

Regulatory technical standards specifying the operational conditions, the representativeness obligation and the reporting requirements related to the active account requirement

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The Council agreed a **general approach** on a draft regulation aimed at increasing transparency and reducing risk in the over-the-counter (OTC) derivatives market. The regulation is aimed at implementing commitments made by G-20 leaders in September 2009. It would apply from the end of 2012.

This all-inclusive agreement will enable the presidency, on behalf of the Council, to start negotiations with the European Parliament, with a view to reaching agreement at first reading.

The main elements of the proposed compromise are the following:

- **The obligation to report all derivative contracts to trade repositories** (i.e. central data centres) and the clearing of standardised³ OTC derivative contracts through central counterparties (CCPs) in order to reduce counterparty risk (i.e. the risk of default by one party to the contract).
- **If a contract is not eligible for clearing by a CCP**, the draft regulation would require the application of different risk management techniques, including, for instance, exchange of collateral and the holding of additional capital.
- **Trade repositories** would have to publish aggregate positions by class of derivatives, thereby offering market participants a clearer view of the OTC derivatives market. The European Securities and Markets Authority (ESMA) would be responsible for the surveillance of trade repositories and for granting and withdrawing their registration.
- The **venues of execution** shall have access to any CCP to clear OTC derivatives transactions and, subject to conditions, for CCPs to have access to the trade flows from trading venues.
- **ESMA would be responsible for the identification of contracts subject to the clearing obligation, while national competent authorities, in coordination with a college of supervisors**, would be responsible for authorising and supervising CCPs, except in the case of CCPs from third countries, which would have to be recognised by ESMA provided they meet certain conditions.
- **Authorisation of a CCP** would always require, as a first condition, that the national competent authority is fully satisfied that the applicant CCP meets all the necessary requirements. On the other hand, a positive opinion from the national competent authority could be overruled by the college of supervisors only if all of its members, excluding the authorities of the member state concerned, reach a mutual agreement that the CCP should not be authorised. Moreover, the draft proposal stipulates that no Member State can be discriminated as a venue for clearing services.
- **A CCP would be required to have a mutualised default fund** to which members of the CCP would have to contribute.
- The obligation to clear OTC derivatives contracts through a CCP and report them to trade repositories would apply to **financial firms**, while non-financial firms would only be subject to the rules if their OTC derivatives positions reach specified information and clearing thresholds, to be set by ESMA and the Commission, and are considered to be systemically important.
- **Pension schemes would be exempt** from the clearing obligation for a period of three years, extendable by another two years through a review clause.

The compromise proposed by the presidency allows room for further technical work, in the context of trilogue negotiations with the Parliament, on third country provisions.