

Commissioner Mairead McGuinness

European Commission
Rue de la Loi / Wetstraat 200
1049 Brussels

2 December 2022

Dear Commissioner McGuinness,

The European Corporate Treasurers Association (EACT), EuropeanIssuers and Deutsches Aktieninstitut on the EMIR review and the regime for non-financial counterparties

We are writing to you representing a wide range of European non-financial companies in the context of the upcoming changes to the EMIR rulebook.

Derivatives are essential tools for companies of all sizes to manage uncertainties arising from their business activities. European companies will be facing risks linked to fluctuations in currencies, interest rates or commodities prices. The availability of these derivatives products for companies is even more important in the current context of high economic uncertainty we are facing.

We would like to stress the need for policymakers to consider with high caution any changes to the regime for non-financial corporates using Over-The-Counter (OTC) derivatives.

We are aware of the concerns raised by the recent events on the energy derivatives markets, which were largely observed on the futures markets. These concerns should be addressed appropriately and in a targeted way without unduly impacting the NFC regime. This regime has indeed proved efficient for most EU businesses.

We do not see any supervisory benefits from focusing on reporting of NFCs intragroup transactions. In NFC group, intragroup transactions do not represent a risk for the financial system – as contracts entered between a subsidiary and the head treasury entity are always replicated externally (and these transactions are fully reported to trade repositories). In fact, intragroup transactions within NFCs are risk neutral. In addition, the intragroup reporting exemption is only granted by competent authorities to companies that can demonstrate a solid internal risk management policy.

While we support the objectives of transparency to give supervisors a clear overview of non-financial companies' use of derivatives, we are concerned by proposals which would force

EU companies to report on their intragroup transactions again. We would caution that this idea, put forward by ESMA in September, has not been subject to a proper cost-benefit analysis despite the very real impact it could have on the costs of hedging for EU companies.

Today, European companies use derivatives to hedge in a prudent way, and report details of their OTC derivatives transactions to authorised trade repositories, including whether a transaction is for hedging purposes or not. In addition, while the recent review of the framework (EMIR Refit) usefully allowed companies to delegate the reporting of their external transactions to third parties, it would be impossible for companies to delegate the reporting of their internal transactions – creating significant costs which would penalise prudent risk management in companies of all sizes.

We want to extend an offer to have a continuous dialogue between EU authorities and the broader EU business community to ensure that the regulatory actions envisaged for OTC derivatives appropriately tackle the issues observed without endangering the overall efficiency of the framework.

Yours sincerely,



François Masquelier
Chair of EACT



Florence Bindelle
Secretary General at
EuropeanIssuers



Dr. Franz-Josef Leven
Deputy Managing Director
at Deutsches Aktieninstitut

About the **European Association of Corporate Treasurers (EACT)**

Representing the European economy, the EACT brings together 14 000 corporate treasury professionals active in 22 countries and working for around 6 500 individual non-financial companies. Corporate treasurers are the finance professionals of the real economy.

About **EuropeanIssuers**

EuropeanIssuers is a pan-European organisation strategically positioned to represent the interests of publicly quoted companies from all sectors.

About the **Deutsche Aktieninstitut**

Deutsches Aktieninstitut acts as the voice of capital markets and represent the interests of our members, German listed companies, at national and European level.