

5 June 2025

EMIR 3.0: Timing for implementation of certain Day 1 active account requirements (AAR) and recommendation to ESMA to issue an opinion or a no-action letter

EACB, EFAMA, FIA and ISDA (the ‘Associations’) and their members continue to support the objectives in EMIR 3.0 to further enhance the competitiveness, efficiency and resiliency of clearing activities in the European Union (EU) and are committed to ensuring compliance with the new requirements.

The Associations thank the ESMA CCP Supervisory Committee for its work on the AAR consultation paper. We also very much appreciate the engagement with the industry throughout the consultation process.

However, we wish to raise our concerns regarding the imminent entry into effect of the AAR in EMIR Article 7a, starting on 24 June 2025 in the absence of the required Level 2 implementing rules. As a result, EU market participants lack clarity on the final AAR requirements with which they must comply from that date. It is indeed critical for the industry that the EMIR 3.0 Level 2 Regulatory Technical Standards (RTS) on the conditions of the AAR are finalised and published in the Official Journal of the European Union (OJEU) sufficiently in advance of this application date, in order for EU financial market participants to understand the final AAR requirements that they must comply with on Day 1.

Stakeholders have raised concerns regarding the need to comply with Level 1 requirements, which mandate the development of Level 2 technical standards for their application, and to carry-out implementation programmes without the finalised technical standards, on the basis of proposed draft implementing rules set out in a consultation.

As it currently stands, **the AAR will have to be implemented by in-scope counterparties without the final RTS being published in the OJEU.**

In accordance with the general principles of EU law, in particular the principles of **legal certainty** and **proportionality**, Level 2 technical requirements should not be applied before their formal adoption and entry into force:

- The principle of legal certainty requires that rules affecting the rights and obligations of market participants be **clear, precise, and predictable** in their effects. Premature application of draft or non-finalised Level 2 technical standards would undermine this principle by exposing stakeholders to regulatory obligations that lack a definitive legal basis and are subject to possible change.
- The principle of proportionality dictates that regulatory burdens must be **appropriate and necessary to achieve the intended policy objectives**. Imposing compliance with non-finalised or evolving draft technical standards risks creating unnecessary operational and legal uncertainty, as well as adding greater burden on industry for no apparent benefit.

Deferring the applicability of the most problematic or complex requirements until their formal adoption and publication in the OJEU is essential to ensure an orderly and uniform application of the rules across Member States. It also preserves a level playing field for financial market participants and reduces the risk of fragmented or inconsistent implementation, enforcement and supervisory practices at national level, which is a particular concern for institutions operating in multiple EU jurisdictions, including on a cross-border basis.

These considerations align with the EU's target to reduce administrative burden and simplify the regulatory framework, as reaffirmed in the Better Regulation Agenda and the Savings and Investments Union (SIU) plan as well as with the EU's aim to harmonize supervisory practices, as reaffirmed in the above-mentioned SIU plan. In this context, the premature application of complex draft technical Level 2 requirements, prior to their formal adoption and publication, would run counter to these objectives by introducing legal uncertainty and operational inefficiencies, ultimately hampering the EU's efforts to create a streamlined, efficient regulatory environment.

Certainty of the requirements as outlined below will remain unresolved until ESMA's final draft RTS have been delivered to, endorsed and adopted by the European Commission (EC), and followed by the non-objection of the co-legislators. Assuming no delays during the endorsement and scrutiny process, we estimate that the final RTS could be published in the OJEU only in Q4 2025.

The complexity of the implementation effort required for the AAR is further evidenced by ESMA's recent request for additional clarification from the EC on the Level 1 rules¹. Only once this guidance is provided by the EC and the final RTS are published in the OJEU will counterparties have the necessary information to comply with key aspects of the AAR appropriately.

- The outstanding Q&As submitted by ESMA to the EC include key Level 1 interpretations that will impact the proper implementation of the AAR, such as the group or entity-level application for the representativeness obligation of Article 7a(4) EMIR.
- ESMA's consultation paper on the conditions of the AAR introduced Level 2 requirements which may or may not feature in the final technical standards, including a potential requirement to nominate at least one dedicated staff member with required knowledge to support the proper functioning of the clearing arrangements at all times, for the purpose of the AAR operational conditions set out in Article 7a(3) EMIR. The consultation also includes details on the specific instruments that fall within the scope of the representativeness requirement and which ESMA is mandated to produce under Article 7a(8) of EMIR.

