Dechert LLP

UK EMIR Reporting Changes: Need to Know With Less Than a Month to Go

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Key Takeaways

- All derivatives users in scope of UK EMIR will be affected.
- Whilst very similar, the UK and EU regimes are separate, and there are differences.
- Changes are significant and new processes may be required.
- A set of accompanying FCA Q&A have been published.

2024 is a big year for EMIR reporting. In April 2024, the EU EMIR refit reporting changes took effect. On Monday 30 September 2024, the UK EMIR reporting changes go live. In this article we take a high-level look at the changes, the differences between the EU and UK regimes and what in-scope entities need to know.

Who is affected?

All derivatives users directly in scope of UK EMIR reporting.

All derivatives – i.e., over-the-counter (**OTC**) derivatives (including cleared derivatives) and exchange traded derivatives – have been subject to a reporting requirement under EMIR since February 2014[1]. So this is not a new requirement *per se* but is in effect an overhaul of those existing rules.

What will happen on 30 September 2024?

- **Form of reports.** All derivatives entered into on or after 30 September 2024 must be reported in accordance with the new standards[2]. There is a transition period of 180 days, until 31 March 2025, for existing transactions to be upgraded to the new standards. However, a modification (which includes a lifecycle event) or correction to an existing transaction report before 31 March 2025 will prompt an earlier upgrade.
- **Reconciliation and verification – new processes and requirements.** New trade repository (**TR**) verification and reconciliation processes will take effect. Counterparties, the entity responsible for reporting (**ERR**) and the report submitting entity, as applicable, must have in place arrangements which ensure that the feedback on the reconciliation failures provided by TRs pursuant to the new rules[3] is taken into account and any reconciliation failures identified in that feedback are resolved where possible, as soon as practicably possible.

- **New notification requirement.** The ERR shall notify the relevant regulator of any material errors or omissions in its reporting, as soon as it becomes aware of them. There is no detailed definition of what constitutes a 'material error or omission' but the new FCA Q&A (more on which below) focus on proportionality. Specific reference is made to the assessment of materiality being based on the size, nature and complexity of the business in question. The form to notify the FCA of any such errors or omissions is unchanged.
- **FCA Q&A take effect.** The FCA has consulted on and published a set of questions and answers in relation to the new reporting requirements (the **FCA Q&A**), which will also apply from Monday 30 September 2024[4]. The FCA Q&A, which cover 11 areas, including the key topics of reconciliations and errors and omissions, must be read alongside the Policy Statement and other supporting documentation listed on the FCA's EMIR reporting obligation webpage, including the latest (updated) validation rules. At the time of writing the FCA is consulting on further guidance[5], in the form of Q&A, specifically to support TRs in the implementation of the updated UK EMIR reporting requirements. The consultation closes on 25 September 2024 and the feedback that the FCA receives will be incorporated into the final guidance, which will be made available via the FCA Trade Repositories webpage[6].

Why do I need to know?

- **Compliance timeline.** Day one compliance is expected, and the same is true for updates to historic trades. For the latter, the FCA Q&A refers to ERRs proactively engaging with the FCA ahead of the completion of the transition period, with an explanation, if they are at risk of not updating their outstanding reports to comply with the new requirements after 31 March 2025.
- **Minimum expectations.** For errors and omissions, the FCA Q&A state that, at a minimum, they expect ERRs to have systems and controls in place to ensure timely and complete reporting in accordance with UK EMIR. In addition, ERRs should have in place: (i) effective governance to oversee their UK EMIR reporting; (ii) effective systems and controls to identify and remediate errors and omissions; and (iii) arrangements with counterparties to address reconciliation breaks. The FCA Q&A refer to ERRs using the information provided by the TRs in the Warnings Feedback messages to monitor the accuracy of their reporting by investigating the potential issues. In turn this can inform any remediation, and whether any material errors and omissions notification is required.
- **Reconciliation breaks.** As a result of the new requirement to have arrangements in place to ensure the remediation of reconciliation breaks as soon as practically possible, there is a focus on reconciliation. The FCA Q&A state that because the nature and severity of reconciliation breaks will vary, the FCA does not intend to provide prescriptive guidance as to when and how counterparties should remediate breaks. However, the expectation is that ERRs have arrangements to remediate reconciliation breaks that are appropriate to the nature, scale, and complexity of their business.

