
Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) No 153/2013, Introductory Text. (See end of Document for details) EUR 2013 No. 153 may be subject to amendment by EU Exit Instruments made by the Bank of England under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 3. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details)

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 (Text with EEA relevance)

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to the opinion of the European Central Bank⁽¹⁾,

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⁽²⁾, and in particular Article 25(8), Article 26(9), Article 29(4), Article 34(3), Article 41(5), Article 42(5), Article 44(2), Article 45(5), Article 46(3), Article 47(8) and Article 49(4) thereof,

Whereas:

- (1) The provisions in this Regulation are closely linked, since they deal with organisational requirements, including record keeping and business continuity, and prudential requirements, including in relation to margins, the default fund, liquidity risk controls, the default waterfall, collateral, investment policy, review of models, stress testing and back testing. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations it is desirable to include all the regulatory technical standards required under Title III and Title IV of Regulation (EU) No 648/2012 in a single Regulation.
- (2) In view of the global nature of financial markets, this Regulation should take into account the Principles for Financial Market Infrastructures issued by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions (CPSS-IOSCO Principles) which serve as a global benchmark for regulatory requirements for central counterparties (CCPs).
- (3) To ensure that they are safe and sound in all market conditions, it is important that CCPs adopt prudent risk management procedures which duly cover all the risks they are or may be exposed to. In this respect, the risk management standards actually implemented by CCPs should be more stringent than those set forth in this Regulation if for risk management purposes it is deemed appropriate.

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- (4) In order to clearly identify a limited number of concepts stemming from Regulation (EU) No 648/2012, as well as to specify the technical terms necessary for developing this technical standard, a number of terms should be defined.
- (5) It is important to ensure that recognised third country CCPs do not disrupt the orderly functioning of Union markets. For this reason, it is essential to ensure that recognised CCPs are not in a position to lower their risk management requirements below Union standards, which could lead to regulatory arbitrage. The information to be provided to ESMA concerning the recognition of a third country CCP should enable ESMA to assess whether that CCP is in full compliance with the prudential requirements applicable in that third country. In addition, the equivalence determination by the Commission should ensure that the laws and regulations of the third country are equivalent to every provision under Title IV of Regulation (EU) No 648/2012 and of this Regulation.
- (6) To ensure an adequate level of investor protection, in the recognition of third country CCPs the European Securities and Markets Authority (ESMA) may require additional information to the one strictly necessary to assess that conditions established in Regulation (EU) No 648/2012 are fulfilled.
- (7) The ongoing assessment of the full compliance of a third country CCP with the prudential requirements of such third country is the duty of the third country competent authority. The information to be provided to ESMA by the applicant third country CCP should not have the objective of replicating the assessment of the third country competent authority, but ensuring that the CCP is subject to effective supervision and enforcement in that third country, thus guaranteeing a high degree of investor protection.
- (8) To allow ESMA to perform a complete assessment, the information provided by the applicant third country CCP should be complemented by that information necessary to assess the effectiveness of the ongoing supervision, enforcement powers and actions taken by the third country competent authority. Such information should be provided under the cooperation arrangement established in accordance with Regulation (EU) No 648/2012. Such a cooperation arrangement should ensure that ESMA is informed in a timely manner of any supervisory or enforcement action against the CCP applying for recognition and any change of the conditions under which authorisation was granted to the relevant CCP and on any relevant update of the information originally provided by the CCP under the recognition process.
- (9) The requirements of Regulation (EU) No 648/2012 relating to internal risk reporting lines need further specification to implement a risk-management framework, which includes the structure, rights and responsibilities of the internal risk management process. Governance arrangements should take into account different regimes on corporate law in the Union, in order to ensure that CCPs operate within a sound legal framework.
- (10) To ensure that a CCP implements the appropriate procedures to comply with this Regulation, Regulation (EU) No 648/2012 and Commission Implementing Regulation

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(EU) No 1249/2012⁽³⁾, the role and responsibilities of a compliance function of a CCP should be specified.

