



FINANCIAL
SERVICES
AND
MARKETS
AUTHORITY



Communication

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Communication of the NBB and of the FSMA to the institutions that fall under their respective supervision on the obligations arising from the entry into force of Delegated Regulation of 19 December 2012 supplementing Regulation (EU) No 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ('EMIR')

Scope:

The EMIR obligations from Title II apply for the execution of derivative transactions.

Title II of the EMIR Regulation applies to two different categories of counterparties: 'financial counterparties' and 'non-financial counterparties'.

Financial counterparties include credit institutions, investment firms, insurance and reinsurance companies, UCITS and management companies of UCITS, institutions for occupational retirement provision, and alternative investment funds,

A non-financial counterparty means an undertaking established in the EU other than CCPs and financial counterparties. Payment institutions, electronic money institutions, settlement institutions, and institutions equivalent to settlement institutions are to be considered non-financial counterparties in this context.

Summary/Objectives:

The aim of this Communication is to inform institutions of their obligations arising from the entry into force on 15 March 2013 of the Delegated Regulations of 19 December 2012 which establish the regulatory technical standards of Regulation (EU) 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (referred to as 'EMIR').

Structure:

SCOPE

EMIR OBLIGATIONS

1. CLEARING OBLIGATION

1.1 Clearing obligation

1.2 Counterparties subject to a clearing obligation

1.2.1. Financial and non-financial counterparties above the clearing threshold

1.2.2. Ratione personae exemptions

1.3 Derivative contracts subject to a clearing obligation

1.4 Start date of the clearing obligation

2. RISK-MITIGATION TECHNIQUES FOR OTC DERIVATIVES CONTRACTS NOT CLEARED BY A CCP

2.1 Timely confirmation of the transaction

2.2 Daily marking-to-market of outstanding contracts

2.3 Portfolio reconciliation, compression, and dispute resolution

2.4 Exchange of collateral and holding of capital

3. REPORTING OBLIGATION

3.1 Reporting obligation

3.2 Start date of the reporting obligation

OVERVIEW OF THE DIFFERENT EMIR OBLIGATIONS AND THEIR START DATE

4. NON-FINANCIAL COUNTERPARTIES ABOVE THE CLEARING THRESHOLD

NATIONAL COMPETENT SUPERVISORY AUTHORITY(IES)

LEGAL TEXTS AND DOCUMENTS

FURTHER INFORMATION

Dear Sir or Madam,

The aim of this Communication is to inform institutions of their obligations arising from the entry into force on 15 March 2013 of the Delegated Regulations of 19 December 2012 which establish the regulatory technical standards of Regulation (EU) 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (referred to as 'EMIR').

The purpose of EMIR is to strengthen the regulatory framework of the European Union for derivative transactions by improving the stability, transparency, and efficiency of derivative markets. It aims to reduce credit, liquidity and operational risks to counterparties upon clearing OTC derivative transactions.

EMIR and its Delegated Regulations and Implementing Regulations primarily lay down rules on the obligatory use of central counterparties (CCP) for standardized over-the-counter (OTC) derivative transactions, and establish risk-management requirements - including on the exchange of collateral - for non-standardized OTC derivative contracts.

Alongside this, EMIR provides for mandatory reporting of derivative transactions to trade repositories to provide a global overview of the derivatives market and to give supervisory authorities oversight of the derivatives data for the institutions they supervise.

Finally, EMIR lays down the conditions and procedures for granting authorization to central counterparties and trade repositories.

EMIR and its Delegated Regulations and Implementing Regulations are binding in their entirety and have direct effect in Belgium (and in all other Member States of the European Union) from the date stated therein. This Communication provides an overview of the 'EMIR' obligations that apply to market participants - the clearing obligation, the risk-mitigation techniques for OTC derivatives contracts not cleared by a CCP, and the reporting obligations for derivative transactions as well as of the time at which the different obligations commence.

