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COMMISSION DELEGATED REGULATION (EU) 2024/1704

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amending Delegated Regulation (EU) 2019/360 as regards harmonisation of certain aspects of fees charged by the European Securities and Markets Authority to trade repositories

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 ([1]), and in particular Article 11(2) thereof,

Whereas:

(1) Commission Delegated Regulation (EU) 2019/360 ([2]) specifies the type of fees, the calculation, and the payment modalities with regard to the fees charged by the European Securities and Markets Authority (ESMA) to trade repositories.

(2) In 2018, both the Commission's Internal Audit Service's review and the European Court of Auditors' audit ([3]) concluded that ESMA's fee funding system is unnecessarily complex. To simplify the collection of fees and reduce risks linked to the incorrect calculation or inefficient allocation of fees, it is necessary to ensure consistency of technical aspects across the different delegated acts on fees charged by ESMA, where appropriate and possible.

(3) To fully cover ESMA's expenditure relating to supervision of trade repositories, the annual supervisory fees should be determined on the basis of the annual estimate of all direct costs necessary for the supervisory tasks performed by ESMA and a reasonable apportionment of ESMA's fixed and variable overheads.

(4) To ensure consistency among delegated acts on fees to be paid to ESMA, and to enable ESMA to receive in due time the audited turnover data for the estimation of fees due by trade repositories to ESMA, the reference year of the audited accounts for the determination of the applicable turnover should be 2 years prior to the year for which ESMA charges fees to the trade repository.

(5) The applicable turnover of trade repositories is calculated in euros. It is therefore necessary to specify a mechanism for the conversion into euros of revenues generated in other currencies.

(6) Annual supervisory fees should be equal to the estimate of expenditure relating to the supervision of trade repositories' activities under Regulation (EU) 2015/2365, as included in ESMA's budget for that year.

(7) In line with Commission Delegated Regulation (EU) 2019/715 ([4]), fees charged to trade repositories should be set at a level that ensures that the full cost of services provided by ESMA is covered and a deficit is avoided, but at the same time avoids the accumulation of a significant surplus. Where a significant positive or negative budget result becomes recurrent, the level of the fees should be revised.

([1]) OJ L 337, 23.12.2015, p. 1, ELI: http://data.europa.eu/eli/reg/2015/2365/oj.
([2]) Commission Delegated Regulation (EU) 2019/360 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to trade repositories (OJ L 81, 22.3.2019, p. 58, ELI: http://data.europa.eu/eli/reg_del/2019/360/oj).
([3]) Court of Auditors, Annual report on EU agencies for the financial year 2018 (OJ C 417, 11.12.2019, p. 29 and p. 85).
([4]) Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (OJ L 122, 10.5.2019, p. 1, ELI: http://data.europa.eu/eli/reg_del/2019/715/oj).

(8) To avoid an excessive supervisory fee in the year of its registration, a registered trade repository should pay an initial supervisory fee the amount of which should be proportional to the period of time in that first year during which the trade repository has been registered.

(9) The administrative cost linked to the first year supervisory fee for a trade repository registered in December, is not proportionate to that fee. Therefore, a trade repository that is registered in December should be exempted from the requirement to pay an annual supervisory fee for the year in which that trade repository was registered.

(10) To ensure consistency among delegated acts on fees to be paid to ESMA, ESMA should calculate the penalty in case of late payments in line with the provisions on default interest set out in Article 99 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([5]).

(11) To enhance transparency with respect to the terms and processes of payment of fees for trade repositories, it is necessary to determine within which period of time, or at which date, trade repositories are to pay an ESMA invoice on fees. For the annual supervisory fees, it is necessary to specify the amount and the latest date on which ESMA is to send the relevant invoice to trade repositories.

(12) To ensure the timely payment of registration fees and recognition fees, those fees should in any case be paid within 30 calendar days from the date of issuance of ESMA's invoice.

(13) To further simplify the fee payment flows, and to ensure ESMA has the necessary funds to carry out its planned supervisory activities, annual supervisory fees should be paid in a single instalment during the first 3 months of the calendar year for which such fees are due.

(14) To provide sufficient time and facilitate internal approval processes, ESMA should send invoices for the payments of annual supervisory fees at least 30 calendar days before the relevant payment date.

(15) In order to avoid legal uncertainty for the ongoing fee collection process this Regulation should apply from 1 January 2025.

(16) Delegated Regulation (EU) 2019/360 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2019/360

Delegated Regulation (EU) 2019/360 is amended as follows:

(1) Article 1 is replaced by the following:

([5]) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1, ELI: http://data.europa.eu/eli/reg/2018/1046/oj).

