



Brussels, 10.6.2022  
C(2022) 3581 final

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

**of 10.6.2022**

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

(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.

In particular, Article 78(10) of that regulation requires ESMA to develop regulatory technical standards specifying the procedures for reconciliation of data between the trade repositories and for verification by the trade repositories of the completeness and correctness of the data reported under Article 9.

### **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***

##### **Verification of derivatives by a trade repository**

A key element for the correct functioning of the reporting regime under EMIR and ensuring the quality of derivative reporting is the validation by trade repositories of the data submission by the counterparties that are subject to the reporting obligation. Although Article 9(1e) EMIR as amended by EMIR REFIT, provides that “Counterparties and CCPs that are required to report the details of derivative contracts shall ensure that such details are reported correctly and without duplication.”, with Article 78(9) and 78(10) EMIR as amended by EMIR REFIT also places responsibility regarding the procedures to verify the data on the trade repositories.

ESMA proposed in the Consultation Paper a framework for the collection of data and data validation performed by trade repositories.

To ensure legal certainty with regard to the compliance with the reporting obligation when setting up the procedures for verification by trade repositories, ESMA proposed to reject data that was not reported in accordance with the requirements under EMIR Article 9, as opposed to only issuing warnings to the relevant entity.

The majority of respondents supported ESMA’s proposal for the framework and agreed that it will contribute to the overall data quality.

##### **Procedure for update of Legal Entity Identifiers (LEI)**

In the Consultation Paper, ESMA stressed the importance of the process to be applied by trade repositories and counterparties in case of changes in the LEIs due to mergers, acquisition or other corporate restructuring events. The majority of respondents agreed with ESMA’s proposal to clarify these aspects and to include in the RTS the key elements of the process, especially with regard to elements related to the timeframe of the LEI update elements as these are fundamental to ensure data quality.

##### **Reconciliation of data by trade repositories**

The lack of initial specification of the reconciliation process by ESMA, due to the absence of legal mandate, led to (i) inconsistent reconciliation procedures, (ii) inconsistent reconciliation

timings, (iii) tolerances and categorisation of fields decided by trade repositories, (iv) lengthy change request implementation times. To address these issues, ESMA proposed that once the data is validated by the trade repositories, the trade repositories should reconcile the details of the two sides of the derivative that are reported. This results from the legal basis in Article 78(9)(a) EMIR, as amended by EMIR REFIT which provides that the trade repositories shall establish “procedures for the effective reconciliation of data between trade repositories”. ESMA proposed in the Consultation Paper several general principles for performing reconciliation. Respondents to the public consultation supported the harmonisation of the reconciliation process and provided a number of observations which have been taken into consideration by ESMA in the principles established in this draft delegated regulation.

#### End-of-day response mechanism

Trade repositories should provide the reporting counterparties, report submitting entities, entities responsible for reporting as well as third parties which have been granted access to information under Article 78(7) EMIR as applicable, with certain end-of-day information which should allow them to enhance the quality of the data reported under EMIR.

ESMA considers that having end-of-day information on rejected trades is practical information for the entities (i) to corroborate their submissions, (ii) to act on any potential derivative that has not yet been corrected, and (iii) to enable straight-through processing and workflow automation.

ESMA received an important number of very detailed responses to its proposals. After considering this feedback, ESMA has proposed a minimum set of end-of-day reports which are to be made available by trade repositories.

### **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.

ESMA understands that the proposed technical standards will enhance the quality of the data reported under EMIR and thus provide a clear benefit to the authorities which are entitled to access EMIR data, but also to reporting entities and trade repositories. For example, the proposed amendments aligning the requirements in the EU with the global guidance on reporting of OTC derivatives are expected to bring a significant reduction in costs for entities reporting under several jurisdictions. Similarly, in addition to the standardisation of formats and use of ISO 20022 for reporting by the counterparties to the trade repositories, a more comprehensive feedback on rejections and warnings will contribute to easier correction of data by the reporting entities and to the reduction of the data quality issues, thus will further enhance the automation of reporting and reduce the data quality issues. In the case of reconciliation, the proposed amendments aligning the requirements with regards to the reconciliation across the TRs are expected to result in a more consistent reconciliation feedback provided to the reporting entities, and contribute to easier reconciliation of the reports, thus decreasing the need of the burdensome follow-up processes on the reconciliation breaks thus reducing the compliance cost and enhancing the data quality.

