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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT Accompanying the document 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

Delegations will find attached document SWD(2017) 149 final.

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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

**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 }
{ SWD(2017) 148 final }

Executive Summary Sheet

Impact assessment on possible amendments to 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

A. Need for action

Why? What is the problem being addressed?

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') responded to the commitment by G20 leaders, made in September 2009, to implement certain requirements for OTC derivative contracts on a global basis. EMIR pursues the objective of reducing the 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. Some of the requirements introduced to this end have entered into application, while others are not yet in force. The Commission's monitoring of the market and input received from stakeholders and EU bodies and authorities showed broad support for the overall objectives of EMIR but pointed to a number of issues leading to the EMIR objectives not being met in the most effective and efficient way. These concern in particular (i) disproportionate compliance costs that in a number of cases outweigh prudential benefits, (ii) Insufficient transparency of OTC derivatives positions and exposures and (iii) insufficient access to clearing for certain counterparties.

What is this initiative expected to achieve?

The envisaged options, while maintaining the framework set up by EMIR, aim at rendering the application of EMIR more effective and efficient by increasing the proportionality of rules, increasing the transparency of OTC derivatives positions and exposures and reducing impediments to access to clearing. To this end, a number of targeted adjustments to EMIR are considered and assessed against the overarching objective of EMIR to safeguard financial stability.

What is the value added of action at the EU level?

The EMIR Regulation is binding in its entirety and directly applicable in all Member States. The targeted adjustments to existing EMIR provisions envisaged by this initiative can only be made at EU level on the basis of Article 114 of the Treaty on Functioning of the European Union.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

The initiative consists of a review of the existing EMIR Regulation. Consequently, the options considered concern targeted adjustments of specific (legislative) provisions. To achieve the desired objectives, a number of preferred policy options have been identified:

- to provide for a new transitional exemption of Pension Scheme Arrangements from the clearing obligation;
- to reduce the scope of the clearing obligation for Non-Financial Counterparties ('NFCs');
- to remove very small financial counterparties from the scope of the clearing obligation;;
- to remove the "backloading" obligation;
- to exempt NFCs from the intragroup transactions reporting obligation;
- for exchange-traded derivatives transactions, to introduce single-sided reporting by the central counterparties;
- for transactions other than exchange-traded derivatives transactions, to provide for reporting by the financial counterparty of the trade with a small NFC;
- to further harmonise the reporting rules and procedures and to require trade repositories to ensure the quality of data;
- to increase the upper limits of the basic amounts of fines for infringements of EMIR requirements by trade repositories;
- to clarify the interaction between EMIR default management tools and national insolvency laws and to introduce a principle to provide clearing services under Fair, Reasonable And Non-Discriminatory commercial terms ('FRAND' principle) in EMIR.

Who supports which option?

Stakeholder feedback on the functioning of EMIR was obtained through two Commission public consultations. The consultation raised a number of specific questions but did not highlight any concrete policy options that could be considered. There was wide support from all groups of stakeholders for increasing the proportionality of rules. Trade reporting received a lot of attention. Respondents, mainly corporate enterprises and industry associations, asked for a reduction of reporting requirements for non-financial counterparties. A large number of respondents across different classes of stakeholders also considered that double-sided reporting should be replaced by single-sided reporting – an option assessed, but rejected in this impact assessment. Respondents also raised the need to introduce exemptions from clearing and margining requirements for counterparties that are not systemically important.

Discussions held with Member States' experts at a later stage included the specific policy options considered. A majority of Member States' experts was in favour of the preferred options retained in this impact assessment.
C. Impacts of the preferred option
What are the benefits of the preferred option (if any, otherwise main ones)?
First, the proposed modifications will reduce compliance costs and burden imposed on market participants, without adversely affecting financial stability. Greater proportionality in the application of clearing rules will benefit NFCs as the envisaged measures will ensure a better level-playing field as a higher threshold will only place the largest NFCs in scope of clearing requirements. A re-calibration of what constitutes an SFC that would be subject to the clearing obligation will allow lightening the burden of those (very) small financial counterparties for which central clearing is not economically feasible. Pension Scheme Arrangements will benefit from a new transitional clearing exemption on the grounds that no viable technical clearing solution has emerged to date. All counterparties will benefit from the lightening of certain reporting requirements, such as the removal of the "backloading" obligation. Second, greater transparency of OTC derivatives positions and exposures will enable authorities to identify any potential problems at an earlier stage and to take timely action addressing any risks, thus benefitting the resilience of financial markets. Third, improved access to clearing will allow additional market participants to manage and hedge their risks and by reducing the likelihood of sudden shocks and business disruptions occurring contribute to a less volatile business development and job security of their employees.
What are the costs of the preferred option (if any, otherwise main ones)?
Overall, there should be no significant relevant social and economic cost. The envisaged simplification and increased proportionality of rules on reporting will allow achieving the objectives of EMIR while considerably reducing the overall administrative burden borne by counterparties that are subject to reporting requirements under EMIR. Where a transfer of the reporting obligation is considered, the entities that should take on the reporting obligation in the future are better equipped for this task and, due to the economies of scale involved, the relevant overall aggregate costs should decrease. The further harmonisation of reporting rules and procedures may at most involve some limited additional administrative costs in the initial stages of implementation, but should lead to greater efficiencies and reduce the overall burden in the mid-term. Similarly, a requirement to observe fair, reasonable and non-discriminatory commercial terms in the provision of clearing services, which will benefit many counterparties, is expected to involve only limited additional administrative costs. The combined effect of all preferred options is a significant reduction of costs. Estimates of potential savings, calculated solely for the purpose of this impact assessment and taking into consideration all the underlying assumptions described in annex 8, range from EUR 2.3 billion to EUR 6.9 billion in fixed (one-off) costs and from EUR 1.1 billion and EUR 2.66 billion in operational costs. A number of limitations affect the reliability of these estimated cost reductions. First, these estimates are valid only at the current point in time. Requirements that will apply at a later stage, such as the phased-in application of margin requirements, have not been taken into account in the calculations. Second, calculations are based on the limited amount of data that is publicly available and on anecdotal market intelligence, which may not accurately capture the diversity and the specificity of the counterparties at play. Third, calculations are based on the assumption that the cost reductions will be entirely passed on to end-users. Fourth, minimal adjustment costs resulting, for instance, from introducing FRAND terms (expected impact on clearing members) and from measures to increase the quality of data (expected impact on TRs) have not been included in this calculation.
How will businesses, SMEs and micro-enterprises be affected?
Businesses, SMEs and micro-enterprises will, in particular, benefit from the options aimed at (i) reducing regulatory requirements in cases where disproportionate compliance costs appear to outweigh prudential benefits and (ii) improving access to clearing. Non-financial counterparties will benefit from the adjustment of the scope of the clearing obligation. The simplification of reporting requirements will benefit all counterparties, including SMEs. Finally, introducing new FRAND principles will make it easier to find access to clearing for many counterparties.
Will there be significant impacts on national budgets and administrations?
No. The amendments considered should not trigger relevant costs for national budgets and administrations.
Will there be other significant impacts?
No.
D. Follow up
When will the policy be reviewed?
Keeping in mind that the EMIR requirements entered into application at different points in time and that some of them are not yet in force, an evaluation of EMIR in its entirety should be carried out, with a particular focus on its effectiveness and efficiency in meeting EMIR's original objectives. This evaluation should include the targeted amendments considered in the present initiative and take place at least 3 years after the application of these amendments. In certain cases, notably for pension scheme arrangements, it is important to monitor progress in the availability of solutions for PSA clearing on an ongoing basis.