

RULE No. 11/2018

for the application of the ESMA Guidelines On the Process for the Calculation of the Indicators to Determine the Most Relevant Currencies in which Settlement Takes Place, of the ESMA Guidelines On the Process for the Calculation of the Indicators to Determine the Substantial Importance of a CSD for a Host Member State, and of the ESMA Guidelines On the Cooperation Between Authorities under Articles 17 and 23 of Regulation (EU) No. 909/2014

Based on the provisions of art. 1 para. (2), art. 2 para. (1) letters a) and d), art. 3 para. (1) letter b), art. 6 para. (2), as well of art. 14 of the Government Emergency Ordinance no. 93/2012 regarding the establishment, organisation and operation of the Financial Supervisory Authority, approved with alterations and completions by Law no.113/2013, with the subsequent alterations and completions.

In accordance with the provisions of art. 16 of the Regulation (EU) no. 1095/2010 of the European Parliament and of the Council of the 24th November 2010 for the establishment of the European supervisory authority (European Securities and Markets Authority), for the modification of Decision no. 716/2009/EC and for the abrogation of Decision 2009/77/EC of the Commission,

Based on the Regulation (EU) no. 909/2014 of the European Parliament and of the Council regarding the improvement of the securities settlement within the European Union and regarding the central securities depositories and for the modification of Directives 98/26/EC and 2014/65/EU and of Regulation (EU) no. 236/2012,

In consideration of the provisions of art. 1 para.(3²) of Law no.297/2004 related to the capital market, with the subsequent alterations and completions.

According to the deliberations conducted during the meeting of the Financial Supervisory Authority Council of the 6th June 2018,

The Financial Supervisory Authority issues the present norm:

Art. 1 - The Financial Supervisory Authority applies the ESMA Guidelines On the Process for the Calculation of the Indicators to Determine the Most Relevant Currencies in which Settlement Takes Place, provided in annex no.1, the ESMA Guidelines On the Process for the Calculation of the Indicators to Determine the Substantial Importance of a CSD for a Host Member State, provided in annex no. 2, and the ESMA Guidelines on the Cooperation between authorities under Articles 17 and 23 of Regulation (EU) No 909/2014, provided in annex no. 3.

Art. 2. – Annexes no. 1-3 are inherent parts of the present norm.

Art. 3 – The present norm is published in the Official Gazette of Romania, Part I, and comes into force on the date of its publication.

Chairman of the Financial Supervisory Authority,

Leonardo Badea

Guidelines
On the Process for the Calculation of the Indicators to Determine the Most Relevant Currencies
in which Settlement Takes Place

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I. Executive Summary

1 Reasons for publication

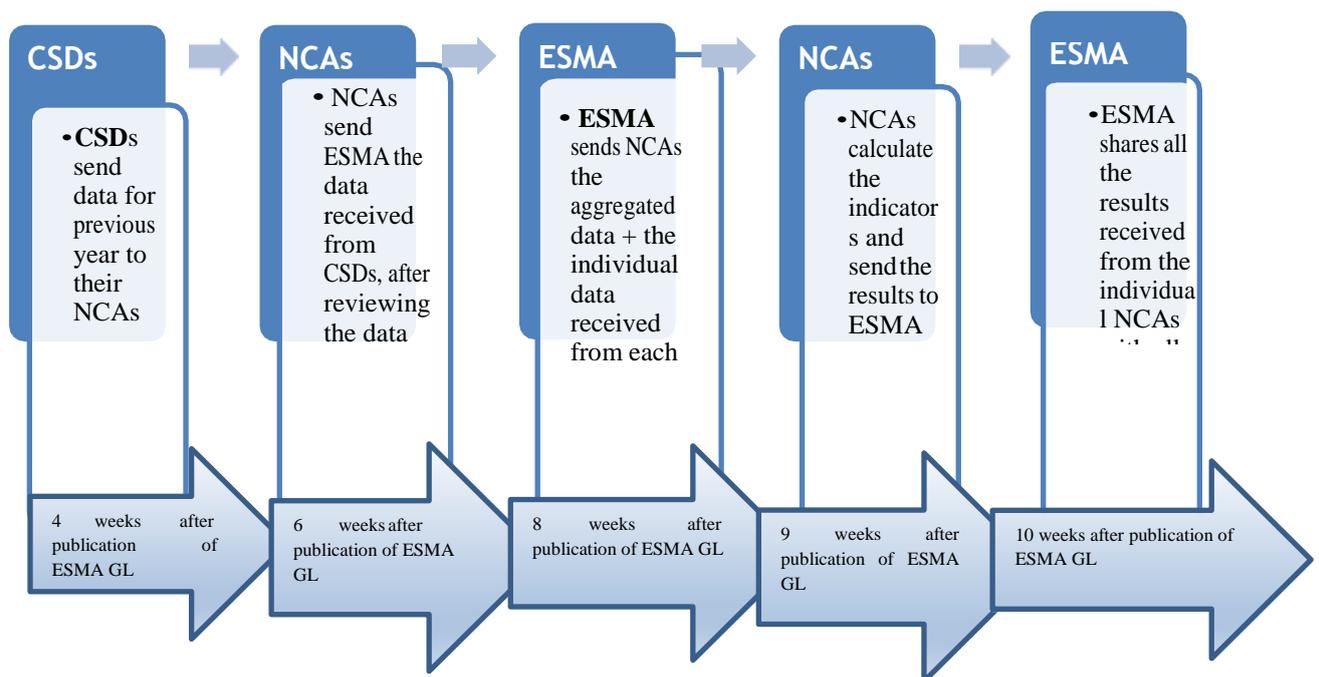
1. According to Article 12(1) of Regulation (EU) No 909/2014 (CSDR), the following authorities shall be involved in the authorisation and supervision of CSDs where specifically referred to in the CSDR:
 - (a) the authority responsible for the oversight of the securities settlement system operated by the CSD in the Member State whose law applies to that securities settlement system;
 - (b) the central banks in the Union issuing the most relevant currencies in which settlement takes place;
 - (c) where relevant, the central bank in the Union in whose books the cash leg of a securities settlement system operated by the CSD is settled.
2. Article 2 (1) of the Commission Delegated Regulation (EU) 2017/392¹ specifies the conditions under which the Union currencies referred to in Article 12(1)(b) of CSDR are considered to be the most relevant. In order to calculate the relevant indicators, competent authorities need to use aggregated data at EU level. However, individual competent authorities may face challenges in collecting and aggregating all the relevant data from CSDs across the EU. In addition, such an approach may lead to duplication of efforts for the competent authorities and may generate risks regarding the use of inconsistent data.
3. Given the need to use consistent data aggregated at EU level for the calculation of the indicators specified in Article 2(1) of the Commission Delegated Regulation (EU) 2017/392, ESMA has decided to issue Guidelines on the process for the collection, processing and aggregation of the data necessary for the calculation of the indicators to determine the most relevant currencies in which settlement takes place (Article 12(1)(b) of CSDR).
4. Having regard to ESMA's task to contribute to the consistent application of legally binding Union acts, in particular by contributing to a common supervisory culture through the establishment of consistent, efficient and effective supervisory practices, ESMA should undertake a coordination role in the process of centralising and aggregating the data received from CSDs, including central banks acting as CSDs. Competent authorities should perform the calculations for the indicators based on the data centralised and aggregated by ESMA.
5. Even though the indicators will not be calculated for central banks acting as CSDs (given that they are exempted from certain CSDR requirements under Article 1(4) of CSDR), it is important that central banks acting as CSDs should send the relevant data which will be

