

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2022/466

of 17 December 2021

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council by specifying criteria for derogation of the principle that approved publication arrangements and approved reporting mechanisms are supervised by the European Securities Markets Authority

(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 2(3) thereof,

Whereas:

- (1) Given the cross-border dimension of market data handling, data quality and the necessity to achieve economies of scale, and to avoid the adverse impact of potential divergences on both data quality and the task of data reporting providers, Regulation (EU) 2019/2175 of the European Parliament and of the Council ⁽²⁾ transferred authorisation and supervision powers with regard to the activities of data reporting services providers ('DRSPs') in the Union to the European Securities and Markets Authority ('ESMA').
- (2) At the same time, approved publication arrangements ('APAs') and approved reporting mechanisms ('ARMs') are derogated from ESMA supervision, and instead remain in scope of national supervision, where their activities are of limited relevance for the internal market.
- (3) The activities of an APA or an ARM should firstly be considered to be of limited relevance for the internal market based on the relative amount of clients established in Member States different from the home Member State of the APA or the ARM. If the services offered by APAs or ARMs are to a large extent cross-border, derogation should not apply. Secondly the relevance for the internal market should be based on the share of the total reported or published transactions that is reported or published by individual APAs or ARMs. If this share exceeds a minimum threshold, then the activities should not be considered to be of limited relevance to the internal market. The calculation for the APA should be based on transparency data submitted to the Financial Instruments Reference Data System and the Financial Instruments Transparency System, while the calculation for the ARM should be based on the transaction reports submitted to the competent authorities.

⁽¹⁾ OJ L 173, 12.6.2014, p. 84.

⁽²⁾ Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds (OJ L 334, 27.12.2019, p. 1).

- (4) Where an APA and an ARM or multiple APAs or ARMs are operated by a single operator, derogation of ESMA supervision is only possible if all APAs or ARMs are eligible for derogation.
- (5) In order to ensure smooth functioning of the new supervisory framework for DRSPs, as introduced in Article 4 of Regulation (EU) 2019/2175, this Regulation should enter into force without delay and enter into application as a matter of urgency,

HAS ADOPTED THIS REGULATION:

Article 1

Assessment of APAs and ARMs

1. Approved publication arrangements ('APAs') and approved reporting mechanisms ('ARMs') shall be subject to authorisation and supervision by a competent authority of a Member State as defined in Article 4(1), point (26) of Directive 2014/65/EU of the European Parliament and of the Council (*) on account of their limited relevance for the internal market if the activities of those APAs and ARMs on average do not exceed any of the thresholds set out in Article 2 of this Regulation. Where more than one APA or ARM is operated by the same operator, a derogation shall only apply if the activities of none of the APAs or ARMs exceed the thresholds set out in Article 2.
2. For the purpose of authorisation, the assessment of the criteria set out in Article 2 shall be based on estimates of the future activities provided by the applicant.
3. The relevance for the internal market of the activities of an APA or an ARM referred to in paragraph 1 shall be reassessed by ESMA every year, starting in the year following the first full calendar year after authorisation. The assessment of the criteria in Article 2 shall be based on data representing the full calendar year prior to the reassessment.
4. In the case that based on the reassessment referred to in paragraph 3 in two consecutive years the thresholds for derogation or application of ESMA supervision are no longer met, the change into application or derogation of ESMA supervision shall take effect on 1 June in the following year.

Article 2

Criteria for identification of derogation from ESMA supervision

1. An APA or ARM shall be subject to a derogation from ESMA supervision where:
 - (a) the APA or ARM provides services to or on behalf of investment firms subject to the post trade disclosure requirements of Articles 20 and 21 of Regulation (EU) No 600/2014 or the reporting requirement of Article 26 of that Regulation, in maximum three different Member States, while at least 50 % of those investment firms are authorised in the same Member State as the APA or ARM; and
 - (b) the number of trades reported to the public and the volume thereof by the APA in accordance with Article 20(1) of Regulation (EU) No 600/2014 regarding equity instruments amounts to less than 0,5 % of the total number of trades or volume reported by all APAs in accordance with Article 20(1) of that regulation and the number of trades reported to the public and the volume thereof by the APA in accordance with Article 21(1) of that regulation regarding non-equity instruments does not amount to more than 0,5 % of the total number of trades or volume reported by all APAs in accordance with Article 21(1) of that regulation; and
 - (c) the number of transactions reported by the ARM in accordance with Articles 26(1) and 26(7) of Regulation (EU) No 600/2014 does not amount to more than 0,5 % of the total number of transactions reported by all ARMs in accordance with Articles 26(1) and 26(7) of that Regulation.

(*) 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).

2. APAs and ARMs shall provide the competent authority on request data which allows the assessment of the criterion laid down in paragraph 1, point (a).

Article 3

Transitional provision

For the purposes of Article 1, ESMA shall perform the initial assessment of the derogation criteria listed in Article 2. Such initial assessment shall be based on data related to the first 6 months of 2021.

Article 4

Entry into force and date of application

This Regulation shall enter into force and apply on the third 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, 17 December 2021.

For the Commission
The President
Ursula VON DER LEYEN
