested has been gathered, please provide that information here or explain how it will be provided, or make reference to the relevant annexes containing the information requested:

.....  
.....  
.....  
.....

If there is any other relevant or essential information, please provide that information here or explain how it will be provided, or make reference to the relevant annexes containing that information:

.....  
.....  
.....  
.....

*[please provide any other essential information that could influence the granting of the authorisation]*

.....  
.....  
.....  
.....

Confidentiality

.....  
.....  
.....  
.....

*[Please insert any necessary confidentiality warnings or any necessary restrictions on the permissible uses of information (provided those restrictions are compliant with Union law)].*

Yours sincerely,

[signature]

## **ITS 8: Draft implementing technical standards on procedures and forms for submitting information on sanctions and measures**



Brussels, **XXX**  
[...](2015) **XXX**

**COMMISSION DELEGATED REGULATION (EU) .../...**

**of **XXX****

**COMMISSION IMPLEMENTING REGULATION (EU) .../... laying down implementing technical standards with regard to procedures and forms for submitting information on sanctions and measures 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<sup>1</sup>, and in particular Article 71(7) thereof,

Whereas:

---

<sup>1</sup> OJ L 173, 12.5.2014, p. 349.

- (1) Article 71 of Directive 2014/65/EU provides for submission of information to the European Securities and Markets Authority (ESMA) by competent authorities with regard to sanctions and measures referred to in that Article. Directive 2014/65/EU also provides for establishment of procedures and forms for submitting that information.
- (2) To facilitate communication between competent authorities and ESMA, competent authorities should designate a contact point specifically for the purpose of communication on sanctions and measures.
- (3) In order to enable ESMA to correctly identify and register the information on sanctions and measures submitted to it in accordance with Article 71 of Directive 2014/65/EU, it is appropriate for competent authorities to provide it with detailed and harmonised information on each sanction or measure notified
- (4) The reporting by competent authorities to ESMA of sanctions and measures should clearly identify sanctions and measures by offering sufficient details. It is, therefore, appropriate to establish a form to be used by competent authorities for this purpose.
- (5) With a view to including meaningful information in the annual report on sanctions and measures to be published by ESMA in accordance with Article 71 of Directive 2014/65/EU, competent authorities should report the information by using specific forms clearly indicating Articles of Directive 2014/65/EU that were infringed.
- (6) The application of this Regulation should be deferred in order to be aligned with the date of application of Directive 2014/65/EU.
- (7) This Regulation is based on the draft implementing technical standards submitted by ESMA to the Commission.
- (8) 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.
- (9) 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<sup>2</sup>,

HAS ADOPTED THIS REGULATION:

---

<sup>2</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

## Article 1

### **Contact points**

1. Competent authorities shall designate contact points for communications on any issue relating to the submission of information in accordance with Articles 2, 3, 4, 5 and 6 and shall notify the European Securities and Markets Authority (ESMA) of those contact points.
2. ESMA shall designate a contact point for communication of information in accordance with Articles 2, 3, 4, 5 and 6 and for any issue relating to the reception of such information. ESMA shall publish information on its contact point on its website.

## Article 2

### **Reporting procedure and forms**

1. Competent authorities shall submit to ESMA the information referred to in the second subparagraph of Article 71(3) and Article 71(5) of Directive 2014/65/EU using the existing interfaces provided by the information technology system set up by ESMA to manage the receipt, storage, publication and exchange of information on criminal sanctions and administrative sanctions and measures in accordance with Article 71 of Directive 2014/65/EU.
2. The information referred to in the second subparagraph of Article 71(3) and Article 71(5) of Directive 2014/65/EU shall be submitted to ESMA in a report file in the format set out in Annex I to this Regulation.

## Article 3

### **Invalidating and updating of reports**

1. Where a competent authority wishes to invalidate an existing report file it has previously submitted to ESMA, it shall cancel the existing report and send a new report file.
2. Where a competent authority wishes to update an existing report file it has previously submitted to ESMA, it shall resubmit the report file with the updated information.

## Article 4

### **Timeline**

1. Competent authorities shall notify ESMA of an administrative sanction imposed but not published by sending the report file within 10 working days at the latest after the decision not to publish the sanction has been taken.

2. Competent authorities shall notify ESMA of information or the final judgement in relation to any criminal sanction by sending the report within 10 working days at the latest after it has received the information or the final judgement.

