



EMIR status as of 1 May 2024

Frequently Asked Questions

1. WHAT IS EMIR?

The European Market Infrastructure 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 (hereafter EMIR) introduces a set of new rules and requirements aimed at improving transparency and reducing the risks related to derivatives markets.

EMIR requires all derivatives contracts to be reported to trade repositories and over-the-counter (OTC) derivatives contracts to be centrally cleared, while also setting a framework that enhances the safety of central counterparties (CCPs) and trade repositories (TRs). EMIR introduces a series of risk mitigation techniques aimed at creating sounder financial markets.

EMIR REFIT

EMIR Refit (EMIR Regulatory Fitness Program) is a large-scale regulatory update to the existing EMIR, which came into effect on 29 April 2024. EMIR Refit aims to simplify and improve the regulatory framework for derivatives markets in the EEA. EMIR Refit introduces changes to the existing definition of financial counterparties, the clearing obligation, the reporting obligation, the risk mitigation techniques, and the supervision of trade repositories (relevant items are also part of this FAQ). Hereafter, when we refer to EMIR, we are referring to the revised version of EMIR (i.e., after the entry into force of EMIR REFIT).

It must be stressed that under the EMIR regulation that took effect on 29 April 2024 the bank will not be able to execute derivatives transactions (OTC and ETD) on behalf of investors if key information such as the investor's financial status, corporate sector and valid LEI for legal entities have not been provided and documented in our system.

The UK enacted the same regulation applicable for UK and Gibraltar, known as UKMIR; hereafter, reference is made to "EEA/UK" to include both regulations and affected entities.

Another important source of information that should be consulted on a regular basis is the EMIR section on ESMA's website, and in particular the Frequently Asked Questions published by ESMA. The

EMIR regulation was adopted by the European Parliament on 4 July 2012 and entered directly into force in all European member states on 16 August 2012.

ESMA'S EMIR Q&A

https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52_qa_on_emir_implementation.pdf

ESMA'S EMIR reporting guidelines <https://www.esma.europa.eu/press-news/esma-news/esma-publishes-guidelines-and-technical-documentation-reporting-under-emir>

2. TO WHOM DOES EMIR APPLY?

Investors (counterparties and clients of one of the entities of the Pictet Group) domiciled in the EEA who trade derivatives (bilateral OTC contracts and exchange-traded derivatives (ETDs)) are subject to different obligations under EMIR, depending on their classification and the nature of their transactions. The EMIR regulation applies to both financial and non-financial counterparties (FCs and NFCs) that enter into derivatives contracts.

All undertakings domiciled in the EEA/UK that conclude derivative contracts/engage in derivative transactions are directly affected by the regulation. The term "undertaking" depends on the activities of a person and not on their legal form or type of financing. Accordingly, an undertaking is an entity that performs a commercial activity and is not exclusively a consumer or employee. This generally excludes individuals.

Economic activity is also an activity which involves providing goods or services on a given market. Consequently, any market-related conduct targeting the supply or demand of goods or services constitutes an undertaking. Conversely, the lack of profit-making intent does not constitute an exclusion criterion.

Counterparties, clients and investors not domiciled in the EEA/UK, when facing our EU bank Bank Pictet & Cie (Europe) AG ("BPAG") or one of its branches (i.e., also NOT Banque Pictet & Cie SA ("BPSA"), which is a Swiss-incorporated bank and is therefore NOT subject to EMIR regulation) are obliged

to comply with certain EMIR requirements as well. Such clients and counterparties should be classified as FC or NFC as if they were located in the EEA/UK.

For trust and charities, please refer to further information in Section 3 for EMIR classification and Section 10 regarding LEI obligations.

2.1 Which products are considered to fall under the scope of EMIR?

In-scope instruments under EMIR are all derivatives trades, including exchange-traded derivatives (ETD) and OTC derivatives. 'OTC derivative' or 'OTC derivative contract' (under Article 2 of EMIR) is a derivative contract, the execution of which does not take place on a regulated market or on a third-country market considered as equivalent to a regulated market.