Yours faithfully,

Jean-Paul Servais
Chairman of the Financial Services and
Markets Authority

Luc Coene
Governor of the National Bank of
Belgium

OBLIGATIONS FOR MARKET PARTICIPANTS WITH REGARD TO OTC DERIVATIVE TRANSACTIONS BASED ON REGULATION (EU) 648/2012 ('EMIR')

SCOPE

The obligations of market participants with regard to OTC derivative transactions in the European Union are laid down in Regulation (EU) 648/2012 of 4 July 2012 on OTC derivative transactions, central counterparties and trade repositories ('EMIR' Regulation), and in the Commission Delegated Regulation and Implementing Regulation (EU) of 19 December 2012 supplementing Regulation 648/2012.

Title II of EMIR lays down rules for the mandatory use of central counterparties (CCP) for standardized over-the-counter (OTC) derivative transactions and lays down risk-management requirements - including on the exchange of collateral - for non-standardized OTC derivative transactions. Alongside this, EMIR provides for mandatory reporting of derivative transactions to trade repositories (TR).

Title II of the EMIR Regulation applies to two different categories of counterparties: 'financial counterparties' and 'non-financial counterparties'.

Financial counterparties include credit institutions, investment firms, insurance and reinsurance companies, UCITS and management companies of UCITS, institutions for occupational retirement provision, and alternative investment funds¹.

A non-financial counterparty means an undertaking established in the EU other than CCPs and financial counterparties². Payment institutions, electronic money institutions, settlement institutions, and institutions equivalent to settlement institutions are to be considered non-financial counterparties in this context.

The EMIR obligations from Title II apply for the execution of OTC derivative transactions. EMIR defines OTC derivatives or OTC derivative contracts as follows: "a derivative contract the execution of which does not take place on a regulated market as within the meaning of Article 4(1)(14) of Directive 2004/39/EC or on a third- country market considered as equivalent to a regulated market in accordance with Article 19(6) of Directive 2004/39/EC"³.

The EMIR obligations from Title II (clearing, reporting and risk mitigation of OTC derivatives) apply to the extent described hereinafter.

¹ Article 2, 8 of EMIR defines a financial counterparty as an investment firm authorized in accordance with Directive 2004/39/EC, a credit institution authorized in accordance with Directive 2006/48/EC, an insurance undertaking authorized in accordance with Directive 73/239/EEC, an assurance undertaking authorized in accordance with Directive 2002/83/EC, a reinsurance undertaking authorized in accordance with Directive 2005/68/EC, a UCITS and, where relevant, its management company, authorized in accordance with Directive 2009/65/EC, an institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC and an alternative investment fund managed by AIFMs (Alternative Investment Fund Managers) authorized or registered in accordance with Directive 2011/61/EU.

² Article 2, 9 EMIR.

³ Article 2, 7 EMIR.

EMIR and its Delegated Regulations and Implementing Regulations have direct effect in Belgium and in other Member States of the EU. The application of the different obligations is phased in over time⁴.

EMIR OBLIGATIONS

1. CLEARING OBLIGATION

1.1 Clearing obligation

All OTC derivative contracts that have been declared subject to the clearing obligation and that have been concluded between counterparties which are subject to the clearing obligation, must be cleared via a CCP⁵.

The transactions shall be cleared in a CCP that is authorized, or recognized if the CCP is established outside the EU⁶. In addition to capital requirements⁷, EMIR imposes rules of conduct and prudential rules for CCPs such as rules on the segregation and portability of positions and collateral, margin requirements, and the mandatory use of a default fund⁸.

The obligation to clear via a CCP can be complied with either as a clearing member or as a client of a clearing member, or even as a client of a client which is a credit institution or an investment firm⁹. The latter stipulation, called 'indirect clearing arrangements', requires a contractual arrangement and an equivalent level of protection for indirect clients, by way of suitable segregation and portability of positions and collateral¹⁰.

Transactions not cleared via a CCP are subject to a number of risk-mitigation techniques (see Point 2 hereinafter).

