COMMISSION DELEGATED REGULATION (EU) 2017/1800

of 29 June 2017

amending Delegated Regulation (EU) No 151/2013 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 repositories (¹), and in particular Article 81(5) thereof,

Whereas:

(1) The application of Commission Delegated Regulation (EU) No 151/2013 (²) 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 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 1095/2010 (³), 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.

(¹) OJ L 201, 27.7.2012, p. 1.
(²) 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).
(³) 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).

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.

(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 Delegated Regulation (EU) No 151/2013

1.   Article 4 is amended as follows:

(a) Paragraph 1 is replaced by the following:

'1.   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.   In Article 5, 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 1247/2012 (*).

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;

(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.

(*) 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 Implementing Regulation (EU) 2017/105 (OJ L 17, 21.1.2017, p. 17).'

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 June 2017.

For the Commission
The President
Jean-Claude JUNCKER