

Securities Financing Transactions Regulation

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Chapter 2

Commission Delegated Regulation (EU) 2019/357

Preamble

THE EUROPEAN COMMISSION,
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Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012, and in particular points (c) and (d) of Article 12(3) thereof,

01/01/2021

Whereas:

(1) Article 12(2) of Regulation (EU) 2015/2365 requires that the entities listed in that Article have access to the details of SFTs so they are able to fulfil their responsibilities and mandates. It is therefore essential that trade repositories are able to identify accurately the counterparties and transactions concerned. The access provided by trade repositories should include access to details of SFTs concluded by a counterparty, irrespective of whether that counterparty is a parent undertaking or subsidiary of another undertaking, or whether that information concerns transactions concluded through a particular branch of a counterparty, provided that the access required concerns information needed for the fulfilment of the responsibilities and mandates of the relevant entity.

(2) Many of the entities listed in Article 12(2) of Regulation (EU) 2015/2365 have several and different mandates and needs. To avoid that trade repositories continuously have to check under which mandate and for which specific need an entity demands access, and thus to avoid unnecessary administrative burdens for those trade repositories, it is appropriate to allow the trade repositories to provide each entity with a single access, which should cover the mandates and specific needs of each entity.

(3) The mandates and responsibilities of the European Securities and Markets Authority (ESMA) with regard to trade repositories are laid down in Article 5 to 11 of Regulation (EU) 2015/2365 and cover, inter alia, the registration and supervision of trade repositories. An effective supervision requires that ESMA has full access to all details of all SFTs held by all trade repositories.

(4) The European Banking Authority (EBA), the European Insurance and Occupational Pensions Agency (EIOPA) and the European Systemic Risk Board (ESRB) are part of the European System for Financial Supervision and have, with regard to financial stability

and systemic risk, mandates and responsibilities that are very similar to those of ESMA. It is therefore important that those authorities, like ESMA, have access to all details of all SFTs.

(5) Because of the close link between SFTs and monetary policy, a member of the European System of Central Banks (ESCB), as referred to in Article 12(2)(f) of Regulation (EU) 2015/2365, should have access to all details of SFTs relating to the currency issued by that ESCB member, and more specifically, to all details of SFTs of which the loan or the collateral is expressed in the currency issued by that ESCB member.

(6) Certain entities listed in Article 12(2) of Regulation (EU) 2015/2365 are responsible for monitoring systemic risks to financial stability. The proper performance of their tasks relating to the stability of the financial system requires that those entities have access to the broadest spectrum of market participants, trading venues and the most comprehensive and granular details of SFTs available for their area of responsibility, which can be, depending on the entity concerned, a Member State, the euro area or the Union.

(7) Council Regulation (EU) No 1024/2013 established a Single Supervisory Mechanism. A trade repository should ensure that the European Central Bank (ECB) has access to the details of all SFTs concluded by any counterparty which, within the single supervisory mechanism, is subject to the ECB's supervision pursuant to Regulation (EU) No 1024/2013.

(8) The mandate and specific needs of the Union securities and markets authorities referred to in Article 12(2)(i) of Regulation (EU) 2015/2365 require that those authorities are provided with access to all details of SFTs representing transactions, or relating to markets, securities lent or borrowed or provided as collateral, benchmarks used as references, and counterparties that fall under the supervisory responsibilities and mandates of that authority

(9) Pursuant to Directive 2014/59/EU of the European Parliament and of the Council, resolution authorities are to be given effective means of action with respect to the entities referred to in Article 1(1) of that Directive to prevent contagion. Each resolution authority should therefore have access to details of SFTs reported by those entities.

(10) Pursuant to Regulation (EU) No 806/2014 of the European Parliament and of the Council, the Single Resolution Board is responsible for the effective and consistent functioning of the Single Resolution Mechanism, inter alia, by drawing up the resolution plans for the entities referred to in Article 2 of that Regulation. To enable the Single Resolution Board to draw up those resolution plans, a trade repository should provide that Board with access to the details of SFTs concluded by any counterparty which falls under the scope of Regulation (EU) No 806/2014.