'*Article 1*

Recovery of supervisory costs in full

The fees charged to trade repositories shall cover:

(a) all direct and indirect costs relating to the registration and supervision of trade repositories by ESMA in accordance with Regulation (EU) 2015/2365, including those costs resulting from the recognition of trade repositories as well as costs resulting from the extension of registration or extension of recognition for trade repositories that have already been registered or recognised under Regulation (EU) No 648/2012;

(b) all costs for the reimbursement of direct and indirect costs of competent authorities that have carried out work pursuant to Regulation (EU) 2015/2365, and as a result of any delegation of tasks pursuant to Article 74 of Regulation (EU) No 648/2012 and in accordance with Article 9 of Regulation (EU) 2015/2365.';

(2) Article 2 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. The applicable turnover of a given trade repository for a given year (n) shall be the sum of the amounts referred to in points (a) and (b), divided by the sum of the amounts referred to in points (c) and (d):

(a) the revenues generated from the core functions of centrally collecting and maintaining records of SFTs under Regulation (EU) 2015/2365 on the basis of the audited accounts of the year (n–2);

(b) the applicable revenues from the ancillary services determined in accordance with paragraphs 1 and 2, as applicable, on the basis of the audited accounts of the year (n–2);

(c) the total revenues of all registered trade repositories generated from the core functions of centrally collecting and maintaining records of SFTs under Regulation (EU) 2015/2365 on the basis of the audited accounts of the year (n–2);

(d) the total applicable revenues from the ancillary services of all registered trade repositories determined in accordance with paragraphs 1 and 2, as applicable, on the basis of the audited accounts of the year (n–2).';

(b) the following paragraph 3a is inserted:

'3a. Trade repositories shall provide ESMA, on an annual basis, with the audited accounts referred to in paragraphs 1 and 2. Trade repositories shall submit those accounts to ESMA by electronic means by 30 September each year (n–1).';

(c) paragraph 4 is replaced by the following:

'4. Where the trade repository did not operate during the full year (n–2), ESMA shall estimate its applicable turnover in accordance with paragraph 3 and by extrapolating the value calculated for the number of months during which the trade repository operated in year (n–2) to the whole year (n–2).';

(d) the following paragraphs 5 and 6 are added:

'5. Where no audited accounts for year (n–2) are available, ESMA shall use the audited accounts for year (n–1).

6. Where the revenues referred to in paragraph 3 are reported in another currency than euro, ESMA shall convert those revenues into euro using the average euro foreign exchange rate applicable to the period during which the revenues were recorded. For that purpose, ESMA shall use the euro foreign exchange reference rate published by the European Central Bank.';

(3) Article 3 is deleted;

(4) Article 6 is amended as follows:

(a) in paragraph 2, point (a) is replaced by the following:

'(a) the total annual supervisory fee for a given year (n) shall be the estimate of expenditure relating to the supervision of registered trade repositories' activities under Regulation (EU) 2015/2365 as included in ESMA's budget for that year;';

(b) paragraph 3 is replaced by the following:

'3. In no case shall a trade repository registered under Article 5(5) of Regulation (EU) 2015/2365 pay an annual supervisory fee of less than EUR 30 000.';

(c) the following paragraph 4 is added:

'4. By way of derogation from paragraphs 1, 2 and 3, a registered trade repository shall pay, in the year of its registration ('year (n)'), an initial supervisory fee ('SF(n)') equal to the following:

$$SF(n) = RF \bullet k$$

where:

RF = the registration fee calculated in accordance with Article 5;

$$k = \frac{\text{number of calendar days from the date of registration until 31 December in year (n)}}{\text{number of calendar days in year (n)}}$$

The trade repository shall pay the supervisory fee of the first year after it has been notified by ESMA that its application has been successful and within 30 calendar days from the date of issuance of ESMA's invoice. However, where a trade repository is registered during the month of December, that trade repository shall not be required to pay an annual supervisory fee for the year in which it was registered.';

(5) in Article 8, paragraph 2 is replaced by the following:

'2. Any late payment shall incur the default interest laid down in Article 99 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (*).

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(*) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1, ELI: http://data.europa.eu/eli/reg/2018/1046/oj).';

(6) in Article 9, paragraph 1 is replaced by the following:

'1. The registration fee referred to in Article 5 shall be due at the time the trade repository submits its application for registration under Article 5(5) of Regulation (EU) 2015/2365 and shall be paid in full within 30 calendar days from the date of issuance of ESMA's invoice.';

(7) in Article 10, paragraphs 1 and 2 are replaced by the following:

'1. The annual supervisory fee referred to in Article 6 for a given year (n) shall be paid in a single instalment which shall be due by the end of March of the year to which it relates. The annual supervisory fee shall not be reimbursed.

2. ESMA shall send the invoice specifying the amount of the annual supervisory fee to the trade repositories at least 30 calendar days before the payment date.';

(8) Article 11 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

'1. The recognition fees referred to in Articles 7(1) and 7(2) shall be due at the time the trade repository submits its application for recognition under Article 19(4) of Regulation (EU) 2015/2365 and shall be paid in full within 30 calendar days from the date of issuance of ESMA's invoice.

ESMA shall not refund the recognition fee.

2. The annual supervisory fee for a recognised trade repository for a given year (n) shall be paid by the end of the third month of the calendar year for which such fee is due. ESMA shall send the invoice specifying the amount of the annual supervisory fee to the recognised trade repository at least 30 calendar days before the payment date.';

(b) paragraph 3 is deleted.

Article 2

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*.

It shall apply from 1 January 2025.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11 March 2024.

For the Commission
The President
Ursula VON DER LEYEN