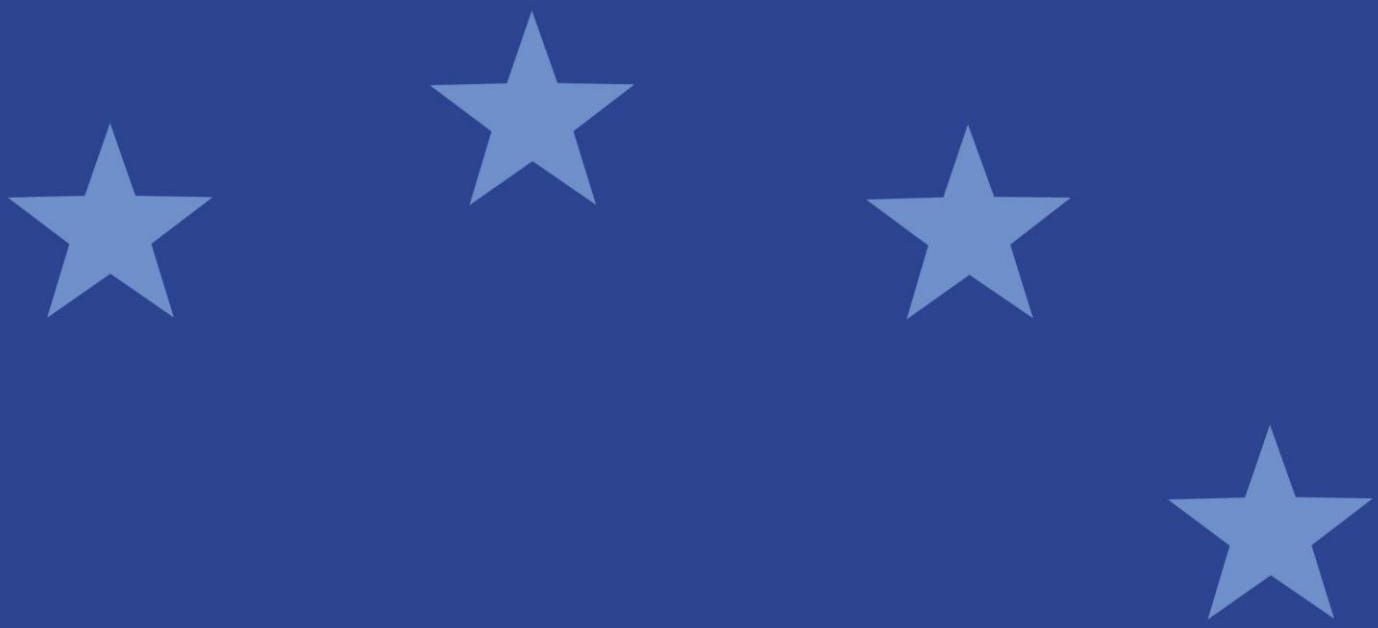
esma European Securities and Markets Authority

# Final Report

## EMIR RTS on amendments to the clearing obligation regarding intragroup contracts



13 June 2022 | ESMA70-451-164

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# Acronyms used

| | |
|---|---|
| Bilateral margining RTS | Commission Delegated Regulation (EU) No 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) - also referred to as "bilateral margin RTS". |
| Clearing obligation RTS | Commission Delegated Regulations (EU) 2015/2205 of 6 August 2015, (EU) 2016/592 of 1 March 2016 and (EU) 2016/1178 of 10 June 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 on the clearing obligation (OJ L 314, 1.12.2015, p. 13; OJ L 103, 19.4.2016, p. 5 and OJ L 195, 20.7.2016, p. 3 respectively) – also referred to as "the RTS on the clearing obligation" |
| CCP | Central Counterparty |
| EMIR | European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1) – also referred to as "the Regulation" |
| EBA | European Banking Authority |
| EIOPA | European Insurance and Occupational Pensions Authority |
| ESAs | European Supervisory Authorities, namely the EBA, EIOPA and ESMA |
| ESMA | European Securities and Markets Authority |
| ESMA Regulation | 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) |
| ESRB | European Systemic Risk Board |
| NCA | National Competent Authority |
| OTC | Over-the-counter |
| RTS | Regulatory Technical Standards |
| TEU | Treaty on the European Union |

# 1 Executive Summary

## Reasons for publication

This final report presents new draft amending regulatory technical standards (RTS) on the clearing obligation that ESMA has developed under Article 5(2) of EMIR[1]. The draft RTS propose to amend Commission Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 on the clearing obligation (RTS on the clearing obligation), with respect to the treatment of OTC derivative contracts concluded between counterparties that are part of the same group and where one counterparty is established in a third country and the other counterparty is established in the Union.

