

OTC derivatives, central counterparties and trade repositories (EMIR, European Market Infrastructure Regulation)

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The Commission presents a report on the International treatment of central banks and public entities managing public debt with regard to OTC derivatives transactions.

Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR) was adopted on 4 July 2012 and entered into force on 16 August 2012. This Regulation requires the central clearing of all standardised OTC derivatives contracts (clearing obligation), margins for non-centrally cleared contracts (margins requirements) and the reporting of all derivatives contracts to trade repositories (reporting obligation).

The Union's central banks and Union public bodies charged with or intervening in the management of public debt are exempted from EMIR and are, therefore, not subject to the clearing obligation, to risk-mitigation techniques for uncleared trades or to the reporting obligation.

At the time of adoption of the EMIR Regulation, there were uncertainties on the treatment of foreign central banks in the application of OTC derivatives reforms in other jurisdictions. The European Parliament and the Council therefore postponed a decision on the application of EMIR to third-country central banks until more clarity could be reached on this issue. The Commission was requested to analyse the international treatment of central banks and of public bodies managing public debt in other jurisdictions' legal framework and to present a report of its comparative analysis three months after the entry into force of EMIR.

The report concludes that central banks and public bodies charged with or intervening in the management of public debt will not be subject to the clearing and reporting obligation under the US and Japanese and upcoming Swiss regulatory frameworks. They are also likely to be exempted under the forthcoming Australian and Hong Kong legal frameworks. Exemptions under the Canadian regime can also be expected.

The comparative analysis contained in the report is by no means exhaustive. It is also based on some third-countries' legislation that is not final. The report will need to be updated regularly as the reform process advances in these and other G20 jurisdictions

At this stage, the Commission concludes a delegated act is required to amend Article 1(4) of EMIR and to exempt the central banks and public bodies charged with or intervening in the management of public debt from Japan and the United States, which are the two jurisdictions with final rules on OTC derivatives in place.

As Australia, Canada, Hong Kong and Switzerland proceed with finalising their rules, the Commission will monitor and report on the latest developments with a view to also exempting their respective central banks and debt management offices on the basis of the rules that are currently proposed in those jurisdictions.

In order to ensure that third country central banks and other public bodies charged with or intervening in the management of public debt continue to perform adequately their tasks, other countries will also be considered in the future, as needed. Further amendments of Article 1(4) of EMIR to include countries not listed in this first report may, therefore, be expected.

In the immediate future, no market disruption will be imposed on third countries that are not included in the first delegated act, since the obligations related to central clearing and risk mitigation techniques for uncleared trades have not yet entered into force in the Union. The European Commission will pay close attention to the timing of the entry into force of these obligations with the exemptions of third country central banks.