#### Article 5

##### **Annual submission of aggregated information on sanctions and measures**

Competent authorities shall provide ESMA with the information referred to in the first subparagraph of Article 71(4) of Directive 2014/65/EU by filling in the form set out in Annex II to this Regulation. That form shall include the information on all sanctions and measures imposed by the competent authority in accordance with Article 71(1) and (2) of Directive 2014/65/EU during the previous calendar year. It shall be completed electronically and sent to ESMA contact point by e-mail by 31 March of each year at the latest.

#### Article 6

##### **Annual submission of anonymised and aggregated data on criminal investigations and sanctions**

Where Member States have, in accordance with article 70 of Directive 2014/65/EU, laid down criminal sanctions for the infringements referred to in that Article, their competent authorities shall provide ESMA with the data referred to in the second subparagraph of Article 71(4) of Directive 2014/65/EU by filling in the form set out in Annex III to this Regulation. That form shall include data on all criminal investigations undertaken and criminal sanctions imposed for infringements referred to in the second subparagraph of Article 71(4) of Directive 2014/65/EU by the competent authority during the previous calendar year. It shall be completed electronically and sent to ESMA contact point by e-mail by 31 March of each year at the latest.

#### 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 2017.

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





Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

ANNEX I

**Form for submitting information under the second subparagraph of Article 71(3) and Article 71(5) of Directive 2014/65/EU**

*Information under the second subparagraph of Article 71(3) and Article 71(5) of Directive 2014/65/EU*

<b>Field</b>	<b>Description</b>	<b>Type</b>
Sanction Identifier	The identification code attributed by the competent authority for the purpose of the submission of the sanction or measure	Optional
Legal Framework	The acronym of the Union act under which the sanction or measure has been imposed	Mandatory
Member State	The acronym of the Member State of the competent authority submitting the sanction or measure	Mandatory
Entity Identifier	The identification code used to uniquely identify an entity on which sanction or measure has been imposed	Mandatory (only for sanctions or measures imposed on investment firms)
Nature of sanction	Information on whether the sanction notified is a criminal sanction or an administrative sanction	Mandatory (only for sanctions)
Authority Key	The identifier of the authority submitting the sanction or measure	Mandatory
Entity Legal Framework	The acronym of the Union act that applies to the entity on which the sanction or measure has been imposed	Mandatory
Entity full name	Full name of the entity on which the sanction or measure has been imposed	Optional

Person full name	Full name of the persons on whom the sanction or measure has been imposed	Mandatory (for natural persons only)
Sanctioning NCA	The acronym of the competent authority that has imposed the sanction or measure	Mandatory
Free Text	Text of the sanction or measure and text of any relevant information related to the sanction or measure (including any appeal in relation thereto, the outcome thereof and final judgements in relation to criminal sanction imposed) - in language 1	Mandatory
Free Text	Text of the sanction or measure and text of any relevant information related to the sanction or measure (including any appeal in relation thereto, the outcome thereof and final judgements in relation to criminal sanction imposed) - in language 2	Optional
Date	The date on which the sanction or measure was imposed by the competent authority	Mandatory
Expiration date	Date on which the effects of the measure or sanction ends	Optional
Public	Information on whether the sanction or measure has been published by the competent authority	Mandatory

ANNEX II

**Form for submitting aggregated information on all sanctions and measures imposed  
by [name of the competent authority] in [year]**

*Aggregated information on all sanctions and measures imposed by [name of the competent  
authority] in [year] under Article ... of ...*

FROM:

Member State:

Competent authority:

Address:

(Contact details of the designated contact person)

Name:

Telephone:

Email:

TO:

ESMA

(Contact details of the designated contact person)

Name:

Telephone:

Email:

Dear *[insert appropriate name]*

In accordance with the first subparagraph of Article 71(4) of Directive 2014/65/EU I wish to provide you with aggregated information regarding all sanctions and measures imposed by *[name of the competent authority]*:

**Sanctions:**

Articles of Directive 2014/65/EU transposed by the national provisions, or of Regulation (EU) No 600/2014 of the European Parliament and of the Council <sup>3</sup> , which were infringed	Number of sanctions imposed in the reporting period	Value of sanctions imposed in the reporting period
<i>[number of the article, paragraph, subparagraph]</i>	<i>[number of sanctions]</i>	<i>[value of sanctions<sup>(1)</sup>]</i>
<b>Total sanctions</b>	<b><i>[total number of sanctions<sup>(2)</sup>]</i></b>	<b><i>[total value of sanctions<sup>(1)(2)</sup>]</i></b>

**(1)** Please insert value in Euro or in national currency. If the relevant sanction refers not only to breaches relating to the relevant article of Directive 2014/65/EU or of Regulation (EU) No 600/2014, but also to other provisions, add the mention “AGGREGATED FIGURE” to each value.

