

BNP Paribas

EMIR: Clearing Fact Sheet



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Please be aware that this communication is provided for information only and should not be relied upon. BNP Paribas cannot provide legal or regulatory advice to our clients and you are strongly recommended to discuss these regulations with your own professional advisers.

Under the European Market Infrastructure Regulation (**EMIR**, as amended by EMIR Refit), Financial Counterparties over the clearing threshold in any asset class (**FC+**) and Non-Financial Counterparties over the clearing threshold in an asset class (**NFC+**) have to clear certain types of over-the-counter (**OTC**) derivatives, in accordance with the relevant clearing obligations.

The EMIR regime was amended by the EMIR Refit Regulation in 2019 as a result of a review into the implementation of EMIR, and some of the changes introduced by EMIR Refit are covered below.

Note also that as a result of Brexit and the UK’s onshoring of EU-derived law, the EU and the UK apply their own EMIR and Markets in Financial Instruments (**MiFIR**) regimes respectively within the European Economic Area (**EEA**) and the UK. The application and interaction of the UK and EU regimes can be complex, especially for OTC derivatives transactions between EU and UK established/authorised counterparties. Where an EMIR or MiFIR provision or obligation is mentioned below, the position should be considered under the EU and/or UK regime(s) as appropriate. Clients should consult with their legal advisers in case of uncertainties (BNP Paribas does not offer legal or regulatory advice).

Which OTC derivatives are currently subject to the clearing obligation under EU EMIR?

In the context of the Benchmark Transition to new Risk-Free Rates (RFRs), the EU has and is still adjusting its EMIR Clearing Mandates in order to remove LIBOR and add new RFRs.

G4 Currencies IRS RTS

Type	Maturity	Currency	Reference Index	Settlement CCY type	Optionality	Notional Type	Effective date
Basis swaps	28D-50Y	EUR	EURIBOR	Single CCY	No	Constant or Variable	
Fixed-to-Float	28D-50Y	EUR	EURIBOR	Single CCY	No	Constant or Variable	
Forward rate agreements	3D-3Y	EUR	EURIBOR	Single CCY	No	Constant or Variable	
Overnight index swaps	7D-3Y	USD	FedFunds	Single CCY	No	Constant or Variable	
Overnight index swaps	7D-3Y	EUR	€STR	Single CCY	No	Constant or Variable	May 18 th 2022
Overnight index swaps	7D-50Y	GBP	SONIA	Single CCY	No	Constant or Variable	May 18 th 2022
Overnight index swaps	7D-3Y	USD	SOFR	Single CCY	No	Constant or Variable	Aug 18 th 2022
Overnight index swaps	3Y-50Y	USD	SOFR	Single CCY	No	Constant or Variable	Feb 11 th 2024
Overnight index swaps	7D-30Y	JPY	TONA	Single CCY	No	Constant or Variable	Feb 11 th 2024



EEA Currencies IRS RTS						
Type	Maturity	Currency	Reference Index	Settlement CCY type	Optionality	Notional Type
Fixed-to-Float	28D-10Y	NOK	NIBOR	Single CCY	No	Constant or Variable
Fixed-to-Float	28D-10Y	PLN	WIBOR	Single CCY	No	Constant or Variable
Fixed-to-Float	28D-15Y	SEK	STIBOR	Single CCY	No	Constant or Variable
Forward rate agreements	3D-2Y	NOK	NIBOR	Single CCY	No	Constant or Variable
Forward rate agreements	3D-2Y	PLN	WIBOR	Single CCY	No	Constant or Variable
Forward rate agreements	3D-3Y	SEK	STIBOR	Single CCY	No	Constant or Variable

CDS RTS					
Type	Sub-Type	Reference Index	Settlement Currency	Series	Tenor
Index CDS	Untranching Index	iTraxx Europe Main	EUR	17 onwards	5Y
Index CDS	Untranching Index	iTraxx Europe Crossover	EUR	17 onwards	5Y

The mandatory clearing obligation (**CO**) was phased-in based on the **Clearing Categorisation** of counterparties - but the clearing obligation is now in force for all counterparty clearing categories. This clearing obligation may be extended further over time.

What are the changes introduced by EMIR Refit to the clearing classifications and clearing obligation?

