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

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In accordance with the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council on over-the-counter (OTC) derivatives, central counterparties and trade repositories (EMIR), the Commission presents a report on the review of the Regulation.

To recall, EMIR enacts, at EU level, the reform in the OTC derivatives market that were agreed at the G20 summit in Pittsburgh in 2009. It aims to promote transparency and standardisation in derivatives markets as well as reduce systemic risk through the application of its core requirements, these being:

- central clearing of standardised OTC derivative contracts;
- margin requirements for OTC derivative contracts that are not centrally cleared;
- reporting of all derivative contracts;
- requirements for central counterparties (CCPs) and for trade repositories.

The report provides a summary of the areas where consultation responses and specific input received from various authorities, such as the European Securities and Markets Authority (ESMA) and the European System Risk Board (ESRB), have shown that action is necessary to ensure fulfilment of the objectives of EMIR in a more proportionate, efficient and effective manner.

The main conclusion is that fundamental changes should not be made to the nature of the core requirements of EMIR. These requirements are integral to ensuring transparency and mitigating systemic risks in the derivatives markets.

However, there are a number of areas where the EMIR requirements could be adjusted without compromising on its overall objectives in order to:

1. Simplify and increase the efficiency of the requirements.

In this respect, the report suggests:

- introducing a mechanism to suspend the clearing obligation: the Commission will propose a mechanism for suspending a clearing obligation as part of the proposal on CCP recovery and resolution;
- facilitating the predictability of margin requirements, through: (i) better information sharing to make compliance with margin requirements more efficient for market participants and enable them to better manage their own assets, and (ii) establishing a mandate for initial margin models endorsed by authorities;
- promoting transparency by streamlining reporting requirements to trade repositories. Further assessment of the current rules should be undertaken to take specific actions to achieve that goal;
- exploring alternative methods for providing access to third country authorities of trade repositories' data that provide appropriate safeguards.

2. Reduce disproportionate costs and burdens.

The report suggests:

- reviewing to what extent transactions entered into before the clearing obligation enters into force and intragroup transactions should remain within scope of the relevant requirements;
- assessing whether it is necessary to amend the scope of the core requirements in EMIR in order to deal with the challenges faced by non-financial counterparties (NFCs). The report suggests that further consideration should also be given to whether any NFCs, or only some of them based on the volume and type of activity in derivatives markets, should be captured by clearing and margin requirements;
- considering measures to address the obstacles to client clearing. In addition to the difficulties faced by NFCs, small financials and industry associations and some public authorities noted that when undertaking limited derivatives activity they were facing significant challenges in establishing the access to clearing necessary to meet upcoming clearing obligations;
- considering whether the current exemption for pension scheme arrangements could be extended or made permanent without compromising on EMIR's objective of reducing systemic risk.

The Commission will propose a legislative review of EMIR in 2017, in the framework of REFIT that will be accompanied by an impact assessment which will considers the various issues at stake in more depth.