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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	ANNEX to the COMMISSION DELEGATED REGULATION (EU) .../... supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards containing a template document for cooperation arrangements with third countries

Delegations will find attached document C(2021) 4786 final.

Encl.: C(2021) 4786 final



Brussels, 2.7.2021
C(2021) 4786 final

ANNEX

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to the

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

supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards containing a template document for cooperation arrangements with third countries

ANNEX

Template document for cooperation arrangements concerning the exchange of information between competent authorities of Member States and authorities in third countries and the enforcement of obligations arising under Regulation (EU) No 596/2014 in third countries

1. Introduction

Description of each signatory authority's legal basis for the exchange of information in order for them to carry out their duties as regards to their laws and regulations relating to market abuse.

Declaration that pursuant to the laws and regulations that constitute the legal basis for exchange of information and to the cooperation arrangements, the signatory authorities can provide each other with mutual assistance on a reciprocal basis.

2. Definitions

An appropriate list of definitions covering the terms used in the arrangements.

3. Content of the assistance to be provided

Description of the type of assistance to be provided in line with Article 23 of Regulation (EU) No 596/2014¹ such as:

- (a) obtaining information held in the files of the signatory authority receiving the request
- (b) obtaining statements or information from any person;
- (c) obtaining documents from persons or entities including through the performance of on-site inspections;
- (d) obtaining data traffic records, insofar as permitted by national law and, where applicable, with the assistance of the appropriate judicial authority depending on the implementation of Article 23(2)(h) of Regulation (EU) No 596/2014 or any equivalent power under the laws of the relevant third country;
- (e) obtaining or assisting in obtaining the freezing or sequestration of assets in line with Article 23(2)(i) of Regulation (EU) No 596/2014 or any equivalent power under the laws of the relevant third country;
- (f) obtaining or assisting in obtaining the temporary cessation of any practice contrary to the laws and regulations relating to market abuse in line with Article 23(2)(k) of Regulation (EU) No 596/2014 or any equivalent power under the laws of the relevant third country;

4. General provisions – denial of assistance

¹ 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 (OJ L 173, 12.6.2014, p. 1.)

List the cases in which cooperation requests may be denied such as:

- (a) the request is not made in compliance with the arrangements;
- (b) the request would require the signatory authority receiving the request to act in a manner that would violate domestic law;
- (c) communication of the relevant information could adversely affect the security of the jurisdiction addressed, in particular the fight against terrorism or other serious crimes;
- (d) complying with the request is likely to adversely affect the receiving authority's own investigation, enforcement activities or, where applicable, a criminal investigation;
- (e) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the relevant authorities of the jurisdiction addressed;
- (f) a final judgment has already been delivered in relation to the same persons for the same actions in the jurisdiction addressed.

Assistance will not be denied based on the fact that the type of conduct under investigation would not be a violation of the laws and regulations relating to market abuse of the authority receiving the request.

5. Sending and processing requests for assistance

Description of the procedure for sending and processing requests for assistance.

6. Permissible uses of information

Description of the rules on the permissible use of the information in line with Article 26(3) of the Regulation (EU) No 596/2014 and namely that the information provided must be intended for the performance of the tasks of the signatory authorities to ensure compliance with and enforce the laws and regulations relating to market abuse. The information exchanged shall be used solely for the purposes set forth in the request for assistance.

If a signatory authority making the request intends to use information furnished under the arrangement for any purpose other than those stated in this section, it must obtain the prior consent of the signatory authority receiving the request.

7. Confidentiality restrictions

Description of the rules on confidentiality of any information disclosed, received, exchanged or transmitted. The description must include the following:

- (a) all information exchanged between the signatories under the arrangements that concerns business or operational conditions or other economic or personal affairs must be considered to be confidential and must be subject to the requirements of professional secrecy, except where the authority providing the information states at the time of communication that the information may be disclosed or such disclosure is necessary for legal proceedings;

- (b) the obligation of professional secrecy applies to all persons who work or who have worked for the signatories or for any authority or market undertaking to whom either of the signatories has delegated its powers, including auditors and experts contracted by the signatory. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by Union law or national law, or by virtue of provisions laid down in the laws of the relevant third country at least equivalent to such provisions.

The information exchanged must not be disclosed to any other authority or entity except with the prior agreement of the signatory who originally provided it.

8. General provisions – identification of a contact point

To facilitate cooperation under the arrangements, designation of contact points by the signatory authorities.

9. General provisions – revision clause

Periodical review by the signatory authorities of the functioning and effectiveness of the cooperation arrangements with a view to expanding or altering the scope or operation of the arrangements, should that be judged necessary.

10. Other provisions – Miscellaneous