

PRESS RELEASE 13/26

■ REMINDER ON EMIR

The CSSF wishes to remind all concerned entities of the obligations applicable to them under [Regulation \(EU\) No 648/2012](#) of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (“EMIR”)

For a summary of EMIR and the EMIR obligations, please refer to the CSSF circular 13/557 on Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

CSSF circular 13/557, as well as further information, with links to the relevant EU legislation (which includes the EMIR regulation and EMIR-related delegated regulations referred to in the present press release) can be found on the CSSF’s website under “EMIR”.

Who is concerned by EMIR ?

The EMIR obligations apply to **financial and non-financial counterparties**.

Financial counterparties are banks, investment firms, collective investment undertakings with their management companies, pension funds and insurance undertakings¹.

Non-financial counterparties are very broadly defined as all undertakings other than CCP and financial counterparties². Considering this definition of non-financial counterparties, **securitization undertakings are also covered**.

Which obligations do financial counterparties have to fulfill ?

Financial counterparties are subject to the **clearing obligation and the exchange of collateral** imposed by EMIR.

They also have to comply with the **reporting requirements to a trade repository** as well as with **risk management requirements** for OTC derivatives contracts³ they enter into and which are not cleared by a CCP.

¹ Article 2(8) of EMIR defines ‘**financial counterparty**’ as an *investment firm* authorised in accordance with Directive 2004/39/EC, a *credit institution* authorised in accordance with Directive 2006/48/EC, an *insurance undertaking* authorised in accordance with Directive 73/239/EEC, an *assurance undertaking* authorised in accordance with Directive 2002/83/EC, a *reinsurance undertaking* authorised in accordance with Directive 2005/68/EC, a *UCITS* and, where relevant, its *management company*, authorised in accordance with Directive 2009/65/EC, an *institution for occupational retirement provision* within the meaning of Article 6(a) of Directive 2003/41/EC and an *alternative investment fund managed by AIFMs* authorised or registered in accordance with Directive 2011/61/EU.

² ‘**Non-financial counterparty**’ is defined in Article 2(9) of EMIR as “an undertaking established in the Union other than CCPs and financial counterparties”.

³ Article 2(7) of EMIR defines ‘**OTC derivative**’ or ‘**OTC derivative contract**’ as a derivative contract the execution of which does not take place on a regulated market as within the meaning of Article 4(1)(14) of Directive 2004/39/EC or on a third-country market considered as equivalent to a regulated market in accordance with Article 19(6) of Directive 2004/39/EC.

As far as **unconfirmed OTC derivative transactions** are concerned, the answer by ESMA to OTC Question 8 of the Q&A published by ESMA⁴ clarifies the wording of Article 12(4) of Commission Delegated Regulation (EU) 149/2013, according to which financial counterparties shall have the necessary procedure to report on a monthly basis to the relevant NCA the number of unconfirmed OTC derivative transactions that have been outstanding for more than 5 business days.

Besides the clarification of the starting point for the calculation of the 5 business days, it also indicates that financial counterparties need to ensure that the necessary procedures they have in place allow: 1) the recording of all unconfirmed trades for more than 5 business days and 2) the production of a monthly report of these unconfirmed trades that occurred the month before.

The report does not need to be provided to the competent authorities that have not asked to receive it.

Accordingly, for the time being, **financial counterparties do not need to submit a report on unconfirmed OTC derivative transactions to the CSSF**, but they must have the necessary procedures in place for the recording and the production of a monthly report of these unconfirmed trades as described above. They must be able to produce such reports to the CSSF upon request.

Which obligations do non-financial counterparties have to fulfill ?

All non-financial counterparties, whether above or below the clearing threshold, have to apply the operational **risk management** requirements and the **reporting** obligations to a trade repository.

Those non-financial counterparties which are above the clearing threshold⁵ are moreover subject to the clearing obligation and the exchange of collateral, one of the risk mitigation techniques for outstanding OTC derivatives contracts.

The clearing thresholds' values for the purpose of the clearing obligation shall be:

- (a) EUR 1 billion in gross notional value for OTC credit derivative contracts;
- (b) EUR 1 billion in gross notional value for OTC equity derivative contracts;
- (c) EUR 3 billion in gross notional value for OTC interest rate derivative contracts;
- (d) EUR 3 billion in gross notional value for OTC foreign exchange derivative contracts;
- (e) EUR 3 billion in gross notional value for OTC commodity derivative contracts and other OTC derivative contracts not provided for under points (a) to (d).

Non-financial counterparties that enter into positions in OTC derivatives contracts are required to notify the CSSF if they pass the clearing threshold, either going above it or below it.⁶ The notification forms can be found on the CSSF's website under "EMIR".

⁴ http://www.esma.europa.eu/system/files/2013-685_qa_ii_on_emir_implementation_final_for_publication_20130604.pdf

⁵ The clearing thresholds for the different classes of derivatives are specified in Article 11 of the Commission Delegated Regulation (EU) N°149/2013.

⁶ This notification obligation is foreseen in Article 10(1) of EMIR and entered into force on 15th March 2013.

Which EMIR obligations will be applicable soon?

The CSSF draws the concerned entities' attention to the timing of several upcoming EMIR obligations, for which the concerned entities should start to prepare now. Insofar as some of the dates below are not yet definitive, the CSSF will publish the final dates as soon as they will be known.

Risk mitigation techniques for OTC derivatives not cleared by a CCP:

Portfolio reconciliation ⁷ Portfolio compression ⁸ Dispute resolution ⁹	15 September 2013
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Reporting obligation:

Reporting of credit derivatives and interest rate derivatives to trade repositories ¹⁰	According to ESMA's indicative timetable, by 23 September 2013
Reporting of all other derivative contracts to trade repositories ¹¹	At the earliest, 1 January 2014

For the **reporting of exposures information** referred to in Article 3 of the Commission Delegated Regulation (EU) N°148/2013, each reporting start date to the trade repositories as indicated in the Commission Implementing Regulation (EU) N°1247/2012 shall be extended by 180 days.¹²

Use of the Legal Entity Identifiers for the purpose of the reporting obligation:

Regarding the code to be used to identify counterparties (Legal Entity Identifiers¹³, interim Legal Entity Identifiers or Business Identifier Codes¹⁴), the answer to TR Question 10 of the updated ESMA Q&A¹⁵ indicates that "An interim LEI meeting the conditions indicated by the LEI Regulatory Oversight Committee (ROC) is expected to be used for reporting purposes under EMIR. Please refer to the annex to the first progress note on the Global LEI Initiative:

http://www.leiroc.org/publications/gls/roc_20130308.pdf".

Luxembourg, 24 June 2013

⁷ Article 13 of the Commission Delegated Regulation (EU) N°149/2013.

⁸ Article 14 of the Commission Delegated Regulation (EU) N°149/2013.

⁹ Article 15 of the Commission Delegated Regulation (EU) N°149/2013.

¹⁰ Article 5.1 (b) of the Commission Implementing Regulation (EU) N°1247/2012

¹¹ Article 5.2 (a) of the Commission Implementing Regulation (EU) N°1247/2012

¹² Article 5.5 of the Commission Implementing Regulation (EU) N°1247/2012

¹³ <http://www.leiroc.org/>

¹⁴ <https://www2.swift.com/search/redirect.faces>

¹⁵ http://www.esma.europa.eu/system/files/2013-06/85_qa_ii_on_emir_implementation_final_for_publication_20130604.pdf