EUROPEAN
COMMISSION

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COMMISSION DELEGATED REGULATION (EU) …/...

of 6.8.2015

supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) No 648/2012 (EMIR) requires mandatory clearing of certain OTC derivatives. ESMA is required under EMIR to propose the classes of OTC derivatives that should be subject to clearing, as well as the different dates from which the clearing obligation will take effect for the different types of counterparties identified (for which different phase-in periods may be laid down).

Moreover, OTC derivative contracts concluded between the first authorisation of a CCP under EMIR, which took place on 18 March 2014, and the later date on which the clearing obligation actually takes effect are also subject to clearing, unless they have a remaining maturity lower than the minimum remaining maturities which are to be laid down in the regulatory technical standards (RTS) (the so called frontloading requirement). Therefore, frontloading may be excluded for some OTC derivative contracts or counterparties by determining the minimum remaining maturities.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

On 11 July 2014, ESMA published a consultation paper proposing mandatory clearing for certain Interest Rate Swaps (IRS) and draft RTS specifying the IRS that should be subject to the clearing obligation, the dates from which the clearing obligation should take effect and the relevant minimum remaining maturities.

On 1 October 2014, ESMA submitted to the Commission its final report on the clearing obligation for IRS, including the draft RTS as amended after taking into account the 51 responses received to the consultation.

Following the procedure laid down in paragraph 1 of Article 10 of Regulation (EU) No 1095/2010, the Commission informed ESMA in December 2014 of its intention to adopt with amendments the draft RTS. The proposed amendments consisted on:

(1) Postponing the starting date of the frontloading requirement until two and five months from the entry into force of the RTS for categories 1[1] and 2[2], respectively. Such a postponement would allow counterparties to determine whether they fall into a category of counterparties subject to frontloading and to implement the necessary arrangements for frontloading to take place. In particular, frontloading should not start for counterparties in category 1 until they can know whether they benefit from the exemption from clearing pursuant to Article 4(2)(a) of EMIR. Other

[1] Category 1 comprises clearing members for at least one of the classes of OTC IRS subject to clearing.

[2] Category 2 comprises financial counterparties and alternative investment funds (AIFs) which are not clearing members and which have a higher level of activity in OTC derivatives (to be measured against a quantitative threshold).

counterparties need to implement the necessary arrangements to carry out the calculations of a threshold which determines whether they fall under category 2 and therefore are subject to frontloading. Moreover, after a financial counterparty knows that it falls within category 2, it has to adopt the necessary arrangements to be able to frontload contracts, including providing the appropriate representations to its counterparties and making the appropriate changes to its systems, controls and internal procedures to reflect these determinations and representations. The postponement of the starting date of the frontloading requirement also requires an adaptation of the period to be taken into account for the calculation of the threshold, so that the threshold is calculated taking into account the most recent period before frontloading starts (the three months following the publication of the delegated act in the Official Journal, excluding the month of the publication).

(2) Providing for a transitional period where IRS OTC derivatives that are intragroup transactions concluded between a counterparty established in a Member State and another counterparty established in a third country which belong to the same group and which fulfil certain conditions could benefit from the exemption from clearing. This would allow sufficient time for the Commission to adopt the relevant equivalence decisions pursuant to Article 13 of EMIR. In fact, those equivalence decisions cannot be adopted until this delegated act and the third country rules on the clearing obligation are in force.

ESMA adopted a formal Opinion on the amendments proposed by the Commission on 29 January 2015[3]. ESMA agreed with the ultimate objectives of the amendments proposed by the Commission but welcomed a different approach from a legal perspective for the treatment of non-EU intragroup transactions. Moreover, ESMA proposed that the calculation of the threshold for funds is made at fund level rather than at group level. ESMA also proposed some clarifications and made some drafting suggestions, in particular regarding the frontloading requirement.

The Commission's delegated act is in line with the formal Opinion adopted by ESMA.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The delegated act lays down the classes of the OTC derivative contracts that are subject to the clearing obligation and four different categories of counterparties for which different phase-in periods apply:

(1) For counterparties in category 1, 6 months after the entry into force of the RTS.

(2) For counterparties in category 2, 12 months after the entry into force of the RTS.

(3) For counterparties in category 3[4], 18 months after the entry into force of the RTS.

(4) For counterparties in category 4[5], 3 years after the entry into force of the RTS.

[3] Further to it, ESMA adopted a revised Opinion on 6 March 2015.

[4] Category 3 comprises financial counterparties and alternative investment funds (AIFs) which are not clearing members and which have a lower level of activity in OTC derivatives (to be measured against a quantitative threshold).

