

**COMMISSION DELEGATED REGULATION (EU) 2017/577****of 13 June 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 the volume cap mechanism and the provision of information for the purposes of transparency and other calculations****(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 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 <sup>(1)</sup>, and in particular Articles 5(9) and 22(4) thereof,

Whereas:

- (1) Regulation (EU) No 600/2014 requires competent authorities and the European Securities and Markets Authority (ESMA) to perform a significant number of calculations in order to calibrate the applicability of the pre-trade and post-trade transparency regime and the trading obligation for derivatives as well as to determine whether an investment firm is a systematic internaliser.
- (2) In order to perform the necessary calculations, both competent authorities and ESMA need to be able to obtain robust and high quality data for each asset class to which Regulation (EU) No 600/2014 applies. It is therefore necessary to improve both the accessibility and the quality of data available to competent authorities and ESMA in accordance with Directive 2014/65/EU of the European Parliament and of the Council <sup>(2)</sup> and Regulation (EU) No 600/2014 so that the classification of financial instruments, including the thresholds for the purposes of pre-trade and post-trade transparency, and, where necessary, re-calibrations of these thresholds, can be calculated on a more informed basis after the regime has been applied for a certain period of time.
- (3) Provisions should be laid down specifying, in general terms, the common elements with regard to the content and format of data to be submitted by trading venues, approved publication arrangements (APAs) and consolidated tape providers (CTPs) for the purposes of transparency and other calculations. Those provisions should be read in conjunction with Commission Delegated Regulations (EU) 2017/587 <sup>(3)</sup>, (EU) 2017/583 <sup>(4)</sup>, (EU) 2017/567 <sup>(5)</sup>, (EU) 2017/565 <sup>(6)</sup> and (EU) 2016/2020 <sup>(7)</sup> which describe the methodology and data necessary to perform the relevant calculations and specify the content and scope of the data necessary to perform

<sup>(1)</sup> OJ L 173, 12.6.2014, p. 84.

<sup>(2)</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

<sup>(3)</sup> Commission Delegated Regulation (EU) 2017/587 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 shares, depository receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or a systematic internaliser (see page 387 of this Official Journal).

<sup>(4)</sup> 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 bond, structured finance products, emission allowances and derivatives (see page 229 of this Official Journal).

<sup>(5)</sup> Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, derivatives, portfolio compression and supervisory measures on product intervention and positions (see page 90 of this Official Journal).

<sup>(6)</sup> Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (see page 1 of this Official Journal).

<sup>(7)</sup> Commission Delegated Regulation (EU) 2016/2020 of 26 May 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 criteria for determining whether derivatives subject to the clearing obligation should be subject to the trading obligation (OJ L 313, 19.11.2016, p. 2).

the transparency calculations. Therefore, the content, format and quality of the data submitted with regard to trading venues, APAs and CTPs should be consistent with the applicable methodology prescribed in the relevant implementing acts of Directive 2014/65/EU and Regulation (EU) No 600/2014 when performing such calculations.

