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

of 13.12.2018

**amending Delegated Regulation (EU) No 151/2013 with regard to access to the data held
in trade repositories**

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 32(3) of Regulation (EU) 2015/2365 has amended Article 81(3) of Regulation (EU) No 648/2012 (EMIR) to add, in line with Article 12(2) of Regulation (EU) 2015/2365 (SFTR), a number of entities to the list of those to which a trade repository should make information available to enable them to fulfil their respective responsibilities and mandates.

Pursuant to Article 81(5) of EMIR, ESMA has notably developed regulatory technical standards (RTS) specifying the frequency and the details of the information to be made available to the relevant entities.

These RTS were adopted on 19 December 2012 by Commission Delegated Regulation (EU) No 151/2013 with regard to regulatory technical standards specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data.

The current draft delegated act is an amendment of those RTS, reflecting the recent adoption of SFTR with new authorities getting access to data and experience gained in the area of trade reporting and access to data. Specifically, the amendments aim at establishing the adequate levels of access to TRs data for these new authorities.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Together with consultations for technical standards in relation to SFTR, ESMA held two public consultations on the proposed amendments to the Commission Delegated Regulation (EU) No 151/2013. First, on the basis of an initial Discussion Paper published in 11 March 2016 and then on a Consultation Paper published on 30 September 2016. The consultation closed on 30 November 2016. This draft regulatory technical standard was submitted to the Commission on 30 March 2017.

In accordance with Articles 10 to 14 of Regulation No (EU) 1095/2010 establishing ESMA, the Commission shall decide within three months of receipt of the amended draft regulatory technical standard whether to endorse the draft submitted or not. The Commission may also endorse the draft standard in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles. Formal amendments by the Commission once the draft has been officially submitted to the Commission follow the lengthy procedure set out in Article 10 of Regulation EU No 1095/2010 and must be adopted by the College of Commissioners before being sent to ESMA.

Together with the draft amended delegated regulation, ESMA submitted a report¹ on how the outcome of these consultations has been taken into account in the development of the final draft regulatory technical standards submitted to the Commission.

¹ https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-82_2017_sftr_final_report_and_cba.pdf

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The draft delegated act introduces several modifications to the existing Regulation (EU) No 151/2013:

Article 1 modifies Article 2 of Regulation (EU) No 151/2013 on Data access by relevant authorities and further details the type of data recorded by the trade repository that the relevant authorities can access, including the details of derivatives that have not been accepted by the trade repository or the details of derivatives following the performance of the reconciliation of derivatives. It also further details the level of access each relevant authority listed in paragraph 3 of Article 81 of EMIR shall be provided with by a trade repository.

Article 2 precise that the delegated regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

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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 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories², and in particular Article 81(5) thereof,

Whereas:

- (1) Article 32(3) of Regulation (EU) 2015/2365 of the European Parliament and of the Council³ has amended Article 81(3) of Regulation (EU) No 648/2012 by adding a number of entities to the list of entities to which a trade repository is to provide information on derivatives so that those entities are able to fulfil their responsibilities and mandates. Those entities should therefore also be included in Delegated Regulation (EU) No 151/2013⁴ with specifications concerning the information and the level of access to the details of derivatives to be provided. It is therefore essential that trade repositories are able to identify accurately the counterparties and transactions concerned. The access provided by trade repositories should include access to details of transaction data on derivatives concluded by a counterparty, irrespective of whether that counterparty is a parent undertaking or subsidiary of another undertaking, provided that the access required concerns information needed for the fulfilment of the responsibilities and mandates of the relevant entity.
- (2) Many of the entities listed in Article 81(3) of Regulation (EU) No 648/2012 have several and different responsibilities and mandates. To avoid that trade repositories continuously have to check under which mandate and for which specific need an entity demands access, and thus to avoid unnecessary administrative burdens for those trade repositories, it is appropriate to allow the trade repositories to provide each entity with a single access, which should cover the responsibilities and mandates of each entity.
- (3) Access by the entities listed in Article 81(3) of Regulation (EU) No 648/2012 to all details of derivatives, including details of derivatives that have not been accepted by

² OJ L 201, 27.7.2012, p. 1.

³ Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1).

⁴ Commission Delegated Regulation (EU) No 151/2013 of 19 December 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 specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data (OJ L 52, 23.2.2013, p. 33).

the trade repository and details following the performance of the reconciliation process for derivatives referred to in Article 19 of Commission Delegated Regulation (EU) No 150/2013⁵, is of utmost importance to ensure that those entities are able to fulfil their responsibilities and mandates.

