



Brussels, 19.12.2018
C(2018) 9047 final

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

of 19.12.2018

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 to extend the dates of deferred application of the clearing obligation for certain OTC derivative contracts

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Under EMIR Article 4(2), intragroup transactions may be exempted from the clearing obligation. Intragroup transactions with a third-country group entity, may also be exempted if the Commission has adopted an equivalence decision under EMIR Article 13(2), for the third country where the group entity is established. To date, the Commission hasn't adopted such equivalence decision.

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. 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. The nearest deferred date for the clearing obligation is 21 December 2018.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

ESMA held a public consultation¹ on the proposed amendments to the technical standards on the clearing obligation between 11 July 2018 and 30 August 2018. ESMA also consulted the European Systemic Risk Board, which indicated having no objection from a macro prudential perspective. ESMA subsequently adopted a set of draft RTS on the clearing obligation on 26 September 2018 and submitted it to the Commission on 29 September 2018.

Together with the draft technical standards, ESMA submitted a report² on how the outcome of these consultations has been taken into account in the development of the final draft regulatory technical standards submitted to the Commission.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The delegated act introduces a modification to three existing RTS on the clearing obligation:

Article 1 modifies Article 3(2) of Commission Delegated Regulation (EU) 2015/2205 regarding interest rate derivative classes, by extending the deferred date of application of the clearing obligation for intragroup transactions with a third-country group entity from 21 December 2018 to 21 December 2020.

Article 2 modifies Article 3(2) of Commission Delegated Regulation (EU) 2016/592 regarding credit derivative classes, by extending the deferred date of application of the clearing obligation for intragroup transactions with a third-country group entity from 9 May 2019 to 21 December 2020.

Article 3 modifies Article 3(2) of Commission Delegated Regulation (EU) 2016/1178 regarding interest rate derivative classes, by extending the deferred date of application of the clearing obligation for intragroup transactions with a third-country group entity from 9 July 2019 to 21 December 2020.

¹ <https://www.esma.europa.eu/press-news/esma-news/esma-consults-clearing-obligation-under-emir>

² <https://www.esma.europa.eu/press-news/esma-news/esma-publishes-final-report-amending-rts-clearing-obligation-intragroup>

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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 repositories³, and in particular Article 5(2) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2015/2205⁴, Commission Delegated Regulation (EU) 2016/592⁵ and Commission Delegated Regulation (EU) 2016/1178⁶ 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.
- (2) 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. As stated in the relevant recitals of those Regulations, those deferred dates were necessary to ensure that such OTC derivative 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.
- (3) To date, no implementing act pursuant to Article 13(2) of Regulation (EU) No 648/2012 has been adopted in relation to the clearing obligation. Therefore, the application of the clearing obligation to OTC derivative contracts should be further deferred for a defined period of time or until the adoption of those implementing acts.
- (4) Delegated Regulation (EU) 2015/2205, Delegated Regulation (EU) 2016/592 and Delegated Regulation (EU) 2016/1178 should therefore be amended accordingly.

³ OJ L 201, 27.7.2012, p. 1.

⁴ 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).

⁵ 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).

⁶ 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).

- (5) The initial deferred dates of application were, in Delegated Regulation (EU) 2015/2205, Delegated Regulation (EU) 2016/592 and Delegated Regulation (EU) 2016/1178, aligned with the date of application of the clearing obligation for counterparties in Category 4. Because the deferred dates of application should be further extended, that extension should also apply to Category 4 entities.
- (6) Taking into consideration the initial deferred dates of application, and to ensure a consistent application of the clearing obligation for intragroup transactions with the date of application of this Regulation, this amending act should enter into force on the day following that of its publication in the *Official Journal of the European Union*.
- (7) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.
- (8) 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 of the European Parliament and of the Council⁷,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Delegated Regulation (EU) 2015/2205

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

“2. By way of derogation from 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.”

⁷ 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).

Article 2
Amendment to Delegated Regulation (EU) 2016/592

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

“2. By way of derogation from 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 Delegated Regulation (EU) 2016/1178

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

“2. By way of derogation from 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, 19.12.2018

For the Commission
The President
Jean-Claude JUNCKER