- (4) With the exception of potential ad-hoc data requests and calculations to be performed for the purposes of the volume cap mechanism, trading venues, APAs and CTPs should submit reports on a daily basis. Considering the broad scope of financial instruments covered and the large amount of data to be processed, this daily submission enables competent authorities to more accurately process files of manageable sizes and ensures an efficient and timely management of the data submission, data quality check and data processing. Collecting data on a daily basis also simplifies the data provision obligation on trading venues, APAs and CTPs by alleviating them from the burden of calculating the number of trading days in the cases where that quantitative liquidity criterion is applicable, and of aggregating data for the same financial instrument across different time maturity buckets in the cases where the time to maturity has to be considered. Centralising that calculation also ensures a consistent use of the criteria across financial instruments and trading venues.
- (5) Trading venues should store data that is comprehensive and allows competent authorities and ESMA to perform accurate calculations. While the required information is usually provided in the post-trade reports, in some cases, the information necessary for the calculations goes beyond the information available in those reports. This includes, for example, information on transactions executed on the basis of orders that benefitted from the large in scale waiver. This information should not be included in trade reports since it could expose such transactions to adverse market impact. However, since that information might be necessary for competent authorities to perform accurate calculations, it should be stored appropriately by trading venues, APAs and CTPs and communicated to competent authorities and ESMA where necessary. Trading venues should ensure that they adequately disseminate the information to be provided to competent authorities and ESMA. Transactions executed on the basis of large in scale orders should be appropriately identified in their report to CTPs.
- (6) Data should be collected from a variety of sources since a single source may not always hold a complete data set for an asset class or even a particular instrument. Therefore, to allow competent authorities and ESMA to obtain and consolidate high quality data from various sources, trading venues, APAs and CTPs should use, where available, pre-set specifications in terms of content and format in order to make the data collection easier and more cost efficient.
- (7) Considering the sensitivity of the necessary calculations and the potential commercial consequences for trading venues, issuers and other market participants of publishing incorrect information which could lead, in the case of the volume cap mechanism, to the suspension of the use of the waivers for one particular venue or across the Union for one particular financial instrument, it is crucial to clarify the format of the data to be submitted to competent authorities and ESMA in order to set up efficient communication channels with trading venues and CTPs and ensure timely and correct publication of the required data.
- (8) Regulation (EU) No 600/2014 requires ESMA to publish, for financial instruments to which the volume cap mechanism applies, measurements of the total volume of trading in the previous 12 months and of the percentages of trading under both the negotiated trade and reference price waivers across the Union and on each trading venue in the previous 12 months. In case of financial instruments traded in more than one currency, it is necessary to convert the volumes executed in different currencies into one common currency so as to enable the computation of those volumes and make the required calculations. Therefore, the methodology and exchange rates to be used to convert, where necessary, trading volumes should be provided for.
- (9) For the purpose of the volume cap mechanism, trading venues should be required to report the volumes of trading executed under the reference price waiver and, for liquid instruments, the negotiated trade waiver. Given that the waivers apply to orders and not to transactions, it is important to clarify that the volumes to be reported should include all transactions flagged with 'RFPT' or 'NLIQ' for the purpose of the post-trade publication of transactions and as specified in Delegated Regulation (EU) 2017/587. Where a transaction was executed on the basis of two orders benefitting from the large in scale waiver, this transaction should not count towards the volumes calculated under the reference price waiver and the negotiated trade waiver.
- (10) For the purpose of the volume cap mechanism, trading venues and CTPs should ensure that the trading venue on which the transaction was executed is identified with sufficient granularity to allow ESMA to perform all

calculations referred to in Regulation (EU) No 600/2014. In particular, the trading venue identifier used should be unique for that trading venue and not shared with any other trading venue operated by the same market operator. Trading venue identifiers should allow ESMA to distinguish in an unequivocal manner all trading venues for which the market operator has received a specific authorisation under Directive 2014/65/EU.

- (11) For the purpose of the volume cap mechanism, it is necessary to require trading venues to submit a first report on the day of entry into application of Directive 2014/65/EU and Regulation (EU) No 600/2014 with trading volumes under the reference price waiver and, for liquid financial instruments, negotiated transaction waiver for the preceding calendar year. To ensure a proportionate application of this requirement, trading venues should, for that purpose, base their report on the adjusted volumes of trading executed under equivalent waivers existing under Directive 2004/39/EC of the European Parliament and of the Council <sup>(1)</sup> and Commission Regulation (EC) No 1287/2006 <sup>(2)</sup>.
- (12) In order to provide competent authorities and ESMA with accurate data, trading venues, APAs and CTPs should ensure that their reports include single-counted transactions only.
- (13) The provisions in this Regulation are closely linked, since they deal with specifying the content, frequency, format of data requests, the method to be used to process this data and other specifications relating to the publication of information for the purposes of transparency as defined under Regulation (EU) No 600/2014. To ensure coherence between those provisions, which will enter into force at the same time, and to facilitate a comprehensive view for stakeholders, and in particular those subject to the obligations, it is desirable to include them in a single Regulation.
- (14) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the provisions laid down in Regulation (EU) No 600/2014 apply from the same date.
- (15) This Regulation is based on the draft regulatory technical standards submitted by the ESMA to the Commission.
- (16) ESMA 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 Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council <sup>(3)</sup>,