The abovementioned three RTS on the clearing obligation mandate a range of interest rate and credit derivative classes to be cleared. Under EMIR, the clearing obligation would apply regarding intragroup contracts with a third-country group entity when no equivalence decision under Article 13 has been adopted. The RTS on the clearing obligation introduced a deferred date of application of this obligation in order to provide time for the European Commission (EC) to take the relevant equivalence decisions. This deferred date of application (contained in these RTS) is currently set for 30 June 2022. No such equivalence decision has been adopted so far under Article 13 of EMIR with respect to the clearing obligation. The EC has indicated that reaching such decisions with regards to relevant third-country jurisdictions in relation to which any such implementing act may be warranted has turned out to pose challenges, and that a number of issues would need to be resolved in order to be able to move forward. In addition, ESMA, and more broadly the ESAs, are also mindful of the regulatory efforts to ensure that EU counterparties reduce reliance and exposure to certain third-country entities. In this context, the dependency of the Capital Requirements Regulation (CRR) on the equivalence mechanism under EMIR can also cause certain challenges to restrict the scope of the CVA intragroup exemption under CRR. Based on the observed difficulties, ESMA is of the view that a review of the EMIR framework for intragroup exemptions for contracts with third countries, and its interaction with CRR, would be desirable.

Stakeholders have raised concerns about negative consequences if the deferred date of application was not extended beyond 30 June 2022.

Taking into account the challenges posed in reaching the necessary equivalence decisions until the deferred date of application, the possible negative consequences in case of no changes as well as the scheduled upcoming review of EMIR which offer the possibility to fix the mentioned challenges, the draft RTS is proposing to extend the deferred date of obligation set in the RTS on the clearing obligation by three years.

The proposed amendments are an adaptation of the timelines to facilitate the current implementation of the RTS on the clearing obligation and are limited in nature. Moreover, the current deadline related to these provisions is due to expire soon. Given the limited scope of the amendments and the urgency of the matter, in accordance with Article 10(1) of

the ESMA Regulation, it would have been disproportionate for ESMA to conduct open public consultations or full analyses of the potential related costs and benefits. However, the advice of the Securities and Markets Stakeholder Group has been requested. ESMA consulted the European Systemic Risk Board (ESRB), which indicated having no objection from a macro prudential perspective.

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This paper provides explanations on the draft RTS amending the current RTS on the clearing obligation with respect to the treatment of intragroup contracts. More specifically, the report develops the rationale for ESMA's proposal to extend the deferred date of application for intragroup contracts by three years.

## Next Steps

The draft RTS presented in the Annex are being submitted to the EC for endorsement in the form of a Commission Delegated Regulation, i.e. a legally binding instrument directly applicable in all Member States of the European Union. Following their endorsement, they are subject to non-objection by the European Parliament and the Council.

[1] Regulation (EU) 648/2012 of the European Parliament and Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories

# 2 Final report

## 2.1 Introduction

1. With the overarching objective of reducing systemic risk, EMIR provides for the obligation to clear certain classes of OTC derivatives in Central Counterparties (CCPs) that have been authorised (for European CCPs) or recognised (for third-country CCPs) under the EMIR framework. Ensuring that the clearing obligation reduces systemic risk requires a process of identification of classes of derivatives that should be subject to mandatory clearing.

2. EMIR foresees two possible processes for the identification of the relevant classes of OTC derivatives:

   a) The "bottom-up" approach described in Article 5(2) of EMIR, according to which the determination of the classes to be subject to the clearing obligation will be done based on the classes which are already cleared by authorised or recognised CCPs; and

   b) The "top-down" approach described in Article 5(3) of EMIR, according to which ESMA will on its own initiative identify classes which should be subject to the clearing obligation but for which no CCP has yet received authorisation.