- EMIR Refit made certain changes to the counterparty classifications and their subsequent obligations
- A Small Financial Counterparty (**SFC**) is a Financial Counterparty whose positions calculated at group level do not exceed any of the clearing thresholds per product class (SFCs must include hedging transactions in the calculation). SFCs are no longer subject to the EMIR clearing obligation but are still subject to reporting and margin requirements
- If an FC exceeds any of the clearing thresholds in any product class it is classified as a large FC (**FC+**) and subject to the mandatory clearing obligation in respect of all mandatorily clearable derivative product classes
- NFC+ counterparties are only subject to the clearing obligation in the product classes where they exceed the relevant clearing threshold but will remain subject to EMIR reporting and margin requirements in respect of OTC derivatives generally

EMIR Clearing thresholds

The following clearing thresholds in terms of gross notional value of OTC contracts apply when an entity is calculating its EMIR clearing status (i.e. FC+ or NFC+):

- EUR 1 billion Credit derivative contracts
- EUR 1 billion Equity derivative contracts
- EUR 3 billion Interest rate derivative contracts
- EUR 3 billion Foreign exchange derivative contracts
- EUR 4 billion Commodity derivative contracts & others ¹

¹ Note that entities should consider other relevant factors as required by EMIR when carrying out the clearing threshold calculation depending on whether they are an FC+ or NFC+ e.g. whether to include/exclude hedging transactions or derivatives entered into by other entities in its corporate group.



Which Central Counterparties have been authorised or recognised by European Securities and Markets Authority (ESMA)?

The consolidated list of authorised EU Central Counter Parties (CCPs) is set out in this ESMA [document](#), while recognised third-country CCPs are specified in the following ESMA [document](#). Counterparties subject to the EMIR mandatory clearing obligation may only clear in-scope derivatives on an EU-authorised CCP. Parties subject to UK EMIR should consider which UK CCPs have been authorised by, and non-UK CCPs recognised by, the UK regulators.

UK CCPs: The EU-UK transition period has ended (31 December 2020) and UK CCPs are now viewed as third-country CCPs from an EU EMIR perspective. The UK CCPs (LME, ICE, and LCH) have been temporarily recognised as equivalent by ESMA until 30 June 2025. Therefore, clients can continue to meet their clearing obligation on these CCPs at the date of this publication.

What is required for a client to meet their clearing obligation?

- Clients must have a Cleared Derivatives Execution Agreement (**CDEA**) in place with BNP Paribas prior to trading instruments with BNP Paribas which are subject to the EMIR mandatory clearing obligation
- Clients must have all relevant clearing arrangements (i.e. a clearing broker) in place for clearing on a CCP that is authorised or recognised by ESMA for these purposes
- In-scope counterparties must ensure they are set up to trade electronically on EU-authorised trading venues (i.e. Bloomberg's or Trade Web's EU-authorised trading venues), or a third country venue that has been recognised as equivalent to an EU trading venue by the European Commission (e.g. US Swap Execution Facilities (**SEFs**)) in order to fulfil the MiFIR Derivatives Trading Obligation (**DTO**) for in-scope instruments

How does Brexit impact the clearing threshold calculation? ²

For purposes of calculating their clearing threshold for EU EMIR purposes, in-scope firms must take into account the fact that after the EU-UK transition period (i.e. from 1 January 2021) derivatives executed on UK regulated markets are regarded as "OTC derivatives" and should be included in a firm's gross notional value clearing threshold calculations for purposes of EU EMIR.

[ESMA EMIR Q&A, OTC Question 2](#) confirms that derivatives executed on UK regulated markets before the end of the EU-UK transition period (i.e. before 1 January 2021) do not count as "OTC derivatives" for purposes of clearing thresholds. Derivatives executed on UK venues after 1 January 2021 would do so.

UK EMIR: Firms calculating their clearing threshold for UK EMIR purposes should consider whether they exceed the UK EMIR clearing thresholds taking into account that derivatives executed on UK regulated markets and non-UK venues recognised by the UK will not be treated as "OTC derivatives". Firms should check which non-UK venues have been recognised by the UK.

² Please note that the upcoming new EMIR3 regulation might impact this calculation.



MIFIR Derivatives Trading Obligation (DTO)

NFC+ and FC+ are subject to the mandatory clearing obligation under EMIR and are subsequently subject to the derivatives trading obligation under Article 28 of the Markets in Financial Instruments Regulation (EU) No 600/2014 (MiFIR).³

The DTO requires in-scope firms to execute in-scope instruments on EU-authorized regulated markets, Multilateral Trading Facility (MTFs) or Organised Trading Facility (OTFs).

