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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 19 December 2012

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

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Subject: COMMISSION DELEGATED REGULATION (EU) No .../.. of 19.12.2012
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 on the minimum details of the
data to be reported to trade repositories

Delegations will find attached Commission document C(2012) 9586 final.

Encl.: C(2012) 9586 final



Brussels, 19.12.2012
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COMMISSION DELEGATED REGULATION (EU) No .../..

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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 on the minimum details of the data to be reported to trade repositories

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 9(5) of Regulation (EU) No 648/2012 empowers the Commission to adopt, following submission of draft standards by the European Securities and Markets Authority (ESMA), and in accordance with Article 10 of Regulation (EU) No 1095/2010, delegated acts on regulatory technical standards specifying the information to be reported to trade repositories.

In accordance with Articles 10 to 15 of Regulation (EU) No 1095/2010 establishing ESMA, the Commission shall decide within three months of receipt of the draft standards whether to endorse the drafts submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1095/2010, ESMA has carried out a public consultation on the draft technical standards submitted to the Commission in accordance with Articles of Regulation (EU) No 648/2012. A consultation paper was published on the ESMA internet site on 26 June 2012, and the consultation closed on 5 August 2012. Prior to the publication of Regulation (EU) No 648/2012 on 27 July 2012, ESMA released a discussion paper¹ (DP) on the basis of the political agreement on EMIR reached on 9 February 2012. This document presented preliminary views and possible options for the development of the draft technical standards ESMA is required to develop.

Moreover, ESMA also consulted i) the Post-Trading Consultative Working Group which was asked in September 2011 to respond to a call for input; ii) the Securities and Markets Stakeholder Group (SMSG), which provided advice on both the Discussion Paper and the Consultation Paper; iii) the authorities that ESMA is required to consult under the different articles of Regulation (EU) No 648/2012. ESMA held two opening hearings on 6 March 2012 and 12 July 2012. Together with the draft technical standards, ESMA has submitted an explanation of how the outcome of these consultations has been taken into account in the development of the final draft technical standards submitted to the Commission.

3. ANALYSIS OF COSTS AND BENEFITS

Together with the draft technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1095/2010, ESMA has submitted an analysis of the costs and benefits related to the draft technical standards submitted to the Commission. This analysis is available at:

<http://www.esma.europa.eu/content/Impact-assessment-Annex-VIII-Final-report-draft-Regulatory-and-Implementing-Technical-Standa>

The analysis examines the main benefits and costs that have been identified by ESMA in relation to the draft technical standards.

¹ <http://www.esma.europa.eu/system/files/2012-95.pdf>

The classification of emission allowances derivatives as a category of commodity derivatives should be seen only for reporting purposes under Regulation No 648/2012. It is without prejudice to any legal classification of emission allowances or derivatives thereof which may arise from any other piece of Union legislation applying to the financial markets. Furthermore, such classification of emission allowances for reporting purposes under Regulation No 648/2012 may need to be revisited in view of the outcome of the review of Directive No 2004/39/EC (MiFID).

4. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 1 specifies the details to set out in the reports to trade repositories.

Article 2 details the treatment of cleared trades for reporting purposes.

Article 3 details the reporting of exposures.

Article 4 details the reporting log.

Article 5 provides that the Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal.

The Annex specifies in two tables the details of the information relating respectively (i) to the counterparties to a contract and (ii) to the derivative contract between the two counterparties.

COMMISSION DELEGATED REGULATION (EU) No .../..

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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 on the minimum details of the data to be reported to trade repositories

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the opinion of the European Central Bank²,

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 repositories³, and in particular Article 9(5) thereof,

Whereas:

- (1) In order to allow flexibility, a counterparty should be able to delegate the reporting of a contract to the other counterparty or to a third party. Counterparties should also be able to agree to delegate reporting to a common third entity including a central counterparty (CCP), the latter submitting one report, including the relevant table of fields, to the trade repository. In these circumstances and in order to ensure data quality, the report should indicate that it is made on behalf of both counterparties and contain the full set of details that would have been reported had the contract been reported separately.
- (2) To avoid inconsistencies in the Common Data tables, each counterparty to a derivative contract should ensure that the Common Data reported is agreed between both parties to the trade. A unique trade identifier will help with the reconciliation of the data in the case that the counterparties are reporting to different trade repositories.
- (3) To avoid duplicate reporting and to reduce the reporting burden, where one counterparty or CCP reports on behalf of both counterparties, the counterparty or CCP should be able to send one report to the trade repository containing the relevant information.
- (4) Valuation of derivative contracts is essential to allow regulators to fulfil their mandates, in particular when it comes to financial stability. The mark to market or

