



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

European Market Infrastructure Regulation

Questions and Answers

1st Edition – 21 January 2020

European Market Infrastructure Regulation

Questions and Answers

This document sets out answers to queries, which may arise in relation to the European Market Infrastructure Regulation (Regulation (EU) No 648/2012) and the Irish Regulations. It updates and replaces the Frequently Asked Questions on EMIR previously published by the Central Bank. It is published to limit uncertainty and is not relevant to assessing compliance with regulatory requirements. In addition to being published in the Central Bank's "Markets Update" it will be posted on the Central Bank website and will be updated there occasionally as required. You should check the website from time to time in relation to any matter of importance to you to see if the position on a query may have altered. The Central Bank reserves the right to alter its approach to any matter covered in this Q&A at any time.

In this document:

"EMIR" refers to 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;

"ESMA" refers to the European Securities and Markets Authority;

"FC" refers to financial counterparty as defined in EMIR;

"GLEIF" refers to Global LEI Foundation;

"Irish Regulations" refers to the European Union (European Markets Infrastructure) Regulations 2014, S.I. No. 443 of 2014, as amended;

"LEI" refers to legal entity identifier;

"MIFID II" refers to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;

"NCA" refers to national competent authority;

"NFC" refers to non-financial counterparty as defined in EMIR;

"OTC" refers to over-the-counter;

"TR" refers to trade repository as defined in EMIR.

ID 1001

Q. Who is the NCA in Ireland?

A. On 8 October 2014, the Central Bank was appointed the sole NCA for EMIR by the Minister for Finance in the Irish Regulations.

ID 1002

Q. Are FX Forwards considered as derivatives?

A. Yes. For EMIR purposes, derivatives are defined by reference to points (4) to (10) of Section C in Annex 1 of MIFID II. Further detail on derivatives related to FX transactions is provided by Article 10 of Commission Delegated Regulation (EU) 2017/565.

ID 1003

Q. How does the Central Bank supervise and enforce compliance with the reporting requirements in EMIR?

A. The supervision of FCs' EMIR compliance is incorporated into the Central Bank's risk-based approach for supervision (PRISM) where relevant.

The role of supervising EMIR compliance by NFCs is the responsibility of the EMIR unit within the Central Bank. The EMIR unit also processes the various notifications and applications required by EMIR (e.g. applications for intragroup exemptions).

The Central Bank consulted on the supervision of NFCs under EMIR (CP90) and on 16 July 2015 the Central Bank published a [Feedback Statement](#) which provides details on the Central Bank's revised model of EMIR supervision.

The Central Bank's supervisory approach may be subject to change in light of resource constraints, systems development and operational priorities.

ID 1004

Q. Is there a Central Bank approved or preferred TR?

A. No. All ESMA registered TRs are equally acceptable in discharging reporting obligations. The requirement is for trades to be reported to a TR; therefore, a single entity could report different trades to different TRs. The important thing is that all trades are reported, not that they are reported to the same TR. The list of registered TRs is available on ESMA's website.

ID 1005

Q. My TR had a problem and will not accept my trades: should I send them to the Central Bank?

A. No. The obligation is to report to a TR, not to the Central Bank; sending trades to the Central Bank will not discharge your obligation. Should there be any problems, ensure that all efforts are made to report trades as soon as possible and keep detailed records of the incident, the trades involved and the process undertaken to resolve the matter so that the information can be made available to the Central Bank if requested.

ID 1006

Q. Where can I get my LEI code? Is there a national authorised LEI provider?

A. An LEI is available from LEI issuers accredited by the GLEIF. A list of all LEI issuers, also referred to as Local Operating Units (LOUs) can be found on the [GLEIF website](#)

The GLEIF has also introduced the concept of a [registration agent](#) to streamline the issuance of LEIs. Registration agents help legal entities to access the network of LEI issuing organisations.

ID 1007

Q. When can I submit a request/ notification for an intragroup exemption?

A. Centrally Cleared OTC Derivative Contracts

An Irish counterparty intending to avail of an intragroup exemption or derogation where one counterparty is established in a third country, as provided for in Commission Delegated Regulations (EU) 2015/2205 of 6 August 2015, 2016/592 of 1 March 2016 and 2016/1178 of 10 June 2016 must notify the Central Bank at least 30 calendar days in advance.

A completed notification form must be submitted to both the counterparty's Central Bank supervisor and the EMIR Unit (as appropriate). Please email emir@centralbank.ie to request an Intragroup Transaction Exemption/Derogation notification form.

Non-Centrally Cleared OTC Derivatives

Subject to certain criteria being met to the satisfaction of its competent authority, a counterparty can avail of an exemption/derogation under EMIR from the obligation to bilaterally exchange variation and initial margin on intragroup transactions. An Irish counterparty intending to avail of an exemption/derogation must, as required under EMIR, apply to/notify the Central Bank at least three months in advance.

The Central Bank is now accepting applications/notifications; a completed application/notification form must be submitted to both the counterparty's Central Bank supervisor and the EMIR Unit (as appropriate). Please email emir@centralbank.ie to request a Bilateral Margining Intragroup Transaction Exemption/Derogation Application/Notification form.

ID 1008

Q. How do I submit the monthly unconfirmed trades report?

A. Commission Delegated Regulation (EU) No 149/2013, Article 12(4) states that *“financial counterparties shall have the necessary procedure to report on a monthly basis to the competent authority designated in accordance with Article 48 of Directive 2004/39/EC of the European Parliament and of the Council the number of unconfirmed OTC derivative transactions referred to in paragraphs 1 and 2 that have been outstanding for more than five business days”*

At this point FCs do not need to submit such a report unless specifically requested to by the Central Bank. However, it is expected that all impacted FCs will have the necessary procedures in place to report to the Central Bank when requested to do so.

ID 1009

Q. NFCs – what is the clearing threshold?

A. In accordance with Article 10 of EMIR, every 12 months a NFC taking non-hedged positions in OTC derivative contracts may calculate its aggregate month-end average position for the previous 12 months. Where the result of that calculation exceeds any one of the specified limits set out in Article 11 of Commission Delegated Regulation (EU) No. 149/2013, that NFC is deemed to have breached the clearing threshold. That NFC will subsequently have to clear the OTC derivative contracts which pertain to the asset classes subject to the clearing obligation for which the clearing threshold has been breached.

Alternatively, if a NFC chooses not to calculate whether its positions exceed the thresholds, it will become subject to the clearing obligation for any class of OTC derivatives subject to the clearing obligation. Article 10 of Commission Delegated Regulation (EU) No 149/2013 sets out the criteria for determining which OTC derivative contracts may qualify as objectively reducing risks.

ID 1010

Q. I am a NFC with OTC derivative contracts above the clearing threshold, which are not objectively measurable as reducing risks. What do I need to do?

A. A NFC must inform both ESMA and its NCA when it exceeds the clearing threshold (NFC+) and when it no longer exceeds the clearing threshold (NFC-).

For further information on the clearing thresholds and for a copy of the relevant notification to be submitted please refer to ESMA's web page.

Notifications to the Central Bank should be sent to emir@centralbank.ie.



T: +353 (0)1 224 6000
E: emir@centralbank.ie
www.centralbank.ie



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem