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

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Delegations will find attached document C(2017) 4408 final.

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Brussels, 29.6.2017
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COMMISSION DELEGATED REGULATION (EU) .../...

of 29.6.2017

**amending 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**

(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. In order to ensure transparency and allow the appropriate regulatory and supervisory bodies to fulfil their respective responsibilities and mandates, Article 81, paragraphs 1 to 3, of EMIR requires trade repositories to regularly publish aggregate data on OTC derivative positions and to grant access to the details of derivative contracts to a certain number of clearly specified entities. Pursuant to Article 81(5) of EMIR, ESMA is required to develop draft regulatory technical standards (RTS) specifying:

- the frequency and the details of the information to be published and made available to the entities referred to in Article 81(3); and
- the operational standards required in order to aggregate and compare data across trade repositories and for these entities to have access to information as necessary.

These RTS were adopted on 19 December 2012 by Commission Delegated Regulation (EU) No 151/2013. The current delegated act is an amendment of those RTS, reflecting recent developments and experience gained in the area of trade reporting and access to data. Specifically, the amendments set out:

- common provisions for the operational standards for aggregation and comparison of data, including common output formats; and
- common provisions for the operational standards for access to data, including data exchange procedures between TRs and the competent authorities listed in Article 81(3) EMIR.

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 11 December 2015 and 1 February 2016. ESMA subsequently adopted the draft RTS on the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data on 28 March 2016 and submitted them to the Commission on 4 April 2016.

Together with the draft technical standards, 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/2016-422_final_report_rts_on_tr_data_under_art.81_emir.pdf

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The delegated act introduces several modifications to the existing RTS:

- It modifies Article 4 of Commission Delegated Regulation (EU) No 151/2013 by replacing paragraph 1 with a new paragraph which states explicitly that TRs must grant access directly and immediately to all entities listed in Article 81(3) to the data referred to in Article 2 and Article 3 of that Regulation using an XML template according to ISO 20022 methodology. Paragraph 2 which required the counterparties to generate a unique trade identifier for each derivative contract is deleted.
- Article 5 is modified by adding new paragraphs 3 to 9. These paragraphs:
 - require the establishment of secure FTP connections between trade repositories and entities and the use of standardised data exchange supported by ISO 20022 methodology (par. 3);
 - specify the data to which the entities mentioned in Article 81(3) shall have access (par. 4);
 - require that TRs allow the use of recurrent and predefined queries and list the data fields which can be included in an *ad hoc* request (par. 5 and par. 6);
 - set a fixed frequency (i.e. a deadline) for the TRs to provide data to the relevant entities (par. 7);
 - oblige the TRs to validate each request to access data and to provide standardised feedback in a timely manner (par. 8); and
 - require the use of an electronic signature and data encryption protocols (par. 9).

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

of 29.6.2017

amending 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

(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 repositories², and in particular Article 81(5) thereof,

Whereas:

- (1) The application of Commission Delegated Regulation (EU) No 151/2013³ has demonstrated that the lack of specific standards for data access and data aggregation and comparison leads to structural deficiencies. The lack of standardised data, uniform functionality, and a standardised message format has impeded the direct and immediate access to data and, consequently, prevented the entities referred to in Article 81(3) of Regulation (EU) No 648/2012 from effectively assessing systemic risk and thereby fulfilling their respective responsibilities and mandates.
- (2) In order to remedy those impediments, it is necessary to amend Delegated Regulation (EU) No 151/2013 by further specifying the operational standards required to aggregate and compare data across trade repositories so as to ensure that the entities referred to in Article 81(3) of Regulation (EU) No 648/2012 are able to access the information necessary to fulfil their respective responsibilities and mandates.
- (3) In order to enable the effective and efficient comparison and aggregation of data across trade repositories, XML format templates and XML messages developed in accordance with ISO 20022 methodology should be used for access to data and for communication between the entities referred to in Article 81(3) of Regulation (EU) No 648/2012 and the trade repositories. This should not exclude the possibility that trade

² OJ L 201, 27.7.2012, p. 1.

³ 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).

repositories and the relevant entities may agree amongst themselves to provide access or to communicate using a different format in addition to XML.

