

Study of Implementation
by Asset Management Companies
of EMIR Regulation on Derivatives

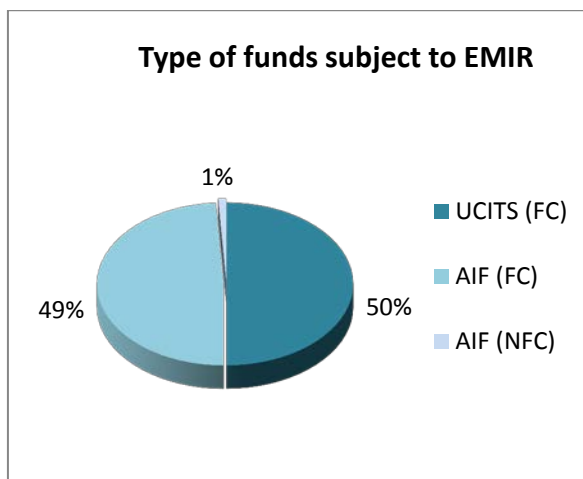
Le 15 décembre 2014

EMIR¹ on OTC derivatives establishes a number of different obligations incumbent upon counterparties entering into derivatives contracts. The scope of the counterparties to whom it applies includes asset management players, among others.

In order to provide effective support for asset management companies in implementing this Regulation, in early July 2014, the AMF circulated a questionnaire among them, to be completed by September 2014, on the measures they had implemented and/or scheduled within the framework of the said Regulation on 31 December 2013. On the basis of the information collected via these questionnaires, the following observations can be made.

1. Scope of application

Out of almost 650 questionnaires that were sent out, 475 were returned completed to the AMF. According to these responses, over 50% of the asset management companies supervised by the AMF that completed the questionnaire are impacted by EMIR on account of their individual and/or collective management business.



In collective management, almost 4,000 funds were said to be subject to EMIR, of which 50% are UCITS. Over 99% of the funds subject to EMIR are so as financial counterparties. As a reminder, financial counterparty status applies, among others, to UCITS and AIFs having managers who are authorised or registered in accordance with the AIFM directive. As such, they are therefore subject to the most stringent provisions provided by that regulation.

➤ **The AMF reminds companies that when a fund has non-financial counterparty status, an assessment should be conducted to determine whether the thresholds provided by EMIR for mandatory clearing are exceeded.**

If this is the case, a notification must be sent to the AMF².

Asset management companies are also impacted by EMIR with regards to their discretionary management (individual portfolio management) activity.

- **The AMF reminds companies that for the purposes of this activity, the counterparty for whom the financial counterparty qualification criteria are assessed is the owner of the financial instrument portfolio under management (i.e. the asset management company's principal/client).**

¹ Regulation (EU) N°648/2012 of the European Parliament and the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

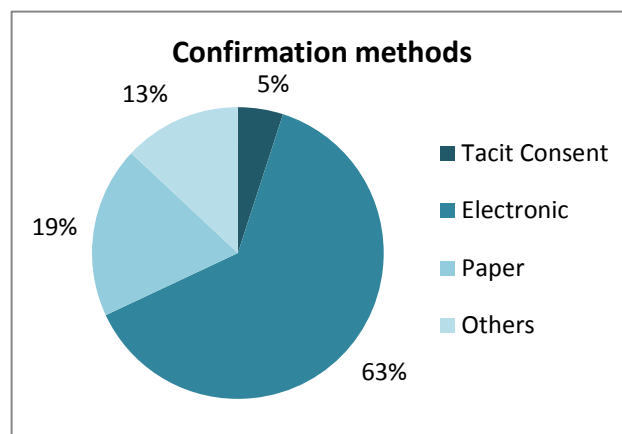
² <http://www.amf-france.org/Formulaires-et-declarations/Produits-derives/Formulaire-de-declaration-du-franchissement-de-seuil-de-compensation-a-la-hausse.html>

2. Risk-mitigation measures

The questionnaire also surveyed asset management companies about the measures they had taken by 31 December 2013 to implement the risk mitigation techniques which came into force in March (for the valuation and confirmation obligations) and September 2013 (for dispute management, reconciliation and compression), and which are applicable to OTC derivatives contracts that are not subject to mandatory clearing obligations³.

