

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

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The Committee on Economic and Monetary Affairs adopted the report by Werner LANGEN (EPP, DE) on the 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 committee recommended that European Parliaments position adopted at first reading under the ordinary legislative procedure should amend the Commission proposal.

Scope: the amended text stipulates that the proposed Regulation shall not apply to:

- central banks and other public bodies charged with or intervening in the management of the public debt;
- the Bank for International Settlements;
- multilateral development banks.

Clearing obligation: the amended text specifies that clearing members and clients of clearing members that provide clearing services shall provide these services on transparent terms. Such clearing members and clients shall take all reasonable steps designed to identify, prevent, manage and monitor conflicts of interest within a group of affiliated entities, in particular between the trading unit and the clearing unit. Clearing members or clients shall be permitted to control the risks connected to the clearing services offered.

Such clearing members and clients should take all reasonable steps to detect, prevent, manage and monitor conflicts of interest within a group of affiliated entities, including between the bargaining unit and the clearing unit. Clearing members and clients could control the risks associated with the proposed clearing services

The European Securities and Markets Authority (ESMA) shall develop draft technical regulatory standards specifying the conditions under which commercial terms for clearing services are considered to be fair, reasonable, non-discriminatory and transparent.

Suspension of clearing obligations: the Commission may suspend the clearing obligation in certain situations. The suspension shall be possible:

- where the criteria on the basis of which a specific class of OTC derivative has been made subject to the clearing obligation are no longer met;
- where a CCP ceases to offer a clearing service for a specific class of OTC derivative or for a specific type of counterparty and other CCPs cannot step in fast enough to take over those clearing services;
- possible where that is deemed necessary to avoid a serious threat to financial stability in the Union.

A designated competent authority may also request ESMA to submit a suspension request. ESMA should inform the competent authority concerned of its decision, giving detailed reasons.

Non-financial counterparties: since financial counterparties and non-financial counterparties present different risks, two distinct clearing thresholds have been developed. In order to take into account any development of financial markets, those thresholds should be updated regularly.

To reduce the burden of reporting for small non-financial counterparties not subject to the clearing obligation, the financial counterparty should be solely responsible, and legally liable, for reporting a single data set with regard to OTC derivative contracts entered into with a non-financial counterparty that is not subject to the clearing obligation as well as for ensuring the accuracy of the details reported. However, it should be possible for a non-financial counterparty to choose to report its OTC derivative contracts.

Small pension scheme arrangements (PSAs) do not present the same risks as larger PSAs and it is appropriate to allow them a longer exemption from the clearing obligation. For such PSAs, the Commission should extend the exemption from that obligation to three years.

In order to reduce the administrative burden, the amended text stressed that ESMA should introduce a common Union standard of reporting to trade repositories. As CCPs and other financial counterparties are taking on delegated reporting duties, a single format would increase efficiency for all participants.

Reporting: the Commission shall prepare a report detailing the changes made in this Regulation to the clearing obligation for derivatives, in particular as regards the scope of entities subject to the clearing obligation and the suspension mechanism. A report shall also be prepared for the trading obligation for derivatives set out in Regulation (EU) No 600/2014.