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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... amending the regulatory technical standards laid down in Delegated Regulation (EU) No 149/2013 as regards the clearing thresholds and the mechanisms triggering their review

Delegations will find attached document C(2026) 4861 final.

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EUROPEAN
COMMISSION

Brussels, 14.7.2026
C(2026) 4861 final

COMMISSION DELEGATED REGULATION (EU) …/...

of 14.7.2026

amending the regulatory technical standards laid down in Delegated Regulation (EU) No 149/2013 as regards the clearing thresholds and the mechanisms triggering their review

(Text with EEA relevance)

EN EN

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024[1] ('EMIR 3'), which amends Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012[2] ('EMIR'), entered into force on 24 December 2024.

EMIR 3 seeks in particular to address the financial stability risks caused by EU clearing members and clients being exposed to systemically important third-country central counterparties (Tier 2 CCPs), by requiring some financial counterparties and non-financial counterparties with exposures to clearing services of substantial systemic importance to hold an operational and representative active account at EU CCPs. In order to ensure that the current prudent coverage of the clearing obligation is not affected by the active account framework, the co-legislators empowered the European Securities Markets Authority (ESMA) to set an aggregate clearing threshold. EMIR 3 also ensures that the clearing threshold values laid down in Commission Delegated Regulation (EU) 149/2013 properly and accurately reflect the different risks and characteristics in derivatives, other than interest rate, foreign exchange, credit and equity derivatives. Finally, it mandates ESMA to develop transparent and predictable mechanisms for the review of the clearing thresholds.

In accordance with Articles 4a(4) and 10(4) of EMIR, as amended under EMIR 3, ESMA is mandated to further specify the value of the clearing thresholds applicable to aggregate and uncleared positions, the criteria for establishing which OTC derivative contracts are objectively measurable as reducing risks, as well as the mechanisms triggering a review of the values of the clearing thresholds, in a regulatory technical standard within six months following the entry into force of EMIR 3. Having considered the existing framework (Article 10(3) of EMIR, Article 10 of Delegated Regulation 149/2013 and the clarifications outlined in the related Q&As published by ESMA, in particular with respect to the qualification as a hedge or not of renewable financial or virtual power purchase agreements (PPAs) recently provided by the European Commission), ESMA did not propose any change to the current Article 10 of Commission Delegated Regulation (EU) No 149/2013.

ESMA submitted its final report to the Commission on 25 February 2026[3].

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

ESMA published a Consultation Paper including draft regulatory technical standards on 8 April 2025. The consultation ended on 16 June 2025.

The final report provides the draft regulatory technical standards (RTS) further specifying the value of the clearing thresholds applicable to aggregate positions where necessary to ensure the prudent coverage of financial counterparties under the clearing obligation under Article 4a, and uncleared positions under Article 10(4)(b). Additionally, the draft RTS contained in

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[1] Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets; OJ L, 2024/2987, 4.12.2024.

[2] 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; OJ L 201, 27.7.2012, p. 1–59.

[3] ESMA74-1049116226-944_Final_Report_on_the_draft_technical_standards_amending_Regulation__EU__1492013_to_further_detail_the_new_EMIR_clearing_thresholds_regime.pdf

ESMA's final report further specifies the mechanisms triggering a review of the values of the clearing thresholds.

The final report and the accompanying draft RTS take into account the feedback provided by the respondents to the consultation. In particular, with the simplification and burden reduction objectives in mind, ESMA paid particular attention to comments urging the need to keep the framework simple, to the extent possible, and to limit the operational impact of the transition from the current regime to the new one. This was the case when clarifying that after the entry into force of the Commission Delegated Regulation, counterparties could conduct the new clearing thresholds calculations in the same period of the year during which they are currently performing them under the pre-EMIR 3 regime, or sooner for the counterparties that would want to benefit from the new regime earlier. Other examples of how the simplification and burden reduction objectives have been taken into account include: i) the decision to keep five categories for the purpose of the clearing thresholds and not to introduce more granular categories, ii) the choice to increase the uncleared commodity clearing threshold to notably take into account price changes and inflation, iii) the increase in the uncleared interest rate clearing threshold to better take into account the overlap in terms of counterparties in scope with both the uncleared clearing threshold and the aggregate clearing threshold, and iv) the sought stability and visibility in the trigger mechanism process.

In accordance with Articles 4a(4) and 10(4a) of EMIR, the draft RTS have been prepared in cooperation with the ESRB. ESMA also sought advice from the Securities and Markets Stakeholder Group.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The Delegated Act is based on the draft proposal from ESMA and has not been modified.

This Commission Delegated Regulation introduces the following modifications to Commission Delegated Regulation (EU) No 149/2013:

- Article 11 is amended to set the clearing thresholds values applicable to aggregate positions for financial counterparties.
- Article 11a is inserted to set the clearing thresholds values applicable to uncleared positions.
- Article 11b is inserted to devise the mechanisms triggering a review of the values of the clearing thresholds.