¹ Commission Delegated Regulation (EU) 2017/392 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on authorisation, supervisory and operational requirements for central securities depositories (OJ L 65, 10.3.2017, p. 48–115)

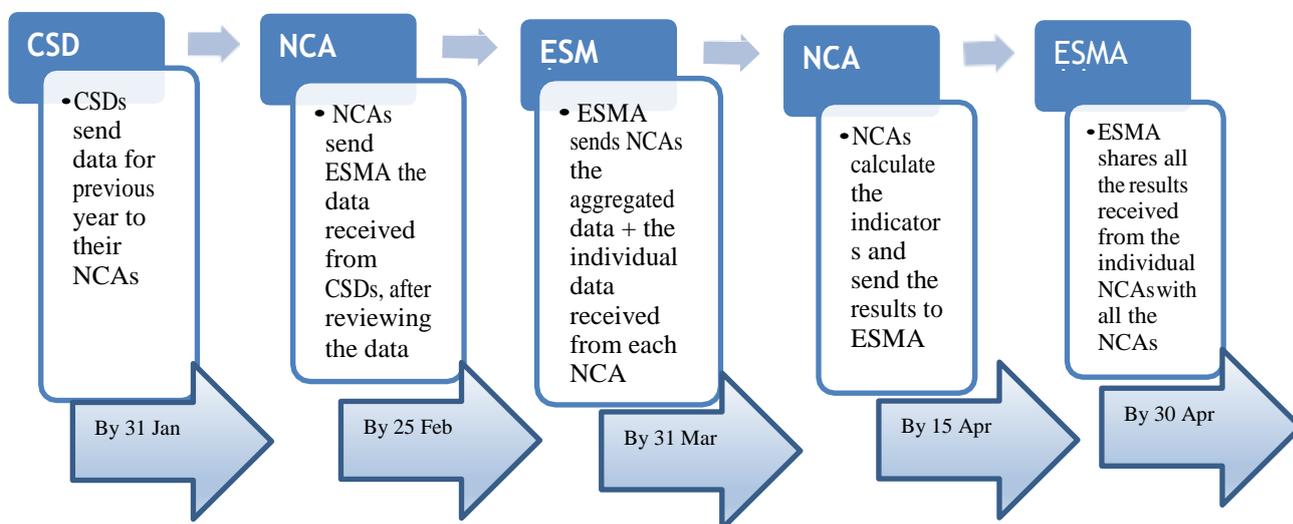
used to determine the values for the denominators, in order to have a full picture of the activity at EU level for the respective indicators.

6. In order to ensure a consistent implementation of the relevant provisions of the Commission Delegated Regulation (EU) 2017/392, the guidelines clarify the scope of the data to be reported for the purpose of the calculation of the indicators, by providing examples regarding the types of transactions and operations that should be included, as well as examples regarding the types of transactions and operations that should not be included.
7. In the pursuit of the same objective, and in particular to ensure a harmonised and consistent approach for data reporting across CSDs for the purpose of the calculation of the indicators specified in points (a) and (b) of Article 2(1) of the Commission Delegated Regulation (EU) 2017/392, these guidelines propose common parameters for reporting settlement instructions (i.e. without double-counting settlement instructions depending on the manner in which they are settled: through CSD links or not). These parameters would not affect the application of substantive rules related to settlement, including in relation to Directive 98/26/EC and national securities and property laws.
8. Having regard to the date of entry into force of the Commission Delegated Regulation (EU) 2017/392, these guidelines describe a general process to be used for the data collection and calculation of the indicators starting with 1 January 2018, as well as an initial process to be used for the first application of the general process in 2017 covering the reporting period of 1 January to 31 December 2016.

Outline of Initial Process (to be applied in 2017)



Outline of General Process (to be applied from 1 January 2018)



2 Content

9. Section II includes the full text of the Guidelines on the Process for the Calculation of the Indicators to Determine the Most Relevant Currencies in which Settlement Takes Place.

3 Next steps

10. The guidelines in Section II will be translated into the official languages of the European Union and published on ESMA's website.

II. Guidelines on the Process for Calculation of the Indicators to Determine the Most Relevant Currencies in which Settlement Takes Place

1 Scope

Who?

1. These guidelines apply to competent authorities designated under Regulation (EU) No 909/2014² (CSDR).

What?

2. These guidelines apply in relation to the process for the collection, processing and aggregation of the data necessary for the calculation of the indicators to determine the most relevant currencies in which settlement takes place, in accordance with point (b) of Article 12(1) of the CSDR.

When?

3. These guidelines apply from 28/03/2018.

2 Definitions

4. Terms used in these guidelines have the same meaning as in the CSDR and in the Commission Delegated Regulation (EU) 2017/392³.

3 Purpose

5. The purpose of these guidelines is to ensure common, uniform and consistent application of point (b) of Article 12(1) of CSDR. In particular, they provide guidance on the process for the collection, processing and aggregation of the data necessary for the calculation of the indicators to determine the most relevant currencies in which settlement takes place.

² 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 Directive 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

³ Commission Delegated Regulation (EU) 2017/392 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on authorisation, supervisory and operational requirements for central securities depositories (OJ L 65, 10.3.2017, p. 48–115)

4 Compliance and reporting obligations

4.1 Status of the guidelines

6. This document contains guidelines issued under Article 16 of the ESMA Regulation⁴. In accordance with Article 16(3) of the ESMA Regulation, competent authorities and financial market participants must make every effort to comply with guidelines and recommendations.
7. Competent authorities to whom these guidelines are addressed should comply by incorporating them into their supervisory practices.

