

**EUROPEAN COMMISSION**Directorate General Financial Stability, Financial Services and Capital Markets Union
FINANCIAL MARKETS

Director-General

Brussels, **16 JUN 2016**
FISMA C2 MF/BD/cd (2016) 3439354Mr Mark Carney
Chairman
Financial Stability BoardBy email: fsb@bis.org**Subject: Addressing Legal Barriers to Reporting of, and Access to, OTC Derivatives Transaction Data**

Dear Mr Carney,

Further to your letter of 13 March 2016 in which you remind all FSB member jurisdictions to report by June this year on their planned actions to address legal barriers in relation to trade reporting, which FSB members committed to as a follow-up action to the FSB's thematic peer review on OTC derivatives trade reporting published in November 2015, please find below the European Commission's response.

Please note that the present response addresses the points that were identified as legal barriers stemming from the implementation of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories ('EMIR'). The responses concerning legal barriers arising from specific national laws will be provided separately by the relevant EU Member State jurisdictions.

Finding 3 – Recommendations 2A and 2B**Reporting pursuant to foreign reporting requirements and Article 13 EMIR equivalence**

As the Final Report of the Thematic Peer Review on OTC Derivatives Reporting correctly states, there are no legal barriers at EU level to reporting to domestic trade repositories pursuant to foreign reporting requirements. Moreover, any national barriers to reporting pursuant to foreign requirements (stemming among others from the need to receive counterparty consent) would be superseded as soon as the European Commission has adopted an equivalence decision for the jurisdiction in question according to Article 13(1) and (3) of EMIR. The Commission is currently assessing several jurisdictions with a view to establishing whether such equivalence can be granted, and is in close contact with each jurisdiction being assessed as part of this exercise.

Reporting to a foreign TR pursuant to foreign reporting requirements and Article 13 EMIR equivalence

At EU level, EMIR allows counterparties to fulfil their reporting requirements by reporting to a foreign trade repository if the foreign trade repository has been recognised by ESMA to receive reports for that purpose. Such recognition de facto requires the conclusion of an international agreement and a cooperation arrangement with the relevant foreign authority. This requirement stems from the broader requirement within EMIR for an international agreement to be signed between the EU and a third-country jurisdiction in order to grant the relevant authorities within that jurisdiction direct access to data held in EU trade repositories.

As described in the following section, the international agreement requirement is currently being looked at as part of a review of EMIR.

Finding 8 – Recommendations 3A and 3B

Under EU law, where a trade repository is established in the jurisdiction of the foreign authority, direct access to EU trade repository data is granted only after the execution of both an international agreement and a cooperation arrangement with the relevant foreign authority. The Final Report of the Peer Review states that this is seen by some jurisdictions as a potential legal barrier to access to trade repository data.

As required by Article 85(1) of EMIR, the European Commission is currently undertaking an in-depth review of this Regulation. One of the elements being looked at as part of this review is the requirement for an international agreement. Options are being considered which would allow for the elimination of any legal barriers to access to data held by EU trade repositories and the reduction of burdens for authorities requesting such access, while at the same time continuing to ensure that European authorities' access to data held in foreign trade repositories is guaranteed by law.

It is at this stage too early to predict the outcome of the review, but the outcome should, in principle, be known in the second half of 2017. However, it is important to note that the recently adopted Securities Financing Transactions Regulation¹ has taken a more flexible approach towards this issue, considering that a relevant third-country legislative act which ensures foreign direct access to data held in domestic trade repositories can be considered as just such a legal guarantee and is therefore sufficient for direct access to be granted to authorities from that jurisdiction to data held in EU trade repositories.

Finding 10 – Recommendation 3C

With respect to operational and technical issues in authorities' access to trade repository-held data, the Commission fully supports the conclusions of the Final Report of the Peer Review calling for authorities and trade repositories to work together to facilitate the creation of appropriate operational frameworks that facilitate access to trade repository-held data.

In this respect, the European Commission is already quite active. In addition to the present group, it participates – either as a full member or as an observer – in several international work streams aiming at greater harmonisation and standardisation of reporting and access to OTC derivatives data. This includes the Working Group on the governance of the UTI and UPI (GUUG) and the ODRF, to name just a couple.

¹ Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012

Moreover, the European Commission is currently in the process of adopting revised technical standards on trade reporting drafted by ESMA, which include direct references to several international standards (ISO, LEI, etc.) as well as a number of other steps to simplify the reporting, aggregation, and access to data.

Finally, the ongoing review of EMIR is also looking at ways to minimise any operational and technical challenges with regard to authorities' access to trade repository data. More clarity is expected in this respect in the second half of 2017.

I trust that the above information will prove helpful. I take this opportunity to reiterate the Commission's support and appreciation for the FSB's continuing efforts to facilitate authorities' access to OTC derivatives data held in trade repositories. By allowing them to fulfil their legal obligations, this work will greatly contribute to achieving the goals set by the G20 in its Pittsburgh declaration.

I remain at your disposal should you have any questions on this matter.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, sweeping initial 'O' followed by a vertical line and a series of loops and flourishes.

Olivier GUERSENT