

EMIR 3 – the active account requirement



The latest revisions to the European Market Infrastructure Regulation (known as EMIR 3)¹ brought about numerous changes affecting cleared markets, with potential impacts both within and outside the EU. Among these is the introduction of the controversial, new “active account” requirement. This will require certain EU counterparties to hold at least one active account at an EU CCP and clear a representative number of trades through that account. This is intended to incentivise the development of clearing in the EU and reduce exposures to and usage by EU entities of non-EU central counterparties (CCPs).

Following its consultation,² the European Securities and Markets Authority (ESMA) has now published its final draft regulatory technical standards (RTS)³ that set out the detail of the active account requirements (the Active Account RTS). This provides greater certainty for those counterparties and CCPs. EMIR 3 entered into force on 24 December 2024, except for the amendments to the calculation of the clearing thresholds for financial counterparties (FCs) and non-financial counterparties (NFCs). The requirement to have an active account applied from 25 June 2025, however, the final draft of the Active Account RTS still has to be approved by the European Commission. Until such time that the Active Account RTS enter into force, in-scope entities should discuss compliance with their national competent authority (NCA). We focus on the active account requirement in this note.

However, that requirement is not the only change in EMIR 3. Other key changes in EMIR 3 relating to venue-traded and cleared OTC derivatives include new exemptions from the clearing obligation; changes to the cross-border intragroup exemption; the calculation of the clearing threshold for FCs and NFCs; and additional requirements for clearing members and clients that provide clearing services. We covered these in our note on these changes: [EMIR 3 – Impact on cleared OTC derivatives markets](#). We covered changes impacting uncleared OTC derivatives markets in our separate note: [EMIR 3 – Impact on uncleared OTC derivatives markets](#).

¹ Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets.

² See ESMA consultation paper on [Conditions of the Active Account Requirement](#), 20 November 2024.

³ See ESMA final report on [Conditions of the Active Account Requirement](#), 19 June 2025.

ACTIVE ACCOUNT – KEY TAKEAWAYS

- For in-scope clearing members, this will mean setting up and potentially using new accounts at EU CCPs.
- For clients of clearing members, this may involve recertifying their status to their clearing member (versus the new “representativeness” threshold). For those clients over the threshold(s), active accounts would need to be established and potentially used.
- Affected persons should monitor existing EU clearing houses and incumbent providers for new offerings. Notably, ICE has announced its plans to clear Euro-denominated short-term interest rate futures in Amsterdam through ICE Clear Netherlands.⁴

INTRODUCTION

The so-called “active account” requirement has been the most controversial and major change in EMIR 3. In general, this requires certain EU FCs and EU NFCs (those subject to the clearing obligation) to open and maintain an “active account” for certain products at an EU CCP offering clearing services in those products. Where a EUR6 billion notional threshold is met, counterparties must also clear a proportion of their transactions through the active accounts.

The “active account” requirement is a novel regulatory approach by global standards. It determines where counterparties are able to clear certain derivatives transactions and limits counterparties’ ability to use non-EU CCPs for those products. It is driven by EU policy concerns that many Euro-denominated contracts are largely cleared outside the EU. From an industry perspective, for costs, efficiency and other reasons, interest rate (and other) products are most efficiently traded on the same deep, liquid markets and cleared

in the same CCPs which offer cross-currency margin offsets. Although some Euro-denominated contracts are predominantly cleared in the EU already, London has traditionally hosted interest rates derivatives markets globally, including for Euro-denominated products (as well as U.S. dollar, Yen, sterling and other denominated products).

It is worth highlighting what the active account is not. There is no EU proposal to revoke the equivalence of UK clearing houses. Indeed, the EU recently extended the equivalence granted to UK CCPs until 30 June 2028, which Commissioner Maria Luis Albuquerque noted⁵ would allow time for the active account requirement to take effect. Moreover, the so-called “location” powers in EMIR are not being activated as an attempt to force a clearing transition from UK to EU CCPs. Following industry and member state comments,⁶ the active account obligation was watered down during the legislative process, and it is probably best now regarded as a capacity building project. Currently, only two UK CCPs, LCH Ltd and ICE Clear Europe, have been determined to have clearing services of substantial systemic importance (known as Tier 2 CCPs), and this measure targets their interest rate products by seeking to mandate the development and usage of an EU-domiciled, competing clearing capacity.



