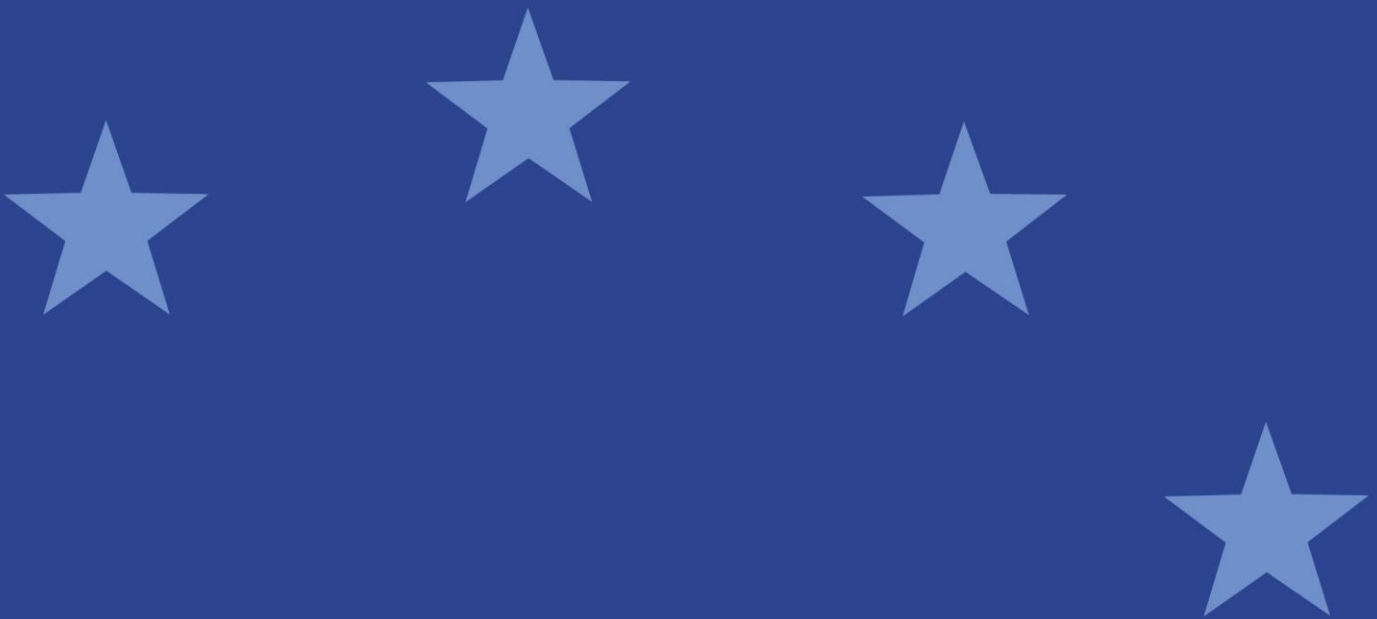




European Securities and
Markets Authority

Final report

Draft Implementing Technical Standards on forms and procedures for cooperation between competent authorities under Regulation (EU) No 596/2014 on market abuse



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Acronyms

EEA	European Economic Area
EU	European Union
ESMA	European Securities and Markets Authority
ITS	Implementing Technical Standards
MAR	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC ¹
NCA	National Competent Authority, a competent authority referred to in Article 3(1)(12) of MAR

¹ OJ L 173, 12.6.2014, p. 1

I. Executive summary

1. This report contains ESMA's proposed draft Implementing Technical Standards on how NCAs should cooperate with each other for the purposes of the Market Abuse Regulation (MAR), unless one of the exceptions of Article 25(2) of MAR applies.
2. In particular, this report sets out procedures and forms for NCAs to exchange information and assist each other where necessary under Article 25 of MAR.

