



Brussels, 1.3.2016
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COMMISSION DELEGATED REGULATION (EU) .../...

of 1.3.2016

supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the content of notifications to be submitted to competent authorities and the compilation, publication and maintenance of the list of notifications

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 4 of Regulation (EU) No 596/2014 (MAR) and Article 27 of the Regulation (EU) No 600/2014 (MiFIR) establish a requirement on the provision of instrument reference data to the competent authorities. The competent authorities should in turn provide this data to the European Securities and Markets Authority (ESMA) that will make it available on its website. Such provisions are aimed at providing transparency to market participants and ensuring competent authorities possess the necessary tools to fulfil their supervisory duties under MAR and under MiFIR.

Considering the common purpose of the two provisions and the common reference data elements to be provided, ESMA deemed it appropriate to ensure that the two requirements are aligned and that a single set of reference data is published on ESMA's website. Article 4 of MAR requires ESMA to develop regulatory technical standards in relation to the obligation to provide information on the financial instruments.

The draft regulatory technical standards were submitted to the Commission on 28 September 2015. In accordance with Articles 10 to 15 of Regulation No (EU) 1095/2010 establishing ESMA, the Commission shall decide within three months of receipt of the draft regulatory technical standards whether to endorse them. The Commission may also endorse the draft regulatory technical 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

ESMA published its Final Report on draft technical standards on MAR and submitted it to the Commission on 28 September 2015.¹ The report takes into account the views expressed by stakeholders during the public consultation on the draft regulatory technical standards and the opinion of the Securities and Markets Stakeholder Group (MSG) set up in accordance with Article 37 of Regulation (EU) No 1095/2010.

ESMA consulted on its approach to propose a single set of reference data in the Discussion Paper on MiFIR, dated 22 May 2014. It was further clarified in the Consultation Paper, dated 18 February 2015, where additionally ESMA sought feedback on further issues related to the instrument reference data, including the proposed list of details of financial instruments to be provided in the reports.

A strong support was expressed for the alignment of requirements related to provision of instruments reference data under MAR and MiFIR. ESMA, therefore, decided to align to the extent possible the relevant provisions: (i) the same details of financial instruments are included in the instrument reference data reported under both MAR and MiFIR, (ii) the data reporting uses the same standards, formats and means of the same technical format, (iii) timelines for submissions of reference data to the competent authorities and for subsequent transmission to ESMA are also aligned. However, the alignment of the regulatory technical standards was not followed in the case of the trading venues. Whilst under MiFIR the trading venues send information on a given instrument on a daily basis as long as the instrument is traded, the trading venues under MAR only send two submissions for a given instrument – when the instrument is traded for the first time (or when the instrument is admitted to trading or when a request for admission to trading is submitted) and when it ceased to be traded.

¹ The Final Report is available at: https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-esma-1455_-_final_report_mar_ts.pdf.

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

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This Delegated Regulation sets out provisions with the details of financial instruments to be included in the instrument reference data reported under the first and third paragraphs of Article 4 of MAR. The data is reported using the same standards and formats and by means of the same technical format. Timelines for submissions of reference data to the competent authorities, as well as for their subsequent transmission from the competent authorities to ESMA, are also aligned. The role of ESMA is to monitor and assess the completeness and accuracy of the notifications, to consolidate them and to publish their complete list.

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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 596/2014 of the European Parliament and of the Council of 16 May 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC², and in particular the third subparagraph of Article 4(4) thereof,

Whereas:

- (1) Commission Delegated Regulation to be adopted in accordance with the third subparagraph of Article 27(3) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012³ requires ongoing submissions of identifying reference data for financial instruments admitted to trading. By contrast, Article 4 of Regulation (EU) No 596/2014 requires trading venues to notify their competent authorities only once of details of financial instruments which are the subject of a request for admission to trading, admitted to trading or traded and once subsequently where a financial instrument ceases to be traded or admitted to trading. Subject to the foregoing difference in reporting obligations under Regulation (EU) No 596/2014 and the aforementioned Delegated Regulation, the reporting obligations under this Regulation should be aligned with the reporting obligations under the aforementioned Delegated Regulation so as to reduce the administrative burden for entities subject to such obligations.
- (2) In order to enable effective and efficient use of the list of notifications of financial instruments, trading venues should provide complete and accurate notifications of financial instruments. For the same reasons, competent authorities should monitor and assess notifications of financial instruments received from trading venues for completeness and accuracy and promptly inform them of any incompleteness or inaccuracy identified. Likewise, the European Securities and Markets Authority (ESMA) should monitor and assess the completeness and accuracy of notifications received from competent authorities and promptly inform them of any incompleteness or inaccuracy identified.

² OJ L 173, 12.6.2014, p. 1.

³ OJ L 173, 12.6.2014, p. 84.

- (3) The list of notifications of financial instruments should be published by ESMA in an electronic, machine-readable and downloadable form in order to facilitate efficient use and exchange of the data.
- (4) This Regulation is based on the draft regulatory technical standards submitted by the ESMA to the Commission. 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 Council⁴.
- (5) In order to ensure the smooth functioning of the financial markets, it is necessary that this Regulation enters into force as a matter of urgency and that the provisions laid down in this Regulation apply from the same date as those laid down in Regulation (EU) No 596/2014,

HAS ADOPTED THIS REGULATION:

Article 1

Notifications of financial instruments pursuant to Article 4(1) of Regulation (EU) No 596/2014 shall include all details referred to in Table 2 of the Annex to this Regulation that pertain to the financial instruments concerned.

Article 2

1. Competent authorities shall monitor and assess, using automated processes, whether the notifications received pursuant to Article 4(1) of Regulation (EU) No 596/2014 comply with the requirements under Article 1 of this Regulation and Article 2 of Commission Implementing Regulation (EU) .../...⁵.
2. Trading venue operators shall be informed using automated processes without delay of any incompleteness in the received notifications and of any failure to deliver the notifications before the deadline specified in Article 1 of Implementing Regulation (EU) .../....
3. Competent authorities shall, using automated processes, transmit complete and accurate notifications of financial instruments to ESMA pursuant to Article 1.

On the day following receipt of the notifications of financial instruments in accordance with Article 4(2) of Regulation (EU) No 596/2014, ESMA shall, using automated processes, consolidate the notifications received from each competent authority.

4. ESMA shall, using automated processes, monitor and assess whether the notifications received from competent authorities are complete and accurate and comply with the applicable standards and formats specified in Table 3 of the Annex to Implementing Regulation (EU) No .../.....

⁴ 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).

⁵ Commission Implementing Regulation (EU) .../... of ... laying down implementing technical standards with regard to the timing, format and template of the submission of notifications to competent authorities according to Regulation (EU) No 596/2014 of the European Parliament and of the Council (OJ L ..., ..., p. ...).

5. ESMA shall, using automated processes, without delay inform the competent authorities concerned of any incompleteness in the transmitted notifications and of any failure to deliver notifications before the deadline specified in Article 1(3) of Implementing Regulation (EU) No .../....
6. ESMA shall, using automated processes, publish the complete list of notifications in an electronic, downloadable and machine readable form on its website.

Article 3

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

It shall apply from 3 July 2016.

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

Done at Brussels, 1.3.2016

For the Commission
The President
Jean-Claude JUNCKER