1.2 Counterparties subject to a clearing obligation¹¹

1.2.1. Financial and non-financial counterparties above the clearing threshold

The clearing obligation applies *ratione personae* primarily to financial counterparties.

⁴ See the table 'Overview of the different EMIR obligations and their start date' in this Communication on page 9. ESMA keeps a regularly updated calendar with the start date of the different EMIR obligations on its website at <http://www.esma.europa.eu/page/post-trading>.

⁵ See Article 4, 1 EMIR.

⁶ Article 4, 3 EMIR.

⁷ Article 16 of EMIR and Commission Delegated Regulation (EU) No 152/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on capital requirements for central counterparties.

⁸ See on the same subject Title III of EMIR and Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties.

⁹ Article 4, 3 EMIR.

¹⁰ See on this subject Article 4, 3 of EMIR and Chapter II of Delegated Regulation No 149/2013 of 19 December 2012.

¹¹ Article 4 EMIR.

Alongside this, the obligation applies to certain non-financial counterparties with positions in OTC derivative contracts that are above the clearing threshold (see Point 4 hereinafter)¹².

1.2.2. Ratione personae exemptions

Alongside the non-financial counterparties below the clearing threshold, certain other counterparties can be granted an exemption. Pension scheme arrangements¹³ can be granted a temporary exemption from the clearing obligations of an initial three years¹⁴, which can in certain cases be extended, but not from the obligation to apply risk-mitigation techniques, including the exchange of collateral for OTC derivatives contracts not cleared by a CCP (see point 2 hereinafter).

Intragroup transactions can be granted an exemption from the clearing obligation in certain cases. The use of an exemption requires prior notification to the competent supervisory authority(ies). The competent authorities can object to this exemption within 30 calendar days after receipt of the said notification¹⁵.

The intragroup exemption is an exemption to the clearing obligation and cannot therefore apply before the clearing obligation comes into effect. The formal notification for exemption pursuant to Article 4, 2 of EMIR is not expected prior to the competent authority of a CCP notifying ESMA that the CCP concerned is authorized to clear a certain class of derivative, provided for in Article 5 of EMIR.

1.3 Derivative contracts subject to a clearing obligation

EMIR provides for a specific procedure¹⁶ to determine which OTC derivative contracts (which classes of OTC derivatives) fall under the clearing obligation¹⁷. The European Commission takes the decision on this subject following a proposal by ESMA, by means of a regulatory technical standard. ESMA must previously consult the market and the European Systemic Risk Board.

Every OTC derivative contract¹⁸ indicated as such by the Commission, can be subject to the clearing obligation *ratione materiae*. EMIR includes framework criteria for the eligibility of an OTC derivative contract for the clearing obligation, namely its level of standardization and liquidity, and the availability of price information. Credit derivatives, fixed income derivatives, equity derivatives, FX derivatives and commodity derivatives can all be subject to the clearing obligation.

¹² See on the subject Article 10 of EMIR and Chapter VII of Delegated Regulation No 149/2013 of 19 December 2012.

¹³ Article 2,10 EMIR.

¹⁴ Article 89 EMIR.

¹⁵ See Article 3 and Article 4, 2 EMIR.

¹⁶ Article 5 EMIR.

¹⁷ Article 4 et seq. EMIR.

¹⁸ Contrary to OTC derivatives, exchange-traded derivatives are *de facto* already cleared via a CCP. The draft MiFIR now also explicitly provides that derivative trades that are concluded on the regulated market must be cleared via a CCP (art. 25 MiFIR).

The clearing obligation shall in principle only be valid for contracts that are concluded or renovated after the entry into force of the clearing obligation, i.e. after the decision by the Commission that the contract is subject to the clearing obligation¹⁹. Finally, it is highlighted that the Commission can also phase in the clearing obligation for a particular class of derivatives²⁰.

ESMA holds a public register with an inventory of the classes of OTC derivatives that are subject to the clearing obligation²¹.

