

INCEPTION IMPACT ASSESSMENT			
TITLE OF THE INITIATIVE	EMIR Amendment		
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	FISMA C2	DATE OF ROADMAP	21/11/2016
LIKELY TYPE OF INITIATIVE	Regulation amending Regulation of the European Parliament and of the Council amending Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR)		
INDICATIVE PLANNING	1 <sup>st</sup> quarter 2017		
ADDITIONAL INFORMATION	-		
<p><b>This Inception Impact Assessment aims to inform stakeholders about the Commission's work in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options. The Inception Impact Assessment is provided for information purposes only and its content may change. This Inception Impact Assessment does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content.</b></p>			

A. Context, Problem definition and Subsidiarity Check
<p><b>Context</b></p> <p>European Market Infrastructure Regulation (EMIR) seeks to promote transparency and standardisation in derivatives markets as well as to reduce systemic risk through the application of its core requirements. These requirements should be proportionate and not impose unnecessary costs on companies. Under Article 85(1) of EMIR, the Commission is required to prepare a general report on EMIR together with any appropriate proposals. In accordance with this mandate, the legislative initiative will propose some targeted amendments to EMIR.</p> <p>Certain core requirements (clearing obligations, bilateral margin requirements) provided for under EMIR are yet to be implemented or completed, and thus a full evaluation in particular of their efficiency and effectiveness is not possible. Nevertheless, the data collected by the public authorities on the basis of rules which are already in place as well as the responses to the public consultations and developments in third country jurisdictions reveal areas where the objectives of EMIR could be fulfilled in a more efficient and proportionate manner and where risks of disproportionate costs and unnecessary burdens could be avoided.</p> <p>The current initiative is also related to the ongoing initiative to establish a Capital Markets Union (CMU) and contribute to the Jobs and Growth agenda of the Commission.</p> <p>This initiative is included in the 2017 REFIT Work Programme.</p>
<p><b>Problem the initiative aims to tackle</b></p> <p><b>The scope of clearing and bilateral margins requirements:</b> The scope of EMIR includes all financial and non-financial counterparties above a certain threshold and is broader than in some other jurisdictions. However, there may be drawbacks in imposing mandatory clearing and/or bilateral margins requirements on certain participants (i.e. NFCs, pension funds, small financial counterparties) to an extent that might outweigh the benefits.</p> <p><b>Scope of transactions covered by EMIR requirements:</b> In particular the requirement to clear contracts entered into before the clearing obligation enters into force ('frontloading') and the application of operational risk mitigation requirements to intragroup transactions have been questioned by stakeholders.</p> <p><b>Access to clearing:</b> Smaller institutions in particular are struggling to access clearing due to uncertainty among bank intermediaries (clearing members) regarding the final shape of the leverage ratio under the Capital Requirements Regulation (CRR). This therefore should be looked at not just in the context of EMIR but also in the CRR review. Also affecting access to clearing are the legal and commercial challenges posed by EMIR with respect to the level of client asset segregation that has to be offered by clearing members. In addition, there are concerns that EMIR does not explicitly override inconsistencies in Member States' national insolvency regimes ("portability").</p> <p><b>Too onerous or inefficient requirements that could be refined:</b> There is currently no mechanism under EMIR for the clearing obligation to be suspended promptly where the market situation so requires. There also seems to be insufficient transparency of margin requirements for centrally cleared transactions. In addition, there is no clear</p>

mandate for initial margin models to be endorsed by authorities with respect to non-cleared transactions. **Reporting requirements:** Market participants complain about the burdensome reporting requirements while at the same time expressing concerns about the quality of the data. Furthermore, certain third country authorities face legal challenges in concluding the arrangements for mutual access to trade repositories data required under EMIR. A separate issue linked to trade repositories is that the fines for trade repositories do not correspond to the needs of effective supervision.

**Subsidiarity check (and legal basis)**

The legal basis for EMIR is Article 114 of the Treaty on the Functioning of the European Union (TFEU) and any changes to it would have the same legal basis. The objectives of EMIR to mitigate the risks and improve the transparency and standardisation of OTC derivative contracts by laying down uniform requirements for such contracts and for the performance of activities of CCPs and trade repositories cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of actions, be better achieved at Union level in accordance with the principle of subsidiarity as set out in Article 5 of TFEU.

**B. Objectives and Policy options**

The aim of the initiative is to ensure that the objectives of EMIR – to promote transparency and standardisation in derivatives markets as well as reduce systemic risk through the application of its core requirements – are met in a more proportionate, effective and efficient manner. Given the importance of promoting jobs, investment and growth, the review also provides an opportunity to ensure that the requirements of EMIR are calibrated so as not to impose an unnecessary or disproportionate burden on those counterparties which do not pose significant risks to financial stability. Without any EU action, the current EMIR requirements would stay in place. Without action some actors would continue to be subject to potentially disproportionate requirements, access to clearing may be economically unviable, data reported to trade repositories would not be used in an optimal way and the potential benefits from reducing unnecessary administrative burdens would not be secured.

