MFSA MALTA FINANCIAL SERVICES AUTHORITY

04 July 2024

Dear Chief Executive Officer,
Dear Compliance Officer,

Re: European Market Infrastructure Regulation (EU) Nº 648/2012 ('EMIR' or the 'Regulation') as *inter alia* amended by Regulation (EU) Nº 2019/834 (the 'EMIR Refit' or the 'Refit')

- **Findings of the Questionnaire Issued by the Authority in relation to Financial Counterparties' Readiness to Report Under EMIR Refit.**

You are receiving this letter as the Chief Executive Officer and/or Compliance officer of a financial counterparty as defined in Article 2(8) of EMIR as supervised by the Malta Financial Services Authority (referred herein as the 'MFSA' or 'the Authority').

Background

The EMIR Refit, which entered into force on 17 June 2019, introduced significant amendments to the original EMIR framework. The REFIT programme is part of the Commission's Better regulation agenda. Under this programme, the Commission ensures that EU laws deliver their intended benefits for individuals and businesses, while simplifying existing EU laws and cutting red tape, whenever possible. REFIT aims to make EU laws simpler, more targeted and easier to comply with[1]. Many of the changes and requirements brought about the Refit did not start to apply immediately but were gradually introduced. Two key dates to keep note of are 29 April 2024, being the go-live for the 'new' reporting methodology, and the deadline of 26 October 2024 to backload data for any outstanding reports.

More specifically, the Regulatory Technical Standards ('RTS') and the Implementing Technical Standards ('ITS') on reporting under EMIR Refit, applicable from 29 April 2024, introduced a number of significant changes, most notably the increase in the number of reporting fields from 129 to 203. More generally, however, the RTS and the ITS require entities involved in derivative trading to update their reporting systems and procedures. Thus, entities falling within scope of the Regulation were required to make the necessary arrangements to handle the more detailed reporting and the need for precise data management given the increased complexity of such reports. The reporting instructions contain EMIR XML messages which were updated or newly developed based on the revised technical standards and validation rules. A fully standardised format for reporting will eliminate the risk of discrepancies due to inconsistent data. End-to-end reporting in ISO 20022 XML is expected to further enhance data quality and consistency and mitigate the data integrity risks, by reducing the need for data cleaning/normalisation and facilitate their exploitation for various supervisory and/or economic analysis based on the changes presented by the EMIR Refit regulation. The implemented schema sets were designed to ensure the backward compatibility of the data

[1] https://commission.europa.eu/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-less-costly-and-future-proof_en

reporting[2]. Additionally, EMIR Refit allows for a transitionary period to update any outstanding derivatives in order to ensure its conformity with the amended reporting requirements.

Given the changes which were to affect entities' reporting obligations from 29 April 2024 and in view of the significance of EMIR data, the Authority undertook an exercise to assess these entities' readiness and preparedness with respect to these changes. The MFSA has a wide selection of regulatory and supervisory tools available at its disposal, such as supervisory interactions (inspections and meetings), supervisory reviews, thematic reviews, SREP and mystery shopping. Following an internal assessment, the Authority determined that a Questionnaire was best suited to achieve the aim of such an exercise. Specifically, a questionnaire allowed the Authority to assess a sizeable proportion of reporting entities in a formalised and efficient manner and even more importantly, to obtain a holistic view of the state of play of reporting prior to the coming into force of the changes in reporting.

In turn, on the 22 March 2024 the Authority launched a Questionnaire to a sample of over 120 entities falling within scope of the EMIR Refit reporting regime. The sample selection was based on various criteria, including *inter alia,* entity type classification, number of transactions, and the venue of execution for the derivative contracts.

This letter aims to provide a breakdown of the Authority's findings in this regard, and to explain the MFSA's planned way forward in terms of ensuring the relevant entities' adherence to their EMIR obligations..

This letter is structured as follows: Section 1 explains the criteria for the sample selection of entities, Section 2 presents the findings of the questionnaire and Section 3 outlines the actions that the Authority intends to undertake as a way forward.

