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COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.: C(2022) 3590 final

Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 10.6.2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) No 151/2013 by further specifying the procedure for accessing details of derivatives as well as the technical and operational arrangements for their access

Delegations will find attached document C(2022) 3590 final.

Encl.: C(2022) 3590 final



Brussels, 10.6.2022
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COMMISSION DELEGATED REGULATION (EU) .../...

of 10.6.2022

amending the regulatory technical standards laid down in Delegated Regulation (EU) No 151/2013 by further specifying the procedure for accessing details of derivatives as well as the technical and operational arrangements for their access

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) No 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 (EMIR REFIT) introduces several empowerments for ESMA to develop implementing and regulatory technical standards related to reporting framework under EMIR.

Article 81(5) of that regulation requires ESMA to develop regulatory technical standards concerning the data to be published by the trade repositories and data to be made available by them to the relevant authorities.

EMIR REFIT has aligned the legal requirements regarding terms and conditions for granting access to data under EMIR and Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse (SFTR)¹. This aspect addressed a long-standing issue related to the data access to individual trade repositories. Some of the trade repositories put in place contractual documentation and, in certain cases, this led to undue delays or even the impossibility to access data by some authorities who were prohibited from signing legal agreements with any type of supervised entities.

The proposed amendments to Delegated Regulation (EU) No 151/2013 will address the above-mentioned issue.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Procedural aspects

ESMA conducted a public consultation on its draft regulatory and implementing technical standards between 26 March 2020 and 3 July 2020. ESMA has received a total of 41 public responses and 10 confidential responses.

Stakeholder views

ESMA proposed in its public consultation to include a specific provision in the draft RTS on access levels that would define the precise and exhaustive procedure for granting access to data. The harmonising exercise carried out should ensure that the application of the envisaged provisions avoids divergence across the Union and achieves the same goal throughout. The terms and conditions for data access include a procedure for accessing the data as well as the technical and operational arrangements to access the data given that the access to data is required under EMIR. The trade repository should not require any further documentation to the authority besides the templates and tables to establish the relevant access to data.

Following the feedback received, ESMA has assessed the information received and modified the final draft RTS where relevant (e.g. ESMA has removed the requirement to provide a list of authorised users under EMIR).

¹ OJ L 337, 23.12.2015, p. 1–34

3. IMPACT ASSESSMENT

The Commission has not conducted a detailed impact assessment on the proposed regulatory technical standards but has based its assessment on ESMA's cost benefit analysis included in its Final Report.

The main policy decisions have already been analysed and published by the Commission on the legislative proposal that led to Regulation (EU) No 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012.

The proposed technical standards will solve the difficulties related to the data access to individual trade repositories by relevant entities due to the lack of harmonisation of procedures among Union trade repositories. In the short run, the modifications to Delegated Regulation (EU) No 151/2013 will imply costs for trade repositories, however the benefits outweigh this costs. Furthermore, ESMA is proposing an implementation timeline which should help smooth the costs implications.

4. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 1 amends Delegated Regulation (EU) No 151/2013 on how, when and to whom trade repositories should grant access to details of derivatives.

Article 2 sets out the entry into force of the delegated regulation and sets out a delayed entry into application of 18 months concerning requirements on specific type of access to entities listed in Article 81(3) of EMIR.

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

of 10.6.2022

amending the regulatory technical standards laid down in Delegated Regulation (EU) No 151/2013 by further specifying the procedure for accessing details of derivatives as well as the technical and operational arrangements for their access

(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 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories², and in particular Article 81(5), fourth subparagraph, in conjunction with Article 81(5), first subparagraph, point (d), thereof,

Whereas:

- (1) In order to compare and aggregate data effectively and efficiently, trade repositories should use XML format templates and XML messages developed in accordance with ISO 20022 methodology for granting access to details of derivatives and for communicating with the entities referred to in Article 81(3) of Regulation (EU) No 648/2012. This should not prevent trade repositories and relevant entities from agreeing to use formats other than XML to communicate or to provide access to details of derivatives.
- (2) The details of reported derivatives that trade repositories make available in XML format templates developed in accordance with ISO 20022 to the entities listed in Article 81(3) of Regulation (EU) No 648/2012 should contain the same information as the information provided by the counterparties, entities responsible for reporting and report submitting entities, as applicable.
- (3) Information that entities listed in Article 81(3) of Regulation (EU) No 648/2012 should be able to access should include details of derivatives that trade repositories have rejected or details of derivatives that they have accepted, but for which they have issued a warning as well as the details following the performance of the reconciliation process for derivatives referred to in Article 19 of Commission Delegated Regulation (EU) No 150/2013³.
- (4) Where the Commission has adopted an implementing act determining that the legal framework of a third country fulfils the conditions provided for in Article 76a(2) of Regulation (EU) No 648/2012, a trade repository should grant a relevant authority of

² OJ L 201, 27.7.2012, p. 1.