² OJ C X, xx.xx.201x, p.xx

³ OJ L 201, 27.7.2012.

mark to model value of a contract indicates the sign and size of the exposures related to that contract, and complements the information on the original value specified in the contract.

- (5) Gathering information on the collateral pertaining to a particular contract is essential to ensuring the proper monitoring of exposures. To enable this, counterparties that collateralise their transactions should report such collateralisation details on a transaction level basis. Where collateral is calculated on the basis of net positions resulting from a set of contracts, and is therefore not posted on a transaction level basis but on a portfolio basis, counterparties should be able to report the portfolio using a unique code or numbering system as determined by the counterparty. That unique code should identify the specific portfolio over which the collateral is exchanged where the counterparty has more than one portfolio and should also ensure that a derivative contract can be linked to a particular portfolio over which collateral is being held.
- (6) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission and it reflects the relevance of the role of trade repositories to improve transparency of markets towards the public and regulators, the data to be reported to, collected by and made available by trade repositories depending on derivative class and the nature of the trade.
- (7) ESMA has consulted the relevant authorities and the members of the European System of Central Banks (ESCB) before submitting the draft regulatory technical standards on which this Regulation is based. In accordance with Article 10 of 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)⁴, ESMA has also conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Details to set out in reports pursuant to Article 9 (1) and (3) of Regulation (EU) No 648/2012

1. Reports to a trade repository shall include:
 - (a) the details set out in Table 1 of the Annex which contains information relating to the counterparties to a contract;
 - (b) the information set out in Table 2 of the Annex which contains details pertaining to the derivative contract concluded between the two counterparties.

⁴ OJ L 331, 15.12.2010, p.84.

2. For the purposes of paragraph 1, conclusion of a contract shall mean ‘execution of a transaction’ as referred to in Article 25 (3) of Directive 2004 /39/EC of the European Parliament and of the Council⁵.
3. Where one report is made on behalf of both counterparties, it shall contain the information set out in Table 1 of the Annex in relation to each of the counterparties. The information set out in Table 2 of the Annex shall be submitted only once.
4. Where one report is made on behalf of both counterparties it shall indicate this fact, as set out in field 9 of Table 1 of the Annex.
5. Where one counterparty reports the details of a contract to a trade repository on behalf of the other counterparty, or a third entity reports a contract to a trade repository on behalf of one or both counterparties, the details reported shall include the full set of details that would have been reported had the contracts been reported to the trade repository by each counterparty separately.
6. Where a derivative contract includes features typical of more than one underlying asset as specified in Table 2 of the Annex, a report shall indicate the asset class that the counterparties agree the contract most closely resembles before the report is sent to a trade repository.

Article 2

Cleared trades

1. Where an existing contract is subsequently cleared by a CCP, clearing should be reported as a modification of the existing contract.
2. Where a contract is concluded in a trading venue and cleared by a CCP such that a counterparty is not aware of the identity of the other counterparty, the reporting counterparty shall identify that CCP as its counterparty.

Article 3

Reporting of exposures

1. The data on collateral required under Table 1 of the Annex shall include all posted collateral.
2. Where a counterparty does not collateralise on a transaction level basis, counterparties shall report to a trade repository collateral posted on a portfolio basis.
3. Where the collateral related to a contract is reported on a portfolio basis, the reporting counterparty shall report to the trade repository a code identifying the portfolio of collateral posted to the other counterparty related to the reported contract.

⁵ OJ L 145, 30.4.2004, p. 1.

4. Non-financial counterparties other than those referred to in Article 10 of Regulation (EU) No 648/2012 shall not be required to report collateral, mark to market, or mark to model valuations of the contracts referred to in Table 1 of the Annex.
5. For contracts cleared by a CCP, mark to market valuations shall only be provided by the CCP.

