

Regulatory News Alert

EMIR Refit to enter into force on 17 June: Why you are concerned?

28 May 2019

The amended Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019, Regulation (EU) No 648/2012 ([Refit](#)) was published in the Official Journal today.

As [previously stated](#), the published Refit text does not include a delayed implementation of the new clearing regime. The new regime will therefore **apply as soon as the Refit text comes into force on Monday 17 June 2019**.

As a result, financial and non-financial counterparties taking positions in OTC derivative contracts and choosing to calculate their aggregate month-end average position for the previous 12 months (in order to determine if they are subject to clearing obligations), would need to **have the results of such calculation on the day the Refit is actioned**.

This also means that all financial and non-financial counterparties that **do not calculate** their OTC derivatives position, or where the result of that calculation **exceeds any of the clearing thresholds**, are required to **immediately notify** ESMA and their relevant competent authority **on the 17 June at the latest**. Counterparties will become subject to the clearing obligation for the OTC derivative contracts entered into, or novated, from **four months following that notification**.

In addition, ESMA has published today [updated EMIR Q&A](#) in order to provide further clarifications on the implementation of the Refit framework.

Other important changes introduced by Refit:

- **Extended definition of financial counterparties (FC)** to capture EU AIFs and their EU AIFMs
- **FC to report derivative transactions** on behalf of non-financial counterparties (NFCs)
- Exemption from reporting obligations for **intragroup transactions** where one counterparty is a NFC
- **End of backloading** requirement
- Introduction of so-called “small FCs” which are exempt from clearing obligations (although still subject to the margin requirements for uncleared OTC)



- For NFC+, clearing is **limited to the asset class(es)** for which the threshold is exceeded
- **End of frontloading** requirement
- Extension of the clearing exemption for risk-reducing transactions of **pension schemes**
- Power for ESMA and the Commission to **suspend the clearing and derivatives trading** obligation
- Regulators to **validate risk management procedures** for the exchange of collateral
- Obligation to **provide clearing services** on fair, reasonable, non-discriminatory, and transparent terms.

How can Deloitte help you?

Since its entry into force, we have been helping our clients to comply with EMIR provisions by providing assistance on activities ranging from strategic considerations to the full implementation of its requirements.

Deloitte Luxembourg EMIR Services can help your organization analyze the current gaps with regulatory health checks, propose remediation plans, and define the appropriate governance framework (contracts, risk management, and control).

Deloitte Luxembourg can help you in your reporting with its reporting facility for EMIR, MIFIR and upcoming SFTR.

With our RegWatch service, Deloitte helps you stay on top of regulatory news and prepare your organization to address future regulatory developments.

Your contacts

Pascal Martino

Partner – Banking & Digital Leader

Tel: +352 45145 2119

pamartino@deloitte.lu

Laurent Collet

Partner – Strategy, Regulatory & Corporate Finance

Tel: +352 45145 2112

lacollet@deloitte.lu

Kevin Demeyer

Senior Manager – Strategy, Regulatory & Corporate Finance

Tel: +352 45145 3808

kdemeyer@deloitte.lu

Marijana Vuksic

Manager – Regulatory & Consulting

Tel : +352 45145 2311

mvuksic@deloitte.lu

Simon Ramos

Partner – IM Advisory & Consulting Leader

Tel : +352 45145 2702

siramos@deloitte.lu

Benoit Sauvage

Senior Manager – RegWatch, Strategy & Consulting

Tel : +352 45145 4220

bsauvage@deloitte.lu

Deloitte Luxembourg

560, rue de Neudorf

L-2220 Luxembourg

Tel: +352 451 451

Fax: +352 451 452 401

www.deloitte.lu

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