**(2)** As sanctions imposed may be based on more than one legislative provision, the sum of the different lines (number of sanctions/value) may not correspond to the total number/value of sanctions imposed.

<sup>3</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 Text with EEA relevance (OJ L 173, 12.6.2014, p. 84).

**Measures:**

Articles of Directive 2014/65/EU transposed by the national provisions, or of Regulation (EU) No 600/2014, which were infringed	Number of measures imposed in the reporting period
[number of the article, paragraph, subparagraph]	[number of measures]
<b>Total measures</b>	<b>[total number of measures<sup>(3)</sup>]</b>

**(3)** As measures imposed may be based on more than one legislative provision, the sum of the different lines may not correspond to the total number of measures imposed.

Yours sincerely,

[signature]

### ANNEX III

#### **Form for submitting anonymised and aggregated data on all criminal investigations undertaken and criminal sanctions imposed in [year]**

*Anonymised and aggregated data on all criminal investigations undertaken and criminal sanctions imposed in [year] under Article ... of ...*

FROM:

Member State:

Competent authority:

Address:

(Contact details of the designated contact person)

Name:

Telephone:

Email:

TO:

ESMA

(Contact details of the designated contact person)

Name:

Telephone:

Email:

Dear *[insert appropriate name]*

In accordance with the second subparagraph of Article 71(4) of Directive 2014/65/EU I wish to provide you with anonymised and aggregated information regarding all criminal investigations undertaken and criminal sanctions imposed in the reporting period.

**Criminal investigations:**

Infringements of Articles of Directive 2014/65/EU transposed by the national provisions, or of Regulation (EU) No 600/2014, which have been investigated	Number of criminal investigations in the reporting period
[number of the article, paragraph, subparagraph]	[number of criminal investigations]
<b>Total criminal investigations</b>	<b>[total number of criminal investigations<sup>(1)</sup>]</b>

**(1)** As criminal investigations may be based on more than one legislative provision, the sum of the different lines may not correspond to the total number of criminal investigations.



**Criminal sanctions imposed:**

Articles of Directive 2014/65/EU transposed by the national provisions, or of Regulation (EU) No 600/2014, which were infringed	Number of criminal sanctions imposed in the reporting period	Value of criminal sanctions imposed in the reporting period
[number of the article, paragraph, subparagraph]	[number of criminal sanctions]	[value of criminal sanctions <sup>(2)</sup> ]
<b>Total criminal sanctions</b>	<b>[total number of criminal sanctions<sup>(3)</sup>]</b>	<b>[total value of criminal sanctions<sup>(2)(3)</sup>]</b>

**(2)** Please insert value in euro or in national currency. If the relevant criminal sanction refers not only to breaches relating to the relevant article of Directive 2014/65/EU or of Regulation (EU) No 600/2014, but also to other provisions, add the mention “AGGREGATED FIGURE” to each value.

**(3)** As criminal sanctions imposed may be based on more than one legislative provision, the sum of the different lines (number of criminal sanctions/value) may not correspond to the total number/value of criminal sanctions imposed.

Yours sincerely,

[signature]

## **ANNEX II: Cost and benefit analysis**

### **Cost and benefit analysis on the draft implementing technical standards on the format for position reporting in commodity derivatives (Article 58(5) and (7) of MiFID II)**

