

Indirect clearing arrangements

2017/2859(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 amending Commission Delegated Regulation (EU) No 149/2013 with regard to regulatory technical standards on indirect clearing arrangements.

As a reminder, [Regulation \(EU\) No 648/2012](#) of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories¹ (EMIR) requires financial counterparties and some non-financial counterparties to clear through central counterparties (CCPs) over-the-counter (OTC) derivatives pertaining to a class that has been declared subject to a clearing obligation pursuant to that Regulation

EMIR mandates the European Securities and Markets Authority (ESMA) to develop draft regulatory technical standards that specify the types of indirect clearing arrangements that can be used to fulfil the clearing obligation.

Those regulatory technical standards were adopted on 19 December 2012 by Commission delegated [Regulation \(EU\) No 149/2013](#), the current delegated act being an amendment of that delegated Regulation in order to reflect recent developments and experience gained in the area of clearing.

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. It did not formally consult ESMA over this period concerning its amendments to this draft RTS and did not inform the co-legislators or the industry of the reasons for delay.

Parliament 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, full use of the three-month scrutiny period available to Parliament **would no longer allow sufficient time for industry** to implement the changes.

Members believed, therefore, 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.