II. Background

3. Articles 24 and 25 of MAR of the Market Abuse Regulation (MAR) mandate ESMA to develop draft ITS concerning the procedures and forms for exchange of information and assistance
 - among NCAs;
 - between NCAs and the Commission in relation to the exchange of information relating to the commodities on agricultural products referred to in Article 25(1) second subparagraph of Regulation (EU) No 596/2014;
 - between NCAs and the relevant national regulatory authorities responsible for the related spot markets;
 - in relation to emission allowances, between NCAs and the entities referred to in points (a) and (b) of Article 25(8), second subparagraph of Regulation (EU) No 596/2014;
 - between NCAs and ACER;
 - between NCAs and NRAs defined in REMIT;
 - between ESMA and ACER;
 - between NCAs and ESMA.
4. Considering the recipients of these draft ITS and in order to facilitate its application, ESMA has split the subjects of these mandates in two subgroups and therefore has been developing two different sets of draft ITS that would respectively cover procedures and forms for exchange of information and assistance:
 - among NCAs; and
 - between NCAs and ESMA with the rest of the authorities, entities and public bodies mentioned under Art.25 MAR.

5. In splitting the mandates, ESMA has also taken into consideration that the draft ITS on cooperation between NCAs takes its root in existing cooperation practices and the ESMA MoU. For the rest of authorities, agencies, entities and public bodies, except for the case of ACER, with whom ESMA signed a MoU in 2013, brand new forms and procedures have had to be created following the views and advise of all the parties involved.
6. The division also obeys to the different powers, functions and abilities of the subjects obliged to cooperate, having the cooperation between NCAs a broader scope and a more regular basis. The level and type of assistance between the different authorities, agencies, entities and public bodies is not the same, as well as the subjects that are obliged to cooperate with each other. In this sense, NCAs are the only authorities that, according to Article 25 of MAR, have to cooperate with Commission in relation to the exchange of information relating to the commodities on agricultural products referred to in Article 25(1) second subparagraph of Regulation (EU) No 596/2014; whereas regarding cooperation with ACER, the subjects obliged are ESMA and NCAs, though at different levels as set out in Article 25 (3) and (5) of MAR.
7. ESMA was required to submit the draft ITS to the European Commission by 3 July 2016, according to the mandates in Articles 24 and 25 of MAR, respectively. In the spring of 2015, it was agreed to postpone the submission to the Commission of both draft ITS as the existing ESMA MoU (for NCAs) and IOSCO MMoU cover this area and therefore this work was not considered a priority for competent authorities. The Commission, the Council and the EU Parliament were informed accordingly.
8. This report is only addressing the draft ITS on cooperation between NCAs; the other set of technical standards being under finalisation.
9. ESMA has not conducted a public consultation, but a targeted one with the NCAs. The reason of not having a public consultation is that such a consultation would have been disproportionate in relation to the scope and impact of these draft ITS, taking into account that the addressees of the ITS would only be the NCAs and not market participants.
10. ESMA has requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Articles 15(1) and 37(1) of Regulation (EU) No 1095/2010 of the European Parliament and of the Council.
11. Annex I recalls the legislative mandate to develop the draft ITSs and Annexe II set out the full text of the draft ITS.

III. On the cooperation between NCAs

12. This section of the report covers cooperation procedures and forms that NCAs should follow and use, respectively, when exchanging information and rendering assistance with each other as referred to in Article 25 of MAR.
13. Article 25 of MAR caters for different circumstances where cooperation in investigation, supervision and enforcement activities between NCAs might take place, such as:
 - exchange of information further to a request for assistance;
 - unsolicited exchange of information;
 - request for assistance with regard to on-site inspections or investigations;
 - recovery of pecuniary sanctions.
14. Article 25 of MAR states that NCAs shall cooperate with each other without undue delay on a mandatory basis, except where one or more of the circumstances mentioned in Article 25(2) of MAR applies. Those circumstances are as follows,
 - communication of relevant information could adversely affect the security of the Member State addressed, in particular the fight against terrorism and other serious crimes;
 - complying with the request is likely adversely to affect its own investigation, enforcement activities or, where applicable, a criminal investigation;
 - judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed; or
 - a final judgment has already been delivered in relation to such persons for the same actions in the Member State addressed.
15. In order to facilitate communication between themselves, NCAs should designate contact points specifically for submitting the information required. They may not be always physical persons, but could be mailboxes or any other point that ensure the reception, avoiding thus unnecessary delays or failed deliveries of information. ESMA should centralise the information about the contact points and make them available to the NCAs.
16. The draft ITS describe the specific procedures to be followed by the NCAs for making, acknowledging, processing and replying to requests for assistance as well as when unsolicited assistance is provided.

