



Alternative Investment
Management Association

**AIMA Update Note
on the draft EU OTC derivatives Regulation
following the ECON Committee discussions
of 4 July 2011 and the EP plenary vote of 5
July 2011**



July 2011

1. Background

On 15 September 2010, the European Commission published its 'Proposal for a Regulation on OTC derivatives, central counterparties and trade repositories', commonly referred to as the 'European Market Infrastructure Regulation' or 'EMIR'. The Commission's proposal takes forward the European Union's commitments as part of the G20 regarding trading, clearing and reporting of OTC derivatives¹.

As part of the European ordinary legislative procedure, the European Parliament (EP), through its ECON Committee and the Council of Ministers (the Council) have been preparing separate agreed amendments to the Commission's Proposal. Once the EP and Council each agree their individual proposed amendments, these institutions, along with the Commission, are expected to engage in a series of trilogue negotiations in order to find a compromise acceptable to all parties.

On 4 July 2011, AIMA sent its members an update note, which provided a detailed analysis of how the key issues in the Commission's draft Proposal are being dealt with by the EP and Council. The previous update note additionally speculated on how the Proposal may be dealt with in the legislative process, including the possibility that the ECON Committee would seek to gain approval in the EP of EMIR only at a second reading. In light of an ECON Committee meeting on 4 July 2011 and an EP plenary vote to formally approve the ECON Committee's proposed amendments on 5 July 2011, we now wish to provide AIMA members with a further update on how we believe EMIR will progress in the legislative process.

2. ECON Committee discussion

On 4 July 2011, the ECON Committee held a meeting to discuss the EP plenary session taking place the following day, as well as discuss submitted plenary amendments to, and the future course of, EMIR.

Our previous understanding had been that the EP's rapporteur on EMIR, Werner Langen, would seek a second reading passage of the Proposal, in a possible attempt to gain concessions from the Council on certain key elements.

At the ECON Committee meeting, however, Mr Langen appears to have had a change of mind and has decided, instead, to postpone the first reading vote and commence trilogue negotiations with the Polish Presidency of the Council. His intention, therefore, seems to be to reach a compromise position on amendments to the Commission's draft Proposal and for the EP to approve the compromise amendments at first reading at a plenary session. The text would then be formally adopted by the Council.

At the meeting on 4 July 2011, Werner Langen stated:

"The Hungarian Presidency did good work but there are some conflicts in their position and ours and therefore the issue has been handed to the Poles, and we are confident that we can find a solution with them. ECON has decided that it wishes to postpone the final vote until September to allow for negotiations to commence with the Polish Presidency."

It is believed that this last minute change of tactics has resulted from strong pressure on Werner Langen from a number of MEPs and the other institutions who feared that sending the text to a second reading would significantly delay the adoption of EMIR. Second reading agreements typically tend to take, on average, up to

¹ In September 2009, the G20 leaders at the Pittsburgh Summit agreed that "All standardized OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest. OTC derivative contracts should be reported to trade repositories. Non-centrally cleared contracts should be subject to higher capital requirements".



twice as long to conclude (24 to 31 months) as first reading agreements (15 months) from the moment the Commission Proposal is introduced.

3. European Parliament plenary vote

On 5 July 2011, the EP in plenary session voted on and approved the proposed amendments to the Proposal approved by the ECON Committee on 24 May 2011 (the ECON Text), with only a small number of minor amendments. On the voting record, we understand 393 MEPs voted in favour of the ECON Text, 244 MEPs voted against it and 13 MEPs abstained.

The ECON Text, as amended at EP plenary, will now be the EP's position of the EP when it enters into trilogue negotiations with the Council and the Commission.

4. Next steps

Serious negotiations between the EP, the Council and the Commission will not start until the Council reaches an agreement (general approach) on its set of amendments to the EP proposal. It is still expected that informal trilogues will be held with the Polish presidency even if the Council has not finalised its own position. Council is expected to agree a general approach in October. That general approach may already contain some EP demands to speed up the final talks. All institutions aim to finalise the agreement before the end of the year but it cannot be excluded that negotiations spill over to the Danish presidency in 2012 as there still seems to be a fairly high number of open issues.

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