Although these benefits outweigh the costs, it is inevitable that in the short run the modifications to reporting systems emerging from the proposed regulatory and implementing

technical standards will imply costs for authorities, counterparties and trade repositories. ESMA is proposing an implementation timeline which should help smooth the costs implications.

#### **4. LEGAL ELEMENTS OF THE DELEGATED ACT**

Article 1 sets out the process for the verification of reports on derivatives by trade repositories.

Article 2 sets out the procedure for the update of LEIs.

Article 3 establishes the procedure for the reconciliation of data by trade repositories.

Article 4 establishes the end-of-day information with regard to reported derivatives that trade repositories have to make available to certain entities.

Article 5 sets out the date of entry into force of the delegated regulation.

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(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 repositories<sup>1</sup>, and in particular Article 78(10) thereof,

Whereas:

- (1) To ensure the high quality of the details of derivatives reported to trade repositories, trade repositories should verify the identity of the report submitting entities, the logical integrity of the sequence in which the details of the derivative are reported, and the completeness and correctness of those details.
- (2) For the same reason, trade repositories should reconcile the details of each derivative report received where both counterparties have a reporting obligation. A standardised process should be specified to enable trade repositories to conduct reconciliation in a consistent manner and to reduce the risks of details of derivatives not being reconciled. Certain details of derivatives, however, might not be identical due to the specificities of the technology systems used by the entities submitting the report. Certain tolerances therefore need to be applied, so that minor differences in the reported details of derivatives do not prevent the authorities from analysing the data with an adequate level of confidence.
- (3) Furthermore and notwithstanding other obligations with regard to the details of derivatives collected and recorded when performing the reconciliation process, the trade repositories should ensure the confidentiality of the data exchanged between them and made available to the reporting counterparties, the entities responsible for reporting and the report submitting entities.
- (4) Where a corporate restructuring event resulting in the change of legal entity identifier ('LEI') of a counterparty takes place, the details of the entities identified in a derivative report need to be updated. To ensure the integrity of that information, which is essential for the monitoring of systemic risks to financial stability, it is necessary that the update is performed centrally by the trade repositories. For that reason, a

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<sup>1</sup> OJ L 201, 27.7.2012, p. 1.

procedure should be established to ensure that trade repositories can update the identifier of the entity in a centralised manner, thus ensuring an efficient, robust and timely process.

- (5) Report submitting entities should be given sufficient time to adapt to the reporting requirements, in particular to prevent the accumulation of non-reconciled trades immediately after the reporting obligation starts to apply. It is therefore appropriate that in a first phase only a reduced set of fields should be reconciled.
- (6) Report submitting entities and entities responsible for reporting, where applicable, should be able to monitor their compliance with their reporting obligations under Regulation (EU) 648/2012. They should therefore be able to access certain information, on a daily basis, in respect of those reports, including the result of the verification of those reports, also where a warning has been generated, and the progress of the reconciliation of the reported data. It is therefore necessary to specify the information that a trade repository should make available to these entities at the end of each working day.
- (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 consulted the members of the European System of Central Banks and 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 Council<sup>2</sup>.
- (9) To enable counterparties and trade repositories to take all necessary actions to adapt to the new requirements, the date of application of this Regulation should be deferred by eighteen months,

HAS ADOPTED THIS REGULATION:

*Article 1*  
***Verification of derivatives by trade repositories***

1. A trade repository shall verify all of the following in a received derivative report:
  - (a) the identity of the report submitting entity as referred to in field 2 of Table 1 and field 2 of Table 3 of the Annex to [*PO please insert reference to C(2022) 3588*];
  - (b) that the XML template used to report a derivative complies with the ISO 20022 methodology in accordance with Article 1 of [*PO please insert reference to C(2022) 3588*];
  - (c) that the report submitting entity, if different from the entity responsible for reporting as referred to in field 3 of Table 1 and field 3 in Table 3 of the Annex to [*PO please insert reference to C(2022) 3588*], is duly authorised to report on behalf of counterparty 1 or the entity responsible for reporting, if different from

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<sup>2</sup> 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).

counterparty 1, as referred to in field 4 of Table 1 and field 4 in Table 3 of the Annex to [PO please insert reference to C(2022) 3588];

