

Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (Text with EEA relevance)

TITLE X

**FINAL PROVISIONS**

*Article 52*

**Reports and review**

1 By 3 March 2019, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the impact in practice of the transparency obligations established pursuant to Articles 3 to 13, in particular on the impact of the volume cap mechanism described in Article 5, including on the cost of trading for eligible counterparties and professional clients and on trading of shares of small and mid-cap companies, and its effectiveness in ensuring that the use of the relevant waivers does not harm price formation and how any appropriate mechanism for imposing sanctions for infringements of the volume cap might operate, and on the application and continued appropriateness of the waivers to pre-trade transparency obligations established pursuant to Article 4(2) and (3) and Article 9(2) to (5).

2 The report referred to in paragraph 1 shall include the impact on European equity markets of the use of the waiver under Article 4(1)(a) and (b)(i) and the volume cap mechanism under Article 5, with particular reference to:

- a the level and trend of non-lit order book trading within the Union since the introduction of this Regulation;
- b the impact on the pre-trade transparent quoted spreads;
- c the impact on the depth of liquidity on lit order books;
- d the impact on competition and on investors within the Union;
- e the impact on trading of shares of small and mid-cap companies;
- f developments at international level and discussions with third countries and international organisations.

3 If the report concludes that the use of the waiver under Article 4(1)(a) and (b) (i) is harmful to price formation or to trading of shares of small and mid-cap companies, the Commission shall, where appropriate, make proposals, including amendments to this Regulation, regarding the use of those waivers. Such proposals shall include an impact assessment of the proposed amendments, and shall take into account the objectives of this Regulation and the effects on market disruption and competition, and potential impacts on investors in the Union.

4 By 3 March 2019, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the functioning of Article 26, including whether the content and format of transaction reports received and exchanged between competent authorities comprehensively enable to monitor the activities of investment firms in accordance with Article 26(1). The Commission may make any appropriate proposals, including providing for transactions to be reported to a system appointed by ESMA instead of to competent authorities, which allows relevant competent authorities to access all the information reported pursuant to

this Article for the purposes of this Regulation and of Directive 2014/65/EU and the detection of insider dealing and market abuse in accordance with Regulation (EU) No 596/2014.

5 By 3 March 2019, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on appropriate solutions to reduce information asymmetries between market participants as well as tools for regulators to better monitor quotation activities on trading venues. That report shall at least assess the feasibility of developing a European best bid and offer system for consolidated quotes to fulfil those objectives.

6 By 3 March 2019, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the progress made in moving trading in standardised OTC derivatives to exchanges or electronic trading platforms pursuant to Articles 25 and 28.

7 By 3 July 2019, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the development in prices for pre-trade and post-trade transparency data from regulated markets, MTFs, OTFs, APAs and CTPs.

8 By 3 July 2019, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council reviewing the interoperability provisions in Article 36 of this Regulation and of Article 8 of Regulation (EU) No 648/2012.

9 By 3 July 2019, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the application of Articles 35 and 36 of this Regulation and of Articles 7 and 8 of Regulation (EU) No 648/2012.

By 3 July 2021, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the application of Article 37.

10 By 3 July 2019, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the impact of Article 35 and 36 of this Regulation on newly established and authorised CCPs as referred to in Article 35(5) and trading venues connected to those CCPs by close links and whether the transitional arrangement provided for in Article 35(5) shall be extended, weighing the possible benefits to consumers of improving competition and the degree of choice available to market participants against the possible disproportionate effect of those provisions on newly established and authorised CCPs and the constraints of local market participants in accessing global CCPs and the smooth functioning of the market.

Subject to the conclusions of that report, the Commission may adopt a delegated act in accordance with Article 50 to extend the transitional period in accordance with Article 35(5) by a maximum of 30 months.

11 By 3 July 2019, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on whether the threshold laid down in Article 36(5) remains appropriate and whether the opt out mechanism in respect of exchange-traded derivatives is to remain available.

12 By 3 July 2016, the Commission shall, based on a risk assessment carried out by ESMA in consultation with the ESRB, submit a report to the European Parliament and to the Council assessing the need to temporarily exclude exchange-traded derivatives from the scope of Article 35 and 36. That report shall take into account risks, if any, resulting from open access provisions regarding exchange-traded derivatives to the overall stability and orderly functioning of the financial markets throughout the Union.

Subject to the conclusions of that report, the Commission may adopt a delegated act in accordance with Article 50 to exclude exchange-traded derivatives from the scope of Articles 35 and 36 for up to thirty months following 3 January 2017.