4.2 Reporting requirements

8. Competent authorities to whom these guidelines are addressed must notify ESMA [to: csdr.data@esma.europa.eu] whether they comply or intend to comply with these guidelines, with reasons for non-compliance, within two months of the date of their publication. In the absence of a response by this deadline, competent authorities will be considered as non-compliant. A template for notifications is available on ESMA's website. However, in order to ensure the smooth and timely implementation of the process for the collection, processing and aggregation of the data necessary for the calculation of the indicators referred to in these guidelines, it is advisable that competent authorities notify ESMA as soon as possible, and preferably within two weeks of the date of publication of these guidelines.
9. The date of publication of these guidelines means the date of their publication on ESMA's website in all official languages of the EU.
10. Central securities depositories (CSDs) are not required to report whether they comply with these guidelines.

⁴ 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).

5 Guidelines on determining the most relevant currencies in which settlement takes place

5.1 Scope of data to be reported by CSDs

11. Competent authorities should ensure that CSDs, including central banks acting as CSDs, report the relevant data in the format provided in the templates in the Annex. The list of CSDs (including central banks acting by CSDs) specified in the templates included in the Annex should be updated by the competent authorities on an annual basis.

12. Competent authorities should ensure that CSDs apply the following data reporting parameters:

- a) The data should include absolute values of settlement by each CSD for each currency covering the previous calendar year.
- b) The values should be expressed in the original currencies in which settlement takes place.
- c) All categories of settlement instructions against payment settled by a CSD should be included, irrespective of whether they relate to transactions that are executed on a trading venue or on an OTC basis.
- d) For operations composed of several transactions, such as securities repurchase or lending agreements, both legs should be reported once settled.
- e) In the case of intra-CSD settlement, the CSD (issuer CSD or investor CSD) should report both legs of a transaction, i.e. it should report the two settlement instructions received.
- f) In the case where more than one CSD is involved in the settlement of a transaction through standard, customised or indirect links, only the CSD (issuer CSD or investor CSD) settling the two legs of the transaction should report. It should report the two settlement instructions received. The investor CSD “settling” only one leg of the transaction should not report.
- g) In the case of cross-CSD settlement by CSDs using a common settlement infrastructure or through interoperable links, each CSD should report the single settlement instruction received in relation to a transaction.

13. The settlement instructions could be related to the following types of transactions:

- a) purchase or sale of securities (including primary market purchases or sales of securities);
- b) collateral management operations (including triparty collateral management operations or auto-collateralisation operations);
- c) securities lending/borrowing operations;
- d) repurchase transactions;
- e) others (including corporate actions on flows, i.e. market claims and transformations).

14. The following types of transactions should be considered out of scope of the reporting:

- a) corporate actions on stock, such as cash distributions (e.g. cash dividend, interest payment), securities distributions (e.g. stock dividend; bonus issue), reorganisations (e.g. conversion, stock split, redemption, tender offer);
- b) primary market operations, meaning the process of initial creation of securities;
- c) creation and redemption of fund units, meaning the technical creation and redemption of fund units, unless such creation and redemption of fund units is done through transfer orders in a securities settlement system operated by a CSD;
- d) realignment operations.

5.2 General process for the collection of data and the calculation of the indicators to determine the most relevant currencies in which settlement takes place

15. The general process proposed in this section should be applied from 1 January 2018.
16. Competent authorities should ensure that CSDs, including central banks acting as CSDs, report the relevant data for the previous calendar year, which is necessary for the calculation of the indicators specified in Article 2(1) of the Commission Delegated Regulation (EU) 2017/392, to them, by 31 January of each year (i.e. data from 1 of January to 31 December of the previous calendar year should be used).
17. After reviewing the data, competent authorities should transmit to ESMA the data received from CSDs in their jurisdiction, including central banks acting as CSDs, by 25 February of each year.
18. Competent authorities should perform the calculation for the indicators specified in Article 2(1) of the Commission Delegated Regulation (EU) 2017/392 in respect of each CSD for which a competent authority is the home Member State competent authority, upon receipt of the following data from ESMA by 31 March of each year:
 - a) all data received from the individual competent authorities;
 - b) data aggregating the values per CSD and per currency, to be used for the calculation of the denominators of the indicators specified in points (a) and (b) of Article 2(1) of the Commission Delegated Regulation (EU) 2017/392.
19. When aggregating the data, where necessary, the conversion of other currencies into euros should be used. For this, the exchange rates valid on the last day of the calendar year for which data is reported should be used. Where available, the exchange rate of the European Central Bank valid on the last day of the calendar year for which data is reported should be used for the conversion of other currencies into euros.

20. Competent authorities should send ESMA the results for the indicators and the identification of the relevant authorities in accordance with point (b) of Article 12(1) of the CSDR, by 15 April of each year, to enable ESMA to share this information with all the competent authorities by 30 April of each year.

5.3 *Initial process for the collection of data and the calculation of the indicators to determine the most relevant currencies in which settlement takes place*

21. For the first application of the general process in 2017 covering the reporting period of 1 January to 31 December 2016, CSDs, including central banks acting as CSDs, as well as competent authorities should apply the general process using the following dates, each date calculated from the date of publication of these guidelines:

- a) CSDs, including central bank acting as CSDs, should report the relevant data necessary for the calculation of the indicators specified in Article 2(1) of the Commission Delegated Regulation (EU) 2017/392 to the competent authorities within four weeks;
- b) Competent authorities should transmit to ESMA the data received from CSDs, including central banks acting as CSDs, within six weeks, to enable ESMA to send the competent authorities the aggregated data, as well as the individual data received from each competent authority, within eight weeks;
- c) Competent authorities should send the results for the indicators and the identification of the relevant authorities in accordance with point (b) of Article 12(1) of the CSDR to ESMA within nine weeks, to enable ESMA to share this information with all the competent authorities within ten weeks.