1.4 Start date of the clearing obligation

The Commission determines the date on which the clearing obligation enters into force for a particular class of OTC derivatives²². In view of the decision-making procedure that must be followed, the clearing obligation will in all likelihood come into effect for the first time after Q1 2014²³.

2. RISK-MITIGATION TECHNIQUES FOR OTC DERIVATIVES CONTRACTS NOT CLEARED BY A CCP

OTC derivative transactions that do not need to be cleared via a CCP (for the clearing obligation, see point 1 hereinabove) are subject to a number of risk-mitigation techniques²⁴.

The obligations are the following:

2.1 Timely confirmation of the transaction

OTC derivative contracts must be confirmed within the set time frame following the date on which the contract was concluded. This obligation applies to all counterparties. The time frame set depends on the type of contract and the capacity of the counterparties, and becomes progressively shorter in accordance with the date of the contract. The confirmation must occur, where available, by electronic means²⁵.

Financial counterparties must have the necessary procedures in place to register the number of unconfirmed OTC derivative transactions that have been outstanding for more than five

¹⁹ Art. 4, 1, b EMIR. There is an exception to this. The Commission can still decide that the clearing obligation applies retroactively, depending on the remaining maturity of the contract, with the start date being the time at which a competent CCP supervisory authority has notified ESMA that it authorized the CCP to clear that derivative contract.

²⁰ Article 5, 2, b EMIR.

²¹ Article 6 EMIR. At the time of publishing this Communication, the ESMA register is not yet available. For further information, please see the ESMA website; <http://www.esma.europa.eu/page/post-trading>.

²² Article 5, 2 EMIR.

²³ ESMA holds a regularly updated calendar with the start date of obligations, which is available here: <http://www.esma.europa.eu/page/post-trading>.

²⁴ Article 11 EMIR.

²⁵ Article 11, 1 a) EMIR and its technical standards. For the specific time frames, see Article 12, 1&2 of Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing EMIR.

working days on a monthly basis, and report on this on request from the competent authority²⁶.

The obligation applies from 15 March 2013.

2.2 Daily marking-to-market of outstanding contracts

Financial counterparties and non-financial counterparties above the clearing threshold (see point 4 hereinafter) shall mark-to-market on a daily basis the value of outstanding contracts. Where market conditions prevent marking-to-market, reliable and prudent marking-to-model shall be used²⁷.

The obligation applies from 15 March 2013.

2.3 Portfolio reconciliation, compression, and dispute resolution

Portfolio reconciliation - All counterparties must reconcile their OTC derivative portfolios with each other in accordance with an agreement, if necessary using a qualified third party. The required frequency of reconciliation depends on the number of outstanding contracts between the parties and on their nature. Financial and non-financial counterparties above the clearing threshold (see point 4 hereinafter) must reconcile daily from 500 contracts, weekly from more than 50 contracts and always at least once a quarter. The other counterparties reconcile yearly or quarterly from 100 contracts²⁸.

The obligation applies from 15 September 2013.

Portfolio compression - All market participants with 500 or more OTC derivative contracts outstanding with a counterparty which are not cleared via a CCP must analyse the possibility of conducting a portfolio compression exercise at least twice a year on the outstanding OTC derivative contracts (i.e. multilateral netting of the contracts), to reduce counterparty risk. If the conclusion is that compression is not appropriate, the market participants must ensure that they are able to provide a reasonable and valid explanation to the relevant (national) competent authority²⁹.

The obligation applies from 15 September 2013.

Dispute resolution - All counterparties must have procedures in place for the resolution of disputes relating to the recognition or valuation of OTC derivative contracts and to the exchange of collateral. Financial counterparties are obliged to report to their competent (national) supervisory authority any disputes for an amount higher than EUR 15 million and outstanding for at least 15 business days³⁰.

²⁶ Article 12, 1&2, of Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing EMIR.

²⁷ Article 11, 2, EMIR and Article 16 of Delegated Regulation (EU), No 149/213 of 19 December 2012.

