

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

2017/0090(COD) - 04/05/2017 - Legislative proposal

PURPOSE: to propose more simple and more efficient rules for OTC derivatives without putting financial stability at risk, and increasing transparency with regard to the OTC derivatives market.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: [Regulation \(EU\) No 648/2012](#) of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (**EMIR Regulation**) implements in the EU the G20 commitment made in 2009 to increase the stability of the OTC derivatives market.

The main objective of EMIR is to reduce systemic risk by increasing the transparency of the OTC derivatives market, through core requirements. They include: (i) central clearing; (ii) margin requirements; (iii) operational risk mitigation requirements; (iv) reporting obligations for derivative contracts; (v) requirements for central counterparties (CCPs); and (vi) requirements for trade repositories.

In November 2016, the Commission adopted the [EMIR report](#), which pointed to the need to eliminate disproportionate costs and burdens on small companies and to simplify rules without compromising financial stability.

Accordingly, the proposal sets out a **series of targeted amendments to the EMIR Regulation**, in order to simplify the rules and ensure that the latter are more proportionate. At the same time the proposal maintains all key elements of the framework that have proved to allow achieving the objectives of EMIR. It is related to and consistent with the ongoing initiative to establish a [Capital Markets Union](#).

IMPACT ASSESSMENT: the impact assessment analysis the costs and benefits of areas of EMIR where targeted action could ensure fulfilment of the EMIR objectives in a more proportionate, efficient and effective manner. The analysis shows that it would be possible to obtain a reduction of costs and restrictions, and at the same time, simplify the Regulation.

It is estimated that the combined effect of all preferred options, calculated solely for the purpose of the impact assessment, amount to **cost reductions** ranging from EUR 2.3 billion to EUR 6.9 billion in fixed (one-off) costs and from EUR 1.1 billion to EUR 2.66 billion in operational costs.

Overall, businesses, SMEs, and micro-enterprises will, in particular, benefit from (i) reducing regulatory requirements in cases where disproportionate compliance costs appear to outweigh prudential benefits and (ii) improving access to clearing.

There should be no significant relevant social and economic cost.

CONTENT: the Commission proposes to **amend Regulation (EU) No 648/2012 in order to simplify the rules applicable to over the counter derivatives and make them more proportionate** in order to reduce costs and regulatory burden weighing on market participants, without putting at risk financial stability.

The proposal **simplifies reporting requirements for all counterparties**. It re-focuses the scope of the clearing obligation for financial counterparties to include some additional relevant market players while exempting the smallest financial counterparties.

Specifically the proposal:

- removes the requirement to report **historic transactions**, i.e. transactions that were not outstanding on the starting date of the reporting obligation on 12 February 2014;
- introduces improvements to ensure the **quality of reported data** for trade repositories;
- establishes **single-sided reporting** by the central counterparties for exchange-traded derivatives transactions ('ETDs');
- provides that, for transactions **other than ETD transactions**, the responsibility for reporting transactions between a small non-financial counterparty (i.e. not subject to the clearing obligation) and a financial counterparty should be on the financial counterparty to the trade;
- exempts **intragroup transactions** involving any non-financial counterparties from the reporting obligation;
- provides, with regards to **non-financial counterparties**, that only non-hedging contracts are counted towards the thresholds triggering the clearing obligation;
- introduces a new three-year temporary exemption for **pension funds** from central clearing;
- increases the upper limit of basic amount of **finances** for infringements of EMIR requirements by trade repositories;
- clarifies the interaction between EMIR default management tools and national insolvency laws to ensure the **insolvency remoteness** of client assets;
- requires observance of the principle to provide clearing services under fair, reasonable and non-discriminatory commercial terms ('**FRAND**' principle).

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.