

COMMISSION IMPLEMENTING REGULATION (EU) 2016/824
of 25 May 2016

laying down implementing technical standards with regard to the content and format of the description of the functioning of multilateral trading facilities and organised trading facilities and the notification to the European Securities and Markets Authority according to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of 15 May 2014 of the European Parliament and of the Council on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ⁽¹⁾, and in particular the third subparagraph of Article 18(11) thereof,

Whereas:

- (1) It is important to recognise the need for competent authorities to receive complete information about the purpose, structure and organisation of multilateral trading facilities (MTFs) and organised trading facilities (OTFs) that they will be required to supervise in order to ensure the efficient and orderly functioning of financial markets.
- (2) That information should build upon the information an investment firm or market operator would be required to provide as part of the general authorisation requirements under Directive 2014/65/EU. It should focus upon the specific functionality of the trading system so as to enable competent authorities to assess whether the system satisfies the definition of an MTF or OTF and to assess its compliance with the particular, venue-orientated requirements of Directive 2014/65/EU and Regulation (EU) No 600/2014 of the European Parliament and of the Council ⁽²⁾. The requirement for a detailed description should not affect the duty of an investment firm or market operator to provide other information to its competent authority as required under Directive 2014/65/EU and Regulation (EU) No 600/2014, or the rights of competent authorities to request other information as part of their on-going supervision of trading venues.
- (3) The information received by competent authorities should ensure collecting detailed descriptions of the functioning of the MTF or OTF under Directive 2014/65/EU in a uniform manner, and achieve an efficient processing of information for existing MTFs already operating in accordance with a national authorisation at the point in time when the requirement of submitting a detailed description comes into force.
- (4) Since SME growth markets are distinguished from other MTFs in that they are subject to additional rules under Directive 2014/65/EU, it is necessary that SME growth markets provide additional information.
- (5) Since OTFs are distinguished from MTFs in that the trading process may involve the use of discretionary rules by the operator and because the operator of an OTF will owe responsibilities to users of the system, OTFs should provide additional information.
- (6) To ensure efficient processing, the information required should be provided in electronic format.
- (7) To facilitate the publication by the European Securities and Markets Authority (ESMA) of the list of all MTFs and OTFs in the Union accompanied by information on the services they provide and the unique code identifying them, a standard template for that information should be used.

⁽¹⁾ OJ L 173, 12.6.2014, p. 349.

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

- (8) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date.
- (9) Any personal data provided under this Regulation should be for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes. In accordance with Article 6 of Directive 95/46/EC of the European Parliament and of the Council ⁽¹⁾ any personal data should be retained for no longer than necessary for the purpose of the exercising the supervisory function, and a maximum period of retention should be indicated.
- (10) This Regulation is based on the draft implementing technical standards submitted by ESMA to the Commission.
- (11) ESMA has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽²⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) 'relevant operator' means:
 - (a) an investment firm operating a multilateral trading facility (MTF);
 - (b) an investment firm operating an organised trading facility (OTF);
 - (c) a market operator operating an MTF;
 - (d) a market operator operating an OTF;
- (2) 'asset classes' means the categories of financial instruments as set out in Section C of Annex I to Directive 2014/65/EU.

Article 2

Information to be provided on MTFs and OTFs

1. A relevant operator shall provide its competent authority with the following information:
 - (a) the asset classes of financial instruments traded on the MTF or OTF;
 - (b) the rules and procedures for making financial instruments available for trading, together with details of the publication arrangements used to make that information available to the public;
 - (c) the rules and procedures to ensure the objective and non-discriminatory access to the trading facilities together with details on the publication arrangements used to make that information available to the public;
 - (d) the measures and procedures to ensure that sufficient information is publicly available to users of the MTF or OTF to form an investment judgement, taking into account both the nature of the users and the classes of financial instruments traded;

⁽¹⁾ 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).

