



COMMERZBANK

The European Market Infrastructure Regulation (EMIR) EMIR status of the counterparties of a derivative transaction

The following information provides an overview of the correct classification of counterparties of derivative transactions under EMIR. It is not, however, intended to be a complete presentation of all the legal details and questions regarding application. It cannot replace advice from and an assessment by an expert lawyer. Commerzbank AG does not assume any liability in this respect.

The European Market Infrastructure Regulation (EMIR) is intended to reduce the risks of derivative transactions to the stability of the financial market and to improve transparency for the stakeholders, in particular for the supervisory authorities. For this purpose, EMIR sets a number of requirements for the participants in such transactions (the “counterparties”). In particular, there may be requirements to participate in clearing through a central counterparty and to report transactions to a transaction register. The requirements that apply in a concrete case depend on the status of the relevant counterparty. EMIR differentiates between financial counterparties (FC) and non-financial counterparties (NFC).

A. Financial counterparty (FC) or non-financial counterparty (NFC)?

The following are classified as financial counterparties:

- investment firms and companies licensed as securities depositories,
- credit institutions,
- insurance undertakings/reinsurance undertakings,
- investment funds and alternative investment funds as well as their management companies and
- institutions for occupational retirement provision.

An undertaking that does not meet these conditions but that carries out derivative transactions has to be classified as a **non-financial counterparty (NFC)** in accordance with EMIR.

B. NFC+ or NFC-?

EMIR subdivides NFCs into NFC+ and NFC-. This classification depends on the volumes of derivative transactions carried out. If the positions of an NFC exceed the following thresholds, it will be deemed to be an NFC+:

Derivative class	Threshold (euros)
Credit derivatives	1 billion
Equity-based derivatives	1 billion
Interest derivatives	3 billion
Currency derivatives	3 billion
Commodity derivatives/other derivatives	4 billion

In this respect, the gross nominal volume of the positions is relevant in general.

Classification as an NFC+ is limited to the derivative class in which the threshold is exceeded.

When calculating the volume, NFCs have to include all derivative transactions entered into by the NFC or an affiliated NFC which do not objectively and measurably reduce the risks that are directly associated with the business activity or the liquidity and financial management of the NFC or affiliated NFCs.

Derivative transactions that reduce risk in this sense can thus be ignored for the purposes of the calculation.

If an NFC is below the threshold, it is an NFC- in accordance with EMIR. Legal consequence: An NFC- is not required to participate in clearing with a central counterparty and generally also does not have to report its transactions to the transaction register itself. Instead, the report is to be provided by the FC with which the NFC- carries out the relevant transaction.

Important: In order to identify its status correctly, every undertaking classified as an NFC must calculate **its positions every twelve months** and identify whether the threshold for individual derivative classes has been exceeded. However, if and when an undertaking (NFC) only carries out OTC transactions that objectively and measurably reduce the financial risks of its business activity (hedging), there will be no positions relevant for the calculation (volume: 0). We recommend documenting this for audit purposes.

If there are relevant positions and an NFC does not conduct the legally required calculation, it will – regardless of the actual extent of its positions – be deemed to be an NFC+ and will have to comply with all the resulting requirements.

An NFC which is classified as an NFC- after the calculation has been conducted must be in a position to prove to the supervisory authorities (which means the BaFin in Germany) on request that the clearing threshold has not been exceeded.

C. Status reports to Commerzbank

In order to meet all EMIR requirements properly, we always need information about the (current) EMIR status of our business partners (counterparty). Therefore, we would like to ask our clients to notify us of their EMIR status before beginning any derivative transactions and also to inform us immediately of any changes that occur during the business relationship.