➤ Timely confirmation (in force since March 2013)

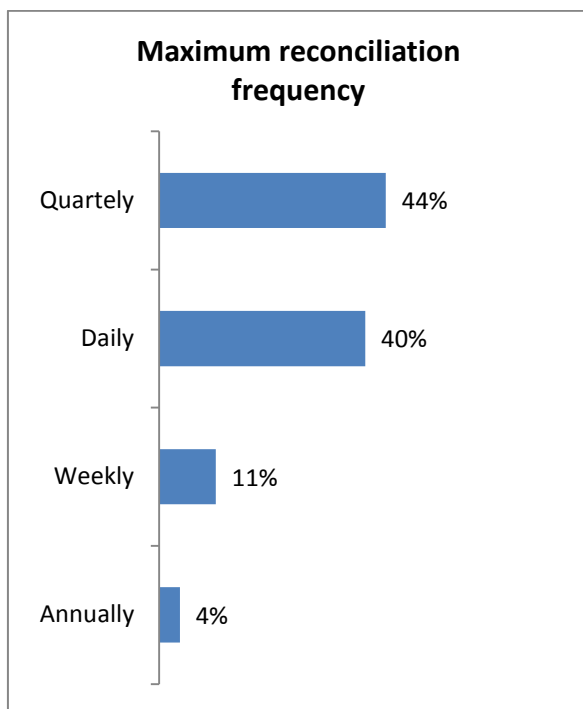
EMIR requires counterparties entering into non-centrally cleared OTC derivatives contracts to have procedures in place for confirming the contracts they have concluded within the deadline set by the Regulation. 92% of those asset management companies declaring themselves to be impacted by EMIR indicated that by 31 December 2013, they had implemented procedures to ensure timely confirmation of the OTC derivatives contracts entered into on behalf of their funds and principals/clients. Electronic confirmation is widely preferred.



³ On 31 December 2013, the obligation of clearing through a central counterparty provided by EMIR was not in force. The risk-mitigation measures therefore applied to all OTC derivatives contracts concluded by asset management companies on behalf of their funds and their mandates.

➤ **Portfolio compression (in force since September 2013)**

Pursuant to EMIR, counterparties having at least 500 non-centrally cleared derivatives outstanding with each other must compress their contracts at least twice a year. In the light of the thresholds provided and the period for which the analysis in the questionnaire was requested⁴, only 28% of asset management companies declared that they had performed an analysis of the possibility of conducting portfolio compression with their counterparty.



➤ **Portfolio reconciliation (in force since September 2013)**

EMIR also establishes an obligation to perform portfolio reconciliation. The purpose of this obligation is to identify any discrepancies in the data on the main terms of the contracts entered into between two counterparties (contract valuation, maturity date, payment or settlement dates, etc.). The frequency of implementation varies according to the volume of contracts outstanding between the contracting parties⁵. On this point, over 85% of the asset management companies that responded to this section of the questionnaire reported that they had introduced reconciliation procedures with their counterparties. The highest frequency at which these portfolio reconciliation procedures are performed is once a quarter for 44% of them⁶ and daily⁷ for 40% of asset management companies.

➤ **Dispute resolution (in force since September 2013)**

82% of the asset management companies stated that they had come to agreements with their counterparties on procedures and processes to identify, record and monitor disputes, and resolve them in a timely manner. At 31 December 2013, no disputes were said to have been identified in over 95% of cases.

➤ **The AMF reminds companies that if a dispute is identified relating to an OTC financial contract, its valuation or the exchange of collateral for an amount or a value higher than EUR 15 million and outstanding for at least 15 business days, it must be sent a notification⁸.**

⁴ The analysis covered the period between September 2013 (entry into force of the obligation) and December 2013.

⁵ Article 13 of European Implementing Regulation N° 149/2013

⁶ For a financial counterparty, the portfolio reconciliation procedures must be performed once per quarter when the counterparties do not have more than 50 OTC derivative contracts outstanding with each other at any time during the quarter.

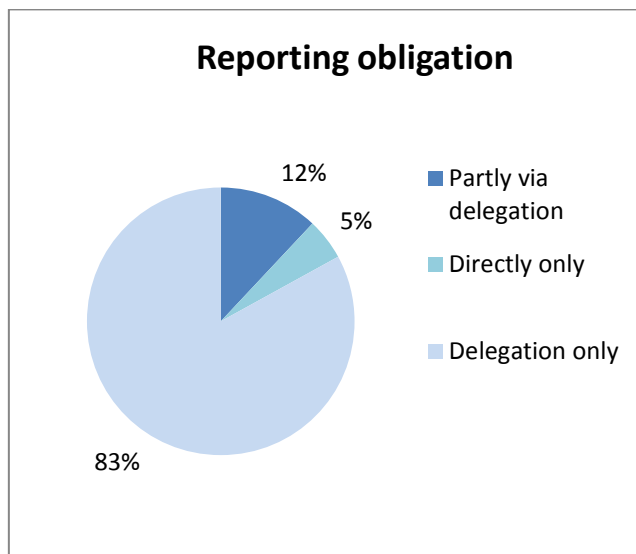
⁷ For a financial counterparty, the portfolio reconciliation procedures must be performed daily when the counterparties have at least 500 OTC derivatives contracts OTC outstanding with each other.

