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COMMISSION DELEGATED REGULATION (EU) 2024/1702

of 11 March 2024

amending Delegated Regulation (EU) No 1003/2013 as regards harmonisation of certain aspects of fees charged by the European Securities and Markets Authority to trade repositories

(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 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ([1]), and in particular Article 72(3) thereof,

Whereas:

(1) Commission Delegated Regulation (EU) No 1003/2013 ([2]) specifies the type of fees, the calculation, and the payment modalities with regard to the fees charged by the European Securities and Markets Authority (ESMA) to trade repositories.

(2) In 2018, both the Commission's Internal Audit Service's review and the European Court of Auditors' audit ([3]) concluded that ESMA's fee funding system is unnecessarily complex. To simplify the fee collection and reduce risks linked to the incorrect calculation or inefficient allocation of fees, it is necessary to ensure consistency of technical aspects across the different delegated acts on fees charged by ESMA, where appropriate and possible.

(3) To ensure consistency with respect to the fees charged by ESMA to trade repositories, Delegated Regulation (EU) No 1003/2013 should be aligned to Commission Delegated Regulation (EU) 2019/360 ([4]).

(4) To fully cover ESMA's expenditures relating to the supervision of trade repositories, the annual supervisory fees should be determined on the basis of the annual estimate of all direct costs necessary for the supervisory tasks performed by ESMA and a reasonable apportionment of ESMA's fixed and variable overheads.

(5) To ensure consistency and comparability of data across trade repositories when determining ESMA's supervisory fees, the annual supervisory fees should be calculated only based on the turnover generated by a trade repository's core activities and its ancillary services.

(6) To ensure consistency among delegated acts on fees to be paid to ESMA, and to enable ESMA to receive in due time audited turnover data for the estimation of fees due by trade repositories to ESMA, the reference year of the audited accounts for the determination of the applicable turnover should be 2 years prior to the year for which ESMA charges fees to the trade repository.

(7) The applicable turnover of trade repositories is calculated in euros. It is therefore necessary to specify a mechanism for the conversion into euros of revenues generated in other currencies.

([1]) OJ L 201, 27.7.2012, p. 1, ELI: http://data.europa.eu/eli/reg/2012/648/oj.
([2]) Commission Delegated Regulation (EU) No 1003/2013 of 12 July 2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to trade repositories (OJ L 279, 19.10.2013, p. 4, ELI: http://data.europa.eu/eli/reg_del/2013/1003/oj).
([3]) Court of auditors, Annual report on EU agencies for the financial year 2018, (OJ C 417, 11.12.2019, p. 29 and p. 85 ff).
([4]) Commission Delegated Regulation (EU) 2019/360 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to trade repositories (OJ L 81, 22.3.2019, p. 58, ELI: http://data.europa.eu/eli/reg_del/2019/360/oj).

(8) In line with Commission Delegated Regulation (EU) 2019/715 ([5]), fees charged to trade repositories should be set at a level that ensures that the full cost of services provided by ESMA is covered and a deficit is avoided, but at the same time avoids the accumulation of a significant surplus. Where a significant positive or negative budget result becomes recurrent, the level of the fees should be revised.

(9) To avoid an excessive supervisory fee in the year of its registration, a registered trade repository should pay an initial supervisory fee the amount of which should be proportional to the period of time in that first year during which the trade repository has been registered.

(10) Where a trade repository that has not yet been registered under Regulation (EU) No 648/2012 simultaneously submits applications for registration under both Regulation (EU) No 648/2012 and Regulation (EU) 2015/2365 of the European Parliament and the Council ([6]), the expenditure necessary to accurately assess and examine the applications should be lower because of the synergies of reviewing the same type of documents. In the case of simultaneous applications, the trade repository should thus pay the full registration fee due under Regulation (EU) No 648/2012, and the reduced fee for extension of registration due under Regulation (EU) 2015/2365.

(11) The administrative cost linked to the first year supervisory fee for a trade repository registered in December, is not proportionate to that fee. Therefore, a trade repository that is registered in December should be exempted from the requirement to pay an annual supervisory fee for the year in which that trade repository was registered.

(12) To ensure consistency among delegated acts on fees to be paid to ESMA, ESMA should calculate the penalty in case of late payments in line with the provisions on default interest set out in Article 99 of the of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([7]).

(13) To enhance transparency with respect to the terms and processes of payment of fees for trade repositories, it is necessary to determine within which period of time, or at which date, trade repositories are to pay an ESMA invoice on fees. For the annual supervisory fees, it is necessary to specify the amount and the latest date on which ESMA is to send the relevant invoice to trade repositories.