3. ESMA has followed a number of times the bottom-up clearing obligation procedure, which is based on the classes that are already offered for clearing by authorised or recognised CCPs. The Public Register lists all the CCPs authorised (and their extensions of authorisations in the case they extended their scope) or recognised that clear OTC derivatives[2].

4. The determination process described above has led to three RTS on the clearing obligation[3], which are based on the corresponding three draft RTS developed by ESMA. They cover a range of OTC derivative classes in the interest rate and credit derivative asset classes. The details of the classes subject to the clearing obligation and the associated implementation calendar have been maintained in the Public Register referenced above.

5. Since then, the RTS on the clearing obligation have been reviewed a number of times and sometimes amended, for a number of reasons. This includes the recent review as well as the submission of certain amendments to the scope of the clearing obligation

[2] The "Public Register for the Clearing Obligation under EMIR" is available under the post-trading section of: http://www.esma.europa.eu/page/Registries-and-Databases

[3] Commission Delegated Regulation (EU) 2015/2205 of 6 August 2015 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation (OJ L 314, 1.12.2015, p. 13); Commission Delegated Regulation (EU) 2016/592 of 1 March 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation (OJ L 103, 19.4.2016, p. 5); Commission Delegated Regulation (EU) 2016/1178 of 10 June 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation (OJ L 195, 20.7.2016, p. 3).

to accompany the benchmark transition[4], which has been endorsed by the EC and is under review with the European Parliament and the Council.

6. The RTS on the clearing obligation contain a deferred date of application with regards to the treatment of OTC derivative contracts concluded between counterparties that are part of the same group and where one counterparty is established in a third country and the other counterparty is established in the Union (throughout this document, referred to as “intragroup contracts”). This deferred date was introduced to ensure that such OTC derivative intragroup contracts were not subject to the clearing obligation before the assessment and the adoption of an implementing act pursuant to Article 13(2) of EMIR could be undertaken for the jurisdictions where it might be warranted. The deferred date is 30 June 2022.

7. The Final report presents the considerations taken into account by ESMA with respect to that deferred date and leading to the proposed draft RTS presented in Annex II.

8. It should also be noted that similar considerations are being made and a similar amendment as presented in this report is being considered in parallel by the ESAs, regarding the bilateral margining RTS.

## 2.2 Intragroup OTC derivative contracts

### 2.2.1 Background

#### 2.2.1.1 Proportion of intragroup contracts

9. Intragroup OTC derivative contracts can be used for centralised risk management purposes, thus aggregating risks within certain group entities and enabling certain efficiencies in the management of these risks.

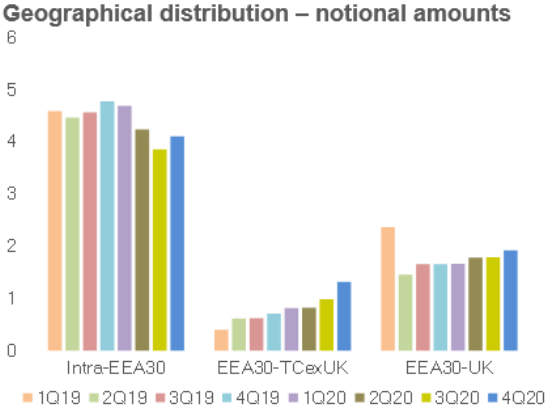
10. ESMA publishes a set of Annual Statistical Reports (ASR) analysing the EU derivatives and securities markets based on data submitted under EMIR and the Markets in Financial Instruments Directive (MiFID). The last ASR was published on 17 December 2021 providing an overview of EU/EEA markets in 2020. As part of this yearly exercise, ESMA has analysed the data related to intragroup OTC derivative booking activity with respect to derivatives activity.

