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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) 3585 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 10.6.2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) No 150/2013 as regards the details of the applications for registration as a trade repository and for applications for extension of registration as a trade repository

Delegations will find attached document C(2022) 3585 final.

Encl.: C(2022) 3585 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 150/2013 as regards the details of the applications for registration as a trade
repository and for applications for extension of registration as a trade repository**

(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)¹ introduces several empowerments for ESMA to develop implementing and regulatory technical standards. Articles 56(3) and 56(4) of EMIR, as amended by EMIR REFIT provide that ESMA should develop regulatory and implementing technical standards concerning the registration and the extension of registration of trade repositories. The objective is to allow trade repositories already registered under Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse² (SFTR) to obtain an authorisation under EMIR in a simplified procedure (extension of registration).

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 received a total of 41 public responses and 10 confidential responses.

Following the public consultation, ESMA adopted its Final Report on “Technical standards on reporting, data quality, data access, and registration of Trade Repositories under EMIR REFIT”³ on 17 December 2020.

Stakeholder views

In the Consultation Paper ESMA indicated that Article 56(3) of EMIR has been updated to include a reference to a provision mirroring the one in Article 5(7)(c) SFTR with regards to the extension of registration under EMIR for trade repositories registered under SFTR. In that context, ESMA is empowered to define the details of the simplified application for the extension of the registration. It is worth noting that the process and timelines for new registration and for an extension of registration are the same. ESMA received very limited feedback on its proposals.

Furthermore, ESMA proposed to include the payment of the relevant fees as a condition for a trade repository to be registered under EMIR. One respondent proposed to permit a joint application for EMIR and SFTR. ESMA disagrees as the registration decisions are separate and that it is easier to keep separate references to the applications.

3. IMPACT ASSESSMENT

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

¹ OJ L 141, 28.5.2019, p. 42–63

² OJ L 337, 23.12.2015, p. 1–34

³ https://www.esma.europa.eu/sites/default/files/library/esma74-362-824_fr_on_the_ts_on_reporting_data_quality_data_access_and_registration_of_trs_under_emir_refit_0.pdf

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.

ESMA understands that the proposed amendments to the technical standards should facilitate the application of trade repositories and aligns EMIR and SFTR requirements in this regard.

4. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 1 amends Delegated Regulation (EU) No 150/2013 with regards to the information contained in the application for registration of a trade repository under EMIR, the payment of fees when a trade repository apply for registration under EMIR, the information to be provided when a trade repository already registered under SFTR applies for an extension of authorisation to provide services with regards to EMIR.

Article 2 sets out the date of entry into force of the proposed amendments, with a specific date of application, 18 months after the entry into force of the proposed delegated regulation, for amendments related to the content of the application for registration.

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

of 10.6.2022

amending the regulatory technical standards laid down in Delegated Regulation (EU) No 150/2013 as regards the details of the applications for registration as a trade repository and for applications for extension of registration as a trade repository

(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 repositories⁴, and in particular Article 56(3), third subparagraph, thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) No 150/2013⁵ specifies the details of the application for registration as a trade repository.
- (2) Following the entry into force of Regulation (EU) No 2019/834 of the European Parliament and of the Council⁶, trade repositories are required to have in place the procedures for the reconciliation of data between trade repositories and procedures to verify the compliance with the reporting requirements by the reporting counterparty or submitting entity and to verify the completeness and correctness of the data reported. To ensure that the European Securities and Markets Authority has the relevant information allowing it to verify that a trade repository complies with those requirements when assessing the application for registration of a trade repository, trade repositories should be required to provide information regarding the procedures they have put in place for the authentication of the identity of the users accessing the data, provision of feedback to relevant entities on the authorization of the report submitting entity, verification of the completeness and correctness of the data, reconciliation and the outcomes of the reconciliation process, for the provision of a warning feedback to submitting entities and for changing legal entity identifiers, in accordance with Commission Delegated Regulation (EU) .../...⁷⁺.

⁴ OJ L 201, 27.7.2012, p. 1.

⁵ 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 (OJ L 52, 23.2.2013, p. 25).

⁶ Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (OJ L 141, 28.5.2019, p. 42).

⁷ Commission Delegated Regulation (EU) .../... of ... supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards specifying the

- (3) To ensure that the trade repositories meet the highest regulatory standards, additional rules need to be introduced with regard to the information to be provided on the procedures on portability, on the IT issues that impact the quality of the data and with regard to the reporting log.
- (4) Details of a simplified application for the extension of registration should be established to allow the trade repositories already registered under Regulation (EU) No 2015/2365 of the European Parliament and of the Council⁸ to have their registration extended under Regulation (EU) No 648/2012. To avoid any duplication of requirements, the trade repositories applying for an extension of registration should only be required to provide information on the adaptations to their systems, processes and resources necessary to ensure they comply with the requirements of Regulation (EU) No 648/2012.
- (5) The payment of the applicable fees by trade repositories when submitting the application for registration or for extension of registration as a trade repository is essential to cover the expenses of European Securities and Markets Authority relating to that registration or extension of registration. The proof of payment should therefore be included in the application.
- (6) Delegated Regulation (EU) No 150/2013 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.
- (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 Council⁹.
- (9) To enable trade repositories to take all necessary actions to adapt to the changes to the requirements regarding the information on verification of completeness and correctness of data introduced by this Regulation, the date of application of those provisions should be deferred,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) No 150/2013 is amended as follows:

- (1) Article 19 is replaced by the following:

procedures for the reconciliation of data between trade repositories and the procedures to be applied by the trade repository to verify the compliance by the reporting counterparty or submitting entity with the reporting requirements and to verify the completeness and correctness of the data reported (OJ L ...).