HAS ADOPTED THIS REGULATION:

#### Article 1

##### Subject matter and scope

1. This Regulation sets out, the details of the data requests to be sent by competent authorities and the details of the reply to those requests to be sent by trading venues, approved publication arrangements (APAs) and consolidated tape providers (CTPs), for the purposes of calculating and adjusting the pre-trade and post-trade transparency and trading obligation regimes and in particular for the purposes of determining the following factors:

- (a) whether equity, equity-like and non-equity financial instruments have a liquid market;
- (b) the thresholds for pre-trade transparency waivers for equity, equity-like and non-equity financial instruments;

<sup>(1)</sup> Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

<sup>(2)</sup> Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 1).

<sup>(3)</sup> 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).

- (c) the thresholds for post-trade transparency deferrals for equity, equity-like and non-equity financial instruments;
- (d) when the liquidity of a class of financial instruments falls below a specified threshold;
- (e) whether an investment firm is a systematic internaliser;
- (f) the standard market size applicable to systematic internalisers dealing in equity and equity-like instruments, and the size specific to the instrument applicable to systematic internalisers dealing in non-equity instruments;
- (g) for equity and equity-like instruments, the total volume of trading for the previous 12 months and of the percentages of trading carried out under both the negotiated trade and reference price waivers across the Union and on each trading venue in the previous 12 months;
- (h) whether derivatives are sufficiently liquid for the purposes of implementing the trading obligation for derivatives.

#### Article 2

##### **Content of the data requests and information to be reported**

1. For the purpose of carrying out calculations that occur at pre-set dates or in pre-defined frequencies, trading venues, APAs and CTPs shall provide their competent authorities with all the data required to perform the calculations set out in the following Regulations:

- (a) Delegated Regulation (EU) 2017/587;
- (b) Delegated Regulation (EU) 2017/583;
- (c) Delegated Regulation (EU) 2017/567;
- (d) Delegated Regulation (EU) 2017/565.

2. Competent authorities may request, where necessary, additional information for the purpose of monitoring and adjusting the thresholds and parameters referred to in points (a) to (f) and (h) of Article 1 from trading venues, APAs and CTPs.

3. Competent authorities may request all the data ESMA is required to take into consideration in accordance with Delegated Regulation (EU) 2016/2020 for non-equity financial instruments, including data on the following:

- (a) the average frequency of trades;
- (b) the average size and distribution of trades;
- (c) the number and type of market participants;
- (d) the average size of spreads.

#### Article 3

##### **Frequency of data requests and response times for trading venues, APAs and CTPs**

1. Trading venues, APAs and CTPs shall submit the data referred to in Article 2(1) each day.
2. Trading venues, APAs and CTPs shall submit the data in response to an ad hoc request as referred to in Article 2(2) within four weeks of receipt of that request unless exceptional circumstances require a response within a shorter time period as specified in the request.
3. By way of derogation from paragraphs 1 and 2, trading venues and CTPs shall submit data to be used for the purpose of the volume cap mechanism as set out in paragraphs 6 to 9 of Article 6.

*Article 4***Format of the data requests**

Trading venues, APAs and CTPs shall submit the data referred to in Article 2 in a common XML format and, where available, in compliance with any other specifications in terms of content and format defined to facilitate an efficient and automated process of data delivery as well as its consolidation with similar data from other sources.

*Article 5***Type of data that must be stored and the minimum period of time trading venues, APAs and CTPs shall store data**

1. Trading venues, APAs and CTPs shall store all data required to calculate, monitor or adjust the thresholds and parameters set out in Article 2 regardless whether this information has been made public or not.
2. Trading venues, APAs and CTPs shall store the data referred to in paragraph 1 for at least three years.

