

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1944**of 13 June 2017****laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm in accordance with Directives 2004/39/EC and 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 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC ⁽¹⁾, and in particular the sixth subparagraph of Article 10a(8) thereof,

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 ⁽²⁾, and in particular Article 12(9) thereof,

Whereas:

- (1) It is appropriate to set out common standard forms, templates and procedures to ensure the accurate assessment by Member States' competent authorities of notifications of proposed acquisitions or increases of qualifying holdings in an investment firm. In those cases, the relevant competent authorities should consult and provide each other with any essential or relevant information.
- (2) To facilitate the cooperation between them and ensure efficiency in their exchange of information, competent authorities designated in accordance with Article 48 of Directive 2004/39/EC should designate contact persons specifically for the purpose of the consultation process provided for in Article 10(4) of Directive 2004/39/EC and a centralised list of those contact persons should be maintained by the European Securities and Markets Authority (ESMA).
- (3) Consultation procedures containing clear timing constraints should be set up in order to ensure the timely and efficient cooperation between competent authorities. A clear cooperation procedure should include a preliminary notice to be sent by the requesting authority to the requested authority, to inform the requested authority of the ongoing assessment.
- (4) The procedures should also aim at ensuring that competent authorities cooperate and work towards the improvement of the process by promoting the exchange of feedback on the quality and relevance of the information received.
- (5) Any exchange or transmission of information between competent authorities, other authorities, bodies or persons should be in accordance with the rules on personal data as laid down in Directive 95/46/EC of the European Parliament and of the Council ⁽³⁾.
- (6) Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽⁴⁾ applies to the processing of personal data by ESMA in the application of this Regulation.

⁽¹⁾ OJ L 145, 30.4.2004, p. 1.

⁽²⁾ OJ L 173, 12.6.2014, p. 349.

⁽³⁾ 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).

⁽⁴⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

- (7) This Regulation is based on the draft implementing technical standards submitted by ESMA to the Commission.
- (8) ESMA did not publicly consult or analyse the potential related costs and benefits of introducing the standard forms, templates and procedures for the consultation process between relevant competent authorities, as this was considered disproportionate in relation to their scope and impact.
- (9) Directive 2014/65/EU entered into force on 2 July 2014. Article 12(9) of Directive 2014/65/EU replaces Article 10a(8) of Directive 2004/39/EC and contains empowerments to ESMA for the development of implementing technical standards which are identical to those provided for under Article 10a(8) of Directive 2004/39/EC. Furthermore, the content of Articles 10b(4) and Article 10(4) of Directive 2004/39/EC is also identical to the content of Article 13(4) and Article 11(2) of Directive 2014/65/EU. In accordance with Article 94(1) of Directive 2014/65/EU, Directive 2004/39/EC will be repealed with effect from 3 January 2017. The adoption of the technical standards by the Commission in accordance with Article 10a(8) of Directive 2004/39/EC should also be considered in compliance with Article 12(8) of Directive 2014/65/EU with the consequence that the technical standard will continue to apply after 3 January 2018 without the need for further amendment,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down the standard forms, templates and procedures for the exchange of information during the consultation process between the competent authority of the target entity (the 'requesting authority'), and the competent authority of the proposed acquirer or of an authorised entity which is either a subsidiary of or controlled by the proposed acquirer (the 'requested authority').

Article 2

Designated contact persons

1. Competent authorities designated in accordance with Article 48 of Directive 2004/39/EC shall designate contact persons for communication for the purposes of this Regulation and shall notify ESMA of those persons.
2. ESMA shall maintain and update the list of the designated contact persons for the use of the competent authorities as referred to in paragraph 1.

Article 3

Preliminary notice

1. A requesting authority shall send a preliminary notice to the requested authority within three working days of the receipt of a notification by the proposed acquirer in accordance with Article 10(3) of Directive 2004/39/EC.
2. The requesting authority shall send the preliminary notice by completing the template set out in Annex I and shall include all the information set out therein.

