II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2022/629

of 12 January 2022

amending the regulatory technical standards laid down in Delegated Regulation (EU) 2017/583 as regards adjustment the liquidity thresholds and trade percentile used to determine the size specific to the instrument applicable to certain non-equity instruments

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

Whereas:

(1) Commission Delegated Regulation (EU) 2017/583 [2] sets out the transparency requirements applicable to bonds, structured finance products, emission allowances and derivatives. In order to ensure a smooth implementation of those requirements, that Delegated Regulation has introduced an annual phase-in of application of certain transparency thresholds over the course of 4 years, starting from 2019. That phase-in allows gradual broadening of the application of corresponding transparency obligations. This concerns, in particular, the 'average daily number of trades' criterion used for the determination of bonds for which there is a liquid market and as the trade percentiles used for the determination of the size specific to the instrument (SSTI) which allows for pre-trade transparency obligations to be waived.

(2) Under that phased-in approach, moving to the next stage is not automatic. The European Securities and Markets Authority (ESMA) is required to submit to the Commission its annual assessment of the appropriateness of the move to the next stage. The ESMA's assessment has to analyse the evolution of trading volumes for the concerned financial instruments under the current stage and to anticipate the possible impact a move to the next stage could have on both available liquidity and market participants. If appropriate, ESMA is required to submit, together with its report, a revised regulatory standard adjusting the threshold to the next stage.

(3) ESMA submitted its assessment and revised regulatory standards to the Commission on 22 July 2021. ESMA concludes that between 1,57 % and 2,58 % of bonds traded between the first and the fourth quarter of 2020 were considered liquid following the criteria that apply in stage S2. Moving to stage S3 means an increase of approximately 40 %.

(1) OJ L 173, 12.6.2014, p. 84.

(2) 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 bonds, structured finance products, emission allowances and derivatives (OJ L 87, 31.3.2017, p. 229).

(4) With regard to the SSTI, ESMA concludes that moving from stage S2 to S3 will mostly affect trading in sovereign bonds and other public bonds, since for those instruments the increase will be the largest. Those instruments, however, typically are traded in the range of EUR 3 million to EUR 6 million. ESMA considers therefore that a move to stage S3 would keep the pre-trade SSTI sufficiently low to protect liquidity providers from market impact stemming from large orders, while ensuring that more liquid bonds would be subject to pre-trade transparency.

(5) Taking into account the assessment undertaken by ESMA and the limited level of transparency in the bond markets, the limited effects to competition in the market and the fact that the threshold would still be sufficiently low to protect liquidity providers from potential market impact stemming from large orders, it is appropriate to move to stage S3 for bonds for which there is a liquid market and for the SSTI for bonds. The move to stage S3 should increase the level of transparency available in the bond market without a negative impact on liquidity.

(6) Delegated Regulation (EU) 2017/583 should therefore be amended accordingly.

(7) This Regulation is based on the draft regulatory technical standards submitted to the Commission by ESMA.

(8) 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 advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([3]),

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2017/583

Article 17 of Delegated Regulation (EU) 2017/583 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. For determining the bonds for which there is not a liquid market for the purposes of Article 6 and according to the methodology specified in Article 13(1), point (b), the approach for the liquidity criterion “average daily number of trades” shall be taken applying the “average daily number of trades” corresponding to stage S3 (7 daily trades).’;

(b) paragraph 3 is replaced by the following:

‘3. For determining the size specific to the financial instrument for the purposes of Article 5 and according to the methodology specified under Article 13(2), point (b)(i), the approach for the trade percentile to be applied shall be used applying the trade percentile corresponding to the stage S3 (50th percentile).

For determining the size specific to the financial instrument for the purposes of Article 5 and according to the methodology specified under Article 13(2), points (b)(ii) to (iv), the approach for the trade percentile to be applied shall be used applying the trade percentile corresponding to the stage S1 (30th percentile).’.

Article 2

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*.

([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).

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

Done at Brussels, 12 January 2022.

For the Commission

The President

Ursula VON DER LEYEN