

European Market Infrastructure Regulation (EMIR): clearing obligation, reporting requirements, risk-mitigation techniques, trade repositories

2017/0090(COD) - 28/05/2019 - Final act

PURPOSE: to adopt updated rules on derivatives and clearing.

LEGISLATIVE ACT: Regulation (EU) 2019/834 of the European Parliament and of the Council amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories.

CONTENT: [Regulation \(EU\) No 648/2012](#) on European Market Infrastructure (EMIR) is one of Europe's regulatory responses to the 2007-2008 financial crisis. The obligations it establishes contribute to reducing the systemic risk by increasing the transparency of the OTC derivatives market and reducing the counterparty credit risk and the operational risk associated with OTC derivatives.

Simplified rules on derivatives and clearing

This Regulation introduces a series of targeted amendments to the EMIR Regulation in order to simplify the rules applicable to OTC derivatives and make them more proportionate, with a view to reducing regulatory costs and burdens on market participants, without undermining the primary objective of preserving financial stability and reducing systemic risks.

The updated rules streamline existing reporting obligations in order to improve the quality of reported data, make monitoring more efficient and increase access to compensation by removing unnecessary obstacles.

Small financial counterparties

Some financial counterparties have a volume of activity in OTC derivatives markets that is too low to present a significant systemic risk to the financial system and too low for central clearing to be economically viable.

Under the amending regulation, these counterparties, commonly referred to as small financial counterparties, shall be exempted from the clearing obligation, but they should remain subject to the requirement to exchange collateral to mitigate any systemic risk.

In addition, the smallest financial counterparties shall be subject to reduced clearing obligations.

Non-financial counterparties

Non-financial counterparties are less interconnected than financial counterparties. The scope of the clearing obligation for non-financial counterparties that choose to calculate their positions every 12 months against the clearing thresholds shall therefore be narrowed.

These non-financial counterparties should be subject to the clearing obligation only with regard to the classes of OTC derivatives that exceed the clearing threshold.

To reduce the burden of reporting OTC derivative contracts for non-financial counterparties that are not subject to the clearing obligation, the financial counterparty should, as a rule, be solely responsible, and legally liable, for reporting on behalf of both itself and non-financial counterparties that are not subject to the clearing obligation with regard to OTC derivative contracts entered into by those counterparties, as well as for ensuring the correctness of the details reported.

Pension schemes arrangements

The EMIR Regulation establishes that the clearing obligation is not to apply to pension scheme arrangements until an appropriate technical solution is developed by CCPs for the transfer of non-cash collateral as variation margins.

As no viable solution has yet been developed to facilitate the participation of pension scheme arrangements in central clearing, the Regulation extends by two years (and subsequently provides for the possibility of extending twice by one year) the temporary exemption from the compensation requirement for pension plans.

Powers of the European Securities and Markets Authority (ESMA)

ESMA should periodically review the clearing thresholds and update them where necessary.

To ensure that ESMA can carry out its tasks and duties in relation to the clearing obligation, competent authorities shall notify ESMA without delay of any information received from a CCP regarding the CCP's intention to start clearing a class of OTC derivatives that is covered by its existing authorisation.

In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections on any business premises, land or property of the legal persons. Where the proper conduct and efficiency of the inspection so require, ESMA may conduct the on-site inspection without prior announcement.

ESMA shall refer matters to the relevant authorities for investigation and possible criminal prosecution where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts that it knows to be liable to constitute a criminal offence under the applicable law.

ENTRY INTO FORCE AND APPLICATION: from 17.6.2019, except certain provisions which apply from 18.12.2019, 18.6.2020 or 18.6.2021.