1. Selection Criteria

EMIR lays down clearing and bilateral risk-management requirements for over-the-counter ('OTC') derivative contracts, reporting requirements for derivative contracts and uniform requirements for the performance of activities of central counterparties ('CCPs') and trade repositories. These obligations include, *inter alia*, the mandatory clearing of certain derivative contracts through central counterparties ('CCPs'), in accordance with Article 4 of EMIR, as well as the reporting obligations outlined in Article 9 therein.

Given the more onerous reporting obligations which are imposed on financial counterparties (when compared to non-financial counterparties), the Authority was of the view that the Questionnaire should be directed at financial counterparties. Consequently, circa 120 financial counterparties were requested to fill in the said Questionnaire.

[2] https://www.esma.europa.eu/press-news/esma-news/esma-publishes-guidelines-and-technical-documentation-reporting-under-emir

(+356) 2144 1155
info@mfsa.mt
www.mfsa.mt

Malta Financial Services Authority
Triq l-Imdina, Zone 1
Central Business District, Birkirkara, CBD 1010, Malta

2. Key findings of the Questionnaire

The Questionnaire consisted of three sections; a section aimed at ascertaining the methodologies employed by each financial counterparty in handling their reporting obligations, a section evaluating the readiness of counterparties that manage their own reporting, specifically in relation to the technical modifications necessitated by the EMIR Refit, and a third section assessing the overall preparedness of each counterparty regarding extensive changes that were to be introduced by the RTS and ITS. The below findings are a snapshot of figures reported as at 4 April 2024, being the deadline put by the Authority for feedback in relation to the Questionnaire.

Approximately 91% of respondents stated that they delegated their EMIR reporting to another counterparty, whilst 4% managed their own EMIR-related data reporting. Based on the results, the remaining 5% made use of both operations. This is illustrated in Figure 1 below.

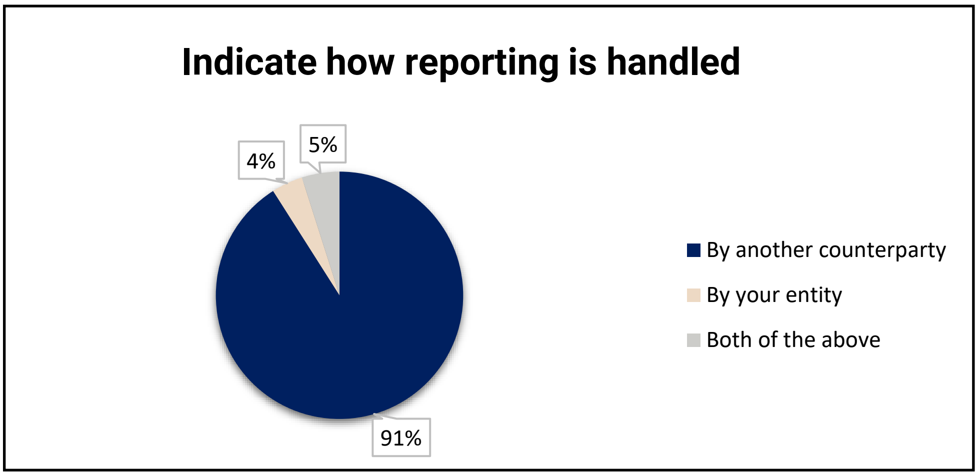


Figure 1

As can be seen in Figure 2 below, 96% of the entities delegating their reporting have engaged with their delegated reporting entity to ensure the latter's alignment and readiness for the regulatory changes which were upcoming as a result of the EMIR Refit. The remaining 4% appear not to have initiated such communication as at the date of their response.

