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COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

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To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

No. Cion doc.: C(2026) 2871 final

Subject: COMMISSION DELEGATED REGULATION (EU) .../... supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council by specifying the method for the determination of fees charged by the European Banking Authority for the validation of the pro forma models referred to in Article 11(3), fourth subparagraph, of that Regulation, and specifying the modalities of the payment of those fees

Delegations will find attached document C(2026) 2871 final.

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COMMISSION DELEGATED REGULATION (EU) .../...

of 5.5.2026

supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council by specifying the method for the determination of fees charged by the European Banking Authority for the validation of the pro forma models referred to in Article 11(3), fourth subparagraph, of that Regulation, and specifying the modalities of the payment of those fees

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) 2024/2987 ('EMIR 3') amending Regulation (EU) No 648/2012 ('EMIR'), was published in the Official Journal of the European Union on 4 December 2024¹.

Article 11(3), fourth subparagraph, of EMIR, as amended by EMIR 3, grants the European Banking Authority (EBA) the task to set up a central validation function for the elements and general aspects of pro forma models, and changes thereto, used or to be used by a subset of financial and non-financial counterparties to calculate the amount of collateral to be exchanged with respect to their portfolios of non-centrally cleared OTC derivatives. Consequently, in accordance with Article 11(12a) of EMIR, as amended by EMIR 3, the EBA shall charge annual fees, per pro forma model, to those financial and non-financial counterparties using the pro forma models validated by the EBA. In accordance with EMIR the fees need to be proportionate to the monthly average outstanding notional amount of non-centrally cleared OTC derivatives over the last 12 months of the counterparties concerned using the pro forma models validated by the EBA and need to be assigned to cover all costs incurred by the EBA for the performance of its tasks in relation to the validation of pro forma models.

Article 11(12a) of EMIR, as amended by EMIR 3, empowers the Commission to adopt a delegated act in order to specify further the types of fees, by setting out the method for the determination of the amount of the fees and the modalities of the payment of the fees.

The delegated act is to be adopted in accordance with Article 82 of EMIR and Article 290 of the Treaty on the Functioning of the European Union.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Procedural aspects

On 31 July 2024, the Commission made a provisional request to the EBA for technical advice on a possible delegated act specifying the method for the determination of the amount of the fees, and the modalities of the payment of such fees, to be paid by financial and non-financial counterparties requiring the validation of pro forma models under the European Market Infrastructure Regulation.

The EBA consulted stakeholders and requested comments on the following aspects: i) the scope of the new tasks and corresponding costs expected from the new role of the EBA as central validator of pro forma models; ii) the calculation of the monthly average outstanding notional amount of non-centrally cleared OTC derivatives over the past 12 months; and iii) the fee calculation methods and the payment modalities. Following the consultation, the EBA prepared a technical advice and sent it to the Commission on 16 June 2025. For a new pro forma model for which counterparties request the EBA's validation, the EBA recommends to set a fixed amount of costs of EUR 500 000 per calendar year of the first EBA validation.

On 6 August 2025, the Commission consulted the Expert Group of the European Securities Committee (EGESC) on the provisional content of this delegated act. The EGESC comprises representatives of Member States, the European Central Bank, and ESMA.

Stakeholder views

¹ OJ L, 2024/2987, p. 1.

Overall, respondents to the abovementioned consultations welcomed the establishment of a central validation function, ensuring a uniform validation process within the Union. Some respondents highlighted that the proposed approach to assign fees based on an exact 12-month average notional amount could be unnecessarily costly and burdensome. Taking into account the explicit requirement in Article 11(12a) of EMIR that the fee “*shall be proportionate to the monthly average outstanding notional amount of non-centrally cleared OTC derivatives over the last 12 months of the counterparties concerned using the pro forma models*” but recognising the need to reduce an unnecessary administrative burden on counterparties, it is proposed to introduce two alternative methods to estimate that notional amount.