⁴ See press article, [ICE to clear Euro rates futures in Europe to mitigate regulatory impact](#), 19 June 2025. Note that the article refers to Euro-denominated short-term interest rate futures and options; however, the ESMA final report on the Conditions of the Active Account Requirement confirms that options have been removed from the scope of the active account requirement (see paragraph 121).

⁵ See press article, [Commission extends time-limited equivalence for UK central counterparties](#), 31 January 2025. ESMA has also extended the recognition of UK CCPs.

⁶ See, for example, [Joint Trade Association Statement](#) (EFAMA, BFPI Ireland, EACB, FIA EPTA, Federation of the Dutch Pension Funds, Finance Denmark, Nordic Securities Association, AIMA, ICI Global, FIA and ISDA), [Active Accounts – call for deletion of proposal](#), 7 September 2023; [ISDA Briefing, Costs and risks of an Active Account Requirement](#), 22 May 2023; [ISDA, Comments on European Commission Active Account Proposal](#), 22 May 2023; [ISDA, AIMA, EFAMA, FIA, Statement on EC’s Proposed Amendments to EMIR](#), 2 February 2023.

SCOPE OF THE ACTIVE ACCOUNT REQUIREMENT

The active account requirement applies to EU FCs and EU NFCs, including EU subsidiaries of non-EU entities, that: (i) were subject to the clearing obligation on 24 December 2024 or became subject to it thereafter; and (ii) exceed the clearing threshold in the active account categories of derivative contracts.

The categories of in-scope derivative contracts are:

- (i) interest rate derivatives denominated in euro (IRD EUR);
- (ii) interest rate derivatives denominated in Polish zloty (IRD PLN); and
- (iii) Short-Term Interest Rate derivatives denominated in euro (STIR EUR), excluding STIR EUR options.⁷

The clearing threshold test uses the existing clearing threshold (being EUR3bn for interest rate derivatives) and the existing clearing threshold calculations, until such time as the EMIR 3 provisions amending those calculations enter into force. The clearing threshold test can be met either on an individual or aggregate basis across the categories of in-scope derivative contracts.

The active account requirement applies at group level where groups are subject to consolidated supervision in the EU (with the exception of intragroup transactions).

OPERATIONAL CONDITIONS

In-scope counterparties must open an active account at an EU authorised CCP offering clearing services for the active account categories of derivative contracts. The account must meet certain specifications as to its usability, function and operations. In particular, a counterparty must ensure that the account is permanently functional. This means, among other things, having IT connectivity, internal processes and legal documents in place. It has been argued by market associations that counterparties can use their existing connectivity, internal processes and legal documents for this purpose since a requirement for anything additional would impose costs and burdens that are contrary to the aims of the active account requirement,⁸ as well as the EU's new competitiveness agenda.

A counterparty must also have systems and resources available at all times to use the account, including at short notice, for large volumes of the in-scope derivatives