- (d) that the same derivative has not been submitted previously;
  - (e) that a derivative report with action type ‘Modification’, ‘Margin Update’, ‘Valuation’, ‘Correction’, ‘Error’ or ‘Terminate’ relates to a previously submitted derivative;
  - (f) that a derivative report with action type ‘Modification’ does not relate to a derivative that has been reported as cancelled with action type ‘Error’ which has not been subsequently reported with action type ‘Revive’;
  - (g) that a derivative report does not include the action type ‘New’ in respect of a derivative that has previously been reported;
  - (h) that a derivative report does not include the action type ‘Position component’ in respect of a derivative that has previously been reported;
  - (i) that a derivative report does not purport to modify the details of fields ‘Counterparty 1’ or ‘Counterparty 2’ to a previously reported derivative;
  - (j) that a derivative report does not purport to modify an existing derivative by specifying an effective date later than the reported maturity date of the derivative;
  - (k) that a derivative reported with action type ‘Revive’ relates to a previously submitted derivative report with action type ‘Error’ or ‘Terminate’ or to a derivative that has matured;
  - (l) the correctness and completeness of the derivative report.
2. A trade repository shall reject a derivative report that does not comply with one of the requirements set out in paragraph 1 and assign to it one of the rejection categories set out in Table 1 of the Annex.
  3. A trade repository shall provide the report submitting entities with detailed information on the results of the data verification referred to in paragraph 1 within sixty minutes after it has received a derivative report. A trade repository shall provide those results in an XML format and a template in accordance with the ISO 20022 methodology. The results shall specify reasons for the rejection of a derivative report in accordance with Table 1 of the Annex.

## *Article 2*

### ***Procedure for updates of Legal Entity Identifiers***

1. A trade repository to which a request under Article 8 of [PO please insert reference to C(2022) 3588] is addressed shall identify the outstanding derivatives referred to in paragraph 2 of Article 2 of [PO please insert reference to C(2022) 3588] at the time of the corporate restructuring event, where the entity is reported with the identifier used before the corporate restructuring event in the field ‘Counterparty 1’ or ‘Counterparty 2’, as informed in the relevant request. It shall replace the old identifier with the new Legal Entity Identifier (‘LEI’) in the reports relating to all those derivatives at the time of the event referred to in Article 8 of [PO please insert reference to C(2022) 3588] pertaining to that counterparty. A trade repository shall perform the procedure on the update of the identifier at the latest on the day of

restructuring or within 30 calendar days as of receipt of the request if reported less than 30 calendar days prior to the date of the corporate restructuring event.

2. A trade repository shall identify the relevant derivatives referred to in paragraph 2 of Article 2 of [*PO please insert reference to C(2022) 3588*] at the time of the corporate restructuring event, where the entity is identified with the old identifier in any of the fields, and replace that identifier with the new LEI. Where a corporate restructuring event relates to an update of the LEI for fields other than ‘Counterparty 1’ or ‘Counterparty 2’, the trade repository shall perform such an update of the relevant derivatives only following a timely confirmation by counterparty 1 or the entity responsible for reporting.
3. A trade repository shall carry out the following actions:
  - (a) following the receipt of the relevant confirmation under paragraph 2, implement the update of the LEI as of the date referred to in paragraph 1;
  - (b) broadcast the following information at the earliest possibility, and no later than 5 working days after the complete notification is received, to all the other trade repositories and to the reporting counterparties, report submitting entities, entities responsible for reporting involved in the derivatives contracts concerned by the LEI update, and to third parties which have been granted access to information under Article 78(7) of Regulation (EU) No 648/2012, as applicable:
    - (i) the old identifier(s);
    - (ii) the new identifier;
    - (iii) the date as of which the update shall be done;
    - (iv) in case of corporate events affecting a subset of the derivatives outstanding at the date of the event, the list of the unique trade identifiers (UTIs) of the derivatives concerned by the LEI update;
  - (c) notify, at the latest the working day before the date on which the update is applied, the entities listed in Article 81(3) of Regulation (EU) No 648/2012 who have access to the data relating to the derivatives that have been updated, by way of a specific file in machine-readable format:
    - (i) the old identifier(s);
    - (ii) the new identifier;
    - (iii) the date as of which the update shall be done;
    - (iv) in case of corporate events affecting a subset of the derivatives outstanding at the date of the event, the list of the UTIs of the derivatives concerned by the LEI update;
  - (d) record the LEI update in the reporting log.
4. A trade repository shall not update the LEIs reported for derivatives different from those referred to in paragraph 2 of Article 2 of [*PO please insert reference to C(2022) 3588*] at the time of the corporate event.