The draft delegated act was published on the Commission’s Better Regulation Portal from 12 February to 12 March 2026, a period during which only a limited number of comments were provided. In particular, the International Swap and Derivatives Association asked clarity on whether the initial margin amounts used to determine the average notional amount values were those calculated by the counterparty as secured party; this is indeed the case, so the text was amended to clarify this. Other comments, which suggested some editorial changes, are also reflected in the adopted version of the delegated act.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 1 lays down the general principles the EBA should follow when calculating and collecting fees related to the performance of its validation function.

Article 2 specifies how the EBA should estimate its annual overall costs related to the performance of its validation function.

Article 3 specifies how counterparties should calculate their average notional amount for the purpose of the determination of the fees to be paid for the validation of the pro forma models they use.

Article 4 specifies the fees to be paid by counterparties on a regular basis.

Article 5 specifies the fees to be paid by counterparties using a pro forma model already in use prior to the entry into force of EMIR 3.

Article 6 specifies the fees to be paid in the first years following the introduction and the application for validation of a new pro forma model.

Article 7 provides for the general modalities of payment of the EBA fees.

Article 8 specifies the information to be communicated to the EBA for the purpose of the determination of the EBA fees.

Article 9 lays down the date of entry into force of the delegated act.

COMMISSION DELEGATED REGULATION (EU) .../...

of 5.5.2026

supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council by specifying the method for the determination of fees charged by the European Banking Authority for the validation of the pro forma models referred to in Article 11(3), fourth subparagraph, of that Regulation, and specifying the modalities of the payment of those fees

(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 repositories², and in particular Article 11(12a), seventh subparagraph thereof,

Whereas:

- (1) The annual fee referred to in Article 11(12a), fifth subparagraph, of Regulation (EU) No 648/2012 should be sufficiently high to cover all direct and indirect costs incurred by the European Banking Authority ('EBA') for validating the pro forma models referred to in Article 11(3), fourth subparagraph, of that Regulation. All the fees charged should be set at a level such as to avoid a deficit or a significant accumulation of surplus. Where a significant positive or negative budget result becomes recurrent, the level of the fees should be revised.
- (2) The obligation to have the pro forma models referred to in Article 11(3), fourth subparagraph, of Regulation (EU) No 648/2012 validated by the EBA was introduced by Regulation (EU) 2024/2987 of the European Parliament and of the Council³. However, some of the counterparties that have entered into OTC derivative contracts that have not been cleared by a CCP, have been using pro forma models prior to the entry into force of that Regulation. It is therefore appropriate to devise a specific methodology for the calculation of fees due for the validation of those pro forma models.
- (3) Article 11(12a), fifth subparagraph, of Regulation (EU) No 648/2012 requires that the annual fee to be paid to the EBA is proportionate to the monthly average outstanding notional amount of non-centrally cleared OTC derivatives transactions over the last 12 months of the counterparties concerned. Counterparties should use the equivalent portfolio notional approach to determine the average notional amount. Counterparties

² OJ L 201, 27.7.2012, p. 1, ELI: <http://data.europa.eu/eli/reg/2012/648/oj>.

³ 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, p. 1, ELI: <http://data.europa.eu/eli/reg/2024/2987/oj>).

should be allowed to use an alternative approach, provided that they can justify the choice for that alternative approach to their competent authority.

- (4) For new pro forma models, there is not yet a monthly average outstanding notional amount that can be used to allocate the cost proportionally over all counterparties that use that new pro forma model. It is therefore appropriate, for the first year in which the new pro forma model is used, to charge those counterparties an equal and fixed fee per new pro forma model. Article 11(12a), second subparagraph, of Regulation (EU) No 648/2012, however, gives the EBA six months after the receipt of the application for validation of such new pro forma model to validate that model, which means that it is possible that a pro forma model is only validated in the year following the application for validation. The EBA should therefore be able to charge the fixed fee also for the year in which the pro forma model is actually validated. For the years following the one in which the first validation is granted, a steady state methodology for the determination of fees due should be established.
- (5) To enable the EBA to calculate the annual fee accurately, counterparties that use pro forma models that are subject to validation by the EBA should send the EBA all the information that the EBA requires for such calculation in a timely manner,

HAS ADOPTED THIS REGULATION:

Article 1

Annual fee based on full cost recovery and following an activity-based management model

The annual fee referred to in Article 11(12a), fifth subparagraph, of Regulation (EU) No 648/2012 shall be based on both of the following:

- (a) the principle of full cost recovery;
- (b) the average notional amount calculated in accordance with Article 3.