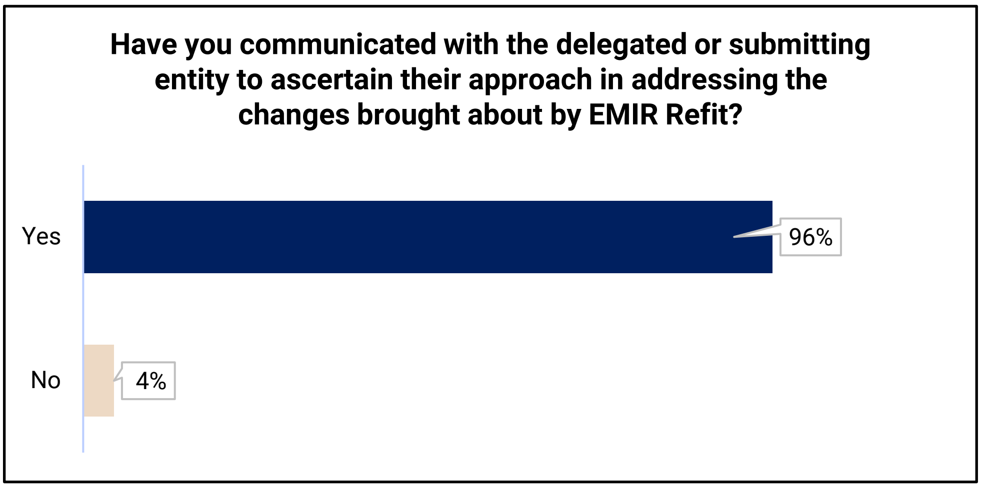


Figure 2

The entities reporting on their own behalf were requested to self-assess their preparedness to submit reports under the new validation rules, and their readiness to draw up and review such reports in XML format. As can be seen in Figure 3 below, all entities which were subjected to the Questionnaire reported that they were aware of the changes and had encountered no significant difficulties in complying with these new validation rules.

More specifically, entities were asked to assess their preparedness in relation to the changes in validation rules which were becoming applicable, by providing a rating between 1 and 5, with 1 representing a severe lack of preparedness and 5 indicating a high level of readiness. The average score was about 3.8, indicating that the majority of the entities that handled their own reporting were comfortable with the reporting of the new validation rules. The distribution of the responses regarding this question can be found in Figure 3.

