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EMIR REGULATION

Reference Text: European regulation – 648/2012

Link :

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0001:0059:EN:PDF
http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R2251&rid=1
http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2010/0250(COD)&l=EN
http://www.europarl.europa.eu/oeil/popups/summary.do?id=1219218&t=f&l=en

Public Register for the clearing obligation under EMIR
Public Register for third country CCPs agreed by ESMA:
file:///C:/Users/a351652/Downloads/public_register_for_the_clearing_obligation_under_emir.pdf
https://www.esma.europa.eu/sites/default/files/library/third-country_ccps_recognised_under_emir.pdf

Q&A:

https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52_qa_on_emir_implementation_0.pdf

Date of application: 16 August 2012

Presentation

This text responds to the undertakings of the G20 (2009 Pittsburgh Summit) in order, by the end of 2012, to increase the transparency of the derivatives market and reduce the current risk induced by transactions which mostly remain dealt bilaterally (pure OTC – Over The Counter). It can be likened to the American Dodd Franck Act which dedicates part of the text (chapter VII) to the regulation of these transactions.

EMIR is made up of three main topics

- The mitigation of the risk for OTC derivatives contracts
  - → Mandatory clearing for products considered sufficiently standards
  - → For contracts not cleared, reinforcement of the rules to mitigate both the operational risk and the counterparty risk (for example via bilateral exchanges of initial / variation margins)
- Transparency via the mandatory reporting to Trade Repository of derivatives contracts (ETD and OTC)
- Infrastructures :
  - → Reinforced requirements for Central Counterparties
  - → Creation of a EU Trade Repository status

For more information please refer the European Parliament (Legislative Observatory); links are indicated in the Link paragraph of this document

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Current Situation:

- <u>Reporting to a Trade Repository (since 2014)</u>

ESMA has proposed to modify the deadline as regards backloading.

Backloading concerns contracts that have been:

- Either concluded before the entry into force of EMIR (16/08/2012), still open at that date and closed before the start of the reporting obligation (12/02/2014)
- Or concluded after the 16/08/2012 and closed before the 12/02/2014

Texts amending the delegated acts 148/2013 and 1247/2012 have been published in the Official Journal and will enter into application on the 1st November 2017. The new deadline is the 12/02/2019.

- <u>Operational risk mitigation techniques for non cleared contracts (since 2013)</u>

No change compared to the initial requirements

- <u>Counterparty risk mitigation techniques for non cleared contracts (since 2017)</u>

The delegated regulation on risk mitigation techniques for OTC derivative contracts non cleared by a CCP, has started on the 6th of February (reference of the text: 2016/2251)

As of the 1st of March exchanges of variation margins are always required (except for specific cases); regulators at different levels (international, European as well as domestic) have recognised the difficulty for parties change current contracts.

	2 counterparties above 3000 billions €	**2 counterparties above 2250 billions €**	**2 counterparties above 1500 billions €**	**2 counterparties above 750 billions €**	**2 counterparties above 8 billions €**	**At least 1 counterparty below 8 billions €**
Initial Margin (IM)	06/02/2017	01/09/2017	01/09/2018	01/09/2019	01/09/2020	No IM
Variation Margin (VM)	06/02/2017	01/03/2017	01/03/2017	01/03/2017	01/03/2017	01/03/2017
VM (FX forwards) (**)	*03/01/2018*	*03/01/2018*	*03/01/2018*	*03/01/2018*	*03/01/2018*	*03/01/2018*

(**) see above point on FX forwards definition

Man should note that the same phase-in exists at an international level; except for the first date (6/02/2017) the EU calendar is consistent with the former.

- <u>Clearing obligation</u>

The Public Register for the clearing obligation under EMIR is on the website of ESMA (see page 1§ Link)

IRS et CDS :

The clearing start date for “category 3 contracts” is officially postponed until the 21/06/2019. The delegated act (2017/751) has been published in the EU Official Journal on the 29th of April. The new date is the same for all the products.

Accordingly counterparties in category 4 will start before. This is not seen by ESMA as inconsistent since it appears, ESMA says, that counterparties in category 4 (namely NFC+) may be more active than small FC (those in category 3).

