

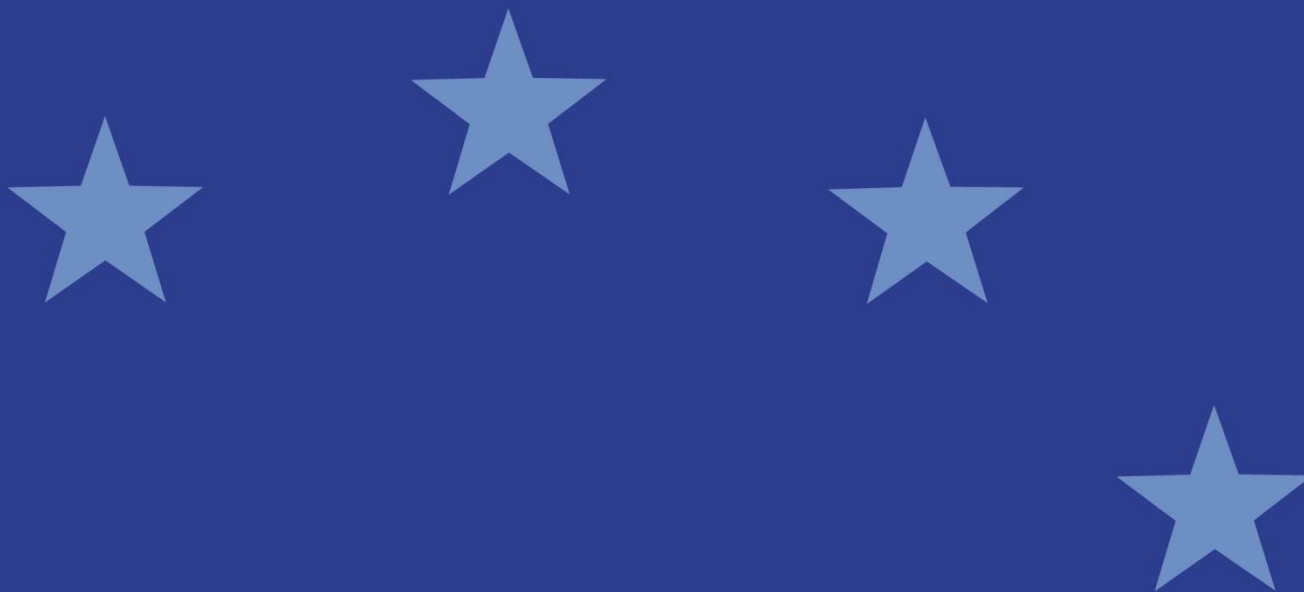


European Securities and
Markets Authority

3 October 2013 | Conference Centre Albert Borshette, Brussels

DG Agri Expert Group

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Agenda

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- EMIR
- MiFID II
- MAD/MAR

Commodity Derivatives Regulation in Secondary Law

EMIR	MiFID II	MAD II/MAR
<ul style="list-style-type: none"> • Application of EMIR to commodity derivatives • Determining commodity derivative contracts subject to clearing obligation 	<ul style="list-style-type: none"> • Position limits • Position reporting • Regulators' position management powers • Transparency requirements 	<ul style="list-style-type: none"> • Expansion of scope, including to certain spot commodity contracts • Enhances cooperation between regulators, including relevant regulators of commodity markets
<p>Sector Specific Regulation</p>		
<p>REMIT</p> <ul style="list-style-type: none"> • Market integrity and transparency framework applicable to wholesale energy markets • Monitored by ACER in cooperation with national energy regulators 		



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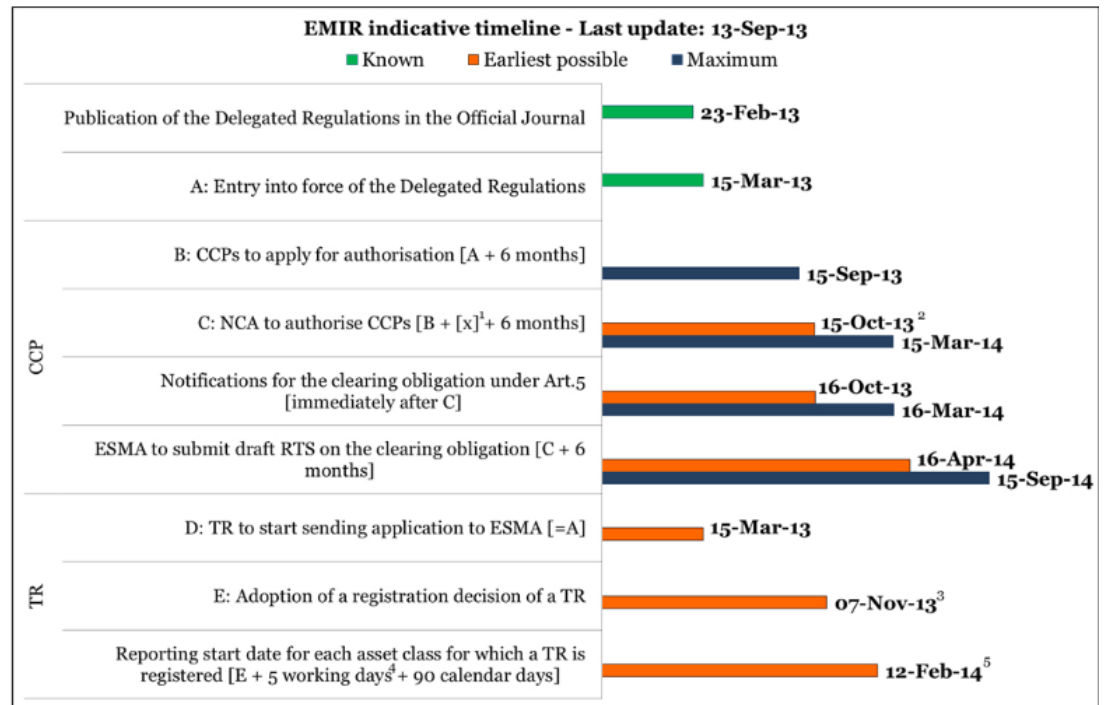
EMIR – latest developments