Accordingly, the Associations respectfully request that ESMA issue an Opinion to national competent authorities (NCAs) **inviting** them not to prioritise any supervisory or enforcement action in relation to the AAR, namely the representativeness requirement.

The Associations' request to ESMA is based on Article 9a of Regulation (EU) No 1095/2010, which provides that ESMA may issue opinions or no-action letters if the absence of a delegated act that

¹ [Outstanding ESMA Q&As](#)



would complement or specify the legislative act in question raises legitimate doubts concerning the proper application of such act.

As a recent relevant example for EMIR 3.0, in December 2024, the EBA exercised its no-action letter authority under Article 9c(4) of Regulation (EU) No 1093/2010 and issued an opinion on the application of EMIR 3.0 with respect to the new rules on Initial Margin models for non-centrally cleared derivatives².

More generally and beyond the scope of this statement, the industry is increasingly concerned by the emerging pattern (the AAR being an example of the same) whereby Level 1 provisions are expected to apply before the corresponding Level 2 implementing rules have been finalised, adopted and published in the OJEU. Experience with recent regulatory reforms has underscored the importance of allowing the European Supervisory Authorities (ESAs), NCAs, and market participants sufficient time to effectively manage change and implement financial reforms. A more proportionate, coordinated and sequential implementation – where Level 2 rules operationalise the principles and requirements set out in Level 1 – followed by an appropriate implementation period for market participants to arrange their compliance based on the published level 2 rules is essential to ensure legal certainty and facilitate simple, effective and correct implementation across the industry.

² Furthermore, it is worth remembering that ESMA issued no-action letters and deprioritisation statements in the context of the EMIR framework (before the adoption of EMIR 3.0) including the public statements regarding the eligibility of uncollateralised public guarantees, public bank guarantees and commercial bank guarantees for Non-Financial Counterparties (NFCs) acting as clearing members (10 July 2024). This statement was issued in light of the impending (at that time) review of EMIR.



ABOUT EACB

The European Association of Co-operative Banks ([EACB](#)) is the voice of the cooperative banks in Europe. It represents, promotes and defends the common interests of its 27 member institutions and of cooperative banks in general. Cooperative banks form decentralised networks which are subject to banking as well as cooperative legislation. Democracy, transparency and proximity are the three key characteristics of the cooperative banks' business model. With 2,500 locally operating banks and 40,000 outlets cooperative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 227 million customers, mainly consumers, retailers and communities. The cooperative banks in Europe represent 90 million members and 737,000 employees and have a total average market share of about 20%.

ABOUT EFAMA

EFAMA is the voice of the European investment management industry, which manages around EUR 33 trillion of assets on behalf of its clients in Europe and around the world. We advocate for a regulatory environment that supports our industry's crucial role in steering capital towards investments for a sustainable future and providing long-term value for investors.

Besides fostering a Capital Markets Union, consumer empowerment and sustainable finance in Europe, we also support open and well-functioning global capital markets and engage with international standard setters and relevant third-country authorities. EFAMA is a primary source of industry statistical data and issues regular publications, including Market Insights and the EFAMA Fact Book. More information is available at www.efama.org

ABOUT FIA

[FIA](#) is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers. FIA's mission is to:

- support open, transparent and competitive markets,
- protect and enhance the integrity of the financial system, and
- promote high standards of professional conduct.

As the principal members of derivatives clearinghouses worldwide, FIA's clearing firm members play a critical role in the reduction of systemic risk in global financial markets.

About ISDA

Since 1985, the International Swaps and Derivatives Association (ISDA) has worked to make the global derivatives markets safer and more efficient. ISDA has over 1,000 member institutions from 76 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers.

Information about ISDA and its activities is available on the Association's website: www.isda.org. Follow us on [LinkedIn](#) and [YouTube](#).