



Brussels, 2.6.2016
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COMMISSION DELEGATED REGULATION (EU) .../...

of 2.6.2016

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on the specification of the offering of pre-and post-trade data and the level of disaggregation of data

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The Markets in Financial Instruments Regulation (Regulation (EU) No 600/2014, 'MiFIR') requires market operators and investment firms operating a trading venue to make publicly available the information published in accordance with Articles 3, 4 and 6 to 11 by offering pre-trade and post-trade transparency data separately.

In this context, Article 12 (2) of MiFIR empowers the Commission to adopt, following submission of draft regulatory technical standards by the European Securities and Markets Authority (ESMA), a delegated Regulation further specifying the offering of pre-trade and post-trade transparency data, including the level of disaggregation of the data to be made available to the public.

In accordance with Article 10(1) of Regulation No (EU) 1095/2010 establishing the ESMA, the Commission shall decide within three months of receipt of the draft standards whether to endorse them. 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 Article 10 of the Regulation (EU) 1095/2010 ESMA has carried out a public consultation on the draft regulatory technical standards. A consultation paper was published on 19 December 2014 on the ESMA website and the consultation closed on 2 March 2015. In addition, ESMA sought the views of the Securities and Markets Stakeholder Group (SMSG) established in accordance with Article 37 of the ESMA Regulation. The SMSG chose not to provide advice on these issues due to the technical nature of the standards.

Together with the draft technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1095/2010, the ESMA has submitted its impact assessment, including the analysis of costs and benefits related to the draft technical standards. This analysis is available at http://www.esma.europa.eu/system/files/2015-esma-1464_annex_ii_-_cba_-_draft_rts_and_its_on_mifid_ii_and_mifir.pdf

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The right to adopt a delegated Regulation is provided for under Article 12(2) of MiFIR. According to this provision, the Commission is empowered to adopt a delegated Regulation to specify the level of data disaggregation to be made available to the public by trading venues. This will reduce market data costs for market participants by allowing them to acquire only the very specific pre-trade or post-trade data they need.

For this purpose, Article 1 of this Delegated Regulation provides a break down on the level of disaggregation required having regard to the nature of the asset class, the country of issue for shares and sovereign debt, the currency in which the instrument is traded, and scheduled daily actions. It is also provided that data may be bundled and that combinations of disaggregation shall be provided if requested.

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THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council on Markets in Financial Instruments and amending Regulation (EU) No 648/2012¹ and in particular the third subparagraph of Article 12(2) thereof,

Whereas:

- (1) In order to reduce costs for market participants when purchasing data, Regulation (EU) No 600/2014 provides for pre-trade and post-trade transparency data to be made available to the public in an “unbundled” fashion for separate data items. It is necessary to specify the level of disaggregation by which venues should offer data. Taking into account the evidence of demand for such data from other stakeholders, market operators and investment firms operating a trading venue should disaggregate data by asset class, by country of issue, by the currency in which a financial instrument is traded, and according to whether data comes from scheduled daily auctions or from continuous trading.
- (2) To ensure that pre-trade and post-trade data offered appropriately matches the demand from market participants, market operators and investment firms operating a trading venue should offer any combination of the disaggregation criteria on a reasonable commercial basis.
- (3) For some financial instruments such as for derivatives it may not always be possible to determine unambiguously the particular asset class to which that instrument belongs since the determination of an asset class depends on which characteristics of the financial instruments are considered to be the decisive ones. Similarly, it may not always be possible to unambiguously determine which other criteria a type of data meets. To ensure that market participants purchasing data from a particular trading venue receive a consistent data set, it is necessary to require market operators or investment firms operating a trading venue to determine in those cases where the disaggregation criteria cannot be applied in an unambiguous manner which criteria a financial instrument or type of data should be deemed to meet.
- (4) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the provisions laid down in Regulation (EU) No 600/2014 apply from the same date.

¹ OJ L 173, 12.6.2014, p. 84.

- (5) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (6) ESMA 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 opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council²,

HAS ADOPTED THIS REGULATION:

Article 1

Offering of pre-trade and post-trade transparency data

1. A market operator or investment firm operating a trading venue shall upon request make the information published in accordance with Articles 3, 4 and 6 to 11 of Regulation (EU) No 600/2014 available to the public by offering pre-trade and post-trade data disaggregated, in accordance with the following criteria:
 - (a) the nature of the asset class:
 - (i) shares;
 - (ii) depositary receipts, ETFs, certificates and other similar financial instruments referred to in Article 3 of Regulation (EU) No 600/2014;
 - (iii) bonds and structured finance products;
 - (iv) emission allowances;
 - (v) derivatives;
 - (b) the country of issue for shares and sovereign debt;
 - (c) the currency in which the financial instrument is traded;
 - (d) scheduled daily auctions as opposed to continuous trading.
2. Derivatives referred to in point (a)(v) shall be disaggregated in accordance with the following criteria:
 - (a) equity derivatives;
 - (b) interest rate derivatives;
 - (c) credit derivatives;
 - (d) foreign exchange derivatives;
 - (e) commodity and emission allowance derivatives;
 - (f) other derivatives.
3. The market operator or investment firm operating a trading venue shall determine which criteria a financial instrument or type of data meets where the disaggregation criteria in paragraphs 1 or 2 cannot be applied in an unambiguous manner.

² 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).

4. The market operator or investment firm operating a trading venue shall apply the criteria referred to in paragraphs 1 and 2 in any combination upon request.
5. In addition to offering the data in accordance with paragraph 1 and 2, a market operator or investment firm operating a trading venue may offer bundles of data.

Article 2

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*.

This Regulation shall apply from the date referred to in the second paragraph of Article 55 of Regulation (EU) No 600/2014.

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

Done at Brussels, 2.6.2016

For the Commission
The President
Jean-Claude JUNCKER