



European Securities and
Markets Authority

Final Report

Clearing Obligation under EMIR (no. 6)



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Acronyms used

CCP	Central Counterparty
CDS	Credit Default Swap
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories – also referred to as “the Regulation”
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
ETD	Exchange Traded Derivatives
FC	Financial Counterparty
IRS	Interest Rate Swap
NCA	National Competent Authority
NFC	Non-Financial Counterparty
NFC+	Non-Financial Counterparty subject to the clearing obligation, as referred to in Article 10(1)(b) of EMIR
OTC	Over-the-counter
Q&A on EMIR	Questions and Answers on the implementation of EMIR available on ESMA's website
RTS	Regulatory Technical Standards
RTS on OTC Derivatives	Commission Delegated Regulation (EU) No 149/2013

Executive Summary

Reasons for publication

The final report presents a new set of draft regulatory technical standards (RTS) on the clearing obligation that ESMA has developed under Article 5(2) of Regulation (EU) No 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories (EMIR). The draft RTS relate to the treatment of certain intragroup transactions concluded with a third country group entity.

There are currently three Commission Delegated Regulations on the clearing obligation. They mandate a range of interest rate and credit derivative classes to be cleared. These Commission Delegated Regulations contain a deferred date of application of the clearing obligation for intragroup transactions satisfying certain conditions and where one of the counterparties is in a third country, in the absence of the relevant equivalence decision. However, the deferred dates are soon approaching and there have not been any equivalence decisions to date with regards to the clearing obligation.

ESMA published a proposal to extend the deferred dates of application and conducted a public consultation on the amending draft RTS. The final report presents the results from this consultation and the finalised version of the draft RTS.

Contents

This paper provides explanations on the finalised draft RTS amending the current Commission Delegated Regulations on the clearing obligation with respect to the deferred date of application for certain intragroup transactions with a third country group entity, including the main feedback received from the consultation.

Next steps

The final report is sent to the European Commission in order to submit the draft RTS presented in Annex 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.

Introduction

1. With the overarching objective of reducing systemic risk, the European Market Infrastructure Regulation (“EMIR”) introduces 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:
 - The “bottom-up” approach described in EMIR Article 5(2), according to which the determination of the classes to be subject to the CO will be done based on the classes which are already cleared by authorised or recognised CCPs; and
 - The “top-down” approach described in EMIR Article 5(3), 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. As explained, the bottom-up clearing obligation procedure is based on the classes, which are already cleared 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 derivatives¹
4. In accordance with the clearing obligation procedure and the Commission mandate shown in Annex I, ESMA shall develop and submit to the European Commission for endorsement draft technical standards specifying:
 - (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; and
 - (c) the minimum remaining maturity of the OTC derivative contracts referred to in Article 4(1)(b)(ii).
5. The determination process described above has led to three Commission Delegated Regulations on the clearing obligation (Commission Delegated Regulations (EU) No 2015/2205, No 2016/592 and No 2016/1178), 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 are maintained in the Public Register referenced above.
6. This final report looks at the proposed amendment to each of the three Commission Delegated Regulations on the clearing obligation mentioned in the previous paragraph. The proposed amendment deals with the treatment of certain intragroup transactions concluded with a third country

¹ 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>

group entity. More specifically, it proposes to postpone the date or dates from when the requirements are due to apply for these intragroup transactions.

7. On 11 July 2018, ESMA published a consultation paper containing its proposal to extend the dates and the corresponding draft RTS. Eleven respondents provided responses during that public consultation. The eleven respondents cover a broad range of stakeholders, there are individual responses as well as responses from trade associations with numerous members, there are responses from financial counterparties (including both sell-side and buy-side) as well as from non-financial counterparties, responses representing the views of entities from certain Member States as well as responses with a broader geographical representation. ESMA also requested the opinion of the ESMA Security and Markets Stakeholder Group, which did not raise any comments, and ESMA also consulted the European Systemic Risk Board, which indicated having no objection from a macro prudential perspective. The final report provides explanations on the finalised draft RTS, including the main feedback received from the consultation.

1 Current temporary exemption

8. The three Commission Delegated Regulations on the clearing obligation, i.e. Commission Delegated Regulation (EU) 2015/2205 and Commission Delegated Regulation (EU) 2016/1178 regarding interest rate derivative classes as well as Commission Delegated Regulation (EU) 2016/592 regarding credit derivative classes, include a provision related to intragroup transactions with a third-country group entity, under Article 3(2) of EMIR. The provision provides for a deferred date of application of the clearing obligation of up to three years for these transactions, in the absence of the relevant equivalence decision (See extract of Article 3(2) text in Annex II).