Article 4

Reporting log

Modifications to the data registered in trade repositories shall be kept in a log identifying the person or persons that requested the modification, including the trade repository itself if applicable, the reason or reasons for such modification, a date and timestamp and a clear description of the changes, including the old and new contents of the relevant data as set out in fields 58 and 59 of Table 2 of the Annex.

Article 5

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*.

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

Done at Brussels, 19.12.2012

For the Commission
The President
José Manuel BARROSO

ANNEX

Details to be reported to trade repositories

Table 1 - Counterparty Data		
	FIELD	DETAILS TO BE REPORTED
	Parties to the contract	
1	Reporting timestamp	Date and time of reporting to the trade repository.
2	Counterparty ID	Unique code identifying the reporting counterparty. In case of an individual, a client code shall be used.
3	ID of the other counterparty	Unique code identifying the other counterparty of the contract. This field shall be filled from the perspective of the reporting counterparty. In case of an individual, a client code shall be used.
4	Name of the counterparty	Corporate name of the reporting counterparty. This field can be left blank in case the counterparty ID already contains this information.
5	Domicile of the counterparty	Information on the registered office, consisting of full address, city and country of the reporting counterparty. This field can be left blank in case the counterparty ID already contains this information.
6	Corporate sector of the counterparty	Nature of the reporting counterparty's company activities (bank, insurance company, etc.). This field can be left blank in case the counterparty ID already contains this information.
7	Financial or non-financial nature of the counterparty	Indicate if the reporting counterparty is a financial or non-financial counterparty in accordance with Article 2(8,9) of Regulation (EU) No 648/2012.
8	Broker ID	In case a broker acts as intermediary for the reporting counterparty without becoming a counterparty, the reporting counterparty shall identify this broker by a unique code. In case of an individual, a client code shall be used.
9	Reporting entity ID	In case the reporting counterparty has delegated the submission of the report to a third party or to the other counterparty, this entity has to be identified in this field by a unique code. Otherwise this field shall be left blank. In case of an individual, a client code shall be used, as assigned by the legal entity used by the individual counterparty to execute the trade.
10	Clearing member ID	In case the reporting counterparty is not a clearing member, its clearing member shall be identified in this field by a unique code. In case of an individual, a client code, as assigned by the CCP, shall be used.
11	Beneficiary ID	The party subject to the rights and obligations arising from the contract. Where the transaction is executed via a structure, such as a trust or fund, representing a number of beneficiaries, the beneficiary should be identified as that structure. If the beneficiary of the

		contract is not a counterparty to this contract, the reporting counterparty has to identify this beneficiary by a unique code or, in case of individuals, by a client code as assigned by the legal entity used by the individual.
12	Trading capacity	Identifies whether the reporting counterparty has concluded the contract as principal on own account (on own behalf or behalf of a client) or as agent for the account of and on behalf of a client.
13	Counterparty side	Identifies whether the contract was a buy or a sell. In the case of an interest rate derivative contract, the buy side will represent the payer of leg 1 and the sell side will be the payer of leg 2.
14	Contract with non-EEA counterparty	Indicates whether the other counterparty is domiciled outside the EEA.
15	Directly linked to commercial activity or treasury financing	Information on whether the contract is objectively measurable as directly linked to the reporting counterparty's commercial or treasury financing activity, as referred to in Art. 10(3) of Regulation (EU) No 648/2012. This field shall be left blank in case the reporting counterparty is a financial counterparty, as referred to in Art. 2 (8) Regulation (EU) No 648/2012.
16	Clearing threshold	Information on whether the reporting counterparty is above the clearing threshold as referred to in Art. 10(2) of Regulation (EU) No 648/2012. This field shall be left blank in case the reporting counterparty is a financial counterparty, as referred to in Art. 2 (8) Regulation (EU) No 648/2012.
17	Mark to market value of contract	Mark to market valuation of the contract, or mark to model valuation where applicable under Article 11(2) of Regulation (EU) No 648/2012.
18	Currency of mark to market value of the contract	The currency used for the mark to market valuation of the contract, or mark to model valuation where applicable under Article 11(2) of Regulation (EU) No 648/2012.
19	Valuation date	Date of the last mark to market or mark to model valuation.
20	Valuation time	Time of the last mark to market or mark to model valuation.
21	Valuation type	Indicate whether valuation was performed mark to market or mark to model.
22	Collateralisation	Whether collateralisation was performed.
23	Collateral portfolio	Whether the collateralisation was performed on a portfolio basis. Portfolio means the collateral calculated on the basis of net positions resulting from a set of contracts, rather than per trade.
24	Collateral portfolio code	If collateral is reported on a portfolio basis, the portfolio should be identified by a unique code determined by the reporting counterparty.
25	Value of the collateral	Value of the collateral posted by the reporting counterparty to the other counterparty. Where collateral is posted on a portfolio basis, this field should include the value of all collateral posted for the portfolio.
26	Currency of the collateral value	Specify the value of the collateral for field 25.

