

Reporting of derivatives under UK EMIR after the transition period

This statement explains what Trade Repositories (TRs), and UK counterparties that use them, should do to make sure they are compliant with their UK EMIR reporting obligations following the end of the transition period. This statement replaces the statement originally published in March 2019.

For the purposes of this statement, 'UK counterparties' includes firms and central counterparties (CCPs) established in the UK who will be subject to the UK EMIR reporting regime.

Background

The European Union (Withdrawal) Act 2018 (EUWA) will convert existing EU legislation which currently has direct effect in the UK into UK law at the end of the transition period and will preserve existing UK laws which implement EU obligations. The UK Government has been given powers to amend this retained EU legislation so that it works effectively when the UK leaves the EU. It has conferred on the FCA (and, where relevant, the Bank of England and the Prudential Regulation Authority) responsibility for amending and maintaining certain EU-binding technical standards which become UK law at the end of the transition period. We have also amended our Handbook to ensure it is consistent with these changes. These amendments are not intended to make policy changes, other than to reflect the UK's new position outside the EU.

To ensure a smooth transition for UK counterparties fulfilling their derivative reporting obligations and TRs who wish to continue to offer services in the UK, a number of Statutory Instruments, Binding Technical Standards and other publications have been made. A full list of the relevant materials can be found on the FCA's [EMIR webpage](#).

What changes for UK counterparties?

From the end of the transition period (11:00pm on 31 December 2020), all UK counterparties that enter into a derivative contract (both over-the-counter (OTC) and exchange-traded derivatives) are in scope of the UK EMIR regime and required to report details of those transactions to an FCA-registered, or recognised, TR according to the UK EMIR regime.

UK branches of firms established in a third-country (including branches of firms from EU27 countries) are **not in scope** of the UK EMIR reporting regime and so do not have to report under the UK EMIR regime.

Third-country (including EU27) branches of firms established in the UK are **in scope** of the UK EMIR reporting regime and must report details of their derivative transactions to an FCA-registered, or recognised, TR.

Alternative Investment Funds (AIFs) that are not established in the UK but are managed by an AIFM authorised or registered under the UK Alternative Investment Fund Managers Regulations, are **in scope** of the UK EMIR reporting regime.

Regulation 11 of the [Gibraltar \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019](#) ensures that relevant matters in relation to Gibraltar can generally be treated as they were before the end of the transition period, with any necessary modifications to take into account the UK and Gibraltar's withdrawal from the EU. No action is required by UK TRs in relation to Gibraltar counterparties (unless it is requested by those parties). However, TRs should confirm their position with the Gibraltar FSC in relation to the obligations imposed by the law of Gibraltar.

From the end of the transition period, EU counterparties are not in scope of the UK EMIR reporting requirements. Therefore, the following transactions are **not in scope** of UK EMIR and will not be required to be reported to a UK TR:

- Derivative transactions entered into by 2 EU27 counterparties that are traded on a UK Trading Venue.
- Derivative transactions entered into by 2 EU27 counterparties denominated in GBP.
- Derivative transactions entered into by 2 EU27 counterparties where the reference entity of the derivative contract is located in the UK or where the reference obligation is UK sovereign debt.

In addition, UK authorities will no longer have access to this data.

The Bank of England will remain responsible for supervising the UK EMIR reporting requirements for UK CCPs. We will continue to be responsible for supervising these requirements for all other UK counterparties.

Temporary Transitional Powers: exception for EMIR reporting and TR requirements

To help firms adapt to their new requirements under UK legislation, HM Treasury has given UK financial regulators the power to make transitional provisions to financial services legislation for a temporary period. This is known as the Temporary Transitional Power (TTP). This means firms and other regulated persons do not generally need to prepare now to meet the changes to their UK regulatory obligations brought about by onshoring but we expect firms to use the duration of the TTP period to prepare for full compliance with the onshored UK regime by 31 March 2022. There are, however, some areas where the TTP will not apply.

In a [statement](#) published on 1 October 2020, we confirmed that the EMIR reporting requirements for UK counterparties and requirements for TRs are "key areas" which are excluded from the TTP.

The following requirements will therefore apply immediately from the end of the transition period:

- UK counterparties must report details of their derivative trades to an FCA registered, or recognised, TR.

- UK TRs must fulfil their requirements under UK EMIR (including requirements to provide UK authorities with direct and immediate access to data reported to them by UK counterparties).

Reporting of new and outstanding trades under the UK EMIR reporting regime by counterparties in scope

All **new** derivative trades entered into by UK counterparties on or after 11.00pm on 31 December 2020 are in scope of the UK EMIR reporting regime and are required to be reported to an FCA-registered, or recognised, TR.

All **outstanding** derivative trades entered into by UK counterparties on or after 16 August 2012, need to be held in an FCA-registered, or recognised, TR from 11.00pm on 31 December 2020

- For outstanding trades between UK and EU27 counterparties at 11.00pm on 31 December 2020 only the UK report of the trade needs to be ported to, or to remain in, a UK TR after the transition period. Any updates to these trades following the end of the transition period will only be required by UK counterparties.
- For outstanding trades that need to be ported to a UK TR following the end of the transition period, TRs will be required to ensure the porting of all outstanding trades on behalf of UK counterparties to an FCA-registered, or recognised, TR in time for the end of the transition period. However, UK counterparties are encouraged to engage with their TRs to understand how the porting will be executed and to ensure all their relevant trades are captured.
- UK counterparties currently using EU27 based TRs are encouraged to engage with their TR to ensure all outstanding trades are ported to a UK TR of their choice by the end of the transition period.