*Article 6***Reporting requirements for trading venues and CTPs for the purpose of the volume cap mechanism**

1. For each financial instrument subject to the transparency requirements in Article 3 of Regulation (EU) No 600/2014, trading venues shall submit the following data to the competent authority:
  - (a) the total volume of trading in the financial instrument executed on that trading venue;
  - (b) the total volumes of trading in the financial instrument executed on that trading venue falling under the waivers of Article 4(1)(a) or Article 4(1)(b)(i) of Regulation (EU) No 600/2014, respectively, with total volumes reported separately for each waiver.
2. For each financial instrument subject to the transparency requirements in Article 3 of Regulation (EU) No 600/2014 and where requested by the competent authority, CTPs shall submit to the competent authority the following data:
  - (a) the total volumes of trading in the financial instrument executed on all trading venues in the Union with total volumes reported separately for each trading venue;
  - (b) the total volumes of trading executed on all trading venues in the Union falling under the waivers of Article 4(1)(a) or Article 4(1)(b)(i) of Regulation (EU) No 600/2014, respectively, with total volumes reported separately for each waiver and for each trading venue.
3. Trading venues and CTPs shall report the data set out in paragraphs 1 and 2 to the competent authority using the formats provided in the Annex. They shall, in particular, ensure that the trading venue identifiers they provide are sufficiently granular to enable the competent authority and ESMA to identify the volumes of trading executed under the reference price waiver and, for liquid financial instruments, under the negotiated trade waiver of each trading venue and allow for the calculation of the ratio set out under Article 5(1)(a) of Regulation (EU) No 600/2014.
4. For the purposes of the calculation of the volumes referred to in paragraphs 1 and 2:
  - (a) the volume of an individual transaction shall be determined by multiplying the price of the financial instrument by the number of units traded;
  - (b) the total volume of trading in each financial instrument set out in paragraph 1(a) and paragraph 2(a) shall be determined by aggregating the volume of all individual and single-counted transactions for that financial instrument.
  - (c) the trading volumes set out in paragraph 1(b) and paragraph 2(b) shall be determined by aggregating the volumes of individual and single-counted transactions for that financial instrument reported under the flags 'reference price' and 'negotiated transactions in liquid financial instruments' in accordance with Table 4 of Annex I of Delegated Regulation (EU) 2017/587.

5. Trading venues and CTPs shall only aggregate transactions executed in the same currency and shall report separately each aggregated volume in the currency used for the transactions.
6. Trading venues shall submit the data referred to in paragraphs 1 to 5 to the competent authority on the first and the sixteenth day of each calendar month by 13:00 CET. Where the first or the sixteenth day of the calendar month is a non-working day for the trading venue, the trading venue shall report the data to the competent authority by 13:00 CET on the following working day.
7. Trading venues shall submit to the competent authority the total volumes of trading determined in accordance with paragraphs 1 to 5 in respect of the following time periods:
- (a) for the reports to be submitted on the sixteenth day of each calendar month, the execution period is from the first day to the fifteenth day of the same calendar month;
  - (b) for the reports to be submitted on the first day of each calendar month, the execution period is from the sixteenth day to the last day of the previous calendar month.
8. By way of derogation from paragraphs 6 and 7, trading venues shall submit the first report per financial instrument on the day of entry into application of Directive 2014/65/EU and Regulation (EU) No 600/2014 by 13:00 CET and shall include the trading volumes referred to in paragraph 1 for the preceding calendar year. For this purpose, trading venues shall report separately, for each calendar month, the following:
- (a) the trading volumes during the period from the first day to the fifteenth day of each calendar month;
  - (b) the trading volumes during the period from the sixteenth day to the last day of each calendar month.
9. Trading venues and CTPs shall respond to any ad hoc request from competent authorities on the volume of trading in relation to the calculation to be performed for monitoring the use of the reference price or negotiated trade waivers by close of business on the next working day following the request.