17. Besides, the draft ITS address specific procedural aspects relating to particular type of assistance, namely the taking of statement from a person, on-site inspections or investigations and the recovery of pecuniary sanctions.
18. The relevant forms to be used by NCAs for the above are set out in the annexes of the draft ITS.
19. NCAs shall communicate with each other where the information that has been provided to them further to a request for assistance is intended to be used for purposes not stated in the request, but falling under MAR. In such a case, the competent authority that provided the information shall give its prior consent to the use of information that the requesting authority is willing to make.



Annex I: Legislative mandate

Article 25(9) of MAR provides that:

“In order to ensure uniform conditions of application of this Article, ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information and assistance as referred to in this Article.

ESMA shall submit those draft implementing technical standards to the Commission by 3 July 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.”



Annex II: Draft implementing technical standards on the procedures and forms for exchange of information and assistance between competent authorities according to Regulation (EU) No 596/2014 of the European Parliament and of the Council



EUROPEAN COMMISSION

Brussels, **XXX**
[...](2016) **XXX** draft

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

of **XXX**

[...]



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

of [dd mm yyyy]

laying down implementing technical standards with regard to procedures and forms for exchange of information and assistance between competent authorities according to Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 596/2014 of 16 April 2014 of the European Parliament and of the Council on market abuse (market abuse regulation)² and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC³, and in particular Article 25(9) thereof,

Whereas:

- (1) It is appropriate to set out common procedures and forms to ensure that the authorities designated as competent authorities under Regulation (EU) No 596/2014 are able to efficiently provide assistance and exchange information in a timely manner for the purposes of that Regulation in order to provide each other full mutual assistance.
- (2) The exchange of information in writing should assist the competent authority to use the information it received to fulfil its duties. Oral communication may take place where appropriate, also before a written request is sent to inform about an upcoming request for assistance and discuss any problematic issues that may impede assistance being provided. In urgent cases, a request for assistance may also be communicated orally provided that the urgency is not due to late action from the requesting party.
- (3) Regulation (EU) No 596/2014 sets out obligations to exchange information and provide assistance. However, in considering the content of its request for assistance, a competent authority is expected to ensure, to the extent possible, that it reserves requests for taking of statement or for carrying out an on-site inspection or an investigation for cases where a simple information request would not provide the necessary level of assistance. Besides a competent authority is expected to have undertaken all actions reasonably practicable in its own jurisdiction prior to making

² OJ L 173, 12.6.2014, p1.

³ OJ L 173, 12.6.2014, p. 1

such a request for assistance, noting though it may not be reasonably practicable for this authority to have exhausted all the methods of enquiry prior to the request.