²⁸ Article 13 of Delegated Regulation (EU) No 149/213.

²⁹ Article 14 of Delegated Regulation (EU) No 149/213.

³⁰ Article 14 of Delegated Regulation (EU) No 149/213.

The obligation applies from 15 September 2013.

2.4 Exchange of collateral and holding of capital

EMIR requires risk management procedures for the timely, accurate and appropriately segregated exchange of collateral for outstanding (bilateral) positions of the OTC contracts that are not cleared by a CCP and that either are entered into on or after 16 August 2012 with respect to the financial counterparty, or on or after the date on which the clearing threshold is exceeded (see point 4, hereinafter) with respect to non-financial counterparties³¹.

Intragroup transactions are exempt under certain circumstances from the requirement to collateralize OTC derivative contracts that are not cleared via a CCP in a timely, accurate and appropriately segregated manner³². Consent from the national supervisory authority or authorities after notification is a prerequisite to exemption³³.

Financial counterparties must hold an appropriate and proportionate amount of capital to manage the risk not covered by appropriate exchange of collateral³⁴.

The final technical standards with the levels and categories of collateral and segregation rules, as well as the capital requirements, remain to be laid down by EBA-ESMA-EIOPA. The Commission shall mandate the ESAs once the BSCB-IOSCO market consultation on the subject is complete, and the BSCB and IOSCO have published their final report. The minimum levels for the exchange of collateral will in all probability be phased in from mid-2015³⁵.

3. REPORTING OBLIGATION

3.1 Reporting obligation

The reporting of all derivative contracts, even of "non-standardized" derivative transactions or of non-OTC transactions is obligatory for all counterparties. The reporting of contracts can be delegated to, inter alia, a CCP³⁶.

The reporting must occur no later than the working day following the conclusion, modification or termination of the contract.

³¹ Article 11, 3 EMIR.

³² See Article 3 and Article 11, 5 up to and including 11, 11 EMIR.

³³ Article 11, 5 up to and including 11,11 EMIR.

³⁴ Article 11, 4 EMIR.

³⁵ ESMA, EBA and EIOPA have consulted the market on this subject through a "Joint Discussion Paper on Draft Regulatory Technical Standards on risk mitigation techniques for OTC derivatives not cleared by a CCP under the Regulation on OTC derivatives, CCPs and Trade Repositories" of 6 March 2012. BCBS and IOSCO have launched two market consultations at an international level on this subject. The BCBS-IOSCO "Consultative document on margin requirements for non-centrally-cleared derivatives" (available at <http://www.bis.org/publ/bcbs242.pdf>) proposes imposing an "initial margin requirement (i.e. in addition to the exchange of "variation margin") from a certain minimum threshold. For further information, see <http://www.bis.org> or <http://www.iosco.org>.

³⁶ Article 9 EMIR. Non-financial counterparties under the clearing threshold do not have to report a number of details. See Article 3.4 of Delegated Regulation 148/1013 of 19 December 2012.

The reporting obligation applies to each contract that is concluded on or after 16 August 2012 or that remains outstanding on that date. A number of contracts will therefore have to be reported retroactively (see point 3.2 hereinafter - 'Reporting start date').

The data to be reported must include the counterparty details and the contract and transaction details. Alongside the transaction details, market data (valuation details) must be reported as well as the bilateral collateralization of derivative transactions, either per transaction or for the entire portfolio³⁷.

The reporting must be completed in the prescribed format laid down in the Implementing Regulation³⁸. The Implementing Regulation also determines the required frequency of reporting.

The reporting occurs in a trade repository (TR). The trade repository must be registered³⁹ or - if it is established outside the EU - recognized⁴⁰ by ESMA, and will be subject to ESMA's supervision. Transactions must only be reported to ESMA where there is no TR in operation for a certain class of derivatives.

Market participants are free to choose their TR. ESMA keeps a website listing the authorized trade repositories⁴¹.

The TR must inform market participants through the publication of aggregate positions per class of derivatives. Alongside this, the TR must have the data that it holds available for the competent supervisory authorities⁴².