### Article 53

#### **Amendment of Regulation (EU) No 648/2012**

Regulation (EU) No 648/2012 is amended as follows:

(1) in Article 5(2), the following subparagraph is added:

In the developing of the draft regulatory technical standards under this paragraph ESMA shall not prejudice the transitional provision relating to C6 energy derivative contracts as laid down in Article 95 of Directive 2014/65/EU<sup>(1)</sup>;

(2) Article 7 is amended as follows:

(a) paragraph 1 is replaced by the following:

1. A CCP that has been authorised to clear OTC derivative contracts shall accept clearing such contracts on a non-discriminatory and transparent basis, including as regards collateral requirements and fees related to access, regardless of the trading venue. This in particular shall ensure that a trading venue has the right to non-discriminatory treatment in terms of how contracts traded on that trading venue are treated in terms of:

- a collateral requirements and netting of economically equivalent contracts, where the inclusion of such contracts in the close-out and other netting procedures of a CCP based on the applicable insolvency law would not endanger the smooth and orderly functioning, the validity or enforceability of such procedures; and
- b cross-margining with correlated contracts cleared by the same CCP under a risk model that complies with Article 41.

A CCP may require that a trading venue comply with the operational and technical requirements established by the CCP, including the risk-management requirements.;

(b) the following paragraph is added:

6. The conditions laid down in paragraph 1 regarding non-discriminatory treatment in terms of how contracts traded on that trading venue are treated in terms of collateral requirements and netting of economically equivalent contracts and cross-margining with correlated contracts cleared by the same CCP shall be further specified by the technical standards adopted pursuant to Article 35(6)(e) of Regulation (EU) No 600/2014<sup>(2)</sup>;

(3) In Article 81(3), the following subparagraph is added:

A trade repository shall transmit data to competent authorities in accordance with the requirements under Article 26 of Regulation (EU) No 600/2014<sup>(2)</sup>

## Article 54

### Transitional provisions

1 Third-country firms shall be able to continue to provide services and activities in Member States, in accordance with national regimes until three years after the adoption by the Commission of a decision in relation to the relevant third country in accordance with Article 47.

2 If the Commission assesses that there is not a need to exclude exchange-traded derivatives from the scope of Articles 35 and 36 in accordance with Article 52(12), a CCP or a trading venue may, before the entry into application of this Regulation, apply to its competent authority for permission to avail itself of transitional arrangements. The competent authority, taking into account the risks resulting from the application of the access rights under Article 35 or 36 as regards exchange-traded derivatives to the orderly functioning of the relevant CCP or trading venue, may decide that Article 35 or 36 would not apply to the relevant CCP or trading venue, respectively, in respect of exchange-traded derivatives, for a transitional period until 3 July 2019. Where such a transitional period is approved, the CCP or trading venue cannot benefit from the access rights under Article 35 or 36, as regards exchange-traded derivatives for the duration of that transitional period. The competent authority shall notify ESMA, and in the case of a CCP the college of competent authorities for that CCP, when a transitional period is approved.

Where a CCP which has been approved for the transitional arrangements, is connected by close links to one or more trading venues, those trading venues shall not benefit from access rights under Article 35 or 36 for exchange-traded derivatives for the duration of that transitional period.

Where a trading venue, which has been approved for the transitional arrangements, is connected by close links to one or more CCPs, those CCPs shall not benefit from access rights under Article 35 or 36 for exchange-traded derivatives for the duration of that transitional period.

## Article 55

### Entry into force and application

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 apply from 3 January 2017.

Notwithstanding the second paragraph, Article 1(8) and (9), Article 2(2), Article 5(6) and (9), Article 7(2), Article 9(5), Article 11(4), Article 12(2), Article 13(2), Article 14(7), Article 15(5), Article 17(3), Article 19(2) and (3), Article 20(3), Article 21(5), Article 22(4), Article 23(3), Article 25(3), Article 26(9), Article 27(3), Article 28(4), Article 28(5), Article 29(3), Article 30(2), Article 31(4), Article 32(1), (5) and (6), Article 33(2), Article 35(6), Article 36(6), Article 37(4), Article 38(3), Article 40(8), Article 41(8), Article 42(7), Article 45(10), Article 46(7), Article 47(1) and (4), Article 52(10) and (12) and Article 54(1) shall apply immediately following the entry into force of this Regulation.

Notwithstanding the second paragraph, Article 37(1), (2) and (3) shall apply from 3 January 2019.

TITLE X

Document Generated: 2024-07-04

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- (1) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ([OJ L 173, 12.6.2014, p. 349](#));
- (2) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 ([OJ L 173, 12.6.2014, p. 84](#))