9. A Recital present in the three Commission Delegated Regulations on the clearing obligation (Recital 12 of Commission Delegated Regulation (EU) 2015/2205, Recital 11 of Commission Delegated Regulation (EU) 2016/592 and Recital 12 of Commission Delegated Regulations (EU) 2016/1178) provides the rationale for this temporary exemption:

For OTC derivative contracts concluded between a counterparty established in a third country and another counterparty established in the Union belonging to the same group and which are included in the same consolidation on a full basis and are subject to an appropriate centralised risk evaluation, measurement and control procedures, a deferred date of application of the clearing obligation should be provided. The deferred application should ensure that those contracts are not subject to the clearing obligation for a limited period of time in the absence of implementing acts pursuant to Article 13(2) of Regulation (EU) No 648/2012 covering the OTC derivative contracts set out in the Annex to this Regulation and regarding the jurisdiction where the non-Union counterparty is established. Competent authorities should be able to verify in advance that the counterparties concluding those contracts belong to the same group and fulfil the other conditions of intragroup transactions pursuant to Regulation (EU) No 648/2012.

10. The three Commission Delegated Regulations on the clearing obligation entered into force on three different dates, which means that the three year deadline expires on three different dates for each of them:

- a. 21 December 2018 for the first Commission Delegated Regulation on IRS,
- b. 9 May 2019 for the Commission Delegated Regulation on CDS, and
- c. 9 July 2019 for the second Commission Delegated Regulation on IRS.

11. As a result, the temporary exemption will expire in less than a year with regards to the OTC derivative classes covered in all three Commission Delegated Regulation, with the first deadline approaching, the temporary exemption for interest rate derivative classes denominated in the G4 currencies expiring in a few months later this year.

2 Proposed amendment

12. To date, no implementing act on equivalence on legal, supervisory and enforcement framework of a third-country under Article 13(2) of EMIR in respect of the clearing obligation has been adopted.
13. The adoption by the Commission of implementing acts on equivalence under Article 13 establishing that third-countries are considered as having legal, supervisory and enforcement frameworks equivalent to EMIR is required for the exemption to clear derivatives subject to the clearing obligation for intragroup transactions with third-country group entities. As previously mentioned by ESMA, any provision that has an effect equivalent to that of an implementing act on equivalence under Article 13, although limited in time and scope, but without the assessment provided by the examination procedure referred to in Article 13(2), may have unintended consequences with respect to the objectives of EMIR and therefore requires a very careful review.
14. Therefore, in order to find the right balance between the objective of the temporary exemption as explained in the abovementioned recitals (Recital 12 of Commission Delegated Regulations (EU) 2015/2205 and 2016/1178, as well as Recital 11 of Commission Delegated Regulation (EU) 2016/592 provide for a bit more time for intragroup transactions satisfying certain conditions, not to be affected by the clearing obligation in the absence of equivalence decisions so far), and the need to contain the risk of unintended consequences as explained in the previous paragraph, ESMA proposed to prolong these exemptions for a limited and short period of time only.
15. ESMA proposed in the consultation paper to prolong this date by two years for Commission Delegated Regulation (EU) 2015/2205 (interest rate derivative classes denominated in the G4 currencies), i.e. until 21 December 2020. And for simplicity, ESMA proposed to align the date for the other two Commission Delegated Regulations (EU) 2016/1178 and (EU) 2016/592 to 21 December 2020 as well.
16. All respondents expressed support for the extension and there was broad support for the extension as proposed, including the alignment of the three dates.
17. More specifically, several respondents supported the extension on the basis that it will allow them to continue to hedge their risks in a centralised manner, as otherwise it would represent extensive operational and technological challenges and costs as well as a significant uplift in collateral requirements due to the need to post margin, thus putting at risk their ability to enter into intragroup transactions. Several respondents also supported the alignment of the dates in the three Commission Delegated Regulations as it constitutes a simplification of the clearing rules, in terms of procedures and systems evolutions with regard to intragroup transactions, only one respondent argued against the alignment.
18. Some respondents also raised further considerations on why they support this extension or suggestions on how to introduce some flexibility in the approach, which are mentioned in the next section.

