
FSMA_2026_01 of 16/01/2026

Guidance on EMIR

Scope:

EMIR (European Market Infrastructure Regulation)

Summary/Objectives:

EMIR aims to strengthen the European Union's regulatory framework for derivative transactions by improving stability, transparency and efficiency in derivatives markets.

Structure:

EMIR and its delegated and implementing regulations primarily regulate the mandatory use of central counterparties (CCPs) for standardised over-the-counter (OTC) derivative contracts and establish requirements in terms of risk management, including the exchange of collateral, for non-standardised OTC derivative contracts.

Furthermore, EMIR introduces an obligation to report derivative contracts to trade repositories in order to provide an overall picture of the functioning of derivatives markets and to provide competent authorities with details of derivative contracts entered into by the institutions subject to their supervision.

1. What is EMIR?

On 16 August 2012, [Regulation \(EU\) No 648/2012](#) of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (European Market Infrastructure Regulation - EMIR) entered into force.

This Regulation imposes three major obligations on market counterparties that hold any form of derivatives:

- the obligation to report all derivative contracts to a trade repository recognised by the European Securities and Markets Authority (ESMA) (Article 9 EMIR);
- the obligation to centrally clear OTC derivative contracts that ESMA has declared subject to this central clearing obligation (Article 4 EMIR);
- the obligation to apply risk mitigation techniques as referred to in Article 11 EMIR for OTC derivative contracts not cleared by a CCP, such as confirmation, daily mark-to-market, portfolio reconciliation and exchange of collateral^[1].

EMIR also provides a framework for the authorisation and supervision of CCPs and for the registration and supervision of trade repositories by ESMA.

[1] EMIR RTS on risk mitigation techniques for OTC derivatives not cleared by a central counterparty (CCP): [Commission Delegated Regulation \(EU\) No 149/2013 of 19 December 2012](#) and [Commission Delegated Regulation \(EU\) 2016/2251 of 4 October 2016](#).

2. Scope: to which products and entities does EMIR apply?

EMIR applies to all financial and non-financial counterparties (FCs and NFCs) that have entered into derivative transactions. The different forms of derivatives are listed in Section C (points 4 to 11) of Annex I to Directive (EU) No 2014/65/EU (known as “MiFID II”).

In Belgium, the NBB and the FSMA monitor compliance with the EMIR requirements of the counterparties falling under their respective competences.

The NBB is the competent authority with respect to FCs, such as credit institutions, stockbroking firms, insurance and reinsurance companies, settlement institutions, payment institutions and electronic money institutions that are subject to prudential supervision.

The FSMA is competent for NFCs (e.g. corporates) and certain FCs not falling under the prudential supervision of the NBB, such as UCITS, alternative investment funds, their management companies, and institutions for occupational retirement provision.

3. Obligations under EMIR

3.1 Clearing obligation

Which derivative contracts are subject to the clearing obligation?

The European Commission determines, based on regulatory technical standards developed by ESMA, which classes of OTC derivative contracts are subject to the clearing obligation and when this obligation takes effect.

In determining whether a class of OTC derivative contracts should be subject to the clearing obligation, ESMA aims for a reduction in systemic risk. In its decision, ESMA takes into account assessment factors such as the standardisation of derivative contracts, the volume and the liquidity of the different classes of OTC derivative contracts, whether there is a CCP authorised to clear such derivative contracts, and the availability of fair, reliable and generally accepted pricing information in the relevant class of OTC derivative contracts.

An overview of the derivative contracts subject to the clearing obligation is available [here](#).

From when does the clearing obligation apply?

In developing the regulatory technical standards that determine when the central clearing obligation applies, ESMA has adopted a phased-in approach. Under this approach, not all classes of derivative contracts are subject to the clearing obligation from the same date. The central clearing obligation depends on:

- the date from which a class of OTC derivative contracts is subject to the clearing obligation, and

- the categories of counterparties to a derivative transaction.

