BNP PARIBAS

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EMIR – Clearing Obligation factsheet

What you need to know?

November 2026

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What is the EMIR Clearing Obligation?

Under the European Market Infrastructure Regulation (**EMIR**, Regulation (EU) No 648/2012) Financial Counterparties over the clearing threshold in any asset class (**FC+**) and Non-Financial Counterparties over the clearing threshold in an asset class (**NFC+**) must clear certain types of Over The Counter (**OTC**) derivatives, in accordance with the relevant clearing obligations. For further information, we refer you to ESMA's web site and the official ESMA clearing obligation register.

What is a Financial Counterparty?

A **financial counterparty** (FC) under EMIR is defined in Article 2(8) and includes the following entities:

- Investment firms authorised under Directive 2014/65/EU (MiFID II).
- Credit institutions authorised under Directive 2013/36/EU (CRD IV).
- Insurance, reinsurance, and assurance undertakings authorised under relevant EU directives (e.g., Solvency II).
- Collective investment undertakings (e.g., UCITS) and their authorised management companies.
- Institutions for occupational retirement provision (e.g., pension funds).
- Alternative investment funds (AIFs) managed by authorised or registered AIFMs under Directive 2011/61/EU.
- Central Securities Depositories (CSDs) authorised under CSDR Regulation (EU) No 909/2014.

EMIR Refit, applicable since 2020, further classifies FCs based on their OTC derivative positions relative to clearing thresholds:

- **Financial Counterparty above thresholds (FC+)**. Must comply with clearing obligations, transaction reporting, risk mitigation techniques (including collateral exchange) and active account requirements.
- **Small Financial Counterparty or "SFC" (FC-)**. Exempt from clearing obligations and active account requirements but still subject to transaction reporting and risk mitigation techniques (including collateral exchange).

What is a Non-Financial Counterparty?

A **non-financial counterparty** (NFC) under EMIR is defined in Article 2(9) that:

- Is not a financial counterparty and
- Is not a central counterparty (CCP).

[1] Please also note 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).

This includes entities engaged in commercial or economic activities (e.g., corporates, non-financial institutions, or special purpose vehicles) that enter into derivative contracts but do not fall under the categories of FCs or CCPs. EMIR Refit, applicable since 2020, also further classifies NFCs based on their OTC derivative positions relative to clearing thresholds:

- **Non-Financial Counterparty above thresholds (NFC+)**. Must comply with clearing obligations in any asset class where they breach the clearing threshold, transaction reporting, risk mitigation techniques (including collateral exchange) and active account requirements.
- **Non-Financial Counterparty below thresholds (NFC-)**. Exempt from clearing obligations, active account requirements and collateral exchange but still subject to transaction reporting and risk mitigation techniques.

What is the Clearing Threshold regime?

EMIR 3.0 (Regulation (EU) 2024/2987), introduced a revised methodology for the clearing threshold regime that entered into force[2] on 10th November 2026. Related final Regulatory Technical Standard defining this new regime can be found here.

- **Summary of the clearing threshold regime for FCs**

Framework	EU Clearing Threshold rules
To which entities do these apply?	Entities with an EMIR classification of Financial Counterparty
Which positions are in scope?	There are **two** calculations with **two different** trade populations: 1. OTCDs not cleared at an EU authorised[3] CCP or a third country recognised[4] CCP under EMIR 2. **All** OTCDs, **cleared** and **uncleared, not** executed on a regulated market or on an equivalent third-country market Include positions of other group entities
What is the calculation?	Aggregate month-end average position in each asset class for the previous 12 months
What gross notional thresholds apply?	**Two tests:** **1. OTCDs not cleared at an EU authorised CCP or a third country recognised CCP under EMIR ("uncleared"):** • EUR 0.8 billion for credit derivatives • EUR 0.7 billion for equity derivatives • EUR 2.2 billion for interest rate derivatives • EUR 3 billion for foreign exchange derivatives • EUR 4 billion for commodity derivative **and emission allowance derivatives** **2. All OTCDs, cleared and uncleared:** • EUR 1 billion for credit derivatives • EUR 3 billion for interest rate derivatives
Does the hedging exemption apply?	Not applicable to FCs
What happens if the FC exceeds one or more of the clearing thresholds?	The FC will be a 'Large' FC (FC+) and subject to clearing obligation for **all** asset classes
What if the FC is below all clearing thresholds?	The FC will be a 'Small' FC (SFC or FC-) and will **not** be subject to the clearing obligation for **any** asset classes
What happens if the FC does not perform this calculation?	The FC will be considered to be a FC+
Who should be notified?	The entity should inform ESMA, their NCA and their counterparties
What happens to the uncleared margin requirements?	Both FC+ and SFC (or FC-) are subject to uncleared margin requirements
What happens to the Derivative Trading Obligation (DTO)	Only FC+ are subject to the DTO, SFC (or FC-) are exempted from DTO requirements
What happens to the Active Account requirements (AAR)	Only FC+ are subject to the AAR, SFC (or FC-) are exempted from AAR requirements