The trading obligation only applies to a range of in-scope derivatives instruments as specified in the relevant MiFIR regulatory technical standards. They are a sub-set of classes of derivatives subject to the EMIR clearing obligation.

ESMA maintains and publishes a public register of those derivative contracts that are subject to the trading obligation. The register provides clarity to market participants on the application of the trading obligation under MiFIR and in particular on:

- The classes of derivatives subject to the trading obligation
- The trading venues on which those derivatives can be traded
- The dates on which the DTO takes effect per category of counterparties

The ESMA [public register](#) will be updated in case of changes, such as when new trading venues offer trading in the derivatives subject to the trading obligation. Parties subject to the UK DTO should refer to the relevant UK public registers and technical standards under UK MiFIR.

What are the OTC derivatives currently subject to the clearing obligation under UK EMIR?

Similarly to the EU, in the context of the Benchmark Transition to new Risk Free Rates (RFRs), the UK has adjusted its EMIR Clearing Mandates in order to remove LIBOR and add new RFRs.

G4 Currencies IRS RTS

Type	Maturity	Currency	Reference Index	Settlement CCY type	Optionality	Notional Type	Effective date
Basis swaps	28D-50Y	EUR	EURIBOR	Single CCY	No	Constant or Variable	
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Overnight index swaps	7D-3Y	USD	FedFunds	Single CCY	No	Constant or Variable	
	7D-3Y	EUR	€STR	Single CCY	No	Constant or Variable	Oct 18 th 2021
	7D-50Y	GBP	SONIA	Single CCY	No	Constant or Variable	Dec 20 th 2021
	7D-30Y	JPY	TONA	Single CCY	No	Constant or Variable	Jan 31 st 2022
	7D-50Y	USD	SOFR	Single CCY	No	Constant or Variable	Oct 31 st 2022

³ Technically, Article 28 MiFIR applies the trading obligation to “financial counterparties” (FC) and non-financial counterparties above the clearing threshold (NFC+). When EMIR Refit came into effect, small FCs (FC-) are technically not subject to a clearing obligation but, due to Article 28 MiFIR referring to FCs generally, seemed to be subject to the trading obligation. Responding to this unintended misalignment between the application of the EMIR mandatory clearing obligation and the DTO, ESMA released a statement endorsing national authorities not to enforce the DTO against parties not subject to the EMIR mandatory clearing obligation (e.g. small FCs and NFC-).



EEA Currencies IRS RTS						
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How did Brexit impact the EMIR clearing obligation and the MiFIR derivatives trading obligation?

EMIR mandatory clearing obligation

Firms should consider the position under EU EMIR and/or UK EMIR, as applicable. The application of the EU/UK EMIR regimes can be complex, and firms should be aware of the following high-level issues. BNP Paribas does not provide legal and regulatory advice and in case of further queries firms are recommended to consult with their own legal advisers.

EU EMIR:

- From an EU EMIR perspective, firms should note that UK CCPs are now third country CCPs and a UK CCP can only be used by parties for purposes of the EU EMIR mandatory clearing obligation if that UK CCP has been recognised by ESMA. As noted above, ESMA has temporarily recognised certain UK CCPs (LME, ICE Clear Europe Ltd, and LCH Limited) until 30 June 2025.
- As mentioned above, derivatives executed on third country venues are viewed as "OTC derivatives" for purposes of the EMIR clearing threshold calculations unless that third country venue has been recognised as equivalent to an EU regulated market by ESMA. UK venues have not been recognised yet, so firms must include derivatives executed on UK venues as "OTC derivatives" when calculating whether they exceed the clearing thresholds under EU EMIR.

UK EMIR:

- We note similar points in relation to EMIR as onshored into UK law (i.e. UK EMIR).
- From a UK EMIR perspective, firms should take into account that only UK CCPs and non-UK CCPs recognised by the UK can be used where they need to comply with the UK EMIR clearing obligation. The Bank of England has recognised various EEA CCPs on a temporary basis and third country CCPs already recognised by the EU before Brexit have also been recognised by the UK, post-Brexit.
- Counterparties calculating their clearing threshold status for UK EMIR purposes should also note UK EMIR's definition of which derivatives are regarded as "OTC derivatives" (derivatives not executed on UK regulated markets or third country venues recognised by the UK).