- (4) This Regulation specifies the procedures and forms to be used for requesting assistance and for processing and replying to such request for assistance, as well as the provision of assistance without a request having been received. Such an unsolicited assistance is provided when required under Regulation (EU) No 596/2014 or on a voluntary basis in relation to other situations in accordance with Regulation (EU) No 596/2014, when a competent authority considers that the information it holds or has obtained may be of use for another competent authority.
- (5) Indicating the reason for the request for assistance is necessary for providing sufficient information about the subject matter of the request and its context, and for enabling the requested authority to process the request efficiently and expeditiously. It cannot be understood as a requirement for the authority seeking assistance to specify the facts giving rise to its suspicion, as the only precondition for entitlement to administrative assistance is that the requested information is necessary for that authority to fulfill its duties.
- (6) Beyond the use of forms for requesting and replying to a request for assistance and to ensure an efficient processing of a request for information or assistance, the procedures for cooperation should allow and facilitate the communication, consultation and interaction between the requesting authority and the requested authority, throughout the process of cooperation.
- (7) To ensure constant improvement of operational aspects of the cooperation, the requested authority and the requesting authority may also provide feedback to each other where appropriate on the usefulness of information or other assistance received, the outcome of the case in relation to which the assistance was sought and any problems encountered in providing such assistance.
- (8) The procedures and forms specified in this Regulation should ensure that the information exchanged or transmitted is kept confidential in accordance with Regulation (EU) No 596/2014, and should ensure compliance with the rules laid down in EU legislation on the processing of personal data and the transfer of such data.
- (9) This Regulation is based on the draft implementing technical standards submitted by ESMA to the Commission.
- (10) ESMA did not publicly consult, analyse the potential related costs and benefits of introducing forms and procedures for the cooperation between competent authorities or as this would have been disproportionate in relation to their scope and impact.
- (11) 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,
- (12) In order to ensure the smooth functioning of the financial markets and considering the date of entry into application of Regulation (EU) No 596/2014, it is necessary that

this Regulation enters into force and the provisions it lays down apply as a matter of urgency.

HAS ADOPTED THIS REGULATION:

Chapter I GENERAL PROVISIONS

Article 1

Subject matter

This Regulation lays down the procedures and forms for exchange of information and assistance between competent authorities referred to in Article 3(1)(12) of Regulation (EU) No 596/2014.

Article 2

Definitions

For the purposes of this Regulation, the following definition shall apply:

“electronic means” are means of electronic equipment for the processing (including digital compression), storage and transmission of data, employing wires, radio, optical technologies, or any other electromagnetic means.

Article 3

Designated contact points

1. Competent authorities shall designate contact points for communication under this Regulation. Competent authorities shall, within 30 days of this Regulation entering into force, communicate the information about their contact points to ESMA. They shall provide ESMA updated information as necessary
2. ESMA shall maintain and update the list of the designated contact points for use by the competent authorities.

CHAPTER II

PROCEDURES FOR COOPERATION

Article 4

Request for assistance

1. A requesting authority shall make a request for assistance in writing by post, fax or secure electronic means, addressed to the designated contact point of the requested authority. Those electronic means shall ensure that completeness, integrity and confidentiality of the information are maintained during the transmission.
2. A requesting authority shall send its request for assistance using the form set out in Annex I, specifying details of the relevant information that the requesting authority is seeking from the requested authority and identifying, where appropriate, issues relating to the confidentiality of information that may be obtained. The requesting authority may attach to the request any document or supporting material deemed necessary to support the request.
3. If the request for assistance is urgent, the requesting authority may make a request for assistance verbally provided that subsequent confirmation of the request is made in writing without undue delay by using the means referred to in paragraph 1 unless the requested authority agrees otherwise.

Article 5

Acknowledgment of receipt of a request for assistance

The requested authority shall send the acknowledgement of receipt to the contact point identified in the request by post, fax or secure electronic means, by completing the form in Annex II within ten (10) working days of receipt of the written request for assistance and including, if possible at that stage, an estimated date of response. Those electronic means shall ensure that completeness, integrity and confidentiality of the information are maintained during the transmission.

Article 6

Reply to a request for assistance

1. A reply to a request for assistance shall be made in writing by post, fax or secure electronic means. Those electronic means shall ensure that completeness, integrity and confidentiality of the information are maintained during the transmission. The reply shall be addressed to the designated contact point unless otherwise specified by the requesting authority.
2. The requested authority shall:

- (a) request further clarifications in whatever form as soon as possible if it has any doubt in relation to the precise information requested;
 - (b) take all reasonable steps within the scope of its powers to provide the assistance requested;
 - (c) execute requests for assistance without delay and in a manner which ensures any necessary regulatory action shall proceed expeditiously, taking into account the complexity of the request and the necessity to involve third parties or another authority; and
 - (d) reply to the request for assistance using the form set out in Annex III.
3. In accordance with Article 25(2) of Regulation (EU) No 596/2014, if the requested authority refuses to act upon a request for assistance in full or in part, that authority shall inform the requesting authority of its decision as soon as possible, in writing or verbally. The requested authority shall indicate the exception in Article 25(2) of Regulation (EU) No 596/2014 that motivates the refusal in the reply to the request for assistance made in accordance with paragraph 1.

