

EMIR Intragroup Transaction Exemption Notification

Introduction

An intragroup transaction is a transaction between two undertakings which are included in the same **consolidation on a full basis** and are subject to appropriate centralised risk evaluation, measurement and control procedures.

Consolidation on a full basis

* Counterparties shall be considered to be included in the same consolidation when they are both either:

(a) included in a consolidation in accordance with Directive 83/349/EEC or International Financial Reporting Standards (IFRS) adopted pursuant to Regulation (EC) No 1606/2002 or, in relation to a group the parent undertaking of which has its head office in a third country, in accordance with generally accepted accounting principles of a third country determined to be equivalent to IFRS in accordance with Regulation (EC) No 1569/2007 (or accounting standards of a third country the use of which is permitted in accordance with Article 4 of that Regulation); or

(b) covered by the same consolidated supervision in accordance with Directive 2006/48/EC or Directive 2006/49/EC or, in relation to a group the parent undertaking of which has its head office in a third country, the same consolidated supervision by a third-country competent authority verified as equivalent to that governed by the principles laid down in Article 143 of Directive 2006/48/EC or in Article 2 of Directive 2006/49/EC.

OTC derivative contracts may be found in both non-financial and financial groups, as well as within groups composed of both financial and non-financial undertakings. If such a contract is considered an intragroup transaction in respect of one counterparty, then it should also be considered an intragroup transaction in respect of the other counterparty to that contract.

Exemption 1 - Clearing Obligation exemption

An exemption of intragroup transactions from the **clearing obligation** may be applied for with the relevant competent authority/ies, provided that this exemption does not increase systemic risk.

Exemption 2 - Collateralisation exemption

Some intragroup transactions could be exempted, in some cases on the basis of the decision of the competent authorities, from the **collateralisation requirement** provided that their risk-management procedures are adequately sound, robust and consistent with the level of complexity of the transaction and there is no impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.

Intragroup exemption for Financial Counterparties

In relation to a financial counterparty, an intragroup transaction is any of the following:

- a. an OTC derivative contract entered into with another counterparty which is part of the same group, provided that the following conditions are met:
 - i. the financial counterparty is established in the Union or, if it is established in a third country, the Commission has adopted an implementing act under Article 13(2) of EMIR in respect of that third country;
 - ii. the other counterparty is a financial counterparty, a financial holding company, a financial institution or an ancillary services undertaking subject to appropriate prudential requirements;
 - iii. both counterparties are included in the same consolidation on a full basis; and
 - iv. both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures;
- b. an OTC derivative contract entered into with another counterparty where both counterparties are part of the same institutional protection scheme, referred to in Article 80(8) of Directive 2006/48/EC, provided that the condition set out in point (a)(ii) of this paragraph is met;
- c. an OTC derivative contract entered into between credit institutions affiliated to the same central body or between such credit institution and the central body, as referred to in Article 3(1) of Directive 2006/48/EC; or

- d. an OTC derivative contract entered into with a non-financial counterparty which is part of the same group provided that both counterparties are included in the same consolidation on a full basis and they are subject to an appropriate centralised risk evaluation, measurement and control procedures and that counterparty is established in the Union or in a third-country jurisdiction for which the Commission has adopted an implementing act as referred to in Article 13(2) of EMIR in respect of that third country.

Intragroup exemption for Non-Financial Counterparties

In relation to a non-financial counterparty, an intragroup transaction is an OTC derivative contract entered into with another counterparty which is part of the same group provided that both counterparties are included in the same consolidation on a full basis and they are subject to an appropriate centralised risk evaluation, measurement and control procedures and that counterparty is established in the Union or, if it is established in a third country, the Commission has adopted an implementing act under Article 13(2) in respect of that third country.

Intragroup Reporting Exemption for Non-Financial Counterparties

This form should be submitted by a counterparty wanting to notify to the Authority that it wants to make use of the exemption from the intragroup transactions reporting obligation in accordance with article 9(1) of regulation (EU) 648/2012 (EMIR) amended by regulation (EU) 2019/834.

