

EMIR : Quelles sont les dernières évolutions pour l'application du règlement ?

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Les 8 obligations applicables dans le cadre d'EMIR

1- Compensation auprès d'une contrepartie centrale

2- Confirmation rapide des opérations

3- Rapprochement de portefeuilles

4- Règlement des différends

5- Compression de portefeuilles

6- Valorisation des contrats

7- Echange de garanties

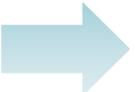
8- Déclaration aux référentiels centraux

- ✓ Territorialité : EMIR s'applique à toutes les entités membres de l'Espace Economique Européen (EEE), y compris leurs succursales hors EEE.

- ✓ Produits : les produits dérivés.
 - Pour la compensation : les dérivés de gré à gré déclarés éligibles à la compensation par l'ESMA,
 - Pour les mesures de réduction du risque : les dérivés de gré à gré non compensés,
 - Pour la déclaration des opérations : les dérivés qu'ils soient traités de gré à gré ou négociés sur des marchés réglementés.

- ✓ Contreparties : les Contreparties Financières (CF) et les Contreparties Non Financières (CNF).

Les premiers contrats dérivés concernés :

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Dérivés de taux

Le 1^{er} décembre 2015 a été publié au Journal Officiel de l'Union européenne un premier règlement délégué 2015/2205 du 6 août 2015 qui impose une obligation de compensation centrale sur les dérivés de taux suivants, libellés en euros, en livres sterling, en yens japonais et en dollars :

- les *swaps* de taux d'intérêt fixe contre variable,
- les *swaps* de base,
- les *Forward Rate Agreements (FRA)*,
- les *swaps* indexés sur le taux à un jour.

Ces contrats devront par ailleurs remplir certaines conditions, notamment en ce qui concerne leur durée résiduelle et leurs indices de référence, qui sont précisées dans le règlement délégué.

Le 10 novembre 2015, l'ESMA a en outre publié un projet de standards techniques proposant de rendre obligatoire la compensation centrale sur certains dérivés de taux d'intérêt libellés en devises polonaise, norvégienne et suédoise (fixed-to-float et FRA) considérés comme d'importance systémique tant à un niveau local qu'au niveau européen.

Le 1er mars 2016, la Commission européenne a adopté un règlement délégué 2016/592 visant à rendre obligatoire la compensation centrale de certains contrats dérivés sur risque de crédit (CDS).

Critères pris en compte :

- Degré de normalisation
- Volume
- Liquidité
- Information sur la formation des prix



DATE D'APPLICATION

- Selon le type de contrepartie, du 9 FEVRIER 2017 au 9 mai 2019

LISTE ACTUALISEE DES DERIVES OTC SOUMIS A L'OBLIGATION DE COMPENSATION (source ESMA)

Table 1: Basis Swap Classes

id	Type	Reference Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional Type
A.1.1	Basis	EURIBOR	EUR	28D-50Y	Single currency	No	Constant or Variable
A.1.2	Basis	LIBOR	GBP	28D-50Y	Single currency	No	Constant or Variable
A.1.3	Basis	LIBOR	JPY	28D-30Y	Single currency	No	Constant or Variable
A.1.4	Basis	LIBOR	USD	28D-50Y	Single currency	No	Constant or Variable

Table 2: Fixed-to-Float Interest Rate Swap Classes

id	Type	Reference Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional Type
A.2.1	Fixed- to-Float	EURIBOR	EUR	28D-50Y	Single currency	No	Constant or Variable
A.2.2	Fixed- to-Float	LIBOR	GBP	28D-50Y	Single currency	No	Constant or Variable
A.2.3	Fixed- to-Float	LIBOR	JPY	28D-30Y	Single currency	No	Constant or Variable
A.2.4	Fixed- to-Float	LIBOR	USD	28D-50Y	Single currency	No	Constant or Variable

Table 3: Forward Rate Agreement Classes

id	Type	Reference Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional Type
A.3.1	FRA	EURIBOR	EUR	3D-3Y	Single currency	No	Constant or Variable
A.3.2	FRA	LIBOR	GBP	3D-3Y	Single currency	No	Constant or Variable
A.3.3	FRA	LIBOR	USD	3D-3Y	Single currency	No	Constant or Variable

Table 4: Overnight Index Swap Classes

id	Type	Reference Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional Type
A.4.1	OIS	EONIA	EUR	7D-3Y	Single currency	No	Constant or Variable
A.4.2	OIS	FedFunds	USD	7D-3Y	Single currency	No	Constant or Variable
A.4.3	OIS	SONIA	GBP	7D-3Y	Single currency	No	Constant or Variable

LISTE ACTUALISEE DES CHAMBRES DE COMPENSATION AUTORISEES OU RECONNUES

(source esma)

Id of the class	Authorised European CCPs ⁵						Recognised Third-Country CCPs ⁸	
	BME Clearing (Spain)	CME Clearing (UK)	Eurex Clearing (Germany)	LCH SA (France)	LCH Ltd (UK)	Nasdaq OMX (Sweden)	JSCC (Japan)	OTC HK (Hong Kong)
A.1.1	✓	✓	✓		✓		✓	✓
A.1.2		✓	✓		✓			
A.1.3		✓	✓		✓		✓	
A.1.4		✓	✓		✓		✓	✓
A.2.1	✓	✓	✓		✓	✓	✓	✓
A.2.2		✓	✓		✓			
A.2.3		✓	✓		✓		✓	
A.2.4		✓	✓		✓		✓	✓
A.3.1	✓	✓	✓		✓	✓		
A.3.2		✓	✓		✓			
A.3.3		✓	✓		✓			
A.4.1	✓	✓	✓		✓	✓		
A.4.2		✓	✓		✓			
A.4.3		✓	✓		✓			
B.1.1				✓				
B.1.2				✓				