[2] *The new EU EMIR clearing thresholds regime applied on 10th November 2026. However, counterparties had the flexibility to recalculate at their usual time (noting this is an annual calculation), typically in June, or earlier if desired, after the RTS enters into force.*

[3] *Authorised EU CCP under EMIR article 14*

[4] *Recognised Third Country CCP under EMIR article 25*

- **Summary of the clearing threshold regime for NFCs**

Framework	EU Clearing Threshold rules
To which entities do these apply?	Entities with an EMIR classification of Non-Financial Counterparty
Which positions are in scope?	Include all OTCD positions: • **not** executed on a regulated market or on an equivalent third-country market **not** cleared through an EU authorised CCP or a third country recognised CCP under EMIR. • not subject to hedging exemption • **Entity level calculation only**
What is the calculation?	Aggregate month-end average position in each asset class for the previous 12 months
What gross notional thresholds apply?	• EUR 0.8 billion for credit derivatives • EUR 0.7 billion for equity derivatives • EUR 2.2 billion for interest rate derivatives • EUR 3 billion for foreign exchange derivatives • EUR 4 billion for commodity **& emission allowance derivatives**
Does the hedging exemption apply?	Yes. Under EMIR, the hedging exemption for Non-Financial Counterparties (NFCs) allows certain OTC derivative contracts to be excluded from the calculation of positions for determining whether an NFC exceeds the clearing thresholds. This exemption applies to contracts that meet specific criteria, ensuring that NFCs are not penalized for using derivatives to hedge commercial or treasury financing risks. The ESMA Q&As here, Q10, gives useful guidance on this.
What happens if the NFC exceeds one or more of the clearing thresholds?	• The NFC will be classified as NFC+ and will be subject to the clearing obligation only for the asset class(es) for which the clearing threshold has been exceeded • Variation Margin exchange requirements (VM CSA mandatory) and daily mark to market requirements • Subject to transaction reporting obligation
What if the NFC is below all clearing thresholds?	• The NFC will be classified as NFC- and not be subject to the clearing obligation for any asset class • No Variation Margin exchange or daily mark to market requirements • For EU clients, BNPP has regulatory obligation to report On Behalf Of
What happens if the NFC does not perform this calculation?	An NFC will be considered to be an NFC+
Who should be notified?	The entity should inform ESMA, their NCA and their counterparties
What happens to the uncleared margin requirements?	Only NFC+ are subject to uncleared margin requirements, NFC- are exempted.
What happens to the Derivative Trading Obligation (DTO)	Only NFC+ are subject to DTO, NFC- are exempted.
What happens to the Active Account requirements (AAR)	Only NFC+ are subject to DTO, NFC- are exempted.

What happens if an entity does not perform this calculation?

Entities not making the relevant calculation are “classified up”: if an FC does not perform this calculation it will default to FC+; an NFC which does not perform this calculation will default to NFC+.

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 adjusted its EMIR Clearing Mandates[5] to remove LIBOR and add new RFRs.

OTC interest rate derivatives classes						
Type	**Maturity**	**Currency**	**Reference Index**	**Settlement CCY**	**Optionality**	**Notional Type**
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
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-3Y	EUR	EURIBOR	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
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
Overnight index swaps	7D-50Y	GBP	SONIA	Single CCY	No	Constant or Variable
Overnight index swaps	7D-50Y	USD	SOFR	Single CCY	No	Constant or Variable
Overnight index swaps	7D-30Y	JPY	TONA	Single CCY	No	Constant or Variable

OTC credit derivatives classes					
Type	**Sub-Type**	**Reference Index**	**Settlement Currency**	**Series**	**Tenor**
Index CDS	Untranched Index	iTraxx Europe Main	EUR	17 onwards	5Y
Index CDS	Untranched Index	iTraxx Europe Crossover	EUR	17 onwards	5Y

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

The consolidated list of authorised EU Central Counterparties (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 or recognised CCP. Parties subject to UK EMIR should consider which UK CCPs have been authorised by, and non-UK CCPs recognised by, the UK regulators.

The EU-UK transition period has ended (31st 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 30th June 2028. Therefore, clients can continue to meet their clearing obligation on these CCPs at the date of this publication.