11. The analysis indicates that the largest part of intragroup OTC interest rate derivative booking is intra-EEA, which is thus not affected by the considerations regarding third countries developed in this final report. Following intra-EEA intragroup contracts, then comes intragroup contracts with UK entities and then intragroup contracts with entities from other third countries, which are the intragroup contracts being considered in this

[4] ESMA proposes changes to the scope of the clearing and derivative trading obligations for the benchmark transition (europa.eu)

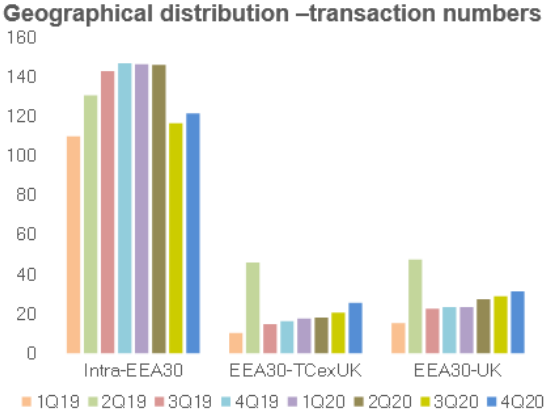
final report. Over the period analysed, intragroup contract activity has steadily increased.

Figure 1
**Geographical distribution – notional amounts**




Note: Total notional amounts for interest rate derivatives subject to clearing obligation in G4 currencies (EUR, USD, GBP, JPY) outstanding by zone of both counterparties, in EUR trillions. TCexUK denotes non-EEA30 and non-UK.
Sources: TRs, ESMA.

Figure 2
**Geographical distribution –transaction numbers**




Note: Total oustanding intragroup transactions amounts for interest rate derivatives subject to clearing obligation in G4 currencies (EUR, USD, GBP, JPY) distributed by zone of both counterparties, in thousands of records. TCexUK for third-country non-UK.
Sources: TRs, ESMA.

12. However, to put things into perspective, the ASR derivatives report also clarifies that intragroup contracts of interest rate derivatives, the largest part of intragroup OTC derivative activity, only represents 7% in terms of notional and 8% in terms of trade count of the OTC interest rate derivative market[5]. ESMA will continue monitoring this distribution of trades as part of the next ASR annual exercise.

#### 2.2.1.2 Applicable regime

13. Under EMIR, there are two regimes for intragroup contracts, with regards to whether and when the clearing obligation may apply. More specifically, there is:

- a permanent regime in Level 1 (EMIR), specifically an intragroup exemption regime where one of the conditions is an equivalence decision under Article 13 with regards to the given third country, and

- a temporary regime in Level 2 (RTS on the clearing obligation), specifically a deferred date of application of the clearing obligation as mentioned in paragraph 6.

14. The temporary regime had been introduced in the RTS in order to provide time for the EC to prepare the relevant equivalence decisions for the permanent regime to apply.

15. To date, the EC has issued a total of 8 equivalence decisions under Article 13(2) of EMIR, all relating to bilateral margining, and none covering the clearing obligation. In other words, none of these 8 equivalence decisions is covering the full scope of Article

[5] See in particular the statistics table on page 5 of the ASR: esma50-165-2001_emir_asr_derivatives_2021.pdf (europa.eu)

13(2). The 8 equivalence decisions relate to Australia, Brazil, Canada, Hong Kong, Japan, Singapore and the United States of America (2 separate decisions)[6].

16. The temporary regime is not an automatic and blanket exemption approval of all possible intragroup contracts regarding any potential third countries. Article 3(2) (in the RTS on the clearing obligation) defines a number of conditions that need to be met to benefit from this deferred date, such that the relevant competent authority can assess the risk management framework of the counterparty seeking to benefit from that deferred date under the temporary regime. Based on this assessment, the relevant competent authority may or may not decide to accept it. It can also be noted that when an equivalence decision has been taken, then the permanent regime takes over, which triggers similar conditions to be met and assessed as in the temporary regime for that counterparty to benefit from an exemption under EMIR.

17. The temporary regime is now due to expire on 30 June 2022.

#### 2.2.1.3 Concerns

18. If the temporary regime was to expire on 30 June 2022, then this would impact a certain number of groups with cross border activity, with regards to their risk management practices and their arrangements with group entities for which there no equivalence decision has been adopted so far.

19. Stakeholders raised these concerns to ESMA (and the ESAs for bilateral margining requirements) and the EC in a letter sent by several trade associations (EACB, EBF, EFET, FIA, GFMA, ISDA and NSA) on 17 November 2021[7]. The stakeholders requested an extension of the temporary regime by 3 more years. ESMA (and the ESAs for bilateral margining requirements) responded in December 2021 saying to be aware of the situation and to be in contact with the EC about it.