*Article 3*  
***Reconciliation of data by trade repositories***

1. A trade repository shall seek to reconcile a reported derivative by undertaking the steps set out in paragraph 3, provided that all of the following conditions are met:
  - (a) the trade repository has completed the verifications set out in paragraphs 1 and 2 of Article 1;
  - (b) both counterparties to the reported derivative have a reporting obligation pursuant to Article 9 of Regulation (EU) No 648/2012;
  - (c) the trade repository has not received a report with the action type ‘Error’ in respect of the reported derivative, unless such report has been followed by a report with action type ‘Revive’.
2. A trade repository shall have arrangements in place to ensure the confidentiality of the data when exchanging information with other trade repositories and when providing information to reporting counterparties, report submitting entities, entities responsible for reporting as well as third parties which have been granted access to information under Article 78(7) of Regulation (EU) No 648/2012 about the values for all the fields that are subject to reconciliation.
3. Where all the conditions of paragraph 1 are met, a trade repository shall undertake the following steps, using the latest reported value for each of the fields in Table 2 of the Annex as of the preceding working day:
  - (a) a trade repository having received a derivative report shall verify whether it has received a corresponding report from or on behalf of the other counterparty;
  - (b) a trade repository that has not received a corresponding derivative report as referred to in point (a) shall attempt to identify the trade repository that has received the corresponding derivative report by communicating to all registered trade repositories the values of the following fields of the reported derivative: ‘Unique Transaction Identifier’, ‘Counterparty 1’ and ‘Counterparty 2’;
  - (c) a trade repository that determines that another trade repository has received a corresponding derivative report referred to in point (a) shall exchange with that trade repository the details of the reported derivative in an XML format and a template developed in accordance with the ISO 20022 methodology;
  - (d) a trade repository shall treat a reported derivative as reconciled where the details of that derivative subject to reconciliation match the details of the corresponding derivative as referred to in point (a) and in accordance with the applicable tolerance limits and relevant dates of application as laid down in Table 2 of the Annex;
  - (e) a trade repository shall subsequently assign values for the reconciliation categories for each reported derivatives transaction, as set out in Table 3 of the Annex;
  - (f) a trade repository shall conclude the steps in points (a) to (e) at the earliest opportunity and shall take no such steps after midnight Universal Coordinated Time on a given working day;
  - (g) a trade repository that cannot reconcile a reported derivative shall seek to match the details of that reported derivative on the following working day. The

trade repository shall no longer seek to reconcile the reported derivative thirty calendar days after the derivative is not outstanding.

4. A trade repository shall confirm the total number of paired derivatives and the number of reconciled derivatives with each trade repository with which it has reconciled derivatives at the end of each working day. A trade repository shall have in place written procedures for ensuring the resolution of all discrepancies identified in this process.
5. No later than sixty minutes after the conclusion of the reconciliation process as set out in point (f) of paragraph 3, a trade repository shall provide the report submitting entities with the results of the reconciliation process performed by it on the reported derivatives. A trade repository shall provide those results in an XML format and a template developed in accordance with the ISO 20022 methodology, including information on the fields that have not been reconciled.

#### *Article 4*

##### ***End-of-day response mechanisms***

1. With regard to each working day, a trade repository shall make available to the reporting counterparties, report submitting entities, entities responsible for reporting as well as third parties which have been granted access to information under Article 78(7) of Regulation (EU) No 648/2012, as applicable, the following information on the concerned derivatives, in an XML format and a template developed in accordance with the ISO 20022 methodology:
  - (a) the derivatives reported during that day;
  - (b) the latest trade states of the outstanding derivatives;
  - (c) the derivative reports that have been rejected during that day;
  - (d) the reconciliation status of all reported derivatives subject to reconciliation pursuant to Article 3(1);
  - (e) the outstanding derivatives for which no valuation has been reported, or for which the valuation that was reported is dated more than fourteen calendar days earlier than the day for which the report is generated;
  - (f) the outstanding derivatives for which no margin information has been reported, or for which the margin information that was reported is dated more than fourteen calendar days earlier than the day for which the report is generated;
  - (g) the derivatives that were received on that day with action type 'New', 'Position component', 'Modification' or 'Correction' and whose notional amount is abnormal for that class of derivatives.
2. A trade repository shall provide such information no later than 06:00 Coordinated Universal time on the working day following the day to which the information provided in paragraph 1 refers.

#### *Article 5*

##### ***Entry into force and application***

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

It 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*