In accordance with Article 9(1) of EMIR, the reporting obligation shall not apply to OTC derivative contracts within the same group where at least one of the counterparties is a non-financial counterparty or would be qualified as a non-financial counterparty if it were established in the Union, provided that:

- i. both counterparties are included in the same consolidation on a full basis;
- ii. both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures; and
- iii. the parent undertaking is not a financial counterparty.

The notification may be submitted by an entity established in Malta in order to benefit from this exemption (unique request). This notification can also be submitted by the parent entity for all entities located in Malta which want to make use of this exemption (multiple requests). Other national competent authorities that are concerned by this notification are required to be mentioned in the form

(i.e. European authorities that are competent for the group entities for which Maltese entities share intragroup derivatives contracts).

Intragroup Exemption from the Clearing Obligation

Without prejudice to the risk-mitigation techniques under Article 11 of EMIR, intragroup transactions as described above may apply for an exemption from the clearing obligation subject to:

- i. the two counterparties being both established in the Union belonging to the same group have first notified their respective competent authorities in writing that they intend to make use of the exemption for the OTC derivative contracts concluded between each other. The notification shall be made not less than 30 calendar days before the use of the exemption. Within 30 calendar days after receipt of that notification, the competent authorities may object to the use of this exemption if the transactions between the counterparties do not meet the conditions laid down in Article 3 of EMIR, without prejudice to the right of the competent authorities to object after that period of 30 calendar days has expired where those conditions are no longer met. If there is disagreement between the competent authorities, ESMA may assist those authorities in reaching an agreement in accordance with its powers under Article 19 of Regulation (EU) No 1095/2010; or
- ii. OTC derivative contracts between two counterparties belonging to the same group which are established in a Member State and in a third country, where the counterparty established in the Union has been authorised to apply the exemption by its competent authority within 30 calendar days after it has been notified by the counterparty established in the Union, provided that the conditions laid down in Article 3 are met. The competent authority shall notify ESMA of that decision.

Total (Exemption 1 & 2) /Partial Exemption (Exemption 1) from Article 11(3) of EMIR

- i. An intragroup transaction referred to in Article 3(2)(a), (b) or (c) of EMIR that is entered into by counterparties which are established in different Member States shall be exempt totally or partially from the requirement laid down in Article 11(3) of EMIR, on the basis of a positive decision of both the relevant competent authorities, provided that the following conditions are fulfilled:

- a. the risk-management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction;
 - b. there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.
- ii. An intragroup transaction referred to in Article 3(1) of EMIR that is entered into by non-financial counterparties which are established in different Member States shall be exempt from the requirement laid down in Article 11(3) of EMIR, provided that the following conditions are fulfilled:
 - a. the risk-management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction;
 - b. there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.

The non-financial counterparties shall notify their intention to apply the exemption to the competent authorities referred to in Article 10(5) of EMIR. The exemption shall be valid unless either of the notified competent authorities does not agree upon fulfilment of the conditions referred to in points (a) or (b) above within three months of the date of the notification.

- a. the risk-management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction;
 - b. there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.
- iii. An intragroup transaction referred to in Article 3(2)(a) to (d) of EMIR that is entered into by a counterparty which is established in the Union and a counterparty which is established in a third- country jurisdiction shall be exempt totally or partially from the requirement laid down in Article 11(3) of EMIR, on the basis of a positive decision of the relevant competent authority responsible for supervision of the counterparty which is established in the Union, provided that the following conditions are fulfilled:
 - a. the risk-management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction;
 - b. there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.
- iv. An intragroup transaction referred to in Article 3(1) of EMIR that is entered into by a non-financial counterparty which is established in the Union and a counterparty which is established in a third-country jurisdiction shall be exempt from the requirement laid down in Article 11(3) of EMIR, provided that the following conditions are fulfilled:
 - a. the risk-management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction;

- b. there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.