20. The EC then sent a letter to ESMA (and the ESAs for bilateral margining requirements) at the end of December 2021 asking to consider an extension of the temporary regime based on a number of considerations:

21. First of all, the EC mentioned that so far only eight equivalence decisions were adopted. In addition, the EC flagged that these equivalence decisions had been adopted solely for the purpose of EMIR Article 11 (i.e. bilateral margining requirements, and thus not the clearing obligation). This means that they are not fully covering the scope of Article 13(2) and, as a consequence, would not allow for the envisaged exemptions for intragroup contracts. In the absence of these equivalence decisions, EU counterparties would have to start applying the clearing obligation or margin requirements to their intragroup contracts, incurring undue costs and introducing a level playing field issue for EU firms.

[6] List of Implementing and Delegated Acts for (EU) No 648/2012 Equivalence Decisions (europa.eu)
[7] Industry-Urges-EU-to-Extend-Relief-for-Cross-Border-Intragroup-Transactions.pdf (isda.org)

22. Secondly, the EC indicated that reaching these decisions has however turned out to pose challenges, and that a number of issues would need to be resolved in order to be able to move forward. The scheduled upcoming review of EMIR could be the opportunity to address some of these challenges.

23. Last but not least, it should be noted that ESMA, and the ESAs more broadly, are also mindful of the regulatory efforts to restrict the scope of the CVA intragroup exemption under CRR to ensure better alignment on Basel standards by removing its dependency on equivalence decisions under Article 13 of EMIR. As stated in the December 2019 EBA response to the EC's Call for Advice[8], the *"main issue with the EU intragroup treatment of CVA risk in terms of compliance with international standards is its potential extension to third countries considered 'equivalent', which stems from cross-references to EMIR, rather than the provisions in the prudential framework, and which ideally should be removed."*.

### 2.2.2 Proposed amendments

24. ESMA is thus of the view that the EMIR framework for intragroup exemptions should be reviewed. The scheduled upcoming review of EMIR should indeed take all the concerns described above into account in order to address these issues and ensure an adequate intragroup exemption framework in Level 1.

25. The changes to the intragroup regime in EMIR should be done in a manner that ensures that the risk management of Union currencies is done in the EEA, to prevent circumvention risk via certain booking practices, e.g. back to back trades to essentially maintain everything in a third-country. The changes to the intragroup regime should also ensure ruling out exemptions for intragroup contracts with group entities from certain jurisdictions, e.g. jurisdictions not meeting certain standards or subject to sanctions.

26. A possibility to achieve this might be through the addition of new conditions to be met in order to benefit from an intragroup exemption. With regards to the first aspect, one of the conditions could be that EUR and Union currencies risks are centrally managed within the EEA, i.e. by an EEA group entity.

27. With regards to the second aspect, a condition could be introduced to ensure that the third country in which the group entity is established or authorised is not considered by the EU institutions as having strategic deficiencies in its national anti-money laundering and counter financing of terrorism regime that poses significant threats to the financial system of the Union, nor has been subject to economic sanctions issued by the EU

[8] See paragraph 38 of EBA response to the EC's Call for Advice https://www.eba.europa.eu/eba-updates-estimates-impact-implementation-basel-iii-and-provides-assessment-its-effect-eu-economy: "*However, as noted in the report on CVA, it is worth clarifying that the exemption of intragroup transactions does not constitute per se a divergence from Basel but rather the specification of a treatment of intragroup transactions, which reflects the application of the Basel standards at the consolidated level of EU parent institutions. The main issue with the EU intragroup treatment of CVA risk in terms of compliance with international standards is its potential extension to third countries considered 'equivalent', which stems from cross-references to EMIR, rather than the provisions in the prudential framework, and which ideally should be removed.*"

institutions. It can be noted that ESMA has made these proposals in its high-level response to the EC consultation on the targeted review of EMIR that was published on 5 April 20229.

28. However, it will take some time for the co-legislators to complete a review of Level 1, and therefore there are valid reasons why the temporary intragroup regime could be extended. First of all, it would avoid unintended consequences on the centralised risk management practices of cross-border groups when the current exemption expires in June 2022.