All counterparties are obliged to keep a record of any derivative contract they have concluded and any modification thereof for at least five years following the termination of the contract⁴³.

³⁷ Article 9, 5 EMIR and Commission Delegated Regulation (EU) No 148/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories.

³⁸ Article 9, 6 of EMIR and Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012.

³⁹ Article 55 EMIR. For the transitional provisions, see Article 89, 7 and 8 EMIR.

⁴⁰ Article 77 EMIR.

⁴¹ Article 88, f, EMIR. At the time of publishing this Communication, the ESMA register is not yet available. For further information, please see the ESMA website; <http://www.esma.europa.eu/page/post-trading>.

⁴² Article 81 EMIR. See Commission Delegated Regulation (EU) No 151/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, with regard to regulatory technical standards specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data.

⁴³ Article 9.2 EMIR.

3.2 Start date of the reporting obligation⁴⁴

The reporting obligation for credit derivatives and interest rate derivatives starts 90 days after the registration of a trade repository established in the EU for this class of derivatives by ESMA.

For the other derivative contracts, the start date is 90 days after the registration of a trade repository established in the EU for that class of derivatives, or 1 January 2014 if the trade repository for that class of derivatives is registered before or on 1 October 2013.

If no TR is registered on 1 July 2015 for a certain type of derivative, ESMA must be reported to from that date.

The start dates apply for the contracts that remain outstanding on the start date. Contracts that are no longer outstanding on the start date must be reported within three years.

Finally, the reporting of the valuations and of collateral must start 180 days after the start of reporting for the class of derivatives concerned.

OVERVIEW OF THE DIFFERENT EMIR OBLIGATIONS AND THEIR START DATE

EMIR obligation	Start date of the obligation
<p style="text-align: center;">CLEARING OBLIGATION</p> <p>Obligatory use of a CCP for standardized OTC derivative transactions (Article 4 EMIR)</p>	<p>The obligations (relating to categories of OTC derivatives in question and the date of entry into force) are to be specified. That occurs by means of approval of the regulatory technical standards by the Commission upon recommendation from ESMA. The clearing obligation also supposes that the CCP is authorized under EMIR (which in all likelihood will occur in Q4 2013 at the earliest). The clearing obligation is not expected to start before Q2 2014.</p>
<p style="text-align: center;">RISK-MITIGATION TECHNIQUES</p> <p>for OTC derivative contracts not cleared through a CCP (Article 11 EMIR)</p>	
<p>Timely confirmation of OTC derivative transactions (Article 11, 1, a) EMIR); and</p>	15 March 2013

⁴⁴ Article 5 of Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012

	Daily valuation of contracts (Article 11, 2 EMIR)	
	Portfolio reconciliation Portfolio compression Dispute resolution (Article 11, 1, b) EMIR)	15 September 2013
	Exchange of collateral and capital requirements for OTC derivative transactions not cleared through a CCP (Article 11, 3 and 11, 4 EMIR)	The final technical standards with the levels and categories of collateral and segregation rules as well as the capital requirements remain to be laid down by EBA-ESMA-EIOPA. The Commission shall mandate the ESAs once the BSCB-IOSCO market consultation on the subject is complete and the BSCB and IOSCO have published their final report. The minimum levels for exchange of collateral will in all probability be phased in from the mid-2015.
REPORTING OBLIGATION		
	Obligatory reporting of derivative transactions to trade repositories (TR) (Article 9, EMIR)	For interest rate derivatives and credit derivatives, 90 days after registration of an EU trade repository; and, for other derivatives, 90 days after registration and at the earliest from 1 January 2014; in each case provided that a trade repository is recognized by ESMA for the class of derivatives to be reported.

ESMA holds a regularly updated calendar featuring the start dates of obligations on its website⁴⁵.