Article 2

Estimation of the annual overall costs the EBA will incur due to the validation of pro forma models

Each year, to determine the overall amount of fees the EBA is to charge pursuant to Article 11(12a), fifth subparagraph, of Regulation (EU) No 648/2012, the EBA shall take into account the direct and indirect expenditure that it will incur that year for:

- (a) the validation of the pro forma models, including changes thereto;
- (b) the development and maintenance of statistical and IT tools to support the validation function of pro forma models;
- (c) the calculation, invoicing, and collection of the annual fee;
- (d) any other activities in support of the validation function of pro forma models.

Article 3

Average Notional Amount

1. For the calculation of the annual fee due to the EBA by each counterparty that is subject to the obligation to have its pro forma models validated, each counterparty using, or applying for validation to use, a pro forma model, as applicable, shall calculate the average notional

amount by averaging the monthly notional amount of non-centrally cleared derivatives using a given pro forma model over the reference period concerned. Those counterparties shall calculate each monthly notional amount as of the last business day of the given month, using the equivalent portfolio notional method laid out in paragraph 4 or the alternative approaches laid out in paragraph 5 or 7, as applicable. A counterparty may exclude from the average notional amount calculations portfolios for which it does not collect initial margins as a result of the application of the derogation laid down in Article 29(1) of Commission Delegated Regulation (EU) 2016/2251⁴. A counterparty that chooses to exclude such portfolios shall provide the number of portfolios it excluded as part of the information referred to in Article 8(1) of this Regulation.

2. For the purposes of Article 4, the reference period shall be the period from 1 January to 31 December of the year preceding that of the billing date specified in accordance with Article 7.

3. For the purposes of Article 5, the reference period shall be the 12 months preceding the date on which the EBA has publicly announced that it has set up its central validation function ('the EBA readiness date').

4. For each month of the reference period referred to in paragraph 1, counterparties shall calculate the monthly notional amount by converting the initial margin amount calculated with the pro forma model for the relevant portfolio into an equivalent portfolio notional amount in accordance with the following formula:

$$Notional_m = \frac{IM(Interest\ rate, inflation, FX)}{6\%} + \frac{IM(Credit)}{10\%} + \frac{IM(Equity)}{15\%} + \frac{IM(Commodity)}{15\%} + \frac{IM(other)}{15\%}$$

where:

- m = the index denoting the month of the reference period;
- C = the index denoting the class or classes of derivatives contracts;
- $IM(C)$ = the total initial margin amount for non-centrally cleared OTC derivatives transactions in class C , calculated on the last business day of the month for which the monthly notional amount is calculated, using the pro forma model, converted in euro.

5. Alternatively, for each month of the reference period referred to in paragraph 1, counterparties may decide to use the following formula to convert the total initial margin amount calculated by asset class for the relevant portfolio into an equivalent portfolio notional amount:

$$Notional_Month'_m = \frac{IM'(Interest\ rate, inflation, FX)}{6\%} + \frac{IM'(Credit)}{10\%} + \frac{IM'(Equity)}{15\%} + \frac{IM'(Commodity)}{15\%} + \frac{IM'(other)}{15\%}$$

⁴ Commission Delegated Regulation (EU) 2016/2251 of 4 October 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty (OJ L 340, 15.12.2016, p. 9, ELI: http://data.europa.eu/eli/reg_del/2016/2251/oj).

where:

- m = the index denoting the month of the reference period;
- C = the index denoting the class or classes of derivatives contracts;
- $IM'(C)$ = the total initial margin amount for non-centrally cleared OTC derivatives transactions in class C , calculated on the last business day of the month for which the monthly notional amount is calculated, converted in euro.

