EUROPEAN MARKET INFRASTRUCURE REGULATION ("EMIR") - REPORTING OBLIGATION

Overview

The European Market Infrastructure Regulation ("EMIR") is a European Union ("EU") and United Kingdom ("UK") Regulation setting out reporting requirement for both "Over the Counter" ("OTC") derivative contracts and Exchange Traded / Listed derivatives ("ETD"). Its main objective of increasing transparency in the derivative markets and allowing regulators to monitor systemic risk.

Under EMIR, the details of any conclusion, modification or termination of a derivative contract are to be reported to a registered or recognized Trade Repository ("TR") no later than the business day following the conclusion, modification, or termination of such contract.

Who is required to report under EMIR?

EMIR reporting obligations apply to counterparties established in the EEA zone and in the United Kingdom (UK). Since Brexit, there is an EU EMIR and a UK EMIR regime. The EU EMIR regime applies to the EEA zone and the UK EMIR regime applies to the UK zone. Generally, EEA counterparties will have to report to an EU authorized/recognised TR and UK counterparties will have to report to a UK authorized/recognised TR.

The exact reporting obligation will depend on each entity's categorisation under EMIR and on the exemptions elected by entities under EMIR.

When did the reporting obligation under EMIR first begin?

ETD and OTC derivatives reporting requirements have been in place since 12 February 2014. Since then, ESMA introduced some technical amendments on 17 June 2019 which changed the way counterparties report derivatives. Most recently, ESMA and the FCA have announced significant changes to reporting requirements under EMIR, these changes are referred to as "EMIR Refit" and come into force on 29 April 2024 for ESMA (EU EMIR) and 30 September 2024 for the FCA (UK EMIR).

Can I delegate my reporting to a third-party?

Yes, however you remain responsible for the accuracy completeness and timeliness of the EMIR reports submitted on your behalf.

Note: Société Générale has been offering this reporting delegation service since February 12, 2014, if you would like to benefit from it, please contact us.

SOCIETE GENERALE 'S ENTITIES

Société Générale wholesale banking entities offering delegated or assisted reporting services to clients:

Legal Name	Entity Identifier (LEI)	EMIR Reporting Obligation	EMIR Refit Classification	FC corporate sector	GLEIF Link
SOCIETE GENERALE	O2RNE8IBXP4R0TD8PU41	Yes under ESMA	FC+	CDTI	https://search.gleif.org/#/record/O2RNE8IBXP4R0TD8PU41
SOCIETE GENERALE INTERNATIONAL LIMITED	0IKLU6X1B10WK7X42C15	Yes under FCA	FC+	INVF	https://search.gleif.org/#/record/0IKLU6X1B10WK7X42C15
SG AMERICAS SECURITIES, LLC	549300F35UE0BOM1WJ55	No	FC+	INVF	https://search.gleif.org/#/record/549300F35UE0BOM1WJ55

EMIR Refit

The European Commission published EU EMIR Refit new transaction reporting standards within the Regulatory Technical Standards ("RTS") on 7 October 2022. The compliance date for the changes is 29 April 2024 whereby new derivatives contracts should comply with the new rules. Outstanding live derivatives as of 29 April 2024 have until 29 October 2024 to comply with the new rules: trades can be updated using the Event Type 'Update' provided there is no modification to the derivative within those 180 calendar days transition period.

The UK Financial Conduct Authority and the Bank of England published a joint policy statement on 24 February 2023 regarding the final amendments to Technical Standards in relation to the revised UK EMIR Refit reporting requirements. The compliance date for the changes is 30 September 2024.

Key changes to the data to be reported

- ISO 20022: all reports must now be in the **new ISO 20022 XML format**, previous standards used to report will no longer be accepted. Collateral data are reported on separate margins report which are no longer part of the derivative trade report.
- EMIR Refit requires additional fields, such as **on counterparty data**:

    1. **Nature of Counterparty 2**: FC, NFC, CCP, Other.
    2. **Corporate Sector of Counterparty 1 & 2**: required for FC or NFC. Left blank for CCPs and entities in third countries or without EMIR reporting obligation.
    3. **Clearing Threshold of Counterparty 2**: True or False depending on whether above or below Clearing threshold.
    4. **Reporting Obligation of Counterparty 2**: True or False.
    5. **Entity Responsible for Reporting ("ERR")** [1]
       Voluntary delegated reporting: ERR is the LEI of Counterparty 1 having delegated its reporting to SG.
       Mandatory delegated reporting with NFC-: ERR is the LEI of the FC reporting for the NFC-. However, if an NFC- moves to being an NFC+ during the life of the trade, the NFC will have to inform the FC in a timely manner of its status change. Please note, mandatory delegated reporting does not apply to ETDs.

- Some examples of new or amended fields under EMIR Refit: "**Event date**", "**Custom basket code**", "**Delta**" for changes in derivative price vs. change in price of the underlier for options and swaptions, extension of **collateralization categories**, **pre-haircut** and post-haircut margins, standard ESMA codes for underlying index, trade direction "MAKE" or "TAKE" (previously payer/ receiver).
- Increased **granularity in trade life cycle events** reporting, with new combinations of action types and event types to provide more details of the underlying action (trade, early termination, allocation, clearing, corporate event…), linking IDs to allow identification of reports related to the same life cycle events (Prior UTI, Post-Trade Risk Reduction Identifier, Subsequent position UTI).