Please note that both FX swaps and FX forwards are considered OTC derivatives under EMIR. Spot transactions (settled T+2 or shorter) are NOT OTC derivatives.

2.2 Exemptions applicable to FX swaps and forwards

FX swaps and forwards are OTC derivatives, hence subject to all EMIR requirements.

By way of derogation from Article 2(2), counterparties may provide in their risk management procedures that variation margins are not required to be posted or collected for physically settled foreign exchange forward contracts and physically settled foreign exchange swap contracts where one of the counterparties:

- Is not an institution as defined in point (3) of Article 4(1) of Regulation (EU) No 575/2013; or
- Would not qualify as such an institution if it were established in the Union.

In a simplified manner, physically settled FX swaps and forwards (i.e., excluding NDFs) are only subject to margining between credit institutions. So a fund or non-banking entity – even though they are considered

a financial counterparty – is exempt from margining (both variation and initial margining) when facing a credit institution.

Non-deliverable forwards (NDFs) are considered differently than physically settled FX forwards. For example, NDFs might be subject to initial margining requirements, while physically settled FX forwards are exempt.

3. HOW TO DETERMINE ONE'S EMIR CLASSIFICATION? "FC" OR AN "NFC"?

Investors can be classified as either FC-, FC+, NFC- or NFC+.

Non-financial counterparties (NFCs) are entities that are not classified as financial counterparties (FCs) under EMIR. NFCs are further divided into NFC- and NFC+, based on whether they exceed the clearing thresholds for different classes of derivatives listed in the table below. NFC- are exempt from the clearing obligation, but still need to report their trades to trade repositories and apply risk mitigation techniques. NFC+ are subject to the clearing obligation for the classes of derivatives that exceed the thresholds and need to comply with the margin requirements for non-cleared derivatives.

Particular cases:

1. Trusts, charities, and equivalent structures are usually classified as non-EU undertakings. This classification does not prevent them from obtaining a Legal Entity Identifier (LEI).

This has been clarified by ESMA in a briefing that can be found here:

https://www.esma.europa.eu/sites/default/files/library/esma70-145-238_lei_briefing_note.pdf

2. For Investment funds Luxembourg please find the following guidelines:

FINANCIAL COUNTERPARTY (FC)	NON-FINANCIAL COUNTERPARTY (NFC)
UCITS	AIFs not managed by an authorised or registered AIFM: - AIF managed by a NON-EU AIFM - AIF managed by an AIFM exempted from authorisation (article 6 (3) & (4) AIFMD)
AIF managed by an authorised or registered AIFM: - Part II - SIF & SICAR falling under the scope of article 1 (39) AIFM Law - FIAR managed by authorised AIFM	Non-AIF: not falling under the scope of article 1 (39) AIFM Law, but regulated: - SIF, - SICAR
Management company of UCITS (Chapter 15): - Own account - Discretionary portfolio management for retail clients	AIFM (chapter 16): - Own account - Discretionary portfolio management for retail clients
Super Manco (chapter 15 + AIFM): - Own account - Discretionary portfolio management for retail clients	- Securitisation vehicles authorised (SSPE) - Non regulated securitisation vehicles
- SEPCAV - ASSEP	-

FC- OR FC+:

Financial counterparties (FCs) are entities that are classified as such under EMIR. FCs include credit institutions, investment firms, insurance companies, UCITS, AIFs, pension funds, and certain securitisation entities. FCs are subject to the clearing obligation for all classes of derivatives, the reporting obligation, the

margin requirements for non-cleared derivatives, and the risk mitigation techniques. FCs are further divided into FC- and FC+, based on whether they are above or below the clearing thresholds for different classes of derivatives listed in the table below. FC+ are subject to higher capital requirements and supervision than FC.