[5] *The mandatory clearing obligation was originally 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*

MIFIR Derivatives Trading Obligation (DTO)

NFC+ and FC+[6] 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**). The DTO requires in-scope firms to execute in-scope instruments on EU-authorised 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 DTO
- 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 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 DTO for in-scope instruments

Active Account requirements

The Active Account requirement (AAR) is the obligation under EMIR 3.0 to maintain[7] an 'active account' with an authorised EU CCP (list here) for products deemed of systemic importance by ESMA, specifically:

- OTC Interest Rate Derivatives (IRD) denominated in euro and polish zloty, and
- Short-Term Interest Rate (STIR) futures denominated in euro.

The AAR applies to EU FC and EU NFC subject to the clearing obligation and that exceed the clearing threshold[8] in any of the in-scope products. The threshold could be exceeded in a particular products category or on an aggregate basis across all categories. ESMA has been providing additional guidance in the Q&A 2506.

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*[6] 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-).*

[7] AAR require in-scope market participants to comply with a set of requirements including operational criteria, representativeness criteria and reporting

*[8] The active account has a double condition for applicability, which counterparties are required to assess on a continuous basis. **First**, the C/P must be subject to the clearing obligation under EU EMIR. Changes in status from FC- to FC+ or NFC- to NFC+ (or vice versa) therefore impact the satisfaction of the first condition. **Second**, the C/P must exceed the "clearing threshold" in any of the AAR categories of derivatives (interest rate derivatives denominated in euro or Polish zloty and short-term interest rate derivatives denominated in euro), individually or in aggregate.*

Questions & Answers

What is BNP Paribas SA's status?

BNP Paribas SA (LEI: R0MUWSFPU8MPRO8K5P83) 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).

How do EU and UK EMIR/MiFIR regimes work together?

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. This may mean (but you should consult with your legal and regulatory advisors as BNP Paribas does not provide legal or regulatory 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 current status of the clearing exemption for EU Pension Funds under EU EMIR?

The EU Pension Fund clearing obligation temporary exemption came to an end on **18th June 2023**. The European Commission (here) concluded that conditions were finally met for EU Pension Funds to be subject to the CO. Since **18th June 2023**, in-scope EU Pension Scheme Arrangements (PSA) have been subject to the EU EMIR CO and subsequently to the MiFIR Derivative Trading Obligation including when trading with BNP Paribas SA.

What is the current status of the clearing exemption for UK Pension Funds under EU EMIR?

EMIR3 (article 4(1)), which came into force on 24th December 2024, introduced an official clearing exemption from an EU standpoint for third country pension funds for as long as they are exempted under their local rules. Bearing in mind that today, as confirmed by HMT in January 2025 (here), UK PSA are still exempted from the clearing obligation under UK rules, therefore UK PSA remain exempted under EU rules from the clearing obligation. BNP Paribas is not required to clear trades subject to the clearing obligation under EU EMIR, executed with UK PSA**.**

Are Post Trade Risk Reduction services exempted from the clearing obligation under EU EMIR?

EMIR 3.O, effective since December 2024, introduces an exemption from the clearing obligation for transactions resulting from Post Trade Risk Reduction (PTRR) services, subject to certain requirements. To further specify the requirements and conditions for such exemption, EMIR 3.0 mandates ESMA to develop draft RTS. ESMA has published in October 2026 a final report and final draft RTS on these requirements for PTRR services for the purpose of the clearing obligation exemption under the European Market Infrastructure Regulation. Such resulting transactions are also exempted from the Derivatives Trading Obligation under MiFIR.

Will UK EMIR Clearing thresholds change as well?

The current clearing thresholds under UK EMIR[9] are generally the same as the existing EU EMIR clearing thresholds. However, under UK EMIR, derivatives executed on UK regulated markets and recognised non-UK venues are not considered OTC (under EU EMIR they would be considered as OTC). There are two key differences between UK and the EU EMIR regime:

- The UK EMIR Commodity threshold **has been increased on 29th May 2026 to EUR 6bn** (here).
- The twofold FC clearing threshold test described above is EU EMIR **only**

[9] *https://www.fca.org.uk/markets/uk-emir/clearing-obligation*

Therefore, it is possible to have different classifications under both Regimes and counterparties. For example, an NFC- under the UK Regime could be an NFC+ under EU EMIR which would have Uncleared Margin, Clearing Obligation and Reporting implications; counterparties in this situation would need to run two sets of calculations. Whilst there is no clear regulatory guidance on this, it is likely that the Strictest Of approach will apply[10].

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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[10] *UK EMIR only applies to firms established in the UK (subject to the "extraterritorial" provisions).*