(11) The authorities referred to in Article 12(2)(m) of Regulation (EU) 2015/2365 comprise, inter alia, the authorities competent for the Single Supervisory Mechanism and for the prudential supervision of credit institutions, investment firms, insurance and reinsurance companies, UCITS, AIFMs, occupational pensions funds, central securities depositories and non-financial counterparties. To enable those authorities to exercise their responsibilities and mandates effectively, they need to have access to details of SFTs reported by the counterparties that fall under their responsibility.

(12) The authorities referred to in Article 12(2)(m) of Regulation (EU) 2015/2365 comprise, inter alia, the authorities responsible for the authorisation and supervision of central counterparties. To enable those authorities to perform their task effectively, they should have access to the details of SFTs relating to the central counterparties under their supervision.

(13) To ensure the standardisation and consistency of the access to details of SFTs and to reduce the administrative burden for both the authorities that have access to those details and trade repositories holding those details, trade repositories should follow a specific procedure for establishing the terms and conditions under which that access will be provided, more specifically the setting up of that access and ongoing operational arrangements.

(14) To ensure the confidentiality of the details of SFTs, any type of data exchange between trade repositories and the authorities concerned should be carried out through a secure machine-to-machine connection and by using data encryption protocols.

(15) To enable the effective and efficient comparison and aggregation of details of SFTs across trade repositories, XML format templates and XML messages developed in accordance with the ISO 20022 methodology should be used for providing access to those details and for communication between the authorities and the trade repositories.

(16) To enable the authorities listed in Article 12(2) of Regulation (EU) 2015/2365 to perform targeted investigations, it is essential to facilitate the direct and immediate access to specific datasets and thus to establish a set of combinable ad-hoc queries referring to the counterparties to the SFT, the type of SFT, the time horizon of the execution, maturity and termination of the SFT, as well as the life-cycle stage of the SFT.

(17) To enable the direct and immediate access to details of SFTs and to facilitate for the authorities concerned and the trade repositories the scheduling of their internal data processes, the deadlines by which the trade repositories should provide the authorities access to those details of SFTs should be harmonised.

(18) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission pursuant to the procedure in Article 10 of Regulation (EU) No 1095/2010.

(19) ESMA has conducted open public consultations on these draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION:



Article -1 Interpretation

Where a term is defined in Regulation 2015/2365/EU, as amended by The Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019, that definition shall apply for the purposes of this Regulation.



Article 1 Details of SFTs to be made accessible

A trade repository shall ensure that details of SFTs made accessible to each entity listed in Article 12(2) of Regulation (EU) 2015/2365 in accordance with Article 3 include the following data:

- (a) the reports of SFTs reported in accordance with Tables 1 to 4 of the Annex to Commission Delegated Regulation (EU) 2019/356, including the latest trade states of SFTs that have not matured or which have not been the subject of reports with action types "Error", "Termination/Early termination", or "Position component" as referred to in Field 98 of Table 2 of Annex I to Commission Implementing Regulation (EU) 2019/363
- (b) the relevant details of SFT reports rejected by the trade repository, including any SFT reports rejected during the previous working day and the reasons for their rejection, as specified in accordance with Table 2 of Annex I to Commission Delegated Regulation (EU) 2019/358.
- (c) the reconciliation status of all reported SFTs for which the trade repository has carried out the reconciliation process in accordance with Delegated Regulation (EU) 2019/358 except those SFTs that have expired or for which SFT reports with action types "Error", "Termination/Early termination", or "Position component" were received more than a month before the date on which the reconciliation process takes place.



Article 2 Single access

A trade repository shall provide the entities that have several responsibilities or mandates under Article 12(2) of Regulation (EU) 2015/2365 with a single access to the details of all SFTs covered by those responsibilities and mandates.

Article 3 Access to details of SFTs in
accordance with the mandate and specific
needs of each authority concerned

(1) A trade repository shall provide the FCA with access to all details of all SFTs to exercise its supervisory competences in accordance with its responsibilities and mandates.