Thresholds to determine classification -/+

ASSET CLASS	FC- & NFC-	THRESHOLD (NOTIONAL)	FC+ & NFC+
Credit derivatives	less than	EUR 1 billion	more than
Equity derivatives	less than	EUR 1 billion	more than
Interest rate derivatives	less than	EUR 3 billion	more than
Foreign exchange derivatives	less than	EUR 3 billion	more than
Commodity derivatives and other derivatives	less than	EUR 4 billion	more than

4. WHAT ARE THE INVESTOR CORPORATE SECTORS?

Market regulators require information on the circumstances of investors, namely the investor's corporate sector.

Corporate sectors possible for Non-Financial Companies (NFCs):

- Agriculture, forestry and fishing
- Mining and quarrying
- Manufacturing
- Electricity, gas, steam, and air conditioning supply
- Water supply, sewerage, waste management and remediation activities
- Construction
- Wholesale and retail trade, repair of motor vehicles and motorcycles
- Transportation and storage
- Accommodation and food service activities
- Information and communication
- Financial and insurance activities
- Real estate activities
- Professional, scientific, and technical activities
- Administrative and support service activities
- Public administration and defence; compulsory social security
- Education
- Human health and social work activities
- Arts, entertainment, and recreation
- Other service activities
- Activities of households as employers; undifferentiated goods and services producing activities of households for own use
- Activities of extraterritorial organisations and bodies

Corporate sectors possible for Financial Companies (FCs):

- Credit institution (authorised in compliance with Directive 2013/36/EU)
- Investment firm (authorised in compliance with Directive 2014/65/EU)
- Insurance undertaking or reinsurance undertaking (authorised in compliance with Directive 2009/138/EC)
- Alternative investment fund (established in the European Union or managed by a registered or authorised alternative investment fund manager in compliance with Directive 2011/61/EU)
- Pension fund (institution for occupational retirement provision pursuant to art. 6(1) of Directive 2016/2341)
- UCITS (and its management company authorised in compliance with Directive 2009/65/EC)

The regulations require trustees that invest trust funds on capital markets to obtain an LEI for the trust.

This has been clarified by ESMA in a briefing that can be found here:

https://www.esma.europa.eu/sites/default/files/library/esma70-145-238_lei_briefing_note.pdf

Therefore, a trust or similar structure should obtain an LEI and classify themselves. They are usually classified as "Non-EU undertakings".

5. GIVEN MY EMIR CLASSIFICATION, WHAT ARE MY OBLIGATIONS?

EMIR classifications trigger the obligations that the participants have to implement:

This is essential because the classification not only creates duties for the external counterparty but also dictates the obligations applicable to BPAG or BPSA as an FC+.

Emir obligations applicable according to a counterparty's classification

OBLIGATION	FC+	NFC+	FC-	FC-
1) Clearing obligation	√	√	n.a.	n.a.
Calculation of thresholds per derivative category	√	√	√	√
2) Reporting to trade repository	√	√	√	(√) *
3) Risk mitigation	√	√	√	√
Confirmation of contractual terms	√	√	√	√
Portfolio reconciliation	√	√	√	n.a.
Dispute resolution	√	√	√	√
Portfolio compression	√	√	√	√
Daily valuation	√	√	n.a.	n.a.
Collateral posting	√	√	√	n.a.
FC+ Large financial counterparty NFC+ Large non-financial counterparty	FC- Small financial counterparty NFC- Small non-financial counterparty		n.a. Not applicable	

*For NFC- clients facing BPAG, the transaction reporting obligation lies with the EU bank, therefore the client has nothing to do (no delegation required).

For NFC- clients facing any other entity of the Pictet Group outside of BPAG and one of its branches, the transaction reporting obligation falls on the client themselves, therefore the client needs to delegate its reporting to the Bank (including NFC- clients).

6. WHAT ARE EMIR OBLIGATIONS?

6.1 The Reporting Obligation – What is EMIR “reporting”?

Reporting means the daily process by which data relating to derivatives and their counterparties are submitted to a trade repository. A trade repository is an organisation established to manage data on a secure and confidential basis and is regulated under EMIR.

