

## **EMIR REGULATION**

**Reference Text:** European regulation – 648/2012

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

**Date of application:** 16 August 2012

### **Presentation**

This text responds to the undertakings of the G20 (2009 Pittsburgh Summit) in order, by the end of 2012, to increase the transparency of the derivatives market and reduce the current risk induced by transactions which mostly remain dealt bilaterally (pure OTC – Over The Counter). It can be likened to the American Dodd Franck Act which dedicates part of the text (chapter VII) to the regulation of these transactions.

EMIR firstly introduces the “standard contracts” concept and associates them with an obligation for clearing via a Central Counterparty (CCP) with the aim of sharply reducing counterparty risk. The text then imposes an obligation to declare all OTC operations on derivatives, whether or not they relate to standard contracts, to central databases namely “Trade Repositories”. Lastly, for transactions which are not cleared, as an exception or because they relate to non-standard contracts, the text sets out the reinforcement of the rules governing relations between parties, especially in regards to collateral exchange constraints between the parties.

The obligation made by EMIR to use a CCP reinforces the key role of these market infrastructures. It was therefore essential to ensure their solidity and guarantee their longevity. This is the purpose of the second part of the text. EMIR sets out a certain number of standards relative to their supervision, their governance and their organisation, but also to the levels of their capital corresponding to the type of risks they bear. The regulation also addresses the issue of settlement in central bank money, interoperability and access to data flows for trading platforms. Lastly, it establishes a “default waterfall” procedure relative to the ordered use of a CCP in the event of the default of one of its members and resources that are available, whether its own capital or the different types of guarantees (deposited by its members or subscribed with a specialised institution). This new procedure proves more protective for non-defaulting members.

The last part of the text is devoted to the regulation of Trade Repositories, the role of which will be to collect data on all transactions undertaken on OTC derivative products and to feed this information back to the competent authorities. It must be approved to exercise this activity, and failure to comply with the related obligations shall be sanctioned by the relevant supervisory authorities.

The desire to regulate operations now dealt with mainly Over The Counter which is at the origin of EMIR is extended in the proposed MIF regulation (MiFIR) which establishes the obligation to trade any contract deemed standard in the context of EMIR and having a sufficient level of liquidity via a trading platform (regulated market, MTF or OTF).

*Role of the European Securities and Markets Authority (ESMA)*: this will be responsible for the surveillance of trade repositories and for granting and withdrawing their registration. It can:

- conduct investigations and on-site inspections;
- impose periodic penalty payments to compel trade repositories to put an end to an infringement, to supply complete and correct information required by ESMA or to submit to an investigation or an on-site inspection;
- impose fines on trade repositories where it finds that they have committed, intentionally or negligently, an infringement of this Regulation.

The European Securities and Markets Authority (ESMA) shall establish, maintain and keep up to date a register to correctly and unequivocally identify the classes of derivatives subject to the clearing obligation. The register shall be publicly available on ESMA's website.

Third countries: the decisions determining third-country legal regimes as equivalent to the legal regime of the Union should be adopted only if the legal regime of the third country provides for an effective equivalent system for the recognition of CCPs authorised under foreign legal regimes in accordance with the general regulatory goals and standards set out by the G20 in September 2009.

### **Current Situation:**

- Reporting to a Trade Repository

Since the 11th of August 2014, portfolio valuations as well as margins to be included in the reporting ESMA has officially transmitted to the European Commission (13<sup>th</sup> of November 2015) a RTS and an ITS replacing former approved texts (resp.148/2013 and 1247/2012). The aim of these updated texts is to fix issues appeared since the start of the requirement as well as to incorporate information today provided through its Q&A. For recall, ESMA had launched a consultation end of 2014.

To be noted, a MoU signed between ESMA and CFT (Hong Kong) for exchange of date held in Trade Repositories.

- Risk mitigation techniques for non cleared contracts

The second ESAs' consultation is now closed (July 2015). Now waiting for a draft RTS to be issued and submitted to the European Commission for approval. This new version has taken into account the changes made at the international level: BCBS/CPMI have postponed the mandatory margins exchanges (starting date the 1<sup>st</sup> of September 2016 instead of December 2015) and have adopted a phase-in also for variable margins (but not the same as for IM).

- Clearing obligation

ESMA is about to launch a new consultation on indirect clearing.

The European Commission has issued on the 6th of August a draft of a delegated regulation on IRD. The text has been submitted to the Parliament and the Council for a non rejection / adoption. The entry into force is foreseen in April 2016. The text relating to the mandatory clearing for some IRS has been published in the EU JO on the 1<sup>st</sup> of December (its reference: 2015/2205) and will enter into force 20 days after. There will be a phase-in for the start of the obligation linked to the categories of counterparties: 21/06/2016 for categ 1, 21/12/2016 for categ 2, 21/06/2017 for categ 3 and 21/12/2018 for categ 4.

On CDS, ESMA has submitted its draft RTS to the Commission on the 2<sup>nd</sup> of October.

Regarding IRD for additional currencies, ESMA has submitted its draft RTS on the 10<sup>th</sup> of November 2015.

On NDF FX, ESMA has decided to not propose a clearing obligation on NDF FX classes at this stage (04/02/2015).

