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Subject: Draft directives for the negotiation of bilateral agreements between the European Union and Australia, Brazil, Canada, Hong Kong, India, Japan, Korea, Mexico, Saudi Arabia, Singapore, South Africa and the United States on mutual access to, and exchange of information on, derivative contracts held in trade repositories

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.



Council of the
European Union

Brussels, 8 September 2014

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RESTREINT UE/EU RESTRICTED

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NOTE

from:	General Secretariat of the Council
to:	Delegations
Subject:	Draft directives for the negotiation of bilateral agreements between the European Union and Australia, Brazil, Canada, Hong Kong, India, Japan, Korea, Mexico, Saudi Arabia, Singapore, South Africa and the United States on mutual access to, and exchange of information on, derivative contracts held in trade repositories

Delegations will find attached the draft directives for the negotiation of bilateral agreements between the European Union and Australia, Brazil, Canada, Hong Kong, India, Japan, Korea, Mexico, Saudi Arabia, Singapore, South Africa and the United States on mutual access to, and exchange of information on, derivative contracts held in trade repositories

Encl.:

Draft directives for the negotiation of bilateral agreements between the European Union and Australia, Brazil, Canada, Hong Kong, India, Japan, Korea, Mexico, Saudi Arabia, Singapore, South Africa and the United States on mutual access to, and exchange of information on, derivative contracts held in trade repositories

The Commission will, in the course of negotiations, aim to achieve the following objectives:

- In the context of global OTC derivatives markets, Agreements will duly reflect the necessity and importance of mutual access to data on derivative contracts held in the different jurisdictions 'respective trade repositories by EU and third country relevant authorities.
- The objective of the Agreements – to be concluded bilaterally with Australia, Brazil, Canada, Hong Kong, India, Japan, Korea, Mexico, Saudi Arabia, Singapore, South Africa and the United States – will be to ensure mutual access to, and exchange of information by the relevant authorities on derivative contracts held in trade repositories.
- Agreements will ensure that all the relevant EU authorities listed in Article 81(3) of Regulation (EU) No 648/2012 have direct and immediate access to all the information they need to fulfil their mandates, when this information is stored in a trade repository registered in a third country with which an Agreement is concluded.
- Agreements will identify (as set out in the Agreement or its Annex) the relevant authorities from each of the third countries concerned that, in accordance with Article 81(3) of Regulation (EU) No 648/2012 will have access to data on derivative contracts held by trade repositories in the EU.
- Agreements will define the scope of data access, i.e. the level of detail of information that third country authorities will be entitled to access from EU trade repositories in accordance with Article 81(3) of Regulation (EU) No 648/2012, as well as the level of detail of information that the EU relevant authorities will be entitled to access from the third countries' trade repositories.

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- Agreements will ensure the removal, if any, of specific barriers or obstacles to access to relevant information held in third country trade repositories by EU authorities.
- Agreements will ensure that, when accessing the data held in EU trade repositories, guarantees of professional secrecy, limitation of the use of the information to be accessed and confidentiality equivalent to the ones set out in Regulation (EU) No 648/2012 are in place regarding access to EU trade repositories' data by third countries' authorities.
- Agreements will ensure that, in case of access to personal data held in EU trade repositories by the relevant authorities of the third countries, the rights to privacy and of personal data protection of natural persons when processing personal data is appropriately protected in line with the requirements laid down in Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data. In particular, Agreements will ensure that the transmission of and access to personal data is governed by the following principles: purpose limitation, necessity and proportionality, transparency vis-à-vis data subjects, rights of data subjects (right of access, rectification, deletion, right to object), guarantees regarding onward transfers, data quality (complete, accurate and up-to-date), data retention (maximum data retention period, as based on purpose-functional need of the data processing, necessity and proportionality), security measures (technical and organizational security measures), independent oversight, administrative and judicial redress mechanisms for data subjects and equal treatment of EU and third country citizens.
- Agreements will specify that it in no way affects the EU data protection standards or national legislation nor limit the supervisory competence of data protection authorities.
- Agreements shall include a provision stipulating that nothing in the Agreement shall cause prejudice to national or EU laws regarding public access to official documents.
- Agreements will provide for a dispute settlement mechanism with respect to their interpretation, application and implementation.

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- Agreements will include the possibility to be reviewed as necessary.
 - Agreements will be concluded for a period of 4 years and will include a provision whereby a Party may terminate each Agreement and a provision whereby an Agreement may be renewed for a similar period unless a Party terminates it.
 - Agreements will be binding and enforceable against trade repositories registered in the third country by the EU relevant authorities for which direct and immediate access must be ensured.
 - The Agreements will specify their territorial application.
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