The aim of reporting is to promote transparency by making the information on derivatives provided to such trade repositories available to regulators, thereby giving them an accurate overview of the derivatives market and the exposures of market participants with a view to aiding prudential regulation of the financial markets.

6.2 Which parties will be subject to the reporting obligation?

All EEA derivatives market participants (see also above Section 2 “To whom does EMIR apply?”) are subject to the reporting obligation under EMIR, regardless of whether they enter into derivatives contracts with other EU counterparties or third-country entities, depending on their classification and related obligations (see Section 5 above: typically individuals do not have any reporting obligation).

6.3 Which derivatives are subject to the reporting obligation?

Entities that are in scope for the EMIR reporting obligation must report details of any derivative contracts (see also Section 2 “To whom does EMIR apply?”) entered into, and any modification or termination of those contracts to a registered or recognised trade repository (“TR”) by the end of the next working day.

Clients and counterparties can delegate their reporting obligation to the bank, as explained hereafter in Section 6.4.

6.4 EMIR reporting mandate

The EMIR reporting mandate is required for all clients that are EEA/UK undertakings authorised to trade derivatives (ETD or OTC) with their bank, whether they are booked at BPAG or at another booking centre (i.e. BPSA (including the HKG branch), BPCAL and PBT) and willing to delegate their OTC/ETD reporting obligations to the booking centre.

The EMIR reporting mandate incorporates the delegation of both ETD and OTC reporting.

If the client is NFC-, for EEA/UK undertakings booked with BPAG, the reporting of ETD only should be delegated (the reporting of OTC for NFC- is mandated

by the regulation to be done by the EU bank). However, if the client is FC-, FC+ or NFC+ they should delegate both ETD and OTC reporting.

For EEA/UK undertakings, we strongly recommend that clients of other booking centres (Switzerland, Singapore, Hong Kong or Bahamas) conclude an EMIR reporting mandate to avoid any reporting failures.

In Summary:

- For EU/EEA NFC- clients trading OTC with BPAG: no delegation required
- For EU/EEA FC+/- and NFC+ clients trading OTC with BPAG: delegation (if client doesn't report themselves)
- For all EU/EEA clients trading ETD with BPAG: delegation (if client doesn't report themselves)
- For all EU/EEA clients trading OTC and/or ETD outside BPAG: delegation (if client doesn't report themselves)
- For reporting delegation mandates, refer to Section 7 below.

7. WHAT DOCUMENTS ARE REQUIRED TO BE SIGNED BY CLIENTS IN THE CONTEXT OF EMIR?

At BPAG, the entities' onboarding forms will include the additional fields required to collect the necessary data.

If the client/counterparty is booked at BPAG:

- The account-opening form, which includes the fields required to collect the necessary data;
- The EMIR reporting mandate, which will be made available in Q1 2024. Indeed, ETD remains subject to the reporting obligations of all EU/UK undertakings (including NFC-);
- ETD/OTC master agreements or the standard International Swaps and Derivatives Association (hereafter "ISDA") master agreement and ETD documentation for FC+, FC- or NFC+;

If a client/counterparty is booked at BPSA, BPCAL or PBT and incorporated in the EEA/UK:

- The dedicated EU onboarding form to collect the required data;
- The EMIR reporting mandate for their booking centre to prevent them from being in breach of their EU/UK reporting obligation. In any case, they remain liable for ensuring their reporting obligations requirements are met;
- ETD/OTC master agreements if available.

The ISDA agreement will remain the preferred document for FC+/FC- and NFC+ clients as they are subject to specific requirements not covered by Pictet's internal OTC Master Agreement (portfolio reconciliation, dispute resolution, margining, etc.). For any guidance or a client's specific request to ISDA, please contact the PWM Legal team and/or Market Infrastructure team to discuss the various requirements. Any ISDA agreement must be approved by the PWM Legal team.