#### **Executive Summary**

1. Pursuant to Article 15 of the Regulation establishing ESMA<sup>1</sup>, ESMA is empowered to develop draft implementing technical standards where the European Parliament and the Council delegate power to the Commission to adopt ITS by means of delegated acts under Article 290 TFEU in order to ensure consistent harmonisation in the areas specifically set out in the legislative acts within the scope of action of ESMA. The same article obliges ESMA to conduct open public consultations on draft implementing technical standards and to analyse the related potential costs and benefits, where appropriate. Such consultations and analyses shall be proportionate in relation to the scope, nature and impact of the draft implementing technical standards.
2. The purpose of the proposed draft ITS 4 is to determine the formats of the daily position reports made by investment firms to NCAs. The purpose of the proposed draft ITS 5 is to determine when the weekly reports published by trading venues (Commitment of Traders (COTs) reports) in respect of commodity derivatives, emission allowances and derivatives thereof must be sent to ESMA.
3. This document provides a cost-benefit analysis of the incremental obligations arising from the proposed ITS 4 and 5 against a MiFID II baseline. Whenever market practice is above what is being required by MiFID, current market practice will be taken into consideration to assess costs and benefits. However, in practice, it may sometimes be very difficult to disentangle the effects of the Level 1 provisions, for which an impact assessment<sup>2</sup> covering the general aspects of the Directive has already been performed and published by the European Commission, and the effects of the Level 2 provisions.
4. This document has five sections. The introduction sets out the background for the ITS, which aims at establishing uniform templates for reporting positions in commodity derivatives, emission allowances and derivatives thereof. The objective is to improve the oversight and transparency of these markets. The baseline section explains the starting point for assessing the incremental rule related to ESMA's ITS, which can be either the MiFID requirements, or the existing practices when they are above MiFID. The stakeholders identified are trading venues (TVs) which support trading of commodity derivatives, emission allowances and derivatives thereof, investment firms which

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1 Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

2 See [http://ec.europa.eu/internal\\_market/securities/docs/isd/mifid/SEC\\_2011\\_1226\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/isd/mifid/SEC_2011_1226_en.pdf)

conduct OTC activity in commodity derivatives, emission allowances and derivatives thereof and NCAs. The cost-benefit analysis section covers the benefits and costs associated with the proposals set out in the ITS.

## **Introduction**

5. MiFID II introduces position limits in commodity derivatives (Article 57) in order to improve the stability and integrity of European financial markets. In order to monitor compliance with these limits, MiFID II also introduces reporting requirements regarding positions held in commodity derivatives. The position reporting regime is wider in scope than the position limits regime as it applies to emission allowances and derivatives thereof as well as commodity derivatives whereas the position limits regime itself only applies to commodity derivatives.
6. Members of trading venues must report at least daily a detailed break-down of their positions and those of their clients (down to the end client) to the trading venue, which then passes on the reports to the competent authority. Investment firms which conduct OTC activity must report at least daily a detailed break-down of their positions and those of their clients (down to the end client) to the competent authority. In addition, each trading venue must issue a weekly report of aggregate open positions per contract, by category of market participant, where thresholds are exceeded that are to be determined by the European Commission in a delegated act. ESMA has to develop ITS determining the formats of the daily position reports made by investment firms to competent authorities and the weekly reports published by trading venues (Commitment of Traders (COTs) reports).
7. The analysis that follows has taken into account the responses received to the Discussion Paper (DP) published in May 2014, the Consultation Paper (CP) published in December 2014, the Consultation Paper published in August 2015 and the responses to the ESMA CBA questionnaire on position limits sent in March 2015.

## **Baseline**

8. There are currently no EU-wide standards specifying the format of position reports in commodity derivatives, emission allowances and derivatives thereof. Therefore, from a legal perspective, the relevant baseline from which to assess the impact of the proposed ITS are Articles 58(1) to 58(4) of MiFID II.
9. ESMA is mandated under Article 58(5) to specify the format of the reports referred to in Article 58(1)(a) (COTs Reports) and in Article 58(2) (daily position reports to regulators from investment firms) in an ITS in order to allow monitoring of compliance with the position limits in commodity derivatives and provide greater transparency to these markets and those of emission allowances and derivatives thereof.
10. Desk research indicates that current market practice is such that positions are monitored by firms for internal risk management and general monitoring purposes. Furthermore,

the reporting requirements laid out in EMIR (European Markets Infrastructure Regulation) as well as those contained in MiFID II require investment firms engaged in commodity derivative trading to have information on derivative trades and involved parties readily available. However, there are differences between the reporting regimes. EMIR, for example, does not cover emission allowances and derivatives thereof. Neither does it include the concept of linking positions in on-venue contracts with 'economically equivalent' OTC contracts.