MiFIR derivatives trading obligation (DTO)

Firms should consider the position under EU MiFIR and/or UK MiFIR as applicable. The application of the EU/UK MiFIR regimes can be complex and firms should be aware of the following high level issues. BNP Paribas does not provide legal and regulatory advice and in case of further queries firms are respectfully recommended to consult with their legal counsel.

EU MiFIR:

- From an EU MiFIR perspective, UK regulated markets, MTFs and OTFs are, after the end of the EU-UK transition period (1 January 2021 onward), regarded as third country venues. Third country trading venues can only be used to execute in-scope derivatives in compliance with the EU DTO if the venue has been recognised as equivalent to EU venues by ESMA. UK venues have not been recognised by the EU yet so cannot be used by firms subject to the EU DTO to trade in in-scope derivatives⁴.

UK MiFIR:

- We note similar points in relation to EMIR as onshored into UK law (i.e. UK EMIR)
- From a UK MiFIR perspective, firms subject to the UK DTO should be aware that they may only trade in compliance with the UK DTO on UK regulated markets, UK MTFs and UK OTFs and non-UK venues recognised by the UK. The UK has not recognised EEA derivatives venues for purposes of the UK DTO yet. On December 31st 2020 the FCA released a statement on the use of the Temporary Transitional Power (TTP) to modify the application of the UK DTO. Where firms that are subject to the UK DTO trade with, or on behalf of, EU clients that are subject to the EU DTO, they will be able to transact or execute those trades on EU venues provided that certain conditions are met (this is addressed in more detail below). This modification of the application of the UK DTO applies to UK firms, EU firms using the UK's temporary permissions regime and branches of overseas firms in the EU. In July 2022, HMT published a Statutory Instrument (SI), which extends the period during which the FCA may continue to use the TTP to modify the application of the DTO. This SI came into force on Nov 15th 2022. The DTO TTP Direction will continue to apply until 31 Dec 2024. Recently, under the Financial Services and Markets Act (FSMA), the FCA was granted a permanent power to suspend or modify the UK DTO (as their current power to modify the UK DTO is time limited). We are expecting the FCA to make this DTO relief permanent using its new power.

⁴ Please note that the latest review of MiFIR is including a measure to, upon National Competent Authority (NCA) request and under certain conditions, a mechanism to suspend the DTO for EU market makers when trading with non-EU clients on UK Trading Venues. We will keep monitoring the situation and the availability of this measure.



Questions & Answers

What is BNP Paribas SA's status?

BNP Paribas SA (LEI: ROMUWSFPU8MPR08K5P83) is currently classified as a Financial Counterparty Category 1 entity under EMIR under the G4, EEA and Credit Regulatory Technical Standards (RTS) so subject to mandatory clearing requirements when facing an in-scope counterparty. Under EMIR Refit BNP Paribas has confirmed its large Financial Counterparty (FC+) status to its National Competent Authorities (NCA) and ESMA. BNP Paribas is therefore still subject to mandatory clearing requirements when facing an in-scope counterparty. This status also applies when BNP Paribas is dealing with a counterparty that is subject to UK EMIR (e.g. UK-incorporated FCs and NFCs).

Does EMIR Refit impact the EMIR clearing obligation?

Yes. Key impacts of EMIR Refit include:

- Revised FC Definition :
 - New narrower definition of "small financial counterparties" (SFC), with the intention that these SFCs are exempt from the clearing obligation in cases where clearing is viewed as being not economically feasible. SFCs below the clearing threshold in all asset classes are not subject to the clearing obligation (though exceeding the clearing threshold in any asset class will trigger the clearing obligation for all asset classes). SFCs are still potentially subject to other EMIR requirements (e.g. Article 9 reporting requirements and Article 11 risk-mitigation requirements (including, depending on the relevant phase-in dates, obligations to exchange IM/VM for uncleared derivatives)).
 - FC+ (i.e. financial counterparties clearing the clearing threshold for any of the asset classes) are subject to the clearing threshold for all asset classes.
- The EMIR mandatory clearing obligation threshold is triggered on an asset class by asset class basis for NFCs, which means an NFC will only be subject to the clearing obligation in the asset classes for which it exceeds the relevant clearing threshold.
- No further frontloading.

Under EMIR Refit, am I classified as a Small Financial Counterparty?

A Small Financial Counterparty (SFC) is an FC whose positions calculated at group level does not exceed any of the clearing thresholds (hedging transactions are included in the FC's calculation). A counterparty must perform its own calculation to determine if they classify as SFC, and make the relevant notification to their NCA and ESMA. SFCs are exempt from the clearing obligation but still subject to reporting, margin and other risk-mitigation requirements.

As a Small FC, are we subject to the EMIR mandatory clearing obligation when trading in-scope instruments with BNP Paribas?

No. As a Small FC you are exempted from the mandatory clearing requirement as amended by EMIR Refit. This is because you do not exceed the clearing thresholds in any asset classes as a small FC. You can clear on a voluntary basis but this will not be a regulatory requirement. You need to notify BNP Paribas ([CIB CLIENT REGULATION EMEA](#)) that you are classified as a SFC and also if this classification changes over time. You will be treated as a FC subject to mandatory clearing in case you do not provide the relevant information on your status to BNP Paribas.

As a Small FC, are we still subject to the EMIR requirement to exchange margin for uncleared derivatives when trading in-scope instruments with BNP Paribas?

Yes. The new EMIR Refit SFC classification does not impact current margin requirements for un-cleared OTC derivative trades.

As an NFC+, are we subject to the EMIR mandatory clearing obligation?

As an NFC+ you will only be subject to the clearing obligation in the asset classes where you exceed the threshold. For example if you exceed the IRS clearing threshold you will be subject to the mandatory clearing requirement for IRS while if you are below the Credit clearing threshold you will not be subject to the clearing requirement for CDS. You need to notify BNP Paribas ([CIB CLIENT REGULATION EMEA](#)) if you are below a threshold for a specific asset class or if there is a change over time. You will still be subject to reporting and margin requirements as relevant to NFCs.



What is the impact of EMIR Refit on the MiFIR Derivatives Trading Obligation?

Counterparties in scope for the EMIR Clearing Obligation (CO) are subsequently automatically in-scope for MiFIR DTO for in-scope instruments. Please note that on 12 July 2019 ESMA published a [statement](#) to advise National Competent Authorities (NCAs) not to prioritise their supervisory actions in relation to the DTO towards counterparties exempted from the CO following the entry into force of EMIR Refit. In line with this statement, SFC clients below all clearing thresholds or NFC clients below a threshold for a specific asset class are exempted from the CO and therefore the DTO.

As a Small FC, are we subject to the MiFIR Derivatives Trading Obligation when trading in-scope instruments with BNP Paribas?

No. The 12 July 2019 ESMA [statement](#) confirms you are exempted from DTO requirements.

As an FC+, are we subject to the MiFIR Derivatives Trading Obligation when trading in-scope instruments with BNP Paribas?

Yes. Clearing clients that qualify as FC+ due to being above any of the clearing thresholds are subject to the MiFIR Derivatives Trading Obligation. BNP Paribas started enforcing this on October 18th 2019 in accordance with the 12 July 2019 ESMA [statement](#).

How could EU and UK EMIR/MiFIR obligations apply to me?

As the UK has onshored EMIR and MiFIR and applies its own version of those regulations, you should consider whether you are instead, or in addition, subject to UK EMIR or UK MiFIR requirements (for example in relation to the EMIR clearing obligation, any other EMIR obligations and the DTO under MiFIR) and whether your clearing/trading arrangements are in compliance.

As a result of Brexit the UK and EU operate their own EMIR and MiFIR regimes and counterparties may have to carry out their clearing threshold calculation using different EU and UK definitions of an "OTC derivative". This may mean (but you should consult with your legal and regulatory advisors as BNP Paribas does not provide legal advice) you need to make different clearing threshold calculations for purposes of UK EMIR and EU EMIR, depending on whether the EU and/or UK regime applies to you and to your counterparty.

What is the overall impacts of the Benchmark Transition on Clearing Mandates?

In the context of the Benchmark Transition to new Risk Free Rates (RFRs), both the EU and the UK have adjusted their respective EMIR Clearing Mandates in order to remove LIBOR and add new RFRs.

FURTHER QUESTIONS

If you have any other comments or questions, please contact the BNP Paribas European Regulatory Reform Team (cib.client.regulations.emea@bnpparibas.com) or your usual relationship or sales contact.

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