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

## General information

1. Pursuant to Article 9(1) of EMIR as amended by 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**’)

*“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:*

* 1. *were entered into before 12 February 2014 and remain outstanding on that date;*
	2. *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:***

1. ***both counterparties are included in the same consolidation on a full basis;***
2. ***both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures; and***
3. ***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.”***

1. **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:
	1. both counterparties are included in the same consolidation on a full basis (Article 3(3) EMIR);
	2. both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures;
	3. 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.
2. 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:
	1. 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
	2. 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.
3. 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:
	1. by describing the risk management and risk control policies, including how these policies are centrally defined and applied;
	2. 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);
	3. 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;
	4. 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
	5. 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.
4. If the notification of the intention to apply the reporting obligation exemption under Article 9(1) of EMIR, as amended by EMIR Refit, 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.
5. **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 also apply the exemption in accordance with ESMA** [**Q&A**](https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52_qa_on_emir_implementation.pdf) **question 51 as it stands.**

**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 the other counterparty (on the basis of a power of attorney), or a parent on behalf of all counterparties established in Slovakia may notify NBS in writing** that they intend to apply the reporting obligation exemption for intragroup derivative transactions.
2. When notifying of their intention to apply the reporting obligation exemption for intragroup derivative transactions in accordance with Article 9(1) EMIR, as amended by Regulation 2019/834, the notifying counterparty should state that it fulfils the conditions laid down in Article 9(1) EMIR, as amended by Regulation 2019/834.
3. In accordance with paragraph 1, the notifying counterparty shall demonstrate compliance with the above conditions for intragroup transactions by filling in the relevant fields in the template (Annex 1) pursuant to this Guidance and, where appropriate, by providing the required information in an annex to the template.
4. NBS may ask for additional information and/or documents to assess the fulfilment of the conditions referred to in the third subparagraph of Article 9(1) of EMIR, as amended by Regulation 2019/834.
5. The exemption shall be valid from the date when NBS confirms to the counterparty(ies) that the conditions to use the exemption are satisfied, or if no decision is notified by NBS, it will be valid from the end of the three-month non-objection period. If the conditions, referred to in the third sub-paragraph of Article 9(1) EMIR, as amended by Regulation 2019/834, change, the counterparties need to inform NBS. Without prejudice to the existing exemption, NBS can object to the use of the exemption due to the change in the conditions. From that point in time the exemption will not be valid.
6. If counterparties notify their intention to use the exception to NBS on different dates, and no decision on fulfilment of conditions is notified by NBS, they should wait until the end of the later of the two three-month periods before relying on 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. When notifying of their intention to apply the reporting obligation exemption for intragroup derivative transactions in accordance with Article 9(1) EMIR, as amended by Regulation 2019/834, the notifying counterparty established in Slovakia should state that it fulfils the conditions laid down in Article 9(1) EMIR, as amended by Regulation 2019/834.
3. In accordance with paragraph 1, the notifying counterparty established in Slovakia shall demonstrate compliance with the above conditions for intragroup transactions by filling in the relevant fields in the template (Annex 1) pursuant to this Guidance and, where appropriate, by providing the required information in an annex to the template.
4. NBS may ask for additional information and/or documents to assess the fulfilment of the conditions referred to in the third subparagraph of Article 9(1) of EMIR, as amended by Regulation 2019/834.
5. The intragroup counterparty established in another Member State must demonstrate compliance with the conditions for reporting obligation exemption for intragroup derivative transactions in accordance with the procedures laid down by the competent authority of that Member State.
6. NBS and the competent authority of another Member State assess separately whether the conditions laid down in Article 9(1) are met. Where NBS considers that the conditions are not fulfilled, it shall notify the counterparty established in Slovakia as well as the other NCA(s) within the three-month period of the receipt of the notification and specify the reasons. A competent authority in another Member State should do the same in relation to a counterparty established in another Member State if it considers that the conditions for applying the exemption are not fulfilled.
7. The exemption shall be valid from the date when NBS and the competent authority of another Member State confirms to the counterparty(ies) that the conditions to use the exemption are satisfied, or if no decision is notified by NBS or the competent authority of another Member State, it will be valid from the end of the three-month non-objection period, if NBS or a competent authority in another Member State has not objected that the conditions to use the exemption are satisfied. If the conditions, referred to in the third sub-paragraph of Article 9(1) EMIR, as amended by Regulation 2019/834, change, the counterparties shall inform their competent authority. Without prejudice to the existing exemption, NBS or the competent authority of another Member State can object to the use of the exemption due to the change in the conditions. From that point in time the reporting obligation exemption for intragroup derivative transactions will not be valid.
8. If the relevant counterparties notify their intention to use the exception to NBS and the competent authority of another Member State on different dates, and no decision on fulfilment of conditions is notified by NBS and the competent authority of another Member State, they should wait until the end of the later of the two three-month periods before relying on the exemption.

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

* 1. In this case, it is first necessary to identify whether the parent undertaking is established in the EU or in a third country. The exemption contained in Article 9(1) of **EMIR does not cover intragroup transactions for which the parent undertaking is established in a third country**, even if the transaction occurs between two counterparties which are both established in the EU (see ESMA [Q&A](https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52_qa_on_emir_implementation.pdf) question 51(m)).
	2. Where the parent undertaking is established in the EU, it is not necessary for the Commission to have adopted an implementing act (equivalence decision) under Article 13(2) EMIR in order for the reporting exemption under Article 9(1), as amended by Regulation 2019/834, to apply to derivatives entered into between a counterparty established in the Union and a counterparty established in a third country which would be an NFC if it were established in the Union (see ESMA [Q&A](https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52_qa_on_emir_implementation.pdf) question 51(i)).
	3. **If the counterparty's parent undertaking established in the Slovak Republic is established in the EU, 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 in accordance with the procedure described in Example 1 above.

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

1. Where **at least one of the counterparties** claiming the reporting obligation exemption for intragroup derivative transactions 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

1. Notifications pursuant to Example 1 and 3 above must be sent in Slovak.
2. Notifications pursuant to Examples 2 above must be sent in both Slovak and English.
3. The template for the notification pursuant to Examples 1 to 3 is given in Annex 1.
4. 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 9(1) of EMIR as amended by EMIR Refit

## Annex 2:

Instructions for completing selected fields in the notification template