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1. Change in timeline
2. Consultation on the Clearing Obligation
3. Consultation on contracts which have a direct, substantial and foreseeable effect within the EU and non-evasion of provisions of EMIR
4. Third country equivalent assessments

Change in timeline:

- ESMA expects to make first TR registration decisions not before 7 November rather than 24 September
- Counterparties' reporting to TRs is not expected to start before February 2014
- (95 days after registration before reporting starts to TR for classes of derivatives)



(1) [x] is the time needed for the determination of the completeness of the application sent by CCP to NCA.

(2) On the basis of the information available so far, ESMA's best estimate is that the first CCP authorisation is not likely to take place before 15 October 2013. This should not be understood as meaning that any authorisation will necessarily be granted on 15 October 2013.

(3) On the basis of the information available so far, ESMA's best estimate is that the adoption of the registration decision of the first TR(s) is not likely to take place before 7 November 2013. This should not be understood as meaning that the registration decision will necessarily be adopted on 7 November 2013. The exact date on which the registration decision is adopted will depend on the completeness of the TR's application and its compliance with the EMIR provisions.

(4) The registration decision takes effect on the fifth working day following its adoption.

(5) The reporting start date depends on the actual date of the registration of the first TR(s).

Consultation on the clearing obligation

- ESMA to specify which class of OTC derivatives should be subject to the clearing obligation
- Public register
 - List of classes of OTC derivatives notified to ESMA
 - List of classes subject to the clearing obligation
- “Bottom-up” / “top-down” approaches
- “Bottom-up” process
- Commodity Derivatives class
 - **Product type:** Metals, Energy, Index, Agriculture, Environment, Freight
 - **Product sub type:** Biofuel, Fertilizer, Grain Oil Seeds
- Next steps

Consultation on contracts which have a direct, substantial and foreseeable effect within the EU and non-evasion of provisions of EMIR

Where the two counterparties are established in third countries, the clearing obligation/risk mitigation requirements should apply if:

- Contracts have a direct, substantial and foreseeable effect within the EU, e.g.
 - OTC derivative concluded by the two third country counterparties is guaranteed by an EU financial institution guarantor above certain thresholds
 - Two non-EU entities operate through an EU branch of a third country firm
- It is necessary to prevent evasion of EMIR provisions
 - Aim at capturing transactions which ordinarily would have been subject to EMIR but are deliberately structured to avoid such
 - Non-prescriptive approach: set of criteria to consider primary purpose of arrangement
- But, where at least one counterparty is in a third country deemed equivalent, EMIR can be disapplied

Third country equivalence

ESMA has given advice to the Commission on the equivalence of the regulatory regimes of non-EU countries with EMIR

- Regulatory regimes for Australia and Switzerland for CCPs equivalent to EU rules
- Conditional equivalence is proposed for the following regimes:
 - Hong Kong, Japan, Singapore, and the US for CCPs
 - the US and Japan for central clearing, requirements for non-financial counterparties and risk mitigation techniques for uncleared trades
 - the US for TRs
- If Commission adopts an equivalence decision, ESMA may:
 - recognise within the EU a CCP which is authorised outside the EU;
 - recognise within the EU a TR which is authorised outside the EU;



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MiFID II – level 2

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- Narrowing of exemptions
- Position limits
- Position reporting
- Transparency requirements extended to non-equities
- Derivatives trading obligation
- Regulators' position management powers



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- MAR/MAD
 - Only financial instruments (FIs) traded on MiFID trading venues are within scope
 - Plus spot commodity contracts having an effect on the price of an FI traded on a MiFID trading venue, unless it is a contract in a wholesale energy product
- REMIT
 - Applies to wholesale energy products, meaning spot and futures
 - Unless those futures are FIs, in which case the MAR prohibitions apply
- Next steps



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Thank you

