

Spain Response

Dear FSB Chair,

We would like to provide our national input regarding your letter of 13 March requesting feedback on planned actions to address legal barriers in relation to trade reporting.

In the FSB Thematic peer review on the reporting of OTC derivatives transactions to trade repositories Spain is mentioned as one of the EU member states with legal barriers in the case of reporting to a TR or TR-like entity pursuant to foreign reporting requirements.

In the Spanish case, this barrier derives from banking secrecy provisions contained in article 83 of the Spanish law transposing the 2013 EU Capital requirements directive –CRDIV- (<https://www.boe.es/boe/dias/2014/06/27/pdfs/BOE-A-2014-6726.pdf>), which reads as follows:

[Unofficial translation]

Article 83. Duty of secrecy.

“1. All persons subject to the discipline rules of credit entities are obliged to keep under strict confidentiality all information related to balances, positions, transactions and all other operations of their clients, without these being communicated to third parties or being subject to public disclosure.

2. Exempted from this duty is every piece of information whose disclosure or communication to third parties has been authorized by the client or by the law”

Thus, credit entities are forbidden under Spanish law to provide any information on clients' transactions (including OTC derivatives transactions) to any third party (including TR or TR-like entities) unless:

- A) Either the client has given standing consent, which is perfectly feasible through a specific clause under derivatives contracts;
- B) Or the law applicable in Spain authorizes or requests such a provision, which is the case for providing TRs with information on OTC derivatives contracts under the EU Regulation on OTC derivatives, central counterparties and trade repositories (EMIR). Additionally, Article 13 of EMIR allows credit entities to provide TRs with information on OTC derivatives transactions following foreign reporting requirements in case the European Commission has adopted an equivalence decision for the jurisdiction in question.

Consequently, we deem our current regulatory framework (both at EU and national level) allows sufficient leeway to accommodate eventual reporting requirements by foreign authorities.

Besides, given that the specific legal regime for reporting information on OTC derivatives transaction to TRs derives from an EU Regulation that is directly applicable in Spain and that equivalence decisions are taken by the European Commission, we prefer to refer to the response provided by the latter.

Your sincerely,

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