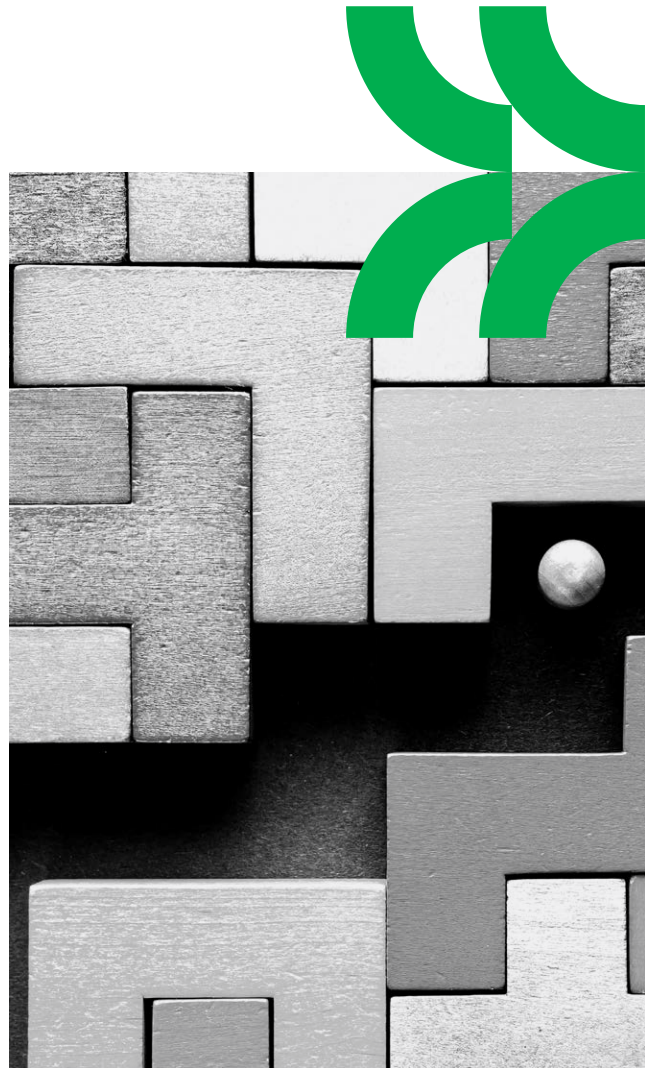
contracts. In addition, the account must be capable of clearing a large number of trades moved from one of the two Tier 2 CCPs. The RTS require that counterparties should be able to provide their NCA with (separate) written confirmations that the CCP, and the counterparty itself or its clearing services provider, has operational capacity to handle the increase in clearing activity.⁹ Industry responses have pointed out (and ESMA has in turn confirmed its understanding)¹⁰ that it will not be possible to freely transfer open positions from a Tier 2 CCP to an EU CCP because there is no interoperability between the CCPs. These practicalities, the wording of the legislation and the small number of trades that must be cleared in active accounts point to a narrower interpretation. In our view, the active account requirement is best interpreted as being met by any account at a CCP into which new transactions can be recorded—but without any requirement to establish the broader infrastructure necessary for a whole-market transition or interoperability with Tier 2 CCPs.

⁷ See ESMA final report on the [Conditions of the Active Account Requirement](#), 19 June 2025, paragraph 121.

⁸ See FIA, [Response to ESMA Consultation Paper on Conditions on the Active Account Requirement \(AAR\) under Article 7a\(8\) of EMIR 3.0](#), 27 January 2025.

⁹ For the written confirmation that the CCP has the required operational capacity, the bar is set at either a threefold increase or the sum of the total gross notional value cleared by the CCP and by CCPs with a substantially systemically important clearing service pursuant to article 25(2c) of EMIR for the previous 12 months across all clearing members in in-scope derivatives. For the written confirmation for the counterparty or its clearing services provider, similarly, the bar is set at a threefold increase or the total gross notional value cleared by the counterparty for the previous 12 months for in-scope derivatives.

¹⁰ See [ESMA final report on the Conditions of the Active Account Requirement](#), 19 June 2025, paragraphs 72, 73 and 74.



A counterparty must also ensure that, at all times, all of its new trades in the in-scope derivative contracts can be cleared in the active account. In our view, this requirement should be interpreted as having an active account and supporting arrangements that would allow new transactions to be submitted for clearing, taking into account the impracticalities of a large-scale moving of trades between CCPs.

Originally, ESMA proposed that a counterparty should have at least one dedicated staff member with the required knowledge to support the functioning of the active account clearing arrangements. This particular proposal received strong feedback from the industry regarding the impracticalities and disproportionate burden of the proposal.¹¹ As a result, the final RTS only require counterparties to be able to demonstrate they have the human resources needed to support the proper function of clearing arrangements, including when a large flow of positions may be transferred from a clearing service of substantial systemic importance.