4. NON-FINANCIAL COUNTERPARTIES ABOVE THE CLEARING THRESHOLD

Article 10 of EMIR provides that each non-financial counterparty that takes positions in OTC derivative contracts which exceed the clearing threshold must:

- a) notify ESMA and the competent authority thereof immediately;

⁴⁵ See <http://www.esma.europa.eu/page/post-trading>.

- b) be subject to the clearing obligation for future contracts if the rolling average position over 30 working days exceeds the threshold; and
- c) clear via a CCP all relevant future contracts within four months of the date on which they became subject to the clearing obligation.

A non-financial counterparty which has become subject to the clearing obligation and subsequently demonstrates to the correct authority that its rolling average position over 30 working days does not exceed the threshold, is no longer subject to the clearing obligation⁴⁶.

In calculating the positions, each non-financial counterparty shall include all the OTC derivative contracts concluded by the non-financial counterparty or by other non-financial entities within the group to which the non-financial counterparty belongs, which are not objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group⁴⁷.

Chapter VII of Delegated Regulation No 149/2013 of 19 December 2012 lays down the clearing thresholds per category of class of OTC derivatives as follows: EUR 1 billion in gross notional value for credit derivatives and equity derivatives, and EUR 3 billion for interest rate derivatives, FX derivatives and for commodities and other derivatives. If the threshold is exceeded for only one class of derivative, then each new OTC derivative contract must be cleared via a CCP irrespective of the class to which it belongs.

NATIONAL COMPETENT SUPERVISORY AUTHORITY(IES)

The EMIR Regulation and its regulatory technical standards have direct effect. It is the responsibility of the Belgian legislator to refer to the national competent supervisory authority(ies) for the clearing obligation, the risk-mitigation techniques for OTC derivatives contracts not cleared by a CCP, and the reporting obligations, as well as to set out the sanctions that will apply in the event of breach.

With this Communication, the NBB and the FSMA intend only to provide information to the institutions subject to EMIR.

LEGAL TEXTS AND DOCUMENTS

- Regulation 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR Regulation) - Official Journal of the European Union L201 of 27 July 2012

- <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0001:0059:EN:PDF>

- Commission Delegated Regulation of 19 December 2012 of Regulation 648/2012 of the European Parliament and of the Council of 4 July 2012: - Official Journal of the European Union L52 of 23 February 2013

- <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0001:0059:EN:PDF>

- <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2013:052:SOM:EN:HTML>

⁴⁶ Article 10.2 EMIR.

⁴⁷ Article 10.3 EMIR and Chapter VII of Delegated Regulation No 149/2013 of 19 December 2012.

See in particular the following Delegated Regulations:

- Commission Delegated Regulation (EU) No 148/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories;
 - Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP;
 - Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties.
- Commission Implementing Regulations (EU) of 19 December 2012 for Regulation (EU) No 648/2012 of 4 July 2012 - Official Journal of the European Union L352 of 21 December 2012
- <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2012:352:SOM:EN:HTML>

FURTHER INFORMATION

The European Commission has published some FAQs on EMIR, which is available on: http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/EMIR-faqs_en.pdf

The European Securities and Markets Authority (ESMA) is competent in the first place to issue any potential guidelines for the interpretation of EMIR provisions and regulatory technical standards. Information on the obligations of EMIR and its Delegated Regulations and Implementing Regulations, and a time line for the start date of the EMIR obligations can be found on the ESMA website: <http://www.esma.europa.eu/page/post-trading>.

ESMA has also published an "EMIR Frequently Asked Questions" document which is regularly updated. The 4 June 2013 version of this document can be viewed on <http://www.esma.europa.eu/system/files/2014-682.pdf>.

For further questions, you can also e-mail the NBB (EMIR@nbb.be) and the FSMA (EMIR@fsma.be or EMIR-notifications@fsma.be).

DISCLAIMER

The aim of this Communication is to provide a necessarily simplified overview to the market participants concerned of the EMIR obligations and of their respective start dates. It is not intended to replace or supplement the Regulation or its implementing technical standards and is provided for information purposes only.