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COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

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To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

No. Cion doc.: C(2022) 7536 final

Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 21.10.2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) No 153/2013 as regards temporary emergency measures on collateral requirements

Delegations will find attached document C(2022) 7536 final.

Encl.: C(2022) 7536 final



Brussels, 21.10.2022
C(2022) 7536 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 21.10.2022

**amending the regulatory technical standards laid down in Delegated Regulation (EU)
No 153/2013 as regards temporary emergency measures on collateral requirements**

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The recent political and market developments have led to significant price and volatility increases on energy markets, which have triggered substantial margin increases by central counterparties (CCPs) to cover the related exposures. These margin increases have created liquidity strains on non-financial counterparties (NFCs), which typically have fewer and less liquid assets to meet margin requirements, forcing them to either reduce their positions or leave them improperly hedged, exposing them to further price variations.

On 13 September 2022, the Commission requested that ESMA consider whether the applicable Level 2 provisions, in particular the Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council (EMIR) with regards to requirements for central counterparties, should be temporarily amended to alleviate some of the burden faced by NFCs, while keeping the overarching goal of EMIR of preserving financial stability. On 22 September 2022, ESMA replied to the Commission outlining concrete proposals to smoothen the functioning of European financial and energy markets and to alleviate the liquidity pressure on NFCs active on gas and electricity regulated markets cleared in EU-based CCPs.

The ESMA report that followed up on ESMA's initial response provides draft amendments to the regulatory technical standards laid down in Delegated Regulation (EU) No 153/2013 developed by ESMA under Article 46(3) of EMIR, to temporarily expand the pool of eligible collateral to uncollateralised bank guarantees for NFCs acting as clearing members and to public guarantees for all types of counterparties. The Commission recalls that public guarantees have to be granted in compliance with the Union State aid framework.

These modifications are temporary and will expire 12 months after the entry into application of this Commission Delegated Regulation. However, depending on the evolution of the situation on energy derivative markets, the Commission stands ready to ask ESMA to consider an extension of those temporary measures.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

ESMA has not conducted open public consultations on the draft regulatory technical standards, in relation to the particular urgency of the matter as permitted under Article 10(1) of Regulation (EU) 1095/2010 (ESMA Regulation).

As required under Article 46(3) of EMIR, ESMA consulted the EBA, the ESRB and the ESCB. Where relevant ESMA also took into account publicly available information from a diverse set of industry sources. The Securities and Markets Stakeholder Group (SMSG) was also not consulted due to the urgency of the matter as foreseen in Article 37(1) of the ESMA Regulation.

This amending regulation is based on ESMA's final report sent to the Commission on 14 October 2022.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The delegated act introduces a modification to Commission Delegated Regulation (EU) No 153/2013.

Article 1 modifies Article 39 and 62 of Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties, as well as its annex I, in the following way:

- Article 39 is amended to temporarily allow for the use of public guarantees as specified in Annex I;
- Article 62 is amended to temporarily allow for the use of uncollateralised or partially collateralised bank guarantees;
- Annex I is supplemented with Section 2a allowing for the use, under strict conditions, of public guarantees.

COMMISSION DELEGATED REGULATION (EU) .../...

of 21.10.2022

amending the regulatory technical standards laid down in Delegated Regulation (EU) No 153/2013 as regards temporary emergency measures on collateral requirements

(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 repositories¹, and in particular Article 46(3) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) No 153/2013² lays down regulatory technical standards on requirements for central counterparties (CCPs) to accept highly liquid collateral with minimal credit and market risk.
- (2) Recent political and market developments have led to significant price and volatility increases on energy markets, which have triggered substantial margin increases by CCPs to cover the related exposures. Those margin increases have created liquidity strains on non-financial counterparties, which typically have fewer and less liquid assets to meet margin requirements. As a consequence, those non-financial counterparties have been forced to either reduce their positions or leave them not properly hedged, which exposes them to further price variations.
- (3) In order to ensure the smooth functioning of the Union financial and energy markets under the current circumstances and to alleviate the liquidity pressure on non-financial counterparties active on gas and electricity regulated markets cleared in CCPs established in the Union, the pool of eligible collateral available to non-financial clearing members should temporarily be expanded to include uncollateralised bank guarantees.
- (4) In order to contain the liquidity strains observed on energy derivative markets, guarantees issued or backed by public entities should also be considered as eligible collateral for financial and non-financial counterparties by the CCP, given that those guarantees have low counterparty credit risk and are irrevocable, unconditional and

¹ OJ L 201, 27.7.2012, p. 1.

² Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties (OJ L 52, 23.2.2013, p. 41).

can be honoured within the period of liquidation of the portfolio of the defaulting clearing member, therefore carrying limited liquidity risk.

- (5) The risks related to an expansion of eligible collateral to uncollateralised bank guarantees and public guarantees are expected to remain limited, as the expansion would be subject to the risk management safeguards of the CCP and all other applicable requirements, as laid down in Delegated Regulation (EU) No 153/2013, would continue to apply.
- (6) Delegated Regulation (EU) No 153/2013 should therefore be amended accordingly.
- (7) In order to further limit the risks associated to the acceptance of uncollateralised bank guarantees for non-financial clearing members and public guarantees for financial and non-financial clearing members as collateral, those measures should be of temporary nature and granted for a period of 12 months, providing relief to market participants and incentivising them to return to the markets.
- (8) In the light of the recent market developments, it is necessary to expand the pool of eligible collateral available to non-financial clearing members as quickly as possible. This Regulation should therefore enter into force as a matter of urgency.
- (9) This Regulation is based on draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA), after consulting the European Banking Authority, the European Systemic Risk Board and the European System of Central Banks.
- (10) ESMA has not conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, nor did it analyse the potential costs and benefits, as this would have been highly disproportionate to the scope and impact of the amendments to be adopted, taking into account the urgent nature and the limited scope of the proposed changes. Given the urgency, ESMA has not 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 Council³. The Securities and Markets Stakeholder Group will be informed thereof pursuant to that provision,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) No 153/2013 is amended as follows:

- (1) In Article 39, the following second paragraph is added:

'Until [OP: please insert the date that is 12 months after the date of entry into force of this Regulation], for the purposes of Article 46(1) of Regulation (EU) No

³ 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).

648/2012, public guarantees that meet the conditions set out in Annex I shall be considered as highly liquid collateral.’;

(2) in Article 62, second paragraph, the following sentence is added:

‘However, Section 2, paragraph 1, point (h), of Annex I shall not apply in respect of transactions on derivatives, as referred to in Article 2(4), points (b) and (d), of Regulation (EU) No 1227/2011 from [OP: please insert the date of entry into force of this Regulation] to [OP: please insert the date that is 12 months after the date of entry into force of this Regulation].’;

(3) Annex I is amended in accordance with the Annex to this Regulation.

Article 2

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, 21.10.2022

For the Commission
The President
Ursula VON DER LEYEN