6 Annex

6.1 *Templates for the collection of data to determine the most relevant currencies in which settlement takes place*

Guidelines

On the Process for the Calculation of the Indicators to Determine the Substantial Importance of a CSD for a Host Member State

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I. Executive Summary

1 Reasons for publication

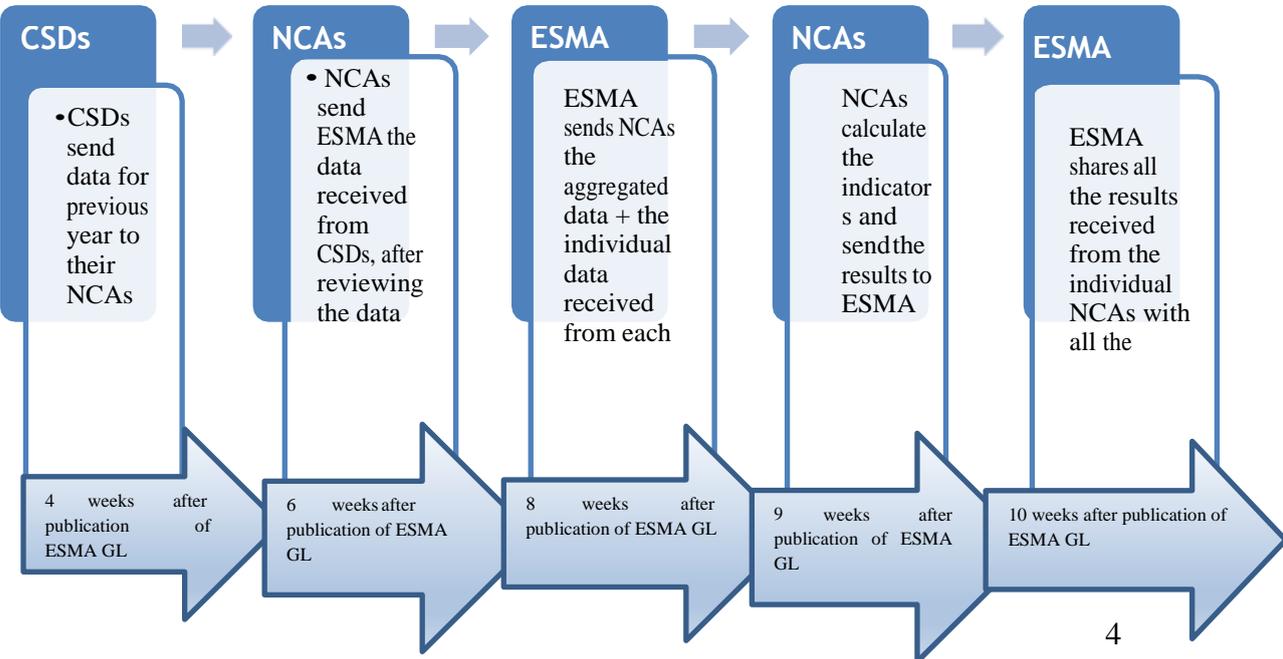
1. Article 24 of Regulation (EU) No 909/2014¹ (CSDR) establishes various cooperation measures between home and host Member States' competent authorities where a CSD provides its services cross-border. More specifically, Article 24(4) of CSDR provides that home and host competent authorities and the home and host relevant authorities shall establish formal cooperation arrangements for the supervision of a CSD where the activities of such CSD have become "of substantial importance for the functioning of the securities markets and the protection of the investors" in the host Member State.
2. The Commission Delegated Regulation (EU) 2017/389² specifies the criteria under which the operations of a CSD in a host Member State could be considered "of substantial importance for the functioning of the securities markets and the protection of the investors" in the host Member State. In order to calculate the relevant indicators based on these criteria, competent authorities need to use aggregated data at EU level. However, individual competent authorities may face challenges in collecting and aggregating all the relevant data from CSDs across the EU. In addition, such an approach may lead to duplication of efforts for the competent authorities and may generate risks regarding the use of inconsistent data.
3. Given the need to use consistent data aggregated at EU level for the calculation of the indicators based on the criteria specified in the Commission Delegated Regulation (EU) 2017/389, ESMA has decided to issue Guidelines on the process for the collection, processing and aggregation of the data and information necessary for the calculation of the indicators to determine the substantial importance of a CSD for a host Member State.
4. Having regard to ESMA's task to contribute to the consistent application of legally binding Union acts, in particular by contributing to a common supervisory culture through the establishment of consistent, efficient and effective supervisory practices, ESMA should undertake a coordination role in the process of centralising and aggregating the data received from CSDs, including central banks acting as CSDs. Competent authorities should perform the calculations for the indicators based on the data centralised and aggregated by ESMA.

¹ 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 Directive 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

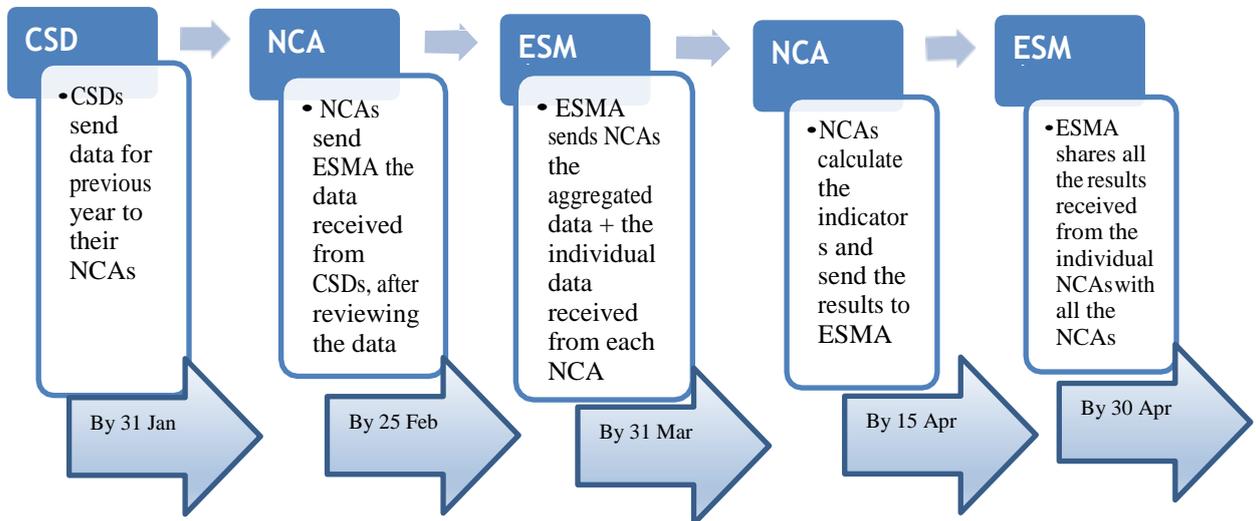
² Commission Delegated Regulation (EU) 2017/389 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council as regards the parameters for the calculation of cash penalties for settlement fails and the operations of CSDs in host Member States (OJ L 65, 10.3.2017, p. 1–8)