- (4) Certain entities listed in Article 81(3) of Regulation (EU) No 648/2012 are responsible for monitoring systemic risks to financial stability. The proper performance of their tasks requires that those entities have access to the broadest spectrum of market participants, trading venues and the most comprehensive and granular details of derivatives data available for their area of responsibility, which can be, depending on the entity concerned, a Member State, the euro area or the Union.
- (5) Because of the links between derivatives and monetary policy, a member of the European System of Central Banks (ESCB), as referred to in Article 81(3)(g) of Regulation (EU) No 648/2012, should have access to position data on derivatives expressed in the currency issued by that ESCB member. Position data should include derivatives data aggregated by criteria, including underlying, product and maturity for individual counterparties.
- (6) The European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Systemic Risk Board (ESRB) are part of the European System for Financial Supervision and have, with regard to financial stability and systemic risk, mandates and responsibilities that are very similar to those of the European Securities and Markets Authority (ESMA). It is therefore important that those authorities, like ESMA, have access to all transaction data on derivatives.
- (7) Council Regulation (EU) No 1024/2013⁶ established a Single Supervisory Mechanism (SSM). A trade repository should therefore ensure that the European Central Bank (ECB) has access to all transaction data on derivatives concluded by any counterparty which, within the single supervisory mechanism, is subject to the ECB's supervision pursuant to Regulation (EU) No 1024/2013.
- (8) Pursuant to Directive 2014/59/EU of the European Parliament and of the Council⁷, resolution authorities are to be given effective means of action with respect to the entities referred to in Article 1(1) of that Directive to prevent contagion. Each resolution authority should therefore have access to transaction data on derivatives reported by those entities.
- (9) Pursuant to Regulation 806/2014 of the European Parliament and of the Council⁸, the Single Resolution Board (SRB) is responsible for the effective and consistent

⁵ Commission Delegated Regulation (EU) No 150/2013 of 19 December 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 specifying the details of the application for registration as a trade repository (OJ L 52, 23.2.2013, p. 25).

⁶ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

⁷ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

⁸ Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

functioning of the Single Resolution Mechanism, inter alia by drawing up the resolution plans for the entities referred to in Article 2 of that Regulation. To enable the Single Resolution Board to draw up those resolution plans, a trade repository should provide that Board with access to the transaction data on derivatives concluded by any counterparty which falls under the scope of Regulation (EU) No 806/2014.

- (10) To enable the authorities referred to in points (o) and (p) of Article 81(3) of Regulation 648/2012 to exercise their responsibilities and mandates, they should have access to data reported by counterparties that fall under their responsibilities and mandates.
- (11) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the European Commission.
- (12) ESMA has consulted the relevant authorities and the members of the ESCB before submitting the draft regulatory technical standards on which this Regulation is based. ESMA has also conducted open public consultations, analysed the potential related costs and benefits and requested the opinion 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 Council⁹.
- (13) Delegated Regulation (EU) No 151/2013 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) No 151/2013 is amended as follows:

- (i) Article 2 of Delegated Regulation (EU) No 151/2013 is replaced by the following:

“Article 2

Access to details of derivatives in accordance with the responsibilities and mandate of each authority concerned

1. A trade repository shall ensure that the details of transaction data on derivatives made accessible to the entities listed in Article 81(3) of Regulation (EU) No 648/2012 in accordance with paragraphs 3 to 17 of this Article include the following data:

- (a) the reports of derivatives reported in accordance with Tables 1 and 2 of the Annex to Delegated Regulation (EU) No 148/2013*, including the latest trade states of derivatives that have not matured or which have not been the subject of reports with action types “Error”, “Early termination”, “Compression” and “Position component” as referred to in Field 93 of Table 2 of the Annex to Delegated Regulation (EU) No 148/2013;
- (b) the relevant details of derivative reports rejected by the trade repository, including any derivative reports rejected during the previous working day and the reasons for their rejection;

⁹ 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).

- (c) the reconciliation status of all derivatives reported for which the trade repository has carried out the reconciliation process in accordance with Article 19 of Delegated Regulation (EU) No 150/2013.

