GDV
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Comments

of the German Insurance Association (GDV) ID-Number
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with view to the EMIR Review 2017

The German Insurance Association (GDV) is the federation of private insurers in Germany. Its more than 450 member companies are representing over 95% of the direct insurance market in Germany with investments totalling 1,509 bn EUR. Since the European Market Infrastructure Regulation (EMIR) came into force, many German insurers have to actively cope with the new regulation regarding directly managed investments.

German insurers clearly support EMIR's intentions. At the same time, however, the operational efforts and costs of EMIR are very high. In consideration of the European Commissions' intention to reduce disproportionate costs and burden, reliefs in particular are required in the areas of **intragroup transactions** and **dual-side-reporting** as well as for **small financial counterparties**:

1. **Facilitate exemptions for intragroup transactions**

   According to Article 11 (3) EMIR intragroup transactions need to be collateralized in principle like external transactions.

   a. However, intragroup transactions entered into by counterparties established within the same Member State are **by operation of law exempted** from the collateralization requirement due to Article 11 (5) EMIR without the need of any exemption

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application or notification if no practical or legal impediments to the prompt transfer of funds exist.

b. In contrast to this, intragroup transactions entered into by counterparties established in different Member States or third-country jurisdictions are not automatically exempted from the collateralization requirement but counterparties **have to apply and/or notify for exemption** in accordance with Articles 11 (6) to (10) EMIR.

We believe that such burdensome and work-intensive application and notification procedure is out of all proportion to any potential benefits. The **unequal treatment** of intra-national transaction on the one hand and European and international transactions on the other hand is **structurally inconsistent**. The considerations that justify the exemption of intragroup derivative transactions between counterparties within the same EU jurisdiction also apply to transactions involving two EU jurisdictions or one EU jurisdiction and one non-EU jurisdiction. In all cases, intragroup derivative transactions should ideally be exempt by operation of law from collateralization requirements, provided that there are no legal or practical impediments to the repayment of liabilities.

Where a decision has been taken as a policy matter, that intragroup transactions need collateralization and that exemptions for intra-European and international intragroup transactions require specific approval, we suggest to follow the following principles:

a. **One unique approval** by the home Member state regulator only;

b. **Contracts below certain thresholds** should be **exempted by virtue of law** from the collateral requirement;

c. **Exemption** by law for derivatives, which are part of **remuneration schemes.**

The changes requested would be appropriate for the following reasons: First, from an external perspective, intragroup derivative transactions only affect the internal parties involved **without any impact on the market** i.e. they do not change or enhance the risk profile of the group. Secondly, collateralization of all intragroup derivative transactions has **far reaching negative effects on the efficiency of a group-wide risk management**. Mandatory collat-

eralization, in essence, leads to a fragmented and rather complex risk mitigation structure, thereby introducing additional layers of operational and credit risks. Regulation of intragroup transactions does not contribute to financial stability.

In its report on the EMIR Review of 23 March 2016, the European Commission has itself announced to examine whether and to what extent it is appropriate at all to apply risk mitigation requirements (including collateralization) to intragroup transactions (see page 8, point 4.2.1.).

The conditions for exemptions of all intragroup transactions - also for European and international intragroup transactions - should be proportionate.

Finally, it should be noted that for the same considerations, the conditions for excluding intragroup derivative transactions from the central clearing obligation should be reviewed. It would be consistent to exclude intragroup derivative transactions from any central clearing obligation, provided that no legal or practical impediments to the repayment of liabilities exist.

2. Proportionate treatment of insurers with a limited volume of activity

German insurers very much appreciate the Commission Delegated Regulation C(2017) 1658 final of 16 March 2017 which proposes to **postpone clearing obligations for category 3 counterparties** until June 2019.

We welcome that **insurers with a limited volume of activity[1] receive additional reliefs within EMIR for proportionality reasons.** Otherwise small insurers might get crowded out of important hedging strategies. Hedging via derivatives is an indispensable asset management tool for insurers, in order **to safeguard parts of the restricted assets**, which cover the insurance companies' liabilities against their insurance clients. If insurers lose the possibility to hedge parts of the restricted assets at reasonable costs, the insurance clients might have to bear the consequences of lower investment performances.

[1] i.e. category 3 - insurers

According to the German Act on the Supervision of Insurance Undertakings (“Versicherungsaufsichtsgesetz”), insurance companies are only permitted to carry out non-insurance business to the extent it is directly related with insurance business. Such a relationship is deemed to exist if derivative contracts are to serve

a. as **hedge** against price and interest rate risks in connection with existing assets;

b. or **future purchases** of securities;

c. or if **any additional return** is to be generated on existing securities, without performance of delivery obligations causing a shortfall of the restricted assets.

Since the introduction of EMIR, insurance companies with a limited volume of activity are forced to reduce the use of such important hedging tools, because they cannot stem the administrative, operational and financial burdens of EMIR anymore. **Small insurance companies sustain competitive disadvantage** if they cannot hedge their portfolios at reasonable costs against future risks.

3. Reconsider dual-side reporting

Dual-side reporting, as introduced by EMIR, is extremely cost- and time intensive. It might already be questionable if dual-side reporting is necessary at all and if the improvement of data quality is of such significance, that this burdensome reporting system can be justified. At least as regards **exchange traded derivatives** dual-side reporting seems unnecessary. The parties acquire and sell derivative products under the respective market places conditions, so that **all details are agreed and no dispute can arise**. In case of exchange traded derivatives the mandatory **dual-side reporting does not improve data quality** and can therefore be changed into single-side reporting.

Finally, considering possible developments of the **Dodd-Frank-Act** in the United States, a European derivatives’ regulation should always reflect international standards. Global financial stability requires a level playing field and cannot be achieved by partial solutions.

Berlin/Brussels, 29 March 2017