

European Market Infrastructure Regulation (EMIR): clearing obligation, reporting requirements, risk-mitigation techniques, trade repositories

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OPINION OF THE EUROPEAN CENTRAL BANK

The ECB has received requests from the Council of the European Union and the European Parliament for an opinion on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivatives contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories.

The ECB generally supports the Commission's initiative to introduce a number of targeted modifications to Regulation (EU) No 648/2012 with a view to simplifying the applicable rules and eliminating disproportionate burdens.

The ECB makes the following observations:

Exemption from central bank transactions: Regulation (EU) No 648/2012 exempts members of the ESCB, but not their counterparts, from the reporting obligation. The ECB considers obliging the counterparties of the members of the ESCB to report all data on their transactions to trade repositories has the unintended consequence of establishing an indirect reporting obligation for central bank transactions, thus limiting the effectiveness of the exemption granted to the members of the ESCB.

The ECB therefore takes the view that in order to ensure that NCBs continue to perform their statutory tasks effectively it is important that central bank transactions are fully exempted from reporting requirements

Reporting obligation: the ECB is concerned about the introduction in the proposed regulation of a reporting exemption for all intragroup trades involving a non-financial counterparty. It considers that the unconditional exemption of intragroup reporting for non-financial counterparties gives rise to the risk of regulatory arbitrage by reporting agents.

The ECB notes that intragroup transactions involving non-financial counterparties are exempted from collateralisation only if certain conditions are met, and subject to authorisation of the competent authorities.

The proposed exemption may potentially lead to sophisticated forms of circumvention of reporting requirements, as trades may be channelled through non-financial subsidiaries of larger financial groups.

Transparency of central counterparties (CCPs): the ECB proposes to include macro prudential intervention tools, in order to prevent the build-up of systemic risks resulting, in particular, from excessive leverage, and to further limit the pro-cyclicality of margins and haircuts.

Macro prudential policy tools should apply to counterparties at the transaction level. In this way, all relevant transactions would be affected, including those contracted by non-banks, regardless of whether these transactions were concluded in the centrally cleared market outside that market or by Union counterparties clearing their trades via a third country CCP.

In addition, the ECB considers that CCPs operating in the Union should be required to publish quantitative and qualitative information consistent with the Committee on Payments and Market Infrastructures-International Organisation of Securities Commissions (CPMI-IOSCO) public disclosure principles.

Classification of securitisation entities in financial counterparties: the ECB reiterates its position that simple, transparent and standardised (STS) securitisation entities should be fully exempted from both the clearing obligation and the legal obligations to provide collateral.

Methodology for calculating counterparties' positions in over-the-counter derivative contracts: the ECB proposes to add in the proposed Regulation a requirement that a financial counterparty and a non-financial counterparty shall be able to demonstrate to the relevant competent authority that the calculation of the aggregate month-end position in OTC derivative contracts does not lead to a systematic underestimation of the overall position.

ECB advisory role: the ECB considers that it should be consulted in due time on any draft Union acts, including draft delegated and implementing acts, falling within its fields of competence.