The new calendar:

	Categ 1	Categ 2	Categ 3	Categ 4
IRS wave 1	21/06/2016	21/12/2016	**21/06/2019**	21/12/2018
CDS	09/02/2017	09/08/2017	**21/06/2019**	09/05/2019
IRS wave 2	09/02/2017	09/07/2017	**21/06/2019**	09/07/2019

NDF FX: no mandatory clearing for the moment

- FX spots/FX forwards definition

The European issue regarding some FX forwards (which are in or out of the EMIR scope depending on the local transposition of MIFID1) should be fixed thanks to the level 2 of MIFID2. It is proposed in the final draft RTS from the ESAs regarding non cleared contracts to postpone the requirement for variation margins (for FX) to the earlier of the following dates: 31st of December 2018 and the entry into force of the level 2 of MIFID2. Thus fixing the issue related to the different dates of entry into force.

- Exemption of clearing and of reporting

The EC proposes to include in the list of National Central Banks exempted those of the following countries: Australia, Canada, Hong Kong, Mexico, Singapore, Switzerland.

- CCPs agreements

No new agreement

- Equivalence

1 new Memorandum of Understanding has been signed with New-Zealand for the recognition of CCP

- EMIR review

As required by the level1, the European Commission has issued in 2015 its consultation in respect of the revision process of the regulation. On the 23rd of November, the EC has published its report to the European Parliament and to the Council, highlighting some weaknesses of EMIR and suggesting improvements.

The European Commission has published on the 4th May 2017 its draft proposal. Third countries aspects will be tackled in a separate proposal expected for June.

- Documentation

A Q&A dedicated to EMIR and regularly updated could be found on the ESMA's website (please refer to paragraph Link)

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Next Steps:

Foreseen	Start of the process in relation to EMIR review proposal

Key Dates:

Following its adoption by the Council on the 4th of July 2012, the final text for EMIR was published in the Official Journal of the European Union on 27th of July 2012. Its application date will therefore apply 20 days following its publication, the 16th of August 2012.

It was nevertheless only able to be applied once the technical implementing measures have been specified (the level 2 measures) regarding the recognition procedure for CCPs, the classification of OTC derivatives, the definition of calculation rules for margin calls for the remaining OTC transactions.

Except two of them (on third country and on margin requirements for non-centrally cleared derivatives), standards have been adopted by the Commission on the 19th of December and published in the EU JO the 23rd of February 2013 for an entry into force the 15th of March 2013.

This date is the first day for some of the requirements regarding risk mitigation techniques for non cleared contracts like timely confirmation (all parties are concerned) as well as valuation (for financial counterparties and non financial ones when above the thresholds – NFC+). Non financial counterparties are also required as of the 15th of March to declare them as NFC+. This is also the start of the period for Trade Repositories and CCPs to send their application form to their authorities.

Other requirements linked to the risk mitigation techniques (except those on the margins) have entered into force 6 months later, ie the 15th of September 2013.

The reporting to a Trade Repository firstly foreseen to September 2013 for IRD and CDS, then postponed to the 1st of January 2014 started finally on the 12th of February 2014 irrespective of the class of assets for both listed and OTC derivatives). Indeed, ESMA agreed the first Trade Repositories on the 28th of November 2013.

On the 18th March 2014, NASDAQ OMX was the first CCP to be agreed under EMIR; this date is important regarding the frontloading requirement. A trade on a product cleared by this CCP concluded or novated at this date or after may be subject to the clearing obligation.

Immediately after, ESMA has started its process as regards the mandatory clearing (IRS, CDS as well as NDF FX have been assessed according to the 3 criteria defined by ESMA to determine if a product was standard). ESMA's conclusions have been issued between 2014 and 2015. The related delegated acts will be adopted end of 2015 and beginning 2016. The mandatory clearing began on the 21st of June 2016 for certain IRS and counterparties that are also clearing members.

Two years after their Discussion Paper, the 3 ESAs (ESMA, EIOPA and EBA) issued on the 14th of April 2014 their Consultation Paper on risk mitigation techniques for OTC derivatives contracts not cleared by a CCP. A second consultation took place in 2015, the final draft being officially transmitted to the Commission in March 2016. Then discussions between the two bodies started and lasted until the year's end.

The delegated act imposing the risk mitigation technique for non cleared contracts has been adopted on the 15th of December 2016 for an entry into application in February 2017 (6 February 2017: start of the obligation to exchange initial and variation margins for the biggest player; 1st of March 2017: start of the obligation to exchange variation margins for all the others).

End of March 2016: ESMA has fined DDRL (subsidiary of DDTC) €64,000 for negligently failing to put in place systems capable of providing regulators with direct and immediate access to derivatives trading data (between March 2014 and December 2014). ESMA has also issued a public notice detailing the negligence.

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