

# Guidance on applying reporting obligation exemptions for intragroup derivative transactions pursuant to Article 1(7) of Regulation (EU) 2019/834 (EMIR Refit) amending Article 9(1) of EMIR

## General information

- (1) Pursuant to Article 1(7) of Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 (EMIR) as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (hereinafter ‘**EMIR Refit**’), **Article 9 of EMIR** is amended as follows:

paragraph 1 is replaced by the following:

*“Counterparties and CCPs shall ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported in accordance with paragraphs 1a to 1f of this Article to a trade repository registered in accordance with Article 55 or recognised in accordance with Article 77. The details shall be reported no later than the working day following the conclusion, modification or termination of the contract.*

*The reporting obligation shall apply to derivative contracts which:*

- a) were entered into before 12 February 2014 and remain outstanding on that date;*
- b) were entered into on or after 12 February 2014.*

*Notwithstanding Article 3, the reporting obligation shall not apply to derivative contracts within the same group where **at least one of the counterparties is a non-financial counterparty or would be qualified as a non-financial counterparty if it were established in the Union, provided that:***

- a) both counterparties are included in the same consolidation on a full basis;*
- b) both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures; and*
- c) the parent undertaking is not a financial counterparty.*

*Counterparties shall notify their competent authorities of their intention to apply the exemption referred to in the third subparagraph. The exemption shall be valid unless the notified competent authorities do not agree upon fulfilment of the conditions referred to in the third subparagraph within three months of the date of notification.”*

- (2) **Intragroup transactions** are defined in Article 3 of EMIR. With respect to intragroup transactions in the form of OTC derivative contracts, counterparties must meet the following general conditions:
- a) both counterparties are included in the same consolidation on a full basis (Article 3(3) EMIR);
  - b) both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures;
  - c) a counterparty is established in the EU or, if it is established in a third country, the Commission has adopted an implementing act under Article 13(2) of EMIR in respect of that third country.
- (3) For the purposes of paragraph 2(a), pursuant to Article 3(3) of EMIR, counterparties are considered to be included in the same consolidation when they are both either:

- a) included in a consolidation in accordance with Directive 83/349/EEC or International Financial Reporting Standards (IFRS) adopted pursuant to Regulation (EC) No 1606/2002 or, in relation to a group the parent undertaking of which has its head office in a third country, in accordance with generally accepted accounting principles of a third country determined to be equivalent to IFRS in accordance with Regulation (EC) No 1569/2007 (or accounting standards of a third country the use of which is permitted in accordance with Article 4 of that Regulation); or
  - b) covered by the same consolidated supervision in accordance with Directive 2006/48/EC or Directive 2006/49/EC or, in relation to a group the parent undertaking of which has its head office in a third country, the same consolidated supervision by a third-country competent authority verified as equivalent to that governed by the principles laid down in Article 143 of Directive 2006/48/EC or in Article 2 of Directive 2006/49/EC.
- (4) The applicant counterparty must prove to Národná banka Slovenska (NBS) its compliance with the condition of being subject to **appropriate centralised risk evaluation, measurement and control procedures** pursuant to paragraph 2(b) at least to the following extent:
- a) by describing the risk management and risk control policies, including how these policies are centrally defined and applied;
  - b) by demonstrating that senior management is responsible for risk management and that risk measurement is being periodically reviewed (stating also the interval between periodic reviews);
  - c) by demonstrating that its organisation has in place regular and transparent communication mechanisms, such that the management board, senior management, relevant business line, risk management function, and other control functions can share information on the measurement, analysis and monitoring of risks;
  - d) by demonstrating that internal procedures and information systems are consistent throughout the institution and are sufficiently reliable, thereby enabling all sources of relevant risks to be identified, measured and monitored on an aggregated basis and to the extent necessary for the entity, business line, and portfolio; and
  - e) by demonstrating that key risk information is regularly reported to the central risk management function in order to allow appropriate centralised risk evaluation, measurement and control procedures across relevant entities within the group.
- (5) If the notification of the intention to apply the reporting obligation exemption under Article 1(7) of EMIR Refit amending Article 9(1) of EMIR concerns transactions between counterparties established in different Member States (Example 2 below), NBS assumes that both counterparties will send their respective competent authorities (which for a counterparty established in Slovakia is NBS; for a counterparty established in another Member State, the competent authority of that Member State) similar information in order to prove compliance with the conditions for the application of the exemption.
- (6) The application of the reporting obligation exemption for intragroup transactions** applies to transactions between two counterparties – the ‘applicant’ counterparty and ‘intragroup’ counterparty. **Each pair of counterparties within the group must apply the exemption separately.**

**Examples of the application of the reporting obligation exemption for intragroup transactions**  
Counterparties to derivative contracts **may apply the reporting obligation exemption for intragroup transactions** in accordance with Examples 1 to 3 below.

