Commission Delegated Regulation (EU) 2017/104 of 19 October 2016 amending 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)

COMMISSION DELEGATED REGULATION (EU) 2017/104

of 19 October 2016

amending 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[(1)], and in particular Article 9(5) thereof,

Whereas:

(1) Commission Delegated Regulation (EU) No 148/2013[(2)] 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.

(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[(3)], 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) Paragraph 2 of Article 1 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[(4)].;

(3) the following Article 3a is inserted:

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2017/104. (See end of Document for details)*

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.

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

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 1 November 2017.

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

Done at Brussels, 19 October 2016.

For the Commission

The President

Jean-Claude JUNCKER