11. Nonetheless, current market practice indicates that most of the information requested in this ITS in order to comply with the new position reporting regime is already available within the covered entities, such as identifiers (e.g. Legal Entity Identifier (LEI), Market Identifier Code (MIC) and information about positions such as the number of contracts entered into and maturities. However, trading venues seem to have different methodologies for aggregating positions, and there could be costs from adapting their systems to report as mandated by the ITS. There could also be issues regarding the reporting channels to be used and confidentiality of the transmitted data. In some of these areas, costs may not arise from operational complexity or administrative burden but rather from risk of predatory trading and divulgence of otherwise confidential information, however while important to take into consideration, this is a direct consequence of Level 1 provisions.

## Stakeholders

12. Three sets of stakeholders have been identified as those most affected by this standard:
  - i. regulated markets or other trading venues that trade commodity derivatives, emission allowances and derivatives thereof;
  - ii. investment firms which conduct OTC activity in commodity derivatives, emission allowances and derivatives thereof and the investment firms' clients (down to the end client); and
  - iii. NCAs.
13. *Regulated markets/other trading venues*: Trading venues will need to report on a weekly basis aggregate positions (subject to thresholds which will be determined by the Commission) in commodity derivatives, emission allowances and derivatives thereof that are traded on their venue. This will have an impact on the internal processes and procedures of venues trading the instruments mentioned in this ITS. The format developed in this ITS will entail costs for the trading venue, particularly in cases they have to provide information not already subject to other reporting requirements. However, the content of the information, which drives the format for the weekly report, is established by MiFID II and not by this ITS, which means the costs stem from Level 1 legislation. Article 58(1)(a) requires that each trading venue prepare a weekly report (subject to thresholds) showing aggregate positions by different categories of persons and specifies:

- i. the five different categories of persons (defined under Article 58(4));
  - ii. the long and short positions by such categories;
  - iii. changes since the last report;
  - iv. percentage of open interest in each category; and
  - v. number of persons in each category.
14. Article 58(4) further requires the report to differentiate between hedging positions and other positions. ESMA does not specify further information to be provided in the reporting format for the CoT reports. Therefore, any costs that could arise for trading venues in producing this report should be attributable to MiFID II and not to this technical standard.
15. *Investment firms*: Investment firms which conduct OTC activity in commodity derivatives, emission allowances and derivatives thereof will be obliged to report on a daily basis to their NCA their position and the position of their clients' (down to the end client) in on-venue and off-venue commodity derivatives. They will be obliged to break that report down and identify the end client where the position taken was not in a principal capacity. Some of the specifications developed in this ITS build on formats and information required by other reporting regimes such as EMIR. Legal certainty regarding the liability for sensitive data that has to be passed on in this context will have an impact on the investment firm's risk exposure, however, that is a direct consequence of Level 1 provisions. The format mandated in this ITS will entail costs for investment firms to the extent they are not currently required to provide the same information for other reporting requirements, or they store it in a different format.
16. *NCA*s: Competent authorities will need to set-up the IT systems and infrastructure to receive the position reports electronically, process them and provide an aggregate overview of positions in the market. This information will be used for different functions including market surveillance and integrity and supervision of the position limits regime. NCA's will incur compliance costs in the form of IT systems, development and storage costs. There will also be costs from having dedicated personnel to process, check and validate this information and establish coordination with other reporting regimes introduced by other regulations, such as EMIR. However, all these costs arise from Level 1 provisions and not from this ITS.

**Cost-benefit analysis**

ITS 4 Draft ITS on position reporting according to Article 58(5)