- (4) The XML format templates should be used to provide data to the relevant entities in a manner which facilitates its aggregation, while the XML messages should be used to streamline the data-exchange process between the trade repositories and the relevant entities. Delegated Regulation (EU) No 151/2013 does not exclude the additional separate use of non-XML format templates, such as comma separated values (csv) or text (txt) files, to the extent that they allow the relevant entities to fulfil their responsibilities and mandates. Trade repositories should therefore be permitted to continue to use those formats in addition to, but never as a substitute for, the use of the XML format templates. At a minimum, XML format templates and XML messages based on the ISO 20022 methodology should be used for all output reports and exchanges to ensure comparability and aggregation of data across trade repositories.
- (5) Entities listed in Article 81(3) of Regulation (EU) No 648/2012 are able to delegate tasks and responsibilities to ESMA under Article 28 of Regulation (EU) No 1095/2010⁴, including access to data reported to trade repositories. The use of such delegation should not in any way affect the obligation of trade repositories to grant entities listed in Article 81(3) of Regulation (EU) No 648/2012 direct and immediate access to the that data.
- (6) In order to ensure confidentiality, any type of data exchange between trade repositories and the relevant entities should be carried out through a secure machine-to-machine connection and by using data encryption protocols. To ensure minimum common standards, an SSH File Transfer Protocol (SFTP) should be used between the trade repositories and the entities listed in Article 81(3) of Regulation (EU) No 648/2012. This should not exclude the possibility that trade repositories and the relevant entities may agree amongst themselves to establish secure machine-to-machine connection using an additional, separate channel to the SFTP. Trade repositories should therefore be permitted to continue to use other secure machine-to-machine connections in addition to, but never as a substitute for, the use of SFTP.
- (7) Data concerning the latest trade state of derivatives contracts with open interest is essential for monitoring financial stability and systemic risk. Therefore, the relevant entities should have access to that data.
- (8) It is essential to facilitate the direct and immediate access to specific datasets and thus to establish a set of combinable ad-hoc requests referring to the parties to the trade, the economic terms, the derivatives contract classification and identification, the time horizon of execution, reporting and maturity, as well as the business and life-cycle events.
- (9) The deadlines by which data is provided to the relevant entities by trade repositories should be harmonised to improve the direct and immediate access to trade repository data and allow the relevant entities and the trade repositories to improve the scheduling of their internal data processes.

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 (OJ L 331, 15.12.2010, p. 84).

- (10) Therefore, Delegated Regulation (EU) No 151/2013 should be amended in order to further specify and improve the operational framework for accessing, aggregating, and comparing data across trade repositories.
- (11) The application of the provisions laid down in this Delegated Regulation should be deferred in order to facilitate the adaptations of systems by trade repositories to the specifications laid down in this Delegated Regulation.
- (12) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.
- (13) In accordance with Article 10 of Regulation (EU) No 1095/2010, ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based and analysed the potential related costs and benefits. These public consultations allowed ESMA to obtain views of the relevant authorities and the members of the European System of Central Banks (ESCB) which were presented by the ECB. In addition, ESMA requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Commission Delegated Regulation (EU) No 151/2013

1. Article 4 is amended as follows:

(a) Paragraph 1 is replaced by the following:

‘A trade repository shall provide the entities listed in Article 81(3) of Regulation (EU) No 648/2012 with direct and immediate access, including where delegation under Article 28 of Regulation (EU) No 1095/2010 exists, to details of derivatives contracts in accordance with Articles 2 and 3 of this Regulation.

For the purposes of the first subparagraph, a trade repository shall use an XML format and a template developed in accordance with ISO 20022 methodology. A trade repository may in addition, after agreement with the entity concerned, provide access to details of derivatives contracts in another mutually agreed format.’

(b) Paragraph 2 is deleted.

2. Article 5 is amended as follows:

The following paragraphs 3 to 9 are added:

‘3. A trade repository shall establish and maintain the necessary technical arrangements to enable the entities listed in Article 81(3) of Regulation (EU) No 648/2012 to connect using a secure machine-to-machine interface in order to submit data requests and to receive data.