(2) A trade repository shall provide the Prudential Regulation Authority, the Pensions Regulator and the Bank of England with access to all details of all SFTs.

(3) [deleted]

(4) [deleted]

(5) [deleted]

(6) [deleted]

(7) [deleted]

(8) [deleted]

(9) A trade repository shall provide an authority of a third country in respect of which regulations pursuant to Article 19(1) have been prescribed by the Treasury with access to the details of all SFTs under the third country authority's mandate and responsibilities in line with the provisions of the aforementioned regulations.

(10) A trade repository shall provide the Panel on Takeovers and Mergers with access to the details of all SFTs for which the security lent or borrowed or provided as collateral is a security issued by a company that meets one or more of the following conditions:

(a) [deleted]

(b) the company has its registered office or head office in the United Kingdom and the takeover bids on the securities of that company fall under that authority's supervisory responsibilities and mandates;

(c) the company is an offeror for the companies referred to in point (b) and the consideration it offers includes securities.

For the purposes of this provision, “company” has the meaning set out in paragraph 21(1) of Schedule 1C to the Companies Act 2006 and the terms “takeover bid” and “offeror” have the meanings defined in paragraph 20 of that Schedule.

(11) A trade repository shall provide an authority as referred to in Article 12(2)(i) of Regulation (EU) 2015/2365 with access to the details of all SFTs representing transactions, or relating to markets, securities lent or borrowed or provided as collateral, benchmarks used as references and counterparties that fall under the supervisory responsibilities and mandates of that authority. A trade repository shall also provide that authority with access to the details of the SFTs of all branches of counterparties established in a third country that operate in the authority's Member State.

(12) A trade repository shall provide the Agency for the Cooperation of Energy Regulators (ACER) with access to the details of all SFTs where the commodity lent or borrowed or provided as collateral is energy.

(13) A trade repository shall provide a resolution authority as referred to in Article 12(2)(k) of Regulation (EU) 2015/2365 with access to the details of all SFTs concluded by:

(a) a counterparty that falls under the responsibilities and mandates of that authority;

(b) a branch of a counterparty established in a third country that operates in the Member State of that resolution authority and falls under its responsibilities and mandates.


(14) A trade repository shall provide the Single Resolution Board with access to the details of all SFTs concluded by any counterparty that falls under the scope of Regulation (EU) No 806/2014.

(15) A trade repository shall provide a competent authority listed in Article 12(2)(m) of Regulation (EU) 2015/2365 with access to the details of all SFTs concluded by:

(a) a counterparty that falls under the responsibilities and mandates of that authority;

(b) a branch of a counterparty established in a third country that operates in the Member State of that competent authority and falls under its responsibilities and mandates.

(16) A trade repository shall provide an authority supervising a central counterparty (CCP) and the member of the ESCB overseeing that CCP with access to the details of all SFTs cleared or concluded by that CCP.



Article 4 Setting up of the access to details of SFTs

(1) A trade repository shall:

(a) designate a person or persons responsible for liaising with the entities listed in Article 12(2) of Regulation (EU) 2015/2365;

(b) publish on its website the instructions that the entities listed in Article 12(2) of Regulation (EU) 2015/2365 are to follow to access details of SFTs;

(c) provide the entities listed in Article 12(2) of Regulation (EU) 2015/2365 with a form as referred to in paragraph 2;

(d) set up the access to details of SFTs by the entities listed in Article 12(2) of Regulation (EU) 2015/2365 only based on information contained in the form provided;

(e) set up the technical arrangements necessary for the entities listed in Article 12(2) of Regulation (EU) 2015/2365 to access SFT details in accordance with Article 5.

