

Comments

of the German Insurance Association (GDV)

ID Number 6437280268-55

**on the clearing obligation for financial counterparties with a
limited volume of activity**

(ESMA 2016/1125)

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Summary

German insurers welcome the opportunity to respond to the ESMA consultation paper. The document appropriately identifies a number of challenges that small counterparties and/or counterparties with limited derivatives activity face in practice.

The need for a more proportional approach on the application of EMIR was already raised by the German Insurance Association (GDV) in the context of the EMIR-Review. In order to conform to the comprehensive principle of proportionality, small insurance companies should experience substantial reliefs in the context of EMIR. Because of the administrative, operational and financial burdens resulting from EMIR, small insurance companies might otherwise be forced to reduce important hedging strategies for their restricted assets in future.

1. Access to clearing for financial counterparties

Question 1:

To which category of counterparties does your organisation belong: (1) in the context of the 1st Commission Delegated Regulation on the clearing obligation, and (2) in the context of the 2nd Commission Delegated Regulation on the clearing obligation?

Please indicate the likely category of counterparties if the determination has not been done yet. For respondents that are in none of the four categories, please indicate the nature of the activity performed in relation to the clearing obligation (e.g. CCP). For associations, please indicate the category of counterparties that you mainly represent.

Answer to question 1:

The German Insurance Association (GDV) is the federation of private insurers in Germany with about 460 member companies. GDV's members range from world market leaders to big and medium sized insurances and insurance groups as well as small and very small entities.

As we did not receive feedback from all our members with regard to the current ESMA consultation a 100 % accurate answer cannot be given. However, to the best of our knowledge no German insurance company belongs to category 1. German insurance companies – and even the big ones - tie themselves to clearing brokers and members in order to receive access to clearing services provided by CCPs. Therefore all German insurance and reinsurance undertakings should be classifiable as category 2 or category 3.

As we have already highlighted in the course of the EMIR-Review last year, we are of the opinion that many regulations of EMIR do not fit for small and very small insurers. Insurance companies predominately use financial derivatives to carefully hedge parts of their restricted assets, which cover the insurance companies' liabilities against their insurance clients. These hedging strategies - and the corresponding acquisition of financial derivatives on the buy-side - are important instruments of the insurers' asset liability management. Since the stepwise introduction of EMIR, small insurance companies 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.

Question 2:

If you offer clearing services, please provide evidence on the constraints that would prevent you from offering clearing services to a wider range of clients.

Answer to question 2:

Not applicable.

Question 3:

Have you already established clearing arrangements (1) for interest rate swaps? (2) for credit default swaps? If not, please explain why (including the difficulties that you may be facing in establishing such arrangements) and provide an estimation of the time needed to finalise the arrangements.

Many European insurance companies have already established clearing arrangements – and this is especially the case of larger entities and entities that have significant derivative activities.

Answer to question 3:

The onboarding process is more time consuming than many insurance companies have expected. In particular smaller entities, which cannot benefit from intragroup experiences and project organisation, might have underestimated the efforts necessary.

2. Current level of CCP clearing experience of financial counterparties**Question 4:**

Please provide information and data you may have that could complement this analysis on the level of experience and preparedness of financial counterparties with CCP clearing.

Answer to question 4:

We cannot provide figures in this regard.

3. Identification of Financial Counterparties with a limited volume of activity

Question 5:

Do you agree with the proposal to keep the definitions of the categories of counterparties as they currently are and to postpone the date of application of the clearing obligation for Category 3? If not, which alternative would achieve a better outcome?

Answer to question 5:

The classification of the counterparties in connection with the clearing obligations has just been finalised or is near to be finalised. We therefore support ESMA's proposal to use the categories already introduced and well known by market participants. New thresholds would require additional calculations and new organisational structures and processes. In a complex regulatory framework like EMIR, it might be advisable using existing structures wherever possible.

4. New phase-in period for Category 3

Question 6:

Do you agree with the proposal to modify the phase-in period applicable to Category 3, by adding two years to the current compliance deadlines?

Answer to question 6:

We support the two-year extension which seems proportionate in particular with regard to the minor portion of derivative business carried out by category 3 counterparties. The deferment should however not hide the fact, that small financial entities face problems onboarding CCPs. These practical problems might be considered and improved in order to solve and not postpone the problem.

Berlin, 5 September 2016