3 Further considerations

19. First of all, in addition to the support expressed for ESMA's proposal to extend the date, a few respondents made the case that the 2 year extension may not be long enough given the political context and the number of jurisdictions to assess.
20. They were thus arguing that in addition to the 2 year extension, there should be some flexibility embedded in the amended Commission Delegated Regulation, i.e. to include in the draft RTS the option to postpone again that date in 2 years time for a predefined period of time (such as 1 year), if it proves then that there has not been sufficient time to issue the necessary equivalence decisions, without having to go again through the time consuming and process heavy review and amendment of the Commission Delegated Regulations. However, ESMA is of the opinion that there is currently no mechanism under the current mandate to include optionality in the dates set in the draft RTS.
21. It can be noted that this relates to some extent to a broader topic on the ability for ESMA to have a more dynamic management of the clearing obligation and of similar types of obligations, that are otherwise set in Level 1 and Level 2 regulations. ESMA's abilities in this regards are defined in the ESA regulation and in the relevant sectorial regulations, and as of now, ESMA has no legal basis to suspend an obligation. In comparison, certain authorities from other jurisdictions abroad have no-action letter type tools.
22. With regards to the specific case of the clearing obligation, it can also be noted that a similar need has been discussed but for a different purpose, the ability for ESMA to have the means to trigger the suspension of the clearing obligation in certain scenarios, such as sudden market events threatening the stability of financial markets, like a default of a large clearing member for instance, and this is now under consideration in the Refit negotiations.
23. Secondly, some respondents commented on the need for a timely adoption and publication of the draft RTS, i.e. before the current exemption expires, otherwise counterparties would then become subject to the obligation to clear their intragroup transactions although this draft RTS was aiming to provide some relief from this obligation. ESMA understands these comments and is hopeful for a timely process, but draft RTS have to follow the standard EU process.
24. Thirdly, some respondents made certain suggestions that are not within ESMA's reach, for example arguing that certain jurisdictions should be prioritised, that the framework for exemptions should not include the equivalence decision as a condition if other safeguards are in place, some reference and links to the Refit proposed changes under discussion, etc. ESMA has taken note of these comments, but these comments are not for ESMA to act on.
25. In view of the broad support, and in order to find the right balance between the objective of the temporary exemption, i.e. to provide for a bit of time for the equivalence decisions, and the need to contain the risk of unintended consequences, as explained in paragraphs 13 and 14, the provisions of the amending draft RTS have been maintained as proposed in the consultation paper.
26. Finally, a minor technical change had to be introduced in the first subparagraph of Article (3)(2) in order for the deferred date of application to apply to all four categories of counterparties. Indeed, in the current drafting of the Delegated Regulations, the first subparagraph excluded Category 4 counterparties from this provision because the deferred dates of application were exactly in line with the dates of application for this Category (respectively for the three Delegated Regulations, 21



December 2018, 9 May 2019 and 9 July 2019). However, given that the new deferred date (21 December 2020) goes beyond the dates of application for Category 4, the first subparagraph needs to be modified in order for the deferred date to also apply to Category 4 counterparties, i.e. by removing the original exclusion. The draft RTS is included in Annex III.

Annex I - Commission mandate to develop technical standards

Article 5 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; and
 - (c) the minimum remaining maturity of the OTC derivative contracts referred to in Article 4(1)(b)(ii).

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.

Annex II – Extract from Commission Delegated Regulation (EU) 2015/2205 on the clearing obligation, with regards to intragroup transactions with a third country group entity

Article 3

Dates from which the clearing obligation takes effect

2. By way of derogation from points (a), (b) and (c) of paragraph 1, in respect of contracts pertaining to a class of OTC derivatives set out in the Annex and concluded between counterparties other than counterparties in Category 4 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, the clearing obligation shall take effect on:

- (a) 21 December 2018 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 referred to the Annex to this Regulation in respect of the relevant third country; or
- (b) the later of the following dates in case an 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 referred to in the Annex to this Regulation in respect of the relevant third country:
 - (i) 60 days after the date of entry into force of the decision 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 referred to in the Annex to this Regulation in respect of the relevant third country;
 - (ii) the date when the clearing obligation takes effect pursuant to paragraph 1.