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

- (e) the systems, procedures and arrangements to ensure compliance with the conditions laid down in Articles 48 and 49 of Directive 2014/65/EU;
 - (f) a detailed description of any arrangements to facilitate the provision of liquidity to the system such as market making schemes;
 - (g) the arrangements and procedures to monitor transactions as required by Article 31 of Directive 2014/65/EU;
 - (h) the rules and procedures for suspension and removal of financial instruments from trading as required by Article 32 of Directive 2014/65/EU;
 - (i) the arrangements to comply with pre-trade and post-trade transparency obligations that apply to the financial instruments traded and the trading functionality of the MTF or OTF; that information shall be accompanied by information on any intention to use waivers under Articles 4 and 9 of Regulation (EU) No 600/2014 and deferred publication under Articles 7 and 11 of that Regulation;
 - (j) the arrangements for the efficient settlement of the transactions effected under its systems and for ensuring that users are aware of their respective responsibilities in this regard;
 - (k) a list of the members or participants of the MTF or OTF which it operates.
2. A relevant operator shall provide its competent authority with a detailed description of the functioning of its trading system specifying:
- (a) whether the system represents a voice, electronic or hybrid functionality;
 - (b) in the case of an electronic or hybrid trading system, the nature of any algorithm or program used to determine the matching and execution of trading interests;
 - (c) in the case of a voice trading system, the rules and protocols used to determine the matching and execution of trading interests;
 - (d) a description explaining how the trading system satisfies each element of the definition of an MTF or an OTF.
3. A relevant operator shall provide its competent authority with information on how and in what instances the operation of the MTF or OTF will give rise to any potential conflicts between the interests of the MTF or OTF, its operator or its owners and the sound functioning of the MTF or OTF. The relevant operator shall specify the procedures and arrangements to comply with the requirements set out in Article 18(4) of Directive 2014/65/EU.
4. A relevant operator shall provide its competent authority with the following information on its outsourcing arrangements that relate to the management, operation or oversight of the MTF or OTF:
- (a) the organisational measures to identify the risks in relation to those outsourced activities and to monitor the outsourced activities;
 - (b) the contractual agreement between the relevant operator and the entity providing the outsourced service in which the nature, scope, objectives, and service level agreements are outlined.
5. A relevant operator shall provide its competent authority with information on any links to or participation by a regulated market, MTF, OTF or systematic internaliser owned by the same relevant operator.

Article 3

Additional information to be provided on MTFs

In addition to the information set out in Article 2, a relevant operator shall provide its competent authority with the following information relating to the requirements set out in Article 19(3) of Directive 2014/65/EU:

- (a) a description of the arrangements and the systems implemented to manage the risks to which the operator is exposed, to identify all significant risks to its operation and to put in place effective measures to mitigate those risks;

- (b) a description of the arrangements implemented to facilitate the efficient and timely finalisation of the transactions executed under the operator's systems;
- (c) having regard to the nature and extent of the transactions concluded on the market and the range and degree of the risks to which the operator is exposed, a description of the financial resources considered sufficient to facilitate its orderly functioning.

Article 4

Information to be provided on MTFs already in operation

In the case of an investment firm or market operator authorised to operate an MTF under Article 5 of Directive 2004/39/EC of the European Parliament and of the Council⁽¹⁾ which is operating at the date of application of this Regulation, that firm or operator shall provide the information referred to under Articles 2 and 3 of this Regulation where it is required:

- (a) to correct, update or clarify information previously submitted by the relevant operator to its competent authority;
- (b) to demonstrate compliance with obligations under Directive 2014/65/EU and Regulation (EU) No 600/2014 that did not apply to the MTF prior to the application of this Regulation.

Article 5

Additional information to be provided on MTFs for registration as an SME growth market

In the case of a relevant operator which is applying for registration of an MTF as an SME growth market, that operator shall ensure that the information provided under Articles 2 and 3 clearly identifies which functionalities or arrangements are applicable to the SME growth market.

