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## EMIR reporting changes

*Of particular interest to: Entities reporting under EMIR*

### In brief

A reminder that **changes to EMIR reporting** will take effect from **29 April 2024 (EU EMIR)** and from **30 September 2024 (UK EMIR)**.

### Summary

Under **Article 9** of EMIR (see 'Useful Links' for access to EU EMIR, as amended by EU EMIR REFIT, and to UK EMIR) there is an obligation for derivative transactions between counterparties to be reported to a Trade Repository (**TR**). The details to be reported are not specified within EMIR but instead are to be found within separate '**technical standards**'.

In 2018 the Committee on Payments and Market Infrastructure and the International Organization of Securities Commissions ('CPMI-IOSCO') published technical guidance on the **harmonisation** of critical data elements in respect of OTC derivatives which led to a review of the EMIR technical standards (albeit that EMIR applies to both OTC and exchange traded derivatives).

Although the UK developed the revised technical standards independently from the EU, fortunately the UK revisions were **closely aligned** with those of the EU "to avoid any unintended cost and/or operational burden that would arise as a result of divergence" (Policy Statement PS23/2).

The revised technical standards under EU EMIR are **EU 2022/1855** (Regulatory Technical Standards specifying the minimum details to be reported) and **EU 2022/1860** (Implementing Technical Standards concerning e.g. formats and frequency). In contrast the UK technical standards are contained in the one instrument **FCA 2023/4** (Annex A and Annex B) – see 'Useful Links'.

### Reporting fields

The number of reporting fields **increases** from 129 to **203** (89 new fields and 15 fields withdrawn) under **EU EMIR** whilst the number of reporting fields under **UK EMIR** increases to **204** - details of the extra field under UK EMIR can be found in FCA 2023/4, Annex A, Table 1, Field 21 ("Parties to the derivative" > "Execution Agent").

As was mentioned in the 'Summary' above the new technical standards for EU EMIR take effect from **29**

months, find that they will be reporting under the new regime in respect of EU EMIR obligations whilst reporting under the current regime in respect of UK EMIR obligations.

Reports must be based upon **ISO 20022 XML** standards (Article 1 EU2022/1860; FCA 2023/4 Annex B, Article 2(1)).

**Action points:** Entities that undertake their own EMIR reporting should ensure that their systems will be able to capture the required information, and report in ISO 20022 XML standards, in good time before the relevant go-live date(s). This will be particularly important for those entities that may have to report under both the EU and UK EMIR regimes in the period between 29 April 2024 and 30 September 2024 under different reporting rules. Entities that make use of delegated reporting should already have been contacted by their delegate concerning the changes.

### **Notification of errors**

The technical standards for both EU EMIR and UK EMIR require **notification** to the appropriate regulator when there are “**reporting issues**”.

Under **Article 9 of EU 2022/1860** (“Methods and arrangements for reporting”) the **entity responsible for reporting** must notify the relevant competent authority/ies “as soon as it becomes aware of them” re:

- any misreporting caused by flaws in the reporting systems that would affect a significant number of reports
- any reporting obstacle preventing the **report submitting entity** from sending reports to a trade repository within the deadline
- any significant issue resulting in reporting errors that would not cause rejection by a trade repository

Section 3.28 of the **ESMA Reporting Guidelines** (see ‘Useful Links’) provides insight into what might be regarded as ‘significant’ in the above. The ‘**report submitting entity**’ and the ‘**entity responsible for reporting**’ are reportable in fields 2 and 3 respectively and their definitions can be found in FCA 2023/4, Annex A, Table 1. In addition, Table 2 (pages 29-30) of the ESMA Guidelines clarifies how these fields should be populated in a variety of scenarios.

In contrast, under **UK EMIR Article 10** (technical standards Annex B - “Methods and arrangements for reporting”) requires the **entity responsible for reporting** to notify the relevant regulator (being the FCA except in the case of a CCP in which case it is the Bank of England) of any **material errors or omissions** in its reporting, as soon as it becomes aware of them. According to paragraph 2.54 of PS 23/2 “It is for counterparties to judge what is material in a given situation ... if counterparties are in doubt as to the materiality of a given error, they should be conservative and notify the FCA or Bank (as applicable)”.

**Action points:** Where reporting has been delegated to a third party i.e. the ‘report submitting entity’ and the ‘entity responsible for reporting’ are different then arrangements will need to be put in place in order

## Reconciliations

Under a **new sourcebook** in the FCA Handbook (**EMIRR**, which comes into force on 30 September 2023, the content of which can be found in **Annex C of PS 23/2**) a TR must **verify** certain specified data in a received report and **within 60 minutes** of said receipt must provide the **report submitting entities** with the result of that verification – see EMIRR 2.1. Furthermore, the TR must carry out a **reconciliation** in accordance with EMIRR 2.3 and provide the **report submitting entities** with the results of that reconciliation **within 60 minutes** of completion of said reconciliation.

**Action points:** It will be noted that the TR reports to the report submitting entity albeit that notification of errors to the regulator (see above) is to be made by the entity responsible for reporting. As such where these are different there will need to be **suitable arrangements in place** between these two entities to ensure timely notification of any error.

## Transactions outstanding before relevant live date

Under **UK EMIR** Article 11, Annex B of FCA 2023/4 provides a **transitional period** for those derivatives **outstanding** as at **30 September 2024**. Such transactions need to be updated in accordance with the new reporting technical standards by **31 March 2025**. However, a **modification** or **correction** of such derivative transactions between those two dates will need to be reported under the new regime.

A **similar transitional** exists under **EU EMIR** (EU 2022/1860, Article 10). Derivatives **outstanding** as at **29 April 2024** have a period of **180 days** (26 October 2024) to be updated in accordance with the new technical standards. However, a **modification** or **correction** between those two dates will need reported under the new regime.

**Action points:** Where reporting has been delegated there will need to be clarity about which party will be responsible for updating these transactions.

## Useful Links

[EU EMIR \(648/2012\)](#)

[EU EMIR REFIT \(2019/834\)](#)

[UK EMIR](#)

[EU 2022/1860](#)

[ESMA Guidelines re EMIR Reporting \(w.e.f. 29 April 2024\)](#)

[FCA Instrument 2023/4](#)

[FCA EMIR Validation Rules \(w.e.f. 30 September 2024\)](#)

[FCA Webpage - EMIR Reporting](#)

[Policy Statement PS23/2](#)

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