³ Commission Delegated Regulation (EU) No 150/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards specifying the details of the application for registration as a trade repository Text with EEA relevance, OJ L 52, 23.2.2013, p. 25.

that third country access to the data, taking account of the mandate and responsibilities of the third-country authority.

- (5) To ensure a standardised and harmonised approach to accessing details of derivatives and to reduce the administrative burden for both the entities listed in Article 81(3) of Regulation (EU) No 648/2012 and the trade repositories, it is appropriate to further specify the tasks of the trade repositories in granting access to details of derivatives. The trade repositories should designate a person responsible for liaising with entities listed in Article 81(3) of Regulation (EU) No 648/2012. They should also make available on their website the instructions for those entities, explaining how to request access to the data held by the trade repository. Furthermore, to facilitate requests from those entities for access to the relevant data, trade repositories should prepare a standardised form which would help those entities to provide trade repositories with the information allowing the latter to establish the requirements for the access to the data. Finally, trade repositories should set up technical arrangements necessary for entities listed in Article 81(3) of Regulation (EU) No 648/2012 to access the details of derivatives reported.
- (6) Commission Delegated Regulation (EU) No 151/2013⁴ should therefore be amended accordingly.
- (7) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority after having consulted the members of the European System of Central Banks.
- (8) The European Securities and Markets Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁵.
- (9) To give counterparties and trade repositories sufficient time to adapt to the new requirements under [*PO please insert reference to C(2022) 3588*], the date of application of the provisions relating to the new data fields should be deferred,

HAS ADOPTED THIS REGULATION:

Article 1
Amendments to Delegated Regulation (EU) No 151/2013

Delegated Regulation (EU) No 151/2013 is amended as follows:

- (1) Article 2 is replaced by the following:

Article

2

Granting access to details of derivatives

⁴ Commission Delegated Regulation (EU) No 151/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, with regard to regulatory technical standards specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data (OJ L 52, 23.2.2013, p. 33).

⁵ 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).

1. A trade repository shall make details of derivatives directly and immediately available, in accordance with Articles 2 and 3 of this Regulation, to the entities listed in Article 81(3) of Regulation (EU) No 648/2012, including where delegation agreements exist under Article 28 of Regulation (EU) No 1095/2010.

For the purposes of the first subparagraph, a trade repository shall use the XML format and the template developed in accordance with ISO 20022 methodology.

2. A trade repository shall ensure that the details of transaction data on derivatives made accessible to the entities listed in Article 81(3) of Regulation (EU) No 648/2012 in accordance with this Article and pursuant to the timelines set out in Articles 4 and 5 of this Regulation include the following data:

(a) the reports of derivatives reported in accordance with Tables 1, 2 and 3 of the Annex to [PO please insert reference to C(2022) 3589]*, including the latest trade states of outstanding derivatives referred to in Article 2(2) of [PO please insert reference to C(2022) 3588];

(b) the relevant details of derivative reports, which the trade repository rejected or warned about during the previous working day and the reasons for their rejection or warning as specified in [PO please insert reference to C(2022) 3581] **;

(c) the reconciliation status of all reported derivatives for which the trade repository has carried out the reconciliation procedure in accordance with Article 3 of [PO please insert reference to C(2022) 3589].

3. A trade repository shall provide the entities that have several responsibilities or mandates under Article 81(3) of Regulation (EU) No 648/2012 with a single access point to the derivatives covered by those responsibilities and mandates.

4. A trade repository shall provide the European Securities and Markets Authority (ESMA) with access to all transaction data on derivatives to exercise competences in accordance with its responsibilities and mandates.

5. A trade repository shall provide the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Systemic Risk Board with access to all transaction data on derivatives.

6. A trade repository shall provide the Agency for the Cooperation of Energy Regulators with access to all transaction data on derivatives where the underlying is energy or emission allowances.

7. A trade repository shall provide an authority which supervises trading venues with access to all transaction data on derivatives executed on those trading venues.

8. A trade repository shall provide a supervisory authority designated pursuant to Article 4 of Directive 2004/25/EC with access to all transaction data on derivatives where the underlying is a security issued by a company that meets one or more of the following conditions:

(a) the company is admitted to trading on a regulated market established within the Member State of that authority and the takeover bids on the securities of that company fall under that authority's supervisory responsibilities and mandates;

(b) the company has its registered office or its head office in the Member State of that authority and the takeover bids on the securities of that company fall under that authority's supervisory responsibilities and mandates;

(c) the company is an offeror as defined in Article 2(1), point (c), of Directive 2004/25/EC for the companies as referred to in points (a) and (b) of this paragraph and the consideration it offers includes securities.