A threshold is laid down for distinguishing between counterparties in categories 2 and 3 based on their level of activity in OTC derivatives, which is to be calculated in the most recent period before frontloading starts (the three months following the publication of the delegated act in the Official Journal, excluding the month of the publication). For funds, the threshold should be calculated at fund level, due to the segregated liability of funds.

Moreover, a different phase-in period is set out for intragroup transactions concluded between a counterparty established in a Member State and another counterparty established in a third country which belong to the same group and which fulfil certain conditions (3 years from the date of entry into force of the delegated act or an earlier date shortly after an equivalence decision is adopted regarding the third country), to allow for a sufficient period for the Commission to adopt equivalence decisions. During this period, no frontloading should take place.

The delegated act also lays down the minimum remaining maturities for the purposes of the frontloading requirement as well as the dates on which the frontloading should start (two and five months after the entry into force of the delegated act for categories 1 and 2).

Moreover, the Commission has further clarified certain issues, some of them on the basis of ESMA's formal Opinion. In particular, the Commission has clarified that only IRS OTC contracts set out in Annex I concluded with covered bond issuers or with cover pools for covered bonds which are not terminated in case of resolution or insolvency of the covered bond issuer or the cover pool can fall outside the scope of application of the clearing obligation.

[5] Category 4 comprises non-financial counterparties not included in the other categories.

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

Whereas:

(1) The European Securities and Markets Authority (ESMA) has been notified of the classes of interest rate over the counter (OTC) derivatives that certain central counterparties (CCPs) have been authorised to clear. For each of those classes ESMA has assessed the criteria that are essential for subjecting them to the clearing obligation, including the level of standardisation, the volume and liquidity, and the availability of pricing information. With the overarching objective of reducing systemic risk, ESMA has determined the classes of interest rate OTC derivatives that should be subject to the clearing obligation in accordance with the procedure set out in Regulation (EU) No 648/2012.

(2) Interest rate OTC derivative contracts can have a constant notional amount, a variable notional amount or a conditional notional amount. Contracts with a constant notional amount have a notional amount which does not vary over the life of the contract. Contracts with a variable notional amount have a notional amount that varies over the life of the contract in a predictable way. Contracts with a conditional notional amount have a notional amount which varies over the life of the contract in an unpredictable way. Conditional notional amounts add complexity to the pricing and risk management associated with interest rate OTC derivative contracts and thus to the ability of CCPs to clear them. This feature should be taken into account when defining the classes of interest rate OTC derivatives to be subject to the clearing obligation.

(3) In determining which classes of OTC derivative contracts should be subject to the clearing obligation, the specific nature of OTC derivative contracts which are concluded with covered bond issuers or with cover pools for covered bonds should be taken into account. In this respect, the classes of interest rate OTC derivatives subject to the clearing obligation under this Regulation should not encompass contracts concluded with covered bond issuers or cover pools for covered bonds, provided they meet certain conditions.

[6] OJ L 201, 27.7.2012, p. 1.

(4) Different counterparties need different periods of time for putting in place the necessary arrangements to clear the interest rate OTC derivatives subject to the clearing obligation. In order to ensure an orderly and timely implementation of that obligation, counterparties should be classified into categories in which sufficiently similar counterparties become subject to the clearing obligation from the same date.

(5) A first category should include both financial and non-financial counterparties which, on the date of entry into force of this Regulation, are clearing members of at least one of the relevant CCPs and for at least one of the classes of interest rate OTC derivatives subject to the clearing obligation, as those counterparties already have experience with voluntary clearing and have already established the connections with those CCPs to clear at least one of those classes. Non-financial counterparties that are clearing members should also be included in this first category as their experience and preparation towards central clearing is comparable with that of financial counterparties included in it.

(6) A second and third category should comprise financial counterparties not included in the first category, grouped according to their levels of legal and operational capacity regarding OTC derivatives. The level of activity in OTC derivatives should serve as a basis to differentiate the degree of legal and operational capacity of financial counterparties, and a quantitative threshold should therefore be defined for division between the second and third categories on the basis of the aggregate month-end average notional amount of non-centrally cleared derivatives. That threshold should be set out at an appropriate level to differentiate smaller market participants, while still capturing a significant level of risk under the second category. The threshold should also be aligned with the threshold agreed at international level related to margin requirements for non-centrally cleared derivatives in order to enhance regulatory convergence and limit the compliance costs for counterparties. As in those international standards, whereas the threshold applies generally at group level given the potential shared risks within the group, for investment funds the threshold should be applied separately to each fund since the liabilities of a fund are not usually affected by the liabilities of other funds or their investment manager. Thus, the threshold should be applied separately to each fund as long as, in the event of fund insolvency or bankruptcy, each investment fund constitutes a completely segregated and ring-fenced pool of assets that is not collateralised, guaranteed or supported by other investment funds or the investment manager itself.