Article 4

Consultation notice

1. The requesting authority shall send a consultation notice to the requested authority as soon as possible after receipt of a notification by the proposed acquirer in accordance with Article 10(3) of Directive 2004/39/EC and not later than 20 working days after receipt of such notification.

2. The requesting authority shall send the consultation notice referred to in paragraph 1 in writing by post, facsimile or secure electronic means, and address it to the designated contact person of the requested authority unless otherwise specified by the requested authority in its reply to the preliminary notice referred to in Article 3.

3. The requesting authority shall send the consultation notice referred to in paragraph 1 by completing the template set out in Annex II, identifying in particular issues relating to the confidentiality of information that may be obtained by the requesting authority, and specifying details of the relevant information that the requesting authority asks from the requested authority.

Article 5

Acknowledgement of receipt of a consultation notice

The requested authority shall send an acknowledgement of receipt of a consultation notice, within two working days of receiving it, including any additional contact details of its designated contact person and, where possible, an estimated date of response.

Article 6

Response from a requested authority

1. A response to a consultation notice shall be made in writing by post, facsimile or secure electronic means. It shall be addressed to the designated contact persons unless otherwise specified by the requesting authority.

2. The requested authority shall provide the requesting authority with the following information as soon as possible and not later than 20 working days of receipt of the consultation notice:

(a) the relevant information requested in the consultation notice, including any views or reservations in relation to the acquisition by the proposed acquirer;

(b) any other essential information that may influence the assessment, on its own initiative.

3. Where the requested authority is not able to meet the time limit set out in paragraph 2, it shall inform the requesting authority of this circumstance, indicating the reasons for the delay and an estimated date of response. The requested authority shall provide regular feedback on the progress made to provide the information requested.

4. In providing information in accordance with paragraph 2, the requested authority shall use the template set out in Annex III.

Article 7

Procedures for consultation

1. The requesting authority and the requested authority shall communicate in relation to a consultation notice and the response using the most expedient means from among those set out in Article 4(2) and Article 6(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. The requesting authority shall respond promptly to any clarifications requested by the requested authority.

2. Where the information requested is or may be held by an authority of the same Member State other than the requested authority, the requested authority shall collect the information promptly and transmit it to the requesting authority in accordance with Article 6.

3. The requested authority and the requesting authority shall cooperate to resolve any difficulties that may arise in executing a request, including resolving any cost issues if the costs of providing assistance are estimated to be excessive for the requested authority.

4. Where new information or a need for further information arises during the assessment period, the requesting authority and the requested authority shall cooperate to ensure that all additional relevant information is exchanged in accordance with this Regulation.

5. By way of derogation from Article 4(2) and Article 6(1), where information is being exchanged within the last 15 working days before the end of the assessment period referred to in the second subparagraph of Article 10a(1) of Directive 2004/39/EC, it may be provided verbally. In those cases, that information shall subsequently be confirmed in accordance with Article 4(2) and Article 6(1) unless the competent authorities involved agree otherwise.

6. The requested authority and the requesting authority shall provide feedback to each other on the outcome of the assessment in relation to which the consultation occurred and, where appropriate, on the usefulness of information or other assistance received or any problems encountered in providing such assistance or information.

Article 8

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*.

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

Done at Brussels, 13 June 2017.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

Preliminary notice template

(Article 3 of Commission Implementing Regulation (EU) 2017/1944)

Preliminary notice

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 3 of Commission Implementing Regulation (EU) 2017/1944 of 13 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm in accordance with Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council, a preliminary notice is made in relation to the matters set out in further detail below.

Information on the proposed acquisition

Identity of the proposed acquirer:

.....

[for natural persons, please include the information referred to in Article 3(1)(a) of Commission Delegated Regulation (EU) 2017/1946 of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm; for legal persons, please include the information referred to in Article 3(2)(a) of Delegated Regulation (EU) 2017/1946.]

