

European Market Infrastructure Regulation

ING Bank N.V.

What is it?

The Regulation on over-the-counter derivatives, central counterparties and trade repositories, commonly known as the European Market Infrastructure Regulation ('EMIR'), implements the G20 commitment to have:

1. all standardised over-the-counter ('OTC') derivatives cleared through a central counterparty ('CCP') in the EU; and
2. all derivatives transactions reported, as part of the worldwide effort to reduce counterparty and operational risk in the OTC derivatives market, which was identified as a contributing factor to the global financial crisis.

When did it come into force?

EMIR was published in the Official Journal of the EU on 27 July 2012 and came into force on 16 August 2012, but most of its provisions only began to apply after the regulation's technical were adopted by the European Commission on 19 December 2012.

What are its key points?

EMIR introduces what is known as a clearing obligation (or mandatory clearing), which mean that 'eligible' OTC derivatives will have to be cleared through CCPs. Eligible OTC derivatives have to meet pre-defined eligibility criteria in order to be subject to the clearing obligation. Clearing, which follows the execution of a transaction, entails making sure that the requisite financial instruments and/or cash are available to enable the transaction to be settled.

If an OTC derivatives transaction is not cleared via a CCP ('centrally cleared'), either because the class of derivative is not subject to the clearing obligation or the counterparties to the transaction do not fall within the scope of the clearing obligation (see below), then EMIR imposes alternative risk mitigation rules.

EMIR also imposes an obligation for all counterparties and CCPs to report all derivative transactions to a registered trade repository ('TR'). The reporting obligation was introduced so that information on the risks inherent in derivatives markets will be centrally stored by TRs and will be easily accessible by the European Securities and Markets Authority and other relevant regulators and central banks. TRs also have to make public some aggregate trade data.