FOCUS

# EMIR

Updated in June 2024

SOCIETE GENERALE
Securities Services

EMIR

# IMPLEMENTATION OF THE 2009 G20 RECOMMENDATIONS FOR OTC DERIVATIVES

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## REGULATORY EVOLUTION

- **Risk mitigation techniques required for non cleared contracts (operational risk):** different tools to be put in place such as timely confirmation, portfolio reconciliation, management of disputes … ❶
- **Mandatory reporting:** applies to all parties to derivatives contracts (listed or OTC); contracts to be bilaterally declared to a Trade Repository. The reporting could technically be outsourced (the party remains responsible) ❷
- **Mandatory clearing:** applies to non listed derivatives that are admitted by at least one CCP and are considered as sufficiently standardised by ESMA (as of today some IRD and CDS) ❸
- **Bilateral exchange of initial and variation margins (IM and VM) for non cleared contracts:** IM are required for counterparties that are above a certain threshold whereas VM are always to be exchanged; there is a phase in implementation for IM (following international recommendations) and a two step for VM. At the end only contracts were both parties are entities with an AANA* (on a group level, except for funds) below a threshold of 8 billion Euros will be exempted from IM exchanges ❹

## FOCAL POINTS

- One of the main impacts of these requirement is related to the shortening of the delay to process these operational tasks now mandatory
- The reporting has to be made by each party of the contract whereas in the US it is a one side model. Moreover, it includes also listed derivatives leading such contracts to be reported twice (due to EMIR and due to MIFIR)
- Parties to the contracts are divided in 4 categories (clearing members, large Financial Counterparties, small Financial Counterparties, Non-Financial Counterparties above the threshold - also called NFC+). Funds are considered as FC. Some counterparties may face difficulties when building a clearing set-up
- It was expected for the 01/09/2016 (international recommendations) and finally started in the EU in February 2017. Some critical points : Inconsistencies with the US regulation (FX forwards, equity options, ..), segregation requirements for IM, timeline for the provision of variation margins, intragroup transactions, counterparties in specific third countries

**AANA – aggregate average notional amount. This is calculated across its group and recorded on the last business day of the months March, April, and May of the relevant year (including all uncleared OTC derivatives of the group and all intra-group noncentrally cleared OTC derivative contracts of the group, taken into account only once).*

**2012**
**Aug. 2012** Entry into force

**2013**
**2013** ❶ Risk mitigation techniques:
- part 1 (Q1)
- part 2 (Q3)

**Q4 2013** ❷ First TR agreed

**2014**
**Q1 2014** ❷ Start of the reporting to TR
**2014** ❸ First CCPs agreed

**2015**
**Q3 2015** Start of the EMIR review process

**Q2 2016 – Q3 2019**
**June 2016 – June 2019** ❸ Phase-in of the clearing obligation for some IRDS
**Feb. 2017 – June 2019** ❸ Phase-in of the clearing obligation for some CDS
**Nov. 2017** ❷ Amended rules for reporting
**Feb. 2019** ❷ Backloading (reporting)
**June 2019** ❸ Entry into force of EMIR Refit

**2020**
**Jan. 2020** Entry into force of EMIR 2.2

**2021**
**Feb. 2021** ❸ ❹ Amended rules for non cleared contracts & for clearing requirements

**2022**
**Feb. 2022** Start of the EMIR 3 process
**Nov. 2022** ❹ New threshold for commodities

**2023**

**2024**
**29 April 2024** ❷ New version of the reporting to TR

**2025**
**June 2025** ❸❹ End of certain exemptions

**Q1 2017 – September 2022 :** Phase-in of the mandatory exchange of initial margins / variation margins ❹

❶ Risk mitigation techniques
❷ Reporting
❸ Mandatory clearing
❹ Margins for non cleared contracts

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## STATEMENT

| CLEARED | Clearing members | FC+ | ~~FC below the threshold~~ | NFC+ |
|---|---|---|---|---|
| **IRS wave1** | 21/06/2016 | 21/12/2016 | ~~*21/06/2019*~~ | 17/10/2019 |
| **CDS** | 09/02/2017 | 09/08/2017 | ~~*21/06/2019*~~ | 17/10/2019 |
| **IRS wave 2** | 09/02/2017 | 09/07/2017 | ~~*21/06/2019*~~ | 17/10/2019 |

**Non cleared contracts**
Due to the Covid-19 a new international timeline has been proposed by the Basel Committee and IOSCO: phase 5 and phase 6 have been postponed by one year (01/09/2021 and 01/09/2022).
The amended delegated regulation has been published in the EU OJ on the 17th of February 2021

| NON CLEARED | 2 parties above 3000 billions € | 2 parties above 2250 billions € | 2 parties above 1500 billions € | 2 parties above 750 billions € | 2 parties above 50 billions € | 2 parties above 8 billions € | At least 1 party below 8 billions € |
|---|---|---|---|---|---|---|---|
| **Initial Margin** (IM) | 06/02/2017 | 01/09/2017 | 01/09/2018 | 01/09/2019 | 01/09/2021 | 01/09/2022 | No IM |
| **Variation Margin** (VM) | 06/02/2017 | 01/03/2017 | 01/03/2017 | 01/03/2017 | 01/03/2017 | 01/03/2017 | 01/03/2017 |
| **VM** (FX forwards) (*) | 03/01/2018 | 03/01/2018 | 03/01/2018 | 03/01/2018 | 03/01/2018 | 03/01/2018 | 03/01/2018 |

*(*) mandatory only for contracts between institutions (see below)*

## FOR YOUR CONSIDERATION

- Non cleared contracts:
  - Physically settled FX forwards and Swaps: variation margins not required where one of the counterparties is not an institution (neither an investment firm nor a credit institution)
  - Equities options and index options: the exemption is now extended until the 4th of January 2024
  - A 3 more years extension for certain intra-group transactions adopted by the Commission (new date: the 30th of June 2025)
  - Threshold for commodities now equal to 4 billions
- Cleared contracts:
  - A 3 more years extension for certain intra-group transactions adopted by the Commission (new date: the 30th of June 2025)
  - Pension Scheme Arrangements: EMIR 3 to provide a clearing exemption for third country Pension Scheme Arrangement when the TC PSA is exempted from the clearing obligation under that third country's national law (ESMA's letter to cover the period until EMIR 3 enters into force,
  - Collateral accepted by CCPs: the EC has eased the criteria for "highly liquid collateral"
- Trade Repository: the new version of the regulatory reporting will start on the 29th of April 2024

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If you want to know more, refer to Fiche To Know More



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