The operational conditions must be regularly stress-tested at least once a year. The operational conditions must be complied with within six months of a counterparty becoming subject to the active account obligation. A counterparty must regularly report to its NCA information to demonstrate compliance with the active account requirements, including the operational conditions.

Counterparties that clear at least 85% of their in-scope derivative contracts at an EU CCP are exempt from the operational conditions and the active account reporting requirements, but (if they exceed the EUR6bn threshold) not from the representativeness obligation.

REPRESENTATIVES OBLIGATION

Not all counterparties are subject to the representativeness obligation—this only applies to EU NFC+s and FC+s with a notional clearing volume outstanding of more than EUR6bn in the in-scope derivative contracts, excluding client transactions.¹² Counterparties that exceed the threshold must use the active account to clear at least a representative number of trades of the in-scope derivatives that are cleared at a Tier 2 CCP. The representativeness obligation only applies to proprietary account transactions of in-scope entities—it does not require clearing members to push client transactions to an EU CCP. However, an in-scope entity might not be a clearing member at relevant CCPs and might access CCPs via clearing members. In such a case, the in-scope entity would need to find a clearing member through which to channel its representative trades to an EU CCP.

The representativeness obligation is satisfied by clearing, on an annual average basis, at least five trades in each of the most relevant subcategories per class of derivative contracts and per reference period. Sub-categories are determined by applying a maturity range and a trade size range (which are specified for each class). The most relevant subcategories are the ones containing the highest number of trades during a reference period.¹³ The reference period may not be less than six months for counterparties with a notional clearing volume outstanding of less than EUR100bn and not less than one month for counterparties with a notional clearing volume outstanding of more than EUR100bn in the active account categories of derivative contracts.

Where the resulting number of trades exceeds half of the total trades of a counterparty for the preceding 12 months, the representativeness obligation will be met where that counterparty clears at least one trade in each of the most relevant subcategories per class of derivative contracts per reference period.



¹¹ See FIA, [Response to ESMA Consultation Paper on Conditions on the Active Account Requirement \(AAR\)](#) under Article 7a(8) of EMIR 3.0, 27 January 2025.

¹² See [ESMA final report on the Conditions of the Active Account Requirement](#), 19 June 2025, paragraphs 43 and 44, which confirm ESMA's approach to interpreting "notional clearing volume outstanding" to mean the notional amount outstanding cleared which is conventionally used in the context of clearing thresholds.

¹³ See the ESMA consultation paper on [Conditions of the Active Account Requirement](#), 20 November 2024, paragraph 134, that confirms that the number of trades refers to those at the clearing services of substantial systemic importance, i.e., those identified pursuant to an Article 25(2c) assessment in respect of Tier 2 CCPs.

The categories, classes, sub-categories and reference periods were the subject of ESMA's consultation. The proposals are summarised in the table below.

