

## II

(Non-legislative acts)

## REGULATIONS

## COMMISSION DELEGATED REGULATION (EU) 2016/1712

of 7 June 2016

**supplementing Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms with regard to regulatory technical standards specifying a minimum set of the information on financial contracts that should be contained in the detailed records and the circumstances in which the requirement should be imposed**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council <sup>(1)</sup>, and in particular Article 71(8) thereof,

Whereas:

- (1) In order to ensure that competent authorities and resolution authorities may easily access data on financial contracts, as defined in Article 2(1)(100) of Directive 2014/59/EU, where the applicable resolution plan or the group resolution plan foresees the taking of resolution actions in relation to an institution or entity referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU, those authorities should require institutions or entities to maintain on an on-going basis a minimum set of information on such contracts. That should be without prejudice to the possibility of competent authorities or resolution authorities to require additional information to be kept in detailed records of financial contracts and to impose such requirements on other institutions or entities referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU when it is needed to ensure comprehensive and effective planning.
- (2) The minimum set of information to be maintained in detailed records of financial contracts by the relevant institutions or entities should be clearly determined. That should be without prejudice to the discretion of competent authorities and resolution authorities to use it as a template or to prescribe the format in which the requested information should be provided within the timeframe set in the request.
- (3) For the avoidance of doubt, the requirement imposed on the relevant institutions or entities to maintain detailed records of financial contracts should not affect the right of the competent authorities and the resolution authorities to request necessary information from trade repositories in accordance with Article 81 of Regulation (EU) No 648/2012 of the European Parliament and of the Council <sup>(2)</sup> and Article 71(7) of Directive 2014/59/EU.

<sup>(1)</sup> OJ L 173, 12.6.2014, p. 190.

<sup>(2)</sup> 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 (OJ L 201, 27.7.2012, p. 1).

- (4) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.
- (5) The European Banking Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council <sup>(1)</sup>,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

### **Requirement to maintain detailed records of financial contracts**

1. An institution or entity referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU shall be required by the competent authority or resolution authority to maintain detailed records of financial contracts where the resolution plan or the group resolution plan foresees the taking of resolution actions in relation to the institution or entity concerned in the event the conditions for resolution are met.
2. Where necessary to ensure comprehensive and effective planning, competent authorities and resolution authorities may impose the requirements referred to in paragraph 1 on institutions or entities referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU which are not covered by paragraph 1 of this Article.

#### *Article 2*

### **Minimum set of information on financial contracts to be kept in the detailed records**

1. An institution or entity which is required to maintain detailed records of financial contracts under Article 1 shall retain on an ongoing basis the minimum set of information listed in the Annex for each financial contract in its records.
2. The institution or entity referred to in paragraph 1 shall, at the request of the competent authority or resolution authority, make available and transmit the requested information on the financial contracts, to the requesting authority within the timeframe set in the request.
3. Where an information field listed in the Annex is not applicable to a certain type of financial contract and the institution or entity referred to in paragraph 1 can demonstrate this to the competent authority or resolution authority, the information relevant to that field shall be excluded from the requirement under Article 1.

#### *Article 3*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

<sup>(1)</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

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

Done at Brussels, 7 June 2016.

*For the Commission*

*The President*

Jean-Claude JUNCKER

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## ANNEX

**The minimum set of the information on financial contracts to be included in the detailed records**

	Field	Description of information to be maintained in detailed records of financial contracts
<b>Section 1 — Parties to the financial contract</b>		
1	Record keeping timestamp	Date and time of record entry.
2	Type of ID of the reporting counterparty	Type of code used to identify the reporting counterparty.
3	Reporting Counterparty ID	Unique code (Legal Entity Identifier (LEI), where available) identifying the reporting counterparty.
4	Type of ID of the other counterparty	Type of code used to identify the other counterparty.
5	ID of the other counterparty	Unique code (LEI, where available) identifying the other counterparty of the financial contract. This field shall be filled from the perspective of the reporting counterparty. In the case of an individual, a client code shall be used in a consistent manner.
6	Name of the reporting counterparty	Corporate name of the reporting counterparty. This field can be left blank where LEI is used to identify the reporting counterparty.
7	Domicile of the reporting counterparty	Information on the registered office, consisting of full address, city and country of the reporting counterparty. This field can be left blank where LEI is used to identify the reporting counterparty.
8	Country of the other Counterparty	The country code of the country where the registered office of the other counterparty is located or, if the other counterparty is a natural person, of the country of residence.
9	Governing law	Identify the law governing the financial contract.
10	Contractual recognition — Write down and conversion powers (only for contracts governed by third country law subject to the requirement of the contractual term under the first subparagraph of Article 55(1) of Directive 2014/59/EU)	The contractual term required under Article 55(1) of Directive 2014/59/EU. When such contractual term is included in a master agreement and applies to all trades governed by that master agreement, it can be recorded at the master agreement level.
11	Contractual recognition — Suspension of termination rights (only for contracts governed by third country law)	The contractual term by which the creditor or party to the agreement creating the liability recognises the power of the resolution authority of a Member State to suspend termination rights. Where such contractual term is included in a master agreement and applies to all trades governed by that master agreement, it can be recorded at the master agreement level.

