

Spotlight on EMIR Reporting

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What is EMIR and its objective?

EU regulation No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties, and trade repositories (European Markets Infrastructure Regulation or “EMIR”) was published in the EU Official journal on 27th February 2012 and came into force on 16th August 2012. As a regulation, EMIR applied directly in each EU member state. Its primary mandate, reflecting a commitment by the G20 countries under the backdrop of the 2008 global financial crisis, was to improve transparency of over-the-counter (“OTC”) European derivatives markets and to mitigate associated risks.

EMIR introduced several requirements related to OTC derivatives including central clearing, risk mitigation techniques and post-trade reporting. In this article, we focus on post-trade reporting requirements imposed on firms and how this challenging and complex area can be navigated effectively.

Scope of application

EMIR applies to any counterparty conducting activities in the EU that has entered derivative contracts (including OTC and exchange-traded derivatives (“ETD”)) relating to securities, currencies, interest rates, foreign exchange, or commodities.

EMIR introduces three primary types of counterparties:

- **Financial Counterparties (“FCs”):** FCs are defined in Article 2 of EMIR and include EU authorised Credit institutions, Investment Firms, Insurance

and Reinsurance Undertakings, Undertaking for Collective Investment in Transferable Securities (“UCITS”) and Alternative Investment Funds (“AIFs”).

- **Non-Financial Counterparties (“NFCs”):** NFCs are undertakings authorised in the EU that are not classified as FCs or Central Clearing Counterparties. For example, a logistics company looking to enter a forward hedging contract on fuel prices. NFCs are further categorised as i) Firms exceeding the clearing threshold (NFC+) and ii) firms below EMIR clearing thresholds (NFC-).
- **Central Counterparties (“CCPs”):** These are undertakings that clear certain classes of OTC derivatives between the counterparties to the contracts traded on one or more financial markets. The European Securities and Markets Authority (“ESMA”), which is the EU’s financial markets regulator and supervisor, must authorise any CCPs utilised.

The EMIR Reporting obligation explained

EMIR reporting requirements, effective from 12th February 2014, were first introduced via Article 9 of EMIR; of key importance was that reports were to be submitted “without undue delay after the trade is executed, and no later than the close of the following working day.” In addition, parameters concerning completeness and accuracy of report submissions were defined via a Regulatory Technical Standard (“RTS”) and an implementing technical standard (“ITS”)¹.



ESMA has published reporting guidelines² in support of EMIR, together with Q&As and detailed submission validation rules on their dedicated website landing page³.

Legislatively, the Central Bank of Ireland (“CBI”) has been designated the Competent Authority of EMIR in Ireland under Statutory Instrument No. 443 of 2014 (“the SI”).

EMIR was revised with the publication on 28 May 2019 of Regulation (EU) 2019/834 of the European Parliament and of the Council (“EMIR REFIT”) in the Official EU Journal, which came into force in June 2019. This amended the original EMIR regulation after the EU Commission identified there was a need to address unreasonable and overly complex requirements placed on small financial counterparties, pension funds and non-financial counterparties. Following EMIR REFIT both the original EMIR RTS and ITS were repealed and replaced by updated versions⁴.

It is important to note where the reporting obligation resides, dependent on counterparties involved:

- Where trades are executed between two FCs, each FC has the regulatory obligation to report to an authorised trade repository.
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- Where trades are executed between a FC and an NFC, the FC has the regulatory obligation to report for both counterparties to an authorised trade repository.
- An NFC executing trades with an entity established in a third country does not have

reporting obligation, subject to certain conditions.

- A CCP has the regulatory obligation to report to an authorised trade repository.

