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The European EMIR Regulation

23 May 2025

The European EMIR Regulation introduced obligations for derivatives market participants: financial or non-financial counterparties carrying out one or more transactions on these markets, central counterparties and trade repositories. With the entry into force of EMIR III, this regulatory framework is evolving to make European central counterparties more attractive and resilient, and thus strengthen the Union's strategic autonomy. Below we set out the main provisions of EMIR and the procedures for reporting to the AMF.

EMIR in a nutshell

What is EMIR?

The aim of [Regulation No. 648/2012](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32012R0648) URL = [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32012R0648] on OTC derivatives, central counterparties and trade repositories (EMIR) was to enhance transparency on the derivatives markets. It came into force on 16 August 2012. It is based on the following principles:

- a central clearing obligation for all OTC derivatives deemed by ESMA to be sufficiently liquid and standardised. As a result, all counterparty risk is transferred to the central counterparties;

- a harmonised legal framework at the European level to ensure that central counterparties comply with stringent requirements in terms of capital, organisation and rules of conduct;
- the use of a range of operational and counterparty risk mitigation techniques for non-cleared contracts;
- an obligation to report all transactions in derivatives to the trade repositories.

Regulation No. 648/2012 (EMIR) was amended in 2019 by [Regulation No. 2019/834](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019R0834) URL = [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019R0834] (EMIR Refit) in a targeted manner to improve its effectiveness and proportionality, and in 2020 by [Regulation No. 2019/2099](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019R2099) URL = [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019R2099], which reviewed the supervisory arrangements for EU and third-country central counterparties.

In 2024, Regulation No. 648/2012 (EMIR) was further amended by [Regulation No. 2024/2987](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202402987) URL = [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202402987] and [Directive No. 2024/2994](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202402994) URL = [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202402994](EMIR III) in order, in particular, to encourage the repatriation of the central clearing of derivatives to the EU and thus reduce exposure to systemic central counterparties in third countries. ESMA delegated acts will provide a more precise explanation of how certain provisions are to be implemented.

Who is subject to EMIR?

EMIR applies to any counterparty, whether financial (credit institutions, investment firms, insurance companies, management companies, etc.) or non-financial, that carries out a transaction on a derivative. Exemptions exist for certain categories of market participants or transactions, when these transactions take place between two entities that belong to the same group, provided that certain conditions are met.

Which products are covered by EMIR?

- The clearing obligation applies to the OTC derivatives defined by ESMA in its [register](#).
- The provisions on central counterparties apply to all financial instruments.
- The obligation for financial counterparties and non-financial counterparties subject to the clearing obligation to hold an ‘active account’ with a central counterparty in the European Union applies to certain interest rate derivatives in euros and zloty. In addition,

there is an obligation of representativeness for derivatives cleared within the EU above a certain threshold.

- Risk mitigation techniques apply to any OTC derivative (i.e. any derivative financial instrument within the meaning of the MiFID Directive, provided that it is not executed on a regulated market).
- Any derivative contract, whether OTC or traded on a regulated market, must be reported to the trade repositories.

Obligations under EMIR

Central clearing obligation

The flagship obligation of the EMIR Regulation – central clearing – has been phased in since June 2016. It covers certain interest rate and credit derivatives and applies to financial counterparties and non-financial counterparties whose positions exceed the [compulsory clearing thresholds](https://www.esma.europa.eu/post-trading/clearing-thresholds) URL = [https://www.esma.europa.eu/post-trading/clearing-thresholds] defined by asset class. Clearing must be carried out by a central counterparty authorised under EMIR or recognised as an equivalent by ESMA.

The [list of authorised central counterparties is available on the ESMA website](https://www.esma.europa.eu/document/list-central-counterparties-authorized-offer-services-and-activities-in-union) URL = [https://www.esma.europa.eu/document/list-central-counterparties-authorized-offer-services-and-activities-in-union].

An [up-to-date register of the contracts subject to the clearing obligation is kept by ESMA](https://www.esma.europa.eu/sites/default/files/library/public_register_for_the_clearing_obligation_under_emir.pdf) URL = [https://www.esma.europa.eu/sites/default/files/library/public_register_for_the_clearing_obligation_under_emir.pdf]. It enables market participants to clearly identify these contracts.

[News and all the reference documents relating to central clearing.](https://www.esma.europa.eu/esmas-activities/markets-and-infrastructure/central-counterparties) URL = [https://www.esma.europa.eu/esmas-activities/markets-and-infrastructure/central-counterparties] can be found on the ESMA website.