- (11) It is necessary to clearly define the responsibilities of the board and the senior management as well as to specify minimum requirements for the functioning of the board in order to ensure that the organisational structure of a CCP enables it to perform its services and activities in a continuous and orderly manner. It is also necessary to set up clear and direct reporting lines to ensure accountability.
- (12) In order to ensure the sound and prudent management of a CCP, it is important that its remuneration policy discourages excessive risk taking. For the remuneration policy to produce the intended effects, it should be adequately monitored and reviewed by the board that should set-up a specific committee to appropriately oversee the fulfilment of remuneration policy.
- (13) To ensure that CCPs operate with the necessary level of human resources to meet all of their obligations, they are accountable for the performance of their activities and competent authorities have the relevant contact points within the CCPs they supervise, CCPs should have at least a chief risk officer, a chief compliance officer and chief technology officer.
- (14) CCPs should adequately assess and monitor the extent to which board members that sit on the boards of different entities have conflicts of interest, whether within or outside the group of the CCP. Board members should not be prevented from sitting on different boards unless this gives rise to conflicts of interest.
- (15) In order to have an effective audit function, a CCP should define the responsibilities and reporting lines of its internal auditors, to ensure that relevant matters are brought before the board of the CCP and the competent authorities in a timely manner. When establishing and maintaining an internal audit function, its mission, independence and objectivity, scope and responsibility, authority, accountability and standards of operation should be clearly defined.
- (16) To carry out its duties effectively, the relevant competent authority should be provided with access to all necessary information to determine whether the CCP is in compliance with its conditions of authorisation. Such information should be made available by the CCP without undue delay.
- (17) Records kept by CCPs should facilitate a thorough knowledge of CCPs' credit exposure towards clearing members and allow monitoring of the implied systemic risk. They should also enable competent authorities, ESMA and the relevant members of the European System of Central Banks (ESCB) to adequately re-construct the clearing process, in order to assess compliance with regulatory requirements including reporting requirements. Once recorded, that data is also useful for CCPs in meeting regulatory requirements and obligations towards clearing members and in disputes.
- (18) Data reported by CCPs to trade repositories should be recorded so as to empower competent authorities to verify the compliance of CCPs with the reporting obligation set out in Regulation (EU) No 648/2012 and to easily access information in cases where this cannot be found in trade repositories.

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- (19) The record-keeping requirements in relation to trades should make use of the same concepts used in the reporting obligation set out in Article 9 of Regulation (EU) No 648/2012, in order to ensure appropriate reporting by CCPs.
- (20) To ensure business continuity in times of disruption, the secondary processing site of the CCP should be located sufficiently distant and in a sufficiently geographically distinct location from the primary site so that it would not be subject to the same disaster which may cause the unavailability of the primary site. Scenarios should be created to analyse the impact of crisis events on critical services, including scenarios which envisage the unavailability of systems caused by a natural disaster. Those analyses should be reviewed periodically.
- (21) CCPs are systemically relevant financial market infrastructures and they should recover critical functions within two hours, with backup systems ideally starting processing immediately after an incident. CCPs should also ensure with very high probability that no data will be lost.
- (22) It is important that the default of a clearing member does not cause significant losses to other market participants. Therefore, CCPs are required to cover through margins posted by the defaulter, at least, a relevant proportion of the possible loss that during the close out process the CCP might have. Rules should determine the minimum percentage the margins should cover for different classes of financial instruments. Furthermore, CCPs should follow principles to adequately tailor their margin levels to the characteristics of each financial instrument or portfolio they clear.
- (23) CCPs should not reduce their margins to a level that compromises their safety as a result of the existence of a highly competitive environment. For this reason, margin calculations should follow specific requirements in their basic components. In this sense, margins should take into account a full range of market conditions including periods of stress.
- (24) Rules should be established to specify the appropriate percentage and time horizons for the liquidation period and the calculation of historical volatility. However, in order to ensure that CCPs duly manage the risk they face, it is desirable not to specify the approach which the CCP should take to calculating margin requirements from these parameters. For the same reasons, CCPs should not be prevented to rely on various reliable methodological approaches for the development of portfolio margining, they should be allowed to rely on methods based on correlations between price risk of the financial instrument or set of financial instruments they clear, as well as any appropriate methods based on equivalent statistical parameters of dependence.
- (25) To determine the period of time during which a CCP is exposed to market risk related to the management of a defaulter's position, the CCP should consider the relevant characteristics of the financial instruments or portfolio cleared, such as their level of liquidity and the size of the position or its concentration. CCPs should prudently evaluate the time required for the complete closure of a defaulter's position since the latest collection of margins, the size of the position and its concentration.

