



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

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

of **XXX**

laying down implementing technical standards with regard to standard forms, templates and procedures for authorisation, review and evaluation of central securities depositories, for the cooperation between authorities of the home Member State and the host Member State, for the consultation of authorities involved in the authorisation to provide banking-type ancillary services, for access involving central securities depositories, and with regard to the format of the records to be maintained by central securities depositories in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council

(Text with EEA relevance)

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

of **XXX**

laying down implementing technical standards with regard to standard forms, templates and procedures for authorisation, review and evaluation of central securities depositories, for the cooperation between authorities of the home Member State and the host Member State, for the consultation of authorities involved in the authorisation to provide banking-type ancillary services, for access involving central securities depositories, and with regard to the format of the records to be maintained by central securities depositories in accordance with Regulation (EU) No 909/2014 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 Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012¹, and in particular Article 17(10), Article 22(11), Article 24(8), Article 29(4), Article 33(6), Article 49(6), Article 52(4), Article 53(5) and Article 55(8) thereof,

Whereas:

- (1) The provisions in this Regulation are closely linked, since they all deal with supervisory requirements involving central securities depositories (CSDs). To ensure coherence between those provisions, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations, it is desirable to include all the implementing technical standards required by Article 17(10), Article 22(11), Article 24(8), Article 29(4), Article 33(6), Article 49(6), Article 52(4), Article 53(5) and Article 55(8) of Regulation (EU) No 909/2014 in a single Regulation.
- (2) Any information submitted to the competent authority in a CSD's application for authorisation as well as for the purposes of review and evaluation should be provided in a durable medium.
- (3) In order to facilitate quick identification of the information submitted by a CSD, all documents provided to the competent authority, including those provided with an application for authorisation, should bear a unique reference number. Information submitted as part of the process of review and evaluation of the CSDs' activities should contain precise indications of the changes to the documents that have been submitted during that process
- (4) In order to facilitate the cooperation between authorities where CSDs provide cross-border activities or set up branches, it is necessary to provide for harmonised standards, forms and procedures for such cooperation.

¹ OJ L 257/1, 28.8.2014, p. 1.

- (5) To carry out their duties effectively and consistently, the authorities authorised to have access to the records of CSDs in accordance with Regulation (EU) No 909/2014 should be provided with data that is comparable across CSDs. In addition, the use of common formats across different financial market infrastructures should facilitate the greater use of those formats by a wide variety of market participants, thus promoting standardisation. Standardised procedures and data formats across CSDs should reduce as well the costs for market participants and facilitate the tasks of supervisors and regulators.
- (6) To ensure consistency of the record keeping, all legal entities that use the services of a CSD should be identified by a unique code through the use of legal entity identifiers (LEI). The use of an LEI is already required under Commission Implementing Regulation (EU) No 1247/2012² and it should be required for the purposes of the record keeping by CSDs. The use of proprietary formats by CSDs should be limited to internal processes, but for reporting purposes and for providing information to competent authorities any internal code should be appropriately converted into a globally accepted standard such as LEI. Account holders that are not participants in the securities settlement systems operated by CSDs, for instance in the case of direct securities holding systems, and clients of participants in the securities settlement systems operated by CSDs should be allowed to continue to be identified by national identifiers where available.
- (7) In order to ensure a harmonised approach regarding the processing of complaints concerning the access of participants to CSDs, the access of issuers to CSDs, the access between CSDs, and the access between a CSD and another market infrastructure, standard forms and templates should be used, specifying the identified risks and the assessment of the identified risks that justify a refusal of access.
- (8) In order to facilitate the consultation by the competent authority of a CSD with other authorities involved referred to in Regulation (EU) No 909/2014 prior to granting or refusing authorisation to provide banking-type ancillary services, it is necessary to provide for an effective and structured process for consultation. To facilitate the timely cooperation of the authorities concerned and allow each of them to provide a reasoned opinion concerning the application, the documents and data attached to an application should be organised according to common templates.
- (9) With a view to ensuring legal certainty and a consistent application of the law, certain requirements provided for in this Regulation concerning settlement discipline measures should start to apply from the date of entry into force of those measures.
- (10) This Regulation is based on the draft implementing technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (11) In accordance with Regulation (EU) No 909/2014, in developing the draft implementing technical standards on which this Regulation is based, ESMA has worked in close cooperation with the members of the European System of Central Banks (ESCB). In accordance with Article 15 of Regulation (EU) No 1095/2010 of the

² Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (OJ L 352, 21.12.2012, p. 20).