The 'active account' obligation

Introduced by EMIR III, the obligation to have an 'active account' with a central counterparty in the European Union for clearing interest rate derivatives in euros and zloty, as well as short-term interest rate derivatives in euros, applies to financial and non-financial counterparties whose positions exceed the compulsory clearing thresholds. An active account is defined as a functioning account, with the legal documentation, IT connectivity

and the necessary procedures in place. It must be possible to use this account at short notice for large volumes at any time.

A minimum level of activity representative of the activities of the financial and non-financial counterparties whose positions exceed the compulsory clearing thresholds is required when the derivative contracts entered into by these counterparties have a notional clearing volume outstanding in excess of €6 billion for the types of derivatives concerned.

Obligation to report the use of third-country central counterparties

Introduced by EMIR III, the obligation to report the use of third-country central counterparties is intended to ensure that the competent authorities have the necessary information on the clearing activities that clearing members and their clients carry out at recognised third-country central counterparties. The information to be reported must make it possible to distinguish between transactions in securities, transactions in derivatives traded on trading platforms and transactions in OTC derivatives. This reporting obligation will come into force in the near future, although the final timetable has yet to be confirmed.

Risk mitigation techniques for non-cleared contracts

The obligations set out below apply to any financial and non-financial counterparty that enters into a derivative transaction, in the absence of an exemption provided for in the Regulation.

Confirmation of OTC contract transactions

EMIR requires that the terms of OTC derivative contracts not cleared by a central counterparty be confirmed promptly, and where possible by electronic means. The confirmation is a legally binding agreement on all the terms of an OTC derivative contract. The confirmation times are specified by technical standards.

Daily valuation of OTC contracts

Outstanding contracts entered into by financial counterparties must be valued on a daily basis (mark-to-market). Where market conditions do not permit this, a reliable and prudent mark-to-model valuation may be used.

La réconciliation des portefeuilles

Market participants and their counterparties must reconcile their portfolios, i.e. compare their portfolio of contracts with that of their counterparty in order to identify any data

differences for the main aspects of all their transactions (contract value, maturity, payment and settlement dates, etc.). The aim here is to identify, as early as possible, any discrepancy for an important aspect of an OTC derivative contract. These reconciliations must be carried out:

- for financial and non-financial counterparties above the compulsory clearing threshold:
 - daily, when the counterparties have more than 500 OTC derivative contracts with one another,
 - weekly, for a portfolio of between 51 and 499 derivatives,
 - quarterly, for a portfolio of 50 derivatives or less,
- when one of the counterparties is a non-financial counterparty and is below the clearing thresholds:
 - quarterly, for a portfolio of more than 100 derivatives,
 - yearly, for a portfolio of less than 100 derivatives.

Dispute management

When an OTC derivative contract is signed, the counterparties (financial or non-financial) must agree on detailed procedures and processes enabling:

- the identification, recording and monitoring of disputes as regards the recognition or value of the contracts, and the exchange of collateral between the parties (all guarantees in cash or in financial instruments provided by counterparty A to counterparty B to protect the latter in the event that counterparty A cannot honour its commitments),
- the timely resolution of these disputes, with a special procedure to be defined by the counterparties for disputes that persist for longer than five working days.

In addition, financial counterparties must report to the AMF any disputes involving amounts in excess of €15 million (value of the derivative or sum of the collateral to be traded) that have persisted for more than 15 days.

Portfolio compression

The process of compressing two counterparties' portfolios consists in identifying positions whose risks can be offset and replacing these with a smaller number of contracts while retaining the same residual exposure. Participants with a portfolio of more than 500 non-cleared OTC derivatives with a counterparty must have procedures in place to regularly (at

least twice a year) analyse the possibility of carrying out portfolio compression exercises in order to reduce their counterparty risk and to carry them out effectively.

Exchanges of collateral for non-centrally cleared contracts

In order to protect a counterparty to a non-centrally cleared OTC derivative contract against the potential risk of default by the other counterparty, the parties to such a contract must bilaterally exchange variation margins, and collect and pay initial margins.

[Delegated Regulation \(EU\) 2016/2251](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R2251) URL = [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R2251] specifies the methodologies to be used to calculate these margins, as well as the eligibility and diversification criteria that the collateral must meet.

These exchange of collateral requirements apply to financial counterparties trading in derivatives, as well as to non-financial counterparties holding derivative positions in excess of the mandatory clearing threshold. They apply to all OTC derivative contracts that are not centrally cleared. Exemptions from exchanges of collateral are provided for intra-group transactions.