5. Even though the indicators will not be calculated for central banks acting as CSDs (given that they are exempted from certain CSDR requirements under Article 1(4) of CSDR), it is important that central banks acting as CSDs should send the relevant data which will be used to determine the values for the denominators, in order to have a full picture of the activity at EU level for the respective indicators.
6. In order to ensure a consistent application of the relevant provisions of the Commission Delegated Regulation (EU) 2017/389, the guidelines clarify the scope of the data to be reported for the purpose of the calculation of the relevant indicators, by providing examples regarding the types of transactions and operations that should be included, as well as examples regarding the types of transactions and operations that should not be included.
7. In the pursuit of the same objective, and in particular to ensure a harmonised and consistent approach for data reporting across CSDs for the purpose of the calculation of the indicators based on the criteria referred to in points (a) and (b) of Article 6(1) of the Commission Delegated Regulation (EU) 2017/389, these guidelines propose common parameters for reporting settlement instructions (i.e. without double-counting settlement instructions depending on the manner in which they are settled: through CSD links or not). These parameters would not affect the application of substantive rules related to settlement, including in relation to Directive 98/26/EC and national securities and property laws.
8. Having regard to the date of entry into force of the Commission Delegated Regulation (EU) 2017/389, these guidelines describe a general process to be used for the data collection and calculation of the indicators starting with 1 January 2018, as well as an initial process to be used for the first application of the general process in 2017 covering the reporting period of 1 January to 31 December 2016.

Outline of Initial Process (to be applied in 2017)



Outline of General Process (to be applied from 1 January 2018)



2 Content

9. Section II includes the full text of the Guidelines on the Process for the Calculation of the Indicators to Determine the Substantial Importance of a CSD for a Host Member State.

3 Next steps

10. The guidelines in Section II will be translated into the official languages of the European Union and published on ESMA's website.

II. Guidelines on the Process for the Calculation of the Indicators to Determine the Substantial Importance of a CSD for a Host Member State

1 Scope

Who?

1. These guidelines apply to competent authorities designated under Regulation (EU) No 909/2014³ (CSDR).

What?

2. These guidelines apply in relation to the process for the collection, processing and aggregation of data and information necessary for the calculation of the indicators to determine the substantial importance of a CSD for the functioning of the securities markets and the protection of investors in a host Member State, in accordance with Article 24(4) of CSDR.

When?

3. These guidelines apply from 28/03/2018.

2 Definitions

4. Terms used in these guidelines have the same meaning as in the CSDR and in the Commission Delegated Regulation (EU) 2017/389⁴.

3 Purpose

5. The purpose of these guidelines is to ensure common, uniform and consistent application of the provisions of Article 24(4) of CSDR. In particular, they provide guidance on the process for the collection, processing and aggregation of data and on the information necessary for the calculation of the indicators to determine the substantial importance of a

³ 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 Directive 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

⁴ Commission Delegated Regulation (EU) 2017/389 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council as regards the parameters for the calculation of cash penalties for settlement fails and the operations of CSDs in host Member States (OJ L 65, 10.3.2017, p. 1–8)

CSD for the functioning of the securities markets and the protection of investors in a host Member State.

4 Compliance and reporting obligations

4.1 Status of the guidelines

6. This document contains guidelines issued under Article 16 of the ESMA Regulation⁵. In accordance with Article 16(3) of the ESMA Regulation competent authorities and financial market participants must make every effort to comply with guidelines and recommendations.
7. Competent authorities to whom these guidelines are addressed should comply by incorporating them into their supervisory practices.

4.2 Reporting requirements

8. Competent authorities to whom these guidelines are addressed must notify ESMA [*to: csdr.data@esma.europa.eu*] whether they comply or intend to comply with these guidelines, with reasons for non-compliance, within two months of the date of their publication. In the absence of a response by this deadline, competent authorities will be considered as non-compliant. A template for notifications is available on ESMA's website. However, in order to ensure the smooth and timely implementation of the process for the collection, processing and aggregation of data for the calculation of indicators referred to in these guidelines, it is advisable that competent authorities notify ESMA as soon as possible, and preferably within two weeks of the date of publication of these guidelines.
9. The date of publication of these guidelines means the date of their publication on ESMA's website in all official languages of the EU.
10. Central securities depositories (CSDs) are not required to report whether they comply with these guidelines.

⁵ 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).

5 Guidelines on determining the substantial importance of a CSD for a host Member State

5.1 Scope of data to be reported by CSDs

11. Competent authorities should ensure that CSDs, including central banks acting as CSDs, report the relevant data and information in the format provided in the templates included in the Annex. The list of CSDs (including central banks acting as CSDs) specified in the templates included in the Annex should be updated by the competent authorities on an annual basis.
12. All the values reported by CSDs, including Central Banks acting as CSDs, should be expressed in EUR, and the exchange rates used should be specified. The exchange rates used should be those valid for the last day of the calendar year for which data is reported. Where available, the exchange rate of the European Central Bank should be used for the conversion of other currencies into euros.
13. For the purposes of the criteria referred to in points (a) and (b) of Article 5(1) of the Commission Delegated Regulation (EU) 2017/389, CSDs, including central banks acting as CSDs, should use data pertaining to valid securities on 31 December of the previous calendar year, which should not include cancelled securities issues.
14. Competent authorities should ensure that CSDs, including central banks acting as CSDs, use the market value for each ISIN, applicable on 31 December of the previous calendar year and identified in accordance with Article 7 of Commission Delegated Regulation (EU) 2017/389, when determining the market value for the purposes of the indicators based on the criteria referred to in points (a) and (b) of Article 5(1) of the Commission Delegated Regulation (EU) 2017/389.
15. The data for the indicators based on the criteria referred to in points (a) and (b) of Article 6(1) of the Commission Delegated Regulation (EU) 2017/389 should include values of settlement instructions settled by each CSD, based on the following data reporting parameters:
 - a) The data should include absolute values of settlement by each CSD covering the previous calendar year.
 - b) All categories of settlement instructions settled by a CSD should be included, irrespective of whether they relate to transactions that are executed on a trading venue or on an OTC basis.
 - c) For operations composed of several transactions, such as securities repurchase or lending agreements, both legs should be reported once settled.
 - d) In the case of intra-CSD settlement, the CSD (issuer CSD or investor CSD) should report both legs of a transaction, i.e. it should report the two settlement instructions received.
 - e) In the case where more than one CSD is involved in the settlement of a transaction through standard, customised or indirect links, only the CSD (issuer CSD or investor CSD) settling the two legs of the transaction should report. It should report the two

settlement instructions received. The investor CSD “settling” only one leg of the transaction should not report.