*Commitment of trader reports (CoT)*

<b>Policy</b>	Obtain the information needed to fulfil Level 1 obligations, ensure
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<b>Objective</b>	transparency in commodity derivatives
<b>Proposal</b>	Investment firm/operator of trading venue to make public and communicate to NCA and ESMA the weekly reports in the format specified by Annex I of ITS 4. Operator of trading venue to provide separate report for each commodity derivative. Report should contain aggregates of positions held and differentiate risk reducing from other activities as specified by Article 1 of ITS 4.
<b>Benefits</b>	<p>Provides transparency on the split between financial and non-financial activities to the commodities market, in line with the CoT in the US, including emission allowances and derivatives thereof.</p> <p>Transparency is provided at the level of each commodity derivative by differentiating risk reducing positions from other positions for investment firms/credit institutions, investment funds, other financial institutions, commercial undertaking and operators with compliance obligations under Directive 2003/87/EC.</p>
<b>Costs to regulator:</b> <b>-One-off</b> <b>-On-going</b>	<p>NCA's will need to set-up IT systems and reporting mechanisms to receive all the information requested. They will need also to deploy staff to receive these reports, undertake monitoring and follow up. However, those costs are driven by MiFID II, and not by this ITS.</p> <p>ESMA will incur minor one off IT set-up costs and ongoing IT and personnel costs from re-publishing the CoT that trading venues have published on their websites</p>
<b>Compliance costs:</b> <b>-One-off</b> <b>-On-going</b>	Trading venues are likely to incur one off costs from setting up or adapting their existing IT systems, as well as setting-up procedures and controls to report in the way mandated by the ITS. Most of these costs should be driven by MiFID II.
<b>Costs to other stakeholders</b>	None identified
<b>Indirect costs</b>	Most of the indirect effects in the market arising from potential changes in trading patterns or volumes should be attributable to MiFID II Level 1

	provisions.
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*Position reports (by investment firms)*

<b>Policy Objective</b>	Ensure consistent and meaningful position reporting by investment firms, specifying the format to follow for position reporting of commodity derivatives and emission allowances.
<b>Proposal</b>	Positions should be reported by investment firms daily on a gross basis and include details of all positions across maturities of all contracts, in the format set in Annex II. They should include LEI or National IDs as identifiers of reporting entity and position holder, as well as the ultimate parent ID (for aggregation purposes). It should include as well other relevant fields related to the position itself. Separate reports are required for spot and other months. For more details please see Article 2 of ITS 4.
<b>Benefits</b>	<p>Provides transparency to regulators on the commodity derivatives market, as well as information in order to effectively apply and enforce the position limits regime.</p> <p>Using LEI/National ID aligns the data with those received for transaction reporting, unifying the way of identifying persons, either legal or natural. This option minimises the costs arising from Level 2 as it aligns the reporting regime as much as possible with the existing and proposed reporting regimes (trade transparency and transaction reporting in MiFID II and trade reporting under EMIR) and relies on the more readily accessible identifiers.</p> <p>Using a common identifier should allow the NCAs to aggregate the positions of individual persons that may be held across different investment firms or venues and therefore allow for more a speedy monitoring of positions. Using the LEI to identify the end client is also the simplest method and requires the least number of fields in the position report. It hence bears the lowest costs for regulators as they will not need to decode the identifier. This would be the case where an internal identifier (a code generated within a firm) is used. Also this approach should exclude the possibility of double counting.</p> <p>The rest of the information required allows regulators to apply and enforce the position limits regime</p>

<p><b>Costs to regulator:</b></p> <p><b>-One-off</b></p> <p><b>-On-going</b></p>	<p>NCA's will need to set-up IT systems and reporting mechanisms to receive all the information requested. They will need also to deploy staff to receive these reports, undertake monitoring and follow up. However, those costs are driven by MiFID II, and not by this ITS.</p>
<p><b>Compliance costs:</b></p> <p><b>-One-off</b></p> <p><b>-On-going</b></p>	<p>Investment firms may incur one off costs from setting up or adapting their existing IT systems, as well as setting-up/adapting procedures and controls to report in the way mandated by the ITS. Most of these costs should be driven by MiFID II.</p> <p>On-going compliance costs arising from the use of LEI/National ID as identifiers are expected to be low as already used in the context of other reporting regimes such as EMIR. Also, alignment with the reporting requirements under Article 26 of MiFIR for the identification of natural persons should minimise resulting costs.</p>
<p><b>Costs to other stakeholders</b></p>	<p>Legal persons that are position holders and do not have an LEI for MiFIR or EMIR purposes may incur one-off costs have to obtain one. An LEI costs around USD 100 a year. There may be also ongoing compliance costs of renewing the LEI, in case the position holder does not have to renew it for MiFIR or EMIR purposes.</p>
<p><b>Indirect costs</b></p>	<p>Issues of confidentiality and market impact may arise where potentially sensitive information on positions is disclosed through a chain of investment firms so that the reporting entity receives the identity of the end client. This creates exposure risk for the end client. Using the LEI to identify the end client amplifies these concerns as the LEI can be understood by all investment firms.</p> <p>Most of the indirect effects in the market arising from potential changes in trading patterns or volumes should be attributable to MiFID II Level 1 provisions.</p>

