



**COUNCIL OF
THE EUROPEAN UNION**

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"I" ITEM NOTE

from : Presidency
to : Permanent Representatives Committee

No. Cion prop. : 13917/10 EF 117 ECOFIN 543 CODEC 879 - COM (2010) 484 final

Subject : Proposal for a Regulation of the European Parliament and of the Council on OTC
 derivatives, central counterparties and trade repositories
 - Progress report

I. INTRODUCTION

1. On 15 September 2010 the Commission transmitted to the Council its proposal for a Regulation of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories.
2. The opinion of the Economic and Social Committee was adopted on 8 December. The opinion of the European Central Bank on the proposal is expected to be delivered this month. The position of the European Parliament is still pending.
3. The proposal has been examined by the Working Party on Financial Services at five meetings during the Belgian Presidency (7 October; 4, 19 and 26 November; 10 December).

4. For the purpose of these discussions, the Presidency has tabled two compromise proposals. The latest one, discussed during the Working Party meeting of 10 December, is set out in doc. 17615/10 EF 206 ECOFIN 824 CODEC 1482.

II. STATE OF PLAY

5. Following the last meeting of the Working Party, the Presidency is in a position to present the following summary of the main outstanding issues:
 - a) Mandatory clearing obligation

The open issues relate to: whether outstanding derivative contracts will also be subject to a mandatory clearing obligation (backloading), the modalities of a phased-in implementation of this obligation; the precise determination of the criteria used to decide which contracts will be subject to the obligation; and, the possibility to further exempt certain specific categories of participants.
 - b) Scope of the clearing requirements

In accordance with the latest Presidency compromise proposal, bilateral or central clearing requirements are imposed to derivatives contracts irrespective of whether they are concluded on the over-the-counter markets or not. Some delegations are considering the precise impact of this approach.
 - c) Competent authorities for authorisation and ongoing supervision and oversight

The opinions diverge on whether ESMA or the competent authority of the Member State where the central counterparty is established should have a more dominant and decisive role in the authorisation and ongoing supervision of the central counterparty. Furthermore, the opinions also diverge on how this Regulation proposal should take into account the oversight competencies of the members of the ESCB in this respect. Comparable divergences exist, although to a lesser extent, with regard to trade repositories and to third-country entities.
 - d) Elaboration of technical standards

The proposal to involve the members of the ESCB in the elaboration of the technical standards, thus reflecting EU central banks' competencies and existing practices, is under scrutiny.

e) Third country central counterparties

The process for the recognition of third-country central counterparties that intend to provide clearing services in the Union is being aligned with the corresponding requirements set by relevant third countries for foreign central counterparties.

f) Segregation and portability

Collateral provided to a central counterparty as margin or as default fund contribution may, under strict prudential requirements, be reused by the central counterparty, provided that the relevant clearing member or client agrees with this. Furthermore, the conditions for the portability of an individual client's, or aggregate clients' positions and related collateral are clarified. Some Member States are reflecting on these approaches.

g) Central counterparty interoperability arrangements

A minority of Member States propose to heighten the conditions for granting a central counterparty the right, restricted to cash financial instruments, to enter into an interoperability arrangement with another central counterparty.

6. Apart from the above-mentioned open issues, there is a considerable degree of convergence of views on the rest of the text, where the Presidency is of the view that most of the remaining open issues can be resolved by further technical drafting.

V. CONCLUSION

Against this background the Permanent Representatives Committee is invited to:

- take note of the progress achieved with regard to the proposal; and
- invite the incoming Hungarian Presidency to continue work on this proposal.