- f) In the case of cross-CSD settlement by CSDs using a common settlement infrastructure or through interoperable links, each CSD should report the single settlement instruction received in relation to a transaction.

16. The settlement instructions could be related to the following types of transactions:

- a) purchase or sale of securities (including primary market purchases or sales of securities);
- b) collateral management operations (including triparty collateral management operations or auto-collateralisation operations);
- c) securities lending/borrowing operations;
- d) repurchase transactions;
- e) others (including corporate actions on flows, i.e. market claims and transformations).

17. The following types of transactions should be considered out of scope of the reporting:

- a) corporate actions on stock, such as cash distributions (e.g. cash dividend, interest payment), securities distributions (e.g. stock dividend; bonus issue), reorganisations (e.g. conversion, stock split, redemption, tender offer);
- b) primary market operations, meaning the process of initial creation of securities;
- c) creation and redemption of fund units, meaning the technical creation and redemption of fund units, unless such creation and redemption of fund units is done through transfer orders in a securities settlement system operated by a CSD;
- d) realignment operations.

18. The determination of market values for free of payment (FOP) settlement instructions, as referred to in point (b) of Article 6(2) of the Commission Delegated Regulation (EU) 2017/389 should be based on the values as of the day of settlement of each settlement instruction.

19. The country of establishment of the issuer should be taken into account with regard to the criterion referred to in point (a) of Article 5(1) of the Commission Delegated Regulation (EU) 2017/389.

20. The jurisdiction where the parent company is established should be taken into account in the case of participants and other holders of securities accounts referred to in point (b) of Article 5(1) and in point (b) of Article 6(1) of the Commission Delegated Regulation (EU) 2017/389 that are branches.

21. Data to be reported by a CSD should also cover the services provided in relation to the home Member State, as this data is needed in order to calculate the denominators at EU level for the various indicators (e.g. for the purpose of the criterion referred to in point (a) of Article 5(1) of the Commission Delegated Regulation (EU) 2017/389, data to be reported

by a CSD should cover securities issued by issuers from the CSD's home Member State, not only securities issued by issuers from host Member States).

5.2 General process for the collection of data information and the calculation of the indicators to determine the substantial importance of a CSD for a host Member State

22. The general process proposed in this section should be applied from 1 January 2018.
23. Competent authorities should ensure that CSDs, including central banks acting as CSDs, report the relevant data and information for the previous calendar year, which is necessary for the calculation of the indicators based on the criteria specified in the relevant provisions of Articles 5 and 6 of the Commission Delegated Regulation (EU) 2017/389, to them, by 31 January of each year (i.e. data from the 1 January to 31 December of the previous calendar year should be used).
24. Competent authorities should ensure that, prior to the date of application referred to in Article 9(2) of the Commission Delegated Regulation (EU) 2017/389 (two years following the publication of the Regulation in the Official Journal of the EU), CSDs, including central banks acting as CSDs, should only send the information relevant for the criteria referred to in point (a) of Article 5(1) and point (c) of Article 6(1) of the regulation to the competent authorities.
25. After reviewing the data, competent authorities should transmit to ESMA the data received from CSDs, including central banks acting as CSDs, by 25 February of each year.
26. Each competent authority should perform the calculation for the indicators based on the criteria referred to in Articles 5 and 6 of the Commission Delegated Regulation (EU) 2017/389 (as applicable, in respect of each CSD for which it is the home Member State competent authority), upon receipt of the following data from ESMA by 31 March of each year:
 - a) all data received from the individual competent authorities;
 - b) data aggregating the values for the denominators of the indicators based on the criteria referred to in Articles 5 and 6 of the Commission Delegated Regulation (EU) 2017/389, as applicable.
27. Competent authorities should send ESMA the results of the calculation regarding the indicators based on the criteria referred to in Articles 5 and 6 of the Commission Delegated Regulation (EU) 2017/389, as applicable, by 15 April of each year, to enable ESMA to share this information with all the competent authorities by 30 April of each year.
28. The general process specified in this section should also be used once the criteria referred to in Article 5(1)(b) and in Article 6(1)(a) and (b) of the Commission Delegated Regulation (EU) 2017/389 become applicable in accordance with Article 8(2) of the regulation.

5.3 *Initial process for the collection of data information and the calculation of the indicators to determine the substantial importance of a CSD for a host Member State*

29. For the first application of the general process in 2017 covering the reporting period of 1 January to 31 December 2016, CSDs, including central banks acting as CSDs, as well as competent authorities should apply the general process using the following dates, each date calculated from the date of publication of these guidelines:

- a) CSDs, including central banks acting as CSDs, should report the relevant data necessary for the calculation of the indicators based on the criteria referred to in point (a) of Article 5(1) and point (c) of Article 6(1) of the Commission Delegated Regulation (EU) 2017/389 to the competent authorities, within four weeks;
- b) Competent authorities should transmit to ESMA the data received from CSDs, including central banks acting as CSDs, within six weeks, to enable ESMA to send to competent authorities the aggregated data, as well as the individual data received from each competent authority, within eight weeks;
- c) Competent authorities should send the results for the indicators based on the criteria referred to in point (a) of Article 5(1) and in point (c) of Article 6(1) of the Commission Delegated Regulation (EU) 2017/389 (in respect of each CSD for which they are the home Member State competent authority) to ESMA within nine weeks, to enable ESMA to share this information with all the competent authorities within ten weeks.

6 Annex

6.1 *Templates for the collection of data for the substantial importance indicators*

Guidelines

Cooperation between authorities under Articles 17 and 23 of Regulation (EU) No 909/2014

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1 Scope

Who?

1. These guidelines apply to the competent authorities designated under Article 11(1) of Regulation (EU) No 909/2014.

What?

2. These guidelines apply in relation to the cooperation requirements applicable to competent authorities when involved in the procedure for granting authorisation to an applicant CSD laid down in Article 17 of Regulation (EU) No 909/2014 and in the procedure relating to the provision of services in another Member State referred to in Article 23 of this Regulation.

