

**COMMISSION DELEGATED REGULATION (EU) 2021/529****of 18 December 2020****establishing regulatory technical standards amending Delegated Regulation (EU) 2017/583 as regards adjustment of liquidity thresholds and trade percentiles 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 <sup>(1)</sup>, and in particular the third subparagraph of Article 9(5) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2017/583 <sup>(2)</sup> 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, this Delegated Regulation introduced an annual phase-in of application of certain transparency thresholds over the course of four years, starting from 2019. This phase-in allows gradual broadening of the application of corresponding transparency obligations. In particular this concerns the 'average daily number of trades' criterion used for the determination of bonds for which there is a liquid market and the trade percentiles used for the determination of the size specific to the instrument which allows for pre-trade transparency obligations to be waived.
- (2) Under this phase-in approach, moving to the next stage is not automatic. The European Securities and Markets Authority (ESMA) is required to submit to the Commission their annual assessment of the appropriateness of the move to the next stage. 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 warranted, ESMA is required to submit, together with its report, a revised regulatory standard to move to the next stage.
- (3) ESMA submitted their assessment and revised regulatory standards to the Commission on 23 July 2020. ESMA concludes that between 0,15 % and 0,31 % of bonds traded between the fourth quarter of 2018 and the third quarter of 2019 were considered liquid following the criteria that apply in stage S1. Moving to stage S2 means an increase of approximately 50 %. With regard to the size specific to the instrument ESMA concludes that 16 % of notional trading volume of sovereign bonds and 6 % of other bonds took place under the waiver related to size specific to the instrument in stage S1. The move to stage S2 should ensure that less bond trades are eligible to this waiver.
- (4) Taking into account the assessment undertaken by ESMA it is appropriate to move to stage S2 for determining bonds for which there is a liquid market and for the size specific to the instrument for bonds. The move to stage S2 should increase the level of transparency available in the bond market without a negative impact on liquidity. However, considering that for other non-equity instruments than bonds ESMA's first annual transparency calculations have only been published this year, there was not enough evidence to move to stage S2 for other classes of financial instruments.
- (5) Delegated Regulation (EU) 2017/583 should therefore be amended accordingly.

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

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

- (6) This Regulation is based on the draft regulatory technical standards submitted to the Commission by ESMA.
- (7) 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 <sup>(3)</sup>,

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 point (b) of Article 13(1), the approach for the liquidity criterion "average daily number of trades" shall be taken applying the "average daily number of trades" corresponding to stage S2 (10 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 point (b)(i) of Article 13(2), the approach for the trade percentile to be applied shall be used applying the trade percentile corresponding to the stage S2 (40th percentile).

For determining the size specific to the financial instrument for the purposes of Article 5 and according to the methodology specified under points (b)(ii), (iii) and (iv) of Article 13(2), 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*.

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

Done at Brussels, 18 December 2020.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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<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).