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ASSEMBLY OF THE REPUBLIC  
EUROPEAN AFFAIRS COMMITTEE

Opinion

COM (2017) 208

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.

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## **PART I – INTRODUCTION**

Pursuant to Article 7 of Law No 43/2006 of 25 August 2006 on the monitoring, examination and issuing of opinions by the Assembly of the Portuguese Republic on matters relating to the process of EU integration, as amended by Law No 21/2012 of 17 May 2012, and in accordance with the Guidelines for the Scrutiny of EU Initiatives approved on 1 March 2016, the European Affairs Committee received a 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].

In view of its subject matter, the above-mentioned initiative was forwarded to the **Committee on Budgetary and Financial Affairs and Administrative Reform, which did not provide its views.**

## **PART II - BACKGROUND**

The financial crisis has exposed weaknesses in the transparency of financial markets. In order to address those weaknesses, Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories was adopted on 4 July 2012 to enhance the overall transparency and functioning of the internal market for financial instruments (hereinafter ‘EMIR’). This regulation responded to the commitment made in the G20 declaration in London in 2009 as regards the application of certain requirements to OTC derivatives contracts<sup>1</sup> at a global level. It thus established increased transparency as one of the shared principles to reduce systemic risk and strengthen the financial system.

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<sup>1</sup> Over-the-Counter Market (OTC): A market where over-the-counter (OTC) transactions are made. An over-the-counter (OTC) derivative is a derivative not traded on an exchange but instead privately negotiated between two counterparts.

This initiative pursues the same objectives of reducing systemic risk by increasing the transparency of the OTC derivatives market and reducing the counterparty credit risk and the operational risk associated with OTC derivatives. It should also be noted that some of the requirements established to this end are already in place. However, others are yet to be applied, resulting in situations deemed to destabilise the full and effective achievement of the objectives of EMIR, in particular as regards: i) disproportionate compliance costs; ii) insufficient transparency of OTC derivatives positions and exposures; iii) insufficient access to clearing for certain counterparties.

Therefore, because the EMIR Regulation has been in force for four years, and taking into account that some of its requirements are yet to enter into force, the Commission proposed that the Regulation be revised as part of the current initiative. To this end, proposals were made to amend certain laws aimed at reducing risks, increasing transparency and harmonising OTC derivatives contracts, thereby enabling the proposed revision to efficiently and effectively achieve the original objectives of EMIR. It should be stressed that this initiative is in line with another ongoing initiative to establish a Capital Markets Union (CMU)<sup>2</sup>.

In the light of the provisions contained in this proposal, the following must be considered:

#### **a) Legal Basis**

The proposal is based on Article No 114 of the Treaty on the Functioning of the European Union (TFEU) which provides a legal basis for a Regulation creating uniform provisions aimed at the functioning of the internal market.

#### **b) Principle of Subsidiarity**

This initiative complies with the subsidiarity principle.

Many of the issues covered by the revision are already covered by the current legal framework. Furthermore, the objectives of EMIR to mitigate the risks and improve the

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<sup>2</sup> COM(2016) 601 final - 'COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN CENTRAL BANK, THE ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS - 'Capital Markets Union - Accelerating Reform'.

transparency and standardisation of OTC derivative contracts cannot be sufficiently achieved by the Member States. Therefore, by reason of the scale of actions, these objectives can be better achieved at Union level in accordance with the principle of subsidiarity as set out in Article 5 of the TFEU.

### **PART III – OPINION**

In the light of the information set out above, the European Affairs Committee is of the opinion that:

1. This initiative upholds the principle of subsidiarity, insofar as the objective will be achieved more effectively by means of Community-wide action.
2. This concludes the scrutiny of this initiative.

Palácio de São Bento, 18 July 2017

Rapporteur

[Signature]

Vitalino Canas

The Chair of the Committee

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Regina Bastos