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EMIR Review

15 March 2017

Banking and finance

European Commission

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'

European Market Infrastructure Regulation

Published on 27 July 2012
Entered into force on 16 August 2012

Why was EMIR adopted?

G20 commitment of September 2009:

"All standardized OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end 2012 at latest. OTC derivatives should be reported to trade repositories. Non-centrally cleared contracts should be subject to higher capital requirements."

Followed concerns about the build-up of unidentified risks in derivative markets leading up to the financial crisis.

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EMIR: different levels of rules

EMIR 'level 1' Regulation	•Commission proposes •European Parliament (EP) and Council adopt
EMIR 'level 2' Commission Delegated and Implementing Acts	•Based on the mandates given to the Commission in level 1
EMIR 'level 2' Technical Standards (Regulatory and Implementing)	• Based on the mandates given to the European Supervisory Authorities (ESAs) and the Commission in level 1 • ESAs develop, Commission endorses, EP and Council scrutinise (RTS)
EMIR 'level 3' Guidelines and recommendations	• ESAs founding regulations mandates them to adopt guidelines and recommendations
Q&A	• ESAs convergence tool to promote common supervisory approaches and practices.

Key requirements of EMIR

I. Central clearing of standardised OTC derivative contracts

II. Margin requirements for OTC derivative contracts that are not centrally cleared

III. Operational risk mitigation requirements for OTC derivative contracts that are not centrally cleared

IV. Reporting of all derivative contracts

V. Requirements for Central Counterparties (CCPs)

VI. Requirements for Trade Repositories

Who does EMIR affect?

Applies to all users of derivatives: Financial counterparties, (FCs) including banks, funds, insurers and non-financials counterparties (NFCs)

Lower requirements apply to NFCs that only use derivatives to hedge real economy needs (NFCs-)

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Why now?

EMIR Article 85

« By 17 August 2015, the Commission shall review and prepare a general report on this Regulation. The Commission shall submit the report to the European Parliament and the Council, together with any appropriate proposals. »

-> EMIR Article 85 sets a mandate for the EC to review the Regulation

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Why now?

Capital Markets Union
'Call for Evidence' Public consultation

Empirical evidence and concrete feedback on financial services legislation, in particular on:

- **Rules affecting the ability of the economy to finance itself and growth**
- **Unnecessary regulatory burdens**
- **Interactions, inconsistencies and gaps**
- **Rules giving rise to unintended consequences**

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Input into the review

Public consultation on EMIR , May – August 2015

Public hearing in May 2015

Input from ESRB, ESCB and ESMA on specific topics

Commission Call for Evidence on financial services legislation September 2015 –January 2016

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Principal issues identified in the consultations

General support for the objectives of EMIR:

Promoting transparency and standardisation in derivatives markets and reducing systemic risk through its core requirements.

However, according to stakeholders, EMIR requirements could be adjusted in order to:

Reduce disproportionate costs and burdens

Simplify and increase the efficiency of the requirements

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EMIR Review report, 22 Nov 2016

Overall conclusion:

No fundamental change should be made to the nature of the core requirements of EMIR, which are integral to ensuring transparency and mitigating systemic risks in the derivatives markets.

The report is available here:
http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX%3A52016DC0857&from=EN

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EMIR Review report, 22 Nov 2016

Areas where action may be necessary to ensure fulfilment of the objectives of EMIR in a more proportionate, efficient and effective manner:

- **Reducing disproportionate costs and burdens**
  - Scope of entities: Recalibration of some of the requirements on Non-Financial Counterparties (NFCs), Small Financial Counterparties, Pension Scheme Arrangements
- **Facilitating access to clearing**
- **Simplifying and increasing the efficiency of the requirements**
  - Introducing a mechanism to suspend the clearing obligation
  - Facilitating the predictability of margin requirements
  - Streamlining Trade Reporting

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Next steps

- Legislative proposal to introduce targeted amendments to EMIR to address the issues identified in the Review report

- REFIT item, adoption scheduled in the spring of 2017

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