



Mr Michel Barnier
Commissioner for Internal Market and Services
European Commission
Rue de la Loi 200
1049 Bruxelles

22 October 2012

Dear Commissioner,

I write to you regarding the ESMA draft regulatory technical standards in the area of 'over-the-counter' (OTC) derivatives markets. BUSINESSEUROPE has sent you its views on this issue earlier in our 16 May 2012 paper which you find enclosed for ease of reference, but we would like to specifically refer to some issues set out in the ESMA report that are of particular concern to us.

Although we support the notional values proposed, we believe that the clearing obligation should not apply across all classes of OTC derivatives as a result of a clearing threshold breach in one specific asset class. In our view, only OTC derivatives in the same asset class as the specific clearing threshold that has been breached should be subject to the clearing obligation.

This would not only align the rules closer with those that are developed in the US but would also acknowledge that even if one class of OTC derivatives is deemed to have accumulated systemic relevance, that this is not automatically true for all the asset classes. Only those classes of derivatives where the clearing threshold is breached should be considered as systematically relevant by subjecting only this class to the clearing obligation. BUSINESSEUROPE thus believes that there should be full segregation of the respective clearing obligations according to the asset classes proposed if there were to be several thresholds.

Then, ESMA suggests that the gross value of OTC derivative contracts should be used as a valid proxy of the measure to be taken into account in the determination of the clearing threshold. This contradicts the text of the Regulation which clearly states that for the clearing threshold the relevant basis is the sum of net positions and exposures per counterparty and per class of derivatives (Article 10 (4) EMIR). The reasoning given by ESMA also contradicts reality; non-financials are not in general positioned one-sided across derivative classes. Introducing a "simplification" which puts corporates at a disadvantage is not helpful and should be avoided. We thus believe that the net value should be taken into account. Again, this is also in line with the US approach.



We are also concerned about the proposal that derivative contracts entered into before 16 August 2012 which are not outstanding anymore should also be reported to a trade repository. This would lead to a situation where a one-month interest rate derivative contract which ended on 16 September 2012 should still be reported, including the burden to generate not-yet-existing trade identification numbers (see further below) retroactively. The Regulation refers to derivative contracts (Article 9 EMIR); if a derivative has ended there is no longer a contractual relationship and such transactions should thus not be reported with retroactive effect.

ESMA also proposes that it should be the responsibility of the counterparties to generate a Unique Trader Identifier which would need to label each trade in a format that is both exchangeable and error-proof across different counterparties (e.g. different trade repositories). The definition of a global legal entity identifier cannot be the responsibility of the counterparties as this would be extremely burdensome to coordinate. Also, the requirement that each transaction should contain an "Execution Time Stamp" in which the exact time of conclusion of the transaction should be indicated is very hard to administer in bilateral trades, which will also in the future be important for corporates that require tailored hedging structures. This should be the responsibility of the trade repository.

Lastly, we believe that the timely confirmation of transactions should be extended to four days instead of the two days proposed by ESMA as tailored transactions often cannot be confirmed electronically, thus requiring additional time. Transition provisions should also be more generous to allow companies sufficient time to prepare for the implementation of obligations.

We remain at your disposal should you wish to discuss this subject further.

Yours sincerely, *Cordis element,*

Philippe de Buck

Encl.