When?

3. These guidelines apply from the date that is two months after their publication on the ESMA's website in all official languages of the EU.
4. Terms defined in Regulation (EU) No 909/2014 have the same meaning in these guidelines. In addition, the following definitions and abbreviations are used in these guidelines:

<i>Commission Implementing Regulation (EU) 2017/394</i>	Commission Implementing Regulation (EU) 2017/394 of 11 November 2016 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 ¹
<i>CSD</i>	Central Securities Depository

<i>Directive 2014/65/EU</i>	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
<i>ESMA</i>	European Securities and Markets Authority
<i>EU</i>	European Union
<i>Regulation (EU) No 909/2014</i>	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 No 236/2012 ²
<i>Regulation (EU) No 1095/2010</i>	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 ³

¹ OJ L 65, 10.3.2017, p. 145.

² OJ L 257, 28.8.2014, p. 1.

³ OJ L 331, 15.12.2010, p. 84.

2 Purpose

5. The purpose of these guidelines is to ensure the common, uniform and consistent application of certain cooperation requirements for authorities in accordance with Article 14(1), second subparagraph, of Regulation (EU) No 909/2014, which provides that *“in order to ensure consistent, efficient and effective supervisory practices within the Union, including cooperation between competent authorities and relevant authorities in the different assessments necessary for the application of this Regulation, ESMA may, in close cooperation with the members of the ESCB [European System of Central Banks], issue guidelines addressed to competent authorities in accordance with Article 16 of Regulation (EU) No 1095/2010.”*
6. Members of the ESCB were involved in the preparation of these guidelines, which aim at harmonising aspects of cooperation between authorities that are not already covered by the technical standards published under Regulation (EU) No 909/2014.
7. These guidelines do not address, for instance, the procedures and templates to ensure the cooperation between authorities requested under Article 24 of Regulation (EU) No 909/2014 in the context of the supervision of the activities of a CSD in a host Member State, which are already covered under Chapter III of the Commission Implementing Regulation (EU) 2017/394. Similarly, the cooperation between authorities requested in the context of the procedure for authorisation to provide banking-type ancillary services is already covered under Chapter VI of the same Implementing Regulation.
8. Therefore, aspects of cooperation between authorities which are covered by these guidelines are:
 - (i) the consultation of authorities involved in the procedure for granting authorisation to an applicant CSD in accordance with Article 17 of Regulation (EU) No 909/2014, and
 - (ii) the communication between the competent authority of the home Member State to the competent authority of the host Member State in the context of the procedure set out in paragraphs (3) to (7) of Article 23 of Regulation (EU) No 909/2014, in relation to a CSD wishing to provide the services referred to in paragraph (2) thereof within the territory of another Member State for the first time, or to change the range of services so provided.

3 Compliance and reporting obligations

3.1 Status of the guidelines

9. This document contains guidelines on cooperation between authorities issued under Article 14 of Regulation (EU) No 909/2014 in accordance with Article 16 of Regulation (EU) No 1095/2010. In accordance with Article 16(3) of Regulation (EU) No 1095/2010, competent authorities must make every effort to comply with the guidelines.
10. Competent authorities to which the guidelines apply should comply by incorporating them into their supervisory practices.

3.2 Reporting requirements

11. Competent authorities to which these guidelines apply must notify ESMA (to csdr.notifications@esma.europa.eu) whether they comply or intend to comply with the guidelines, with reasons for non-compliance, within two months of the date of their publication on ESMA's website in all EU official languages. In the absence of a response by this deadline, competent authorities will be considered as non-compliant.

4 Guidelines

4.1 General cooperation requirements

4.1.1 List of authorities

12. Upon receipt of an application for authorisation referred to in Article 17 of Regulation (EU) No 909/2014, the competent authority should identify the relevant authorities referred to in paragraph (4) of that Article, and where applicable, the authorities referred to in paragraphs (5) as well as the competent authorities referred to in paragraph (6) of the same Article, and set up a list thereof.

4.1.2 Language

13. The competent authority should agree on the working language in its cooperation with the relevant authorities referred to in paragraph (4), and where applicable, the authorities referred to in paragraphs (5) and (6) of Article 17 of Regulation (EU) No 909/2014, as well as with other competent authorities for the purposes of Article 23 of Regulation (EU) No 909/2014. Where there is no agreement, the working language should be a language customary in the sphere of international finance.

14. Where the information provided by a competent authority is in an official language of the EU that is not the working language used in application of the previous paragraph, the transmitting competent authority should provide the addressee authorities with a translation in a language customary in the sphere of international finance of all relevant documentation necessary for those authorities for the purpose of Articles 17 and 23 of Regulation (EU) No 909/2014.
15. Where such translation is provided by the relevant CSD, the competent authority has no responsibility for the translation.

4.1.3 Contact details

16. For the purposes Article 17 of Regulation (EU) No 909/2014, the competent authority should designate and share contact details of one primary and one secondary contact persons and any changes thereto with the relevant authorities, and where applicable, with the authority referred to in Article 67 of Directive 2014/65/EU and with the competent authorities of another Member State referred to in paragraph (6) of Article 17 of Regulation (EU) No 909/2014. The competent authority should also request these authorities to share with it their respective contact details of one primary and one secondary contact person and any changes thereto.
17. For the purposes of Article 23 of Regulation (EU) 909/2014, each competent authority should designate and share with the other competent authorities contact details of one primary and one secondary contact person and any changes thereto.

4.2 *Provision of information and request for views*

4.2.1 In relation to the procedure for granting authorisation

18. Competent authorities should use the templates included in Annex 1 and Annex 2 in order to request the views of the relevant authorities referred to in paragraph (4) of Article 17 of Regulation (EU) No 909/2014, and where applicable, to the authorities referred to in paragraph (5) and to the competent authorities referred to in paragraph (6) thereof, as well as, where relevant, to also provide them with the information included in the application.

4.2.2 In relation to the cross-border provision of services

19. For the purposes of Article 23(4), first subparagraph, of Regulation (EU) No 909/2014, the competent authority of the home Member State should use the template included in Annex 3 to provide the information referred to in Article 23(3) thereof to the competent authority of the host Member State.

20. For the purposes of Article 23(5) of Regulation (EU) No 909/20, where the competent authority of the home Member State decides not to communicate all the information referred to in Article 23(3) thereof to the competent authority of the host Member State, the competent authority of the home Member State should use the template provided as Annex 4 to inform the competent authority of the host Member State of its decision.

