{ EUROPE }

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Regulators are not as active about engaging with treasurers as they should be

Engaging with the European authorities on financial regulation is not for the faint-hearted. Two recent experiences have underlined for me the frustrations of dealing with EU process and its openness and accountability. Both relate directly to the implementation of the European Market Infrastructure Regulation (EMIR).

In view of the length of EMIR's gestation and the challenges faced in trying to protect the ability of corporates to continue to use uncleared OTC derivatives for risk management, one might naively (in hindsight) have hoped that the regulation's implementation would be straightforward. To many, it was clear from early on that this would not be the case.

Since then, what we have uncovered is a story of unprepared institutions, inadequate system testing by trade repositories, poor communication to corporates, inconsistent requirements on the part of national regulators and varying approaches to specific issues around unique trade identifiers (UTIs). The confusion has perhaps been best characterised by the different views prevailing at member-state level on how to treat FX forwards.

And so to the two recent events, linked to EMIR, which have not convinced me that Europe works well. The first is the official response to a letter we wrote to European internal market commissioner Michel Barnier. Our letter, sent just prior to the trade reporting start date in February, highlighted the sorts of implementation problems referred to above. We made a plea for support from Brussels for a sympathetic reaction by national regulators to challenges that corporates would have in complying with the letter of the regulation from day one. We also highlighted – and not for the first time – the difficulties associated with reporting intragroup transactions (without the involvement of banks) and the dubious risk-reduction benefits in the collation of such data.

The European Commission's response was largely a predictable defence of the implementation preparedness, without yielding anything on the case for restraint on compliance requirements. On the question of intragroup deals, the Commission once again asserted its view – which I for one find incomprehensible – that valuable regulatory and systemic risk oversight will be afforded by the reporting of these deals. This argument reinforced the feeling I have had since the financial regulatory reform programme kicked off in 2009, that the risk-mitigation role of treasury management is simply not understood in the corridors of the Commission.

The second event has been the European Association of Corporate Treasurers' (EACT's) reluctant conclusion that we had no alternative but to launch a formal complaint to the European Ombudsman over the approach taken by the European Securities and Markets Authority (ESMA) to stakeholder involvement in their work. You can read more about this on my EACT blog: www.eactchairman.wordpress.com. The issue revolves around the repeated failure of ESMA to appoint treasurers to its stakeholder groups. It looks to me as though ESMA is hiding behind a narrow, incorrect interpretation of how it is required to run these groups. Whatever the explanations, corporates are not being given the proper opportunity to participate within ESMA's processes. I see this as a serious failure on the part of the European regulatory body. That is why we have made the complaint to the Ombudsman.

The Commission's response to our letter highlighting what was going wrong with the EMIR implementation was worded with predictable 'Brussels-speak'. Nothing in that offers great encouragement to real dialogue and engagement. Our challenge to ESMA is over what we see as a fundamental flaw in stakeholder involvement – which, if it had been working as it should, might well have reduced the level of frustration recently experienced by treasurers. So there is no reason to be any less determined in future engagement with Brussels – and no reason not to anticipate continuing disappointment.

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