



Council of the  
European Union

Brussels, 19 October 2016  
(OR. en)

13471/16

EF 309  
ECOFIN 929  
DELECT 219

## COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	19 October 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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No. Cion doc.:	C(2016) 6624 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 19.10.2016 amending Commission Delegated Regulation (EU) No 148/2013 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

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Delegations will find attached document C(2016) 6624 final.

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Encl.: C(2016) 6624 final



Brussels, 19.10.2016  
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**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 19.10.2016**

**amending Commission Delegated Regulation (EU) No 148/2013 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**

(Text with EEA relevance)

## EXPLANATORY MEMORANDUM

### **1. CONTEXT OF THE DELEGATED ACT**

Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR) requires all counterparties and central counterparties (CCPs) to report the details of any OTC derivative contract they have concluded and of any modification or termination of the contract to a trade repository. The European Securities and Markets Authority (ESMA) is required under Article 9(5) of EMIR to develop draft regulatory technical standards (RTS) specifying the details and type of the reports referred to in paragraphs 1 and 3 for the different classes of derivatives. These reports shall specify at least:

- (a) the parties to the derivative contract and, where different, the beneficiary of the rights and obligations arising from it;
- (b) the main characteristics of the derivative contracts, including their type, underlying maturity, notional value, price, and settlement date.

These RTS were adopted on 19 December 2012 by Commission Delegated Regulation (EU) No 148/2013. The RTS were preceded by implementing technical standards (ITS) on the same topic. At the time of adoption of the RTS, there was only limited practical experience with the reporting of derivatives, and EMIR imposed a limited timeframe (3 months) in which to adopt the RTS. This timeframe did not allow ESMA to carry out the necessary investigations and research into what was in effect a new area of reporting. As a result, the practical implementation of EMIR reporting and the experience gained have over time shown several shortcomings and limitations in the reporting framework that need to be addressed so that the EMIR reports can better fulfil their objectives. Until now, any necessary clarifications were provided by ESMA in the form of Q&As. Given the broad scope of issues covered in the Q&As, as well as their relevance for the understanding of the reporting requirements, ESMA now proposes to amend the relevant RTS in order to introduce some of the elements dealt with in the Q&As. Finally, the revised RTS will help further align the reporting requirements under EMIR and Regulation (EU) No 600/2014 on markets in financial instruments (MiFIR) in order to minimize the burden placed on entities reporting under these regimes.

The current delegated act is an amendment of those RTS, reflecting recent developments and experience gained in the area of trade reporting. The revised RTS aim to:

- Clarify data fields, their description or both;
- Adapt existing fields to the reporting logic prescribed in existing Q&As or to reflect specific ways of populating them;
- Introduce new fields and values to reflect market practice or other necessary regulatory requirements.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

ESMA held a public consultation on the proposed amendments to the technical standards on trade reporting between 10 November 2014 and 13 February 2015. ESMA subsequently

adopted the draft RTS on the minimum details of the data to be reported to trade repositories on 5 November and submitted them to the Commission on 13 November 2015.

Together with the draft technical standards, ESMA submitted a report<sup>1</sup> 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.

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

The delegated act introduces several modifications to the existing RTS:

It modifies Article 1 of Commission Delegated Regulation (EU) No 148/2013 by replacing the existing paragraph 2, which set out a restrictive definition of the 'execution of a transaction', with a new paragraph 2, which sets out rules on the reporting of a contract composed of a combination of several other derivative contracts. The new paragraph 2 states that the details and information pertaining to such a contract shall in principle be reported within one report, except where the fields in the Annex do not allow this, in which case the counterparties to the derivative contract should agree between themselves on the number of reports to be submitted. The transaction reports should be identified in a way which will allow them to be linked to any other transaction reports resulting from the same derivative contract.

In Article 2, the rules on the reporting of a previously reported contract which is subsequently cleared by a CCP are amended. The existing contracts shall henceforth be reported as terminated and the new contracts resulting from the transaction shall be reported. Moreover, it clarifies that for contracts concluded and cleared on the same date, only the cleared contract shall be reported.