An overview of the regulatory technical standards that determine from when the clearing obligation applies to a class of OTC derivative contracts is available [here](#).

EMIR Refit and clearing thresholds

EMIR was amended on 17 June 2019 by [Regulation \(EU\) No 2019/834](#) of the European Parliament and of the Council of 20 May 2019 ("EMIR Refit") with a view to enhancing proportionality with the introduction of the concept of "small financial counterparties" (FCs-).

In accordance with Articles 4a and 10 of EMIR, as amended by EMIR Refit, a financial counterparty that falls under the competence of the NBB(FC) that, when calculating its positions, finds that it exceeds the clearing thresholds, must immediately notify the NBB and ESMA. The same obligation holds for NFCs and the FCs falling under the competence of the FSMA that fall above the clearing threshold, who need to contact the FSMA and ESMA. It must also make such notification if it does not carry out that calculation. In that case, it is immediately subject to the central clearing obligation.

The clearing thresholds and the verification procedures to be followed by the counterparties are set out [here](#).

The procedures for notifying the NBB of breaches of the central clearing thresholds are set out [here](#).

EMIR 3 and the active account requirement

EMIR was further amended on 24 December 2024 by [Regulation \(EU\) 2024/2987](#) of the European Parliament and of the Council of 27 November 2024 ("EMIR 3") with a view to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets.

EMIR 3 requires FCs and NFCs that are subject to the clearing obligation and exceed the clearing thresholds in the (aggregated) categories of derivative contracts identified in Art. 7a (6), to hold an active account at a CCP established and authorised in the EU. In accordance with Art. 7a (1) counterparties shall notify ESMA and the national competent authority when they become subject to the active account requirement (AAR). This notification is to be performed by completing and submitting the ESMA template ([AAR_notification_template.xlsx](#)) to [ESMA](#) and the relevant account supervisor by 24 June 2025. Notifications concerning FCs under NBB supervision (see list in Section 2) must be submitted to the [NBB](#). Notifications regarding active accounts by FCs and NFCs under FSMA supervision (see also Section 2) must be submitted to the [FSMA](#).

Current ESMA guidance indicates that the first reporting submission by entities subject to the active account requirement (AAR) is expected no later than July 2026. This initial submission should include information demonstrating compliance with the active account requirement for the period starting 25 June 2025, along with data for 2026. Further ESMA guidance will be published to support consistent reporting

3.2 Reporting obligation

Reporting of transactions to trade repositories

Article 9 EMIR stipulates that all derivative transactions must be reported to trade repositories (TRs). TRs are regulated by EMIR and are recognised and empowered by ESMA to collect and maintain the details of all derivative contracts. This reporting obligation covers both FCs and NFCs and applies to both OTC and exchange-traded derivative contracts.

The purpose of the reporting obligation is to improve the transparency in the OTC derivatives market. Counterparties must report every new transaction, as well as changes and other events, such as novation, compression, early termination, etc., throughout the contract period. For each derivative transaction, counterparties must provide information on the counterparties to the contract, as well as general information on the contract (execution date, maturity date, notional amount, currencies, etc.). Moreover, FCs and NFCs+ (NFCs exceeding the clearing threshold) must report the valuation of their outstanding derivative contracts on a daily basis. The specific rules regarding the reporting of updated valuations are available [here](#).

Market participants established outside the EEA are not subject to the reporting obligation. Since counterparties established in the EEA are subject to the reporting obligation, EEA entities are obliged to report information on counterparties established outside the EEA when entering into derivative transactions with them.

Under EMIR Refit, in transactions between an FC and an NFC- (an NFC not exceeding the clearing threshold), the FC is responsible, including legally, for reporting on behalf of both counterparties. This requirement came into effect on 17 June 2020. Similarly, the NFC is responsible for providing the FC with relevant information (for further information, see question 54 of [ESMA's Q&A on EMIR implementation](#)).

The list of reporting standards is available on [ESMA's website](#).