COMMISSION DELEGATED REGULATION (EU) …/...

of 14.7.2026

amending the regulatory technical standards laid down in Delegated Regulation (EU) No 149/2013 as regards the clearing thresholds and the mechanisms triggering their review

(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[4] and in particular Articles 4a(4) and Article 10(4) thereof,

Whereas:

(1) While financial counterparties are subject to the thresholds applicable to uncleared positions in over-the-counter ('OTC') derivatives ('uncleared thresholds'), in order to ensure a prudent coverage of financial counterparties subject to the clearing obligation in accordance with Article 5(2) of Regulation (EU) 648/2012, it is necessary to set out the clearing thresholds applicable to aggregate positions in OTC derivatives ('aggregate thresholds') to which those counterparties are also subject. Since their purpose is to avoid excluding from the scope of the clearing obligation financial counterparties that have large cleared portfolios while remaining below the uncleared thresholds, these aggregate thresholds should only apply to the asset classes which are subject to that clearing obligation, namely OTC interest rate derivatives and OTC credit derivatives. This would ensure that an appropriate scope of financial counterparties is effectively subject to the clearing obligation.

(2) The changes introduced by Regulation (EU) 2024/2987 to the calculation methodology referred to in Article 4a(3) and Article 10(3) of Regulation (EU) No 648/2012 require a calibration of the uncleared thresholds applying to the positions held by both financial and non-financial counterparties. Those thresholds should be calibrated separately for interest rates, credit, equity, foreign exchange, commodity and emission allowance derivatives in order to ensure a prudent coverage of financial and non-financial counterparties subject to the clearing obligation. Furthermore, their calibration should be based on elements such as the systemic relevance of the sum of net positions, and the sum of net exposures, of those counterparties.

(3) ESMA acknowledged the difference between the new methodology (on which the simulations were based) introduced through amendments of Article 10(3) under Regulation (EU) 2024/2987 which only considers uncleared OTC derivatives positions and the previous methodology which looked at both cleared and uncleared OTC derivative positions. With respect to the actual level of the uncleared thresholds, in the absence of previous thresholds, ESMA considered that the current population of

[4] OJ L 201, 27.7.2012, p. 1, ELI: http://data.europa.eu/eli/reg/2012/648/oj.

counterparties and notional captured should be used as a guide for the calibration of the uncleared thresholds. On that basis, ESMA has run, for each of the five relevant asset classes, simulations showing how the coverage of the clearing obligation would change depending on the level of the threshold selected. It is appropriate to set the uncleared thresholds on the basis of those findings.

(4) In order to ensure the timely review of the clearing thresholds, while preserving a sufficient degree of flexibility and limiting administrative burden, the mechanisms triggering the review of the values of the clearing thresholds referred to in Article 10(4), point (c) of Regulation (EU) No 648/2012 should include the monitoring, on an ongoing basis, of indicators used to monitor market developments in the exercise of the tasks conferred to ESMA under Article 32 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[5].

(5) Delegated Regulation (EU) No 149/2013 should therefore be amended accordingly.

(6) This Regulation is based on the draft regulatory technical standards submitted to the European Commission by ESMA.

(7) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) No 149/2013

Delegated Regulation (EU) No 149/2013 is amended as follows:

(1) Article 11 is replaced by the following:

'*Article 11*

(Article 4a(4) of Regulation (EU) No 648/2012)

Clearing thresholds for aggregate positions

The clearing thresholds values applicable to aggregate positions for the purpose of the clearing obligation shall be:

(a) EUR 1 billion in gross notional value for OTC credit derivative contracts;

(b) EUR 3 billion in gross notional value for OTC interest rate derivative contracts.';

(2) the following Articles 11a and 11b are inserted in Chapter VII:

'*Article 11a*

(Article 10(4), point (b), of Regulation (EU) No 648/2012)

Clearing thresholds for uncleared positions

The clearing thresholds values applicable to uncleared positions for the purpose of the clearing obligation shall be:

[5] OJ L 331, 15.12.2010, pp. 84 ELI: http://data.europa.eu/eli/reg/2010/1095/oj

(a) EUR 0,8 billion in gross notional value for uncleared OTC credit derivative contracts;

(b) EUR 0,7 billion in gross notional value for uncleared OTC equity derivative contracts;

(c) EUR 2,2 billion in gross notional value for uncleared OTC interest rate derivative contracts;

(d) EUR 3 billion in gross notional value for uncleared OTC foreign exchange derivative contracts;

(e) EUR 4 billion in the combined gross notional value of uncleared OTC commodity derivative and OTC emission allowance derivative contracts.

Article 11b

(Article 10(4), point (c), of Regulation (EU) No 648/2012)

Mechanisms triggering a review of the values of the clearing thresholds

ESMA shall assess, at least on a yearly basis, the evolution of the following indicators:

(a) the prices of the underlyings of any of the following classes of OTC derivatives:

  (i) OTC credit derivatives;

  (ii) OTC equity derivatives;

  (iii) OTC interest rate derivatives;

  (iv) OTC foreign exchange derivatives;

  (v) OTC commodity derivatives;

  (vi) OTC emission allowance derivatives;

(b) the volatility of the prices of the underlyings of each class of OTC derivatives referred to in point (a);

(c) the proportion of OTC derivative transactions, per each class of OTC derivatives referred to in point (a), that are cleared;

(d) the proportion of entities clearing their OTC derivatives transactions;

(e) the relevant inflation rates;

(f) the global financial conditions;

(g) the geopolitical and economic policy uncertainties.

Where ESMA identifies significant changes to the indicators referred to in points (a) to (g), it shall initiate a review of the clearing thresholds referred to in Article 11 and Article 11a in accordance with Article 10(4a) of Regulation (EU) No 648/2012.’.

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, 14.7.2026

For the Commission
The President
Ursula VON DER LEYEN