



Council of the
European Union

Brussels, 8 June 2016
(OR. en)

10030/16

EF 174
ECOFIN 572
DELECT 104

COVER NOTE

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

date of receipt: 7 June 2016

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: C(2016) 3356 final

Subject: COMMISSION DELEGATED REGULATION (EU) No .../.. of 7.6.2016
supplementing Directive 2014/59/EU of the European Parliament and of
the Council establishing a framework for the recovery and resolution of
credit institutions and investment firms with regard to regulatory technical
standards specifying a minimum set of the information on financial
contracts that should be contained in the detailed records and the
circumstances in which the requirement should be imposed

Delegations will find attached document C(2016) 3356 final.

Encl.: C(2016) 3356 final



Brussels, 7.6.2016
C(2016) 3356 final

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

of 7.6.2016

supplementing Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms with regard to regulatory technical standards specifying a minimum set of the information on financial contracts that should be contained in the detailed records and the circumstances in which the requirement should be imposed

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 71 of Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms ('the Directive') empowers the Commission to adopt, following submission of draft standards by the European Banking Authority (EBA), and in accordance with Articles 10 to 14 of Regulation No (EU) 1093/2010, delegated acts specifying relating to the methodology for assessing the value of assets and liabilities of institutions or entities.

In accordance with Article 10(1) of Regulation No (EU) 1093/2010 establishing the EBA, 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 No (EU) 1093/2010, the EBA has carried out a public consultation on the draft technical standards submitted to the Commission in accordance with Article 71 of the Directive. A consultation paper was published on the EBA internet site on 6 March 2015, and the consultation closed on 6 June 2015. Moreover, the EBA invited the EBA's Banking Stakeholder Group set up in accordance with Article 37 of Regulation No (EU) 1093/2010 to provide advice on them. Together with the draft technical standards, the EBA has submitted an explanation on how the outcome of these consultations has been taken into account in the development of the final draft technical standards submitted to the Commission.

Together with the draft technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has submitted its Impact Assessment, including its analysis of the costs and benefits, related to the draft technical standards submitted to the Commission. This analysis is available at <http://www.eba.europa.eu/regulation-and-policy/recovery-and-resolution/regulatory-technical-standards-on-detailed-records-of-financial-contracts> pages 16-20 of the Final Draft Regulatory Technical Standards package.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The draft Regulatory Technical Standard ('RTS') further specifies (a) a minimum set of the information on financial contracts that should be contained in the detailed records, and (b) the circumstances in which the requirement should be imposed.

The draft RTS specifies that an institution or relevant entity shall be required to maintain detailed records of financial contracts where, pursuant to the applicable resolution plan or the group resolution plan, it is foreseen that resolution actions would be applied to the institution or entity concerned should the relevant conditions for resolution be satisfied.

This approach ensures that the necessary information is collected in advance for institutions likely to be subject to an application of the resolution actions and made available to the competent authorities and resolution authorities if needed. At the same time this approach ensures that institutions or entities that are likely to be placed into an insolvency procedure (rather than subject to resolution actions) are not automatically subject to the requirement to maintain detailed records of financial contracts.

However, it is important to note that the RTS does not preclude competent authorities or resolution authorities from imposing the same requirement on other institutions when it is necessary to ensure comprehensive and effective planning activity.

Consistent with the mandate under Article 71(8) of the BRRD, it is proposed that the RTS prescribe only a minimum set (rather than an exhaustive list) of information on financial contracts that should be contained in the detailed records. This approach is intended to strike a balance between the need to achieve an appropriate level of convergence in record keeping whilst ensuring that differences in institutions or relevant entities can be taken into account by the competent authorities and resolution authorities through the specification of additional information fields if necessary to achieve the policy goal of ensuring that the resolution powers can be applied effectively with regard to institutions with different types of business.