Article 7

Procedures for the sending and processing of a request for assistance

1. The requesting authority and the requested authority shall communicate in relation to a request for assistance and its reply 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 requested by the requested authority.
2. When the requested authority becomes aware of circumstances that may lead to a delay in its estimated date of response of more than ten (10) working days, it shall notify the requesting authority without undue delay.
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. Where appropriate, the requested authority shall provide regular feedback regarding progress of the pending request, including revised estimates of the targeted date of reply to the requesting authority.
5. The requested authority and the requesting authority shall consult each other with a way to resolving any difficulties that may arise in executing a request.

Article 8

Procedure for requests for the taking of a statement from a person

1. Where the requesting authority intends to include within its request the taking of a statement of any person in the context of an investigation or an inspection, the requested authority and the requesting authority shall assess and take into account:
 - (a) any legal limitations or constraints and any differences in procedural requirements in national laws;
 - (b) the rights of the persons from whom the statements will be taken including, where applicable, any self-incrimination issues;
 - (c) the nature of the participation of the requesting authority's staff (observer or active participant);
 - (d) the role of the staff of the requested authority and requesting authority in the taking of the statement;
 - (e) 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 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 or is intended to 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, including whether it will be contemporaneous or summarised written minutes or an audio or audio-visual recording;
 - (k) 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; and
 - (l) the procedure for transmitting the statement by the requested authority to the requesting authority, including format and time period.

2. The requested authority and the requesting authority shall ensure that arrangements are in place for their staff to proceed efficiently, including arrangements to enable their staff to agree on any additional information that may be necessary, including the following:
 - (a) dates;
 - (b) the list of questions to be asked to the person from whom the statement will be taken;
 - (c) travelling arrangements, including ensuring that the requested authority and the requesting authority are able to discuss, in meeting or otherwise, the matter prior to the taking of the statement; and
 - (d) if necessary, language arrangements.

Article 9

Procedure for requests of an authority to carry out an investigation or an on-site inspection

1. When a request to carry out an investigation or an on-site inspection is made pursuant to Article 25(6) of Regulation (EU) No 596/2014, the requesting authority and the requested authority shall consult each other on the best way to give useful effect to the request for assistance, taking into account points (a) to (e) of the third paragraph of Article 25(6) of Regulation (EU) No 596/2014.
2. The requested authority shall keep the requesting authority informed of the progress of the investigation or on-site inspection and will transmit its findings in good time to the requesting authority.
3. The requesting authority and the requested authority shall consult each other on the merits of conducting a joint investigation or a joint on-site inspection.
4. In deciding on whether to initiate a joint investigation or a joint on-site inspection, the requesting authority and the requested authority shall take into account at least the following:
 - (a) any requests for assistance received from the requesting authority that might suggest that it is appropriate to carry out the investigation or on-site inspection 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 ne bis in idem principle;
 - (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 the conduct of any joint investigation or joint on-site inspection and any proceedings which might follow;

- (e) the management and direction of the investigation or on-site inspection;
 - (f) the likely prospects that they will be able to agree on the finding of facts;
 - (g) the allocation of resources and appointment of staff in charge of carrying out investigations or on-site inspections;
 - (h) the actions to be taken, jointly or individually, by each authority;
 - (i) whether to establish a joint action plan and the timing of the 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.
5. If the requesting authority and the requested authority 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 ongoing dialogue to coordinate the information gathering process and the finding of facts;
 - (c) work closely and cooperate with each other as to the conduct of the joint investigation or joint on-site inspection;
 - (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, (whether administrative, civil or criminal) of the joint investigation or joint on-site inspection or, where appropriate, the prospects of a settlement.
6. If the requesting authority and the requested authority decide to open a joint investigation or joint on-site inspection, those authorities shall also consider, at least:
- (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 specifying, among others, the substance, nature and timing of the actions to be taken, and 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 the enforcement proceedings, including self-incrimination;
- (e) the public and press strategy; and
- (f) the use of information provided or exchanged.