European Parliament and of the Council³, ESMA has conducted open public consultations before submitting 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,

HAS ADOPTED THIS REGULATION:

CHAPTER I

CSD AUTHORISATION

(Article 17(10) of Regulation (EU) No 909/2014)

Article 1

Standard forms, templates and procedures for application

1. A central securities depository applying for authorisation in accordance with Article 17 of Regulation (EU) No 909/2014 ('applicant CSD') shall submit its application in a durable medium as defined in point (g) of Article 1 of Regulation (EU)... [Commission Delegated Act on CSD requirements], filling in the standard form and templates set out in Annex I.
2. The applicant CSD shall provide the competent authority with a list of all documents submitted as part of its application for authorisation which identifies the following information:
 - (a) the unique reference number of each document;
 - (b) the title of each document;
 - (c) the chapter, section or page of each document where the relevant information is provided.
3. All information shall be submitted in the language indicated by the competent authority. The competent authority may request the CSD to submit the same information in a language customary in the sphere of international finance.
4. An applicant CSD maintaining any of the relationships referred to in Article 17(6) of Regulation (EU) No 909/2014 shall provide the competent authority with the list of competent authorities to be consulted, including contact persons from those authorities.

CHAPTER II

REVIEW AND EVALUATION

(Article 22(11) of Regulation (EU) No 909/2014)

³ Regulation (EU) No 1095/2010 of 24 November 2010 of the European Parliament and of the Council 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 2

Standard forms and templates for the provision of information

1. The CSD shall provide the information referred to in Article 40 of Regulation No...[Commission delegated Regulation on CSD Requirements] in a durable medium.
2. Information provided by a CSD shall be submitted in the standard form and templates provided in Annex II and, where relevant, the template of Table 2 in Annex I. Where the template set out in Table 2 of Annex I is used, it shall have an additional column specifying the chapter, section or page of the document where changes were introduced during the review period and another additional column to include any explanations in relation to the changes introduced during the review period.

Article 3

Procedure for the provision of information

1. The competent authority shall communicate to the CSD the following information:
 - (a) the frequency and the depth of the review and evaluation as referred to in Article 22(4) of Regulation (EC) No 909/2014;
 - (b) the commencement and end dates of the review period referred to in Article 40 of [the RTS].
 - (c) the language in which all information shall be submitted. The competent authority may request the CSD to submit the same information in a language customary in the sphere of international finance.

The competent authority shall communicate to the CSD any changes to the information referred to in the first subparagraph, including the request for a more frequent submission of specific information, without undue delay.

2. The CSD shall provide the information referred to in Article 40(2) of Regulation (EU) No... [RTS on CSD requirements] within two months following the end of the review period.

Article 4

Provision of information to the authorities referred to in Article 22(7) of Regulation No. (EU) 909/2014

1. Upon completion of the review and evaluation, the competent authority shall communicate within three working days to the authorities referred to in Article 22(7) of Regulation No. (EU) 909/2014 its results as specified in Article 44 of Regulation (EU) No.... [RTS on CSD requirements].
2. Where the review and evaluation gives rise to remedial action or a penalty, the competent authority shall inform the authorities referred to in paragraph 1 within three working days after that measure is taken.
3. The authorities referred to in paragraph 1 shall agree on the working language for the exchange of information and, where there is no agreement, the working language shall be a language customary in the sphere of international finance.