UK EMIR validation rules

Following the end of the transition period, UK reporting counterparties and UK TRs should use the updated [UK EMIR validation rules](#) when submitting derivative transactions entered into, or amended, from 11.00pm on 31 December 2020 onwards.

EU non-legislative material

The FCA has [set out its approach](#) to EU non-legislative material which applies prior to the end of the transition period. TRs and reporting counterparties should continue to follow EU non-legislative material (such as ESMA Q&As, guidelines, technical specification documents) that has been implemented before the end of the TP to the extent that the guidance is relevant under UK EMIR.

Intragroup exemptions from the reporting obligation under UK EMIR

Following the implementation of EMIR REFIT on 17 June 2019, the EMIR REFIT requirements were also on-shored under the EUWA via the [EMIR REFIT SI](#). This includes the exemption from the UK EMIR reporting requirements for intragroup transactions where at least one of the counterparties is a non-financial counterparty (NFC) established in the UK (or would be an NFC if it were established in the UK). Both counterparties must be part of the same group and the parent company must not be a Financial Counterparty (FC).

UK firms are required to notify the FCA should they wish to benefit from the intragroup exemption, demonstrating that they have met the relevant conditions as prescribed under the EMIR REFIT SI. Details of how to notify the FCA can be found on the FCA [EMIR notifications and exemptions webpage](#).

UK firms who have already been granted an intragroup exemption from reporting by the FCA may continue to benefit from those exemptions immediately following the end of the TP with no requirement to reapply.

Mandatory delegated reporting under UK EMIR

The UK EMIR REFIT SI includes the mandatory delegated reporting requirements as prescribed under the onshored Article 9(1)(a) – (d).

UK NFC-s who enter into OTC derivatives with EU FCs may no longer benefit from the mandatory delegation of reporting under the UK EMIR REFIT regime. As such, UK NFC-s will need to ensure these trades are reported to a UK TR immediately following the end of the TP (unless an equivalence determination has been made).

What changes for TRs?

We will become the UK authority responsible for the registration and ongoing supervision of TRs operating in the UK at the end of the transition period.

TRs who want to offer services from the UK immediately following the end of the transition period are required to have a UK legal entity registered by us. The [TR SI](#) provides both a conversion regime and a temporary registration regime to ensure TRs can be registered and operational from 11.00pm on 31 December 2020.

Further details on the options available for TRs can be found on the [our TR webpage](#). UK counterparties are encouraged to engage with their TRs to understand the choices their TR has made and how this will affect them.

A list of the TRs who intend to offer services in the UK is available on the TR webpage.

Historic EMIR data

UK-based TRs seeking conversion under the TR SI have been instructed to maintain a copy of historic EMIR data in relation to trades reported since 1 November 2017 (i.e. derivative trades reported under EMIR since 1 November 2017 that are no longer outstanding) to which we and Bank of England currently have access.

EU27 based TRs that establish a new TR in the UK and seek temporary registration under the TR SI have been requested to hold a copy of the historic EMIR data in relation to trades reported since 1 November 2017 to which the FCA and Bank of England currently have access to in that UK TR group entity. This is to enable us and Bank of England to continue to access these data after the end of the transition period based on our current mandates under the EMIR regime.

TRs are not expected to store data relating to historical EMIR rejection statistics or reconciliation statistics.

Firms are encouraged to engage with their TR to ensure they continue to have the relevant access to their historic EMIR data after the end of the transition period, if required.

Inter-TR Reconciliation under UK EMIR

We recognise the importance of inter-TR reconciliation in enhancing data quality. We have communicated our expectations on this to TRs, taking into account the operational requirements required in order to achieve inter-TR reconciliation.

Under UK EMIR, inter-TR reconciliation will only be required between FCA-registered, or recognised, TRs in relation to derivatives transactions submitted by UK counterparties. There is no requirement for inter-TR reconciliation to be performed between UK and EU TRs.

Publication of TR Data

TRs should publish public reports as listed in the relevant on-shored EMIR [BTS](#) one week following implementation of the UK EMIR reporting regime on Monday 11 January 2021. The public reports should be published weekly thereafter.

TRs may continue to use EUR as the currency; there is no requirement to change the rates to GBP.

In addition, TRs may continue to use UTC as the universal time zone; there is no requirement to change to GMT.

Data access for authorities

Following the end of the transition period, UK TRs will only be required to provide access to data reported by UK counterparties (based on individual mandates) to us, the Bank of England and other UK authorities listed within the EMIR SI.

Suspension of the reporting requirements

Article 9(3) UK EMIR provides the FCA power to suspend the reporting obligation for a period of up to one year, with the agreement of HM Treasury.

The use of this suspension power is limited only to the extent there are no FCA-registered, or recognised, TRs available for UK counterparties to report to.

List of Third Country Regulated Markets under UK EMIR

On 9 November 2020, HMT published a [statement](#) indicating their intention to provide unilateral equivalence to the EU in relation to EMIR Article 2a. This confirms that EU regulated markets may be considered as UK regulated markets for the purposes of UK EMIR requirements (including reporting requirements) immediately following the end of the TP.

We will publish a list of third country regulated markets under UK EMIR in due course.

Firms are best placed to understand their own compliance with UK EMIR requirements. This note is not exhaustive of the circumstances in which actions will be needed. Each firm will need to consider whether, in the light of their own specific business model, there are actions they need to take.