This derogation shall only apply where the counterparties fulfil the following conditions:

- (a) the counterparty established in a third country is either a financial counterparty or a non-financial counterparty;
- (b) the counterparty established in the Union is:
 - (i) a financial counterparty, a non-financial counterparty, a financial holding company, a financial institution or an ancillary services undertaking subject to appropriate prudential requirements and the counterparty referred to in point (a) is a financial counterparty; or
 - (ii) either a financial counterparty or a non-financial counterparty and the counterparty referred to in point (a) is a non-financial counterparty;
- (c) both counterparties are included in the same consolidation on a full basis in accordance to Article 3(3) of Regulation (EU) No 648/2012;
- (d) both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures;



(e) the counterparty established in the Union has notified its competent authority in writing that the conditions laid down in points (a), (b), (c) and (d) are met and, within 30 calendar days after receipt of the notification, the competent authority has confirmed that those conditions are met.



Annex III – Amending Draft Regulatory Technical Standards on the Clearing Obligation with regards to Intragroup Transactions

COMMISSION DELEGATED REGULATION (EU) No .../..

amending Delegated Regulation (EU) 2015/2205, Delegated Regulation (EU) 2016/592 and Delegated Regulation (EU) 2016/1178 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation

of []

(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 5(2) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2015/2205, Commission Delegated Regulation (EU) 2016/592 and Commission Delegated Regulation (EU) 2016/1178 specify, among others, the dates when the clearing obligation shall take effect for contracts pertaining to a class of OTC derivatives set out in the Annexes of these regulations and concluded by specified categories of counterparties.
- (2) In addition, the regulations provide for a deferred application of the clearing obligation for such OTC derivative contracts concluded between a counterparty established in a third country and another counterparty established in the Union belonging to the same group where certain conditions are met. As explained by the relevant recitals of the regulations, the deferred application should ensure that those contracts are not subject to the clearing obligation for a limited period of time in the absence of implementing acts pursuant to Article 13(2) of Regulation (EU) No 648/2012 covering the OTC derivative contracts set

² OJ L 201, 27.7.2012, p. 1.

out in the Annexes to the regulations and regarding the jurisdiction where the non-Union counterparty is established.

- (3) As the rationale behind the initial deferral remains valid, the application of the clearing obligation to contracts set out in the Annexes to the regulations and concluded between the counterparties established in a third country and another counterparty established in the Union belonging to the same group which meet the conditions set out in the regulations, should be further deferred for a limited period of time.
- (4) Therefore, the Commission Delegated Regulation (EU) 2015/2205, Commission Delegated Regulation (EU) 2016/592 and Commission Delegated Regulation (EU) 2016/1178 should be amended to ensure the appropriate functioning of international derivative markets and to avoid distorting the economic and hedging incentives of market participants in the global market of OTC derivatives.
- (5) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.
- (6) The European Securities and Markets Authority 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 opinion of the Security and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010.

HAS ADOPTED THIS REGULATION:

Article 1
Amendment to Delegated Regulation (EU) 2015/2205

Commission Delegated Regulation (EU) 2015/2205 is amended as follows:

The first subparagraph of Article 3(2) is replaced with:

2. By way of derogation from points (a), (b) and (c) of paragraph 1, in respect of contracts pertaining to a class of OTC derivatives set out in the Annex and 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, the clearing obligation shall take effect on:
 - (a) 21 December 2020 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; or
 - (b) the later of the following dates in case an 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 referred to in the Annex to this Regulation in respect of the relevant third country:

- (i) 60 days after the date of entry into force of the decision 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 referred to in the Annex to this Regulation in respect of the relevant third country;
- (ii) the date when the clearing obligation takes effect pursuant to paragraph 1.”

Article 2

Amendment to Commission Delegated Regulation (EU) 2016/592

Commission Delegated Regulation (EU) 2016/592 is amended as follows:

The first subparagraph of Article 3(2) is replaced with:

2. By way of derogation from points (a), (b) and (c) of paragraph 1, in respect of contracts pertaining to a class of OTC derivatives set out in the Annex and 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, the clearing obligation shall take effect on:
 - (a) 21 December 2020 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; or
 - (b) the later of the following dates in case an 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 referred to in the Annex to this Regulation in respect of the relevant third country:
 - (i) 60 days after the date of entry into force of the decision 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 referred to in the Annex to this Regulation in respect of the relevant third country;
 - (ii) the date when the clearing obligation takes effect pursuant to paragraph 1.”

