

## Updating and improving EMIR

### Europex comments on Commission's EMIR amendment proposal

Brussels, 13 October 2017 | Europex welcomes the European Commission's recently tabled EMIR amendment proposal that is currently being discussed by the European Parliament and the Council. We strongly support its aim to simplify reporting obligations and improve data quality. We believe that the proposal takes the right approach by reducing the burden on Non-Financial Counterparties (NFCs) and smaller Financial Counterparties (FCs). We explicitly share the goal to increase transparency with respect to clearing and reporting.

In the following, we would like to comment on four key aspects of the Commission's proposal:

1. **Single-sided reporting by Central Counter Parties (CCPs) for exchange-traded derivatives (ETDs)** is the right way forward;
2. **Simplified reporting and clearing obligations** will help to reduce complexity for both FCs and NFCs;
3. The measures to increase the **transparency and predictability of CCPs' initial margin requirements** will be beneficial to market stakeholders;
4. **The entry into force of the new reporting standards should be done over a weekend** to minimise disruption to customers and allow system operators maximum time to test new code and other updates.

Please find our detailed remarks below.

#### 1) Single-sided reporting by the CCP

Europex welcomes the shift in responsibility to the CCP for reporting details of exchange-traded derivative (ETD) transactions on behalf of both counterparties. Transferring the responsibility from the trading venue to the CCP is more efficient and seen as a logical step forward, which will help to ensure the accuracy of the reported details. Introducing single-sided reporting should automatically reduce the coordination effort between the CCP and the clearing member, as the reconciliation rates for ETDs will increase rapidly.

Nevertheless, Europex is concerned about the legal liability associated with reporting the data, especially for those trades between the clearing member and the trading participant. In order for a CCP to carry out its reporting obligation, it must have at its disposal all relevant and necessary data on the transaction between the clearing member and the non-clearing member. Experience has shown though that CCPs do not always have a sufficient level of account segregation to meet all reporting requirements. In other words, they do not have full visibility on the clearing member / market participant trade as they are not counterparty to this trade.

## **2) Amendments designed to simplify obligations for NFCs and small FCs**

### **a) Reporting obligations**

Europex clearly supports the proposal to remove the obligation to report historical data – “back-loading”. Deleting the obligation will relieve market participants of an unnecessary burden and will minimise potential accuracy issues associated with older data.

Europex explicitly welcomes that for transactions other than ETD-transactions, the FC should be responsible for reporting the details of the contracts between itself and the NFC that is not subject to the clearing obligation. This will especially lighten the reporting burden for small NFCs. It will also eventually lead to an increase in data quality due to the higher accuracy of the details reported by a FC.

The same applies to the proposal to introduce an exemption from the reporting obligation for intragroup transactions, where at least one of the counterparties is a NFC. This will not only reduce the amount of reported data but will also provide an improved overview of the actual markets – while reducing the reporting burden for stakeholders.

### **b) Clearing obligations**

The Commission’s proposal maintains a clearing threshold for NFCs, such that a NFC becomes subject to the clearing obligation only when its position exceeds the relevant limits. We welcome this measure, as it will in particular relieve smaller clients from clearing obligations in a proportionate manner.

With regard to the calculation for the clearing threshold, Europex believes it is more practical to use a month-end average rather than a rolling basis average of the positions in March, April and May. Nevertheless, it should be clarified what is meant by a month-end average to ensure that the threshold is calculated consistently across trading participants.

The retention of the hedging exemption in EMIR ensures alignment with the approach taken in MiFID II and is welcomed by Europex, as it created the necessary consistency between these two regulatory frameworks.

Europex furthermore welcomes the statement that assets and positions maintained by a CCP for its Clearing Member (CM) are not treated as part of the insolvency estate of the CCP or the CM unless, of course, the assets are required to be used to cover the cost of closing out positions or covering other liabilities of the CM in the event of its default.

However, a consistent European and national framework for managing defaults is needed and it is therefore highly recommended to clarify the interaction between this measure and national insolvency laws. Harmonisation at European level means consistency between EMIR, CCP Recovery & Resolution, as well as the Bank Recovery and Resolution Directive (BRRD). For example, the default management of a CCP is currently dealt with in EMIR, MiFID II, national insolvency laws, as well as the BRRD. In addition, there should be a precise list of what is implied by the term "assets and positions".

### **3) CCP transparency and risk management procedures**

The measures to increase the transparency and predictability of CCPs' initial margin requirements are welcomed by Europex. The description of their initial margin models to their Clearing Members (CMs) will lead to a deeper and better common understanding. We also support the requirement for CCPs to provide their clearing members with a simulation tool to determine the initial margins amount in case of a new transaction.

The expansion of the scope of risk management procedures for OTC derivatives not cleared by a CCP and the inclusion of supervisory procedures could lead to a significant additional burden for the counterparties. As the required prior regulatory approval will lead to additional lead-time for uncleared OTC derivatives contracts, it could make those deals less attractive. The potential impact of these risk-mitigation techniques on trades between two NFCs also needs to be clarified.

### **4) Entry into force of the new reporting standards**

Finally, Europex would welcome the postponement of the entry into force of the new reporting standards under the current EMIR (to apply as of 1 November 2017, Commission Delegated Regulation (EU) 2017/104), such that it falls over a weekend. It is a matter of best practice for system operators administering sophisticated technology to introduce new code into their production environments over the course of a weekend. The rationale for such timing is that the weekend gives the system operators maximum time to deploy the new code, to assess the success of the deployment and to make any necessary changes to the production environment before the start of business on Monday. Concurrently, customers of the system operators may be required to make necessary changes to their own internal systems. Thus, the introduction of new code into the production environment at any time other than over a weekend introduces unnecessary risks to system operators and materially disadvantages customers by reducing the amount of time that they have both to test the production deployment and to make any enhancements to ensure the success of the release of new code.

## **About**

Europex is a not-for-profit association of European energy exchanges with 27 members. It represents the interests of exchange-based wholesale electricity, gas and environmental markets, focuses on developments of the European regulatory framework for wholesale energy trading and provides a discussion platform at European level.

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