



# EMIR Refit reporting standards

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WILL BE APPLICABLE TO  
DERIVATIVES REPORTING  
UNDER EMIR AS FROM APRIL  
2024.

## EMIR Refit reporting standards

### **New reporting standards will be applicable to derivatives reporting under EMIR as from April 2024.**

ESMA has published on its website details related to the reporting of derivatives as required under Article 9 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as amended (EMIR) and the new technical standards that will become applicable as from 29 April 2024.

This [publication](#)<sup>1</sup> consists of several documents:

1. The final report on guidelines for reporting under EMIR;
2. The validation rules under EMIR that trade repositories are required to apply as well as the notification templates of significant reporting errors to NCAs;
3. The XML EMIR Reporting Schemas towards trade repositories (incoming) and from trade repositories (outgoing).

The technical standards that have been published in the Official Journal of the European Union on 7 October 2022 will become applicable as from 29 April 2024 and consist of the following documents (hereafter the “Technical Standards”):

- **RTS 2022/1855** repealing RTS 148/2013, specifying the minimum details of the data to be reported to trade repositories and the type of reports to be used.
- **ITS 2022/1860** repealing ITS 1247/2012 with regard to the standards, formats, frequency and methods and arrangements for reporting.
- **RTS 2022/1856** amending RTS 151/2013 on the procedure for accessing details of derivatives as well as the technical and operational arrangements for their access.
- **RTS 2022/1858** specifying the procedures for the reconciliation of data between trade repositories and the procedures to be applied by the trade repository to verify the compliance by the reporting counterparty or submitting entity with the reporting requirements and to verify the completeness and correctness of the data reported.

<sup>1</sup> All details are as well available on ESMA's webpage on EMIR Reporting: [EMIR Reporting \(europa.eu\)](https://www.esma.europa.eu)

The CSSF wants to draw the attention of the market players on some significant changes to the EMIR reporting framework introduced by these new technical standards and the related documentation, notably:

1. End-to-end reporting in ISO 20022 XML
2. Framework for the mandatory delegation
3. Information to NCAs for significant reporting issues
4. New controls and feedback reports by trade repositories

### **1. End-to-end reporting in ISO 20022 XML**

XML schemas will now be required for the communication from reporting entities to trade repositories<sup>2</sup>, from trade repositories to entities<sup>3</sup> and from trade repositories to authorities<sup>4</sup> so that the same language and format will be aligned across the whole reporting chain. This is a convergence to the reporting requirement under SFTR<sup>5</sup>. End-to-end reporting in ISO 20022 XML is expected to further enhance data quality and consistency, by reducing the need for data cleaning/normalisation and facilitate their exploitation for both authorities and reporting entities who will now share same formats.

In practice, this prohibits the use of proprietary formats to report to trade repositories. Therefore, it is expected that report submitting entities that still use other formats than ISO 20022 XML will need to overhaul their reporting process in order to meet this new requirement.

<sup>2</sup> as per Article 1 of ITS 2022/1860.

<sup>3</sup> as per Articles 3 and 4 of RTS 2022/1858.

<sup>4</sup> as per Article 2 of RTS 151/2013 as amended.

<sup>5</sup> Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse.

In addition to the change in formats, the content of the report has been modified as well. The main changes are driven by an alignment with international standards, in particular the global guidance developed by CPMI-IOSCO on the definition, format and usage of key OTC derivatives data elements reported to trade repositories, including the Unique Transaction Identifier (UTI), the Unique Product Identifier (UPI) and other critical data elements. The annexes to the RTS 2022/1855 and ITS 2022/1860 as well as the validation rules provide for:

- (1) Changes in the structure of the reports to be submitted that cover now 3 tables where the third table focuses on the collateral related reports which demonstrates the importance of accurate and timely information to be provided on collateral exchanged between counterparties to mitigate the risk related to derivative contracts.
- (2) Addition of several data fields, related to the lifecycle events to be reported, i.e. fields 2.152 "Event type" and 2.153 / 3.29 "Event date", as well as fields allowing to link reports, i.e. fields 2.3 "Prior UTI" and 2.4 "Subsequent position UTI".
- (3) Modifications in the values that are to be reported in several data fields in order to provide more clarity on the details of the derivative contracts, e.g. field 3.11 "Collateralisation category".