Table 2 - Common Data			
	FIELD	DETAILS TO BE REPORTED	APPLICABLE TYPES OF DERIVATIVE CONTRACT
	Section 2a - Contract type		All contracts
1	Taxonomy used	The contract shall be identified by using a product identifier.	
2	Product ID 1	The contract shall be identified by using a product identifier.	
3	Product ID 2	The contract shall be identified by using a product identifier.	
4	Underlying	The underlying shall be identified by using a unique identifier for this underlying. In case of baskets or indices, an indication for this basket or index shall be used where a unique identifier does not exist.	
5	Notional currency 1	The currency of the notional amount. In the case of an interest rate derivative contract, this will be the notional currency of leg 1.	
6	Notional currency 2	The currency of the notional amount. In the case of an interest rate derivative contract, this will be the notional currency of leg 2.	
7	Deliverable currency	The currency to be delivered.	
	Section 2b - Details on the transaction		All contracts
8	Trade ID	A Unique Trade ID agreed at the European level, which is provided by the reporting counterparty. If there is no unique trade ID in place, a unique code should be generated and agreed with the other counterparty.	
9	Transaction reference number	A unique identification number for the transaction provided by the reporting entity or a third party reporting on its behalf.	
10	Venue of execution	The venue of execution shall be identified by a unique code for this venue. In case of a contract concluded OTC, it has to be identified whether the respective instrument is admitted to trading but traded OTC or not admitted to trading and traded OTC.	
11	Compression	Identify whether the contract results from a compression exercise.	

12	Price / rate	The price per derivative excluding, where applicable, commission and accrued interest.	
13	Price notation	The manner in which the price is expressed.	
14	Notional amount	Original value of the contract.	
15	Price multiplier	The number of units of the financial instrument which are contained in a trading lot; for example, the number of derivatives represented by one contract.	
16	Quantity	Number of contracts included in the report, where more than one derivative contract is reported.	
17	Up-front payment	Amount of any up-front payment the reporting counterparty made or received.	
18	Delivery type	Indicates whether the contract is settled physically or in cash.	
19	Execution timestamp	As defined in Article 1 (2).	
20	Effective date	Date when obligations under the contract come into effect.	
21	Maturity date	Original date of expiry of the reported contract. An early termination shall not be reported in this field.	
22	Termination date	Termination date of the reported contract. If not different from maturity date, this field shall be left blank.	
23	Date of Settlement	Date of settlement of the underlying. If more than one, further fields may be used (e.g. 23A, 23B, 23C...).	
24	Master Agreement type	Reference to the name of the relevant master agreement, if used for the reported contract (e.g. ISDA Master Agreement; Master Power Purchase and Sale Agreement; International ForEx Master Agreement; European Master Agreement or any local Master Agreements).	
25	Master Agreement version	Reference to the year of the master agreement version used for the reported trade, if applicable (e.g. 1992, 2002, ...).	
	Section 2c - Risk mitigation / Reporting		All contracts
26	Confirmation timestamp	Date and time of the confirmation, as defined under Regulation (EC) the xx/2012 [Commission delegated regulation endorsing draft regulatory technical standards on OTC Derivatives] indicating time zone in which the confirmation has taken place.	
27	Confirmation means	Whether the contract was electronically confirmed, non-electronically confirmed or remains unconfirmed.	