(f) provide the entities listed in Article 12(2) of Regulation (EU) 2015/2365 with direct and immediate access to details of SFTs within thirty calendar days after that entity submitted a request for setting up such access;

(2) A trade repository shall prepare a form to be used by the entities listed in Article 12(2) of Regulation (EU) 2015/2365 when submitting a request for setting up access to details of SFT details. That form shall contain the following entries:

(a) the name of the entity;

(b) the contact person at the entity;

(c) [deleted]

(d) a list of authorised users of the requested details of SFTs;

- (e) credentials for a secure SSH FTP connection;
- (f) any other technical information relevant to the entity's access to details of SFTs.
- (g) whether the entity is competent for counterparties in its Member State, the euro area or the Union;
- (h) the types of counterparties for which the entity is competent as per the classification in Table 1 of Annex I to Implementing Regulation (EU) 2019/363;
- (i) the types of SFT that are supervised by the entity;
- (j) all Member States where the issuer of securities that were borrowed or lent or provided as collateral is supervised by the entity, if any;
- (k) all Member States where the commodities that were borrowed or lent or provided as collateral are supervised by the entity, if any;
- (l) the trading venues that are supervised by the entity, if any;
- (m) the CCPs that are supervised or overseen by the entity, if any;
- (n) the currency that is issued by the entity, if any;
- (o) the benchmarks used in the Union, the administrator of which the entity is competent for, if any.

Article 5 Operational arrangements for access to details of SFTs

(1) A trade repository shall establish and maintain the necessary technical arrangements to enable the entities listed in Article 12(2) of Regulation (EU) 2015/2365 to connect with the trade repository using a secure machine-to-machine interface.

For the purpose of the first subparagraph, a trade repository shall use the SSH File Transfer Protocol and standardised XML messages developed in accordance with the ISO 20022 methodology to communicate through that interface.

(2) A trade repository shall establish and maintain the necessary technical arrangements to enable the entities listed in Article 12(2) of Regulation (EU) 2015/2365 to establish predefined periodic requests to access, in accordance with Articles 1, 2 and 3, details of SFTs, that are necessary for those entities to fulfil their responsibilities and mandates.

(3) Upon request, a trade repository shall provide the entities listed in Article 12(2) of Regulation (EU) 2015/2365 with access to any SFT falling under their responsibilities and mandates in accordance with Article 3, based on any combination of the following fields as referred to in Annex I to Implementing Regulation (EU) 2019/363;

- (a) reporting timestamp;
- (b) reporting counterparty;
- (c) other counterparty;
- (d) branch of the reporting counterparty;
- (e) branch of the other counterparty;
- (f) sector of the reporting counterparty;
- (g) nature of the reporting counterparty;
- (h) broker;

- (i) report submitting entity;
- (j) beneficiary;
- (k) type of SFT;
- (l) type of collateral component;
- (m) trading venue;
- (n) execution timestamp;
- (o) maturity date;
- (p) termination date;
- (q) CCP;
- (r) action type.

(4) A trade repository shall establish and maintain the technical capability to provide direct and immediate access to the details of SFTs that are necessary for the entities listed in Article 12(2) of Regulation (EU) 2015/2365 to fulfil their mandates and responsibilities. The access to those details of SFTs shall be provided in accordance with the following deadlines:

- (a) where access is requested to details of outstanding SFTs, or of SFTs which have either matured or for which reports with action types "Error", "Termination/Early termination", or "Position component" as referred to in Field 98 of Table 2 of Annex I to Implementing Regulation (EU) 2019/363 were made not more than one year before the date on which the request was submitted: 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 access is requested to SFT details which have either matured or for which reports with action types "Error", "Termination/Early termination", or "Position component" as referred to in Field 98 of Table 2 of Annex I to Implementing Regulation (EU) 2019/363 were made more than one year before the date on which the request was submitted: no later than three working days after the request to access has been submitted.
- (c) where access is requested to SFT details falling under both points (a) and (b): no later than three working days after the request to access is submitted.

(5) A trade repository shall confirm receipt and verify the correctness and completeness of any request to access to details of SFTs submitted by the entities listed in Article 12(2) of Regulation (EU) 2015/2365 and shall notify those entities of the result of that verification no later than sixty minutes after the submission of the request.

(6) 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 12(2) of Regulation (EU) 2015/2365.



Article 6 Entry into force

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



Signature

01/01/2021

Done at Brussels, 13 December 2018.

01/01/2021

For the Commission

01/01/2021

The President

01/01/2021

Jean-Claude JUNCKER