

25 June 2026

Active Account Requirement under EMIR 3: Scope, Notification and Reporting

Introduction

This Circular is being addressed to market participants that enter into derivative contracts and may fall within the scope of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories ("EMIR"), as amended by Regulation (EU) 2024/2987 ("EMIR 3").

In particular, this Circular is relevant for financial counterparties ("FCs") and non-financial counterparties ("NFCs") that may be subject to the Active Account Requirement ("AAR") under Article 7a of EMIR.

This Circular should be read together with EMIR, the applicable delegated and implementing regulations, ESMA Q&As and previous circulars issued by the Authority, including the Authority's Circular of 17 April 2026 on ESMA's reporting templates and instructions for the Active Account Requirement under EMIR 3.

Purpose of this Circular

The purpose of this Circular is to complement the Authority's earlier communication of 17 April 2026, which drew market participants' attention to ESMA's reporting templates and instructions for AAR reporting, by explaining in simple terms how firms should assess whether they fall within the scope of Article 7a of EMIR, what they should do if they are in scope, and how the notification and reporting obligations should be understood in practice.

The Authority has noted that the AAR framework can be difficult to navigate because firms must separately assess:

- i. whether they are in scope of Article 7a(1),
- ii. whether an exemption applies under Article 7a(5), and
- iii. whether they are subject to the reporting obligation under Article 7b.

1. What is the Active Account Requirement?

Article 7a of EMIR requires FC and NFC counterparties, subject to the clearing obligation, to hold at least one active account at a CCP authorised under Article 14 of EMIR for certain categories of derivatives and to use that account in accordance with the conditions set out in the Regulation.

Where a counterparty becomes subject to Article 7a(1), it must notify ESMA and its competent authority and establish the active account within six months.

The AAR applies only to the derivative categories listed in Article 7a(6), namely:

- interest rate derivatives denominated in euro or Polish zloty; and
- short-term interest rate derivatives denominated in euro.

2. How should firms assess whether they fall within the scope of Article 7a(1)?

A firm should work through the following questions in order:

Step 1 – Are you an FC or NFC subject to the EMIR clearing obligation?

Article 7a(1) only applies to financial counterparties and non-financial counterparties that are subject to the clearing obligation under Articles 4a or 10 of EMIR. If a firm is not subject to the clearing obligation, it does not fall within the scope of Article 7a(1).

Step 2 – Do you clear derivatives in the categories covered by Article 7a(6)?

The AAR is not relevant for all derivatives. Firms should first identify whether they clear derivatives that fall within the Article 7a(6) product scope described above.

Step 3 – Do you exceed the relevant threshold for those categories?

A firm only falls within scope of Article 7a(1) if it exceeds the relevant threshold in the Article 7a(6) categories, either in an individual category or on an aggregate basis across those categories.

ESMA has clarified that, for this assessment, only the Article 7a(6) products should be taken into account against the EUR 3 billion threshold¹.

¹ For the purposes of Article 7a(1), firms should assess only the derivative contracts referred to in Article 7a(6) against the EUR 3 billion clearing threshold. This should not be confused with the separate calculation under Article 7a(5), where ESMA has clarified that the 85% test is based on gross outstanding notional of the relevant Article 7a(6) contracts cleared at EU-authorized CCPs compared with the total gross outstanding notional of those contracts cleared at any CCP.

Step 4 – Have you assessed this on the correct group basis?

Where a counterparty belongs to a group subject to consolidated supervision in the Union, Article 7a(2) requires the firm to consider the relevant Article 7a(6) derivatives cleared by that counterparty and by the other entities in the group, excluding intragroup transactions.

Firms should therefore make sure that the scope and threshold assessment is conducted on the correct group basis where applicable.

Simple conclusion

If the answer to all of the above is **yes**, the firm should consider itself to fall within the scope of Article 7a(1).

3. What must a firm do if it is in scope of Article 7a(1)?

A firm that becomes subject to [Article 7a\(1\)](#) must:

- notify ESMA and its competent authority; and
- establish the active account within six months.

For the purpose of notifying ESMA when a counterparty becomes subject to Article 7a(1), firms should use the [ESMA Active Account Notification template](#).

ESMA's notification materials also include [instructions](#) on filename and email subject line conventions.

4. What does Article 7a(5) do?

Article 7a(5) is often misunderstood. It does **not** mean that a firm is outside Article 7a altogether. Instead, it may exempt an in-scope firm from **some** of the obligations that would otherwise apply.

ESMA has clarified that where a counterparty clears at least 85% of the relevant Article 7a(6) derivative contracts at a CCP authorised under Article 14 of EMIR, the counterparty is exempt from:

- the operational requirements in Article 7a(3)(a) to (c);
- the related stress-testing requirement; and
- the reporting requirements under Article 7b.

In simple terms:

- a firm may be **in scope** of Article 7a(1);
- and at the same time benefit from the **Article 7a(5) exemption** from certain obligations.