As these changes are significant and considering the effort to be invested in order to align the IT infrastructure, the Technical Standards provide for a period of 18 months in order to implement these changes, thus the new standards will become applicable as from 29 April 2024. Therefore, all the reports submitted by the counterparties to the trade repositories as from that date will have to comply with the amended requirements. This applies to the reports of derivatives concluded after the new reporting start date and to any modifications or terminations reported on existing derivatives after that date, irrespective of when the derivative that is modified or terminated was concluded.

Nevertheless, an additional transition period of 180 calendar days will be granted to upgrade outstanding contracts that have been submitted to the trade repositories before 29 April 2024 and that do not require any modification or a termination report. Derivative contracts that mature during this transition period do not need to be updated.

## **2. Framework for the mandatory delegation**

EMIR Refit<sup>6</sup> has introduced the transfer of responsibility and legal liability for the reporting of OTC derivative contracts from non-financial counterparties not exceeding the clearing threshold (NFC-) to their financial counterparties under certain circumstances as per article 9(1a) of EMIR.

The new technical standards and guidelines introduce more clarifications related to this provision. In particular, arrangements shall be put in place between both counterparties to ensure a smooth and efficient process.

The CSSF reminds all counterparties that even if the reporting is delegated to third parties, the counterparties established in Luxembourg remain responsible for complying with other EMIR requirements including the requirement under Article 9(2) of EMIR which states that *"Counterparties shall keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of the contract."* In this context the CSSF expects that counterparties shall be able to retrieve these records based on information contained in the reports submitted to trade repositories, in particular based on the Trade Identifier used for EMIR reporting. In order for NFCs to be able to comply with the EMIR requirements in general and more particularly on recordkeeping, the guidelines contain a provision that *"FCs can e.g. provide its NFC- counterparties on regular basis (e.g. monthly) with the information concerning the contracts that are outstanding at the [trade repositories]."*

The CSSF also raises to the attention of the NFC's- that Article 4 of the RTS 2022/1858 requires trade repositories to provide feedback reports not only to their clients, i.e. the report submitting entities, but also to the other stakeholders involved in the reporting and more particularly to the reporting counterparties. This standard supports Article 78(7) of EMIR that requires trade repositories to grant stakeholders access to information maintained by the trade repositories on the condition that counterparties have provided their consent.

<sup>6</sup> Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories.

### **3. Information to NCAs for significant reporting issues**

Article 9(1) of ITS 2022/1860 introduces a new requirement for entities responsible for reporting to notify competent authorities in case of significant reporting issues. The guidelines clarify in what circumstances an issue is deemed significant and becomes reportable to the NCAs.

In addition, ESMA has published a template<sup>7</sup> for submitting these notifications to the NCAs that have decided to adhere to this template. The CSSF will implement the template as soon as the guidelines will become applicable and it will be integrated in its administrative practice and regulatory approach.

The CSSF therefore invites all involved stakeholders to ensure that they will be ready to (1) swiftly identify any reporting issue, (2) recognise whether these reporting issues are in the scope of Article 9(1) of ITS 2022/1860 and in accordance with the guidelines and (3) perform the required notification promptly.

The CSSF insists that whilst this requirement is new, it was already an appreciated market practice amongst several entities, and that this requirement is enforceable under the Law of 15 March 2016 on OTC derivatives, central counterparties and trade repositories to all entities responsible for reporting that are supervised by the CSSF under the aforementioned Law.

### **4. New controls and feedback reports by trade repositories**

Trade Repositories' role in ensuring data quality expands with the application of RTS 2022/1858. This new technical standard sets into law the controls that trade repositories are required to perform as well as the end-of-day response mechanisms in the stakeholders reporting chain.