Name of relevant authorised entity(/ies) in the requested authority's Member State and relationship to proposed acquirer:

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

[where the proposed acquirer is an authorised entity as referred to in Article 10(4)(a) of Directive 2004/39/EC, the name of the proposed acquirer is sufficient. Where the proposed acquirer falls under one of the categories defined under Article 10(4)(b) or (c) of Directive 2004/39/EC it is also necessary to explain the relationship of the proposed acquirer to the relevant authorised entity established in the requested authority's Member State]

Identity of the target entity:

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

[please insert the information referred to under Article 7(a) of Commission Delegated Regulation (EU) 2017/1946 of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm]

Size of the current and intended holding of the proposed acquirer in the target entity:

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.....
.....

[please insert the information referred to under Article 7(c)(i), (ii) and (iii) of Commission Delegated Regulation (EU) 2017/1946 of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm]

Please note that the assessment procedure (*) will expire on [insert date]. We will communicate further the consultation notice, which will contain all essential information on the proposed acquisition, and it will include any relevant information that we would like to receive. However, in the meantime, if you are aware of any essential information in relation to the acquisition, or if you have any views or reservations, we would be grateful if you could provide them at the earliest opportunity and at the latest within 20 working days of receipt of the consultation notice that will follow this preliminary notice.

(*) In accordance with second subparagraph of Article 10a(1) of Directive 2004/39/EC.

Yours sincerely,

[signature]

ANNEX II

Consultation notice template

(Article 4 of Commission Implementing Regulation (EU) 2017/1944)

Consultation notice

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 4 of the Commission Implementing Regulation (EU) 2017/1944 of 13 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm in accordance with Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council, a consultation notice is made in relation to the matters set out in further detail below.

Please note that the assessment procedure (*) will expire on *[insert date]*, therefore we would be grateful if you could provide the requested information and any other relevant and essential information by *[20 working days from receipt of this letter]* or, if that is not possible, an indication as to when you anticipate being in a position to provide the assistance which is sought, taking into account the mentioned deadline for the assessment procedure.

(*) In accordance with second subparagraph of Article 10a(1) of Directive 2004/39/EC

Information on the proposed acquisition

Subject matter
.....
.....

[please set out that information here or make reference to the relevant annexes containing the information]

Details of the proposed acquisition
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.....

[please set out that information here or make reference to the relevant annexes containing the information]

Details of any other supervisory authorities involved
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.....

[please set out that information here or make reference to the relevant annexes containing the information]

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

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

Type of assistance request

Information sought *[if any]*:

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.....

[please insert a detailed description of the specific information sought, including any relevant documents requested, with reasons why that information will be of assistance. Examples include:

- The shareholding structure of the proposed acquirer or of the relevant authorised entity, and the main characteristics of its shareholders;*
- The most recent assessment of the suitability (fitness and propriety) of the proposed acquirer or of the relevant authorised entity;*
- The most recent assessment of the financial soundness of the proposed acquirer or of the relevant authorised entity, with related public or external audit reports (where relevant);*
- The most recent assessment by the requested authority of the quality of the management structure of the proposed acquirer or of the relevant authorised entity, and its administrative and accounting procedures, internal control systems, corporate governance, group structure etc.]*

Additional information provided by the requesting authority.

.....
.....

[Whether the requesting authority has been or will be in contact with any other authority or law enforcement agency in the Member State of the requested authority 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]

Yours sincerely,

[signature]

ANNEX III

Response from requested authority template

(Article 6 of Commission Implementing Regulation (EU) 2017/1944)

Response from requested authority

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 6 of the Commission Implementing Regulation (EU) 2017/1944 of 13 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm in accordance with Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council, your consultation notice dated [dd.mm.yyyy] with reference [insert reference number] has been processed by us.

Where applicable, please explain any doubt you have in relation to the precise information requested or to any other aspect of this assessment:

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If the information requested has been gathered, 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 requested:

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.....

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

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

Please provide, on your own initiative, any essential information that could materially influence the assessment, such as group structure or the most recent assessments of the financial soundness of the proposed acquirer or of the relevant authorised entity.

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Yours sincerely,

[signature]