These have been phased in since February 2017. In accordance with [Delegated Regulation 2021/236](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32021R0236) URL = [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32021R0236] of 21 December 2020, the obligations to pay and collect initial margins came into force on 1 September 2022 for counterparties with positions in excess of €8 billion (average notional amount of non-cleared derivatives).

Transaction reporting

Who must report?

The reporting obligation applies to all derivatives counterparties, whether financial or non-financial. In principle, each of the two counterparties to the transaction must submit a report. However, since EMIR Refit came into force on 18 June 2020, non-financial counterparties are no longer responsible for reporting derivatives transactions when the other counterparty to the transaction is a financial counterparty. Non-financial counterparties are also exempt from the obligation to report derivatives traded with a financial entity outside the EU, subject to compliance with certain conditions. Finally, counterparties are exempt from the reporting obligation for intra-group transactions when certain conditions are met.

Which contracts must be reported?

All derivatives that qualify as financial instruments under MiFID must be reported, whether they are traded over-the-counter or on platforms. These are the products listed in points 4 to 10 of Section C of Annex 1 to Directive [2004/39/EC](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004L0039) URL = [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004L0039], in conjunction with Articles 38 and 39 of Regulation (EC) No. [1287/2006](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32006R1287). URL = [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32006R1287]The details of any newly concluded contract, as well as any modification to or termination of a contract, must be reported to a trade repository no later than the working day following the conclusion, modification or termination of the contract.

What information must be reported?

The format of the information to be reported is set out in European Regulations [2022/1855](https://eur-lex.europa.eu/eli/reg_del/2022/1855/oj/eng) URL = [https://eur-lex.europa.eu/eli/reg_del/2022/1855/oj/eng], and [2022/1860](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32022R1860) URL = [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32022R1860]. The report includes a common section listing the characteristics of the transaction and a section specific to each counterparty (including, in particular, identification of the counterparty, and data on the valuation and collateral for all counterparties above the clearing threshold).

How is the reporting made?

The reporting must be made to a [trade repository registered by ESMA](https://www.esma.europa.eu/document/list-registered-trade-repositories). URL = [https://www.esma.europa.eu/document/list-registered-trade-repositories]A counterparty may delegate the reporting to the other counterparty or to a third party. The regulations do not require any particular formalities to be put in place. Nevertheless, a counterparty that delegates its reporting remains responsible for ensuring that the reports are made on time and that they are compliant.

A counterparty may delegate its reporting to several different counterparties and fulfil its reporting obligations with several different trade repositories.

Reports to the AMF

All the reports or exemption requests listed below should be sent to the AMF by email to: emir-notifications@amf-france.org. URL = [mailto:emir-notifications@amf-france.org]

Notifications of exceeding the clearing threshold

All financial and non-financial counterparties can calculate their positions to check whether they exceed the clearing thresholds. They will have to calculate their average position, based

on the positions at the end of each of the last twelve months. These positions are aggregated at the level of the group to which they belong.

The first calculation was to be carried out from 18 June 2019 and once a year thereafter. Counterparties who do not carry out the calculation will be subject to the clearing obligation.

Asset class	Notional value threshold
Credit derivative contracts	€1 billion
Equity derivative contracts	€1 billion
Interest rate derivative contracts	€3 billion
Foreign exchange derivative contracts	€3 billion
Commodity derivative contracts and others	€4 billion

Financial or non-financial counterparties that do not calculate their positions or whose positions exceed one of the thresholds must declare this to the AMF and [ESMA](https://www.esma.europa.eu/post-trading/clearing-thresholds) URL = [https://www.esma.europa.eu/post-trading/clearing-thresholds] using the [Clearing Threshold Notification template](https://www.amf-france.org/fr/formulaires-et-declarations/produits-derives#form_franchissement_seuil) URL = [https://www.amf-france.org/fr/formulaires-et-declarations/produits-derives#form_franchissement_seuil].

For this calculation, non-financial counterparties only use those positions that do not contribute to reducing the risks associated with commercial activities or treasury financing activities.

Financial counterparties exceeding one of the clearing thresholds are subject to the clearing obligation and must clear all derivatives subject to the clearing obligation entered into four months after the date of notification that the threshold has been exceeded. Non-financial counterparties are subject to the clearing obligation only for derivatives belonging to the asset classes for which they exceed the threshold and which are entered into more than four months after the date of notification that the threshold has been exceeded.

The AMF and ESMA must also be notified if the clearing threshold is no longer exceeded.