29. Secondly, an extension would provide time for the EC and the co-legislators to review and possibly change the Level 1 framework, i.e. to define a new permanent regime applicable to intragroup contracts, in line with the EC letter. Without an extension, groups will have to clear their intragroup contracts with the associated costs.

30. Thirdly, introducing the requirements now will expose groups to multiple changes: a) additional equivalence decisions can be adopted and therefore all the arrangements put in place to clear might no longer be needed for the additional equivalent countries; b) changes to the Level 1 framework are expected, so the application of the clearing obligation to intragroup contracts might be limited in time and groups exposed to multiple changes of the applicable framework.

31. Fourthly, such an extension would remain a temporary measure with some controls in place, as the deferred date of application does not apply automatically, as explained in paragraph 16. Groups have to submit a request and meet certain conditions. If not, competent authorities would not grant such a request.

32. However, it should also be noted that ESMA will continue to pay particular attention to any possible implications of such an extension of the temporary regime on booking models between EU subsidiaries and branches of third-country firms, primarily in light of Brexit.

33. Taking all this into account, ESMA supports a review of the intragroup exemption regime in Level 1 and is proposing an extension of the temporary regime via the amending RTS in annex. With the objective of providing time for redefining a new permanent regime for intragroup contracts under the EMIR Review, ESMA is proposing an extension of three years. This proposal is also in line with what the ESAs are considering with regards to the bilateral margining requirements.

34. ESMA is of the view that these three years should allow for the Level 1 regime to be reviewed and/or for the relevant equivalence decisions to be adopted. ESMA expects groups to monitor the regulatory developments carefully. They should not rely by

[9] ESMA responds to European Commission consultation on EMIR Review (europa.eu)

default on a further extension after the three-year period provided by these amendments.

## 2.3 Way forward

35. From a process point of view, it is important to note that the proposed amendments are an adaptation of the timelines to facilitate the current implementation of the RTS on the clearing obligation, and the proposed amendments are limited in nature.

36. In addition, the current deadline regarding the deferred date of application for intragroup contracts is soon approaching (30 June 2022). Market participants would thus benefit in knowing as early as possible on whether and how to prepare for these requirements.

37. Finally, the proposed changes have also been called for by a large range of market participants.

38. As a result, ESMA is of the view that it would have been disproportionate to conduct open public consultations and full analyses of the potential related costs and benefits, taking into account the scope and impact of the changes concerned in the draft RTS and the urgency of the matter. Therefore, in accordance with Article 10(1) of ESMA Regulation, ESMA has not conducted any open public consultation. However, the advice of the Securities and Markets Stakeholder Group has been requested. ESMA consulted the European Systemic Risk Board, which indicated having no objection from a macro prudential perspective.

39. These amendments are thus submitted directly to the EC for review and endorsement. The process that follows the adoption of draft RTS by the EC without significant amendments is a review period by the European Parliament and Council before they can then be published in the Official Journal and subsequently enter into force.

# 3 Annexes

## 3.1 Commission mandate to develop technical standards

*Article 5(2) of Regulation (EU) No 648/2012*

**Clearing obligation procedure**

(2) Within six months of receiving notification in accordance with paragraph 1 [of Article 5] or accomplishing a procedure for recognition set out in Article 25, ESMA shall, after conducting a public consultation and after consulting the ESRB and, where appropriate, the competent authorities of third countries, develop and submit to the Commission for endorsement draft regulatory technical standards specifying the following:

(a) the class of OTC derivatives that should be subject to the clearing obligation referred to in Article 4;

(b) the date or dates from which the clearing obligation takes effect, including any phase in and the categories of counterparties to which the obligation applies.

Power is delegated to the Commission to adopt regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

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.