(14) To ensure the timely payment of registration fees and recognition fees, those fees should in any case be paid within 30 calendar days from the date of issuance of ESMA's invoice.

(15) To further simplify the fee payment flows, and to ensure ESMA has the necessary funds to carry out its planned supervisory activities, annual supervisory fees should be paid in a single instalment during the first 3 months of the calendar year for which such fees are due.

(16) To provide sufficient time and facilitate internal approval processes, ESMA should send invoices for the payments of annual supervisory fees at least 30 calendar days before the relevant payment date.

(17) In order to avoid legal uncertainty for the ongoing fee collection process, this Regulation should apply from 1 January 2025.

(18) Delegated Regulation (EU) No 1003/2013 should therefore be amended accordingly,

([5]) Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (OJ L 122, 10.5.2019, p. 1, ELI: http://data.europa.eu/eli/reg_del/2019/715/oj).

([6]) 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 (OJ L 337, 23.12.2015, p. 1, ELI: http://data.europa.eu/eli/reg/2015/2365/oj).

([7]) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1, ELI: http://data.europa.eu/eli/reg/2018/1046/oj).

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) No 1003/2013

Delegated Regulation (EU) No 1003/2013 is amended as follows:

(1) Article 2 is replaced by the following:

'*Article 2*

Recovery of supervisory costs in full

The fees charged to trade repositories shall cover:

(a) all direct and indirect costs relating to the registration and supervision of trade repositories by ESMA in accordance with Regulation (EU) No 648/2012, including those costs resulting from the recognition of trade repositories;

(b) all costs for the reimbursement of direct and indirect costs of competent authorities that have carried out work pursuant to Regulation (EU) No 648/2012, in particular as a result of any delegation of tasks in accordance with Article 74 of Regulation (EU) No 648/2012.';

(2) Article 3 is replaced by the following:

'*Article 3*

Applicable turnover

1. Trade repositories registered under Regulation (EU) No 648/2012 shall keep audited accounts for the purposes of this Regulation which distinguish between the following:

(a) revenues generated from core functions of centrally collecting and maintaining records of derivatives under Regulation (EU) No 648/2012;

(b) revenues generated from ancillary services that are directly related to centrally collecting and maintaining records of derivatives under Regulation (EU) No 648/2012.

The applicable revenues from ancillary services of the trade repository for a given year (n) shall be the revenues from the services determined under point (b).

2. Trade repositories registered under both Regulation (EU) No 648/2012 and Regulation (EU) 2015/2365 shall keep audited accounts for the purposes of this Regulation which distinguish between the following:

(a) revenues generated from core functions of centrally collecting and maintaining records of derivatives under Regulation (EU) No 648/2012;

(b) revenues generated from core functions of centrally collecting and maintaining records of securities financing transactions under Regulation (EU) 2015/2365;

(c) revenues generated from ancillary services that are directly related to centrally collecting and maintaining records of derivatives under Regulation (EU) No 648/2012;

(d) revenues generated from ancillary services that are directly related to both centrally collecting and maintaining records of derivatives under Regulation (EU) No 648/2012 and centrally collecting and maintaining records of securities financing transactions under Regulation (EU) 2015/2365.

The applicable revenues from ancillary services of the trade repository for a given year (n) shall be the sum of:

(a) the revenues referred to in point (c) of the first subparagraph;

(b) a share of the revenues referred to in point (d) of the first subparagraph.

The share of the revenues referred to in point (d) of the first subparagraph shall be equal to the revenues referred to in point (a) of that subparagraph, divided by the sum of:

(a) the revenues referred to in point (a) of the first subparagraph;

(b) the revenues referred to in point (b) of the first subparagraph.

3. The applicable turnover of a given trade repository for a given year (n) shall be the sum of the amounts referred to in point (a) and (b) of this paragraph, divided by the sum of the amounts referred to in points (c) and (d) of this paragraph:

(a) the revenues generated from the core functions of centrally collecting and maintaining records of derivatives under Regulation (EU) No 648/2012 on the basis of the audited accounts of the year (n–2);

(b) the applicable revenues from the ancillary services determined in accordance with paragraphs 1 and 2, as applicable, on the basis of the audited accounts of the year (n–2);

(c) the total revenues of all registered trade repositories generated from the core functions of centrally collecting and maintaining records of derivatives under Regulation (EU) No 648/2012 on the basis of the audited accounts of the year (n–2);

(d) the total applicable revenues of all registered trade repositories generated from the ancillary services determined in accordance with paragraph 1 and 2, as applicable, on the basis of the audited accounts of the year (n–2).

