

02 January 2025

EMIR 3 Published and in Force from 24 December 2024: ESMA is Seeking First Input on the Active Account Requirement

This Circular is being addressed to all market participants, particularly entities which enter into derivative contracts, and which fall within the scope of EMIR, namely, financial counterparties ('FCs') and non-financial counterparties ('NFCs'), as defined under EMIR and Central Counterparties ('CCPs').

Overview

The Authority would like to inform market participants that [Regulation \(EU\) 2024/2987](#) ('EMIR 3') of the European Parliament and of the Council of 27 November 2024, shall apply from 24 December 2024 (with the exception of certain articles).

In this respect, on 20 November 2024, the European Securities and Markets Authority ('ESMA') published a [Consultation Paper \(CP\) on the conditions of the Active Account Requirement \('AAR'\) following EMIR 3](#).

Background

On 7 December 2022, the European Commission published its proposal to amend EMIR. On 7 February 2024, the European Parliament and the Council reached a political agreement on a compromise text (EMIR 3), which was formally endorsed by the two institutions on 4 March 2024 and 14 February 2024, respectively. EMIR 3, which introduced amendments to Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131, was published in the Official Journal on 4 December 2024 and will enter into force on 24 December 2024.

The Regulation is aimed primarily at enhancing the competitiveness of EU CCPs and promoting clearing activity in the EU (thereby reducing dependence on UK CCPs that are currently of substantial systemic importance within the EU), including through the introduction of the AAR.

Amendments to Regulation (EU) No 575/2013

Article 2 of EMIR 3 lists the amendments that are to be applied to Regulation (EU) 575/2013 on prudential requirements for credit institutions and investment firms, also known as the Capital Requirements Regulation ("the CRR"). Investment firms that deal on their own account, underwrite financial instruments and/or place financial instruments on a firm commitment basis are subject to the CRR and Titles VII and VIII of the Capital Requirements Directive ("the CRD") if they classify as Class 1 firms or Class 1 minus firms, if the MFSA deems it to be necessary.

The amendments pertain to Article 382 of the CRR, which mainly relates to the calculation of own funds requirements for Credit Valuation Adjustment ("CVA") risk.

Amendments to Regulation (EU) No 648/2012

As part of the AAR, FCs and NFCs which would be subject to the clearing obligation under EMIR and exceed the clearing threshold in (i) interest rate derivatives denominated in euro or Polish złoty or (ii) short-term interest rate derivatives denominated in euro would be required to open and maintain an 'active account' with a CCP established within the EU.

The measures also include a range of amendments intended to streamline and improve EMIR, and to enhance market stability, over and above those previously adopted as part of EMIR REFIT¹ and EMIR 2.2². One other key aspect of EMIR 3 is the simplification of the intragroup transaction framework, whereby the need for an equivalence decision has been replaced with a list of third countries in respect of which an exemption would not be granted.

Other clearing-related changes are *inter alia*:

- Exemption from clearing obligation for transactions resulting from a post-trade risk-reduction (PTRR) exercises;
- Clearing Exemption for transactions with third country pension schemes;
- Calculation methodology of the Clearing thresholds for NFCs;
- Clearing members and clients providing clearing services both through EU CCPs and recognised third country CCPs, will be required to inform clients of the possibility to clear through an EU CCP;
- Enhanced Transparency on margin requirements.

Level 2 technical standards will be critical to the implementation of EMIR 3. For this reason, ESMA exceptionally launched its CP on the technical standards further detailing the AAR on 20 November 2024, in advance of EMIR 3's official publication. The consultation is open until 27 January 2025, and a public hearing will be held on 20 January 2025. ESMA is seeking stakeholder input on several key aspects of the AAR, including the:

¹ [Regulation \(EU\) 2019/834](#)

² [Regulation \(EU\) 2019/2099](#)

- three operational conditions to ensure that the clearing account is effectively active and functional, including stress-testing;
- representativeness obligation for the most active counterparties; and
- reporting requirements to assess their compliance with the AAR

Who Should Respond to the CP?

All interested stakeholders are invited to respond to the CP. In particular, responses are sought from CCPs, the clearing members, as well as the counterparties accessing CCP services as clients of clearing members.

All entities of a group that are subject to this requirement are expected to fill in the survey separately, at entity level.

Next Steps

ESMA will consider all comments received by 27 January 2025. All contributions should be submitted online using the provided [reply form](#).

Contacts

Should you have any queries relating to the above kindly contact the Authority on EMIR@mfsa.mt.