Article 10

Procedures for assistance in recovery of pecuniary sanctions

1. The requesting authority and the requested authority shall consult each other when a request to assist in the recovery of pecuniary sanctions is made under Article 25(6) of Regulation (EU) No 596/2014 on the best way to give useful effect to the request. They shall take into account the actions already taken by the requesting authority in its own jurisdiction and the national framework of the requested authority in relation to the recovery of sanctions.
2. The requested authority shall provide the assistance or make available the information requested for the purposes of this Article in accordance with relevant national law. Where the requested assistance may be provided by or the information may be available to another authority or relevant body of the State of the requested authority, if necessary, the requested authority shall provide the requesting authority with sufficient information to establish direct contact between the requesting authority and the other authority or body from whom the requested information might be available, in accordance with national law.

Article 11

Procedures for unsolicited exchanges of information

1. For the purposes of transmitting information under Article 16(4) and Article 25(5) of Regulation (EU) No 596/2014, or where a competent authority has information that it believes would assist another competent authority in carrying out its duties under Regulation (EU) No 596/2014, it shall transmit such information in writing by post, fax or secure electronic means, addressed to the designated contact point of the relevant competent authority. Those electronic means shall ensure that completeness, integrity and confidentiality of the information are maintained during the transmission.
2. Where the competent authority providing the information referred to in paragraph 1 believes the information should be transmitted urgently, it may inform verbally the other authority, provided that a subsequent transmission is made in writing without undue delay.
3. When transmitting information on an unsolicited basis under paragraph 1, a competent authority shall use the form set out in Annex IV, identifying in particular issues relating to

the confidentiality of information.

Article 12

Restrictions and permissible uses of information

1. The requesting authority and the requested authority shall include an appropriate confidentiality warning in a request for assistance, a reply to a request for assistance or a transmission of unsolicited information in accordance with the forms set out in the Annexes.
2. Where in order to execute the request, the requested authority is required to disclose the fact that the requesting authority has made the request, the requested authority shall disclose it after having 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 requested authority shall not act upon the request and the requesting authority may withdraw or suspend its request or until it is able to provide its consent to disclosure.
3. Information provided under unsolicited assistance shall be used solely for the purposes of securing compliance with or enforcement of the provisions of Regulation (EU) No 596/2014, including but not limited to initiating, conducting or assisting in criminal, administrative, civil or disciplinary proceedings resulting from a breach of the provisions of the same Regulation.

CHAPTER V

FINAL PROVISIONS

Article 13

Entry into force

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 its date of entry into force.

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 assistance

Request for assistance

Reference number:

Date:

Annexes: *[specify the number of documents/supporting documents attached]*

General information

FROM:

Member State:

Requesting Authority:

Legal address:

[Insert the contact details of the designated contact point under Article 3 of the Commission Implementing Regulation (EU) No .../...⁴, or the person designated as contact point for dealing with this request and identified below]

Name:

Telephone:

Email:

TO:

Member State:

Requested Authority:

Legal address:

⁴ Insert reference of these ITS.

[Insert the contact details of the designated contact point under Article 3 of the Commission Implementing Regulation (EU) No .../...⁵]

Name:

Telephone:

Email:

Dear [Insert appropriate name]

In accordance with Article 4 of the Commission Implementing Regulation (EU) No .../...⁶ laying down implementing technical standards with regard to procedures and forms, and procedures for exchange of information and assistance between competent authorities] 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. On recovery of sanctions
6. Other type of assistance

(e.g. freezing or sequestration of assets, authorisation for other use or onward disclosure...)

