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COVER NOTE

From:	Mr Georges Dassis, President of the European Economic and Social Committee
date of receipt:	26 September 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

Subject:	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 [COM(2017) 208 final Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs [COM(2017) 331 final
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Delegations will find attached the above mentioned Opinion.



European Economic and Social Committee

ECO/432

European Market Infrastructure Regulation (EMIR) – Amendment

OPINION

European Economic and Social Committee

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

[COM(2017) 208 final – 2017/090 (COD)]

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs

[COM(2017) 331 final – 2017/0136 (COD)]

Rapporteur: **Petru Sorin DANDEA**

Consultation	European Parliament, COM(2017) 208 final - 31/05/2017; COM(2017) 331 final – awaiting referral Council of the European Union, COM(2017) 208 final - 06/06/2017; COM(2017) 331 final – 22/08/2017
Legal basis	Articles 114 and 304 of the Treaty on the Functioning of the European Union
Section responsible	Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	07/09/2017
Adopted at plenary	20/09/2017
Plenary session No	528
Outcome of vote (for/against/abstentions)	145/0/2

1. Conclusions and recommendations

- 1.1 The EESC welcomes this current initiative, which includes two proposals for regulations, and encourages the Commission to speed up the full implementation of the European Market Infrastructure Regulation (EMIR).
- 1.2 The EESC greatly welcomes the fact that the current Commission proposal implements the proposals in the REFIT programme and has been put forward following a broad public consultation. This has ensured that all stakeholders were consulted and resulted in a proposal to simplify and improve the rules and reduce compliance costs, while at the same time not putting financial stability at risk.
- 1.3 The EESC considers it important that the measures put forward by the Commission are consistent with the Capital Markets Union action plan, and, in particular, with its provisions on securitisation.
- 1.4 The EESC deems the Commission's initiative to be justified and welcomes the fact that the EMIR Regulation retains its original objective, given that the global notional value of OTC derivatives exceeds EUR 544 trillion.
- 1.5 The EESC recommends standardising the types of derivative transactions and instruments because doing so could help to significantly increase the quality of the data.
- 1.6 The EESC agrees with the Commission's proposal to introduce a clearing threshold for small counterparties, as they have difficulties in accessing clearing.
- 1.7 The EESC supports the Commission's proposal to extend the period in which pension funds are exempt from the central clearing obligation, since no solution has been found to date enabling them to have the necessary liquidity, without affecting the interests of fund members.
- 1.8 The EESC welcomes the Commission's proposal on establishing a new supervisory mechanism within the European Securities and Markets Authority (ESMA). The EESC recommends that the Commission allocate the necessary financial resources for training the staff that are to work in the new department of the ESMA, taking into account the complexity of the supervisory activity it will have to carry out.

2. European Commission proposal

- 2.1 In May and June, the Commission presented two proposals for regulations¹ amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing

¹ [COM\(2017\) 208 final](#) – 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; and [COM\(2017\) 331 final](#) – Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs.

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 (EMIR).

- 2.2 Both proposals were accompanied by Commission staff working documents and impact assessments.
- 2.3 In the first proposal for a regulation, the Commission proposes simpler and more effective rules for derivatives. The Commission wishes to address considerable and emerging challenges as regards the clearing of OTC derivatives. The proposal addresses four elements: reporting requirements, non-financial counterparties, financial counterparties and pension funds.
- 2.4 In the second proposal for a regulation, the Commission proposes more robust supervision of central counterparties with regard to the derivatives market. The proposal aims to further improve the financial stability of the EU by establishing a new mechanism within the European Securities and Markets Authority for supervising the derivatives market.

3. **General and specific comments**

- 3.1 The amendment of the EMIR Regulation is part of the Commission's efforts to ensure better regulation of derivatives. In recent years, a number of provisions of the Regulation have been implemented by means of delegated acts, directives and regulations. The EESC welcomes this current initiative and encourages the Commission to speed up the full implementation of the EMIR Regulation.
- 3.2 The EESC greatly welcomes the fact that the current Commission proposal implements the proposals in the REFIT programme and has been put forward following a broad public consultation. This has ensured that all stakeholders were consulted, and resulted in a proposal to simplify and improve the rules and reduce compliance costs, while at the same time not putting financial stability at risk.
- 3.3 The EESC considers it important that the measures put forward by the Commission are consistent with the Capital Markets Union action plan, and, in particular, with its provisions on securitisation.
- 3.4 The Commission's initiative does not undermine the primary objective of the EMIR Regulation: to supervise and monitor OTC derivatives in order to mitigate systemic risk, and also to reduce the volume of this type of instrument, particularly those of a speculative nature. The EESC deems the Commission's initiative to be justified, given that the global notional value of OTC derivatives exceeds EUR 544 trillion.
- 3.5 The changes to the reporting requirements proposed by the Commission will reduce the administrative burden and simplify the reporting procedure for most counterparties. The Commission reckons that the quality of the data reported will also be improved. The EESC believes that standardising the types of transactions and instruments could significantly increase the quality of the data.

- 3.6 The Commission proposes to introduce a clearing threshold for small counterparties. As they have difficulties in accessing clearing, the Commission proposal supports these small entities, which can be small banks or investment funds. The EESC agrees with the Commission's proposal.
- 3.7 In the proposal for a regulation, the Commission wishes to extend the period in which pension funds are exempt from the central clearing obligation for OTC derivative portfolios held. In view of the fact that pension funds do not have the liquidity to enable central clearing and that they play a key role in securing the income of older people, the EESC endorses the Commission proposal.
- 3.8 The second proposal for a regulation introduces new rules and responsibilities as regards the supervision of central counterparties both inside and outside of the EU. The proposal establishes an enhanced framework for cooperation between central banks and supervisory authorities. The EESC welcomes the Commission's proposal.
- 3.9 The proposed regulation envisages the establishment of a new supervisory mechanism within the ESMA, which will have supervisory powers with regard to both EU and third-country central counterparties. The Commission is seeking to enhance the supervision of third-country central counterparties, in particular those that may play an important role in clearing operations within the EU. The EESC recommends that the Commission allocate the necessary financial resources for training the staff that are to work in the new department of the ESMA, taking into account the complexity of the supervisory activity it will have to carry out.
- 3.10 Given the challenges posed by OTC derivatives in relation to citizens' savings, as well as the systemic risk, the EESC reiterates its proposal² for financial education programmes. The Commission could fund such programmes for retail investors.

Brussels, 20 September 2017

Georges DASSIS
President of the European Economic and Social Committee

² See point 4.7 in the EESC opinion on *Markets in financial instruments*, [OJ C 143, 22.5.2012, p. 74](#).