5. How should the 85% test be calculated?

ESMA has clarified that the 85% test in Article 7a(5) should be calculated as follows:

- **numerator:** the gross outstanding notional of the relevant Article 7a(6) derivative contracts cleared at CCPs authorised under Article 14 of EMIR²;
- **denominator:** the total gross outstanding notional of the relevant Article 7a(6) derivative contracts cleared at any CCP³.

Firms relying on Article 7a(5) should keep a clear supporting calculation showing how this test has been performed.

6. Notification under Article 7a(1) is different from reporting under Article 7b

In addition to the reporting obligation under Article 7b of EMIR, counterparties subject to the AAR are also required to submit an Active Account Notification under Article 7a of EMIR.

The EMIR framework distinguishes between:

- the **notification** required when a counterparty becomes subject to Article 7a(1); and
- the **six-monthly reporting** obligation under Article 7b.

This distinction is important. A notification under Article 7a(1) should **not** be treated as a recurring six-monthly “exemption notification”. Article 7b is the provision that creates the recurring six-monthly reporting requirement.

ESMA has clarified that counterparties meeting the conditions in Article 7a(5) are exempt from the Article 7b reporting requirement. However, this does not mean that such counterparties are outside Article 7a altogether. In particular, ESMA has also clarified⁴ that the Article 7a(5) exemption does not remove the representativeness obligation under Article 7a(3)(d), even though it removes the related reporting obligation under Article 7b.

Information on the notification process and the related template is available in the Active Account Notification section of the ESMA’s [CCP Policy page](#).

² CCPs established in the EU and authorised under EMIR. These are the CCPs that count for the 85% numerator

³ the full population of CCPs through which the relevant Article 7a(6) contracts are cleared, including EU-authorised CCPs and non-EU CCPs that may be recognised under EMIR. These all count in the denominator

⁴ ESMA [Q&A 2517](#) and [Q&A 2626](#) clarify that the Article 7a(5) exemption extends to the reporting requirements under Article 7b, including reporting necessary to demonstrate compliance with the representativeness obligation. The representativeness obligation itself is not removed.

7. Practical points for firms preparing the Article 7a(1) notification

When preparing the notification, firms should ensure that the ESMA notification template is completed carefully and consistently with the supporting information maintained by the firm.

As of the date of this circular, there are no separate ESMA template specifically prescribed for:

- the calculation showing that the applicable threshold is exceeded for the purposes of Article 7a(1); or
- the calculation showing that the 85% test is met for the purposes of Article 7a(5).

Accordingly, firms should be in a position to provide these calculations in a supporting annex or worksheet if requested by the Authority.

As good practice, firms should be ready to provide:

- the relevant Article 7a(6) product categories considered;
- the threshold calculation;
- the 85% calculation (where Article 7a(5) is relied upon);
- confirmation of the group basis used; and
- confirmation of the CCPs through which the relevant contracts are cleared.

Next Steps – Reporting Timelines

ESMA published the AAR reporting templates and instructions in April 2026. The first AAR reporting submission is expected on **31 July 2026**, covering the period from **25 June 2025** to **30 June 2026**. Thereafter, reporting takes place every six months, with submissions due on **31 January** and **31 July** each year.

Firms should note, however, that ESMA has clarified that counterparties meeting the conditions in Article 7a(5) are exempt from the Article 7b reporting requirement⁵.

Next Steps – What firms should do now

Firms that enter into OTC derivatives should review, without delay:

1. whether they are subject to the EMIR clearing obligation;
2. whether they clear derivatives falling within Article 7a(6);
3. whether they exceed the relevant threshold;

⁵ See ESMA [Q&A 2517](#) and ESMA [Q&A 2626](#), which clarify that counterparties meeting the Article 7a(5) 85% condition are exempt from the reporting requirements referred to in Article 7b of EMIR. ESMA also clarifies that this does not remove the representativeness obligation itself under Article 7a(3)(d).

4. whether any group-level aggregation is relevant; and
5. whether they meet the conditions in Article 7a(5).

Where a firm considers that it has become subject to Article 7a(1), it should ensure that the required notification is submitted promptly using the ESMA notification template and that the supporting analysis is retained and made available to the Authority upon request.

Contacts

Should you have any queries on the above, please do not hesitate to contact the Authority's EMIR team on EMIR@mfsa.mt for any further clarifications.

Annex – Quick Scope Check for Article 7a EMIR

With a simple yes/no flow:

- **Are you an FC or NFC subject to the EMIR clearing obligation?**
- **Do you clear derivatives in the Article 7a(6) categories?**
- **Do you exceed the relevant threshold?**
- **If part of an EU-consolidated group, did you assess this on a group basis excluding intragroup transactions?**
- **If yes, notify under Article 7a(1).**
- **If 85% or more of the relevant contracts are cleared at an EU-authorized CCP, assess whether Article 7a(5) applies.**
- **If Article 7a(5) applies, remember this affects the operational and reporting obligations, but does not mean you are outside Article 7a.**