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- (26) In order to avoid causing or exacerbating financial instability, CCPs should, to the maximum extent practical, adopt forward-looking margin methodologies that limit the likelihood of procyclical changes in margin requirements, without undermining the resilience of the CCP.
- (27) A higher confidence interval for OTC derivatives is typically justified because those products can suffer from less reliable pricing and shorter runs of historical data on which to base exposure estimations. CCPs might clear OTC derivatives that do not suffer from such phenomena and have the same risk characteristics as listed derivatives and they should be able to clear those products consistently irrespective of the execution method.
- (28) A suitable definition of extreme but plausible market conditions is a core component of CCP risk management. For the purposes of keeping the CCP risk management framework up to date, extreme but plausible market conditions should not be considered as a static concept, but rather as conditions that evolve over time and vary across markets. One market scenario can be extreme but plausible for one CCP while not having great importance for another. A CCP should establish a robust internal policy framework for identifying the markets to which it is exposed and employ a common minimum set of standards for defining extreme but plausible conditions in each identified market. It should also consider objectively the potential for simultaneous pressures in multiple markets.
- (29) To ensure appropriate and robust governance arrangements are in place, the framework used by a CCP to identify extreme but plausible market conditions should be discussed by the risk committee and approved by the board. It should be reviewed at least annually, with results discussed by the risk committee and then shared with the board. The review should ensure that changes to the scale and concentration of the CCP's exposures as well as developments in the markets in which it operates are reflected in the definition of extreme but plausible market conditions. That review should not, however, be a substitute for continuous judgment by the CCP on the adequacy of its default fund in light of evolving market conditions.
- (30) To ensure efficient management of their liquidity risk, CCPs should be required to establish a liquidity risk management framework. That framework should depend on the nature of its obligations and address the tools a CCP has available for assessing the liquidity risk it is facing, determining the liquidity pressures likely to occur and ensuring the adequacy of its liquid resources.
- (31) In assessing the adequacy of its liquid resources, a CCP should be required to consider the size and liquidity of the resources it holds, as well as the possible concentration risk of those assets. It is important that CCPs are able to identify all major kinds of liquidity risk concentrations within their resources so that the CCP's liquidity resources are immediately available when necessary. CCPs should also consider additional risks stemming from multiple relationships, interdependencies and concentrations.
- (32) As liquidity has to be readily available for same day transactions or even intraday transactions, a CCP might employ cash at the central bank, of issue, cash at creditworthy commercial banks, committed lines of credit, committed repos, highly marketable

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collateral held in custody and investments that are readily available and convertible into cash with prearranged and highly reliable funding arrangements, even in stressed market conditions. Such cash and collateral should only be counted as part of prearranged liquid financial resources under certain conditions.

- (33) In order to provide the necessary incentive to the CCP to set prudent requirements and to keep that amount to an adequate level while avoiding regulatory arbitrage, it is important to establish a common methodology for the calculation and the maintenance of a specific amount of the dedicated own resources that a CCP should maintain to be used in the default waterfall. It is essential to keep those resources covering default losses separate and with a distinct function from the CCP's minimum capital requirements which cover different risks to which a CCP might be exposed.
- (34) It is important that CCPs apply a consistent methodology for the calculation of the own resources to be used in the default waterfall, in order to ensure equivalent conditions field between CCPs. Allowing CCPs discretion to implement a methodology that is insufficiently clear would lead to very different results among CCPs, thus providing incentives for regulatory arbitrage. It is therefore essential that the methodology does not allow for discretion to CCPs. For this purpose, it would be appropriate to have a simple percentage based on a clearly identifiable measure and a clear methodology for ensuring a consistent calculation of CCPs' own resources to be used in a default waterfall.
- (35) A minimum set of criteria should be laid down to ensure that acceptable collateral is highly liquid and can be converted into cash rapidly and with minimal price impact. Those criteria should refer to the issuer of the collateral, the extent to which it can be liquidated in the market and whether its value is correlated with the credit standing of the member posting the collateral to cater for possible wrong-way risk. A CCP should have the option to apply additional criteria where necessary to achieve the desired level of robustness.
- (36) CCPs should only accept highly liquid collateral with minimal credit and market risk. In order to ensure that the collateral held by CCPs remains highly liquid at all times, it is necessary that CCPs establish transparent and predictable policies and procedures to assess and continuously monitor the liquidity of assets accepted as collateral, implement adequate valuation methodologies. To that purpose, CCPs should also implement concentration limits aimed at maintaining a sufficient diversification of the collateral to ensure that it can be liquidated promptly without significant market risk affecting its value. In determining their policies on eligible collateral and concentration limits they should take in account the global availability of such collateral in view of the potential macroeconomic effects of their policies.
- (37) To avoid wrong-way risk, clearing members should not, in general, be permitted to use as collateral their own securities or securities issued by an entity from their same group. However, a CCP should be able to allow clearing members to post covered bonds that are insulated from the insolvency of the issuer. The underlying collateral should nevertheless be appropriately segregated from the issuer and satisfy the minimum criteria for acceptability of collateral. A clearing member should not issue financial

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instruments for the primary purpose of using them as collateral by another clearing member.