Article 5

Exchange of information between competent authorities

1. Prior to every review and evaluation, when supervising a CSD which maintains the relationships referred to in points (a), (b) and (c) of Article 17(6) of Regulation (EU) No 909/2014, the competent authority shall update the list referred to in Article 1(4) of this Regulation regarding other competent authorities to be involved in the review and evaluation, including contact persons from those authorities, and shall share that list with all those authorities.
2. The competent authority shall provide the information referred to in Article 45(1) of Regulation (EU) No... [RTS on CSD requirements] to the competent authorities included in the list referred to in paragraph 1 within 30 working days from the date of availability of that information.
3. Within 30 working days from the time-limit referred to in paragraph 2, the competent authorities included in the list referred to in paragraph 1 shall send to the competent authority that provided the information their assessment thereof.
4. Within 3 working days from the completion of the review and evaluation referred to in Article 22(1) of Regulation (EU) No 909/2014, as notified by the competent authority to the competent authorities included in the list referred to in paragraph 1, the competent authority shall communicate to the competent authorities included in the list referred to in paragraph 1 its results as specified under Article 45(2) of Regulation (EU) No... [RTS on CSD requirements].
5. The authorities referred to in paragraphs 1 to 4 shall agree on the working language for the exchange of information and, where there is no agreement, the working language shall be a language customary in the sphere of international finance.

CHAPTER III

COOPERATION ARRANGEMENTS

(Article 24(8) of Regulation (EU) No 909/2014)

Article 6

General requirements for cooperation arrangements

1. The competent authority of the home Member State and the competent authority of the host Member State shall agree on the working language of their cooperation activities and, where there is no agreement, the working language shall be a language customary in the sphere of international finance.
2. Each competent authority shall designate and share with the other competent authorities contact details of one primary and one secondary contact persons and any changes thereto.

Article 7

Supervision of a branch

1. Where a CSD authorised in one Member State has set up a branch in another Member State, the competent authority of the home Member State and the competent

authority of the host Member State shall use the form and template set out in Table 1 of Annex III for the exchange of information.

2. Where a competent authority requests supplementary information from another competent authority, it shall indicate to the other competent authority the activities of the CSD that justify such request.

Article 8

On-site-inspections in the branch

1. Before carrying out on-site inspections referred to in paragraph 1 of Article 24 of Regulation (EU) 909/2014, the competent authorities of the home and host Member States shall reach a common understanding on the terms and scope of the on-site inspection, including the following:
 - (a) the respective roles and responsibilities;
 - (b) the reasons for the on-site inspection.
2. The competent authorities of the home and host Member States shall inform each other of an on-site inspection of the branch of a CSD in a host Member State in accordance with paragraph 1 using the template set out in Table 2 of Annex III.

Article 9

Exchange of information on the CSD's activities in the host Member State

1. The request for information referred to in Article 24(3) of Regulation (EU) No 909/2014 shall be addressed by letter or email to the competent authority of the home Member State and shall include an explanation of the relevance of that information to the activities of that CSD in the host Member State.
2. The competent authority of the home Member State shall, without undue delay, communicate the information referred to in Article 24(3) of Regulation (EU) No 909/2014 by letter or email using the template in Table 3 of Annex III.

Article 10

CSD breach of obligations

1. For the purpose of the first subparagraph of Article 24(5) of Regulation (EU) No 909/2014, the competent authority of the host Member State shall refer its findings on a CSD's breaches to the competent authority of the home Member State and to ESMA using the template set out in Table 4 of Annex III.
2. The competent authority of the home Member State shall review the findings submitted by the competent authority of the host Member State and shall inform that authority of the measures it intends to take to address the breaches identified.
3. Where the matter is referred to ESMA in accordance with the third subparagraph of Article 24(5) of Regulation (EU) No 909/2014, the referring competent authority shall provide ESMA with all relevant information.

