

Indirect clearing arrangements

2017/2860(DEA) - 25/10/2017 - Text adopted by Parliament, single reading

The European Parliament **decided to raise no objections** to the Commission delegated regulation of 22 September 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements

As a reminder, [Regulation \(EU\) No 600/2014](#) on markets in financial instruments and amending [Regulation \(EU\) No 648/2012](#) (MiFIR) requires the operators of regulated markets to ensure that all transactions in derivatives that are concluded on the regulated markets operated by them are cleared by a central counterparty (CCP), i.e. a clearing obligation for exchange traded derivatives (ETDs).

EMIR mandates the European Securities and Markets Authority (ESMA) to develop draft regulatory technical standards (RTS) that specify the types of indirect clearing arrangements that can be used to fulfil the clearing obligation set out in Article 4 of EMIR for over-the counter (OTC) derivatives pertaining to a class that has been declared subject to that obligation, i.e. a clearing obligation for OTC derivatives.

The current delegated act **specifies the types of indirect clearing arrangements which can be used for ETDs**.

Parliament recalled that the **Commission only endorsed the draft regulatory technical standard (RTS) 16 months after having received it from the European Securities and Markets Authority (ESMA)** on 26 May 2016.

Over this period, the Commission did not formally consult ESMA over this period concerning its amendments to this draft RTS, nor did it inform the co-legislators or industry of the reasons for delay.

Members considered it unacceptable that the Commission overran the deadline for adopting the draft RTS by more than a year without informing the co-legislators.

Since the RTS adopted is not ‘the same’ as the draft RTS submitted by ESMA, **Parliament considered that it has three months to object to the RTS due to the amendments made by the Commission**.

The delegated regulation should apply from 3 January 2018, the application date of [Directive 2014/65/EU](#) (‘MiFID II’) and Regulation (EU) No 600/2014 (‘MiFIR’). However, the full use of the three-month scrutiny period available to Parliament **would no longer allow sufficient time for industry to implement the changes**.

Accordingly, Members stated that **swift publication of the delegated regulation in the Official Journal** would allow timely implementation and legal certainty concerning the provisions applicable to indirect clearing.