- (38) To ensure the safety of CCPs, a CCP should accept as collateral a commercial bank guarantee only after a thorough assessment of the issuer and of the legal, contractual and operational framework of the guarantee. Unsecured exposures of CCPs to commercial banks should be avoided. Therefore, commercial bank guarantees may be accepted only under strict conditions. Those conditions are generally met in markets characterised by a high concentration of commercial banks willing to provide credit to non-financial clearing members. For this reason a higher concentration limit should be permitted in these cases.
- (39) To limit its market risk, a CCP should be required to value its collateral at least daily. It should apply prudent haircuts that reflect the potential decrease of value of the collateral over the interval between its last revaluation and the time by which the collateral can reasonably be assumed to be liquidated under stressed market conditions. The level of collateral should also take account of potential wrong-way risk exposures.
- (40) The implementation of haircuts should enable the CCP to avoid large and unexpected adjustments to the amount of collateral required, thus avoiding procyclical effects to the extent possible.
- (41) A CCP should not concentrate collateral on a limited number of issuers or in a limited number of assets, so as to avoid potential significant adverse price effects in case of liquidation of the collateral in a short period of time. Concentrated collateral positions should not be considered highly liquid for this reason.
- (42) Liquidity, credit and market risk should be considered at portfolio level as well as at the level of an individual financial instrument. A concentrated portfolio can have a significant negative effect on the liquidity of the collateral or of the financial instruments in which the CCP can invest its financial resources, since selling large positions in stressed market conditions is unlikely to be feasible without depressing the market price. For the same reason, collateral maintained by the CCP should be monitored and valued on a continuous basis to ensure that it remains liquid.
- (43) Energy derivative markets show a particularly strong interlink with spot commodity markets and in these derivative markets the proportion of non-financial clearing members is high. On those markets, a significant number of market participants are also producers of the underlying commodity. Access to sufficient collateral to back commercial bank guarantees in full could require substantial divesting by those non-financial clearing members of their current positions or could impede them from continuing to clear their positions as a direct clearing member of a CCP. That process could cause market disruptions in energy markets, in terms of liquidity and diversity of market participants. Therefore, its application should be postponed according to a well established time-frame.
- (44) In order to ensure a consistent application of the framework established in Regulation (EU) No 648/2012, all sectors should face similar requirements in the final form of the rules applicable to them. Energy firms currently operate under a well-established

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framework that will require time to adapt to the new requirements established to avoid detrimental effects to the real economy. Therefore, it is considered desirable to establish an application date for such types of markets that allows an appropriate transition from the current market practice without affecting unduly market structure and liquidity.

- (45) The investment policy of a CCP should assign the highest priority to the principles of capital preservation and liquidity maximisation. The investment policy should also ensure that no conflicts of interest arise with the commercial interests of the CCP.
- (46) The criteria that financial instruments should meet to be considered eligible investments for the CCP, should take into account Principle 16 of the CPSS-IOSCO Principles — in order to ensure international consistency. In particular, a CCP should be required to apply restrictive standards concerning the issuer of the financial instrument, the transferability of the financial instrument and the credit, market, volatility and foreign exchange risk of the financial instrument. A CCP should ensure that it does not undermine measures taken to limit the risk exposure of its investments by having excessive exposures to any individual financial instrument, type of financial instrument, individual issuer, type of issuer or individual custodian.
- (47) The use of derivatives by a CCP exposes it to additional credit and market risks and it is therefore necessary to define a restrictive set of circumstances in which a CCP can invest its financial resources in derivatives. Given that a CCP's aim should be to have a flat position with regards to market risk, the only risks that a CCP should need to hedge are those concerning the collateral that it accepts or the risks arising from the default of a clearing member. Risks concerning the collateral that a CCP accepts can be sufficiently managed through haircuts and it is not considered necessary for a CCP to use derivatives in this regard. Derivatives should only be used by a CCP for managing liquidity risk arising for exposures to different currencies and for the purposes of hedging the portfolio of a defaulted clearing member and only where the CCP's default management procedures envisage such use.
- (48) To ensure the safety of CCPs, they should only be allowed to maintain cash in unsecured deposits in minimal proportions. In securing its cash, CCPs should always ensure that they are always adequately protected against liquidity risk.
- (49) It is necessary to set out rigorous stress and back testing requirements to ensure that a CCP's models, their methodologies and the liquidity risk management framework work properly, taking into account all risks the CCP is exposed to, so that the CCP has at all times adequate resources to cover those risks.
- (50) To ensure consistent application of requirements for CCPs, it is necessary to set out detailed provisions with respect to the types of tests to be undertaken, including both stress and back testing. In order to cater for the wide range of security and derivative contracts which may be cleared in the future, reflect differences in CCP's business and risk management approaches, allow for future developments and new risks to be dealt with and allow for sufficient flexibility, a criteria based approach is necessary.
- (51) In validating a CCP's models, their methodologies and the liquidity risk management framework it is important to use an appropriate independent party so that any necessary

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corrective measures can be found and implemented before implementation and to avoid any material conflicts of interest. The independent party should be sufficiently separate from the part of the CCP's business that develops, implements and will operate the model or policies being reviewed and should not hold a material conflict of interest. Those conditions could be met either by an internal party that has separate reporting lines or an external party.