**Example 1: Both counterparties are established in Slovakia.**

- (1) **Either each counterparty separately, or one counterparty on behalf of both (on the basis of a power of attorney), may notify NBS in writing** that they intend to apply the reporting obligation exemption for intragroup derivative transactions.
- (2) Such notification by counterparties must be made not less than three months before the application of the exemption. Within three months after receipt of that notification, NBS must assess whether the conditions for the application of the exemption are met and may object to the application of the exemption if those conditions are not met.
- (3) To demonstrate compliance with the above conditions for intragroup transactions, the applicant counterparty (each counterparty separately or one counterparty on behalf of both) must complete the relevant fields in the template (Annex 1) in accordance with this Guidance or provide the required information in an annex to the template.
- (4) The exemption is valid unless, within three months of receipt of the notification, NBS does not agree upon fulfilment of the conditions for the application of the exemption.

**Example 2: One counterparty is established in Slovakia and the other counterparty is established in another EU Member State.**

- (1) Both counterparties must **separately notify their respective competent authorities in writing** that they intend to apply the reporting obligation exemption for intragroup derivative transactions concluded between each other; i.e. the counterparty established in Slovakia must notify NBS, and the counterparty established in another Member State must notify the competent authority of that Member State.
- (2) The exemption is not be valid if the competent authorities do not agree upon the fulfilment of the conditions for the application of the exemption.
- (3) To demonstrate compliance with the above conditions for applying the reporting obligation exemption for intragroup derivative transactions, the applicant counterparty established in Slovakia must complete the relevant fields in the template (Annex 1) in accordance with this Guidance or provide the required information in an annex to the template.
- (4) The intragroup counterparty established in another Member State must demonstrate compliance with the conditions for applying the clearing obligation exemption for intragroup transactions in accordance with the procedures laid down by the competent authority of that Member State.
- (5) NBS and the competent authority of another Member State must conduct a mutual initial assessment of the notification, exchange initial views, and discuss the notifications from the relevant counterparties.
- (6) To demonstrate compliance with the above conditions for applying the clearing obligation exemption for intragroup transactions, the applicant counterparty established in Slovakia must complete the relevant fields in the template (Annex 1) in accordance with this Guidance or provide the required information in an annex to the template.
- (7) The intragroup counterparty established in another Member State must demonstrate compliance with the conditions for applying the clearing obligation exemption for intragroup transactions in

accordance with the procedures laid down by the competent authority of that Member State.

- (8) NBS and the competent authority of another Member State must inform each other of receipt of the notification from the relevant counterparties.
- (9) NBS and the competent authority of another Member State must conduct a mutual initial assessment of the notification, exchange initial views, and discuss the notifications from the relevant counterparties.
- (10) The reporting obligation exemption for intragroup transactions is valid unless either NBS or the competent authority of the counterparty established in another Member State does not agree upon fulfilment of the conditions for the application of the exemption.

**Example 3: One counterparty is established in Slovakia and the other counterparty is established in a third country.**

- (1) **The counterparty established in Slovakia must notify NBS in writing that it intends** to apply the reporting obligation exemption for intragroup transactions relating to derivative contracts which it is to conclude with the counterparty established in a third country.
- (2) To demonstrate compliance with the above conditions for intragroup transactions, the applicant counterparty established in Slovakia must complete the relevant fields in the template (Annex 1) in accordance with this Guidance or provide the required information in an annex to the template.
- (3) The exemption is valid unless, within three months of **receipt of the notification**, NBS does not agree upon fulfilment of the conditions for the application of the exemption.

**Sending a notification of intention to apply the reporting obligation exemption**

(1) Where at least one of them is a non-financial counterparty, counterparties established in Slovakia that meet the conditions for the application of the reporting obligation exemption for intragroup derivative transactions must notify NBS in writing that they intend to apply the exemption by completing the template (Annex 1) and sending it to the following address:

Národná banka Slovenska  
Útvar dohľadu nad finančným trhom  
Imricha Karvaša 1  
813 25 Bratislava

- (2) Notifications pursuant to Example 1 above must be sent in Slovak.
- (3) Notifications pursuant to Examples 2 and 3 above must be sent in both Slovak and English.
- (4) The template for the notification pursuant to Examples 1 to 3 is given in Annex 1.
- (5) Instructions for completing selected fields in the notification template are given in Annex 2.

## **ANNEXES:**

### **Annex 1:**

Template for the notification of the intention to apply the reporting obligation exemption for intragroup transactions pursuant to Article 1(7) of EMIR Refit amending Article 9(1) of EMIR

### **Annex 2:**

Instructions for completing selected fields in the notification template