Notifications in respect of the obligation to hold an active account

When a French financial or non-financial counterparty becomes subject to the obligation to hold an active account in accordance with Article 7a(1) of EMIR, that financial or non-

financial counterparty must inform the AMF and ESMA of this at the same time. This notification and the procedures for sending it are described on the AMF website: [Make my reporting, notifications and disclosure to the AMF](https://www.amf-france.org/en/professionals/investment-services-providers/my-relations-amf/make-my-reporting-notifications-and-disclosure#Notifications_under_EMIR) URL = [https://www.amf-france.org/en/professionals/investment-services-providers/my-relations-amf/make-my-reporting-notifications-and-disclosure#Notifications_under_EMIR].

Declaration of late confirmations

Financial counterparties must have procedures in place to notify their competent authorities on a monthly basis of the number of OTC contracts that are not confirmed within five working days. However, in accordance with the “questions and answers” published by ESMA, the AMF will not require the counterparties in question to submit this notification systematically. The AMF may make *ad hoc* requests to financial counterparties to ensure compliance with these provisions.

Declaration of disputes between counterparties

Financial counterparties must report to their competent authorities any disputes with their counterparties relating to an OTC derivative contract for which the valuation or exchange of collateral exceeds €15 million and which has persisted for 15 working days or more.

The [counterparty dispute report form](https://www.amf-france.org/fr/formulaires-et-declarations/produits-derives#form_differends) URL = [https://www.amf-france.org/fr/formulaires-et-declarations/produits-derives#form_differends] must be used. The AMF requires that financial counterparties use this form to submit a monthly report on all outstanding disputes for the previous month. This declaration must be made within two weeks following the end of the month. If there are no disputes to report for a given month, financial counterparties are not required to make a declaration.

Applications for exemption from compulsory clearing for intra-group transactions

In order to benefit from the exemption from the clearing obligation for intra-group transactions, each counterparty established in the European Union must notify its competent authority (the ACPR for financial counterparties other than management companies and the AMF for other counterparties, i.e. management companies and non-financial counterparties) in writing of its intention to make use of the exemption provided for by the Regulation. Notification shall be made no later than 30 days before the exemption is used.

The [notification form for exemption from clearing for intra-group transactions](https://www.amf-france.org/fr/formulaires-et-declarations/produits-derives#form_exemption_compensation) URL = [https://www.amf-france.org/fr/formulaires-et-declarations/produits-derives#form_exemption_compensation] must be used.

The AMF may object to the use of the exemption within 30 days of receiving the notification, in accordance with the criteria set out in Article 3 of EMIR.

Applications for exemption from exchange of collateral for intra-group transactions

In order to benefit from the exemption from exchange of collateral for intra-group transactions, each counterparty established in the European Union must submit a request to its competent authority (the ACPR for financial counterparties other than management companies and the AMF for other counterparties), which may or may not approve it, in accordance with the criteria defined in Articles 3 and 11 of EMIR. In accordance with Article 11(5) of EMIR, a counterparty does not have to apply to its competent authority to benefit from this exemption for transactions entered into with a counterparty established in the same Member State.

The [exchange of collateral exemption notification form](https://www.amf-france.org/fr/formulaires-et-declarations/produits-derives#form_exemption_collateral) URL = [https://www.amf-france.org/fr/formulaires-et-declarations/produits-derives#form_exemption_collateral] must be used.

Applications for exemption from exchange of collateral and compulsory clearing for intra-group transactions with an entity established in a third country since EMIR III

Regulation (EU) 2024/2987 has amended the conditions for obtaining these exemptions for intra-group transactions with a group entity established in a third country. Thus, the precondition linked to the existence of an equivalence decision for the third country by the European Commission has been replaced by the requirement not to be on a blacklist (in terms of anti-money laundering and countering the financing of terrorism, and in terms of tax cooperation).

In order to continue to benefit from the applicable exemptions, counterparties whose intra-group transactions were already exempt prior to the entry into force of EMIR III must notify their competent authority (the ACPR for financial counterparties other than management companies and the AMF for other counterparties) by email that these exemptions do not involve an entity established in a third country that is on one of the following blacklists:

- [Delegated Regulation \(EU\) 2016/1675](#) or, from their publication, the delegated acts adopted by the European Commission pursuant to Article 29 of Regulation (EU) 2024/1624; or
- [the EU List of Non-Cooperative Jurisdictions for Tax Purposes](#).

Notifications to the AMF should be sent to: emir-notifications@amf-france.org URL = [\[mailto:emir-notifications@amf-france.org\]](mailto:emir-notifications@amf-france.org).