## 3.2 Draft technical standards

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

**of [ ]**

**amending the regulatory technical standards laid down in Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 as regards the date at which the clearing obligation takes effect for certain types of intragroup contracts**

**(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 ([10]), and in particular Article 5(2) thereof,

Whereas:

(1)Commission Delegated Regulations (EU) 2015/2205 ([11]), (EU) 2016/592 ([12]) and (EU) 2016/1178 ([13]) specify, among others, the effective dates of the clearing obligation for contracts pertaining to the classes of OTC derivatives set out in the Annexes to those Regulations. Those Regulations laid down deferred dates of application of the clearing obligation for OTC derivative contracts concluded between counterparties which are part of the same group and where one counterparty is established in a third country and the other counterparty is established in the Union. Those deferred dates were necessary to ensure that such OTC derivate contracts were not subject to the clearing obligation before the adoption of an implementing act pursuant to Article 13(2) of Regulation (EU) No 648/2012.

(2)Despite the efforts invested to analyse third country jurisdictions in relation to which any such implementing act may be warranted, to date, no implementing act pursuant to Article 13(2) of Regulation (EU) No 648/2012 has yet been adopted in relation to the clearing obligation. The application of the clearing obligation for OTC derivative intragroup contracts should therefore be further deferred to avoid the unintended detrimental economic impact that the expiry of that exemption would have on Union firms.

(3)Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 should therefore be amended accordingly.

[10] OJ L 201, 27.7.2012, p. 1.
[11] Commission Delegated Regulation (EU) 2015/2205 of 6 August 2015 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation (OJ L 314, 1.12.2015, p. 13).
[12] Commission Delegated Regulation (EU) 2016/592 of 1 March 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation (OJ L 103, 19.4.2016, p. 5).
[13] Commission Delegated Regulation (EU) 2016/1178 of 10 June 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation (OJ L 195, 20.7.2016, p. 3).

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

(5)The amendments to Delegated Regulation (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 are limited adjustments of the existing regulatory framework. Given the limited scope of the amendments and the urgency of the matter, it would be disproportionate for ESMA to conduct open public consultations or analyses of the potential related costs and benefits. ESMA nevertheless requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[14].

(6)It is necessary to provide market participants legal certainty as quickly as possible so that they can adequately prepare for complying with the requirements laid down in Regulation (EU) No 648/2012, the application of which will be affected by this Regulation, in particular with respect to the requirements for which the current applicable deadline is approaching rapidly. This Regulation should therefore enter into force as a matter of urgency,

HAS ADOPTED THIS REGULATION:

*Article 1*

***Amendment to Delegated Regulation (EU) 2015/2205***

In Article 3(2), first subparagraph, of Delegated Regulation (EU) 2015/2205, point (a) is replaced by the following:

‘(a) 30 June 2025 in case no equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts set out in the Annex to this Regulation in respect of the relevant third country;’.

*Article 2*

***Amendment to Delegated Regulation (EU) 2016/592***

In Article 3(2), first subparagraph, of Delegated Regulation (EU) 2016/592, point (a) is replaced by the following:

‘(a) 30 June 2025 in case no equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts set out in the Annex to this Regulation in respect of the relevant third country;’.

*Article 3*

***Amendment to Delegated Regulation (EU) 2016/1178***

In Article 3(2), first subparagraph, of Delegated Regulation (EU) 2016/1178, point (a) is replaced by the following:

‘(a) 30 June 2025 in case no equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that

[14] 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).

Regulation covering the OTC derivative contracts set out in the Annex to this Regulation in respect of the relevant third country;'.

*Article 4*

***Entry into force***

This Regulation shall enter into force on the 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,

*For the Commission*
*The President*

*[For the Commission*
*On behalf of the President*

*[Position]*

## 3.3 Annex III – Feedback from the consultation of the Stakeholder Group as to the amendments to the clearing obligation regarding the treatment of intragroup contracts

40. As mentioned at the start of this Report, the advice of the Securities and Markets Stakeholders Group (SMSG) has been requested on amendments related to the provisions covered in the draft RTS.

41. While no formal position of the SMSG could be established in the time provided, no objection was raised. It could also be noted that the advice of the stakeholder groups of each of the ESAs on the mirroring amendment covered in the draft RTS on bilateral margining has been requested in parallel too. While no formal position of the groups could be established either in the time provided, no objection was raised and a few subject matter experts from these groups with respect to the topic covered, bilateral margining of uncleared OTC derivatives, provided positive feedback on the proposed amendments mirroring the amendments for intragroup contracts for the purpose of the clearing obligation.