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THE DIRECTOR GENERAL

Mr Werner Langen
Member of the European Parliament
European Parliament
Rue Wiertz 60
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10 April 2018

Dear Member of the European Parliament,

The European Market Infrastructure Regulation (EMIR)

I write to you regarding current discussions regarding the proposed amendments to the European Market Infrastructure Regulation (EMIR). BusinessEurope strongly supports upholding the existing exemptions for non-financial counterparties (NFCs) which use 'over-the-counter' (OTC) derivatives in conjunction with risk mitigation of underlying real economic risks. *The retention of the hedging exemption is crucial for the real economy* and we therefore urge you to reject proposals which call this exemption into question.

End-users should not be discouraged from entering into OTC derivative transactions. Forcing companies to post margins for all these trades will act as a deterrent by introducing an additional layer of liquidity risk, as NFCs would often have to hold bank credit lines in order to be able to meet margin calls. Requiring them to raise such liquidity will significantly increase costs, weaken their balance sheets and possibly deteriorate their rating, whilst the liquidity posted will not be available for much needed investments, slowing down the recovery of the EU economy. We thus hope that the Commission's proposal will be accepted by the legislator.

It is also important to *move to an asset-by-asset class assessment for clearing*. It should follow that when clearing will be on an asset-by-asset class basis, that bilateral margining will apply to NFCs on the same basis as for the clearing obligation, i.e. only for those asset classes affected.

Additionally, whilst welcoming the Commission proposal to ring-fence transactions to the affected asset class when the clearing thresholds are crossed, the cost savings would be limited if all other (non-affected) asset classes would still require bilateral collateralisation. The scheduled reliefs in terms of the clearing obligation should therefore explicitly include the bilateral collateral exchanges on these assets. Moreover, it should be made clear that only newly entered transactions in the affected asset class(es) are brought in scope of clearing and margining obligations. Moreover, there should be consistency across the treatment of EMIR activities particularly as the same economic arguments apply to NFCs uncleared derivative transactions. Article 11 (3) EMIR should therefore be amended in line with the proposed amendment to Article 10 (1) b.

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It is also important to *exempt intragroup transactions* where at least one counterparty is a NFC from reporting to trade repositories. Intragroup transactions are typically used by centralised treasury units within corporate groups to mirror external transactions and to re-distribute risk to and from operative entities. We welcome the Commission proposal and amendments which remove the reporting obligation for NFCs in respect of transactions that take place within the same consolidated group so long as at least one of the entities is a NFC, or a third country entity that would be considered a NFC if located in the EU.

We are equally convinced that providing good quality data for supervisors can be achieved by *moving to a single side entity-based reporting regime* similar to those which have also been adopted by other jurisdictions such as the US, Canada, Japan, and Switzerland. Dual-sided reporting has led to unforeseen costs for corporates without improving data quality. The Commission proposal is therefore a step in the right direction. Likewise, are amendments which put forward a single sided reporting regime where the FC would be solely responsible and legally liable to report one single data set, as well as for ensuring the accuracy of the details reported, even though the exact meaning of the terms "solely" and "single data set" should be clarified. These amendments also allow NFCs to report the data themselves if they so wish. This "opt-out" clause would resolve practical problems that could arise with respect to third country banks potentially not offering delegated reporting services for NFCs. These banks are often standard business partners of non-financial companies and the "opt-out" clause would ensure that corporates are EMIR compliant even in case delegation is no option for some reason. To note, that option would need to be available for all derivatives of a corporate, as otherwise it could actually face increasing costs from having to run two parallel reporting regimes.

As it takes time to implement the clearing processes, it is necessary to *retain a transitional period of 4 months* to clear derivatives for those non-financial companies which are crossing the clearing thresholds. This transition period should also apply for agreeing bilateral collateralisation agreements (CSA).

And lastly, BusinessEurope believes that *Securitisation Special Purpose Entities (SPVs) should not be classified as financial counterparties*. Often, and especially in the context of European Auto-ABS, the nature and business as well as the average portfolio sizes of securitisation SPVs are different to those of a typical financial counterparty. The proposal would not significantly improve the counterparties' protection whilst disrupting relevant securitisation markets.

We hope that you share these concerns and remain at your disposal should you wish to discuss this further.

Yours sincerely,

Markus J. Beyrer