4.2.3 Acknowledgement of receipt

21. The addressees should immediately upon receipt, and at the latest on the business day following the day of receipt, confirm by email to the transmitting competent authority that the requested views or information have been received.

22. If no confirmation of receipt is received in accordance with paragraph 21, the transmitting competent authority should itself contact the addressees to ensure that the latter have received the request or information.

5 Annexes

Annex 1 – Template for requesting views under Article 17(4), (5) and (6) of Regulation (EU) No 909/2014 (and if relevant, for providing application and related information)

[Name of the competent authority]	
Person(s) responsible for further contacts:	- [Name(s)] - [Function(s)] - [Telephone number(s)] - [Email address(es)]
Date	[YYYY-MM-DD]
Re:	<i>Request for views under Article 17[(4)/(5)/(6)] of Regulation (EU) No 909/2014</i>

(1) On [Date of submission of the application for authorisation], [Name of the applicant CSD] submitted its application for authorisation as a CSD to [Name of the competent authority] in accordance with Article 17 of Regulation (EU) No 909/2014.

(2) [Name of the competent authority] has examined the completeness of the application and considers it to be complete.

(3) [Competent authority to select the correct addressee and purpose from the alternatives listed below]

[Name of the competent authority] hereby provides all the information included in the application to [Name of the relevant authority] as a relevant authority pursuant to Article 17(4) of Regulation (EU) No 909/2014, and requests its views on the features of the securities settlement system(s) operated by the applicant CSD within 3 months from the date of receipt of this request using the template attached as Annex 2 **[competent authority should ensure Annex 2 below is sent as an annex to this request];**

OR

[Name of the competent authority] hereby provides all the information included in the application to [Name of the authority referred to in Article 67 of Directive 2014/65/EU] as the authority referred to in Article 17(5) of Regulation (EU) No 909/2014, and requests its views

on the ability of the applicant CSD to comply with the requirements of Directive 2014/65/EU and of Regulation (EU) No 600/2014 within 3 months from the date of receipt of this request using the template attached as Annex 2 **[competent authority should ensure Annex 2 below is sent as an annex to this request];**

OR

[Name of the competent authority] hereby requests the views of [name of the competent authority from another Member State] as an authority referred to in Article 17(6) of Regulation (EU) No 909/2014, on the points listed in Article 17(7) of the same regulation within 3 months from the date of receipt of this request using the template attached as Annex 2 **[competent authority should ensure Annex 2 is sent as an annex to this request].**

(4) It is required from the addressee to acknowledge receipt of this request by email, at the latest on the business day following the day of receipt.

On behalf of [Name of competent authority],

[signature]

Content:

1. **[For requests under Art 17 (4) and (5) only:]** Application for authorisation of [Name of the applicant CSD]
2. Template for providing views under Article 17[(4)/(5)/(6)] of Regulation (EU) No 909/2014.

Annex 2 – Template for providing views under Article 17(4), (5) or (6) of Regulation (EU) No 909/2014

[Name of the consulted authority]	
Person(s) responsible for further contacts:	<ul style="list-style-type: none"> - [Name(s)] - [Function(s)] - [Telephone number(s)] - [Email address(es)]
Date	[YYYY-MM-DD]
Re:	<i>Provision of views under Article 17[(4)/(5)/(6)] of Regulation (EU) No 909/2014</i>

(1) On [Date of reception of the request], [Name of the consulted authority] received a request for views under Article 17[(4)/(5)/(6)] of Regulation (EU) No 909/2014 from [Name of the competent authority] in respect of [Name of the applicant CSD].

(2) [Name of the consulted authority] hereby provides its views, as detailed below:

a) Views
b) Additional comments – if any
[e.g. identification of key areas for post-authorisation supervisory activities, etc.]

(3) Receipt of these views should be acknowledged by email at the latest on the business day following the day of receipt.

On behalf of [Name of consulted authority],

[signature]

Annex 3 –Template for communicating information under Article 23(4) of Regulation (EU) No 909/2014 to the competent authority of the host Member State

[Name of the competent authority of the home Member State]	
Person(s) responsible for further contacts:	- [Name(s)] - [Function(s)] - [Telephone number(s)] - [Email address(es)]
Date	[YYYY-MM-DD]
Re:	<i>Communication of information under Article 23(4) of Regulation (EU) No 909/2014</i>

(1) On [date of communication by the CSD of information requested under Article 23(3) of Regulation (EU) No 909/2014], [Name of the CSD] communicated the information requested under Article 23(3) of Regulation (EU) No 909/2014 to [Name of the competent authority of the home Member State].

(2) [Name of the competent authority of the home Member State] has examined the information received and considers, by taking into account the provision of services envisaged, that it has no reason to doubt the adequacy of the administrative structure or the financial situation of the CSD wishing to provide its services.

(3) [Name of the competent authority of the home Member State] hereby communicates all the information received under Article 23(3) of Regulation (EU) No 909/2014 to [competent authority of the home Member State should ensure this information is sent along].

(4) Receipt of this communication and related information should be acknowledged by email on the business day following the day of receipt.

On behalf of [Name of competent authority of the home Member State],

[signature]

Content: Information received under Article 23(3) of Regulation (EU) No 909/2014 from [Name of the CSD]

Annex 4 –Template for informing on decision under Article 23(5) of Regulation (EU) No 909/2014 not to communicate all information to the competent authority of the host Member State

[Name of the competent authority of the home Member State]	
Person(s) responsible for further contacts:	- [Name(s)] - [Function(s)] - [Telephone number(s)] - [Email address(es)]
Date	[YYYY-MM-DD]
Re:	<i>Information on decision under Article 23(5) of Regulation (EU) No 909/2014 not to communicate information received under Article 23(3) thereof</i>

(1) On [date of communication by the CSD of information requested under Article 23(3) of Regulation (EU) No 909/2014], [Name of the CSD] communicated the information requested under Article 23(3) of Regulation (EU) No 909/2014 to [Name of the competent authority of the home Member State].

(2) [Name of the competent authority of the home Member State] has examined the information received and considers, by taking into account the provision of services envisaged, that it has reasons to doubt the adequacy of the administrative structure or the financial situation of the CSD wishing to provide its services.

(3) Receipt of this information should be acknowledged by email at the latest on the business day following the day of receipt.

On behalf of [Name of competent authority of the home Member State],

[signature]