CHAPTER IV

RECORD KEEPING

(Article 29(4) of Regulation (EU) No 909/2014)

Article 11

Format of records

1. A CSD shall retain the records referred to in Article 54 of Regulation (EU) No... [RTS on CSD requirements], for all transactions, settlement instructions and orders concerning settlement restrictions that it processes, in the format set out in Table 1 in Annex IV to this Regulation.
2. A CSD shall retain the records referred to in Article 55 of Regulation (EU) No... [RTS on CSD requirements], for the positions corresponding to all the securities accounts that it maintains in the format set out in Table 2 in Annex IV.
3. A CSD shall retain the records referred to in Article 56(1) of Regulation (EU) No... [RTS on CSD requirements] for the ancillary services that it provides in the format set out in Table 3 in Annex IV.
4. CSD shall retain the records referred to in Article 57 of Regulation (EU) No... [RTS on CSD requirements] for activities related to its business and internal organisation in the format set out in Table 4 in Annex IV.
5. For the purposes of reporting to authorities, a CSD shall use a legal entity identifier (LEI) to identify in its records:
 - (a) a CSD;
 - (b) CSD participants;
 - (c) settlement banks;
 - (d) issuers for which the CSD provides the core services referred to in point 1 or 2 of Section A of the Annex to Regulation (EU) No 909/2014.
6. A CSD shall use a legal entity identifier (LEI) or a bank identifier code (BIC), or other available form of identification for legal persons to identify in its records participants' clients, where they are known to the CSD.
7. A CSD may use any available identifier allowing for the unique identification of natural persons at national level, to identify in its records a participant's clients known to the CSD.
8. A CSD shall use in the records retained by it the ISO codes referred to in Annex IV.
9. A CSD may use a proprietary format only if this format can be converted without undue delay into an open format based on international open communication procedures and standards for messaging and reference data, for the purposes of making available its records to authorities in accordance with Article 29(2) of Regulation (EU) No 909/2014.
10. Upon request, a CSD shall provide the competent authority with information referred to in Articles 54 and 55 of Regulation (EU) No... [RTS on CSD requirements] by means of a direct data feed. A CSD shall be given sufficient time to implement the necessary measures to respond to such a request.

CHAPTER V

ACCESS

(Articles 33(6), 49(6), 52(4) and 53(5) of Regulation (EU) No 909/2014)

Article 12

Standard forms and templates for the access procedure

1. A requesting CSD and any other requesting party shall use the template provided in Table 1 of Annex V to this Regulation when submitting a request for access under Article 52(1) or under Article 53(2) of Regulation (EU) No 909/2014.
2. A receiving CSD and any other receiving party shall use the template provided in Table 2 of Annex V to this Regulation when granting access following a request for access under Article 52(1) or under Article 53(2) of Regulation (EU) No 909/2014.
3. A CSD shall use the template set out in Table 3 of Annex V to this Regulation when denying access in accordance with Article 33(3), 49(4), 52(2) or 53(3) of Regulation (EU) No 909/2014.
4. A CCP or a trading venue shall use the template in Table 4 of Annex V to this Regulation when denying access in accordance with Article 53(3) of Regulation (EU) No 909/2014.
5. A requesting party shall use the template in Table 5 of Annex V to this Regulation when submitting a complaint to the competent authority of the CSD that has denied access to it in accordance with Article 33(3), 49(4), 52(2) or 53(3) of Regulation (EU) No 909/2014.
6. A CSD shall use the template in Table 6 of Annex V to this Regulation when submitting a complaint to the competent authority of the CCP or the trading venue that has denied access to the CCP or the trading venue in accordance with Article 53(3) of Regulation (EU) No 909/2014.
7. The competent authorities referred to in paragraphs 5 and 6 shall use the template in Table 7 of Annex V to when consulting the following authorities on their assessment of the complaint, as appropriate:
 - (a) the competent authority of the place of establishment of the requesting participant in accordance with the fourth subparagraph of Article 33(3) of Regulation (EU) No 909/2014;
 - (b) the competent authority of the place of establishment of the requesting issuer in accordance with the fourth subparagraph of Article 49(4) of Regulation (EU) No 909/2014;
 - (c) the competent authority of the requesting CSD and the relevant authority of the requesting CSD referred to in point (a) of Article 12(1) of Regulation (EU) No 909/2014 in accordance with the fifth subparagraph of Article 52(2) of that Regulation;
 - (d) the competent authority of the requesting CCP or trading venue in accordance with the fourth subparagraph of Article 53(3) of Regulation (EU) No 909/2014.

The authorities referred to in points (a) to (d) shall use the template in Table 8 of Annex V when responding to the consultation referred to in this paragraph.