The available actions for addressing the various issues span: a) Amendments to level 1 Regulation, initiated by the Commission and involving the co-legislators; b) Amendments to level 2 measures (either delegated acts initiated by the Commission or technical standards initiated by the European Supervisory Authorities (ESAs) and adopted by the Commission); c) Level 3 guidelines, initiated and adopted by the ESAs (generally used to add detailed practical or technical guidance to existing requirements); and d) Non-legislative actions, including general communication with the industry. However, legally binding changes to EMIR level 1 requirements can only be achieved through amendments to the Regulation.

**C. Preliminary Assessment of Expected Impacts**

**Likely economic impacts**

To be assessed. The Impact Assessment will take into account the trade-off between less burdensome rules to lower the costs and the potential negative impact on financial stability.

**Likely social impacts**

Not anticipated.

**Likely environmental impacts**

Not anticipated.

**Likely impacts on fundamental rights**

Not anticipated.

**Likely impacts on simplification and/or administrative burden**

The final impacts will depend on the options chosen. But the objective of the initiative is to ensure that the objectives of the EMIR are met in a more proportionate, effective and efficient manner. Its expected impact is simplification and increased transparency of legislation and reduction of unnecessary administrative burden.

Since the proposed changes would be introduced in the EMIR Regulation, there would be no additional work to be undertaken by national administrations caused by the implementation of directives. Consecutive revisions of the relevant technical standards by the ESAs might be necessary. Improved trade reporting will help regulators to perform their tasks.

**D. Data Collection and Better Regulation Instruments**

**Impact assessment**

An Impact Assessment is being prepared to support the preparation of this initiative and to inform the

<p>Commission's decision.</p> <p>The Impact Assessment work started in May 2015 with the launch of the public consultation.</p> <p>An Inter-Service steering group has been set up and includes the following Directorates-General and services: Secretariat General, the Legal Service, DG Agriculture and Rural Development (AGRI), DG Climate Action (CLIMA), DG Competition (COMP), DG Economic and Financial Affairs (ECFIN), DG Energy (ENER), DG Internal Market, Industry, Entrepreneurship and SMEs (GROW), DG Justice and Consumers (JUST), DG Taxation and Customs Union (TAXUD) and DG TRADE.</p>
<p><b>Data collection</b></p> <p>ESMA<sup>1</sup>, ESRB<sup>2</sup>, ECB<sup>3</sup> and ESCB<sup>4</sup> have submitted several reports as required by the review clause under EMIR Article 85. The data contained in the reports will be used as appropriate in the Impact Assessment.</p> <p>The Impact Assessment will also rely on the data received in the contributions to the public consultation and the Call for Evidence (see below). Ad hoc requests for advice will be sent to ESMA where there is a need to obtain additional data on specific issues. Where available and to the extent possible, public sources of information, other data gathered from the industry, and existing studies will also be used to enrich the analysis provided in the Impact Assessment. Any necessary additional analytical and technical work will be carried out by experts of the Commission and in cooperation; where appropriate, with the relevant Commission Working Group of Member State experts.</p>
<p><b>Consultation strategy</b></p> <p>A public consultation on EMIR review took place in the period from May to August 2015. The consultation generated more than 170 contributions from a broad range of stakeholders. The consultation and the summary of the responses can be found at <a href="http://ec.europa.eu/finance/consultations/2015/emir-revision/index_en.htm">http://ec.europa.eu/finance/consultations/2015/emir-revision/index_en.htm</a>. In addition, a public hearing was held in Brussels on 29 May 2015, which gathered around 200 stakeholders. Information can be found at <a href="http://ec.europa.eu/finance/events/2015/0529-emir-revision/index_en.htm">http://ec.europa.eu/finance/events/2015/0529-emir-revision/index_en.htm</a>.</p> <p>In a related area the European Commission carried out a public consultation entitled Call for Evidence between September 2015 and January 2016. The consultation sought feedback, concrete examples and empirical evidence on the impact of EU regulatory framework for financial services. The respondents to the Call for Evidence raised also claims on EMIR. These issues were largely the same as those already raised in the EMIR consultation.</p> <p>The consultation can be found at <a href="http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index_en.htm">http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index_en.htm</a>. A public hearing was held in Brussels on 17 May 2016. Information can be found at <a href="http://ec.europa.eu/finance/events/2016/0517-call-for-evidence/index_en.htm">http://ec.europa.eu/finance/events/2016/0517-call-for-evidence/index_en.htm</a>.</p>
<p><b>Will an Implementation plan be established?</b></p> <p>As the initiative takes the form of a Regulation and amends the existing rules in a limited targeted way, no implementation plan will be established.</p>

<sup>1</sup> European Securities and Market Authority

<sup>2</sup> European Systemic Risk Board

<sup>3</sup> European Central Bank

<sup>4</sup> European System of Central Banks