BUSINESSEUROPE

THE DIRECTOR GENERAL

Mr Valdis Dombrovskis
Vice-President
Euro & Social Dialogue
European Commission
Rue de la Loi 200
B-1049 Brussels
BELGIUM

20 September 2017

Dear Vice-President, Dear Valdis,

The European Market Infrastructure Regulation (EMIR)

As you know, BusinessEurope strongly supports upholding existing exemptions for non-financial counterparties (NFCs) which use 'over-the-counter' (OTC) derivatives in conjunction with risk mitigation of underlying real economic risks and we also repeatedly asked for a reduction of the burdens these companies face due to the dual-sided reporting regime.

In this context, we welcome your proposals to amend the European Market Infrastructure Regulation (EMIR). In the attached position paper, we have set out our views and suggestions regarding the proposal. We hope that our paper will contribute to current discussions and remain at your disposal should you wish to discuss this further.

Yours sincerely,

Markus J. Beyrer

AV. DE CORTENBERGH 168
BE-1000 BRUSSELS
BELGIUM
VAT BE 863 418 279

BUSINESSEUROPE a.i.s.b.l.

WWW.BUSINESSEUROPE.EU

TEL +32(0)2 237 65 11
FAX +32(0)2 231 14 45
E-MAIL: MAIN@BUSINESSEUROPE.EU
EU Transparency register 3978240953-79

BUSINESSEUROPE

POSITION PAPER

20 September 2017

THE EUROPEAN MARKET INFRASTRUCTURE REGULATION
Commission Proposal

Introduction

BusinessEurope strongly supports upholding existing exemptions for non-financial counterparties (NFCs) which use 'over-the-counter' (OTC) derivatives in conjunction with risk mitigation of underlying real economic risks and we also repeatedly asked for a reduction of the burdens these companies face due to the dual-sided reporting regime. In this context, we welcome the Commission's proposals to amend the European Market Infrastructure Regulation (EMIR). The retention of the hedging exemption and the decision to move to an asset-by-asset class assessment is crucial for the real economy.

With regard to hedging, 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. As a result, companies may choose to stop or reduce their hedging rather than take on the additional liquidity risk. Reduced hedging would increase not only the financial risk for the economy as a whole but also for single corporations. Reduced hedging will also lead to a different risk assessment of the non-financial companies themselves by potential investors which will negatively affect the cost of equity and debt financing.

We thus hope that the Commission's proposal will be accepted by the legislator. A next step, in particular to reduce the administrative burden of SMEs, should be to ensure greater convergence between the asset-by-asset class assessment according to IFRS and the accounting of the hedging transaction that often follows national requirements.

Treat EMIR activities consistently

BusinessEurope supports the Commission's intention to move to an asset-by-asset class assessment for clearing. In this context though, we would welcome that NFCs are treated the same way as financial counterparties (FCs) by amending Article 11 (3) EMIR in line with the proposed amendment to Article 10 (1) b. This would ensure consistency across the treatment of EMIR activities particularly as the same economic arguments apply to NFCs uncleared derivative transactions.

Reporting and liability

It is also important to exempt intragroup transactions of NFCs from reporting to trade repositories and restrict liability for the reporting to the FC. Intragroup transactions are typically used by centralised dedicated units of within corporate groups to mirror

AV. DE CORTENBERGH 168
BE-1000 BRUSSELS
BELGIUM
VAT BE 863 418 279

BUSINESSEUROPE a.i.s.b.l.

WWW.BUSINESSEUROPE.EU

TEL +32(0)2 237 65 11
FAX +32(0)2 231 14 45
E-MAIL: MAIN@BUSINESSEUROPE.EU
EU Transparency register 3978240953-79

external transactions and to re-distribute risk within the group. We are 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. Again, we welcome the Commission's proposal although it should be clarified that all non-financial companies can benefit from this exemption and not only "small non-financial companies" as the majority of larger companies also uses derivatives mainly to hedge operative risks.

Having said this, the issue of third country banks potentially not offering delegated reporting services for NFCs should be considered. These banks are often standard business partners of non-financial companies and practical problems could arise that could be resolved by including an "opt-out" clause. This "opt-out" clause would ensure that corporates are able to fulfil the reporting obligation themselves. Thereby, NFCs could ensure their EMIR compliance even in case delegation is no option for some reason. To note, that option would need to concern all derivatives of a corporate, as otherwise it would actually face increasing costs from having to run two parallel reporting regimes.

Clearing: Bilateral collateralisation

Regarding the clearing obligation, whilst welcoming the suggestion 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.

Clearing: Transition period

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).

Securitisation aspects

BusinessEurope is concerned about the proposal to classify Securitisation Special Purpose Entities (SPVs) 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.

* * *