*Reporting format*

<p><b>Policy Objective</b></p>	<p>Ensure information is received in a common format that would allow for efficient processing and aggregation.</p>
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<b>Proposal</b>	Reports required by Article 1 and 2 of ITS 4 should be submitted using a common standard XML format.
<b>Benefits</b>	Provides information in a way that is standardised and easy to aggregate, limiting potential errors and increasing the quality of the information received.
<b>Costs to regulator:</b> <b>-One-off</b> <b>-On-going</b>	NCA's will incur one-off costs from setting-up IT systems to receive the information in a common XML format, if not currently in place. They will incur ongoing costs from receiving and processing this information going forward.
<b>Compliance costs:</b> <b>-One-off</b> <b>-On-going</b>	Trading venues and investment firms may incur one-off costs from setting up or adapting their existing IT systems to provide the position reporting information in a common XML format.
<b>Costs to other stakeholders</b>	None identified
<b>Indirect costs</b>	None identified

*ITS 5: Draft ITS on the format and timing of weekly position reports*

*Reporting format*

<b>Policy Objective</b>	Ensure information is received in a common format that would allow for efficient processing and aggregation.
<b>Proposal</b>	Reports should be submitted in a common standard XML format by using the template set out in Tables 1 and 2 of Annex II of ITS 4.
<b>Benefits</b>	See table above

<b>Costs to regulator:</b>	
-One-off	See table above
-On-going	
<b>Compliance costs:</b>	
-One-off	See table above
-On-going	
<b>Costs to other stakeholders</b>	None identified
<b>Indirect costs</b>	None identified

*Reporting deadlines*

<b>Policy Objective</b>	Ensure informational value of the reports by specifying an appropriate deadline for submitting reports.
<b>Proposal</b>	Market operators and investment firms operating a trading venue that trades commodity derivatives, emission allowances or derivatives thereof have to send the weekly aggregated position report required by Article 58(1)(a) no later than 17.30 CET on Wednesday of each successive week, except when that day is a non-working day. See Article 2 of ITS 5 for more details.
<b>Benefits</b>	Allows submitters time to verify, check and correct potential errors, especially in the case of international clients or complex positions.  Increases the overall quality of the information provided, and potentially the number of fields filled and correctly populated.
<b>Costs to</b>	One-off costs are expected in relation to setting up new or adapting existing IT systems to ensure that reports can be received on a weekly

<b>regulator:</b>	basis by the deadline established.
<b>-One-off</b>	On-going costs will arise in relation to monitoring that reports are submitted in the specified time frame, which should be already included in the regular supervisory activities of investment firms and trading venues, so incremental costs should not be significant.
<b>-On-going</b>	
<b>Compliance costs:</b>	One-off costs may arise in relation to setting up new or adapting existing IT systems in order to collect the data requested in the report and complete the reports for submission to the NCAs (which may be multiple) by the deadline established.
<b>-One-off</b>	On-going costs will arise in relation to ensuring that the correct position is collected and validated (staffing and controls) and submitted in the specified time frame.
<b>-On-going</b>	
<b>Costs to other stakeholders</b>	None identified
<b>Indirect costs</b>	None identified

Compliance costs

17. NCAs that responded to ESMA's CBA questionnaire indicated a very wide range of costs arising from implementation of the position reporting regime, as initially outlined in the CP published in December 2014. One-off compliance costs ranged from EUR 50K to 10m and recurring costs from less than EUR 50K to 1m. However, some of the higher estimates also include Level 1 costs as NCAs were not able to split Level 1 and 2 costs.
18. Three trading venues indicated costs associated with weekly and daily reports to be the same. One-off staff costs were expected to be less than EUR 50K and IT one-off costs EUR 50K-250K. These venues indicated some external dependencies as some of the systems that would need to be updated depend on third parties. One small venue mentioned recurring staff and IT costs of less than EUR 50K. Another small venue mentioned one-off and recurring staff costs of less than EUR 50K.
19. One venue provided an estimate of one-off overall costs expected of EUR 1-5m and ongoing costs of EUR 250K-1m for both position reporting and position limits for both daily and weekly reports.