The non-financial counterparty shall notify its intention to apply the exemption to the competent authority referred to in Article 10(5) of EMIR. The exemption shall be valid unless the notified competent authority does not agree upon fulfilment of the conditions referred to in points (a) or (b) above within three months of the date of notification.

- v. An intragroup transaction referred to in Article 3(1) of EMIR that is entered into by a non-financial counterparty and a financial counterparty which are established in different Member States shall be exempt totally or partially from the requirement laid down in Article 11(3) of EMIR, on the basis of a positive decision of the relevant competent authority responsible for supervision of the financial counterparty, provided that the following conditions are fulfilled:
 - a. the risk-management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction;
 - b. there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.

The relevant competent authority responsible for supervision of the financial counterparty shall notify any such decision to the competent authority referred to in Article 10(5) of EMIR. The exemption is valid unless the notified competent authority does not agree upon fulfilment of the conditions referred to in point (a) or (b) of the first subparagraph.

The counterparty of an intragroup transaction which has been exempted from the requirement laid down in Article 11(3) of EMIR shall publicly disclose information on the exemption.

The counterparty applying for an exemption must fill out Annex I, along with the relevant supplementary annexes depending on the type of exemption being applied for, i.e. Exemption 1, Exemption 2 and / or the Reporting Exemption.

Annex I - Counterparty Details

(Compulsory)

Counterparty details	
Full name of the counterparty making the notification or application:	
The applicant is a: (FC / NFC)	
Licence no (where applicable) or Company Registration number:	
Legal Entity Identifier (LEI):	
Registered address:	
Full name of senior person applying for the exemption:	
Position:	
E-mail:	
Telephone number:	

Intragroup Counterparty Details	
Full name of the intragroup counterparty:	
Country of establishment:	
The intragroup counterparty is:	
Registered address:	
Legal Entity Identifier (LEI):	
Client code (eg. Licence No / Registration No)	

Other details	
Has the intragroup counterparty submitted or does it intend to submit a notification or application for exemption?	
Please indicate the submission date for the intragroup counterparty's notification.	
Kindly name the intragroup counterparty's National Competent Authority.	
Describe the corporate relationship between the two counterparties.	
Details of the supporting contractual relationships between the parties.	
Please explain the category of intragroup transaction taking place, as specified under Article 3(1) and Article 3(2) points (a) to (d) of EMIR.	
Provide sufficient evidence demonstrating that both Counterparties are included in the same consolidation on a full basis as explained in the introduction to this form, and which is in line with Article 3(3) of EMIR.	

Annex II – Reporting Exemption

(Optional)

Unique Exemption Request Form

(To be filled if the exemption request concerns only one counterparty)

Information related to the submitting counterparty and its intragroup counterparties	
The submitting counterparty is a: (FC / NFC)	
The parent counterparty is a: (FC / NFC)	
Country/ies of intragroup counterparties of the submitting counterparty where an exemption request has been made:	
Does the submitting counterparty already benefit from an intragroup clearing or margin exemption?	

Transaction Risk Management details	
Describe the risk management policies and controls and how they are centrally defined and applied.	
Demonstrate that senior management is responsible for risk management and that risk measurement is regularly reviewed.	
Demonstrate that regular and transparent communication mechanisms are established within the organisation, so that the management body, senior management, business lines, the risk management function and other control functions can all share information about risk measurement, analysis and monitoring.	
Demonstrate that internal procedures and information systems are consistent throughout the institution and reliable so that all sources of relevant risks can be identified, measured, and monitored on an aggregated	

basis and also, to the extent necessary, by entity, business line, and portfolio.	
Demonstrate how the key risk information is regularly reported to the central risk management function to enable appropriate centralised evaluation, measurement and control risk across the relevant group entities.	

Multiple Exemption Request Form

(To be filled if the exemption request concerns several counterparties of the same group)

Information related to counterparties for which the exemption is requested	
Full name of counterparty/ies:	
Legal Entity Identifier (LEI):	
Is the counterparty Financial or Non-Financial Counterparty?	

Information related to the group	
Countries where exemption is requested:	
Does the group already benefit from an intragroup clearing or margin exemption for counterparties mentioned above?	