For the purposes of the first subparagraph, a trade repository shall use the SSH File Transfer Protocol. The trade repository shall use standardised XML messages developed in accordance with the ISO 20022 methodology to communicate through that interface. A trade repository may in addition, after agreement with the entity concerned, set up a connection using another mutually agreed protocol.

4. In accordance with Articles 2 and 3 of this Regulation, a trade repository shall provide the entities listed in Article 81(3) of Regulation (EU) No 648/2012 with access to the following information:
 - (a) all reports on derivatives contracts;
 - (b) the latest trade states of derivatives contracts that have not matured or which have not been the subject of a report with Action type “E”, “C”, “P” or “Z” as referred to in field 93 in Table 2 of the Annex to Commission Implementing Regulation (EU) No 1247/2012⁵.
5. A trade repository shall establish and maintain the necessary technical arrangements to enable the entities listed in Article 81(3) of Regulation (EU) No 648/2012 to establish predefined periodic requests to access details of derivatives contracts, as determined in paragraph 4, necessary for those entities to fulfil their responsibilities and mandates.
6. Upon request, a trade repository shall provide the entities listed in Article 81(3) of Regulation (EU) No 648/2012 with access to details of derivatives contracts according to any combination of the following fields as referred to in the Annex to Implementing Regulation (EU) No 1247/2012:
 - (a) reporting timestamp;
 - (b) reporting Counterparty ID;
 - (c) ID of the other Counterparty;
 - (d) corporate sector of the reporting counterparty;
 - (e) nature of the reporting counterparty;
 - (f) broker ID;
 - (g) report submitting entity ID;
 - (h) beneficiary ID;

⁵ Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (OJ L 352, 21.12.2012, p. 20) as amended by Commission Implementing Regulation (EU) 2017/105 of 26 October 2016 (OJ L 17, 21.1.2017, p. 17).

- (i) asset class;
- (j) product classification;
- (k) product identification;
- (l) underlying identification;
- (m) venue of execution;
- (n) execution timestamp;
- (o) maturity date;
- (p) termination date;
- (q) CCP; and
- (r) action type.

7. A trade repository shall establish and maintain the technical capability to provide direct and immediate access to details of derivatives contracts necessary for the entities listed in Article 81(3) of Regulation (EU) No 648/2012 to fulfil their mandates and responsibilities. That access shall be provided as follows:

- (a) where an entity listed in Article 81(3) of Regulation (EU) No 648/2012 requests access to details of outstanding derivatives contracts or of derivatives contracts which have either matured or for which reports with action types “E”, “C”, “Z” or “P” as referred to in field 93 in Table 2 of the Annex to Implementing Regulation (EU) No 1247/2012 were made not more than one year before the date on which the request was submitted, a trade repository shall fulfil that request no later than 12:00 Universal Coordinated Time on the first calendar day following the day on which the request to access is submitted.
- (b) where an entity listed in Article 81(3) of Regulation (EU) No 648/2012 requests access to details of derivatives contracts which have either matured or for which reports with action types “E”, “C”, “Z” or “P” as referred to in field 93 in Table 2 of the Annex to Implementing Regulation (EU) No 1247/2012 were made more than one year before the date on which the request was submitted, a trade repository shall fulfil that request no later than three working days after the request to access is submitted.
- (c) where a request to access data by an entity listed in Article 81(3) of Regulation (EU) No 648/2012 relates to derivative contracts falling under both points (a) and (b), the trade repository shall provide details of those derivatives contracts no later than three working days after that request to access is submitted.

8. A trade repository shall confirm receipt and verify the correctness and completeness of any request to access data submitted by the entities listed in Article 81(3) of Regulation (EU) No 648/2012. It shall notify those entities of the result of that verification no later than sixty minutes after the submission of the request.
9. A trade repository shall use electronic signature and data encryption protocols to ensure the confidentiality, integrity, and protection of the data made available to the entities listed in Article 81(3) of Regulation (EU) No 648/2012.

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*.

It shall apply from 1 November 2017.

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

Done at Brussels, 29.6.2017

For the Commission
The President
Jean-Claude JUNCKER