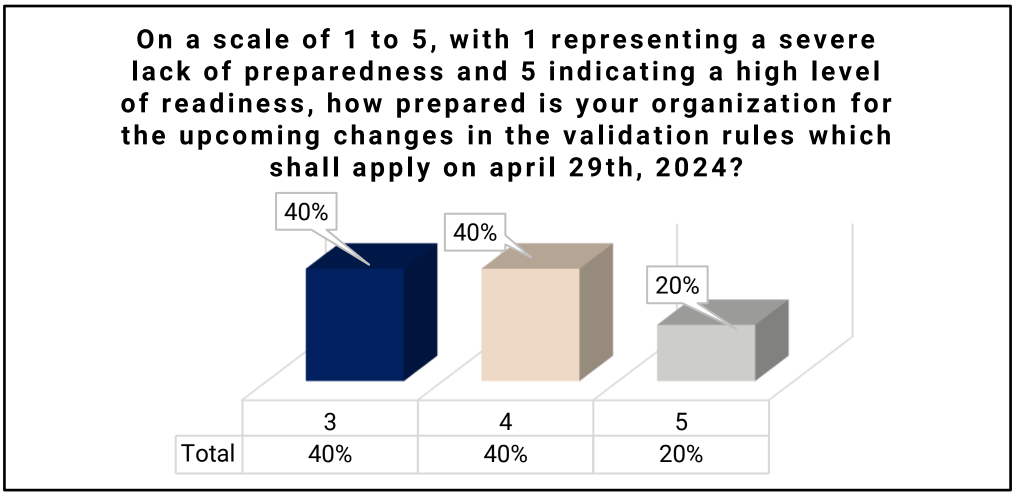


Figure 3

(+356) 2144 1155
info@mfsa.mt
www.mfsa.mt

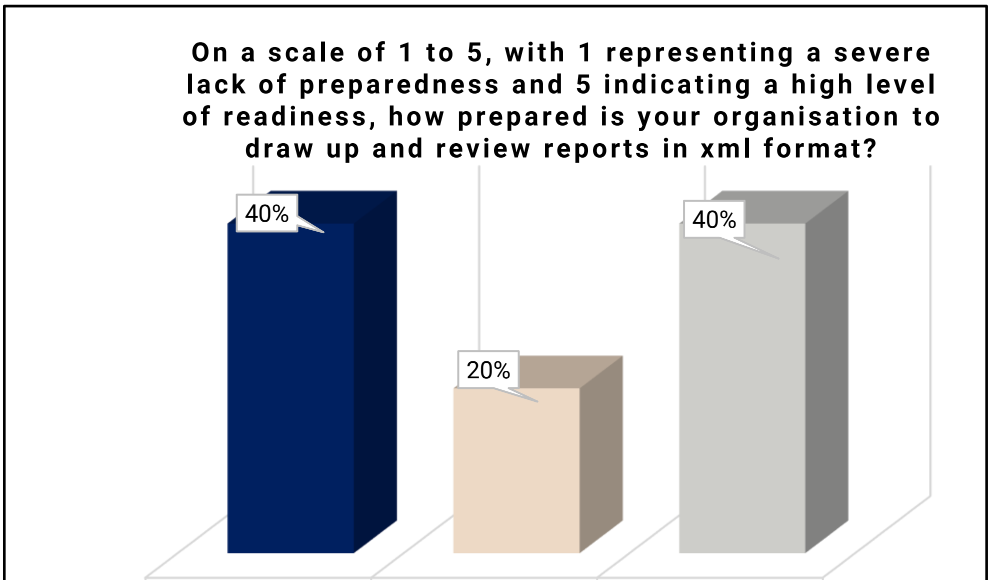
Malta Financial Services Authority
Triq l-Imdina, Zone 1
Central Business District, Birkirkara, CBD 1010, Malta

In terms of the entities' readiness to draft and review reports in XML format, as a point of departure, the Authority sought to determine whether any issues had been encountered with the requirement for reports to be submitted to Trade Repositories in XML format, aligned with the ISO 20022 methodology. Respondents which were categorised as being those entities handling their own reporting had not identified any issues in this respect.

As a next step, the Authority sought to determine whether the surveyed entities had encountered any issues whilst testing the drawing up and reviewing of reports in XML format. Based on the responses, it appeared that no major issues were encountered by the entities when carrying out such tests.

Considering the responses received, therefore, it could be determined that the majority of respondents were comfortable with reviewing and drawing up reports in XML format.

When the entities were asked to rate their level of preparedness in drawing up and reviewing reports in XML format, by providing a rating between 1 and 5, with 1 representing a severe lack of preparedness and 5 indicating a high level of readiness, the average score was approximately 4.0. This result reaffirmed the above finding, that the majority of entities managing their own reporting were comfortable with using the XML format for reports. The distribution of responses to this question is illustrated in Figure 4, below.



	3	4	5
Total	40%	20%	40%

Figure 4

In order to assess the entities' overall preparedness for the changes applicable from 29 April 2024, respondents were asked at the end of the Questionnaire to rate their overall readiness on a scale from 1 to 5, with a rating of 1 signifying a severe lack of preparedness and a rating of 5 indicating a high level of readiness.

As illustrated in Figure 5, below, the responses to this question were overwhelmingly positive. A significant majority of entities reported being well-prepared for the changes in reporting which were to be introduced by the EMIR refit, with 53% and 34% of respondents rating their preparedness as 4 and 5, respectively. This indicated that over 80% of the sample of financial counterparties which were subjected to the Questionnaire, felt highly prepared for the changes in transaction reporting requirements, that were being brought about by EMIR Refit.