Reasons for the request for assistance

⁵ Insert reference of these ITS.

⁶ Insert reference of these ITS.

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

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

The request concerns assistance in

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[Insert description of the subject matter of the request, the purpose for which the assistance is sought, facts relating to the investigation as contextual information for the request and explanation for its helpfulness for fulfilling its duties]

Further to.....

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.....

[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.

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(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 any applicable identification standard code such as the ISIN code or the AII]

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, and any applicable identification code, such as LEI code or client Id code under MiFIR]

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.

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(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 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]

(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.

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2. Taking of a statement

Please indicate:

(a) Nature of the statement sought:

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[Insert indication of preference, if any, as to the nature of the statement sought, e.g. affirmation or other legal instructions; on a voluntary or compelled basis if applicable]

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

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

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.....

[Insert details of the persons from which the statement will be taken, including where relevant the person's position and the company, to enable the requested authority to begin organizing the taking of the statement including 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).

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(e) Any additional information which may be useful:

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[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.

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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 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 the requesting 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 a joint inspection, as appropriate]

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.....
.....



The information included in this request shall be kept confidential in accordance with Article 12 of Commission Implementing Regulation (EU) No .../...⁷ and Article 27 of Regulation (EU) No 596/2014. The requirements of Article 28 of Regulation (EU) No 596/2014 shall be observed with respect to any personal data included in this request.

Your contact for any queries you might have in relation to any aspects of this request is [*Insert relevant contact name and contact details: telephone, email*]

Yours sincerely,

[*Name and signature*]

⁷ Insert reference of these ITS.



ANNEX II

Form for the acknowledgment of receipt of a request for assistance

Acknowledgment of receipt of a request for assistance

Reference number:
Date:
<u>FROM:</u>
Member State:
Requested Authority:
Legal address:
<i>[Insert the contact details of the designated contact point under Article 3 of the Commission Implementing Regulation (EU) No .../...⁸ or the person designated as contact point for dealing with this request and identified below]</i>
Name:
Telephone:
Email:
<u>TO:</u>
Member State:
Requesting Authority:
Legal address:
<i>[Insert the contact details of the designated contact point under Article 3 of the Commission Implementing Regulation (EU) No .../...⁹ unless otherwise specified by the requesting authority]</i>
Name:
Telephone:
Email:

⁸ Insert reference of these ITS.

⁹ Insert reference of these ITS.



Dear *[Insert appropriate name]*

In accordance with Article 5 of Commission Implementing Regulation (EU) No .../...¹⁰ laying down implementing technical standards with regard to procedures and forms for exchange of information and assistance between competent authorities, we hereby acknowledge receipt of your request for assistance with reference *[Insert request reference number]* on *[Insert date]*.

The relevant person(s) within *[Insert name of the requested authority]* dealing with your request is *[Insert name, telephone, email]*.

Estimated date of response:

Yours sincerely,

[Name and signature]

¹⁰ Insert reference of these ITS.



ANNEX III

Form for the reply to a request for assistance

Reply to a request for assistance

Reference number:

Date:

Annexes: [*specify the number of documents/supporting documents attached*]

General information

FROM:

Member State:

Requested Authority:

Legal address:

[Insert the contact details of the designated contact point under Article 3 of the Commission Implementing Regulation (EU) No .../...¹¹ unless otherwise specified by the requested authority]

Name:

Telephone:

Email:

TO:

Member State:

Requesting Authority:

Legal address:

[Insert the contact details of the designated contact point under Article 3 of the Commission Implementing Regulation (EU) No .../...unless otherwise specified by the requesting authority]

Name:

Telephone:

¹¹ Insert reference of these ITS.



Email:

Dear *[insert appropriate name]*

In accordance with Article 6 of Commission Implementing Regulation (EU) No .../...¹² laying down implementing technical standards with regard to procedures and forms for exchange of information and assistance between competent authorities] 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 Article 12 of Commission Implementing Regulation (EU) No .../...¹³ and Article 27 of Regulation (EU) No 596/2014.