On indirect clearing arrangement, ESMA has published (5.11.2015) a Consultation Paper (answers expected for the 17<sup>th</sup> of December). The topic is covered both for OTC contracts (EMIR) and listed derivatives (MIFIR). The draft RTS is expected for Q3 2016.

- CCPs agreements

16 CCPs agreed under EMIR: among them Nasdaq OMX, KDPW\_CCP, Eurex clearing AG, LCH.Clearnet SA, CC&G, LCH.Clearnet Ltd and CME Clearing Europe Ltd, LME clear, BME Clearing.

3 CCPs have been granted with an extension of their agreement (in particular Nasdaq OMX for FX).

10 third country's CCPs have been recognised by the l'UE : 2 in Japan, 2 in Singapore, 4 in Hong Kong et 2 in Australia

To be noted: ICE Clear Europe still not agreed as a CCP under EMIR.

- Equivalence

On the 13<sup>th</sup> of November, the European Commission has recognised the equivalence of regulation for 5 countries (Canada, Mexico, Switzerland, South Africa and South Korea). It follows previous determinations in 2014 for Australia, Singapore, Japan and Hong Kong.

- FX spots/FX forwards definition

The European issue regarding some FX forwards (which are in or out of the EMIR scope depending on the local transposition of MIFID1) should be fixed thanks to the level 2 of MIFID2. Thus the issue will be limited to the period between the entry into force of the VM exchange (required as of the 1<sup>st</sup> September 2016 for the biggest financial counterparties) and the entry into force of the MIFID2 - level2 (3<sup>rd</sup> January 2017).

- Other

As expected, the European Commission has issued its consultation in respect of the revision process of the regulation (deadline the 13<sup>th</sup> of August)

### **Main steps:**

Following its adoption by the Council on the 4<sup>th</sup> of July 2012, the final text for EMIR was published in the Official Journal of the European Union on 27<sup>th</sup> of July 2012. Its application date will therefore apply 20 days following its publication, the 16<sup>th</sup> of August 2012.

It was nevertheless only able to be applied once the technical implementing measures have been specified (the level 2 measures) regarding the recognition procedure for CCPs, the classification of OTC derivatives, the definition of calculation rules for margin calls for the remaining OTC transactions.

Except two of them (on third country and on margin requirements for non-centrally cleared derivatives), standards have been adopted by the Commission on the 19<sup>th</sup> of December and published in the EU JO the 23<sup>rd</sup> of February 2013 for an entry into force the 15<sup>th</sup> of March 2013. This date is the first day for some of the requirements regarding risk mitigation techniques for non cleared contracts like timely confirmation (all parties are concerned) as well as valuation (for financial counterparties and non financial ones when above the thresholds – NFC+). Non financial counterparties are also required as of the 15<sup>th</sup> of March to declare them as NFC+. This is also the start of the period for Trade Repositories and CCPs to send their application form to their authorities. Other requirements linked to the risk mitigation techniques (except those on the margins) will enter into force 6 months later, ie the 15<sup>th</sup> of September 2013.

The reporting to a Trade Repository firstly foreseen to September 2013 for IRD and CDS, then postponed to the 1<sup>st</sup> of January 2014 started finally on the 12<sup>th</sup> of February 2014 irrespective of the class of assets for both listed and OTC derivatives). Indeed, ESMA agreed the first Trade Repositories on the 28<sup>th</sup> of November 2013.

On the 18<sup>th</sup> March 2014, NASDAQ OMX was the first CCP to be agreed under EMIR; this date is important regarding the frontloading requirement. A trade on a product cleared by this CCP concluded or novated at this date or after may be subject to the clearing obligation if that one was pronounced by ESMA

Two years after their Discussion Paper, the 3 ESAs (ESMA, EIOPA et EBA) issued on the 14<sup>th</sup> of April 2014 their Consultation Paper on risk mitigation techniques for OTC derivatives contracts not cleared by a CCP.

July 2014, ESMA issued two consultation Papers on the clearing obligation; one for IRD, one for CDS.

1<sup>st</sup> of October 2014: ESMA has communicated its draft RTS on IRD to the Commission for endorsement

29 January 2015: On IRD, a second version of the draft RTS has been published by ESMA following the comments made by the Commission on the first version. A revised opinion has been issued by ESMA on the 6<sup>th</sup> of March.

2015: ESMA issued a second consultation on the mandatory clearing for other IRDs (fixed-to-float interest rate swaps denominated in CZK, DKK, HUF, NOK, SEK and PLN as well as forward rate agreements denominated in NOK, SEK and PLN).

#### **Next Steps:**

Foreseen	Adoption by the EC of the ESMA's draft RTS on CDS Adoption by the EC of the ESMA's draft RTS/ITS on reporting to TR Transmission to the EC of the ESAs' consultation paper on non cleared contracts
December 2015	Deadline to answer to consultation on indirect clearing arrangement
April 2016	Entry into force of the clearing obligation on certain IRD

#### **Contact list : EU Commission / EU Parliament**

**EC** : *DG Financial Stability, Financial Services and Capital Markets Union*  
*Unit C2 – Financial markets infrastructure*

- Martin Merlin
- Jennifer Robertson (deputy & acting)

**EP** :

**SGSS/SMI Contact:** Sylvie Bonduelle ([sylvie.bonduelle@sgss.socgen.com](mailto:sylvie.bonduelle@sgss.socgen.com))