Article 3 is amended by setting out the rules for the reporting of collateral exchanged by the counterparties, including specifying what exactly should be reported, by whom, and how it should be valued.

A new Article 3a is introduced setting out rules for the reporting of the notional amount for different classes of derivatives.

In Article 4, the references to the fields in the Annex are updated.

The annex is modified by setting out the reporting requirements for credit derivatives as well as for posted and received initial and variation margins.

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<sup>1</sup> [https://www.esma.europa.eu/system/files/2015-esma-1645\\_-\\_final\\_report\\_emir\\_article\\_9\\_rts\\_its.pdf](https://www.esma.europa.eu/system/files/2015-esma-1645_-_final_report_emir_article_9_rts_its.pdf)

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

**of 19.10.2016**

**amending Commission Delegated Regulation (EU) No 148/2013 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**

(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>2</sup>, and in particular Article 9(5) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) No 148/2013<sup>3</sup> sets out details of data to be reported and obliges counterparties to ensure that data reported is agreed between both parties to a trade.
- (2) It is important to also acknowledge that a central counterparty (CCP) acts as a party to a derivative contract. Accordingly, where an existing contract is subsequently cleared by a CCP, it should be reported as terminated and the new contract resulting from clearing should be reported.
- (3) Where a derivative contract is composed of a combination of derivative contracts, the competent authorities need to understand the characteristics of each of the derivative contracts concerned. Since competent authorities also need to be able to understand the overall context, it should also be apparent from the transaction report that the transaction is part of an overall strategy. Therefore, derivative contracts relating to a combination of derivative contracts should be reported in separate legs for each derivative contract with an internal identifier to provide a linkage between the legs.

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<sup>2</sup> OJ L 201, 27.7.2012, p. 1.

<sup>3</sup> 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).

- (4) In the case of derivative contracts composed of a combination of derivative contracts which need to be reported in more than one report, it may be difficult to determine how the relevant information about the contract should be allocated across reports and thus how many reports should be submitted. Therefore, counterparties should agree on the number of reports to be submitted to report such a contract.
- (5) In order to properly monitor concentration of exposures and systemic risk, it is crucial to ensure that complete and accurate information on exposure and collateral exchanged between two counterparties is submitted to trade repositories. Therefore, it is essential that counterparties report valuations of derivative contracts according to a common methodology. Furthermore, it is equally important to require reporting of posted and received initial and variation margins.
- (6) In order to provide the competent authorities with complete information about real exposures of counterparties in all classes of derivatives, it is essential to set out the reporting requirements with respect to the details of credit derivatives as well as of collateral exchanged by the counterparties. Moreover, in order to enable the reporting parties to comply with their reporting obligations in the standardised and harmonised way, further clarifications are required with respect to descriptions of the existing fields.
- (7) Delegated Regulation (EU) No 148/2013 should therefore be amended accordingly.
- (8) It is appropriate to amend the reporting requirements with respect to the details of data to be reported. Counterparties and trade repositories should therefore be granted sufficient time to take all necessary actions to comply with the amended requirements
- (9) This Regulation is based on draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (10) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>4</sup>, ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group referred to in Article 37 of that Regulation,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

Delegated Regulation (EU) No 148/2013 is amended as follows:

- (1) Article 1 is amended as follows:

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<sup>4</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 (OJ L 331, 15.12.2010, p. 84).

(a) paragraph 2 is replaced by the following;

'2. The details and information referred to in paragraph 1 shall be reported within a single report.

By way of derogation from the first subparagraph, the details and information referred to in paragraph 1 shall be reported in separate reports where the following conditions apply:

(a) the derivative contract is composed of a combination of derivative contracts;

(b) the fields in the Tables of the Annex do not allow for the effective reporting of the details and information of the derivative contract referred to in point (a).

