

COMMISSION DELEGATED REGULATION (EU) 2023/450**of 25 November 2022**

supplementing Regulation (EU) 2021/23 of the European Parliament and of the Council with regard to regulatory technical standards specifying the order in which CCPs are to pay the recompense referred to in Article 20(1) of Regulation (EU) 2021/23, the maximum number of years during which those CCPs are to use a share of their annual profits for such payments to possessors of instruments recognising a claim on their future profits and the maximum share of those profits that is to be used for those payments

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 ⁽¹⁾, and in particular Article 20(2), third subparagraph thereof,

Whereas:

- (1) It is necessary to ensure that non-defaulting clearing members eligible for the recompense referred to in Article 20(1) of Regulation (EU) 2021/23 are treated in a fair manner. Therefore, where there is a split between cash payments and instruments recognising a claim on future profits, the allocation between the cash payments and those instruments should be identical for all non-defaulting clearing members that have to be recompensed.
- (2) According to Article 20(1) of Regulation (EU) 2021/23, the competent authority of a CCP may require a CCP to recompense the clearing members for their loss through the issuance of instruments recognising a claim on the future profits of that CCP. The issuance of such instruments, and the ensuing claims on the CCP's future profits, should however not jeopardise the viability of the CCP and its ability to meet its investment needs, nor diminish the attractiveness of the CCP for its shareholders and external investors over a long period. To diminish that risk, it is appropriate to lay down that the annual claims on the future profits of a CCP should not exceed 70 % of the CCP's annual profits, and that such instruments and claims should not exceed a period of more than 10 years.
- (3) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority.
- (4) The European Securities and Markets Authority 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 ⁽²⁾,

⁽¹⁾ OJ L 22, 22.1.2021, p. 1.

⁽²⁾ 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).

HAS ADOPTED THIS REGULATION:

Article 1

Order in which the recompense referred to in Article 20(1) of Regulation (EU) 2021/23 is to be paid

1. A CCP that has been required by its competent authority, in accordance with Article 20(1) of Regulation (EU) 2021/23, to recompense non-defaulting clearing members shall recompense those clearing members *pari passu*.
2. A CCP that has been required by its competent authority to recompense its non-defaulting clearing members both in cash and through the distribution of instruments recognising a claim on the CCP's future profits shall use exactly the same allocation scheme for all non-defaulting clearing members when determining which parts of that recompense shall be allocated in cash and non-cash recompense.
3. Any profit-transfer agreement that may impair the profit level shall be reintegrated in the CCP's profit amount.

Article 2

Maximum share of the CCP's annual profits that is to be used towards payments relating to instruments recognising a claim on future profits of the CCP

Annual recompense payments to be made by a CCP pursuant to instruments recognising a claim on its future profits and that have been issued to each affected non-defaulting clearing member shall not exceed 70 % of that CCP's annual profit for each financial year.

Article 3

Maximum number of years during which the possessor is entitled to receive payments from the CCP until the loss has been recouped

The number of years during which an instrument recognising a claim on future profits of the CCP entitles the possessor to receive payments from the CCP on an annual basis until the loss has been recouped shall not exceed 10 years.

Article 4

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, 25 November 2022.

For the Commission
The President
Ursula VON DER LEYEN