COMMISSION DELEGATED REGULATION (EU) 2022/1930

of 6 July 2022

amending the regulatory technical standards laid down in Delegated Regulation (EU) 2018/1229 as regards the date of application of the provisions related to the buy-in regime

(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 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 ([1]), and in particular Article 7(15) thereof,

Whereas:

(1) Commission Delegated Regulation (EU) 2018/1229 ([2]) specifies measures to prevent and address settlement fails and to encourage settlement discipline. Those measures include monitoring settlement fails and collecting and distributing cash penalties for settlement fails. Delegated Regulation (EU) 2018/1229 also specifies the operational details of the buy-in process referred to in Article 7(3) to (8) of Regulation (EU) No 909/2014.

(2) Delegated Regulation (EU) 2018/1229 was amended by Commission Delegated Regulation (EU) 2020/1212 ([3]) to defer the date of entry into force of Delegated Regulation (EU) 2018/1229 until 1 February 2021. That deferred date of entry into force was again deferred to 1 February 2022 by Commission Delegated Regulation (EU) 2021/70 ([4]).

(3) Stakeholders have, however, provided evidence that mandatory buy-ins could increase liquidity pressure and the costs of securities at risk of being bought in. Such impact could be further exacerbated in cases of market volatility. Against that background, applying the rules on mandatory buy-ins as laid down in Regulation (EU) No 909/2014 and further specified in Delegated Regulation (EU) 2018/1229 could have a negative impact on the efficiency and competitiveness of capital markets in the Union. That impact could in turn lead to wider bid-offer spreads, reduced market efficiency and reduced incentives to lend securities in the securities lending and repo markets and to settle transactions with central securities depositories established in the Union. The costs of applying the rules on mandatory buy-ins, as currently specified in Regulation (EU) No 909/2014, are therefore expected to outweigh the potential benefits.

(4) Article 76(5) of Regulation (EU) No 909/2014 has been amended by Article 17 of Regulation (EU) 2022/858 of the European Parliament and of the Council ([5]). That amendment provides for the possibility to have different dates of application for each of the settlement discipline measures referred to in Article 7(1) to (13) of Regulation (EU) No 909/2014, as further specified in Delegated Regulation (EU) 2018/1229, with the aim of providing for sufficient time to reassess the settlement discipline framework laid down in Regulation (EU) No 909/2014, and in particular of

([1]) OJ L 257, 28.8.2014, p. 1.

([2]) Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline (OJ L 230, 13.9.2018, p. 1).

([3]) Commission Delegated Regulation (EU) 2020/1212 of 8 May 2020 amending Delegated Regulation (EU) 2018/1229 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline (OJ L 275, 24.8.2020, p. 3).

([4]) Commission Delegated Regulation (EU) 2021/70 of 23 October 2020 amending Delegated Regulation (EU) 2018/1229 concerning the regulatory technical standards on settlement discipline, as regards its entry into force (OJ L 27, 27.1.2021, p. 1).

([5]) Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU (OJ L 151, 2.6.2022, p. 1).

the rules on mandatory buy-ins. It is therefore necessary to ensure that the provisions of Delegated Regulation (EU) 2018/1229 that relate to mandatory buy-ins do not apply until that reassessment has been finalised. That would also ensure that market participants do not incur duplicative implementation costs in case those rules are amended as a result of a review of Regulation (EU) No 909/2014 ([6]).

(5) As a result, those provisions of Delegated Regulation (EU) 2018/1229 that relate to mandatory buy-ins should not apply from the date of the entry into force of this Regulation until 2 November 2025.

(6) Pursuant to Article 72 of Regulation (EU) No 909/2014, and to Article 76(5) of that Regulation as it stood before its amendment by Regulation (EU) 2022/858, Article 15 of Regulation (EU) No 236/2012 of the European Parliament and of the Council ([7]) was deleted from the date of entry into force of Delegated Regulation (EU) 2018/1229, to reflect the fact that from that date on, Regulation (EU) No 909/2014 and Delegated Regulation (EU) 2018/1229 were expected to harmonise at Union level the measures to prevent and address settlement fails with a wider scope of application than Regulation (EU) No 236/2012. Given that the provisions of Delegated Regulation (EU) 2018/1229 that deal with mandatory buy-ins will not apply from the date of the entry into force of this Regulation until 2 November 2025, it is necessary to provide for the buy-in procedures that were previously laid down in Article 15 of Regulation (EU) No 236/2012 until the rules laid down in Articles 21 to 38 of Regulation (EU) 2018/1229 apply.

(7) Delegated Regulation (EU) 2018/1229 should therefore be amended accordingly.

(8) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA).

(9) Given the limited scope of the amendment, the need to provide clarity to market participants as soon as possible, and the input already provided by those market participants to the public consultation ran by the European Commission within the context of the legislative proposal for Regulation (EU) 2022/858, ESMA has not conducted any open public consultations. ESMA has nevertheless conducted a high-level analysis of the potential related costs and benefits and has requested the advice of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([8]). In developing the draft regulatory technical standards, ESMA has also cooperated with the members of the European System of Central Banks,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2018/1229

Delegated Regulation (EU) 2018/1229 is amended as follows:

(1) in Chapter IV, Final provisions, the following Article 41a is inserted:

'*Article 41a*

Transitional provisions

Until 2 November 2025, a central counterparty in a Member State that provides clearing services for shares shall ensure that procedures are in place that comply with all of the following requirements:

([6]) On 16 March 2022, the European Commission adopted a legislative proposal to amend Regulation (EU) No 909/2014 to enhance the efficiency of the Union's settlement markets, while safeguarding financial stability (https://ec.europa.eu/info/publications/220316-central-securities-depositories-regulation-review_en).

([7]) Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (OJ L 86, 24.3.2012, p. 1).

([8]) 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).

(a) where a natural or legal person who sells shares is not able to deliver the shares for settlement within four business days after the day on which settlement is due, procedures are automatically triggered for the buy-in of the shares to ensure delivery for settlement;

(b) where the buy-in of the shares for delivery is not possible, an amount is paid to the buyer based on the value of the shares to be delivered at the delivery date plus an amount for losses incurred by the buyer as a result of the settlement failure;

(c) the natural or legal person who fails to settle, reimburses all amounts paid pursuant to points (a) and (b).';

(2) Article 42 is amended as follows:

(i) the title is replaced by the following:

'**Entry into force and application**';

(ii) the following subparagraph is added:

'The settlement discipline measures set out in Articles 21 to 38 shall, however, not apply until 2 November 2025.'.

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.

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

Done at Brussels, 6 July 2022.

For the Commission
The President
Ursula VON DER LEYEN