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

2017/0090(COD) - 12/06/2018 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament adopted by 537 votes to 88 with 52 abstentions, certain **amendments** to 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 matter was **referred back to the competent committee** for interinstitutional negotiations.

This proposal introduces a series of targeted amendments to Regulation (EU) No 648/2012 of the European Parliament and of the Council (EMIR Regulation) to simplify the rules for over-the-counter derivatives and to make them more proportionate, with a view to reducing regulatory costs and burdens on market participants, without undermining the primary objective of **preserving financial stability and reducing systemic risks**.

Regulation (EU) No 648/2012 should apply to all financial counterparties that could pose a significant systemic risk to the financial system. This involves changing the definition of a financial counterparty.

The main amendments adopted in plenary relate to the following:

Scope: 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.

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 temporarily suspend the clearing obligation for a specific class of over-the-counter derivatives or for a specific type of counterparty, where one of the following conditions is met:

- 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;
- where suspension 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. Within 48 hours of receipt of a request from a competent authority, ESMA should either ask the Commission to suspend the clearing obligation or it should reject the 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, with the option of extending this exemption by two more years.

The exemption for PSAs should continue to apply from the date of entry into force of the Regulation and if this Regulation enters into force after 16 August 2018, should also apply retroactively to all OTC derivative contracts executed after that date.

Risk management: the amended text provides that financial counterparties shall have **risk-management procedures** in place that require timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts that are entered into on or after 16 August 2012. Non-financial counterparties may not apply risk-management procedures that require timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts that are in the asset class or asset classes for which the clearing threshold has not been exceeded

ESMA should establish an **EU-wide register** of financial counterparties established in third countries that choose to comply with the Regulation. It should develop draft regulatory technical standards specifying the details to be provided by a **third-country** financial counterparty for its registration with ESMA

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.