#### *Article 7*

### **Reporting requirements for competent authorities to ESMA for the purposes of the volume cap mechanism and the trading obligation for derivatives**

1. Competent authorities shall provide ESMA with the data received from a trading venue or a CTP in accordance with Article 6 by 13:00 CET on the next working day following its receipt.
2. Competent authorities shall provide ESMA with the data received from a trading venue, APA or CTP for the purpose of determining whether derivatives are sufficiently liquid as referred to in Article 1(h) without undue delay and no later than three working days following the receipt of the relevant data.

#### *Article 8*

### **Reporting requirements for ESMA for the purpose of the volume cap mechanism**

1. ESMA shall publish the measurements of the total volume of trading for each financial instrument in the previous 12 months and of the percentages of trading under both the negotiated trade and reference price waivers across the Union and on each trading venue in the previous 12 months, in accordance with paragraphs 4, 5 and 6 of Article 5 of Regulation (EU) No 600/2014, no later than 22.00 CET on the fifth working day following the end of the reporting periods set out in Article 6(6) of this Regulation.
2. The publication referred to in paragraph 1 shall be free of charge and in a machine-readable and human-readable format as defined in Article 14 of Commission Delegated Regulation (EU) 2017/571 <sup>(1)</sup> and in paragraphs 4 and 5 of Article 13 of Delegated Regulation (EU) 2017/567.

<sup>(1)</sup> 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 authorization, organisational requirements and the publication of transactions for data reporting services providers (see page 126 of this Official Journal).

3. Where a financial instrument is traded in more than one currency across the Union, ESMA shall convert all volumes into euros using average exchange rates calculated on the basis of the daily euro foreign exchange reference rates published by the European Central Bank on its website in the previous 12 months. Those converted volumes shall be used for the calculation and publication of the total volume of trading and of the percentages of trading under both the negotiated trade and reference price waivers across the Union and on each trading venue as referred to in paragraph 1.

*Article 9*

**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.

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

Done at Brussels, 13 June 2016.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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## ANNEX

Table 1

**Symbol table for Table 2**

SYMBOL	DATA TYPE	DEFINITION
{ALPHANUM-n}	Up to n alphanumerical characters	Free text field.
{DECIMAL-n/m}	Decimal number of up to n digits in total of which up to m digits can be fraction digits	Numerical field for both positive and negative values. — decimal separator is '.' (full stop); — the number may be prefixed with '-' (minus) to indicate negative numbers.  Where applicable, values shall be rounded and not truncated.
{CURRENCYCODE_3}	3 alphanumerical characters	3 letter currency code, as defined by ISO 4217 currency codes
{DATEFORMAT}	ISO 8601 date format	Dates should be formatted by the following format: YYYY-MM-DD.
{ISIN}	12 alphanumerical characters	ISIN code, as defined in ISO 6166
{MIC}	4 alphanumerical characters	Market identifier as defined in ISO 10383

Table 2

**Formats of the report for the purpose of the volume cap mechanism**

Data field name	Format
Reporting period	{DATEFORMAT}/{DATEFORMAT} where the first date is the beginning of the reporting period and the second date is the end of the reporting period.
Reporting entity identification	Where the reporting entity is a trading venue: {MIC} (segment MIC or, where appropriate, operational MIC) or {ALPHANUM-50} if the reporting entity is a CTP.
Trading venue identifier	{MIC} (segment MIC, where available, otherwise operational MIC).
Instrument identifier	{ISIN}
Currency of the transactions	{CURRENCYCODE_3}
Total volume of trading (per currency)	{DECIMAL-18/5}

Data field name	Format
Total volume of trading under Reference Price waiver as defined under Article 4(1)(a) of MiFIR (per currency)	{DECIMAL-18/5}
Total volume of trading under Negotiated Transactions waiver as defined under Article 4(1)(b)(i) of MiFIR (per currency)	{DECIMAL-18/5}