Counterparties to a derivative contract composed of a combination of derivative contracts shall agree, before the reporting deadline, on the number of separate reports to be sent to a trade repository in relation to that derivative contract.

The reporting counterparty shall link the separate reports by an identifier that is unique at the level of the counterparty to the group of transaction reports, in accordance with field 14 in Table 2 of the Annex.'

(2) Articles 2 and 3 are replaced by the following:

#### *Article 2*

##### ***Cleared trades***

1. Where a derivative contract whose details have already been reported pursuant to Article 9 of Regulation (EU) No 648/2012 is subsequently cleared by a CCP, that contract shall be reported as terminated by specifying in field 93 in Table 2 of the Annex the action type "Early Termination", and new contracts resulting from clearing shall be reported.
2. Where a contract is both concluded on a trading venue and cleared on the same day, only the contracts resulting from clearing shall be reported.

#### *Article 3*

##### ***Reporting of exposures***

1. The data on collateral required in accordance with Table 1 of the Annex shall include all posted and received collateral in accordance with fields 21 to 35 in Table 1 of the Annex.

2. Where a counterparty does not collateralise on a transaction level basis, counterparties shall report to a trade repository collateral posted and received on a portfolio basis in accordance with fields 21 to 35 in Table 1 of the Annex.
  3. Where the collateral related to a contract is reported on a portfolio basis, the reporting counterparty shall report to the trade repository a code identifying the portfolio related to the reported contract in accordance with field 23 in Table 1 of the Annex.
  4. Non-financial counterparties other than those referred to in Article 10 of Regulation (EU) No 648/2012 shall not be required to report collateral, mark-to-market, or mark-to-model valuations of the contracts set out in Table 1 of the Annex to this Regulation.
  5. For contracts cleared by a CCP, the counterparty shall report the valuation of the contract provided by the CCP in accordance with fields 17 to 20 in Table 1 of the Annex.
  6. For contracts not cleared by a CCP, the counterparty shall report, in accordance with fields 17 to 20 in Table 1 of the Annex to this Regulation, the valuation of the contract performed in accordance with the methodology defined in International Financial Reporting Standard 13 Fair Value Measurement as adopted by the Union and referred to in the Annex to Commission Regulation (EC) No 1126/2008<sup>5</sup>.
- (3) the following Article 3a is inserted:

*'Article 3a*

***Notional amount***

1. The notional amount of a derivative contract referred to in field 20 in Table 2 of the Annex shall be specified as follows:
  - (a) in the case of swaps, futures and forwards traded in monetary units, the reference amount from which contractual payments are determined in derivatives markets;
  - (b) in the case of options, calculated using the strike price;
  - (c) in the case of financial contracts for difference and derivative contracts relating to commodities designated in units such as barrels or tons, the resulting amount of the quantity at the relevant price set in the contract;
  - (d) in the case of derivative contracts where the notional amount is calculated using the price of the underlying asset and such price is only available at the time of settlement, the end of day price of the underlying asset at the date of conclusion of the contract.

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<sup>5</sup> Commission Regulation (EC) No 1126/2008 of 3 November 2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council (OJ L 320, 29.11.2008, p. 1).



2. The initial report of a derivative contract whose notional amount varies over time shall specify the notional amount as applicable at the date of conclusion of the derivative contract.'
- (4) Article 4 is replaced by the following:

*'Article 4*

***Reporting log***

1. Modifications to the data registered in trade repositories shall be kept in a log identifying the person or persons that requested the modification, including the trade repository itself if applicable, the reason or reasons for such modification, a date and timestamp and a clear description of the changes, including the old and new contents of the relevant data as set out in field 93 in Table 2 of the Annex.'
- (5) the Annex is replaced with the text set out in the Annex to this Regulation.

*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*.

It shall apply from [OP please set concrete date on the first day of the ninth month after its date of entry into force].

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

Done at Brussels, 19.10.2016

*For the Commission*  
*The President*  
*Jean-Claude JUNCKER*