



Council of the
European Union

Brussels, 27 September 2017
(OR. en)

12603/17

EF 211
ECOFIN 756
DELECT 167

COVER NOTE

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

date of receipt: 26 September 2017

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

No. Cion doc.: C(2017) 6337 final

Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 26.9.2017
amending Commission Delegated Regulation (EU) 2017/571
supplementing Directive 2014/65/EU of the European Parliament and of
the Council with regard to regulatory technical standards on the
authorisation, organisational requirements and the publication of
transactions for data reporting services providers

Delegations will find attached document C(2017) 6337 final.

Encl.: C(2017) 6337 final



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

of 26.9.2017

amending Commission Delegated Regulation (EU) 2017/571 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The Markets in Financial Instruments Directive (Directive 2014/65/EU, MiFID II) introduces a new type of services that are subject to authorisation and supervision: Data Reporting Services (DRSs) operated by Data Reporting Services Providers (DRSPs). DRSs include the operation of Approved Publication Arrangements (APAs), Consolidated Tapes (CTs) and Approved Reporting Mechanisms (ARM). MiFID II provides for a regulatory framework governing DRSPs globally and each of them more specifically, where appropriate.

MiFID II provides for the possibility of establishment of a consolidated tape (CT) both for equity, as well as for non-equity financial instruments. ESMA already submitted in September 2015 draft regulatory technical standards specifying the scope of the equity consolidated tape providers (CTPs) that have been endorsed and adopted by the Commission in Delegated Regulation (EU) 2017/571. Given the higher complexity for establishing and operating a non-equity tape and bearing in mind that the provisions on the non-equity tape of Article 65(2) of MiFID II will only apply from 3 September 2019, ESMA delivered the draft RTS specifying the scope of the non-equity CTP later than that on equity CTP.

Recital 118 of MiFID II acknowledges that the "establishment of a consolidated tape for non-equity instruments is deemed to be more difficult to implement than the consolidated tape for equity financial instruments". This is also reflected in the empowerment for the draft RTS which requires the draft regulatory standards to not only specify the financial instruments data which must be provided by the data stream but also the APAs and trading venues which have to be included in the tape.

To ensure the right balance between being sufficiently attractive for potential CTPs by providing commercial incentives to the CTPs, and at the same time providing market participants with an accurate data on the markets, it is appropriate to allow for the specialisation of the non-equity CTPs. Rather than requiring CTPs to provide services in the entire universe of non-equity instruments, CTPs should be free to specialise in one asset class, the entire spectrum or any combination of asset classes. To ensure high quality of CT, it is required that the CT covers simultaneously both:

- (a) 80% of the cumulated volume of transactions as defined in table 4 of Annex II of Commission Delegated Regulation (EU) No 2017/583¹ reported by all APAs and/or trading venues in the Union over the previous 6-month for the relevant non-equity asset class, and
- (b) 80% of the cumulated number of transactions reported by APAs and/or trading venues in the Union over the previous 6-month period for the relevant non-equity asset class.

The draft regulatory technical standards were submitted to the Commission on 31 March 2017. In accordance with Article 10(1) of Regulation No (EU) 1095/2010 establishing the

¹ Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives (OJ L 87, 31.3.2017, p. 229).

ESMA, the Commission shall decide within three months of receipt of the draft standards whether to endorse them. 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 Article 10 of Regulation (EU) No 1095/2010 ESMA has carried out a public consultation on the draft regulatory technical standards. A consultation paper was published on 3 October 2016 on the ESMA website and the consultation closed on 3 December 2016. In addition, the ESMA sought the views of the Securities and Markets Stakeholder Group (SMSG) established in accordance with Article 37 of the ESMA Regulation.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This Regulation specifies the provisions pertaining to the scope of the consolidated tape for bonds, structured finance products, emission allowances and derivatives. These new provisions on non-equity instruments will be inserted in Commission Delegated Regulation (EU) No 2017/571 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services provider. In addition to the enumeration of the non-equity financial instruments, the data which must be provided by the data stream, it is further specified which APAs and trading venues have to be included in the consolidated tape.

Furthermore, to ensure a smooth transition to the new regime, the Regulation provides for transitional provisions requiring that the first assessment period for determining the coverage ratios by CTPs would apply as of 1 January 2019.