Transaction Risk Management details	
Describe the risk management policies and controls and how they are centrally defined and applied.	
Demonstrate that senior management is responsible for risk management and that risk measurement is regularly reviewed.	
Demonstrate that regular and transparent communication mechanisms are established within the organisation, so that the management body, senior management, business lines, the risk management function and other control functions can all share	

information about risk measurement, analysis and monitoring.	
Demonstrate that internal procedures and information systems are consistent throughout the institution and reliable so that all sources of relevant risks can be identified, measured, and monitored on an aggregated basis and also, to the extent necessary, by entity, business line, and portfolio.	
Demonstrate how the key risk information is regularly reported to the central risk management function to enable appropriate centralised evaluation, measurement and control risk across the relevant group entities.	

Annex III - Clearing Obligation

(Optional)

Transaction details for which exemption is being requested	
Asset class of OTC derivative contract:	
Type of OTC derivative contract:	
Type of underlying:	
Notional and settlement currencies:	
Range of contract tenors:	
Settlement type:	
Anticipated size, volumes and frequency of OTC derivative contracts per annum:	

Transaction Risk Management details	
Describe the risk management policies and controls and how they are centrally defined and applied.	
Demonstrate that senior management is responsible for risk management and that risk measurement is regularly reviewed.	
Demonstrate that regular and transparent communication mechanisms are established within the organisation, so that the management body, senior management, business lines, the risk management function and other control functions can all share information about risk measurement, analysis and monitoring.	
Demonstrate that internal procedures and information systems are consistent throughout the institution and reliable so that all sources of relevant risks can be identified, measured, and monitored on an aggregated basis and also, to the extent necessary, by entity, business line, and portfolio.	

<p>Demonstrate how the key risk information is regularly reported to the central risk management function to enable appropriate centralised evaluation, measurement and control risk across the relevant group entities.</p>	
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Annex IV - Exchange of Collateral

(Optional)

Transaction details for which exemption is being requested	
Asset class of OTC derivative contract:	
Type of OTC derivative contract:	
Type of underlying:	
Notional and settlement currencies:	
Range of contract tenors:	
Settlement type:	
Anticipated size, volumes and frequency of OTC derivative contracts per annum:	

Type of exemption (please select from the below, as applicable)	
An exemption for an intragroup transaction referred to in Article 3(2)(a), (b) or (c) that is entered into by counterparties which are established in different Member States, in accordance with Article 11(6).	
An exemption for an intragroup transaction referred to in Article 3(1) that is entered into by non-financial counterparties which are established in different Member States, in accordance with Article 11(7).	
An exemption for an intragroup transaction referred to in Article 3(2)(a) to (d) that is entered into by a counterparty which is established in the Union and a counterparty established in a third-country jurisdiction, in accordance with Article 11(8).	
An exemption for an intragroup transaction referred to in Article 3(1) that is entered into by a non-financial counterparty which is established in the Union and a counterparty established in a third-country jurisdiction, in accordance with Article 11(9).	

<p>An exemption for an intragroup transaction referred to in Article 3(1) that is entered into by a non-financial counterparty and a financial counterparty which are established in different Member States, in accordance with Article 11(10).</p>	
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Risk Management robustness	
<p>Does the applicant counterparty and the intragroup counterparty have risk management procedures that are adequately sound, robust and consistent with the level of complexity of the OTC derivative transactions for which it is applying for an exemption, in accordance with paragraph (a) of Article 11(6) to 11(10) of EMIR?</p>	
<p>Does your group ensure regular monitoring of the intragroup exposures? How does your group ensure that the timely settlement of the obligations resulting from the intragroup OTC derivative contracts is guaranteed based on the monitoring and liquidity tools at group level?</p>	