New reporting requirements, under EMIR REFIT, came into force on 29 April 2024. Firms are required to update all their outstanding derivatives to conform with these revised reporting requirements within six months of the reporting start date (i.e. by 26th October 2024), including those entered into before 29 April 2024. The following key changes were also introduced:

- Adoption of the standardised ISO 20022 XML template format: this aligns the format for EMIR reporting with other regimes, including MiFIR and SFTR.
- An increase in the number of reporting fields (from 129 to 203). While not all fields will be relevant, this will represent quite a significant uplift in terms of detail for firms.
- Clarification on when Unique Product Identifier (“UPI”) codes and ISIN codes are to be used, and greater emphasis on Unique Trade Identifiers (“UTIs”), including which counterparty is responsible for its generation: this may require firms to amend contractual arrangements already in place.
- Notification requirements for errors and omissions: the entity responsible for reporting is required to notify its relevant national competent authority (“NCA”) of material errors or omissions in its EMIR reporting (and, if also responsible for another party’s reporting, the other entity’s NCA, if different). Such notification must be made by the entity as soon as it becomes aware of the error/omission.



Delegated Reporting Arrangements under EMIR

The delegation of reporting obligations to third parties, although permitted under EMIR, is considered an outsourcing arrangement under the European Banking Authority (“EBA”) Outsourcing Guidelines and CBI Outsourcing Guidance, which apply to financial institutions, including banks, investment firms, and other entities. The EBA Outsourcing Guidelines and CBI Outsourcing Guidance set out certain requirements for outsourcing arrangements around risk management, due diligence, and oversight to mitigate the increased operational risks typically associated with outsourcing arrangements.

Firms that choose to outsource their reporting obligations to third-party providers must inform the regulator of the outsourcing arrangements and should give due consideration to the following:

- Implementing robust due diligence efforts to assess the competence, reliability, and resources of the third party;
- Establishing a clear contractual arrangement that outlines the reporting requirements, service levels, monitoring, and resolution mechanisms;
- Conducting regular and ongoing oversight and monitoring of the third party’s reporting activities to ensure maintained compliance with EMIR; and
- Have appropriate record-keeping to demonstrate compliance with EMIR by maintaining relevant records of outsourced reporting activities.

Whilst firms may outsource their reporting obligations to third-party providers, they remain ultimately responsible for these obligations, including the timeliness and accuracy of the reports.

Supervision and Enforcement approach of the Central Bank of Ireland

The CBI fulfils its EMIR oversight through participation at ESMA fora, review of EMIR reports and carrying out supervisory inspections. In February 2019, the CBI issued a “Dear CEO letter”⁵ in which it outlined some findings following a series of data quality checks. Given the severity of the issues identified, the Dear CEO letter states “Counterparties should include compliance with EMIR Reporting as a standing agenda items for all Board meetings.”

The Dear CEO letter has findings in relation to (1) Delegated Reporting arrangements, (2) Trade Reporting timeliness and accuracy and (3) Legal Entity Identifier / Unique Trade Identifier reporting.

Since 2016, annually there have been an average of three EMIR penalties imposed across Europe. The fines ranged from €1,000 to €408,000 depending on the severity. Of note, fines were imposed both on firms and/or their Board of Directors; equally under the SI (Regulation 42) fines can be also imposed by the CBI on the individuals of EMIR in-scope firms. The SI has a provision (Regulation 34.2) which caps EMIR penalties at €2,500,000.

Requirements for EMIR Reporting in the UK

Post-Brexit, the UK introduced the UK European



Markets Infrastructure Regulation (“UK EMIR”)⁶ to replace the previously applicable EU version of EMIR (“EU EMIR”). UK EMIR closely mirrors EU EMIR, maintaining similar regulatory frameworks designed to govern the OTC derivatives market, reduce systemic risk, increase transparency, and improve market stability.

The key differences between the two frameworks are in the areas of jurisdiction and regulatory oversight, as follows:

1. Jurisdiction:

- EU EMIR: Applies across the EU member states.
- UK EMIR: Applies within the UK.

2. Regulatory Authorities:

- EU EMIR: Overseen by ESMA and the EU national authorities.
- UK EMIR: Overseen by the Financial Conduct Authority (“FCA”) and the Bank of England.

3. Equivalence Decisions:

- EU EMIR: Handled by ESMA and the European Commission.
- UK EMIR: Handled by the UK government and the FCA.

4. Transitional Provisions: UK EMIR includes adaptations to reflect the UK’s departure from the EU.

5. Future Divergence: Potential for independent evolution of UK EMIR to suit domestic needs,

leading to possible regulatory differences over time.

