

EIOPA procedure on Handling requests for temporary exemption from clearing obligation in accordance with Art. 89 (2) of Regulation 648/2012 (EMIR)

EIOPA Occupational Pensions Stakeholder Group meeting Frankfurt, 28 February 2017

What is the relevance for OPSG?



- EMIR temporarily exempts pension scheme arrangements from the clearing obligation o until 16 August 2017
 - o COM proposes to extend to 16 August 2018
- Are there technical solutions to use non-cash collaterals?
- Is the exemption effective, i.e. is it beneficial to be exempted?
- If anything, what needs to be done from a regulatory perspective?

Background: Scope of temporary exemption PDD

• EMIR temporarily exempts

o until 16 August 2017 (to be further extended to 16 August 2018).

• pension scheme arrangements

- o most types of pension scheme arrangements, such as IORPs, are directly exempted by EMIR
- Article 89 (2) of EMIR sets out a <u>specific procedure</u> for pensions arrangements that fall under the criteria of Article 2 (10) (c) or (d) of EMIR before granting the temporary exemption from the clearing obligation according to Article 89 (1) of EMIR.
- from the clearing obligation of OTC derivatives o that are used to mitigate investment risks.

Background: What are Art. 2 (10) (c) or (d) pension scheme arrangements?



- (c) <u>occupational retirement provision businesses of life</u> <u>insurance</u> undertakings covered by Directive 2002/83/EC, provided that all assets and liabilities corresponding to the business are <u>ring-fenced</u>, managed and organised separately from the other activities of the insurance undertaking, without any possibility of transfer
 - o So far only 4 (out of 24) notifications based on (c)
- (d) any other authorised and supervised entities, or arrangements, operating on a national basis, provided that:
 - o (i) they are recognised under national law; and
 - o (ii) their primary purpose is to provide retirement benefits
 - o Majority of the notifications received (20 out of 24)

Background: What makes them eligible?



- An exemption is justified due to difficulties in meeting the variation margin requirements:
 - o pension scheme arrangements typically minimise their holdings of cash in order to maximise the efficiency and the return for their customers.
 - unless the clearing obligation can be endorsed by a suitable technical solution for the transfer of non-cash collateral as variation margins, it is expected that there are likely negative effects on the retirement income of future pensioners.

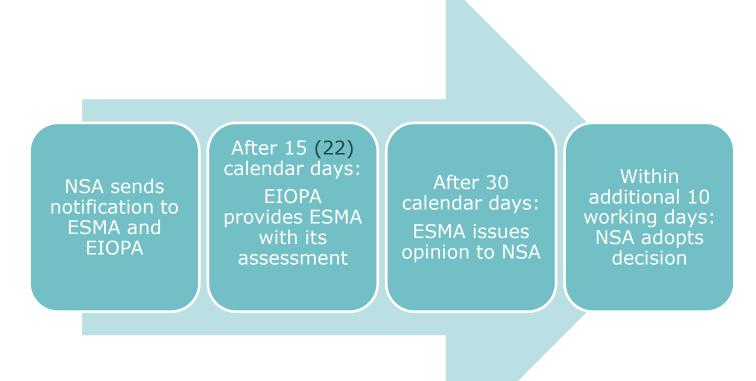
Background: What is EIOPA's role?



- <u>National competent authorities must expressly grant the</u> <u>exemption</u> for those specific types of pension arrangements, for which the eligibility must be assessed.
- Before granting the temporary exemption and <u>in order to</u> <u>ensure consistency</u>, to remove possible misalignments and <u>to avoid any abuse</u>, the national competent authority is <u>required to ask for ESMA's opinion</u> on the compliance of the criteria determining the eligibility of those types of entities or types of arrangements.
- Further, <u>ESMA is requested to consult EIOPA</u> before issuing an opinion assessing compliance of the type of entities or the type of arrangements.

Background: How does that work?





Background:

How does EIOPA assess compliance?

- Assess pension scheme arrangement data and specific information
 - o Provided by national competent authority (via template)
 - o Information in EIOPA's database on pension plans and products
- Assess information provided on liquidity and difficulties in meeting the variation margin requirements:
 - o Provided by national competent authority (via template)