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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

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Delegations will find attached document COM(2014) 509 final ANNEX 1.

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ANNEX 1

**ANNEX**

*to the*

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL**

**On the operation of the European Supervisory Authorities (ESAs) and the European  
System of Financial Supervision (ESFS)**

{SWD(2014) 261 final}

## **Commission Report on the exercise of delegation of power to the Commission to adopt regulatory technical standards pursuant to Article 11(1) of the ESAs Regulations**

Where sectorial legislation enables the ESAs to develop draft regulatory technical standards (RTS) these need to be subsequently endorsed by the Commission in order to give them legal effect in compliance with Articles 10 to 14 of the ESAs founding Regulations. The European Parliament and the Council may, within a specified period of time, object to any RTS adopted by the Commission. If, on the expiry of the objection period, neither the European Parliament nor the Council have objected to the RTS, it shall be published in the Official Journal of the European Union and shall enter into force on the date stated therein.

Article 11(1) of the founding Regulations specifically provides that the power to adopt draft RTS shall be conferred on the Commission for a period of 4 years from 16 December 2010. The Commission shall draw up a report in respect of the delegated power no later than 6 months before the end of the 4-year period.

Since the start of operations of the ESAs in January 2011, several sets of draft RTS have been endorsed by the Commission in form of Commission Delegated Regulations and have subsequently been published in the Official Journal, notably supplementing the Short Selling Regulation (EU) No. 236/2012 of 14.3.2012<sup>1</sup>, the Prospectus Directive 2010/73/EU<sup>2</sup>, the Regulation on OTC Derivatives [EMIR] (EU) No. 648/2012 of 4 July 2012<sup>3</sup>, the CRDIV/CRR package (Directive 2013/36/EU; Regulation (EU) No. 575/2013 of 26 June 2013)<sup>4</sup> and the Financial Conglomerates Directive 2002/87/EC of 16.12.2002<sup>5</sup>. A significant number of further draft RTS have also been endorsed by the Commission but are at the time of drafting this report still under scrutiny by the co-legislators and have not yet entered into force.<sup>6</sup>

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<sup>1</sup> See Commission Delegated Regulation (EU) No. 826/2012 of 29.6.2012, OJ L 251, 18.9.2012, p.1 and Delegated Regulation (EU) No. 919/2012 of 5.7.2012, OJ L 274, 9.10.2012, p.16.

<sup>2</sup> See Commission Delegated Regulation (EU) No. 382/2014 of 7.3.2014, OJ L 111, 15.4.2014, p.36.

<sup>3</sup> See Commission Delegated Regulations (EU) No 152/2013, No. 153/2013, No. 149/2013, No. 148/2013, No. 150/2013, 151/2013 all of 19.12.2013, OJ L 52, 23.2.2013; and Delegated Regulation (EU) No. 285/2014 of 13.2.2014, OJ L 85, 21.3.2014, p.1.

<sup>4</sup> See Commission Delegated Regulation (EU) No. 183/2014 of 20.12.2013, OJ L 57, 27.2.2014, p.3; and Delegated Regulation (EU) No. 241/2014 of 7 January 2014, OJ L 74, 14.3.2014, p.8.

<sup>5</sup> See Commission Delegated Regulation (EU) No. 342/2014 of 21.01.2014, OJ L 100, 3.4.2014, p.1.

<sup>6</sup> E.g. draft Commission Delegated Regulations supplementing the Alternative Investment Manager Directive [AIFMD] 2011/61/EU of 8 .6.2011; the Credit Rating Agencies Directive 2013/14/EU and Regulation (EU) No. 462/2013 both of 21.05.2013; the IORP Directive 2003/41/EC, OJ L 235, 23.9.2003, p.10; as well as further draft RTS under the CRDIV/CRR framework.

Where relevant empowerments for draft RTS in a basic legal act are closely linked, either on substance or in terms of calendar, they have in practice frequently been bundled into a single Delegated Regulation<sup>7</sup>. The objective is to ensure coherence between those provisions, and to facilitate a comprehensive view and access in compact form by persons subject to those obligations.

Upon submission of the draft RTS to the Commission the latter shall decide within three months whether to endorse it. According to the founding Regulations the Commission may also, following coordination with the authority, endorse the draft RTS in part only, or with amendments, where the Union's interest so require.

The majority of the draft RTS have been endorsed by the Commission without further changes.<sup>8</sup> Where the Commission considered amendments to be necessary, it sent back the draft RTS to the ESA concerned stating its reasons for the deviation proposed in compliance with Article 10 (1) of the founding Regulations<sup>9</sup>.

For RTS, Council and EP have a right of objection within three months after adoption by the Commission, extendible by a further three months. However, if the Commission adopts a technical standard that is the same as the draft submitted by the ESAs, that period is reduced to one month, extendible by a further month<sup>10</sup>. The ESAs Regulations require the ESAs to carry out public consultations when preparing draft technical standards and to analyse potential related costs and benefits unless such consultations and analyses would be disproportionate in relation to the scope and impact of the draft technical standard. An appropriate input of stakeholders for regulatory (and implementing) technical standards is hence ensured. In addition, it is established practice by the Commission to regularly inform the Member States and the European Parliament represented in the Commission expert groups and committees about the ongoing process.

Overall, the delegation of powers to the Commission to endorse draft RTS has been crucial to further develop the single rulebook and establish high quality rules while drawing on the particular technical expertise of the ESA concerned. It provides for democratic scrutiny through the possibility of the co-legislators to object to the Commission Delegated Regulation. The timeframe within which the Commission is in principle supposed to endorse

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<sup>7</sup> As an example Delegated Regulation (EU) No. 241/2014 of 7 January 2014, OJ L74, 14.3.2014, p.8 which bundles 14 empowerments for draft RTS since they refer to elements of own funds requirements of institutions and to deductions from those same elements of own funds for the application of Regulation (EU) No 575/2013.

<sup>8</sup> See Recitals (23) and (24) of the founding Regulations.

<sup>9</sup> As an example the Commission rejected a draft RTS on colleges for central counterparties which was submitted by ESMA in September 2012.

<sup>10</sup> The objection period has been further extended by an additional month by means of an amendment to the EBA founding Regulation in Art. 48 of Directive 2014/17 (Mortgage Credit Directive). With regard to the Regulations establishing ESMA and EIOPA relevant amendments have been introduced via the so-called Omnibus II Directive [Directive 2014/51/EU of 16 April 2014, OJ L 153, 22.5.2014, p.1].

a draft RTS has however at certain occasions proven difficult to meet, depending on the complexity of the draft RTS. Before final endorsement by the College, the relevant Commission department needs to thoroughly examine and assess the proposed standard, in particular its legality in light of the underlying empowerment as well as to ensure its translation into all EU languages and to consult other Commission departments. Hence, since draft regulatory technical standards may be particularly complex according to the case, it could be explored to provide for a slightly longer timeframe.

The Commission believes that the delegation of powers with respect to draft RTS effectively contributes to and facilitates the establishment of the single rule book in the area of financial services. While it seems too early in the process to draw firm conclusions on the matter the Commission will of course continue to monitor the implementation of the numerous upcoming empowerments for draft RTS which are set out in various acts of sectorial Union legislation.

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