Regulation on OTC derivatives, Central Counterparties and Trade Repositories (EMIR). July 2012.

On 3 and 4 July respectively, the EU Parliament and Council adopted a new regulation in order to increase transparency and reduce risks in OTC (over the counter) derivatives markets: "Regulation on OTC Derivatives, central counterparties and trade repositories." The process began on 15 September 2010 when Michel Barnier (European Commissioner for Internal Market and Services), presented in Brussels draft Standards prepared by the European Commission to regulate the clearing, clearing and registration of OTC traded derivatives. This legislation is also known as EMIR .

How did EMIR originate?

The collapse of Bear Stearns in March 2008, the bankruptcy of Lehman Brothers in September of the same year and the subsequent rescue of AIG placed the OTC derivatives market at the root of the financial crisis and made it a focus of attention on the process of reform in financial regulation and supervision driven by the G20.

Among the references in G20 communiqués to OTC derivatives, probably the most striking is that of the Pittsburgh summit (September 2009), at which the following was agreed: negotiation before the end of 2012 of the standardised OTC derivatives – where appropriate – through electronic platforms and clearing houses; sending information to so-called trade repositories and the establishment of more stringent capital requirements in the contracts that do not pass through a clearing house . This statement sparked the onset of different work streams of the Standard Setting Bodies in charge of developing this commitment and ensure its implementation.

In parallel and in line with the G20 agreements and the recommendations of the Larosiere report, which analysed the role of derivatives in financial crisis, studying the mechanisms to reduce their associated risks and announced upcoming initiatives among which the possibility of making a legislative proposal was envisaged. This paper discussed, among other things, the standardisation of derivatives, management of collaterals, central data repositories and central counterparty entities.

The EC work led, little more than a year later (15 September 2010), to the EC's proposal of the EMIR, the regulation on OTC Derivatives, Central Counterparties (CCPs) Trade Repositories (TRs) .

Entry into force and current situation

The entry into force of EMIR, in line with the G20's Pittsburgh declaration, is scheduled for late 2012.

This regulation was developed through delegated acts issued by the EC and technical standards developed by ESMA and ratified by the EC. Regarding the technical standards, on June 25 last, ESMA put out for public consultation the document with draft standards which it had developed in collaboration with EBA and EIOPA. It plans to send it to the European Commission for endorsement before 30 Sept. this year as required in the EMIR itself.

EMIR Content

EMIR is divided into nine titles. Title I establishes the scope, purpose and definitions of the standard. Title II deals with the subject of clearing, sending of information and reducing the risk of OTC derivatives. It sets out, inter alia, the procedure for determining the contracts to be passed through the clearing house, which attempts to ensure that as many contracts as possible are settled, while trying to avoid creating new risks. This part of the regulation is essential for implementing the G20's commitment to settle standardised OTC derivatives through clearing houses.

Titles III and IV deal with the licensing process, of the CCPs and organisational and prudential requirements must

comply with these entities to operate. The responsibility for licensing and supervising CCPs lies with national authorities, however, given their systemic importance and cross-border nature, mechanisms are set out in order, among other things, to make ESMA participate in the licensing process and ensure the correct functioning of colleges of supervisors.

Title V discusses the interoperability agreements. Titles VI and VII set out the requirements for the licensing, supervision and operation of the TR. Unlike CCPs, which are the competence of national authorities, the power to license and supervise the TR lies with ESMA, since it is considered that it plays an essential role in gathering information and that this information is important for authorities in different member countries.

Title VIII establishes common requirements on confidentiality and information sharing and the ninth and last, the final requirements and aspects related to the transition period until full implementation of the standard has been effected.

The full text of the standards may be found in the following pdf: