

Corporate & Financial Weekly Digest

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EU Council of Ministers Updates Position on EMIR

On January 24, the EU Council of Ministers (the Council) published a press release setting out its evolving position with respect to the proposed European Market Infrastructure Regulation (EMIR).

The press release indicates that the Council has adjusted its position in negotiations on EMIR with the European Parliament to “facilitate rapid agreement” so as to enable EMIR to be adopted by the European Parliament at first reading.

The main change relates to the introduction of an enhanced role for European Securities and Markets Authority (ESMA) and the college of national regulator supervisors in the procedure for authorizing central counterparties (CCPs). The Council’s earlier approach specified that authorization of a CCP by its home member state regulator could only be blocked by a negative opinion of the college of supervisors supported by a vote of “unanimity minus one” (i.e. all members of the college, excluding the home state regulator). The Council has now adopted an amended position introducing two additional alternative safeguards. First, following a negative opinion of the college of supervisors, with “unanimity minus one”, the home member state can refer the matter to ESMA for binding mediation; and second, if a sufficient majority in the college of supervisors opposes authorization of a CCP, the issue may be referred to ESMA for binding mediation. (“Sufficient majority” is defined as two-thirds of college members, with votes in the college limited to two per member state for colleges of up to and including 12 members, and three for colleges above that size.)

The Press Release also mentions changes in the Council position on two other points:

- CCPs from third countries will only be recognized in the EU if the legal regime of the relevant third country provides for an effective equivalent system for the recognition of CCPs authorized under foreign legal regimes.
- Pension schemes will be exempt from the clearing obligation for three years, extendable by another two years, and then a further year, subject to reports justifying the deferrals.

EMIR is due to be considered by the European Parliament in February 2012. For more information, click [here](#).

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