Commodity Markets Council - Europe

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Summary note:

CMCE EMIR REFIT meetings, 28 February 2018 (Brussels)

& call with Zara Colvile, assistant to Kay Swinburne MEP

CMCE was represented by Marco Goehns (ADM), Ian Mulligan (BP) and Anna-Maria Karjalainen (Hume Brophy).

CMCE met with:
Vincent Derbali and Gilles Herve, DG FISMA EMIR team
Nicolas Dorgeret, European Parliament ECON Secretariat
Tobias Mac-Lean, Assistant of Jakob von Weizsäcker MEP

A call was also held on 26 February with Zara Colvile, assistant of Kay Swinburne MEP

Zara Colvile, Assistant of Kay Swinburne MEP (ECR Shadow Rapporteur)
- Most of the call was taken by CMCE explaining its suggestions for an amendment on the calculation of positions against the clearing thresholds, as well as other CMCE positions on key issues. - Colvile took note of the CMCE suggestions and committed to raising these with Kay Swinburne, in particular as regards the suggested amendment, given the deadline for amendments was on 28 February. - She confirmed that Kay Swinburne's position on ETD reporting was similar to the Council's, i.e. in support of assessing ETD reporting and possible duplicating requirements at a later stage.
Vincent Derbali and Gilles Herve, DG FISMA EMIR team (28.2.2018)
- On **timing**, the FISMA team said the aim was to have EMIR REFIT adopted before the expiry of the current exemption for pension funds in August. - **ETD reporting**: complicated questions need to be solved regarding how CCPs pass on information about intermediaries down the chain in order to make delegated reporting work.

It was decided that this should be pushed back to avoid making changes to the system twice in a short period of time, as that would probably also be burdensome for NFCs. The aim behind the EC proposal was to provide relief for NFCs while maintaining the same data quality. To reassess whether there is some data that does not need to be reported, we would need a political decision on whether some data can be lost, and/or detailed L2 discussions on the exact requirements.

- CMCE commented that under the Council proposal, the assessment of ETD reporting and potential duplication with MiFIR requirements is being pushed back by several years – could this not be done sooner? The FISMA team responded that given the preparation timelines, ESMA would actually need to start its assessment 6 months after entry into force under the Council proposal, which isn't that much.
- **OTC reporting**: CMCE raised the problematic nature of the Council text which says NFCs must make "all necessary arrangements" to provide information to FCs to report on their behalf. This risks in practice putting the burden back on the NFC. Suggestions by FCs to include a detailed and broad list of information that NFCs would need to provide is particularly problematic in this respect. There is a risk that different banks will ask for different information, in different formats which will create additional complexity. This could disincentive NFCs to use different providers.
- The FISMA team acknowledged this, and commented that in reality there are likely to be only a limited number of problematic fields for NCFs. CMCE noted that in particular the hedge / spec information was difficult to provide.
- **Intra-group exemption**: CMCE asked what the concerns of MS were in restricting the exemption to NFC to NFC transactions only, as this did not seem to make much sense. The FISMA team noted this related to a political question of how NCAs intend to supervise entities. Some NCAs had concerns that this data was their only way to check on whether clearing thresholds were being breached. The EC did not have a firm position on this, it was more a question for MS supervisors and ESMA.
- **Calculation against clearing thresholds:** The Commission clarified that the March-April-May period on which the annual calculation against clearing thresholds is based comes from the RTS on margin requirements under EMIR, these timeframes were intentionally aligned. On CMCE's suggestion to provide more flexibility by allowing an NFC who exceeds the threshold on the basis of the annual calculation to recalculate on a quarterly basis, the EC did not seem convinced this would make sense and asked why you would want to do that if it is in the first place difficult to set up clearing relationships. The assumption seemed to be that once you clear, you will want to continue clearing. CMCE clarified that the quarterly calculation would be backward looking and NFCs could be asked to show that the result is consistent over a longer period of time, exactly to avoid firms moving frequently above and below the threshold. The EC was more positive on the suggestion that as an alternative, the annual calculation could be based on a 12-month period, to make sure the result is representative.

Nicolas Dorgeret, Administrator in the ECON Secretariat

- CMCE talked through all key issues as per the CMCE position. N. Dorgeret commented that for the Parliament reporting was considered a relatively technical issue, which meant that MEPs would take input from their national authorities. The pensions exemption was the most politicised issue at the moment. There had not been much discussion about the Rapporteur's proposals to ease the collateral requirements for NFCs and this would be a political issue.
- On the **timeline**, Dorgeret was sceptical about the possibility of adopting the text by August and noted that this would in any case be too late for the revised text to apply before the

expiry of the pensions exemption. Therefore it should be sufficient to have an aligned vision between the institutions on this point in trialogues, so as to provide political guidance to the NCAs ahead of August. The Parliament was not in a great hurry to finalise discussions if more time was needed.

Tobias Mac-Lean, Assistant of MEP Jakob von Weizsäcker (S&D Shadow)

- Mac-Lean seemed somewhat sympathetic to CMCE concerns that if much of the relief in the Commission proposal on reporting is removed, the proposal won't achieve the objective of easing the burden for NFCs, but at the same time not really convinced that there was a need or the possibility to do much in this direction.
- He asked for views on possibly extending to NFCs the proposal by the Rapporteur that for FCs the assumption would be that they need to clear, unless they decide to perform the calculation against the clearing thresholds and show they are underneath.
- On the **intra-group reporting exemption**, he shared the concerns raised by some national authorities that extending the exemption to transactions with FCs could increase risk to financial stability. He noted that there could be a domino effect if a FC within a group defaults as regulators would have no visibility over its links with NFCs. The definition of intra-group is not clear, so it is difficult for regulators to assess whether transactions are actually intra-group, if they are not reported. He said this view was the result of extensive discussions with national and European regulators.
- On the **reporting** requirement generally, he questioned the benefits of delegated reporting and said that in an ideal world, you would try to simplify and automate reporting instead of putting in place complex delegation arrangements.
- On the **calculation against the clearing threshold**, he supported basing the annual calculation on a 12-month period.