RTS CATEGORIES, CLASSES, SUB-CATEGORIES AND REFERENCE PERIODS WITH RELEVANT CCPS							
ACTIVE ACCOUNT CATEGORIES	CLASSES	SUB-CATEGORIES: NUMBER	SUB-CATEGORIES: MATURITY RANGES	SUB-CATEGORIES: TRADE SIZE RANGES ¹⁴	MOST RELEVANT SUB-CATEGORIES: NUMBER	REFERENCE PERIOD	AUTHORISED EU CCP AND RECOGNISED NON-EU CCP
OTC IRD EUR	Fixed-to-float IRS	12	0–5 Y 5–10 Y 10–15 Y 15 Y+	0–25m EUR 25–50m EUR +50m EUR	5	6 months <EUR100bn 1 month >EUR100bn	BME (Spain); CME (USA); EUREX (Germany); JSCC (Japan); KDPW_CCP (Poland); LCH (UK); NASDAQ (Sweden); OTC HK (Hong Kong)
OTC IRD EUR	Forward rate agreements	12	0–6 M 6–12 M 12–18 M 18 M+	0–75m EUR 75–200m EUR +200m EUR	5	6 months <EUR100bn 1 month >EUR100bn	BME (Spain); CME (USA); EUREX (Germany); KDPW_CCP (Poland); LCH (UK); NASDAQ (Sweden)
OTC IRD EUR	Overnight index swaps	12	0–1 Y 1–2 Y 2–5 Y 5 Y+	0–25m EUR 25–100m EUR +100m EUR	5	6 months <EUR100bn 1 month >EUR100bn	BME (Spain); EUREX (Germany); KDPW_CCP (Poland); LCH Ltd (UK)
OTC IRD PLN	Fixed-to-float interest rate swaps	1	Any maturity	Any trade size	1	12 months <EUR100bn 12 months >EUR100bn	KDPW_CCP (Poland); LCH (UK)
OTC IRD PLN	Forward rate agreements	1	Any maturity	Any trade size	1	12 months <EUR100bn 12 months >EUR100bn	KDPW_CCP (Poland); EUREX (Germany); LCH (UK)
ETD ¹⁵ STIR EUR	3–month STIR referenced in Euribor	4	0–6 M 6–12 M 12–24 M 24 M+ ¹⁶	Any trade size	4	6 months <EUR100bn 1 month >EUR100bn	ICE Clear Europe (UK); EUREX (Germany); ICE Clear Netherlands ¹⁷
ETD ¹⁸ STIR EUR	3–month STIR referenced in €STR	4	0–6 M 6–12 M 12–24 M 24 M+ ¹⁹	Any trade size	4	12 months <EUR100bn 6 months >EUR100bn	ICE Clear Europe (UK); CME Group (USA); EUREX (Germany); ICE Clear Netherlands ²⁰

¹⁴ Note that, for OTC IRD PLN and ETD STIR EUR, where there is no sub-category distinction by trade size (and maturity for OTC IRD PLN), the RTS require that counterparties should be able to demonstrate to their NCA that the average trade size (and, for OTC IRD PLN, maturity) of the products cleared in the EU reflect those cleared in the clearing service of substantial systemic importance under article 25(2c) of EMIR. Also note that paragraph 138 of the final report which relates to ETD STIR EUR states that this requirement will apply in respect of maturity, however, there are already maturity sub-categories for ETD STIR EUR and accordingly the amended article 6(5) of the RTS only refers to trade size (and not maturity). This can be contrasted with article 5(4) of the RTS in respect of OTC IRD PLN, which refers to both trade size and maturity.

¹⁵ For the STIR classes, ESMA has designated as classes of derivative cash-settled derivative contracts executed on an EU or third-country exchange, irrespective of equivalence to a regulated market under Article 2a of EMIR. As noted earlier, EUR STIR options are excluded from scope (but futures are not excluded).

¹⁶ See *ESMA final report on the Conditions of the Active Account Requirement*, 19 June 2025, paragraph 137 (but note that the RTS published with the final report do not reflect the updated maturity ranges).

¹⁷ See press article, *ICE to clear Euro rates futures in Europe to mitigate regulatory impact*, 19 June 2025.

¹⁸ As mentioned above, for the STIR classes, ESMA has designated as classes of derivative cash-settled derivative contracts executed on an EU or third-country exchange, irrespective of equivalence to a regulated market under Article 2a of EMIR. As noted earlier, EUR STIR options are excluded from scope (but futures are not excluded).

¹⁹ See *ESMA final report on the Conditions of the Active Account Requirement*, 19 June 2025, paragraph 137 (but note that the RTS published with the final report do not reflect the updated maturity ranges).

²⁰ See press article, *ICE to clear Euro rates futures in Europe to mitigate regulatory impact*, 19 June 2025.

REPORTING

A counterparty that is subject to the active account obligation must calculate its activities and risk exposures in the in-scope derivative contracts and report every six months to its NCA information to demonstrate compliance with the active account obligation.