Prompt transfer of own funds and repayment of liabilities	
<p>Is there any unforeseen <u>legal</u> impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties, in accordance with paragraph (b) of Article 11(6) to 11(10) of EMIR and supplemented by Article 33 of the Commission Delegated Regulation 2016/2251?</p>	
<p>Describe the measures that have been taken to assess whether there is any <u>legal</u> impediment, including any of the following restrictions, as per Article 33 of Commission Delegated Regulation 2016/2251:</p>	
<p>a. currency and exchange controls;</p>	
<p>b. a regulatory, administrative, legal or contractual framework that prevents mutual financial support or significantly affects the transfer of funds within the group;</p>	

<p>c. any of the conditions in the early intervention, recovery and resolution as referred to in Directive 2014/59/EU are met, as a result of which the competent authority foresees an impediment to the prompt transfer of funds or repayment of liabilities;</p>	
<p>d. the existence of minority interests that limit decision-making power within entities that form the group; and</p>	
<p>e. the nature of the legal structure of the counterparty, as defined in its statutes, instruments of incorporation and internal rules.</p>	
<p>Is there any unforeseen <u>practical</u> impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties, in accordance with paragraph (b) of Article 11(6) to 11(10) of EMIR and supplemented by Article 34 of the Commission Delegated Regulation 2016/2251?</p>	
<p>Describe the measures that have been taken to assess whether there is any <u>practical</u> impediment, including any of the following restrictions, as per Article 34 of Commission Delegated Regulation 2016/2251:</p>	
<p>a. a. insufficient availability of unencumbered or liquid assets to the relevant counterparty when due; and</p>	
<p>b. impediments of an operational nature which effectively delay or prevent such transfers or repayments when due.</p>	

Conclusion and Declaration

Conclusion

Intragroup exemption notifications should be sent to the MFSA for entities established in Malta on:
EMIR@mfsa.com.mt

Please also ensure that your intragroup counterparty also applies to its competent authority simultaneously.

Kindly allow 30 calendar days for the MFSA to consider notifications for those entities applying for intragroup exemptions from the clearing obligation, and 3 months for those entities applying for intragroup exemptions from the exchange of collateral.

The MFSA will provide its no objection to the exemption within the stipulated timeframe, however, should the MFSA have an objection to the use of this exemption, you will be notified in advance about such an opposition. In the instance of a potential objection to the use of the exemption, the MFSA intends to allow you with a short period of time to provide any relevant additional information before a final decision is made.

Should such an exemption be approved the entity is being reminded that the information on the intragroup exemption should be made public.

The information to be publicly disclosed shall include:

- a. the legal counterparties to the transactions including their identifiers in accordance with Article 3 of Implementing Regulation (EU) No 1247/2012;
- b. the relationship between the counterparties;
- c. whether the exemption is a full exemption or a partial exemption; and
- d. the notional aggregate amount of the OTC derivative contracts for which the intragroup exemption applies.

Declaration

This notification or application must be submitted by a person of appropriate seniority within the notifying or applying counterparty, for example an executive director, company secretary, or head of compliance.

If the applicant counterparty and the intragroup counterparty are located in the same member state and this notification is being made on behalf of both counterparties using this notification, the person submitting this notification must be duly authorised to make this notification on behalf of all notifying counterparties within this notification.

By submitting this notification or application I confirm that:

- (a) The information in this notification or application is accurate and complete to the best of my knowledge and belief and that I have taken all reasonable steps to ensure that this is the case;
- (b) I am aware that if I knowingly or recklessly provide information that is false and misleading in a material particular in this notification or application I will contravene a legislative requirement and may be the subject of enforcement action;
- (c) If the applicant counterparty and the intragroup counterparty are located in the same member state and this notification is being made on behalf of both counterparties in this notification, the intragroup counterparty in this notification has consented to the notification being made on their behalf and is aware of their responsibilities and obligations under EU Regulation 648/2012, the EMIR Regulation. As such supporting evidence and records which demonstrate the consent of all counterparties to the notification, and that they are aware of their responsibilities and obligations under the EMIR Regulation, are available on request; and
- (d) I will notify the relevant competent authority immediately if there is a significant change to the information provided in this form.

Please confirm that you have read and understood this declaration:

I Confirm

Signature

(Name & Surname, Date)