Furthermore, in order to ensure consistency between different legal acts and reduce the burden for the institutions which are reporting relevant information to the trade repositories, in the RTS, where possible, the same language and structure is used as in the Commission's Delegated Regulation (EU) No 148/2013 and likely upcoming amendments to it.

The minimum list of information on financial contracts provided in the Annex to the RTS could also serve as a basis for the competent authorities and resolution authorities when exercising their discretion to impose a requirement to keep detailed records of financial contracts under Article 5(8) (recovery plans) and Article 10(8) (resolution plans) of the Directive.

The Annex to the RTS does not prescribe a template in which information should be contained; however, this is without prejudice to the discretion of competent authorities and resolution authorities to use it as a template or to prescribe the format in which the requested information should be provided within the timeframe set in the request. Furthermore, the draft RTS do not introduce an additional reporting burden for institutions or entities, as they require institutions and entities to maintain detailed records on an ongoing basis, but make available and transmit the information to the competent authorities and resolution authorities if requested.

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

of 7.6.2016

supplementing Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms with regard to regulatory technical standards specifying a minimum set of the information on financial contracts that should be contained in the detailed records and the circumstances in which the requirement should be imposed

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to 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 Council¹, and in particular Article 71(8) thereof,

Whereas:

- (1) In order to ensure that competent authorities and resolution authorities may easily access data on financial contracts, as defined in Article 2(1)(100) of Directive 2014/59/EU, where the applicable resolution plan or the group resolution plan foresees the taking of resolution actions in relation to an institution or entity referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU, those authorities should require institutions or entities to maintain on an on-going basis a minimum set of information on such contracts. That should be without prejudice to the possibility of competent authorities or resolution authorities to require additional information to be kept in detailed records of financial contracts and to impose such requirements on other institutions or entities referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU when it is needed to ensure comprehensive and effective planning.
- (2) The minimum set of information to be maintained in detailed records of financial contracts by the relevant institutions or entities should be clearly determined. That should be without prejudice to the discretion of competent authorities and resolution authorities to use it as a template or to prescribe the format in which the requested information should be provided within the timeframe set in the request.

¹ OJ L 173, 12.6.2014, p. 190.

- (3) For the avoidance of doubt, the requirement imposed on the relevant institutions or entities to maintain detailed records of financial contracts should not affect the right of the competent authorities and the resolution authorities to request necessary information from trade repositories in accordance with Article 81 of Regulation (EU) No 648/2012 of the European Parliament and of the Council² and Article 71(7) of Directive 2014/59/EU.
- (4) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.
- (5) The European Banking Authority 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 Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council³,

HAS ADOPTED THIS REGULATION:

Article 1

Requirement to maintain detailed records of financial contracts

1. An institution or entity referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU shall be required by the competent authority or resolution authority to maintain detailed records of financial contracts where the resolution plan or the group resolution plan foresees the taking of resolution actions in relation to the institution or entity concerned in the event the conditions for resolution are met.
2. Where necessary to ensure comprehensive and effective planning, competent authorities and resolution authorities may impose the requirements referred to in paragraph 1 on institutions or entities referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU which are not covered by paragraph 1 of this Article.

Article 2

Minimum set of information on financial contracts to be kept in the detailed records

1. An institution or entity which is required to maintain detailed records of financial contracts under Article 1 shall retain on an ongoing basis the minimum set of information listed in the Annex for each financial contract in its records.
2. The institution or entity referred to in paragraph 1 shall, at the request of the competent authority or resolution authority, make available and transmit the requested information on the financial contracts, to the requesting authority within the timeframe set in the request.
3. Where an information field listed in the Annex is not applicable to a certain type of financial contract and the institution or entity referred to in paragraph 1 can

² 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 (OJ L 201, 27.7.2012, p. 1).

³ Regulation (EU) 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

demonstrate this to the competent authority or resolution authority, the information relevant to that field shall be excluded from the requirement under Article 1.

Article 3

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, 7.6.2016

For the Commission
The President
Jean-Claude JUNCKER