- (52) Various aspects of a CCP's financial resources, notably margin coverage, default funds and other financial resources, are designed to cover different scenarios and objectives. It is therefore necessary to provide specific requirements to reflect these objectives and to ensure consistent application across CCPs. In assessing the necessary coverage the CCP should not net off any exposures between defaulting clearing members, in order to avoid reducing the potential impacts that these exposures might have.
- (53) The different types of financial instruments which a CCP may clear are subject to a variety of specific risks. A CCP should therefore be required to consider all the risks relevant to the markets it provides clearing services for in its models, their methodologies and the liquidity risk management framework to ensure it adequately measures its potential future exposure. In order for such risks to be properly considered, stress testing requirements should include instrument-specific risks relevant to different types of financial instruments.
- (54) For a CCP to ensure that its model for calculating initial margins adequately reflects its potential exposures, in addition to the daily back testing of its margin coverage which looks at the adequacy of the margin being called, it should also back test key parameters and assumptions of the model. This is essential to ensure that CCPs' models calculate initial margin accurately.
- (55) Rigorous sensitivity analysis of margin requirements may take on increased importance when markets are illiquid or volatile and should be used to determine the impact of varying important model parameters. Sensitivity analysis is an effective tool to explore hidden shortcomings that cannot be discovered through back testing.
- (56) Failure to conduct stress and back tests regularly could lead to a CCP's financial and liquid resources being inadequate to cover the actual risks it is exposed to. Appropriate tests will also allow a CCP's models, their methodologies and the liquidity risk management framework to deal with changing markets and new risks promptly. Test results should therefore be used promptly by CCPs to review their models, methodologies and liquidity risk management framework.
- (57) Modelling extreme market conditions can help a CCP determining the limits of its current models, the liquidity risk management framework and the financial and liquid resources. However, it requires the CCP to exercise judgment when modelling different markets and products. Reverse stress testing should be considered a helpful management tool, whilst not the main one, to determine the appropriate level of financial resources.
- (58) The involvement of clearing members, clients and other relevant stakeholders in the testing of a CCP's default management procedures, through simulation exercises, is

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essential to ensure that they have the understanding and operational capability to successfully participate in a default management situation. Simulation exercises should replicate a default scenario to demonstrate the roles and responsibilities of clearing members, clients and other relevant stakeholders. Additionally it is important that a CCP has appropriate mechanisms that enable it to ascertain whether corrective action is required and to identify any lack of clarity in, or discretion allowed by, the rules and procedures. The testing of a CCP's default management procedures is particularly important where it relies on non-defaulting clearing members or third parties to assist in the close-out process and where the default procedures have never been tested by an actual default.

- (59) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.
- (60) ESMA has consulted, where relevant, the European Banking Authority (EBA), the European Systemic Risk Board and the members of the ESCB before submitting the draft technical standards on which this Regulation is based. In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)⁽⁴⁾, ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION:

Modifications etc. (not altering text)

- C1** The “appropriate regulator” has power to make such provision as they consider appropriate by means of an instrument in writing to prevent, remedy or mitigate any failure of the provisions of this Regulation to operate effectively or any other deficiency arising from the withdrawal of the United Kingdom from the EU, see [The Financial Regulators' Powers \(Technical Standards etc.\) \(Amendment etc.\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1115\), regs. 2, 3, Sch. Pt. 3](#) (with saving on IP completion day by [S.I. 2019/680, regs. 1\(2\), 11; 2020 c. 1, Sch. 5 para. 1\(1\)](#))
- C2** Regulation: power to modify conferred (11.7.2023) by [Financial Services and Markets Act 2023 \(c. 29\), ss. 3, 86\(3\), Sch. 1 Pts. 1, 3; S.I. 2023/779, reg. 2\(d\)](#)

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- (1) Not yet published in the Official Journal.
- (2) [OJ L 201, 27.7.2012, p. 1.](#)
- (3) [OJ L 352, 21.12.2012, p. 32.](#)
- (4) [OJ L 331, 15.12.2010, p. 84.](#)

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