II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2021/962

of 6 May 2021

extending the transitional period referred to in Article 89(1), first subparagraph, of Regulation (EU) No 648/2012 of the European Parliament and of the Council

(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 85(2), third subparagraph thereof,

Whereas:

(1) Article 89(1) of Regulation (EU) No 648/2012 provides that, for a transitional period until 18 June 2021, the clearing obligation set out in Article 4 of that Regulation shall not apply to OTC derivative contracts that are objectively measurable as reducing investment risks directly relating to the financial solvency of pension scheme arrangements and to entities established for the purpose of providing compensation to members of pension scheme arrangements in case of default. That transitional period was introduced to avoid the adverse effect of centrally clearing derivative contracts on the retirement benefits of future pensioners, and to provide time for developing viable technical solutions for the transfer by pension scheme arrangements of cash and non-cash collateral as variation margins.

(2) Article 85(2), third subparagraph, of Regulation (EU) No 648/2012 empowers the Commission to extend that transitional period twice, each time by one year, where the Commission concludes that no such viable technical solutions have yet been developed and that the adverse effect of centrally clearing derivative contracts on the retirement benefits of future pensioners have remained unchanged. Article 85(2), first subparagraph, of that Regulation requires the Commission to prepare yearly reports until the final extension of the transitional period, assessing whether such viable technical solutions have been developed and whether any measures to facilitate those viable technical solutions need to be adopted.

(3) The Commission adopted its first report ([2]) on 23 September 2020. That report highlighted that market participants have made efforts over the years to develop such viable technical solutions and that some pension scheme arrangements have started clearing centrally a portion of their derivatives on a voluntary basis. The report concluded that the key remaining challenge for pension scheme arrangements is the need to post variation margin in cash in case of market stress, when they may be required by CCPs to post significant amounts of variation margin.

([1]) OJ L 201, 27.7.2012, p. 1.

([2]) Report from the Commission to the European Parliament and the Council under Article 85(2) of 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, as amended by Regulation (EU) No 834/2019, assessing whether viable technical solutions have been developed for the transfer by pension scheme arrangements of cash and non-cash collateral as variation margins and the need for any measures to facilitate those viable technical solutions (COM(2020) 574 final of 23 September 2020).

(4) Article 85(2), second subparagraph, of Regulation (EU) No 648/2012 also requires the European Securities and Markets Authority (ESMA), in cooperation with the European Insurance and Occupational Pensions Authority, the European Banking Authority and the European Systemic Risk Board, to submit to the Commission yearly reports, assessing, *inter alia*, whether CCPs, clearing members and pension scheme arrangements have undertaken an appropriate effort and have developed viable technical solutions facilitating the participation of such arrangements in central clearing by posting cash and non-cash collateral as variation margins, including the implications of those solutions on market liquidity and procyclicality and their potential legal or other implications. ESMA concluded in its report of 17 December 2020 that some solutions to mitigate the challenges faced by pension scheme arrangements have been explored over the years by the stakeholders concerned, which together might be able to support pension scheme arrangements in both normal and stressed times. ESMA also concluded, however, that those solutions need to be further developed, or might need to be accompanied by some regulatory changes in certain cases. ESMA therefore expressed the view that an extension of the transitional period by one year is needed.

(5) The Commission, taking into account the report of ESMA, is of the opinion that it is indeed necessary to extend the transitional period by one year to allow the envisaged solutions to mature and be further refined.

(6) The transitional period referred to in Article 89(1) of Regulation (EU) No 648/2012 should therefore be extended.

(7) This Regulation should enter into force as a matter of urgency so that the existing transitional period is extended prior to its expiry or as soon as possible after its expiry. A later entry into force would lead to legal uncertainty for pension scheme arrangements as to whether they need to begin preparing for upcoming clearing obligations,

HAS ADOPTED THIS REGULATION:

Article 1

The transitional period laid down in Article 89(1), first subparagraph, of Regulation (EU) No 648/2012 is extended until 18 June 2022.

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, 6 May 2021.

For the Commission
The President
Ursula VON DER LEYEN