In this context, the CSSF wants to raise to the attention of the entities that:

<sup>7</sup> The template is part of the validation rules Excel file ([https://www.esma.europa.eu/sites/default/files/library/esma74-362-2683\\_emir\\_refit\\_validation\\_rules\\_reconciliation\\_tolerances\\_and\\_template\\_for\\_notifications\\_of\\_dq\\_issues.xlsx](https://www.esma.europa.eu/sites/default/files/library/esma74-362-2683_emir_refit_validation_rules_reconciliation_tolerances_and_template_for_notifications_of_dq_issues.xlsx))

- (1) In case a report is rejected as per any of the conditions set out in the Article 1 of the RTS 2022/1858 including the point (I) which is further clarified with ESMA's validation rules, in line with the guidelines, the CSSF will consider the report was not submitted and thus the entity responsible for reporting did not comply with the requirements of Article 9 of EMIR unless the report has been resubmitted and accepted within the deadline for reporting.
- (2) For unreconciled reports, the Article 9(3) of ITS 2022/1860 emphasises the importance for counterparties to tackle the related issues by having arrangements in place with the other counterparties respectively their entity responsible for reporting or report submitting entity. The CSSF expects entities to use the reconciliation feedback in order to ensure that the data reported is aligned between both counterparties and, where an inconsistency is identified, that both counterparties liaise efficiently in order to get the non-reconciliation resolved as soon as possible.
- (3) Any feedback from TRs related to the absence of updated valuation or margin information as well as abnormal notional amounts shall be reviewed by the entity and potential underlying issues shall be swiftly addressed.
- (4) Entities are expected to use the information provided in the end-of-day response mechanisms by trade repositories in order to identify any potential misreporting performed by them or on their behalf. The CSSF insists that these end-of-day reports can be made available to reporting counterparties, report submitting entities, entities responsible for reporting as well as any third party which has been granted access to information under Article 78(7) of EMIR on their request to the TR. Therefore, the CSSF expects that any entity under its supervision under the Law of 15 March 2016 on OTC derivatives, central counterparties and trade repositories is capable of collecting the data and to take relevant actions either on its own initiative or further to a request by the CSSF in application of the aforementioned Law.

The CSSF considers that there is sufficient time for stakeholders to implement the changes until 29 April 2024 and that any failure to report accurately as from 29 April 2024 will be considered as a non-compliance with Article 9 of EMIR.



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Therefore, the CSSF reminds all stakeholders in the EMIR reporting value chain that the changes to the reporting framework, which will be applicable as from 29 April 2024, are significant. In order to ensure a smooth transition, the CSSF invites all stakeholders to start preparing for these changes as soon as possible and is confident that all stakeholders will be able to comply with the new requirements without any delay.



## EMIR IN A NUTSHELL

EMIR came into force on 16 August 2012 and introduced requirements aimed at improving the transparency of Over-The-Counter (OTC) derivatives markets and to reduce the risks associated with those markets.

This Regulation is applicable to any undertaking that is counterparty to derivative contract, which include but are not limited to FX forward contracts, interest rate Swap (IRS), other swaps, futures / options on securities / commodities irrespective if these are traded bi-laterally or on trading venues and irrespective of the volume.

EMIR introduces two types of counterparties:

1. Financial Counterparties (FC) such as banks, investment managers, insurance companies or CSDs.
2. Non-Financial (NFC) include all entities that are not Financial Counterparties, nor central counterparties.

EMIR introduces several requirements, where the applicability depends on the status of the counterparty and the volume of the trading activity of the counterparty and its group:

- Central clearing of some OTC derivatives
- Risk mitigation techniques applicable to non-cleared OTC derivatives
  1. Timely confirmation
  2. Portfolio Reconciliation
  3. Daily valuation of outstanding contracts
  4. Bi-lateral collateral exchange
  5. Post Trade Risk Reduction (Compression)
  6. Dispute resolution
- Reporting of details of all derivative contracts concluded, modified or terminated to a Trade Repository.

Reporting obligation applies to all counterparties and for all derivative contracts, OTC and ETD.

Counterparties are strongly encouraged to use the regulatory data in their own internal risk and compliance management processes. In doing so, counterparties incentives to report accurate data will be further aligned.



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