9. A trade repository shall provide an authority referred to in Article 81(3), point (j), of Regulation (EU) No 648/2012 with access to all transaction data on derivatives for markets, contracts, underlyings, benchmarks and counterparties that fall under the supervisory responsibilities and mandates of that authority.

10. A trade repository shall provide the European Central Bank (ECB) and a member of the European System of Central Banks (ESCB), whose Member State's currency is the euro, with access to the following data:

(a) all transaction data on derivatives in either of the following cases:

(i) where the reference entity of the derivative is established within a Member State whose currency is the euro and falls under the supervisory responsibilities and mandates of that ESCB member;

(ii) where the reference obligation is sovereign debt of a Member State whose currency is the euro;

(b) position data for derivatives in euro.

11. A trade repository shall provide an authority listed in Article 81(3) of Regulation (EU) No 648/2012 that monitors systemic risks to financial stability in the euro area and whose Member State's currency is the euro, including the ECB, with access to all transaction data on derivatives concluded on trading venues or by central counterparties (CCPs) and counterparties that fall under the responsibilities and mandates of that authority when monitoring systemic risks to financial stability in the euro area.

12. A trade repository shall provide a member of the ESCB whose Member State's currency is not the euro with access to the following data:

(a) all transaction data on derivatives in either of the following cases:

(i) where the reference entity of the derivative is established within the Member State of that ESCB member and where that entity falls under the supervisory responsibilities and mandates of that ESCB member;

(ii) where the reference obligation is sovereign debt of the Member State of that ESCB member;

(b) position data for derivatives in the currency issued by that member of the ESCB.

13. A trade repository shall provide an authority listed in Article 81(3) of Regulation (EU) No 648/2012 that monitors systemic risks to financial stability and whose Member State's currency is not the euro, with access to all transaction data on derivatives concluded on trading venues or by CCPs and counterparties that fall under the responsibilities and mandates of that authority when monitoring systemic risks to financial stability in a Member State whose currency is not the euro.

14. A trade repository shall provide the ECB, when the latter carries out its tasks within the single supervisory mechanism under Council Regulation (EU) No 1024/2013***, with access to all transaction data on derivatives concluded by counterparties which, within the single supervisory mechanism, are subject to the ECB's supervision pursuant to that Regulation.

15. A trade repository shall provide a competent authority listed in Article 81(3), points (o) and (p), of Regulation (EU) No 648/2012 with access to all transaction data on derivatives concluded by counterparties that fall under the responsibilities and mandates of that authority.

16. A trade repository shall provide a resolution authority as referred to in Article 81(3), point (m), of Regulation (EU) No 648/2012 with access to all transaction data on derivatives concluded by counterparties that fall under the responsibilities and mandates of that authority.

17. A trade repository shall provide the Single Resolution Board (SRB) with access to all transaction data on derivatives concluded by counterparties that fall under the scope of Regulation (EU) No 806/2014 of the European Parliament and of the Council****.

18. A trade repository shall provide an authority supervising a central counterparty (CCP), and the relevant member of the ESCB overseeing that CCP, where applicable, with access to all transaction data on derivatives cleared by that CCP.

* [insert full title and OJ reference]

** [insert full title and OJ reference]

*** Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

**** Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).’;

(2) in Article 3, the following paragraph 3 is added:

‘3. In relation to a relevant authority of a third country for which the Commission has adopted an implementing act determining that the legal framework fulfils the conditions set out in Article 76a(2) of Regulation (EU) No 648/2012, a trade repository shall provide access to the data, taking account of the third country authority’s mandate and responsibilities.’;

(3) Article 4 is replaced by the following:

*‘Article 4
Setting up access to details of derivatives*

1. A trade repository shall carry out the following tasks:
 - (a) designate a person or persons responsible for liaising with the entities listed in Article 81(3) of Regulation (EU) 648/2012;
 - (b) publish on its website the instructions to be followed by the entities listed in Article 81(3) of Regulation (EU) 648/2012 to request access to details of transaction data on derivatives;
 - (c) provide the entities listed in Article 81(3) of Regulation (EU) 648/2012 with a form referred to in paragraph 2 of this Article;
 - (d) set up access to details of transaction data on derivatives for the entities listed in Article 81(3) of Regulation (EU) 648/2012, based on information provided in the form referred to in paragraph 2 of this Article;