(7) Certain alternative investment funds ("AIFs") are not captured by the definition of financial counterparties under Regulation (EU) No 648/2012 although they have a degree of operational capacity regarding OTC derivative contracts similar to that of AIFs captured by that definition. Therefore AIFs classified as non-financial counterparties should be included in the same categories of counterparties as AIFs classified as financial counterparties.

(8) A fourth category should include non-financial counterparties not included in the other categories, given their more limited experience and operational capacity with OTC derivatives and central clearing than the other categories of counterparties.

(9) The date on which the clearing obligation takes effect for counterparties in the first category should take into account the fact that they may not have the necessary pre-existing connections with CCPs for all the classes subject to the clearing obligation. In addition, counterparties in this category constitute the access point to clearing for counterparties that are not clearing members, client clearing and indirect client

clearing being expected to increase substantially as a consequence of the entry into force of the clearing obligation. Finally, this first category of counterparties account for a significant portion of the volume of interest rate OTC derivatives already cleared, and the volume of transactions to be cleared will significantly increase after the date on which the clearing obligation set out in this Regulation will take effect. Therefore, a reasonable timeframe for counterparties in the first category to prepare for clearing additional classes, to deal with the increase of client clearing and indirect client clearing and to adapt to increasing volumes of transactions to be cleared should be set at six months.

(10) The date on which the clearing obligation takes effect for counterparties in the second and third categories should take into account the fact that most of them will get access to a CCP by becoming a client or an indirect client of a clearing member. This process may require between 12 and 18 months depending on the legal and operational capacity of counterparties and their level of preparation regarding the establishment of the arrangements with clearing members that are necessary for clearing the contracts.

(11) The date on which the clearing obligation takes effect for counterparties in the fourth category should take into account their legal and operational capacity, and their more limited experience with OTC derivatives and central clearing than other categories of counterparties.

(12) 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 Annex I 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.

(13) Unlike OTC derivatives whose counterparties are non-financial counterparties, where counterparties to OTC derivative contracts are financial counterparties, Regulation (EU) No 648/2012 requires the application of the clearing obligation to contracts concluded after the notification to ESMA that follows the authorisation of a CCP to clear a certain class of OTC derivatives, but before the date on which the clearing obligation takes effect, provided the remaining maturity of such contracts at the date on which the obligation takes effect justifies it. The application of the clearing obligation to those contracts should pursue the objective of ensuring the uniform and coherent application of Regulation (EU) No 648/2012. It should serve to seek financial stability and the reduction of systemic risk, as well as ensuring a level playing field for market participants when a class of OTC derivative contracts is declared subject to the clearing obligation. The minimum remaining maturity should therefore be set at a level that ensures the achievement of those objectives.

(14) Before regulatory technical standards adopted pursuant to Article 5(2) of Regulation (EU) No 648/2012 enter into force, counterparties cannot foresee whether the OTC derivative contracts they conclude would be subject to the clearing obligation on the

date that obligation takes effect. This uncertainty has a significant impact on the capacity of market participants to accurately price the OTC derivative contracts they enter into since centrally cleared contracts are subject to a different collateral regime than non-centrally cleared contracts. Imposing forward-clearing to OTC derivative contracts concluded before the entry into force of this Regulation, irrespective of their remaining maturity on the date on which the clearing obligation takes effect, could limit counterparties' ability to hedge their market risks adequately and either impact the functioning of the market and financial stability, or prevent them from exercising their usual activities by hedging them by other appropriate means.

(15) Moreover, OTC derivative contracts concluded after this Regulation enters into force and before the clearing obligation takes effect should not be subject to the clearing obligation until counterparties to those contracts can determine the category they are comprised in, whether they are subject to the clearing obligation for a particular contract, including their intragroup transactions, and before they can implement the necessary arrangements to conclude those contracts taking into account the clearing obligation. Therefore, in order to preserve the orderly functioning and the stability of the market, as well as a level playing field between counterparties, it is appropriate to consider that those contracts should not be subject to the clearing obligation, irrespective of their remaining maturities.