8. The authorities referred to in points (a) to (d) of paragraph 7 shall use the template set out in Table 8 of Annex V to this Regulation if any of them decides to refer the matter to ESMA in accordance with the fourth subparagraph of Article 33(3), the fourth subparagraph of Article 49(4), the fifth subparagraph of Article 52(2) or the fourth subparagraph of Article 53(3) of Regulation (EU) No 909/2014.
9. The competent authorities referred to in paragraphs 5 and 6 shall provide the requesting party with a reasoned reply in the format set out in Table 9 of Annex V.
10. The authorities referred to paragraphs 7 and 8, and ESMA for the purposes of paragraph 9, shall agree on the working language for the communication referred to under paragraphs 7, 8, and 9. Where there is no agreement, the working language shall be a language customary in the sphere of international finance.

CHAPTER VI

PROCEDURE FOR AUTHORISATION TO PROVIDE BANKING-TYPE ANCILLARY SERVICES AND FINAL PROVISION

Article 13

List of authorities

Upon receipt of an application for the authorisations referred to in Article 54(2) of Regulation (EU) No 909/2014, the competent authority shall identify the authorities referred to in Article 55(4) of that Regulation and set up a list thereof.

Article 14

Transmission of information and request for a reasoned opinion

1. The competent authority shall transmit a request for the reasoned opinion referred to in Article 55(5) of Regulation (EU) No 909/2014 to the authorities referred to in points (a) to (e) of Article 55(4) of that Regulation using the template in Section 1 of Annex VI to this Regulation.
2. For each transmission referred to in Article 55(4) of Regulation (EU) No 909/2014 and request referred to in paragraph 1 of this Article, each authority referred to in points (a) to (e) of Article 55(4) of Regulation (EU) No 909/2014 shall immediately upon receipt confirm by email to the transmitting competent authority that it received the respective information.
3. If no confirmation of receipt is received in accordance with paragraph 2 of this Article, the competent authority shall itself contact the authorities referred to points (a) to (e) of Article 55(4) of Regulation (EU) No 909/2014, to ensure that the latter have received the information referred to in paragraph 1 of this Article.

Article 15

Reasoned opinion and reasoned decision

1. The authorities referred to in points (a) to (e) of Article 55(4) of Regulation (EU) No 909/2014 shall issue the reasoned opinion to the competent authority using the template provided in Section 2 of Annex VI to this Regulation.
2. Where at least one of the authorities referred to in points (a) to (e) of Article 55(4) of Regulation (EU) No 909/2014 issues a negative reasoned opinion and the competent authority wishing to grant the authorisation provides those authorities with the reasoned decision referred to in the second subparagraph of Article 55(5) of Regulation (EU) No 909/2014, the competent authority shall use the template provided in Section 3 of Annex VI to this Regulation.

Article 16

Authorisation irrespective of negative reasoned opinion

1. Where any of the authorities referred to in points (a) to (e) of Article 55(4) of Regulation (EU) No 909/2014 decides to refer to ESMA the reasoned decision of the competent authority which wishes to grant the authorisation in accordance with the third subparagraph of Article 55(5) of that Regulation, the referring authority shall use the template provided in Section 4 of Annex VI to this Regulation.
2. The referring authority shall provide ESMA with all the information provided by the competent authority in accordance with Article 55(4) of Regulation (EU) No 909/2014, the reasoned opinions provided by the authorities in accordance with the first subparagraph of Article 55(5) of Regulation (EU) No 909/2014 and the reasoned decision issued by the competent authority in accordance with the second subparagraph of Article 55(5) of Regulation (EU) No 909/2014.
3. The referring authority shall provide, without undue delay, a copy of all information referred to in paragraph 2 of this Article to the authorities referred to in points (a) to (e) of Article 55(4) of Regulation No 909/2014.

Article 17

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*.

Article 11(1) shall apply from the date of entry into force of the delegated acts adopted by the Commission pursuant to Articles 6(5) and 7(15) of Regulation (EU) No 909/2014, whichever is the latter.

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

Done at Brussels,

For the Commission
The President
Jean-Claude Juncker