LES EVOLUTIONS MAJEURES : CALENDRIER DE MISE EN ŒUVRE (source ESMA)

Category of counterparty	Short description of the category	Date of taking effect for new contracts	Minimum remaining maturity		
Category 1	Clearing Members in the classes subject to the clearing obligation The CCPs listed below have published the lists of their clearing members in Category ¹⁷ :	21 June 2016	6 months (as of 21 June 2016) for contracts entered into or novated on or after 21 February 2016		
	BME			Spain	Clearing Members in Category 1 - BME Clearing
	CME CE			UK	Clearing Members in Category 1 - CME Clearing Europe
	Eurex			Germany	Clearing Member in Category 1 - Eurex Clearing AG
	LCH Ltd			UK	Clearing Members in Category 1 - LCH Ltd
	Nasdaq			Sweden	Clearing Members in Category 1 - Nasdaq OMX Clearing
	JSCC			Japan	Clearing Members in Category 1 - JSCC
	OTC HK			Hon-Kong	Clearing Members in Category 1 - OTC Clearing HK
Category 2	<ul style="list-style-type: none"> Financial counterparties above the EUR 8bn threshold Alternative investment funds that are non-financial counterparties and above the EUR 8bn threshold 	21 December 2016	6 months (as of 21 December 2016) for contracts entered into or novated on or after 21 May 2016		
Category 3	<ul style="list-style-type: none"> Financial counterparties below the 8bn threshold Alternative investment funds that are non-financial counterparties and below the 8bn threshold 	21 June 2017	Not applicable		
Category 4	Non-financial counterparties not included in Categories 1, 2 or 3	21 December 2018	Not applicable		

⁷ ESMA exercised reasonable care in order to ascertain that the information in the linked websites is accurate. ESMA has no control over the linked websites and is not responsible for the contents or format thereof, or for any problems incurred as a result of accessing them. Offering links to websites should not be construed as an endorsement of any kind from ESMA. ESMA accepts no responsibility or liability whatsoever with regards to the information on the linked websites.

- L'ESMA a publié le 4 février 2016, une mise à jour de ses Q&A concernant la mise en œuvre d'EMIR.



- Dans le cadre de cette mise à jour, la question 37 relative à l'accès aux données par les autorités compétentes a été modifiée, ainsi que la réponse qui lui a été apportée.
- L'ESMA a actualisé le 2 juin 2016 ses Q&A sur le processus de catégorisations des contreparties

****modified**** TR Question 37 [last update 4 February 2016]

Article 81 - Access to data by the competent authorities

According to Article 81(2) EMIR, “A trade repository shall collect and maintain data and shall ensure that the entities referred to in paragraph 3 have direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates”. Furthermore, Article 2 of Commission Delegated Regulation 151/2013 defines the different filtering criteria for the access to the three levels of data: transaction, position and aggregate.

- a) ****modified**** *When referring to access to data by regulators, how “access to all transaction data” needs to be understood? Does it include the details of derivatives which are not accepted by the TR in accordance with the procedures put in place by the TR to comply with the requirements under Articles 19(a) and 19(b) of Commission Delegated Regulation 150/2013, of 19 December 2012? Does it also include the conflicting values of those derivatives trades which are reported to two different TRs following the performance of inter-TR reconciliation process?*
- b) *Does a Union competent authority (including the competent authorities of the EU Member States) have access to all transaction data on all derivatives trades concluded by a counterparty that fall within the scope of that authority, whether such counterparty is reported under counterparty data field no. 2 (Counterparty ID) or counterparty data field no. 3 (ID of the other counterparty)?*
- c) *Does a competent authority from a Member state have access to all transaction data on all derivatives trades concluded by a counterparty that is from the same Member State?*
- d) *Until the adoption of a unique product identifier in the European Union, the reports made to the trade repository in which the underlying is an index or a basket of indices are reported with an “I” or “B” in common data field 4. Which competent authorities have access to the all transaction data of the derivatives trades where the underlying is identified with an “I” or a “B”?*

TR Answer 37

- a) ****modified**** As described in Recital 13 of the Commission Delegated Regulation 151/2013, of 19 December 2012, transaction data should include individual trade details. Irrespective of whether the report for a derivative contract has been accepted or rejected by the TR, in accordance with the procedures put in place by the TR to comply with the requirements under Articles 19(a) and 19(b) of Commission Delegated Regulation 150/2013, of 19 December 2012, these these details include the two sets of counterparty data set out in Table 1 of the Annex of Commission delegated regulation 148/2013, of 19 of December 2012, and the common data set out set out in Table 2 of the Annex of Commission delegated regulation 148/2013, of 19 of December 2012. Given the requirement for TRs to reconcile the details of derivatives under Article 19(c) of Commission Delegated Regulation 151/2013, of 19 December 2012, in those cases where the counterparties report to two different TRs, the transaction data comprises the data sets reported by the two counterparties to the two different TRs.
- b) Yes.
- c) Yes, as long as it is entitled to it.
- d) Until unique product identifier is adopted in the European Union, all Union competent authorities (including the competent authorities of the EU Member States) have access|to all transaction data on derivatives trades where the underlying is identified with an “I” or a “B”.