(16) OTC derivative contracts concluded after the notification to ESMA that follows the authorisation of a CCP to clear a certain class of OTC derivatives, but before the date on which the clearing obligation takes effect should not be subject to the clearing obligation when they are not significantly relevant for systemic risk, or when subjecting those contracts to the clearing obligation could otherwise jeopardise the uniform and coherent application of Regulation (EU) No 648/2012. Counterparty credit risk associated to interest rate OTC derivative contracts with longer maturities remains in the market for a longer period than that associated to interest rate OTC derivatives with low remaining maturities. Imposing the clearing obligation on contracts with short remaining maturities would imply a burden on counterparties disproportionate to the level of risk mitigated. In addition, interest rate OTC derivatives with low remaining maturities represent a relatively small portion of the total market and thus a relatively small portion of the total systemic risk associated to this market. The minimum remaining maturities should therefore be set at a level ensuring that contracts with remaining maturities of no more than a few months are not subject to the clearing obligation.

(17) Counterparties in the third category bear a relatively limited share of overall systemic risk and have a lower degree of legal and operational capacity regarding OTC derivatives than counterparties in the first and second categories. Essential elements of the OTC derivative contracts, including the pricing of interest rate OTC derivatives subject to the clearing obligation and concluded before that obligation takes effect, will have to be adapted within short timeframes in order to incorporate the clearing that will only take place several months after the contract is concluded. This process of forward-clearing involves important adaptations to the pricing model and amendments to the documentation of those OTC derivatives contracts. Counterparties in the third category have a very limited ability to incorporate forward-clearing in their OTC derivative contracts. Thus, imposing the clearing of OTC derivative contracts concluded before the clearing obligation takes effect for those counterparties could limit their ability to hedge their risks adequately and either impact the functioning and the stability of the market or prevent them from exercising their usual activities if they

cannot continue to hedge. Therefore, OTC derivative contracts concluded by counterparties in the third category before the date on which the clearing obligation takes effect should not be subject to the clearing obligation.

(18) In addition, OTC derivative contracts concluded between counterparties belonging to the same group can be exempted from clearing, provided certain conditions are met, in order to avoid limiting the efficiency of intragroup-risk management processes and therefore, undermine the achievement of the overarching goal of regulation (EU) No 648/2012. Therefore, intragroup transactions which fulfil certain conditions and which are concluded before the date on which the clearing obligation takes effect for those transactions should not be subject to the clearing obligation.

(19) This Regulation is based on draft regulatory technical standards submitted by ESMA to the Commission.

(20) The Commission informed ESMA of its intention to endorse with amendments the draft regulatory technical standards proposed by ESMA, in accordance with the procedure set out in the fifth and sixth subparagraphs of Article 10(1) of Regulation (EU) No 1095/2010. ESMA adopted a formal opinion as to those amendments which it submitted to the Commission.

(21) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits, 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 Council[7], and consulted the European Systemic Risk Board.

HAS ADOPTED THIS REGULATION:

Article 1 - Classes of OTC derivatives subject to the clearing obligation

1. The classes of over the counter (OTC) derivatives set out in Annex I shall be subject to the clearing obligation.

2. The classes of OTC derivatives set out in Annex I shall not include contracts concluded with covered bond issuers or with cover pools for covered bonds, provided those contracts satisfy all of the following conditions:

   (a) They are used only to hedge the interest rate or currency mismatches of the cover pool in relation with the covered bond;

   (b) They are registered or recorded in the cover pool of the covered bond in accordance with national covered bond legislation;

   (c) They are not terminated in case of resolution or insolvency of the covered bond issuer or the cover pool;

[7] Regulation (EU) No 1095/2010 of the European Parliament and 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).

(d) The counterparty to the OTC derivative concluded with covered bond issuers or with cover pools for covered bonds ranks at least pari-passu with the covered bond holders except where the counterparty to the OTC derivative concluded with covered bond issuers or with cover pools for covered bonds is the defaulting or the affected party, or waives the pari-passu rank;

(e) The covered bond meets the requirements of Article 129 of Regulation (EU) No 575/2013 and is subject to a regulatory collateralisation requirement of at least 102%.