	Section 2d – Clearing		All contracts
28	Clearing obligation	Indicates, whether the reported contract is subject to the clearing obligation under Regulation (EU) No 648/2012.	
29	Cleared	Indicates, whether clearing has taken place.	
30	Clearing timestamp	Time and date when clearing took place.	
31	CCP	In case of a contract that has been cleared, the unique code for the CCP that has cleared the contract.	
32	Intragroup	Indicates whether the contract was entered into as an intra-group transaction, defined in Article 3 of Regulation (EU) No 648/2012.	
	Section 2e Interest Rates	If a UPI is reported and contains all the information below, this is not required to be reported.	Interest rate derivatives
33	Fixed rate of leg 1	An indication of the fixed rate leg 1 used, if applicable.	
34	Fixed rate of leg 2	An indication of the fixed rate leg 2 used, if applicable.	
35	Fixed rate day count	The actual number of days in the relevant fixed rate payer calculation period, if applicable.	
36	Fixed leg payment frequency	Frequency of payments for the fixed rate leg, if applicable.	
37	Floating rate payment frequency	Frequency of payments for the floating rate leg, if applicable.	
38	Floating rate reset frequency	Frequency of floating rate leg resets, if applicable.	
39	Floating rate of leg 1	An indication of the interest rates used which are reset at predetermined intervals by reference to a market reference rate, if applicable.	
40	Floating rate of leg 2	An indication of the interest rates used which are reset at predetermined intervals by reference to a market reference rate, if applicable.	
	Section 2f – Foreign Exchange	If a UPI is reported and contains all the information below, this is not required to be reported.	Currency derivatives
41	Currency 2	The cross currency, if different from the currency of delivery.	
42	Exchange rate 1	The contractual rate of exchange of the currencies.	
43	Forward exchange rate	Forward exchange rate on value date.	
44	Exchange rate basis	Quote base for exchange rate.	

	Section 2g - Commodities	If a UPI is reported and contains all the information below, this is not required to be reported unless to be reported according to Regulation (EU) No 1227/2011.	Commodity derivatives
	General		
45	Commodity base	Indicates the type of commodity underlying the contract.	
46	Commodity details	Details of the particular commodity beyond field 45.	
	Energy	Information to be reported according to Regulation (EU) No 1227/2011, if applicable.	
47	Delivery point or zone	Delivery point(s) of market area(s).	
48	Interconnection Point	Identification of the border(s) or border point(s) of a transportation contract.	
49	Load type	Repeatable section of fields 50-54 to identify the product delivery profile which correspond to the delivery periods of a day.	
50	Delivery start date and time	Start date and time of delivery.	
51	Delivery end date and time	End date and time of delivery.	
52	Contract capacity	Quantity per delivery time interval.	
53	Quantity Unit	Daily or hourly quantity in MWh or kWh/d which corresponds to the underlying commodity.	
54	Price/time interval quantities	If applicable, price per time interval quantities.	
	Section 2h - Options	If a UPI is reported and contains all the information below, this is not required to be reported.	Contracts that contain an option
55	Option type	Indicates whether the contract is a call or a put.	
56	Option style (exercise)	Indicates whether the option may be exercised only at a fixed date (European, and Asian style), a series of pre-specified dates (Bermudan) or at any time during the life of the contract (American style).	
57	Strike price (cap/floor rate)	The strike price of the option.	
	Section 2i - Modifications to the report		All contracts
58	Action type	Whether the report contains: <ul style="list-style-type: none"> a derivative contract or post-trade event for the first time, in which case it will be identified as 'new'; 	

		<ul style="list-style-type: none"> • a modification of details of a previously reported derivative contract, in which case it will be identified as 'modify'; • a cancellation of a wrongly submitted report, in which case, it will be identified as 'error'; • a termination of an existing contract, in which case it will be identified as 'cancel'; • a compression of the reported contract, in which case it will be identified as 'compression'; • an update of a contract valuation, in which case it will be identified as 'valuation update'; • any other amendment to the report, in which case it will be identified as 'other'. 	
59	Details of action type	Where field 58 is reported as 'other' the details of such amendment should be specified here.	