NEWSFLASH
EMIR 3.0 Implementation
A concise overview of the critical AAR aspects

RegCounsel Financial Services

Background

On 31 January 2025, the Dutch Central Bank ("**DNB**") and the Dutch Authority for the Financial Markets ("**AFM**") published a concise guideline on the core aspects of the EMIR 3.0 Regulation, that entered into force on 24 December 2024. The guideline sets out three (3) crucial elements of EMIR 3.0 for market participants (excluding CCPs and CSPs), including the active account requirement ("**AAR**") which requires certain EU counterparties to establish an account at an EU CCP. Considering the large impact of the AAR on the derivatives market, this newsflash covers its key critical aspects.

What is EMIR 3.0?

EMIR 3.0 is the latest amendment of the European Market Infrastructure Regulation ("**EMIR**"). Specifically, EMIR 3.0 sets out to increase the competitiveness of European clearing services, whereby the reliance on third-country CCPs (read: UK CCPs) is to be reduced. To achieve this, EMIR 3.0 introduces measures to enhance the flexibility of EU CCPs and improve cost transparency by means of a 'soft' location requirement (i.e., the AAR).

> ***"The new framework [contributes] to reducing excessive reliance on systemic CCPs in non-EU countries, by requiring all relevant market participants to hold active accounts at EU CCPs and clear a representative portion of certain systemic derivative contracts within the single market."***
>
> European Commission, 7 February 2024

Who is subject to the AAR?

Briefly put, financial institutions dealing in OTC derivatives are subject to the AAR when they meet two (2) criteria: (**i**) the clearing threshold, and (**ii**) the clearing threshold in respect of either interest rate derivatives ("**IRDs**") or short-term interest rate derivatives ("**STIRs**"), both denominated in either EUR (or PLN for IRDs). EMIR 3.0 will change the nature of the calculation of the clearing threshold with the new RTS describing the revised calculation methodology (which are to be drafted prior to 25 December 2025).

Pre-EMIR 3.0	Aggregate month-end position for the previous 12 months	=	Financial counterparty's OTC derivatives	+	Group entities OTC derivatives**
Post-EMIR 3.0 *(pending RTS)*	Uncleared OTC Position	=	Financial counterparty's <u>uncleared</u> OTC derivatives*	+	Group entities OTC <u>uncleared</u> derivatives**
	OR				
Post-EMIR 3.0 *(Pending RTS)*	Aggregate month-end average position in OTC derivatives	=	Financial counterparty's OTC derivatives* *(cleared and uncleared)*	+	Group entities OTC derivatives** *(cleared and uncleared)*

Clearing Threshold (EUR) *(Currently)*	
IRDs	3 bn.
FX	3 bn.
Com.	4 bn.
Credit	1 bn.
Equity	1 bn.

* Excluding certain transactions, e.g., post-trade risk reduction transactions.
** Excluding OTC derivatives included in AIFs and UCITS, their position is calculated on fund level.

EMIR 3.0 thus moves from an OTC vs. Exchange-Traded Derivatives concept to a (OTC) cleared vs. uncleared methodology, better connecting to its clearing mandate. The exact calibration of the clearing threshold under the revised calculation methodologies will only be made available in the to be drafted RTS. ESMA has indicated that – for the uncleared methodology – the thresholds will be like the current ones, whilst we expect that the threshold for the aggregate total position will be somewhat higher.

Note: For purposes of the AAR, the clearing threshold should be calculated excluding intragroup transactions and including all transactions of group entities included in the *consolidated supervision* of the relevant financial institution (see art. 7a(2) EMIR 3.0). This appears to differ from art. 4a(2) and 10(2) EMIR (3.0), which does not require consolidated supervision for the inclusion of group transactions when calculating the clearing threshold.

Where to report once becoming subject to the AAR?

Financial institutions that become subject to the AAR must notify their relevant competent authority and ESMA *within six (6) months of becoming subject,* using the designated reporting template to AAR-notifications@esma.europa.eu (i.e., for institutions already in scope, before 25 June 2025). Subsequently, financial institutions must report every six (6) months on their AAR activity.

What is required under the AAR?

If a financial institution is subject to the AAR, it must meet certain **organisational requirements**. These see to the following aspects of an active clearing account maintained at an EU CCP:

A. **Permanent functionality**, shown by having the appropriate legal documentation, IT connectivity and internal processes associated to the account in place;
B. **Operational readiness**, the systems and resources available to the financial institutions should be fully operational to facilitate use of the active account, even at short notice, for large new or ported volumes of derivative contracts, at all times;
C. **Full functionality**, all new trades of the financial institutions in STIRs or IRDs can be cleared in the active account, at all times.

Where the financial institution, on a consolidated basis, passes EUR 6 bn. in *notional* outstanding clearing volume in STIRs and/or IRDs they must meet the **representativeness requirement**. This onerous requirement entails the obligatory clearing of a *representative amount of trades* through the active account. ESMA has consulted on draft RTS that detail the exact requirements of the representativeness requirement. In summary, STIRs and IRDs are (**i**) first classified in up to three (3) classes, and then (**ii**) subdivided based on (**a**) maturity and (**b**) size into up to 12 categories per class. Depending on their size, financial institutions must clear one (1) or five (5) transactions in the five (5) most relevant categories per class of STIRs and/or IRDs, every month or every six (6) months through the active account.

Note: The AFM and DNB have indicated not to prioritise enforcement on the AAR requirements that are fully contingent on the finalisation of the respective RTS.

What should financial institutions do to anticipate on the AAR?

Financial institutions should (**i**) assess whether they are in scope of the AAR, (**ii**) assess whether they are in scope of the representativeness requirement, (**iii**) determine the impact of the AAR on their clearing activities, (**iv**) set up an active account at an EU CCP (if required or strategic), and (**v**) prepare the requisite internal documentation to meet the AAR organisational requirements.

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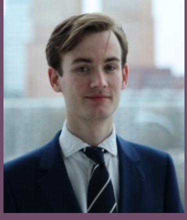

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