Article 2

1. For the purposes of Articles 3 and 4, the counterparties subject to the clearing obligation shall be divided in the following categories:

(a) Category 1, comprising counterparties which, on the date of entry into force of this Regulation, are clearing members, within the meaning of Article 2(14) of Regulation (EU) No 648/2012, for at least one of the classes of OTC derivatives set out in Annex I, of at least one of the CCPs authorised or recognised before that date to clear at least one of those classes;

(b) Category 2, comprising counterparties not belonging to Category 1 which belong to a group whose aggregate month-end average of outstanding gross notional amount of non-centrally cleared derivatives for *[OP Please insert months;* each of the three months after the publication of the RTS in the OJ excluding the month of publication] is above EUR 8 billion and which are any of the following:

(i) Financial counterparties;

(ii) Alternative investment funds as defined in Article 4(1)(a) of Directive 2011/61/EU that are non-financial counterparties;

(c) Category 3, comprising counterparties not belonging to Category 1 or Category 2 which are any of the following:

(i) Financial counterparties;

(ii) Alternative investment funds as defined in Article 4(1)(a) of Directive 2011/61/EU that are non-financial counterparties;

(d) Category 4, comprising non-financial counterparties that do not belong to Category 1, Category 2 or Category 3.

2. For the purposes of calculating the group aggregate month-end average of outstanding gross notional amount referred to in point (b) of paragraph 1, all of the group's non-centrally cleared derivatives, including foreign exchange forwards, swaps and currency swaps, shall be included.

3. Where counterparties are alternative investment funds as defined in Article 4(1)(a) of Directive 2011/61/EU or undertakings for collective investment in transferable securities as defined in Article 1(2) of Directive 2009/65/EC, the EUR 8 billion threshold referred to in point (b) of paragraph 1 of this Article shall apply individually at fund level.

Article 3 – Dates from which the clearing obligation takes effect

1. In respect of contracts pertaining to a class of OTC derivatives set out in Annex I, the clearing obligation shall take effect on:

   (a) [*OP please insert date:* 6 months after the date of entry into force of this Regulation] for counterparties in Category 1;

   (b) [OP please insert date: 12 months after the date of entry into force of this Regulation] for counterparties in Category 2;

   (c) [*OP please insert date:* 18 months after the date of entry into force of this Regulation] for counterparties in Category 3;

   (d) [*OP please insert date:* 3 years after the date of entry into force of this Regulation] for counterparties in Category 4.

Where a contract is concluded between two counterparties included in different categories of counterparties, the date from which the clearing obligation takes effect for that contract shall be the later date.

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 Annex I 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) [*OP please insert date:* 3 years after the date of entry into force of this Regulation] 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 in Annex I of 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 Annex I of 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 Annex I of 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.

Article 4 – Minimum remaining maturity

1. For financial counterparties in Category 1, the minimum remaining maturity referred to in point (ii) of Article 4(1)(b) of Regulation (EU) No 648/2012, at the date the clearing obligation takes effect, shall be:

(a) 50 years for contracts entered into or novated before [*OP please insert date*: two months after the date of entry into force of this Regulation] that belong to the classes in Table 1 or Table 2 set out in Annex I;

(b) 3 years for contracts entered into or novated before [*OP please insert date:* two months after the date of entry into force of this Regulation] that belong to the classes of Table 3 or Table 4 of Annex I;

(c) 6 months for contracts entered into or novated on or after [*OP please insert date:* two months after the date of entry into force of this Regulation] that belong to the classes of Table 1 to Table 4 of Annex I.

2. For financial counterparties in Category 2, the minimum remaining maturity referred to in point (ii) of Article 4(1)(b) of Regulation (EU) No 648/2012, at the date the clearing obligation takes effect, shall be:

(a) 50 years for contracts entered into or novated before [*OP please insert date:* five months after the date of entry into force of this Regulation] that belong to the classes in Table 1 or Table 2 set out in Annex I;

(b) 3 years for contracts entered into or novated before [*OP please insert date:* five months after the date of entry into force of this Regulation] that belong to the classes of Table 3 or Table 4 of Annex I;

(c) 6 months for contracts entered into or novated on or after [*OP please insert date:* five months after the date of entry into force of this Regulation] that belong to the classes of Table 1 to Table 4 of Annex I.

3. For financial counterparties in Category 3 and for transactions referred to in Article 3(2) of this Regulation concluded between financial counterparties, the minimum remaining maturity referred to in point (ii) of Article 4(1)(b) of Regulation (EU) No 648/2012, at the date the clearing obligation takes effect, shall be:

(a) 50 years for contracts that belong to the classes of Table 1 or Table 2 of Annex I;

(b) 3 years for contracts that belong to the classes of Table 3 or Table 4 of Annex I.

4. Where a contract is concluded between two financial counterparties belonging to different categories or between two financial counterparties involved in transactions referred to in Article 3(2), the minimum remaining maturity to be taken into account for the purposes of this Article shall be the longer remaining maturity applicable.

Article 5 – Entry into force

This Regulation shall enter into force on the twentieth 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, 6.8.2015

For the Commission
The President
Jean-Claude JUNCKER