- (e) set up the technical arrangements necessary for the entities listed in Article 81(3) of Regulation (EU) 648/2012 to access details of transaction data on derivatives in accordance with paragraph 2 of this Article;
 - (f) provide the entities listed in Article 81(3) of Regulation (EU) 648/2012 with direct and immediate access to details of derivatives within thirty calendar days after that entity submitted a request for setting up such access.
2. The entity listed in Article 81(3) of Regulation (EU) 648/2012 shall request access to details of derivatives using a form developed and made available by a trade repository and specifying at least the following information:
- (a) the name of the entity;
 - (b) the contact person at the entity;
 - (c) legal responsibilities and mandates of the entity;
 - (d) credentials for a secure SSH FTP connection;
 - (e) any other technical information relevant to the access by the entity to details of derivatives;
 - (f) whether the entity is competent for counterparties in its Member State, in the euro area or in the Union;
 - (g) the types of counterparties for which the entity is competent in accordance with the classification in Table 1 of the Annex to [*PO please insert reference to C(2022) 3588*]*;
 - (h) types of underlyings to derivatives for which the entity is competent;
 - (i) the trading venues supervised by the entity, if any;
 - (j) the CCPs supervised or overseen by the entity, if any;
 - (k) the currency issued by the entity, if any;
 - (l) delivery and interconnection points;
 - (m) the benchmarks used in the Union, the administrator of which is under the supervision of the entity;
 - (n) the characteristics of underlyings supervised by the entity;
 - (o) the characteristics of the parties referred to in fields 16 ‘Clearing member’, 15 ‘Broker’ in Table 1 and field 142 ‘Reference entity’ in Table 2 of the Annex to [*PO please insert reference to C(2022) 3588*] that are supervised by the entity, if any

* [full title and OJ reference.]’;

(4) Article 5 is amended as follows:

- (a) paragraph 4 is deleted;
- (b) paragraph 5 is replaced by the following:
 - ‘5. A trade repository shall establish and maintain the necessary technical arrangements to enable the entities listed in Article 81(3) of Regulation

(EU) No 648/2012 to establish predefined periodic requests to access details of derivatives, as determined in Articles 2 and 3 of this Regulation, necessary for those entities to fulfil their responsibilities and mandates’;

(c) paragraph 6 is replaced by the following:

‘6. Upon request, a trade repository shall provide the entities listed in Article 81(3) of Regulation (EU) No 648/2012 with access to details of derivatives according to any combination of the following fields as referred to in the Annex to [*PO please insert reference to C(2022) 3588*]:

- (a) reporting timestamp;
- (b) counterparty 1;
- (c) counterparty 2;
- (d) entity responsible for reporting;
- (e) corporate sector of counterparty 1;
- (f) nature of counterparty 1;
- (g) broker ID;
- (h) report submitting entity ID;
- (i) asset class;
- (j) product classification;
- (k) contract type;
- (l) ISIN;
- (m) Unique Product Identifier;
- (n) underlying identification;
- (o) venue of execution;
- (p) execution timestamp;
- (q) effective date;
- (r) valuation timestamp;
- (s) expiration date;
- (t) early termination date;
- (u) CCP;
- (v) clearing member;
- (w) level;
- (x) action type;
- (y) event type’;

(d) paragraph 7 is replaced by the following:

‘7. A trade repository shall establish and maintain the technical capability to provide direct and immediate access to details of derivatives necessary for the entities listed in Article 81(3) of Regulation (EU) No 648/2012 to fulfil

their mandates and responsibilities. That access shall be provided as follows:

- (a) where an entity listed in Article 81(3) of Regulation (EU) No 648/2012 requests access to details of outstanding derivatives or of derivatives which have either matured or for which reports with action types ‘Error’, ‘Terminate’ or ‘Position Component’ as referred to in field 151 in Table 2 of the Annex to [PO please insert reference to C(2022) 3588] were made or were subject to a report with action type ‘Revive’ not followed by a report with action types ‘Error’ or ‘Terminate’ not more than one year before the date on which the request was submitted, a trade repository shall fulfil that request no later than 12:00 Universal Coordinated Time on the first calendar day following the day on which the request to access is submitted;
- (b) where an entity listed in Article 81(3) of Regulation (EU) No 648/2012 requests access to details of derivatives which have either matured or for which reports with action types ‘Error’, ‘Terminate’ or ‘Position Component’ as referred to in field 151 in Table 2 of the Annex to [PO please insert reference to C(2022) 3588] were made or were subject to a report with action type ‘Revive’ not followed by a report with action types ‘Error’ or ‘Terminate’ more than one year before the date on which the request was submitted, a trade repository shall fulfil that request no later than three working days after the request to access is submitted;
- (c) where a request to access data by an entity listed in Article 81(3) of Regulation (EU) No 648/2012 relates to derivatives falling under both points (a) and (b) of this paragraph, the trade repository shall provide details of those derivatives no later than three working days after that request to access is submitted.’.

Article 2

Entry into force

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

Article 1(4), points (c) and (d), shall apply from [PO: please insert the date of the first Monday following the date corresponding to 18 months after the date of entry into force.].

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

Done at Brussels, 10.6.2022

For the Commission
The President
Ursula VON DER LEYEN