

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2023/314

of 25 October 2022

amending the regulatory technical standards laid down in Delegated Regulation (EU) 2016/2251 as regards the date of application of certain risk management procedures for the exchange of collateral

(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 11(15) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2016/2251 ⁽²⁾ specifies, among others, the risk-management procedures, including the levels and type of collateral and segregation arrangements referred to in Article 11(3) of Regulation (EU) No 648/2012, that financial counterparties are required to have for the exchange of collateral, with respect to their over-the-counter (OTC) derivative contracts not cleared by a central counterparty.
- (2) Article 36(2), point (a), and Article 37(3), point (a), of Delegated Regulation (EU) 2016/2251 provide for a deferred date of application of the bilateral margin requirements for OTC derivative contracts that are not cleared by a central counterparty and that are concluded between counterparties which are part of the same group and where one counterparty is established in a third country and the other counterparty is established in the Union. That deferred date of application was necessary to ensure that such OTC derivative contracts were not subject to the bilateral margin requirements before the adoption of an implementing act pursuant to Article 13(2) of Regulation (EU) No 648/2012.
- (3) So far, eight implementing acts have been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012. However, efforts are still being undertaken to analyse any other relevant third-country jurisdictions in relation to which any such implementing act may be warranted. The immediate application of the bilateral margin requirements for OTC derivative contracts that are not cleared by a central counterparty and that are concluded between counterparties which are part of the same group and where one counterparty is established in a third country and the other counterparty is established in the Union without the adoption of implementing acts as referred to in Article 13(2) of Regulation (EU) No 648/2012, would, however have detrimental economic impacts on Union counterparties. The application of the bilateral margin requirements for non-centrally cleared OTC derivative intragroup contracts should therefore be further deferred.
- (4) Delegated Regulation (EU) 2016/2251 should therefore be amended accordingly.
- (5) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority (the ESAs).

⁽¹⁾ OJ L 201, 27.7.2012, p. 1.

⁽²⁾ Commission Delegated Regulation (EU) 2016/2251 of 4 October 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty (OJ L 340, 15.12.2016, p. 9).

- (6) The amendments to Delegated Regulation (EU) 2016/2251 are limited adjustments of the existing regulatory framework. Given the limited scope of those amendments and the urgency of the matter, it would be highly disproportionate for the ESAs to conduct open public consultations or analyses of the potential related costs and benefits. The ESAs nevertheless requested the advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽³⁾, the advice of the Insurance and Reinsurance Stakeholder Group and the Occupational Pensions Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council ⁽⁴⁾, and 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 ⁽⁵⁾.
- (7) To provide market participants with legal certainty as quickly as possible, this Regulation should enter into force as a matter of urgency,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2016/2251

Delegated Regulation (EU) 2016/2251 is amended as follows:

- (1) in Article 36(2), point (a) is replaced by the following:
- ‘(a) from 30 June 2025 where no equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 11(3) of that Regulation in respect of the relevant third country;’
- (2) in Article 37(3), point (a) is replaced by the following:
- ‘(a) from 30 June 2025 where no equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 11(3) of that Regulation in respect of the relevant third country;’.

Article 2

Entry into force

This Regulation shall enter into force on the 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, 25 October 2022.

For the Commission
The President
Ursula VON DER LEYEN

⁽³⁾ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

⁽⁴⁾ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

⁽⁵⁾ 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).