Counterparties may choose to use that formula provided that they can justify the choice to their competent authority.

6. For the purposes of paragraphs 4 and 5, when converting amounts in euro, counterparties shall use the euro foreign exchange reference rate published by the European Central Bank on the last business day of the month for which the monthly notional amount is calculated.

7. By way of derogation from paragraphs 4 and 5, a counterparty with a 12-month average notional amount below EUR 3 000 billion may estimate each monthly notional amount to be one of those specified in the table below, as long as it can demonstrate to its competent authority that the actual notional amount is lower than the one selected:

Regulatory threshold	Notional amount
1	EUR 3 000 billion
2	EUR 2 250 billion
3	EUR 1 500 billion
4	EUR 750 billion
5	EUR 50 billion
6	EUR 8 billion

Article 4

Annual validation fees

1. For each pro forma model that is validated as of 1 January of a year and that a counterparty uses or applies for validation in accordance with Article 11(3), fourth subparagraph, of Regulation (EU) No 648/2012 in that year, the counterparty shall pay to the EBA a fee of:

$$\begin{aligned}
 Fee_{n,y,p} = & EUR 200 \\
 & + \max \left(\frac{EBA\ costs_y}{Number\ of\ models_y} * \frac{Average\ Notional\ Amount_{n,p}}{Average\ Notional\ Amount_{Total,p}} \right. \\
 & \left. - EUR\ 200; 0 \right)
 \end{aligned}$$

where:

- n = the index denoting the counterparty using, or applying for validation to use, as applicable, pro forma model p ;
 - y = the index denoting the reference year;
 - p = the index denoting the pro forma model validated by the EBA as of 1 January of year y ;
 - $EBA\ costs_y$ = the amount estimated in accordance with Article 2 for the year y for pro forma models validated by the EBA as of 1 January of that year;
 - $Number\ of\ models_y$ = the number of pro forma models validated by the EBA as of 1 January of year y , floored at 1;
 - $Average\ Notional\ Amount_{n,p}$ the amount calculated by counterparty n , for the pro forma model p , in accordance with Article 3;
 - $Average\ Notional\ Amount_{Total,p} = \sum_n Average\ Notional\ Amount_{n,p}$.
2. Pro forma models that despite being validated are subject to the fee referred to in Article 6 shall not be considered in the calculation set out in paragraph 1.
 3. By way of derogation from paragraph 1, a counterparty that becomes subject to the requirement to apply for validation of a pro forma model after 31 March of a given year shall not pay any fee for that year for that pro forma model.

Article 5

Annual fee for the validation of a pro forma model already in use prior to 24 December 2024

1. By way of derogation from Article 4, for a pro forma model that was already in use prior to 24 December 2024, for the period from the EBA readiness date until the end of the year of the EBA readiness date, a counterparty that is subject, by the EBA readiness date, to the requirement to apply for validation to use, or adopt a change to, that pro forma model in accordance with Article 11(3), fourth subparagraph, of Regulation (EU) No 648/2012, shall pay the EBA an annual fee of:

$$Fee_n = EUR\ 200 + \max\left(EBA\ costs * \frac{Average\ Notional\ Amount_n}{Average\ Notional\ Amount_{Total}} - EUR\ 200; 0\right)$$

where:

- n = the index denoting the counterparty that is subject to the requirement to apply for validation to use, or adopt a change to, that pro forma model in accordance with Article 11(3), fourth subparagraph, of Regulation (EU) No 648/2012 by the EBA readiness date;
- $EBA\ costs$ = the amount, expressed in euro, estimated in accordance with Article 2 from the EBA's readiness date to the end of the year of the EBA readiness date;
- $Average\ Notional\ Amount_n$ = the amount calculated by counterparty n in accordance with Article 3;
- $Average\ Notional\ Amount_{Total} = \sum_n Average\ Notional\ Amount_n$.