4. Trade repositories shall provide ESMA on an annual basis with the audited accounts referred to in paragraphs 1 and 2. Trade repositories shall submit those accounts to ESMA by electronic means by 30 September each year (n–1).

5. Where the trade repository did not operate during the full year (n–2), ESMA shall estimate the applicable turnover in accordance with paragraph 3 and by extrapolating the value calculated for the number of months during which the trade repository operated in year (n–2) to the whole year (n–2).

6. Where no audited accounts for year (n–2) are available, ESMA shall use the audited accounts for year (n–1).

7. Where the revenues referred to in paragraph 3 are reported in another currency than euro, ESMA shall convert those revenues into euro using the average euro foreign exchange rate applicable to the period during which those revenues were recorded. For that purpose, ESMA shall use the euro foreign exchange reference rate published by the European Central Bank.';

(3) Article 4 is deleted;

(4) in Article 6, the following paragraph 6a is inserted:

'6a. Where a trade repository not already registered under Regulation (EU) 2015/2365 simultaneously submits applications for registration under both Regulation (EU) 2015/2365 and Regulation (EU) No 648/2012, the trade repository shall pay the full registration fee due under Regulation (EU) No 648/2012, and the fee for extension of registration pursuant to Article 5(5) of Regulation (EU) 2015/2365.';

(5) in Article 7 paragraphs 2, 3 and 4 are replaced by the following:

'2. The total annual supervisory fee and the annual supervisory fee for a given trade repository for a given year (n) shall be calculated as follows:

(a) the total annual supervisory fee for a given year (n) shall be the estimate of expenditure relating to the supervision of registered trade repositories' activities under Regulation (EU) No 648/2012 as included in the ESMA's budget for that year;

(b) a registered trade repository's annual supervisory fee for a given year (n) shall be the total annual supervisory fee determined pursuant to point (a), for all trade repositories registered in year (n–1), in proportion to their applicable turnover calculated pursuant to Article 3(3).

3. In no case shall a trade repository registered under Article 55(1) of Regulation (EU) No 648/2012 pay an annual supervisory fee of less than EUR 30 000.

4. By way of derogation from paragraphs 1, 2 and 3, a registered trade repository shall pay, in the year of its registration, (year (n)), an initial supervisory fee ('SF(n)') equal to the following:

$$SF(n) = RF \bullet k$$

where:

RF = the registration fee calculated in accordance with Article 6;

$$k = \frac{\text{number of calendar days from the date of registration until 31 December in year (n)}}{\text{number of calendar days in year (n)}}$$

The registered trade repository shall pay the supervisory fee of the first year after it has been notified by ESMA that its application has been successful and within 30 calendar days from the date of issuance of ESMA's invoice.

However, where a trade repository is registered during the month of December, that trade repository shall not be required to pay an annual supervisory fee for the year in which it was registered.';

(6) in Article 9, paragraph 2 is replaced by the following:

'2 Any late payment shall incur the default interest laid down in Article 99 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (*).

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(*) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1, ELI: http://data.europa.eu/eli/reg/2018/1046/oj).';

(7) in Article 10, paragraph 1 is replaced by the following:

'1. The registration fee referred to in Article 6 shall be due at the time the trade repository submits its application for registration under Article 55(1) of Regulation (EU) No 648/2012, and shall be paid in full within 30 calendar days from the date of issuance of ESMA's invoice.';

(8) Articles 11 and 12 are replaced by the following:

'*Article 11*

Payment of annual supervisory fees

1. The annual supervisory fee referred to in Article 7 for a given year (n) shall be paid in a single instalment, which shall be due by the end of March of the year to which it relates.

ESMA shall not reimburse the annual supervisory fee.

2. ESMA shall send the invoice specifying the amount of the annual supervisory fee to the trade repositories at least 30 calendar days before the payment date.

Article 12

Payment of recognition fees

1. The recognition fees referred to in Article 8(1) shall be due at the time the trade repository applies for recognition under Article 77(1) of Regulation (EU) No 648/2012 and shall be paid in full within 30 calendar days from the date of issuance of ESMA's invoice.

ESMA shall not reimburse the recognition fee.

2. The annual supervisory fee for a recognised trade repository for a given year (n) shall be paid by the end of the third month of the calendar year for which such fee is due. ESMA shall send the invoice specifying the amount of the annual supervisory fee to the recognised trade repository at least 30 calendar days before the payment date.'.

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*.

It shall apply from 1 January 2025.

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

Done at Brussels, 11 March 2024.

For the Commission
The President
Ursula VON DER LEYEN