Article 6

Additional information to be provided on OTFs

In addition to Article 2, a relevant operator operating an OTF shall provide its competent authority with the following information:

- (a) information on whether another investment firm is engaged to carry out market making on its OTF on an independent basis in accordance with Article 20(5) of Directive 2014/65/EU;
- (b) a detailed description of how and under what circumstances it executes orders on the OTF on a discretionary basis in accordance with Article 20(6) of Directive 2014/65/EU;
- (c) the rules, procedures and protocols which allow the operator to route the trading interest of a member or participant outside the facilities of the OTF;
- (d) a description of the use of matched principal trading which complies with Article 20(7) of Directive 2014/65/EU;
- (e) the rules and procedures to ensure compliance with Articles 24, 25, 27 and 28 of Directive 2014/65/EU for transactions concluded on the OTF where those rules are applicable to the relevant operator in relation to an OTF user.

⁽¹⁾ 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 (OJ L 145, 30.4.2004, p. 1).

*Article 7***Asset class specific information**

Where a relevant operator of an MTF or OTF applies different rules to different asset classes, it shall provide the information required by this Regulation for each of those asset classes separately.

*Article 8***Material changes**

1. A relevant operator shall provide its competent authority with a description of any material changes to the information previously submitted in accordance with this Regulation which would be relevant to an assessment of that operator's compliance with Directive 2014/65/EU and Regulation (EU) No 600/2014.
2. Where a relevant operator sends new information to its competent authority to correct, update or clarify information previously submitted in accordance with this Regulation, it does not need to include information which is of a purely minor or technical nature that would not be relevant to an assessment of its compliance with Directive 2014/65/EU or Regulation (EU) No 600/2014.
3. An investment firm or market operator authorised to operate an MTF under Directive 2004/39/EC which is operating at the date of application of this Regulation shall, in addition to paragraph 1 of this Article, provide its competent authority with a description of any material changes to the information previously submitted to the competent authority in respect of that MTF under that Directive.

*Article 9***Format for providing the description**

1. Where the relevant operator provides the competent authority with the description of the functioning of the MTF or OTF it operates as set out under this Regulation, the relevant operator shall include clear references in its submission which satisfy the requirements of the template set out in Table 1 of the Annex.
2. In providing the information required by this Regulation, a relevant operator shall include references to the appropriate provisions of the rules of its MTF or OTF, agreements or contracts with participants or relevant third parties and internal procedures and policies.
3. A relevant operator shall provide the information required by this Regulation to its competent authority in an electronic format.
4. When providing the information required by this Regulation, a relevant operator shall:
 - (a) give a unique reference number to each document it submits;
 - (b) ensure that the information it submits clearly identifies which specific requirement of this Regulation it refers to and in which document that information is provided by using the unique reference number to identify the document;
 - (c) ensure that if a requirement of this Regulation does not apply to it, that fact is stated together with an explanation;
 - (d) submit that information in the format set out in Table 1 of the Annex.
5. Where the description is provided in the context of an authorisation request, an entity requesting authorisation to provide more than one service at the same time shall submit one application clearly identifying the services to which the information provided applies. When the same document is to be considered as part of several authorisation requests, for the purpose of providing the information in the format set out in Table 1 of the Annex, the same reference number shall be used when submitting the same document for several applications.

*Article 10***Notification to ESMA**

A competent authority shall notify ESMA of the authorisation of a relevant operator as an MTF or an OTF in electronic format and in the format set out in Table 2 of the Annex.

*Article 11***Entry into force and application**

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

It shall apply from the date that appears in the second subparagraph of Article 93(1) of Directive 2014/65/EU.

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

Done at Brussels, 25 May 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Formats

Table 1

Information by operators of MTFs and OTFs

Relevant operator for which the application is submitted	Relevant Article of Implementing Regulation (EU) 2016/824	Document reference number	Title of the document	Chapter or section or page of the document where the information is provided or reasons why the information has not been provided

Table 2

Information to be sent to ESMA

Notifying competent authority	Name of the relevant operator	Name of the MTF or OTF operated	MIC code	Services provided by MTF or OTF