	Field	Description of information to be maintained in detailed records of financial contracts
12	Contractual recognition — Resolution powers (only for contracts governed by third country law)	The contractual term, if any, by which the creditor or party to the agreement creating the liability recognises the power of a Member State resolution authority to apply resolution powers other than those identified in fields 10 and 11.  Where such contractual term is included in a master agreement and applies to all trades governed by that master agreement, it can be recorded at the master agreement level.
13	Core business lines	Identify which core business line or core business lines the financial contract relates to, if any.
14	Value of the contract	Mark-to-market valuation of the financial contract, or mark-to-model valuation used in application of Article 11(2) of Regulation (EU) No 648/2012 and reported in application of Article 9 of Regulation (EU) No 648/2012 and delegated and implementing regulations adopted thereunder. The CCP's valuation is to be used for a cleared trade.
15	Currency of the value	The currency used for the valuation of the financial contract.
16	Valuation timestamp	Date and time of the last valuation.  For mark-to-market valuation, the date and time of publishing of reference prices shall be reported.
17	Valuation type	Indicate whether valuation was performed mark-to-market or mark-to-model or provided by the CCP.
18	Collateralisation	Indicate whether a collateral agreement between the counterparties exists. Where the financial contract is covered by the reporting requirements under Article 9 of Regulation (EU) No 648/2012 and delegated and implementing regulations adopted thereunder, information on collateralisation shall be provided as required by those requirements.
19	Collateral portfolio	Indicate whether the collateralisation was performed on a portfolio basis. Portfolio means the collateral calculated on the basis of net positions resulting from a set of contracts, rather than per trade.
20	Collateral portfolio code	If collateral is reported on a portfolio basis, the portfolio should be identified by a unique code determined by the reporting counterparty.
21	Initial margin posted	Value of the initial margin posted by the reporting counterparty to the other counterparty.  Where the initial margin is posted on a portfolio basis, this field should include the overall values of the initial margin posted for the portfolio.
22	Currency of the initial margin posted	Specify the currency of the initial margin posted.
23	Variation margin posted	Value of the variation margin posted, including cash settled, by the reporting counterparty to the other counterparty.  Where the variation margin is posted on a portfolio basis, this field should include the overall value of the variation margin posted for the portfolio.

	Field	Description of information to be maintained in detailed records of financial contracts
24	Currency of the variation margin posted	Specify the currency of the variation margin posted.
25	Initial margin received	Value of the initial margin received by the reporting counterparty from the other counterparty. Where the initial margin is received on a portfolio basis, this field should include the overall value of the initial margin received for the portfolio.
26	Currency of the initial margin received	Specify the currency of the initial margin received.
27	Variation margin received	Value of the variation margin received, including cash settled, by the reporting counterparty from the other counterparty. Where the variation margin is received on a portfolio basis, this field should include the overall value of the variation margin received for the portfolio.
28	Currency of the variation margin received	Specify the currency of the variation margin received
<b>Section 2a — Financial contract type</b>		
29	Type of the financial contract	Classify the financial contract according to Article 2, paragraph 1, point 100 of Directive 2014/59/EU.
30	Financial contract ID	Unique trade ID where the financial contract is covered by the reporting requirements under Article 9 of Regulation (EU) No 648/2012 and delegated and implementing regulations adopted thereunder. For any other financial contract, ID assigned by the reporting counterparty.
<b>Section 2b — Details on the transaction</b>		
31	Effective date	Date when obligations under the financial contract come into effect.
32	Maturity date	Original date of expiry of the reported financial contract. An early termination shall not be recorded in this field.
33	Termination date	Termination date in the case of an early termination of the reported financial contract. If not different from maturity date, this field shall be left blank.
34	Termination right	Indicate whether the other counterparty's termination right under the reported financial contract is based on the insolvency or financial condition of the institution under resolution. Where such contractual term is included in a master agreement and applies to all trades governed by that master agreement, it can be recorded at the master agreement level.
35	Master Agreement type	Reference to the name of the relevant master agreement, if used for the reported financial contract (e.g. ISDA Master Agreement; Master Power Purchase and Sale Agreement; International ForEx Master Agreement; European Master Agreement or any local master agreements).

	Field	Description of information to be maintained in detailed records of financial contracts
36	Master Agreement version	Reference to the year of the master agreement version used for the reported trade, if applicable (e.g. 1992, 2002, etc.).
37	Netting agreement	If the financial contract is a part of a netting arrangement as defined in Article 2(1)(98) of Directive 2014/59/EU, a unique reference of the netting arrangement.
38	Type of liability/claim	Indicate whether liabilities arising from the financial contract are: <ul style="list-style-type: none"> <li>— entirely excluded from bail-in pursuant to Article 44(2) of Directive 2014/59/EU;</li> <li>— partially excluded from bail-in pursuant to Article 44(2) of Directive 2014/59/EU;</li> <li>— not excluded from bail-in pursuant to Article 44(2) of Directive 2014/59/EU.</li> </ul>
<b>Section 2c — Clearing</b>		
39	Clearing obligation	Indicate whether the reported financial contract belongs to a class of OTC derivatives that has been declared subject to the clearing obligation and both counterparties to the contract are subject to the clearing obligation under Regulation (EU) No 648/2012, as of the time of execution of the financial contract.
40	Cleared	Indicate whether clearing has taken place.
41	Clearing timestamp	Time and date when clearing took place.
42	CCP	In the case of a financial contract that has been cleared, the unique code for the CCP that has cleared the financial contract.
43	Intragroup	Indicate whether the financial contract was entered into as an intragroup transaction, defined in Article 3 of Regulation (EU) No 648/2012.