Applications for exemption from reporting intra-group transactions

The reporting obligation does not apply to derivative contracts within the same group where at least one of the counterparties is a non-financial counterparty or would be classified as such if it were established in the EU, provided that:

- both counterparties are fully included in the same consolidation scope,
- both counterparties are subject to appropriate centralised risk assessment, measurement and control procedures, and
- the parent undertaking is not a financial counterparty.

The [notification form for exemption from reporting intra-group transactions](#) URL = [\[https://www.amf-france.org/fr/formulaires-et-declarations/produits-derives#form_exemption_transactions\]](https://www.amf-france.org/fr/formulaires-et-declarations/produits-derives#form_exemption_transactions) must be used.

However, in accordance with Article 9(1) of EMIR III, when a non-financial counterparty whose positions exceed the compulsory thresholds is part of a group based in the European Union and benefits from an exemption from reporting intra-group transactions, its parent undertaking in the European Union must report its aggregate net positions by derivative category to the AMF every week by email to: emir-notifications@amf-france.org. URL = [\[mailto:emir-notifications@amf-france.org\]](mailto:emir-notifications@amf-france.org)

MY AMF CONTACT _____

Focus on the obligations applicable to non-financial counterparties

Any non-financial counterparty that trades in derivatives is subject to EMIR. However, the Regulation provides for less stringent obligations for non-financial counterparties whose activity on the derivatives markets (excluding hedging) remains below the clearing thresholds. Derivatives traded for hedging purposes are not included in the calculations used to determine whether the thresholds have been exceeded, nevertheless they must be properly identified and reported. Non-financial counterparties that exceed the clearing threshold are subject to greater obligations.

A non-financial counterparty may, depending on the case, be subject to the following obligations:

- to report its derivative contracts to a trade repository,
- to clear its derivative contracts subject to the clearing obligation, but only if its positions exceed the compulsory clearing threshold,
- to have an ‘active account’ with an EU central counterparty for the clearing of certain interest rate derivative contracts in euros and zloty, but only if its positions exceed the compulsory clearing threshold for this asset class,
- to apply risk mitigation techniques to its OTC derivative contracts for as long as the clearing threshold is not exceeded, or, if it is exceeded, to apply these techniques to OTC derivative contracts that are not cleared by a central counterparty.

Table summarising non-financial counterparties’ obligations by position level

Position level	Central clearing obligation	Confirmation, dispute resolution, reconciliation and compression	Daily valuation	Exchange of collateral	Capital requirements	Reporting of derivatives to the TR
< clearing thresholds	no	yes	no	no	no	no/yes*
> clearing thresholds	yes	yes	yes	yes	no	yes

**As regards the reporting obligation, since 18 June 2020, non-financial counterparties not exceeding the clearing thresholds are exempt from this obligation when their counterparty is a financial counterparty. In this case, the financial counterparty is the sole entity responsible for reporting the transaction. If a non-financial counterparty that does not exceed the clearing thresholds wishes to continue to report itself, it may do so, but it must inform its counterparty of this. Derivatives traded by a non-financial counterparty with an entity that is not a financial counterparty must be reported, with the following exceptions: intra-group derivatives subject to notification (Article 9(1) EMIR), derivatives traded with a counterparty outside the European Union if that counterparty meets certain conditions (Article 9(1a) EMIR).*

Non-financial counterparties may be exempt from the clearing or exchange of collateral obligation for OTC derivative contracts entered into within their group if certain conditions are met.

These conditions are set out above in the section entitled: Declarations to the AMF.

Focus on the Legal Entity Identifier (LEI)

Counterparties to derivative contracts must be identified in the declarations by a legal entity identifier (LEI). In practice, each counterparty subject to the reporting requirements must obtain a LEI from a local entity that assigns identifiers (Local Operating Unit (LOU)). For French counterparties, the INSEE has been designated as the local entity that can assign identifiers to be used for the purposes of reporting under EMIR. Other LOUs are present in other countries, some of which may assign identifiers to counterparties in a third country.

- [Applying for or renewing a LEI](#)
- [See the website of the coordination and oversight committee for the global system of legal entity identifiers \(LEI ROC\)](#)

For more information

- ✚ Regulation No. 648/2012 (EMIR)
- ✚ Regulation No. 2019/834 (EMIR Refit)
- ✚ Regulation No. 2019/2099
- ✚ Regulation No. 2024/2987
- ✚ Page dedicated to EMIR on the ESMA website


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