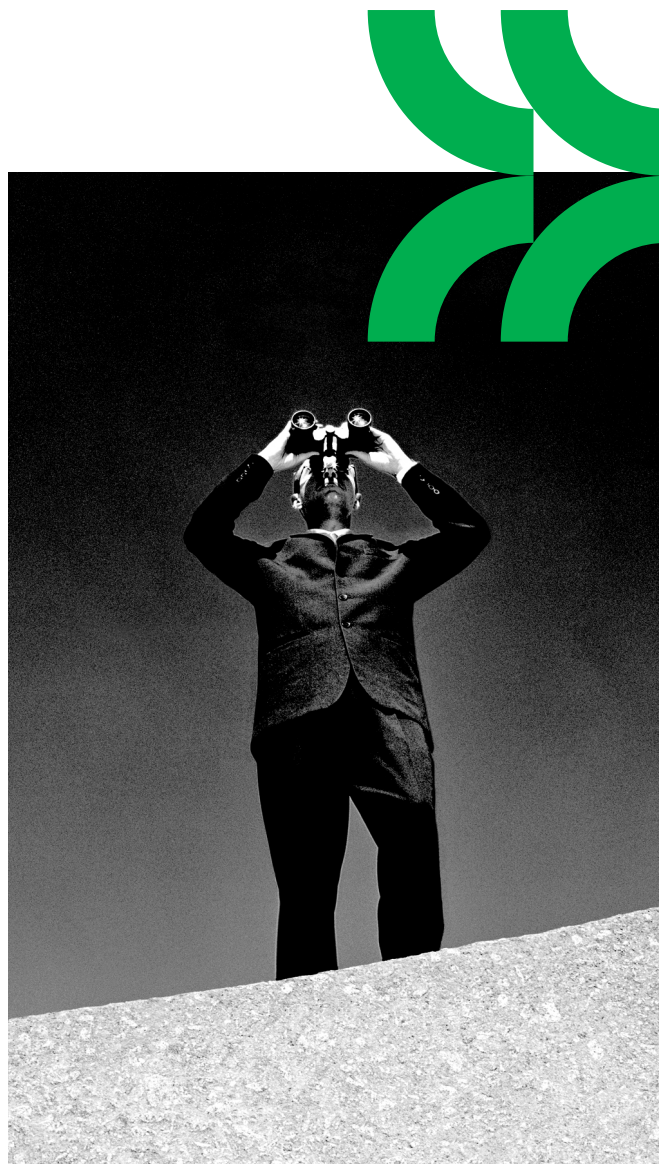
PRUDENTIAL REQUIREMENTS TO ENCOURAGE CLEARING IN THE EU

The EU is also bringing in requirements that aim to reinforce the new active account requirement.²¹ These requirements will apply from 25 June 2026.²²

Credit institutions and investment firms will need to develop plans and targets to monitor and address concentration risk arising from exposures to Tier 2 CCPs. NCAs will be monitoring how firms are managing their concentration risks to CCPs, including such plans, and their progress in adapting business models to the active account requirement.

Where it considers that there is excessive concentration risk arising from exposures towards a CCP, an NCA will be able to require the firm to reduce exposures towards that CCP or to realign exposures across its clearing accounts in accordance with the EMIR 3 active account requirement.

In addition, for UCITS, the regulatory limits on counterparty risk for OTC derivative transactions that apply irrespective of whether the derivatives have been centrally cleared will be removed when the counterparties clear through CCPs that are authorised or recognised under EMIR.



²¹ Directive (EU) 2024/2994 of the European Parliament and of the Council of 27 November 2024 amending Directives 2009/65/EC, 2013/36/EU and (EU) 2019/2034 as regards the treatment of concentration risk arising from exposures towards central counterparties and of counterparty risk in centrally cleared derivative transactions.

²² This aligns with the implementation date for the revised Capital Requirements Directive, known as CRD VI.

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