Article 3

Amendment to Commission Delegated Regulation (EU) 2016/1178

Commission Delegated Regulation (EU) 2016/1178 is amended as follows:

The first subparagraph of Article 3(2) is replaced with:

2. By way of derogation from points (a), (b) and (c) of paragraph 1, in respect of contracts pertaining to a class of OTC derivatives set out in the Annex and 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, the clearing obligation shall take effect on:
- (a) 21 December 2020 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; or
 - (b) the later of the following dates in case an 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 referred to in the Annex to this Regulation in respect of the relevant third country:
 - (i) 60 days after the date of entry into force of the decision 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 referred to in the Annex to this Regulation in respect of the relevant third country;
 - (ii) the date when the clearing obligation takes effect pursuant to paragraph 1.”

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]

Annex IV – Impact assessment

1. Executive Summary

27. Pursuant to Article 10(1) of the Regulation establishing ESMA, ESMA is empowered to develop draft regulatory technical standards where the European Parliament and the Council delegate power to the Commission to adopt regulatory technical standards (RTS) by means of delegated acts under Article 290 TFEU in order to ensure consistent harmonisation in the areas specifically set out in the legislative acts within the scope of action of ESMA. The same article demands that ESMA conducts open public consultations on draft RTS and that they analyse the related potential costs and benefits, where appropriate. Such consultations and analyses shall be proportionate in relation to the scope, nature and impact of the draft RTS.
28. The purpose of the amending draft RTS presented in Annex III of the consultation paper is to prolong the deferred date of application of the clearing obligation for intragroup transactions satisfying certain conditions and where one of the counterparties is in a third country, in the absence of the relevant equivalence decision, as provided for under Article 3(2) of the three Commission Delegated Regulations (EU) 2015/2205, 2016/592 and 2016/1178.
29. This Annex IV has three sections. The first section is the introduction, which sets out the background for the RTS. The second section details the baseline and thus explains the starting point for assessing the incremental rule related to ESMA's draft RTS. The final section provides an overview of the benefits and costs associated with the proposals set out in the RTS.

2. Introduction

30. Under Article 5 of EMIR, ESMA is mandated to develop and submit to the European Commission for endorsement draft technical standards specifying:
 - (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; and
 - (c) the minimum remaining maturity of the OTC derivative contracts referred to in Article 4(1)(b)(ii).
31. Three Commission Delegated Regulations on the clearing obligation, based on draft RTS developed by ESMA under Article 5 of EMIR, have now entered into force. Under Article 3(2) of these three Commission Delegated Regulations contain a deferred date of application of the clearing obligation for intragroup transactions satisfying certain conditions and where one of the counterparties is in a third country, in the absence of the relevant equivalence decision.
32. However, no equivalence decision has been taken to date with regards to the clearing obligation and the deferred dates of application included in the three Commission Delegated Regulations are soon approaching, with the first one on 21 December 2018.
33. The review of the RTS and the analysis in this Annex IV assess the need to prolong these deferred dates.

3. Baseline

34. A deferred date was proposed from the first entry into force of the three Commission Delegated Regulations on the clearing obligation and the rationale for this temporary exemption is explained in Recital 12 of Commission Delegated Regulation (EU) 2015/2205, Recital 11 of Commission Delegated Regulation (EU) 2016/592 and Recital 12 of Commission Delegated Regulation (EU) 2016/1178).
35. These Recitals justify that *“the deferred application should ensure that those contracts are not subject to the clearing obligation for a limited period of time in the absence of implementing acts pursuant to Article 13(2) of Regulation (EU) No 648/2012 covering the OTC derivative contracts set out in the Annex to this Regulation and regarding the jurisdiction where the non-Union counterparty is established”*.

4. Cost benefit analysis

36. Extension of the deferred date of application

Policy objective	Assess whether the deferred date of application should be prolonged.
Technical proposal	Extend the deferred date to 21 December 2020.
Benefits	Leverages on the assessment made at the time the draft RTS on the clearing obligation were developed, i.e. that a deferred date should be provided such that intragroup transactions are not impacted by the clearing obligation while equivalence decisions have not been made, and then validated through the approval and entry into force process of the three Commission Delegated Regulations based on these draft RTS. Ensures continuity and stability of regime.
Costs	No significant one-off or on-going additional costs to regulators or compliance costs for the relevant supervised entities identified.

37. Respondents in their majority did not suggest further elements to consider in this section. However, one respondent added that the proposed change to align the three dates would in fact bring benefits and reduce costs as it simplifies the operational process and the compliance requirements, and another argued that the extension also brings additional benefits as it allows an optimisation of the management of liquidity.