⁸ <http://www.amf-france.org/Formulaires-et-declarations/Produits-derives/Formulaire-de-declaration-des-differends-entrecontrepertes.htm>

3. Obligation of reporting to central trade repositories

EMIR requires counterparties to report the details of the (listed or OTC) derivatives contracts they enter into, and any modification or termination of such contracts, no later than the following working day. For implementation of this obligation, delegation is widely preferred (95%), either for all the funds and mandates managed by the asset management company or for part of them. When they do use delegation, over 50% of asset management companies indicate that they have planned to register directly with the central trade repository in order to have direct access to the information reported by the delegate.

➤ **The AMF reminds companies that the possibility of delegating their reporting obligation remains subject to the other applicable regulatory obligations. In particular, asset management companies are still required (i) to monitor and measure at any time the risk associated with management of portfolio positions and transactions and their contribution to the overall risk profile of the portfolio under management and (ii) to employ a method allowing a precise and independent valuation of the positions and transactions of the portfolio under management, and in particular the value of OTC financial contracts.**



The reporting provided for by EMIR must be made to the central trade repositories authorised by ESMA (of which there are six today), either directly or via delegation.

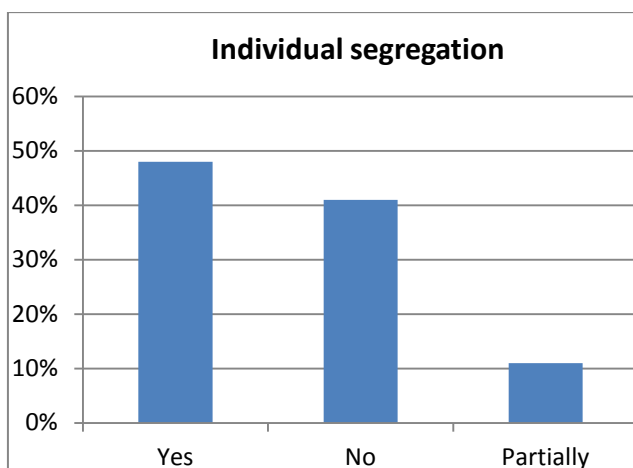
➤ **The AMF reminds companies that in the event of delegation, they may usefully request the identity of the central trade repository to which the information on the derivatives contracts they conclude is reported, notably to ensure their full compliance with the obligations incumbent upon them, for which they remain accountable.**

In implementing the reporting declaration provided by EMIR, use of a legal entity identifier (LEI) is mandatory.

➤ **The AMF reminds companies that an LEI must be obtained for the funds or clients (other than clients who are natural persons) on behalf of which the derivative contract is concluded.**

➤ **The AMF indicates that when applying to the INSEE for an LEI for a fund that does not feature in the GECO database, an application must be sent to gjo@amf-france.org.**

4. Central clearing obligation



Almost 90% of the asset management companies that answered this section of the questionnaire stated that they were planning to use one or two clearing houses. Over 70% of them stated that they intended to contact one, two or even three clearing members to this effect. Finally, 50% of them stated that they favor the individual segregation method.⁹ It should be noted, however, that many of the management companies are still in the process of working on the terms of their access to central clearing.

The AMF encourages asset management players using derivatives products that are likely to be subject in the near future to the central clearing obligation to take the necessary steps to ensure timely access to the corresponding clearing houses.

➤ **In the implementation of central clearing mechanisms by asset management players, the AMF draws their attention to the UCITS-specific requirements on eligible counterparties¹⁰.**

➤ **The AMF also reminds companies that work is underway at the European level on counterparty risk in OTC derivatives contracts that are centrally cleared¹¹.**

⁹ The CCP keeps separate records and accounts enabling each clearing member to distinguish in accounts with the CCP the assets and positions held for the account of a client from those held for the account of other clients.

¹⁰ Pursuant to the UCITS IV Directive, UCITS are subject to requirements regarding the counterparties with which OTC derivatives contracts are entered into. These requirements have been transposed into French law and require the counterparties to contracts to be depositories, OECD credit institutions or European Union investment companies. These requirements must be reconciled with the clearing mechanisms which require novation of the contracts under French law.

¹¹ ESMA has published a discussion paper "Calculation of counterparty risk by UCITS for OTC financial derivative transactions subject to clearing obligations". Responses could be submitted until 22 October 2014 and are published on the following website:

<http://www.esma.europa.eu/consultation/Discussion-paper-Calculation-counterparty-risk-UCITS-OTC-financial-derivativetransacti#responses>