Reporting of clearing activity to competent authorities

EMIR 3 (article 7d) also introduces an annual reporting obligation relating to clearing activities with recognised third-country CCPs. This obligation applies to EU clearing members and clients of clearing services that clear transactions through third-country CCPs. The content and format of this reporting to competent authorities will be specified in technical standards that are yet to be published. Pending the adoption of these standards, the first reporting covering the 2025 reference period is postponed to the 2026 reporting cycle, in order to avoid inconsistencies and unnecessary compliance burdens for supervised institutions.

3.3 Risk mitigation techniques

Under Article 11 EMIR, counterparties holding derivative contracts not cleared by a CCP must have in place specific risk management procedures, such as the daily mark-to-market of such contracts, timely confirmation of transactions, regular portfolio reconciliation, portfolio compression, dispute resolution and exchange of collateral.

	Date of application	FC	NFC+	NFC-
Daily mark-to-market	15/03/2013	Yes	Yes	No
Timely confirmation	15/03/2013	T+1		T+2
Portfolio reconciliation	15/09/2013	Every day, week or quarter depending on portfolio size.		Every quarter or year depending on portfolio size.
Portfolio compression	15/09/2013	When counterparties have more than 500 contracts outstanding with each other, obligation to have procedures to analyse the possibility to conduct the exercise.		
Dispute resolution	15/09/2013	Procedures in place + reporting to the competent authority		Procedures in place
Exchange of collateral*	Phase in per amount of non-centrally cleared derivatives.	Yes		No

* Intragroup transactions are exempted

These risk mitigation techniques are laid down in [Delegated Regulation \(EU\) No 149/2013](#) and [Delegated Regulation \(EU\) 2016/2251](#). The latter relates in particular to the requirements regarding the exchange of collateral (variation margins and initial margins).

In accordance to Article 15, paragraph 2 of the EU Delegated Regulation (EU) 149/2013, financial counterparties must notify the NBB of any dispute with a counterparty regarding the valuation for an amount equal or above 15 million euros that has remained unresolved for 15 working days or more. The notification procedure is described [here](#).

Initial margin model validation for FCs and NFCs

EMIR 3 requires counterparties to apply for authorisation and validation of the model used for initial margin calculation. The NBB and the FSMA will follow [EBA's opinion](#) that any supervisory or enforcement action in relation to the processing of applications for initial margin (IM) model authorisation received will not be prioritised, until the relevant RTS have entered into force. Existing IM models remain in use following the entry into force of EMIR 3. FCs and NFCs currently subject to the requirement to exchange initial margin in accordance with EMIR and Art. 36 of the joint ESAs RTS on uncleared OTC derivatives ([Delegated regulation - 2016/2251 - EN - EUR-Lex](#)) are required to seek authorisation as soon as they implement any model change (including recalibrations) to their existing IM models, regardless of its materiality.

Until EBA establishes its central validation function, counterparties should submit the application to their relevant account supervisor (the [NBB](#) or the [FSMA](#)). If more than one legal entity in a group is

applying, a joint application should be sent, covering all the legal entities of the group using that IM model. Please note that significant credit institutions ought to liaise with the ECB regarding Art.11 on risk mitigation techniques for non-cleared derivatives, e.g. the authorisation of initial margin models.

4. Exemption conditions for intragroup transactions

EMIR provides for a possible exemption for intragroup OTC derivative contracts under certain conditions:

- exemption from the clearing obligation (Article 4(2) EMIR);
- exemption from the obligation to exchange collateral (Articles 11(6)-(10) EMIR);
- exemption from the obligation to report intragroup derivative contracts to trade repositories (Article 9(1) EMIR).

Further information on how to apply for an exemption can be found in the following circular:

[Circular NBB 2017 16 / Intragroup derivative transactions exemption procedure from the clearing and/or collateral exchanges obligations.](#)

For counterparties falling under the supervision of the FSMA, the [following template](#) must be filled in and sent to emirreporting@fsma.be