How are the EU and UK rules different?

- **Legal framework.** The UK framework is principally set out across the Policy Statement, the FCA Q&A, validation rules and XML schema. The EU rules are housed in six implementing and delegated regulations and the ESMA "Guidelines for reporting under EMIR" (the **ESMA Guidelines**)[7] provide further guidance. The ESMA EMIR reporting landing page[8] includes comprehensive detail on other resources, including the validation rules.

- **Reporting fields and other technical aspects.** Only the UK rules include the execution agent field (although it is an optional field). There are other differences across the more technical aspects, including between the trade state reports and XML schema. The FCA makes clear in the FCA Q&A that the Warnings Feedback messages provided by TRs to ERRs which identify missing data and potential outlier values without actually rejecting the reports should be used to help identify and remediate possible errors and omissions. Several of the FCA Q&A provide more information on this.
- **Notification requirement.** The EU regime includes a new three prong notification requirement to the relevant national competent authority[9]. This must be read in the context of the ESMA Guidelines which, for the purposes of determining 'significance', sets out a quantitative test (in the case of limb one) and a qualitative test (in the case of limb three). As mentioned above, the UK regime includes a requirement to notify the FCA of any material errors or omissions in reporting. The FCA, unlike ESMA, has not provided detailed or prescriptive guidance on what constitutes materiality for this purpose.

Tips and traps

- **Resources and support are plentiful** – talk to us, engage with counterparties, service providers and other relevant entities/providers to discuss the changes, testing and timing. The FCA EMIR landing page includes comprehensive detail on UK EMIR reporting and related resources[10].
- **Delegated reporting** – an important tool for many market participants. Users of delegated reporting services should speak with delegates to understand how they intend to address the changes for both new and legacy transactions and if changes to the delegated reporting services agreements are needed.
- **ERR or entity responsible for reporting** – this is a new field for OTC derivatives only, for both EU and UK reporting. It refers to the legal entity responsible for reporting as set out in EMIR, and EU and UK EMIR are consistent in this respect. Under the UK EMIR regime, for AIFs, this means the UK AIFM, and for UK UCITS, the UK UCITS Manco[11].
- **Reconciliation** – ensure you can access and process information on reports and reconciliation issues. There are known teething issues with some of the requirements both under the EU and UK regimes.
- **Policies and procedures** – consider new or revised policies, arrangements and procedures to afford the necessary oversight to ensure compliance with the new requirements.

For more information, contact the team, take a look at our previous article, available here or listen to our EMIR reporting related episodes of Dechert On Reg here.

Footnotes

1. Following the UK's departure from the EU, EMIR was 'on-shored' into the UK statute book.
2. The key FCA publication is the February 2023 joint FCA/Bank of England Policy Statement (PS 23/2), which includes the final amendments to UK Technical Standards and the new rules for Trade Repositories in relation to changes to the derivatives reporting framework under UK EMIR (available here) (the **Policy Statement**). The new schemas and validation rules are also available here.

3. EMIRR 2.3.5R of the FCA Handbook.
4. The FCA Q&A are available here.
5. The draft TR Q&A are available here.
6. The FCA Trade Repositories webpage is available here.
7. The ESMA Guidelines can be found here.
8. The ESMA EMIR Reporting Landing Page is available here.
9. As set out in Article 9(1) of Commission Implementing Regulation (EU) 2022/1860, available here.
10. See here. The FCA's EMIR Reporting webpage includes news relating to UK EMIR, see here.
11. See our 2020 note "EMIR ALERT: Refit Reporting Changes Go Live" for more detail available here.