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

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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 Directive 2014/65/EU of 15 May 2014 of the European Parliament and of the Council on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU², and in particular Article 65(8)(c) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2017/571³ sets out the organisational requirements for data reporting services providers, including consolidated tape providers (CTPs) for equity instruments. Since the details specifying the publication arrangements for the consolidated tape for non-equity instruments, such as bonds, structured finance products, emission allowances and derivatives are closely linked to the provisions of Delegated Regulation (EU) 2017/571, it is appropriate to also specify the scope of the consolidated tape for non-equity instruments in the same Delegated Regulation and therefore to amend Delegated Regulation (EU) 2017/571.
- (2) In order to establish a framework that provides commercial incentives for operating a consolidated tape for non-equity instruments, CTPs should be allowed to operate a consolidated tape covering only one asset class or several asset classes.
- (3) CTPs should ensure that they publish the required information on transactions covering at least 80 per cent of the total volume and number of transactions published in the preceding six months for each relevant asset class by approved publication arrangements (APAs) and trading venues. This approach ensures that CTPs publish information that is of significance from a user perspective while avoiding high costs

² OJ L 173, 12.6.2014, p. 349.

³ Commission Delegated Regulation (EU) 2017/571 of 2 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers (OJ L 87, 31.3.2017, p. 126).

stemming from including all information published by all APAs and all trading venues.

- (4) CTPs should be allowed sufficient time to meet the coverage ratios set out in this Regulation in case they need to add new trading venues and APAs to their data stream.
- (5) For reasons of consistency and a smooth functioning of the financial markets, it is necessary that the provisions relating to non-equity CTPs and the national provisions transposing Directive 2014/65/EU apply from the same date. To ensure a smooth transition to the new regime, it is necessary that the first period for determining the coverage ratios to be reached by the CTP covers the period starting from 1 January 2019.
- (6) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (7) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based 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,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) 2017/571 is amended as follows:

- (1) The following Article 15a is inserted:

“Article 15a

Scope of the consolidated tape for bonds, structured finance products, emission allowances and derivatives

1. A CTP shall include in its electronic data stream the data of one or more of the following asset classes:
 - (a) bonds, excluding exchange traded commodities (ETCs) and exchange traded notes (ETNs);
 - (b) ETC and ETNs bond types;
 - (c) structured finance products;
 - (d) securitised derivatives;

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).

- (e) interest rate derivatives;
 - (f) foreign exchange derivatives;
 - (g) equity derivatives;
 - (h) commodity derivatives;
 - (i) credit derivatives;
 - (j) contracts for differences;
 - (k) C10 derivatives;
 - (l) emission allowance derivatives;
 - (m) emission allowances.
2. A CTP shall include in its electronic data stream the data made public pursuant to Articles 10 and 21 of Regulation (EU) No 600/2014 that meet both of the following coverage ratios:
- (a) the number of transactions published by a CTP in an asset class listed in paragraph 1 represents at least 80% of the total number of transactions in the relevant asset class published in the Union by all APAs and all trading venues during the assessment period referred to in paragraph 3;
 - (b) the volume of transactions published by a CTP in an asset class listed in paragraph 1 represents at least 80% of the total volume of transactions in the relevant asset class published in the Union by all APAs and all trading venues during the assessment period referred to in paragraph 3.

For the purposes of point (b), the volume of transactions shall be determined in accordance with the measure of volume specified in Table 4 of Annex II to Commission Delegated Regulation (EU) 2017/583*.

3. A CTP shall assess the coverage ratios set out in paragraph 2 every six months, based on data covering the preceding 6 months. The assessment periods shall start on 1 January and 1 July each year. The first period shall cover the first six months of the year 2019.
4. A CTP shall ensure that it reaches the minimum coverage ratios set out in paragraph 2 as soon as possible, and in any case not later than:
- (a) 31 January of the calendar year following the period covering 1 January to 30 June;
 - (b) 31 July of the calendar year following the period covering 1 July to 31 December.”

* Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives (OJ L 87, 31.3.2017, p. 229).'

(2) Article 21 is replaced by the following:

“Article 21

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 3 January 2018.

However, Article 15a(4) shall apply from 1 January 2019 and Articles 14(2), 15(1), (2) and (3), and 20(b) shall apply from 3 September 2019.”

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*.

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

Done at Brussels, 26.9.2017

*For the Commission
The President
Jean-Claude JUNCKER*