

09 August 2022

Circular on Regulation N° 648/2012 – The European Market Infrastructure Regulation ('EMIR'/the 'Regulation')

Questionnaire for Financial and Non-Financial Counterparties on the State of Play of Derivatives in Malta

This Circular is being addressed to all market participants, particularly entities who enter into derivative contracts and which fall within the scope of EMIR, namely, financial counterparties ('FCs') and non-financial counterparties ('NFCs') as defined under EMIR.

This Circular should be read in conjunction with the Regulation, its Delegated Regulations and previous Circulars issued by the Authority, as the case may be.

Purpose

EMIR came into force on 16 August 2012 with the objective of *'inter alia'* improving the transparency of the derivatives markets and to reduce the risks associated with those markets. In carrying out its duties as the competent authority designated under Article 22 of the Regulation, the Malta Financial Services Authority ('MFSA' or the 'Authority') has taken a number of initiatives to effectively supervise the dealing into derivative contracts entered into by Maltese counterparties.

In this respect, since 2014, the Authority has been conducting onsite and offsite monitoring on FCs and NFCs falling within scope of EMIR to verify the extent of compliance with the Regulation by the industry, and to review the relevant controls and procedures for the proper conduct of business in terms of EMIR. Furthermore, these initiatives continue to build on the European Securities Markets Authority's ('ESMA') call for increased efforts on EMIR data quality.

In view of the above and considering that EMIR entered into force in August 2012, the Authority expects entities to have in place the required infrastructure and have a good understanding of the requirements of such Regulation.

The Questionnaire

Taking into consideration the above, the Authority issued a [Questionnaire](#), addressed to all market participants, particularly Counterparties to derivative contracts in Malta with the purpose of understanding the state of play of derivative contracts in Malta and to better understand the nature of Maltese Counterparties' activities in relation to derivative trading.

The Questionnaire contains three main sections, as follows:

- Section A – General Information;
- Section B – Overview; and
- Section C – EMIR Requirements

Accordingly, Section A covers the basic information of the individual and entity compiling the Questionnaire. ***In this respect, the Authority is recommending that the Questionnaire is compiled by an individual with the necessary expertise and knowledge on the entity's procedures related to derivative contracts.***

Secondly, Section B is intended to provide the Authority with a better understanding of the entity's business and use of derivative contracts in their day-to-day operations.

Whilst, Section C tackles the three pillars of EMIR, being (a) the reporting obligation, (b) the clearing obligation and (c) the risk mitigation techniques. In this Section, the Authority intends to get a better understanding of the entity's procedures and overall compliance with the Regulation.

Next Steps

Stakeholders, particularly, the personnel responsible for the dealing in derivative transactions within FCs and NFCs, are required to submit their input via the [link](#) provided by 31 October 2022.

A PDF version of the Questionnaire is available [here](#). Nevertheless, please note that responses shall be delivered only by means of the online link.

Filling in this Questionnaire is mandatory for entities falling within scope of EMIR. Any omissions by the Company to provide the correct information within the stipulated deadline may be taken into consideration by the Authority when assessing the Company's level of compliance to EMIR.

Contacts

Should you have queries on the content of the Questionnaire, please do not hesitate to contact the Authority on EMIR@mfsa.mt.

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