

**Mr. Michel Barnier
Vice-President of the European
Commission, responsible for Internal
Market, Services
European Commission
BERL 12/181
B - 1049 Brussels (Belgium)**

Ref: Postponement of reports due by ESMA under Article 85.3 of EMIR

Dear Mr. Barnier,

According to Article 85.3 of EMIR, ESMA shall submit to the European Commission, the European Parliament and the Council by 30 September 2014 the following reports:

- (a) on the application of the clearing obligation under Title II and in particular on the absence of the clearing obligation for OTC derivative contracts entered into before the date of entry into force of this Regulation;
- (b) on the application of the identification procedure under Article 5(3);
- (c) on the application of the segregation requirements laid down in Article 39;
- (d) on the extension of the scope of interoperability arrangements under Title V to transactions in classes of financial instruments other than transferable securities and money-market instruments;
- (e) on the access of CCPs to trading venues, the effects on the competitiveness of certain practices, and on the impact on liquidity fragmentation;
- (f) on ESMA's staffing and resources needs arising from the assumption of its powers and duties in accordance with this Regulation; and
- (g) on the impact of the application of additional requirements by Member States pursuant to Article 14(5).



In December 2012 ESMA delivered to the European Parliament, the Council and the Commission a report on its staffing and resources¹ needs arising from EMIR, as requested under Article 90 of EMIR. We believe that this report already covers point (f) above and there is no need to re-submit another report on the same subject.

With respect to the other reports, I would like to note that according to the first draft technical standards on the clearing obligation for Interest Rate Swaps (to be submitted in the coming days), the clearing obligation will only start applying as of the second half of 2015 and only for a limited number of counterparties. Therefore the report under point (a) can only be submitted at a later date following the assessment of a broader application of the clearing obligation.

As for the report under point (b), I would like to underline that the clearing obligation procedure was also only recently initiated, with some delay compared to the timeline envisaged at the adoption of EMIR, when the original deadline (30 September 2014) for submission of the reports in Article 85.3 was set. Indeed, the first CCP authorisation (being a precondition for the start of the clearing obligation procedure) was only granted on 18 March 2014, while 7 out of the 13 EU-CCPs so far authorised were granted their authorisation only after June 2014.

With reference to the reports under points (c), (d), (e) and (g), we would like to underline that the process for the authorisation of EU CCPs is not yet completed, and it would be thus premature, in ESMA's view, to submit these reports while this process is still on-going.

Therefore, I would like to inform you that ESMA will postpone the submission of the above mentioned reports in order to be able to reflect therein the experience gained throughout the authorisation process of EU CCPs, once completed, and the finalisation of Regulatory Technical Standards (RTS) on the clearing obligation, once adopted. In particular, ESMA plans to start the preparation of the report on the application of the identification procedures under Article 5(3) of EMIR (point (b) of Article 85.3) as soon as the first RTS on the clearing obligation is adopted.

I trust that you will appreciate that the postponement of these reports is appropriate in order to ensure that they will achieve their purpose and will convey meaningful evidence.

¹ <http://esma.europa.eu/system/files/2012-874.pdf>



Yours sincerely,

A handwritten signature in blue ink, consisting of a stylized 'S' followed by a vertical line and a horizontal stroke.

Steven Maijoor

Chair

European Securities and Markets Authority

cc:

Mr. Roberto Gualtieri, Chair of ECON

Mr. Pier Carlo Padoan, Chair of ECOFIN