⁺ OJ: Please insert in the text the number of *C(2022) 3581* and complete the details of that Regulation in the footnote.

⁸ 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 and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1).

⁹ 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).

“An application for registration as a trade repository shall contain the following information:

(a) procedures for the authentication of the identity of the users accessing the trade repository in accordance with Article 1(1)(a) of [*PO please insert reference to C(2022) 3581*];

(b) procedures for the verification of the compliance of the XML template used to report derivatives to the trade repository with the ISO 20022 methodology in accordance with Article 1(1)(b) of [*PO please insert reference to C(2022) 3581*];

(c) procedures for the verification of the authorisation of the entity reporting on behalf of the reporting counterparty in accordance with Article 1(1)(c) of [*PO please insert reference to C(2022) 3581*];

(d) procedures for verification that the logical sequence of the details of the reported derivatives is maintained at all times in accordance with Article 1(1) points (d)-(k) of [*PO please insert reference to C(2022) 3581*];

(e) procedures for the verification of the completeness and correctness of the details of the reported derivatives in accordance with Article 1(1), point (l) of [*PO please insert reference to C(2022) 3581*];

(f) procedures for the reconciliation of data in accordance with Article 3(1) of [*PO please insert reference to C(2022) 3581*];

(g) procedures for the provision of feedback to the counterparties to the derivatives, entities responsible for reporting or the third parties reporting on their behalf, on the verifications performed under points (a) to (e) in accordance with Articles 1(3) and 4(2) of [*PO please insert reference to C(2022) 3581*] and the outcomes of the reconciliation process under point (f) in accordance with Articles 3(5) and 4(2) of [*PO please insert reference to C(2022) 3581*];

(h) procedures for the provision of warning feedback to the counterparties to the derivatives, entities responsible for reporting or the third parties reporting on their behalf, on the verifications performed in accordance with paragraphs 1(e) to 1(g) of Article 4 of [*PO please insert reference to C(2022) 3581*];

(i) procedures for updates of legal entity identifiers in accordance with Article 2 of [*PO please insert reference to C(2022) 3581*].”

(2) Article 21, paragraph (2) is replaced by the following:

“2. An application for registration as a trade repository shall contain the procedures to ensure the orderly substitution of the original trade repository where requested by a reporting counterparty, an entity responsible for reporting, or by a third party reporting on behalf of non-reporting counterparties, or where such substitution is the result of a withdrawal of registration, and shall include the procedures for the transfer of data and the redirection of reporting flows to another trade repository.”;

(3) in Article 22(1), point (b) is replaced by the following:

“(b) a record-keeping of all reported information relating to the conclusion, modification or termination of a derivative contract in a reporting log identifying the person or persons that requested the action, including the trade repository itself if applicable, the reasons for such action, the date and time of the action and the old

and new data as set out in the Annex to [PO please insert reference to C(2022) 3588]^{10+;};

- (4) in Article 23, point (b) is replaced by the following:

“(b) a description of the resources, methods and facilities that the trade repository employs in order to facilitate the access to data on the details of derivative contracts to the relevant authorities in accordance with Article 81(3) of Regulation (EU) No 648/2012, a log listing IT issues at the trade repositories that impact the quality of the data made available to the relevant authorities in accordance with Article 81(3) of Regulation (EU) No 648/2012, the frequency of the update and the controls and verifications that the trade repository may establish for the access filtering process, along with a copy of any specific manuals and internal procedures;”;

- (5) the following title of Chapter 2 is inserted after Article 23a:

“CHAPTER 2
EXTENSION OF REGISTRATION”;

- (6) the following Article 23b is inserted:

“Article 23b
Extension of registration

The application for an extension of an existing registration under Regulation (EU) 2015/2365 of the European Parliament and of the Council** shall contain the information specified in Article 1, except paragraph 2, point (k), Articles 2 and 5, Article 7, except paragraph 2, point (d), Article 8(b), Article 9(1), points (b) and (e), Article 11, Article 12(2), Article 13, Article 14(2), Article 15, Article 16, except point (c), Articles 17 to 23a and Article 23c.

** 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 and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1).”;

- (7) the following title of Chapter 3 is inserted after Article 23b:

“CHAPTER 3
FEES AND VERIFICATION”;

- (8) the following Article 23c is inserted:

¹⁰ Commission Implementing Regulation (EU) .../... of ... laying down implementing technical standards for the application of Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to the standards, formats, frequency and methods and arrangements for reporting (OJ L ...).

+ OJ: Please insert in the text the number of C(2022) 3588 and complete the details of that Regulation in the footnote.

“Article 23c

Payment of fees

An application for registration or for extension of registration as a trade repository shall include a proof of payment of the relevant registration or extension of registration fees as established in Commission Delegated Regulation (EU) 1003/2013*.

*Commission Delegated Regulation (EU) No 1003/2013 of 12 July 2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to trade repositories (OJ L 279, 19.10.2013, p. 4).”.

(9) in Article 24, paragraph (1) is replaced by the following:

“1. Any information submitted to ESMA during the registration or extension of registration process shall be accompanied by a letter signed by a member of the board of the trade repository and of the senior management, attesting that the submitted information is accurate and complete to the best of their knowledge, as of the date of that submission.”.

Article 2

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(1) shall apply from ... [*PO: please insert the date – the first Monday following the date corresponding to 18 months after the date of entry into force of this amending Regulation.*].

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