In summary:

BPAG AND ITS BRANCHES	OTHER BOOKING CENTRES	THRESHOLD (NOTIONAL)
Onboarding form	Local Onboarding form or Annex	ISDA or country master agreement for OTC derivatives instruments
EMIR reporting mandate	EMIR reporting mandate for OTC & ETD	EMIR reporting mandate

8. RISK MITIGATION TECHNIQUES - WHAT ARE "RISK MITIGATION TECHNIQUES"?

Risk mitigation techniques apply in respect of OTC derivatives that are not cleared via CCPs.

They consist of operational risk mitigation techniques. These obligations relate to:

- timely confirmation of trades;
- daily mark-to-market valuations of trades;
- having dispute resolution processes in place; and
- engaging in portfolio reconciliation and considering portfolio compression;
- exchange of collateral.

9. THE CLEARING OBLIGATION - WHAT IS "CLEARING" FOR OTC DERIVATIVES?

Clearing for OTC derivatives is the process by which two parties to an OTC derivative contract replace it with two separate contracts with a central counterparty (CCP) that takes over each party's positions under the original contract. The two parties no longer have a contract with each other but instead with the CCP, thereby making the CCP the counterparty to each of the original parties.

The clearing obligation will apply only if the relevant OTC derivative is of a class that has been declared subject to the clearing obligation and entered into between any combination of FCs and NFC+s, provided that one or more of the parties are established in the EU. The clearing obligation will not apply where at least one of the counterparties is an NFC- (or a third CE that would be an NFC- if it were established in the EU).

In practice, at the time of writing, only IRSS in G4 currencies are subject to the EMIR clearing obligation. CDS will be subject to this obligation in the future. The EU authorities may decide to expand the list of OTCs subject to this obligation.

9.1 Notifications required by NFC, when passing the clearing threshold

On the first day an NFC exceeds any of the clearing thresholds, it has to notify ESMA and its relevant national authority. Where a group has NFCs established in different EU jurisdictions, the group is expected to submit a single notification to ESMA, and all NFCs established in a particular jurisdiction are expected to notify the relevant national authority in that jurisdiction. These notifications are required regardless of whether the NFC actually ends up exceeding the relevant clearing threshold(s) on the basis of the 30 working-day rolling average test (see question 11) and therefore becomes an NFC+.

No notifications are required upon NFCs actually becoming NFC+s.

NFC+s also need to notify ESMA and their relevant national authority as soon as the 30 working-day rolling average of their notional positions in OTC derivatives (excluding 'hedging' ones) no longer exceeds the relevant clearing threshold(s).

9.2 What is meant by explicit permissioning and what is expected?

Clients incorporated in the EEA (with financial statuses NFC-, NFC+, FC-, and FC+) who have delegated their derivatives reporting using the EMIR Reporting Mandate are now required to confirm this delegation to our Trade Repository, UnaVista (third party provider). Clients should confirm the delegation by clicking on an email they will receive from UnaVista. This confirmation is necessary before the bank can report on their behalf, and the requirement is effective since 29.04.2024.

9.3 What is meant by Errors & Omissions and what is expected?

Upon receipt of the EMIR Reporting Mandate, the Bank is required to report any derivative trade according to the Mandate to the relevant authority.

In case of a reporting error or omission during the reporting process, a report should be provided to the client. This will enable them to assess the significance of the breach against the thresholds set by the ESMA guidelines (section 4.29 - §395 - p.185). Based on this assessment the client may be required to notify their National Competent Authority (NCA). A threshold of 200 data (one trade could have various data errors) per month is allowed by LEI. Therefore, the client should be notified of the error(s) and/or omission(s) and advised to contact their NCA as necessary.

10. DO MARKET PARTICIPANTS HAVE TO OBTAIN AN LEI TO COMPLY WITH THE REPORTING OBLIGATION UNDER EMIR?

EMIR provides that market participants should obtain a global legal entity identifier (LEI), when available, for the purposes of reporting counterparty data. The Regulatory Oversight Committee (ROC) is currently finalising the global LEI initiative, which should result in a number of operating units being approved to issue LEIs that are mutually recognised by as many jurisdictions as possible. The new global LEI infrastructure has been in place since 2013/early 2014.