* Commission Delegated Regulation (EU) No 148/2013 of 19 December 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 (OJ L 52, 23.2.2013, p. 1).”;

2. A trade repository shall provide the entities that have several responsibilities or mandates under Article 81(3) of Regulation (EU) No 648/2012 with a single access point to the derivatives covered by those responsibilities and mandates.
3. A trade repository shall provide ESMA with access to all transaction data for derivatives to exercise competences in accordance with its responsibilities and mandates.
4. A trade repository shall provide the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Systemic Risk Board (ESRB) with access to all transaction data for derivatives.
5. A trade repository shall provide the Authority for the Cooperation of Energy Regulators (ACER) with access to all transaction data on derivatives where the underlying is an energy.
6. A trade repository shall provide an authority supervising trading venues with access to all transaction data for derivatives executed on those trading venues.
7. A trade repository shall provide a supervisory authority designated pursuant to Article 4 of Directive 2004/25/EC with access to all transaction data on derivatives where the underlying is a security issued by a company that meets one or more of the following conditions:
- (a) the company is admitted to trading on a regulated market established within the Member State of that authority and the takeover bids on the securities of that company fall under that authority's supervisory responsibilities and mandates;
 - (b) the company has its registered office or head office in the Member State of that authority and the takeover bids on the securities of that company fall under that authority's supervisory responsibilities and mandates;
 - (c) the company is an offeror as defined in Article 2(1)(c) of Directive 2004/25/EC for the companies as referred to in points (a) and (b) and the consideration it offers includes securities;
8. A trade repository shall provide an authority referred to in Article 81(3)(j) of Regulation (EU) No 648/2012 with access to all transaction data on derivatives for markets, contracts, underlyings, benchmarks and counterparties that fall under the supervisory responsibilities and mandates of that authority.
9. A trade repository shall provide a member of the ESCB whose Member State's currency is the euro with access to:

(a) all transaction data on derivatives where the reference entity of the derivative is established within the Member State of that ESCB member or within a Member State whose currency is the euro and falls within the scope of the member according to that member's supervisory responsibilities and mandates, or where the reference obligation is sovereign debt of the Member State of that ESCB member or of a Member State whose currency is the euro;

(b) position data for derivatives contracts in euro.

10. A trade repository shall provide an authority listed in Article 81(3) of Regulation (EU) No 648/2012 that monitors systemic risks to financial stability and whose Member State's currency is the euro, with access to all transaction data on derivatives concluded on trading venues or by CCPs and counterparties that fall under the responsibilities and mandates of that authority when monitoring systemic risks to financial stability in the euro area.

11. A trade repository shall provide a member of the ESCB whose Member State's currency is not the euro with access to:

(a) all transaction level data on derivatives where the reference entity of the derivative is established within the Member State of that ESCB member and falls within the scope of the member according to that member's supervisory responsibilities and mandates, or where the reference obligation is sovereign debt of the Member State of that ESCB member;

(b) position data for derivatives in the currency issued by that member of the ESCB.

12. A trade repository shall provide an authority listed in Article 81(3) of Regulation (EU) No 648/2012 that monitors systemic risks to financial stability and whose Member State's currency is not the euro, with access to all transaction data on derivatives concluded on trading venues or by CCPs and counterparties that fall under the responsibilities and mandates of that authority when monitoring systemic risks to financial stability in a Member State whose currency is not the euro.

13. A trade repository shall provide the ECB, when carrying out its tasks within the single supervisory mechanism under Council Regulation (EU) No 1024/2013, with access to all transaction data on derivatives concluded by any counterparty which, within the single supervisory mechanism, is subject to the ECB's supervision pursuant to Council Regulation (EU) No 1024/2013*.

14. A trade repository shall provide a competent authority listed in points (o) and (p) of Article 81(3) of Regulation (EU) No 648/2012 with access to all transaction data on derivatives concluded by all counterparties that fall under the responsibilities and mandates of that authority.

15. A trade repository shall provide a resolution authority as referred to in point (m) of Article 81(3) of Regulation (EU) No 648/2012 with access to all transaction data on derivatives concluded by counterparties that fall under the responsibilities and mandates of that authority.

16. A trade repository shall provide the SRB with access to all transaction data on derivatives concluded by counterparties that fall under the scope of Regulation (EU) No 806/2014.

17. A trade repository shall provide an authority supervising a central counterparty (CCP), and the relevant member of the European System of Central Banks (ESCB) overseeing that CCP, where applicable, with access to all transaction data on derivatives cleared by that CCP.

* Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).”

Article 2

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, 13.12.2018

For the Commission
The President
Jean-Claude JUNCKER