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Regulatory Blog

By PwC Deutschland | 16. Dezember 2024

EMIR 3.0: Navigating the active account requirement

Part 1: Changes for financial counterparties

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Content

1 Background and objective 3

2 Active account requirement: Who and what is in scope? 3

3 Key components of the active account requirement: Operational conditions, representativeness obligation and reporting requirements 4

4 Timeline of EMIR 3.0 5

5 How PwC can support a seamless implementation 6

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Published in the Official Journal of the European Union (EU) on December 4, 2024, EMIR 3.0 introduces pivotal changes to the regulatory landscape for OTC derivatives transactions. A key element of EMIR 3.0 is the mandate requiring EU counterparties to establish an active account at an authorized central counterparty within the EU and to clear a representative number of interest rate derivatives through this account. While the technical details are still being finalised, with an ongoing consultation by ESMA, the active account requirement must be implemented by the end of June 2025. This new regulation will have substantial implications for many counterparties, affecting both their business and operating model. Therefore, it is crucial for these entities to begin addressing the changes without delay.

1Background and objective

EMIR 3.0 is the latest update to the **European Market Infrastructure Regulation**, designed to further enhance the transparency and resilience of the EU derivative market. This update refines the clearing, risk mitigation and reporting requirements for OTC derivatives, including a revised calculation of the clearing threshold, a mandate for the authorization of initial margin models and procedures to improve the quality of reporting data.

The active account requirement was among the most contentious and political issues in the negotiation process of EMIR 3.0 due to several reasons including market fragmentation concerns, cost implications and liquidity and efficiency aspects. Currently, approximately 80% of the EUR-denominated interest rate derivatives are cleared outside the EU, primarily through the central counterparty (CCP) LCH Ltd. in the UK. This reliance on these systemically important third-country CCPs, known as “tier 2 CCPs” has been criticized by **ESMA** due to concerns over the legal enforceability of EU regulations, the financial stability of the EU, and the effectiveness of monetary policy transmission mechanisms. As a result of the active account requirement, this may now change, with many counterparties likely being compelled to move their clearing activities to authorized **EU CCPs**, such as EUREX.

The impact of the active account requirement could be significant for many counterparties, depending on factors such as their trading volume, the types of derivatives they trade, and their existing clearing arrangements.

2 Active account requirement: Who and what is in scope?

The requirement to hold at least one active account at an authorized EU CCPs applies to the following derivative contracts:

- Over-the-counter Euro-denominated interest rate derivatives (OTC-EUR-IRD)
- OTC Polish zloty-denominated interest rate derivatives (OTC-PLN-IRD)
- Euro-denominated short-term interest rate derivatives (STIR)

ESMA has classified the clearing service provided by LCH Ltd. and ICE Clear Europe for these contracts

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being of substantial systemic importance to the EU's financial stability.

The active account requirement applies to financial and non-financial counterparties that meet the following criteria:

- They are subject to the EU EMIR clearing obligation, which includes counterparties that either do not calculate the clearing thresholds or exceed them. The thresholds are set at EUR 1 billion in gross notional value for OTC credit and equity derivatives, EUR 3 billion for OTC interest rate and foreign exchange derivatives, and EUR 4 billion for commodity and other derivatives; and
- they exceed the clearing threshold for in-scope derivative contracts, either on an individual or aggregate basis. This includes counterparties with positions exceeding EUR 3 billion in gross notional value in any of the specific categories (EUR-OTC-IRD, PLN-OTC-IRD and STIR cleared outside the EU) or across all categories combined.

Counterparties may be exempt from certain aspects of the active account requirement if they meet specific conditions, such as primarily clearing derivatives through authorized EU CCPs.

3 Key components of the active account requirement: Operational conditions, representativeness obligation and reporting requirements

The active account requirement comprises the following three key components:

Operational conditions:

- The accounts are permanently functional;
- Counterparties must have sufficient resources to operate these accounts effectively; and
- New in-scope transactions must be able to be cleared through these accounts.

These requirements are subject to regular stress-testing under various scenarios.

Notably, counterparties that clear at least 85% of their in-scope derivative contracts through authorized EU CCPs, as measured by the gross notional value of their aggregate position, are exempt from these operational conditions.

Representativeness obligation:

Example - EUR OTC interest rate derivative:

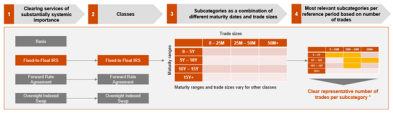
Leveraging the four classes of OTC derivatives that are subject to the EMIR clearing obligation, ESMA has proposed in the recent consultation paper on conditions for active account requirements to select the following three classes of derivatives as a starting point for the determination of the most relevant subcategories under the representativeness obligation:

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- Fixed-to-Float (IRS)
- Forward Rate Agreements (FRA)
- Overnight Indexed Swaps (OIS)

It remains unclear in the ESMA consultation paper whether the previous or current reference period should be used to determine the most relevant subcategories.

Figure: Methodology to determine a representative number of derivatives to be cleared through an active account



Notably, if the resulting number of derivatives to be cleared through an active account over a full calendar year exceeds 50% of the total derivatives for this time period, only one derivative (instead of five for EUR-OTC-IRD) per most relevant subcategory and reference period needs to be cleared through an active account.

Due to the complexity of the representativeness requirement, smaller counterparties are exempt. Specifically, those with an aggregate outstanding notional value of less than EUR 6 billion across all relevant categories – excluding client clearing activities – are not subject to the representative obligation.

Reporting requirement:

EMIR 3.0 mandates that in-scope counterparties report their compliance with the active account requirement. This includes the reporting of activities and risk exposures as well as reporting of operational conditions and the representativeness obligation. While the reporting of activities and risk exposures can utilize existing data from EMIR Article 9 reporting, this information must be reported at an aggregated level, considering factors such as the most relevant subcategories, which may change over time. Counterparties subject to the active account requirements must submit these reports to the relevant national competent authority on the last day of January and the last day of July.

4 Timeline of EMIR 3.0

EMIR 3.0 was adopted by the EU Council on November 19, 2024, and subsequently published in the Official Journal of the EU on December 4, 2024. It is set to enter into force on December 24, 2024. The requirement for counterparties to establish an active account with an authorized EU CCP and to clear a representative number of interest rate derivatives through this account must be met by June 24, 2025.

In the meantime, ESMA has issued a consultation paper addressing technical standards related to the active account requirement, including operational conditions, representativeness obligation, and reporting.

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This consultation will remain open until January 27, 2025. ESMA is required to submit the draft regulatory technical standards (RTS) within six months after the entry into force of EMIR 3.0.

Given the short timeline, counterparties need to act and begin implementing the active account requirement based on the draft RTS. Waiting for the final RTS to be published could result in insufficient time for timely implementation. Therefore, we recommend that counterparties initiate the implementation process as soon as possible, especially if onboarding to authorized EU CCPs is still pending.

5How PwC can support a seamless implementation

PwC can assist you throughout the entire process of implementing the active account requirement. Our services include assessing strategic options, implementing operational and representativeness requirements, facilitating onboarding to EU CCPs, and establishing a robust active account framework.

Our international team of experts brings together deep knowledge of derivative markets and extensive experience in implementing EMIR requirements.

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Get ongoing updates on the topic via regulatory horizon scanning in our research application, PwC Plus. Read more in our "**Services and Offerings**" section.

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Schlagwörter

CCP (Central Counter Party), Derivate, EMIR (European Markets Infrastructure Regulation), EMIR (technische Standards)

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