The *[Insert name of the requesting authority]* shall observe the requirements of the Article 12 of Commission Implementing Regulation (EU) No .../...¹⁴ with respect to the permissible uses of that information, and of Article 28 of Regulation (EU) No 596/2014 with respect to personal data processing and transfer.

If the *[Insert name of the requesting authority]* intends to use or disclose information provided in this reply for a purpose different than the one stated in the request but falling under the scope of Regulation (EU) No 596/2014, *[Insert name of the requested authority]* shall notify *[Insert name of the requesting authority]* which has ten (10) working days to object to such use or disclosure on the grounds referred to in Article 25(2) of Regulation (EU) No 596/2014.

¹² Insert reference of these ITS.
¹³ Insert reference of these ITS.
¹⁴ Insert reference of these ITS.



If the *[Insert name of the requesting authority]* intends to use or disclose information provided in this reply for any purpose outside the scope of Regulation (EU) No 596/2014, it shall notify *[Insert name of the requested authority]* and, unless the exception referred to in Article 27(3) of Regulation (EU) No 596/2014 applies, shall obtain the prior consent of *[Insert name of the requested authority]*. If *[Insert name of the requested authority]* consents to such a use or disclosure of the information, it may subject it to certain conditions.

Yours sincerely,

[Name and signature]



ANNEX IV

Form for the provision of unsolicited assistance

[Article ... (...)]

Unsolicited assistance

Reference number:

Date:

Annexes: *[specify the number of documents/supporting documents attached]*

General information

FROM:

Member State:

Transmitting Authority:

Legal address:

[Insert the contact details of the designated contact point under Article 3 of the Commission Implementing Regulation (EU) No .../...¹⁵]

Name:

Telephone:

Email:

TO:

Member State:

Recipient Authority:

Legal address:

¹⁵ Insert reference of these ITS.



[Insert the contact details of the designated contact point under Article 3 of the Commission Implementing Regulation (EU) No .../...]

Name:

Telephone:

Email:

Dear [insert appropriate name]

In accordance with Article 11 of Commission Implementing Regulation (EU) No .../...¹⁶ laying down implementing technical standards with regard to procedures and forms for exchange of information and assistance between competent authorities, we are providing the following information we believe may be of assistance in carrying out your duties.

Information provided

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

[Please set out the details of the information here, including if relevant a description of any supporting documents or material attached]

The information provided is confidential and is disclosed to [insert name of the competent authority receiving the unsolicited information] pursuant to Article 25 of Regulation (EU) No 596/2014 and on the basis that the information shall remain confidential in accordance with Article 12 of Commission Implementing Regulation (EU) No .../...¹⁷ and Article 27 of Regulation (EU) No 596/2014.

The [insert name of the competent authority receiving the unsolicited information] shall observe the requirements of the Article 12 of Commission Implementing Regulation (EU) No .../...¹⁸ with respect to the permissible uses of that information, and of Article 28 of Regulation (EU) No 596/2014 with respect to personal data processing and transfer.

¹⁶ Insert reference of these ITS.
¹⁷ Insert reference of these ITS.
¹⁸ Insert reference of these ITS.

If the *[Insert name of the competent authority receiving the unsolicited information]* intends to use or disclose the information received for purposes different than those stated in Article 12(3) of the Commission Implementing Regulation (EU) No.../...¹⁹, it shall notify the *[Insert name of the competent authority providing the unsolicited information]* and, unless the exception referred to in Article 27(3) of Regulation (EU) No 596/2014 applies, shall obtain the prior consent of *[Insert name of the competent authority providing the unsolicited information]*. If *[Insert name of the competent authority providing the unsolicited information]* consents to such a use or disclosure of the information, it may subject it to certain conditions.

Yours sincerely,

[Name and signature]

¹⁹ Insert reference of these ITS.