6. Specific Requirements: Differences might exist in intraday margining and reporting thresholds as the UK further customises its regulations post-Brexit.

The new UK EMIR reporting requirements go-live on 30th September 2024 with several transitional arrangements applicable for the period from 30 September 2024 to 31 March 2025 to facilitate the change, i.e.:

- From 30 September 2024, all newly entered or modified derivative trades at both trade and position levels must comply with the new requirements.
- There will be a 6-month transition period for derivative trades entered into before 30 September 2024, during which entities responsible for reporting will update those outstanding derivative reports to the new requirements. This period ends on 31 March 2025.

Firms operating in the UK derivatives market must ensure compliance with UK EMIR reporting obligations, whether reporting in-house or through third-party arrangements. The scope of the reporting requirements extends to all derivative contracts, including OTC and exchange-traded, to a trade repository authorised by the FCA.

For firms reporting both in the EU and the UK, UK EMIR marks a major deviation between the two regulatory regimes. To facilitate a smooth transition, a UK temporary recognition regime came into effect on 31st December 2020 (“IP Completion Day”).

Under this regime, any trade repositories that were providing services in the UK before IP Completion Day could continue to do so for up to three years, pending formal registration under UK EMIR.

The FCA published a joint Policy Statement (PS23/2) with the Bank of England on 24th February 2023 which includes amended Technical Standards and the new rules for TRs, applicable from 30th September 2024 (with the exception of the amended Technical Standards that relate to the registration of TRs which took effect on 24th February 2023)⁷, regarding the changes to the derivatives reporting framework under UK EMIR.

EEA branches of UK firms are in scope for UK EMIR whereas UK branches of EEA firms are not.

Key preparatory considerations for effective EMIR reporting

As EMIR REFIT reporting rules became effective from 29th April 2024, and UK rules will be effective from 30th September 2024, counterparties should already have prepared for EMIR reporting by implementing a dedicated project plan. Some key considerations for those responsible for EMIR reporting compliance are as follows:

- **Understanding of Reporting Obligations:** Counterparties will be required to report additional details about derivative contracts to trade repositories. Counterparties should ensure completion of a gap analysis of reporting capability versus reporting requirements and follow up on closing gaps. Institutions should update their reporting systems and processes to comply with these enhanced standards.
- **Governance:** In line with the CBI's Dear CEO expectations, Counterparties must ensure regular and transparent reporting to Board on compliance with EMIR reporting requirements. Such reporting should be current, complete and of a consistent format. It should also be tailored dependent on the scale and complexity of the counterparty's reporting obligation; for example a report summarising Dear CEO letter compliance could be employed for a firm with a less complex

reporting obligation (single product/low volume), whereas a firm with an obligation to report trades across multiple products may choose to have more technical slides (e.g. Key Performance Indicators).

- **Technology and Infrastructure:** To effectively manage the increased reporting requirements, upgrading technology and infrastructure is essential. Counterparties should invest in robust IT systems capable of handling the additional reporting requirements. This includes integrating new software solutions, enhancing data quality, ensuring system interoperability and Comprehensive UAT testing prior to go-live.
- **Outsourcing:** Where delegated reporting is availed of, the entity responsible for reporting implement a robust and comprehensive validation process to ensure both EMIR and outsourcing regulatory requirements are met e.g. validation by counterparty of submissions for completeness and accuracy, recording in outsourcing register, contractual provisions.
- **Documentation:** Policies, frameworks, and procedures to ensure they conform to EMIR (and Outsourcing, in the case of delegated reporting) regulatory requirements.
- **Regulatory Change Management:** Counterparties must track relevant regulatory issuances/guidance through their regulatory change process, and monitor any communications from the CBI and ESMA.
- **Training and Awareness:** Lastly, training and awareness are critical for seamless adaptation to EMIR REFIT. Organisations should conduct training programs for their staff to understand the firm's risk and control approach arising from the new reporting requirement. It is also important to ensure the Board receives similar training to perform effectively in its oversight role.

The views expressed in this article are the authors' personal views within the area of EMIR, and do not reflect the views of any organisation connected with the authors.

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