ALLEN & OVERY

New reporting standards under EMIR: 203 reporting fields, one deadline, huge sanctions

In-scope entities have to follow new EMIR[1] reporting requirements by April 2024 or face hefty sanctions. ESMA[2] has published the guidelines, validation rules and reporting instructions with which you need to comply. In-scope entities will have to collect more information on their counterparties and use a new ISO 2022 XML format to report to TRs. Don't wait – act now.

New technical standards for reporting derivatives trade information under EMIR Refit were published in October 2022 and will enter into force in April 2024[3]. These new standards will bring significant changes to the reporting requirements under EMIR. Concerned entities were, however, missing the necessary level 3 Measures to have clarity on how to implement such changes.

ESMA has provided much anticipated practical guidance to accompany these reporting requirements. At the end of 2022, ESMA published the final report on guidelines for reporting under EMIR, providing clarification on the compliance with the regulatory and implementing technical standards[2] (the **Guidelines**) along with the validation rules and reporting instructions.

Addition of 89 new reporting fields

With the addition of 89 new reporting fields and the removal of 15 others, the total number of reporting fields under EMIR has grown from 129 to 203. While many of the new fields are logical additions, some largely deviate from current standards. The implementation of some new reporting fields might prove challenging for entities responsible for reporting. Such entities will also be required to obtain significantly more information on their counterparties. Reporting entities will now have to report information on the reporting obligation, the status, clearing threshold or corporate sector of their counterparties.

Entities responsible for reporting will need to put in place detailed arrangements on data and information exchange procedures to meet these requirements.

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1 Regulation (EU) No 648/2012 dated 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as amended.
2 The European Securities and Markets Authority
3 Commission Delegated Regulation (EU) 2022/1855 with regard to regulatory technical standards specifying the minimum details of the data to be reported to trade repositories and the type of reports to be used;
Commission Delegated Regulation (EU) 2022/1856 amending the regulatory technical standards laid down in Delegated Regulation (EU) No 151/2013 by further specifying the procedure for accessing details of derivatives as well as the technical and operational arrangements for their access;
Commission Implementing Regulation (EU) 2022/1860 laying down implementing technical standards with regard to the standards, formats, frequency and methods and arrangements for reporting (the ITS)
Commission Delegated Regulation (EU) 2022/1858 with regard to regulatory technical standards 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.

EMIR reporting via ISO 2022 XML

As of April 2024, proprietary formats will no longer be permitted for reporting to trade repositories (TRs). ISO 2022 XML formats will be required instead. This new requirement aims to create a harmonised and standardised reporting process across EU jurisdictions, and may bring economies of scale by reducing the number of reporting systems that entities must use; however, it will require IT infrastructure updates for those who wish to avoid sanctions as of April 2024.

Notification of significant reporting issues to regulators

In accordance with the ITS, reporting counterparties encountering significant reporting issues will be required to notify their national competent authorities (NCAs). The Guidelines provide a list of qualitative criteria to be used in determining whether a reporting issue is significant. The criteria pertain notably to (i) incorrect or inconsistent interpretations of the reportability of a derivative, (ii) the number of reports to be submitted, (iii) the content of the reporting fields and (iv) the submission of incorrect data to TRs.

If implemented by their NCA, reporting counterparties will need to follow ESMA-specific templates to make such notifications.

Framework for mandatory reporting

Mandatory reporting for OTC derivatives between FCs[4] and NFC-s[5] will need to be formalized in detail. Such reporting arrangements will notably need to spell out reporting and data-sharing processes and the allocation of responsibility and legal liability for reporting these OTC derivatives.

Potential sanctions

In-scope entities which are not compliant with the new requirements by April 2024 might face severe sanctions. In Luxembourg, for instance, non-compliant entities risk fines ranging from EUR 125 to EUR 1,500,000 as well as a potential prohibition on carrying out activities or transactions or to providing certain services.

4 Financial counterparties as defined under Article 2(8) EMIR.
5 Non-financial counterparties not exceeding the clearing threshold as defined under the second subparagraph of Article 10(1) EMIR.

Please contact our dedicated EMIR team in your relevant jurisdiction should you have any questions.

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