Counterparty identifiers and Legal Entity Identifier ("LEI")

If the LEI is not available, or not renewed, trade reports will start getting rejected for counterparties that are not natural persons[2].

[1] *In the case of delegation with funds, SG will apply EMIR Refit regulation Article 9.1 (b), 9.1 (c), 9.1 (d) to determine as ERR, the Alternative Investment Fund Manager (AIFM) legally liable for reporting on behalf of an AIF. Similarly, the management company is the entity responsible for the reporting on behalf of the UCITS, and the entity responsible for managing and acting on behalf of an IORP reports for that pension fund. Should there be any specific third-country cross-borders scenarios, please inform us about the specific LEI of the ERR of your fund (For AIFs, see Annex III of https://amafi.fr/download/pages/Q3rGxNrambvvukYwRkQ5AR3OfMGHrseoRbNOIaSx.pdf).*

[2] *Physical persons do not need an LEI, but the client code identifying them will now need to be pre-fixed by the LEI of the counterparty 1 to the trade.*

If you do not have an LEI with a correct status, or if you do not share your LEI with us, it is likely that our reports facing you will be “rejected”.

To the extent that you have delegated your reporting to us, this will impact your reporting obligations. The LEI code “should be duly renewed and maintained according to the terms of any of the endorsed LOUs (Local Operating Units) of the Global Legal Entity Identifier System”. It is therefore critical that you ensure that you provide us with your active LEI if not done already and ensure that your LEI is renewed in accordance with the terms of your accredited LEI issuer.

Identification of OTC derivatives

EMIR Refit introduces a requirement to report the Unique Product Identifier (UPI) code for OTC derivatives if the International Securities Identification Number (ISIN) code is not applicable.

The ISIN code is used to identify derivatives a) that are admitted to trading or traded on a trading venue, or b) are traded on a systematic internaliser and its underlying is admitted to trading or traded on a trading venue, or c) the underlying is an index or basket trading on a trading venue. **All other derivatives shall be identified and reported using a Unique Product Identifier (UPI) code.**

UPI is administered by ANNA DSB. Trade repositories will cross reference the ANNA DSB database to ensure that the UPI reported is administered by ANNA DSB and the value is an accurate value.

Unique Transaction Identifier (“UTI”)

The UTI, which is mandatory for all reportable trades, must now have an LEI as a preface of the UTI generating party. This further emphasizes the importance regulators have placed on the LEI as a critical data element. For pre-existing transactions and positions, 6-month tolerance period to upgrade to the Global UTI format after EMIR Refit go live.

In order to agree on the entity responsible for generating the UTI for their transactions, counterparties subject to EMIR are required to follow the UTI waterfall tree, in accordance with Article 7 of the ITS EMIR Refit Reporting and the ESMA Guidelines section 4.11. For deals concluded bilaterally, counterparty agreement will not pre-empt steps described within the regulatory UTI waterfall.

Under this new EMIR Refit approach, counterparties are required to generate and exchange the UTI before **10:00 AM UTC** on the business day following the date on which the derivative contract is entered into.

Errors & Omissions (E&O) Notifications

EU EMIR brings a renewed focus on data quality for completeness, accuracy, and timeliness of reports through a new Errors & Notifications process. Notifications to the National Competent Authorities (“NCAs”) by the “Entities Responsible for Reporting” (ERRs) are required when significant issues with EMIR reports are identified. Notifications will also have to be sent by Report Submitting Entities to their delegated clients. Template for NCAs notification are published on the ESMA website.

Similarly, UK EMIR also brings focus on data quality and embeds a requirement to notify the FCA (or the Bank of England for CCPs) of errors and omissions relating to UK EMIR reporting. The FCA and the Bank of England already have existing processes for submitting errors and omissions and these will remain as part of UK EMIR Refit. The FCA and the Bank of England have mandated for each entity to determine the materiality threshold.

As part of the E&O notification requirement under EMIR, Report Submitting Entities (“RSEs”) will have to notify the ERR of errors for their reports in a timely manner in order for the ERR to be able to submit a notification to their NCAs in the EU, and the FCA/Bank of England in the UK.

Master Regulatory Reporting Requirement (MRRA) governing delegated reporting under EMIR is expected to adapt to EMIR Refit new requirements. There is an on-going analysis in order to comply with EMIR Refit new obligations in coordination with industry initiative on the topic.

Resources made available by the regulators

ESMA has published a Guideline document which provides guidance on reporting under REFIT. The document is available on ESMA's EMIR reporting website which is linked further below in this communication.

The FCA has published its Policy Statement (PS23/2) which provides some insights into the FCA's approach to REFIT. Additionally, the FCA has communicated to trade associations that it will be setting up a UK EMIR Reporting Industry Engagement Group with industry participants where the FCA is expected to provide further guidance to the industry.

Useful Links

ESMA's EMIR Reporting Page: EMIR Reporting (europa.eu)

FCA's EMIR Page: UK EMIR | FCA

.