2. A counterparty that becomes subject to the requirement to apply for validation to use a pro forma model already in use prior to 24 December 2024 after the EBA readiness date shall not pay any fee for that given year.

Article 6

Annual fee for the validation of a pro forma model that was not already in use prior to 24 December 2024

1. Each counterparty that applies for the validation of a pro forma model in accordance with Article 11(3), fourth subparagraph, of Regulation (EU) No 648/2012 that was not already in use prior to 24 December 2024, shall pay to the EBA a fee of:

$$Fee_n = \frac{EUR\ 500\ 000}{Total\ number\ of\ counterparties}$$

where:

- n = the index denoting the counterparty applying for validation to use the pro forma model;
- *Total number of counterparties* = the number of counterparties applying to use new pro forma model by 31 July of the given year.

2. Where the six-month validation period specified in Article 11(12a), second subparagraph, of Regulation (EU) No 648/2012 ends in the year following the year in which the first application for initial validation of the new pro forma model was received ('following year'), the EBA may choose to continue applying the formula set out in paragraph 1 for the calculation of the fees for that following year.

Where the EBA exercises the option in the first subparagraph, it shall use the number of counterparties using, or that have applied for validation to use, the pro forma model by 31 July of the following year as "Total number of counterparties" in the formula laid down in paragraph 1.

3. The EBA may decide not to charge the fee referred to in paragraph 1 of this Article for the year where the first application for validation of the pro forma model is received, where it would not be operationally feasible to collect the fees in the manner set out in Article 7.

4. Where a counterparty uses several pro forma models, the fee calculated in accordance with paragraphs 1 and 2 of this Article for the pro forma model subject to initial validation shall be paid in addition to the fee calculated in accordance with Article 4 for all other pro forma models used by the counterparty.

5. By way of derogation from paragraph 1 of this Article, the EBA may, for the fee calculated in accordance with this Article, increase the 500 000 EUR in the formula laid down in that paragraph up to an amount that equals the total costs estimated in accordance with Article 2 for a pro forma model.

Article 7

Payment of annual validation fees

1. Counterparties that are subject to the obligation to have their pro forma models validated for a given year shall be invoiced by the EBA for the fees referred to in Articles 4, 5 and 6, as applicable, during that calendar year.

2. The payment deadline shall be 45 calendar days from the registration of the amount receivable in the EBA's accounts. The fees shall be payable in euro.
3. Any late payments shall incur the default interest laid down in Article 99 of Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council⁵.
4. Communications between the EBA and counterparties referred to in paragraph 1 of this Article shall take place via the central database established by ESMA pursuant to Article 17c of Regulation (EU) No 648/2012 or by any other electronic means where that central database is not available.

Article 8

Information to be communicated to the EBA

1. Each year, counterparties using a validated pro forma model or applying for validation of a pro forma models shall provide the EBA with all elements needed to calculate the fees referred to in Articles 4, 5, and 6, as applicable, including the information on the average notional amount referred to in Article 3 and the financial details of the counterparty that are required for the billing process.
2. For the purposes of paragraph 1, the following shall apply:
 - (a) for the year of the EBA readiness date, the EBA shall collect the elements needed to:
 - (i) calculate the fees referred to in Article 5;
 - (ii) issue the bills no later than 31 October of that year;
 - (b) for the years following the EBA readiness date, the counterparties referred to in paragraph 1 of this Article shall communicate to the EBA the elements needed to calculate the fees referred to in Article 4 and 5, as applicable, by 31 March;
 - (c) for the fees referred to in Article 6, the EBA shall collect the information to calculate those fees and issue the corresponding bills by a suitable date taking into account the provisions of Article 7.

Article 9

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, 5.5.2026

For the Commission
The President
Ursula VON DER LEYEN

⁵ Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast) (OJ L, 2024/2509, 26.9.2024, ELI: <http://data.europa.eu/eli/reg/2024/2509/oj>)