

Regulation (EU) N. 648/2012 (EMIR)

What does EMIR mean for Non-financial counterparties?

What is EMIR?

In order to address the roots of the financial crisis, the G20 countries committed to address risks related to the derivative markets. In order to make that commitment effective, the European Parliament and the Council have adopted a regulation that requires OTC derivative contracts to be cleared, derivative contracts to be reported and sets a framework to enhance the safety of central clearing counterparties (CCP) and for Trade Repositories (TR). This regulation was adopted on 4 July 2012 and entered into force on 16 August 2012. It is directly applicable in all the European member states.

Why do I need to read this information?

EMIR is setting obligations and requirements applicable to both financial and non-financial counterparties that enter into derivative contracts. However, some non-financial counterparties may benefit from some exemptions and, some obligations and requirements may not apply to all non-financial counterparties. If you enter into OTC derivative contracts, we therefore recommend that you carefully read this information in order to have an overview of the obligations set in EMIR and assess whether it applies to you.

I am a non-financial, does EMIR apply to me?

If you are a non-financial and enter into derivative contracts, EMIR does apply to you.

What does it mean?

- You have to report your derivative contracts to a Trade Repository,
- You have to clear your OTC derivative contracts that are subject to the clearing obligation if you exceed the clearing threshold (see below).
- You have to apply risk mitigation techniques to your OTC derivative contracts if you do not exceed the clearing threshold or, if you exceed the clearing threshold, to those OTC derivative contracts that are not subject to the clearing obligation.

I'm a non-financial counterparty, do I have to report my derivative contracts?

Yes. Derivatives you enter into must be reported to a Trade Repository.

What do I need to report?

The minimum reporting details are specified in [ESMA Technical Standards](#) that have been [endorsed](#) by the European Commission.

How much time do I have to report?

New contracts, changes to existing contracts, and termination of contracts need to be reported no later than the working day following the relevant event (execution/modification/termination).

Do I need to report to the Trade Repository myself?

Not necessarily. You may also delegate the reporting to your counterparty or to a third party.

How should I choose my Trade Repository?

You will need to choose a Trade Repository that is authorised or recognised by ESMA and that accepts the type contracts you need to report. Authorised and recognised Trade Repositories as well as the type of contracts they accept will be available on the website of ESMA.

Do I have to centrally clear my OTC derivative contracts?

Yes, if you exceed the clearing threshold, you need to centrally clear those of your OTC derivative contracts that are subject to the clearing obligation.

What is the Clearing Threshold?

The Clearing Threshold is an amount set by class of OTC derivative contracts. It is set by [ESMA Technical Standards](#)¹ and will be reviewed on a regular basis following public consultation.

Value of the clearing thresholds :

- EUR 1 billion* Credit derivative contracts
- EUR 1 billion* Equity derivative contracts
- EUR 3 billion* Interest rate derivative contracts
- EUR 3 billion* Foreign exchange derivative contracts
- EUR 3 billion* Commodity derivative contracts and others

* in gross notional value

How do I apply the clearing threshold?

Not all OTC derivative contracts count towards the clearing threshold. Those OTC derivative contracts entered into in order to reduce risks relating to the commercial or treasury financing activity of the non-financial entity, or of non-financials of the group it belongs to, are excluded from the calculation of the clearing threshold. Criteria to determine those contracts are specified in [Technical Standards drafted by ESMA](#)² that have been [endorsed](#) by the European Commission. All other OTC derivative contracts entered into by the non-financial or other non-financial entities of the group shall be taken into account for the calculation of the clearing threshold. When the amount for one class of OTC derivative contracts is surpassed, you exceed the clearing threshold.

¹ Please see 18 and following of the ESMA Final report

² Please see pages 15 and following of the ESMA Final report

Example of application of the clearing threshold (in gross notional value):

Non-financial company A:

Total credit derivative contracts	2 billion
Hedging	1.8 billion
Non-hedging	0.2 billion

Company A does not exceed the clearing threshold. Its non-hedging credit derivative contracts i.e. 0,2 billion is below the value of the clearing threshold for that class of OTC derivatives i.e. 1 billion.

Non-financial company B

Total equity derivative contracts	1.5 billion
Hedging	1.2 billion
Non-hedging	0.3 billion
Total interest rate derivative contracts	3.5 billion
Hedging	0
Non-hedging	3.5 billion

Company B exceeds the clearing threshold. Its non-hedging activity in interest rate derivative contracts is above the value of the clearing threshold for that class of OTC derivatives i.e. 3 billion.

I enter into OTC derivative contracts with entities of the group I belong to, do I benefit from an exemption from the clearing obligation?

Non-financial companies may benefit from an exemption from the clearing obligation for Intragroup OTC derivative contracts when certain conditions are met (including notification to, or authorisation by the relevant competent authority). Please see Article 4(2) of EMIR for the details.

When I do not centrally clear my OTC derivative contracts, do I have to apply risk mitigation techniques?

Yes, you need to apply risk mitigation techniques for OTC derivative contracts that are not centrally cleared, unless you benefit from an exemption.

I enter into intragroup OTC derivative contracts that are not centrally cleared, do I benefit from an exemption from the application of risk mitigation techniques?

Non-financial companies may benefit from an exemption from the obligation to exchange collateral when some conditions are met. Please see Articles 11 (5), (7), (9) and (10) of EMIR.

The other risks mitigation techniques, such as those related to timely confirmation, portfolio reconciliation, compression and dispute resolution apply in accordance with EMIR and as specified in the [ESMA Technical Standards](#) that have been [endorsed](#) by the European Commission.



I do not exceed the clearing threshold, do I need to apply risk mitigation techniques?

Yes, risks mitigation techniques apply to non-financial companies even if they do not exceed the clearing threshold. However, the applicable rules may differ depending on whether the non-financial counterparty exceeds the clearing threshold or depending on the size of its portfolio.

For more information, you may consult the [Final Report published by ESMA on 27 September 2012](#), and the [endorsed Technical Standards](#) and the [Frequently Asked Questions published by the European Commission](#).