In its EMIR Questions & Answers, ESMA clarified that a pre-LEI issued by any of the endorsed pre-Local Operating Units (pre-LOUS) listed on the LEI ROC website should be used to identify counterparties.

Note that EU derivatives market participants dealing with US counterparties are also likely to be required by their US counterparties to obtain an LEI as US counterparties have to report their counterparties' LEIs.

10.1 What about trusts, charities, and equivalent structures?

When facing our EU bank BPAG or one of its branches, counterparties, clients and investors that are legal entities or structures, including a charity or trust, need to make arrangements to obtain an LEI code if they want the investment firm (BPAG) to continue to act on their instructions or make a decision to trade on their behalf.

The regulations require trustees that invest trust funds on capital markets to obtain an LEI for the trust. We understand that bare trusts may have been excluded from the requirement to obtain an LEI (depending on whether Compliance under AML rules at onboarding classifies bare trusts as legal entities or as individual/joint accounts), but all other trusts will be obliged to obtain an LEI if they are parties to financial transactions (i.e. this includes derivatives under EMIR but also MiFIR relevant transactions as well, mainly securities).

The term legal entity includes, but is not limited to, unique parties that are legally or financially responsible for the performance of financial transactions or have the legal right in their jurisdiction to enter into legal contracts independently, regardless of whether they are incorporated or constituted in some other way (e.g. trust, partnership, contractual).

This has been clarified by ESMA in a briefing that can be found here:

https://www.esma.europa.eu/sites/default/files/library/esma70-145-238_lei_briefing_note.pdf

10.2 How do you get an LEI?

Companies may register at designated institutions known as Local Operating Units (LOUs) to obtain an LEI.

A list of LOUs may be found under www.leiroc.org

Clients may have already registered for a CFTC Interim Compliant Identifier (CICI), which is used for reporting under the US Dodd-Frank Act. The CICI can also be used as LEI for the purposes of EMIR.

By way of an example, the Pictet Group has registered with www.gmeiutility.com

10.3 Consequences of non-compliance with EMIR and not providing an LEI on time

Due to the requirements of BaFin and additional European regulations, all transactions subject to reporting must be carried out with an LEI. The bank will not execute any transaction subject to EMIR if the client or a counterparty has not provided a valid LEI.

Please note that providing trading without an LEI might be subject to penalties from regulators.

Clients shall renew their LEIs regularly and inform the Bank on a timely manner of any change to the NFC's status (counterparty classification, including LEI change in legal entities, etc.) as this will affect the allocation of responsibility for reporting.

11. MARKET INFRASTRUCTURE INFORMATION

Market Infrastructure related information for Banque Pictet & Cie SA in Geneva (BPSA)

Address: Route des Acacias 60, 1211 Geneva 73, Switzerland

BIC Code: PICTCHGGXXX

LEI: 4LCYDN74UCFU5VPM4774

FMIA counterparty classification: Financial Counterparty (FC+ subject to clearing obligation on an ongoing basis)

Corporate sector: Bank

AANA: BPSA is member of an AANA Group and has already crossed the AANA threshold.

AANA means an aggregate month-end average notional amount of non-centrally cleared derivatives, as calculated in accordance with rules for Margin Requirements.

BPSA is also subject on an ongoing basis to Initial Margin requirements under the Uncleared Margin Rules.

Market Infrastructure related information for Bank Pictet & Cie (Europe) AG in Germany (BPAG)

Address: Neue Mainzer Straße 2-4, 60311 Frankfurt am Main, Germany

BIC Code: PICTDEFFXXX

LEI: 549300GSSPQ1QSKI1376

EMIR counterparty classification: Financial Counterparty (FC+ subject to clearing obligation on an ongoing basis)

Corporate sector: Credit Institution

AANA: BPAG is member of an AANA Group and has already crossed the AANA threshold.

AANA means an aggregate month-end average notional amount of non-centrally cleared derivatives, as calculated in accordance with rules for Margin Requirements.

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