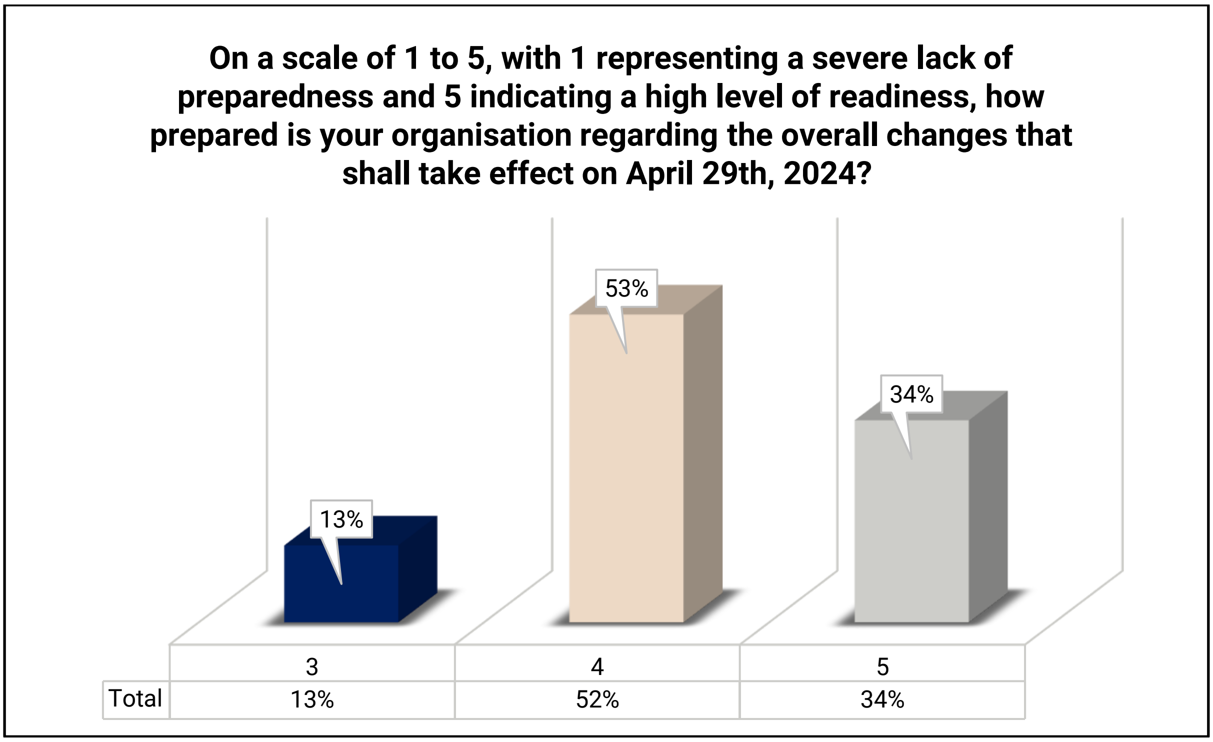


Figure 5

Section 3: Conclusion

Based on the responses received by the Authority, financial counterparties generally appeared to be adequately prepared for the changes in reporting which came into force on 29 April 2024. Nevertheless, the responses also alluded to the need for improving the arrangements which some of the respondents had in place as at the date of the Questionnaire and hence, the Authority expects the relevant entities to follow-up on any of the deficiencies identified. Reporting entities are reminded that the Authority has a low tolerance towards inaccuracies within data submissions and expects industry participants to embrace the changes being applied under EMIR Refit as promptly as possible.

As explained within the MFSA Supervision Priorities Document for 2023, one of the main priorities was to focus on data quality received from the industry and seek to highlight any areas of discrepancies witnessed within such submissions. Although the data being received appears to be satisfactory on the whole, the Authority believes that there is still room for further improvement. Through its Follow-Up Report to the peer review into supervisory actions aiming at enhancing quality of data reported under EMIR, ESMA explained that Data quality is recognised as – and remains – a key area of attention for supervisors and NCAs should use the appropriate tools, including enforcement when needed, to drive up standards and ensure that counterparties meet their regulatory requirements.

With this in mind, the Authority shall seek to further its supervisory endeavors to ensure fair, efficient and transparent financial markets. Specifically, entities falling within scope of EMIR shall continue to be assessed, through different supervisory engagements, to ensure that they are fully adherent with the applicable obligations under EMIR, including the changes in EMIR reporting requirements brought about by EMIR Refit. Any data quality issues, including but not limited to, absence in reporting certain fields, abnormal values, inconsistent submissions, unpaired transactions, and outstanding transactions will be raised and questioned with the respective entities accordingly.

The findings arising from the Authority's Questionnaire are being highlighted in this letter with the aim of raising awareness on the areas requiring the most attention, thereby strengthening the compliance culture further.

Should entities have any queries in relation to the above, or any other queries related to EMIR, please do not hesitate to contact the Authority's Capital Markets Supervision Function on EMIR@mfsa.mt.

Yours Sincerely,
Malta Financial Services Authority

Christopher Peter BUTTIGIEG (Signature) Digitally signed by Christopher Peter BUTTIGIEG (Signature) Date: 2024.07.04 16:22:07 +02'00'

Christopher P. Buttigieg
Chief Officer – Supervision

Lorraine VELLA (Signature) Digitally signed by Lorraine VELLA (Signature) Date: 2024.07.04 16:29:41 +02'00'

Lorraine Vella
Head – Capital Markets Supervision