

EMIR 3.0: Changes to the Clearing Threshold Regime

October 2026

On 14 July 2026, the European Commission adopted a delegated regulation¹ amending Commission Delegated Regulation (EU) No 149/2013¹ as regards the clearing thresholds and the mechanisms triggering their review. The draft RTS contained within the delegation regulation are intended to update the clearing thresholds in Commission Delegated Regulation (EU) No 149/2013 to reflect the changes introduced by EMIR 3.0². The draft RTS are not yet in force. Please see the section entitled “Timeline” for further details.

Background: the EMIR 3.0 Reforms

The clearing thresholds determine whether a counterparty becomes subject to the clearing obligation under EMIR³. Where the clearing obligation applies, relevant OTC derivative contracts must be cleared through an EU-authorized central counterparty (**CCP**) or a third-country CCP recognised by ESMA.

Prior to EMIR 3.0, counterparties assessed whether they exceeded the clearing thresholds by calculating their aggregate month-end average position in OTC derivative contracts over the previous 12 months. The calculation covered all OTC derivative positions, irrespective of whether those positions were centrally cleared.

EMIR 3.0 entered into force on 24 December 2024 and fundamentally changes the focus of the clearing-threshold framework. Rather than measuring a counterparty’s overall OTC derivatives activity, the revised regime places greater emphasis on OTC derivatives risk that remains outside central clearing. To achieve this, EMIR 3.0 introduces a new methodology based on uncleared OTC derivative exposures while retaining an aggregate exposure test for financial counterparties.

The revised framework strengthens incentives to clear derivatives through CCPs. A counterparty that clears a significant proportion of its OTC derivatives activity may remain below the uncleared thresholds even where its overall OTC derivatives activity remains substantial.

Financial Counterparties

Under the original EMIR framework, a financial counterparty (**FC**) calculated its aggregate month-end average position in OTC derivative contracts over the previous 12 months and compared the result with the clearing thresholds. The calculation is made on a gross notional basis and generally includes (save for UCITS and AIFs) OTC derivative contracts entered into by other entities in the same group.

Under EMIR 3.0, FCs must carry out two calculations, each covering the previous 12 months:

- **Aggregate OTC Position Test.** This test broadly follows the existing methodology and includes both cleared and uncleared OTC derivative contracts. The calculation remains based on the aggregate month-end average position over the preceding 12 months. The thresholds applicable to this test have been recalibrated under the new delegated regulation.
- **Uncleared OTC Position Test.** This new test considers only OTC derivative contracts that are not cleared through an EU-authorized CCP or an ESMA-recognized third-country CCP. The resulting figure is compared against newly introduced uncleared clearing threshold.

1 Commission Delegated Regulation (EU) .../... of 14 July 2026 amending the regulatory technical standards laid down in Delegated Regulation (EU) No 149/2013 as regards the clearing thresholds and the mechanisms triggering their review – see [here](#).

2 Regulation (EU) 2024/2987 of the European Parliament and of the Council of 27 November 2024 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets (Text with EEA relevance)

3 Regulation (EU) No 648/2012

An FC exceeding the relevant threshold under either test becomes subject to the clearing obligation. An FC may also elect not to conduct the calculations, in which case it is treated as exceeding the thresholds and therefore becomes subject to the clearing obligation.

An FC that exceeds a threshold must notify ESMA and its national competent authority (**NCA**). The FC then has four months to establish clearing arrangements in place before the clearing obligation applies.

Non-Financial Counterparties

Non-financial counterparties (**NFCs**) are subject to a different approach. Unlike FCs, NFCs need only perform the Uncleared

OTC Position Test. The Aggregate OTC Position Test does not apply. This difference reflects the lower systemic risk that non-financial market participants generally present compared with FCs.

NFCs may continue to exclude OTC derivative contracts that qualify as hedging transactions under EMIR. Accordingly, qualifying hedging transactions remain outside the clearing threshold calculation.

In contrast to FCs, an NFC that exceeds a clearing threshold becomes subject to the clearing obligation only in respect of the asset class or asset classes for which the relevant threshold has been exceeded.

Revised Clearing Thresholds

Asset Class	Uncleared OTC Position Test (FCs & NFCs)	Aggregate OTC Position Test (FCs only)
Interest rate derivatives	EUR 2.2 billion	EUR 3 billion
Credit derivatives	EUR 0.8 billion	EUR 1 billion
Equity derivatives	EUR 0.7 billion	N/A
FX derivatives	EUR 3 billion	N/A
Commodity and emission allowance derivatives	EUR 4 billion	N/A

The revised framework represents a significant recalibration of the clearing-threshold methodology. While the introduction of uncleared position thresholds focuses regulatory attention on risk that remains outside central clearing, the aggregate test continues to ensure that large financial counterparties remain within scope of the clearing obligation even where a substantial proportion of their OTC derivatives activity is centrally cleared.

Implementation of the new calculations

One particularly helpful clarification concerns the practical implementation of the new calculations. In its Final Report on the draft regulatory technical standards⁴ ESMA confirmed that counterparties will not be required to recalculate their positions immediately when the delegated regulation enters into force. Instead, counterparties must apply the revised methodology and thresholds no later than their first annual calculation date following entry into force, which for most counterparties is

expected to be June 2027. Counterparties may therefore either:

- voluntarily apply the revised methodology and thresholds earlier, following entry into force, in order to benefit from the changes sooner; or
- continue with their existing annual calculation cycle and apply the revised methodology at their next scheduled clearing threshold calculation date.

The European Commission acknowledged ESMA's approach in the explanatory memorandum to the delegated regulation.

Where a recalculation does not result in a change to a counterparty's status, no additional notification to ESMA or the relevant NCA is required. However, where a counterparty exceeds a clearing threshold, it must notify ESMA and its NCA and will subsequently have four months to establish clearing arrangements before becoming subject to the clearing obligation.

⁴ ESMA74-1049116226-944, published on 25 February 2026

Timeline

The Council of the EU and the European Parliament will now scrutinise the delegated regulation and, if neither objects, it will enter into force on the 20th day following its publication in the Official Journal of the European Union. Until the delegated regulation become applicable, counterparties should continue to apply the existing clearing threshold framework.

Implications for Funds and their Managers

FCs should not assume that EMIR 3.0 significantly relaxes the clearing threshold regime.

While the new uncleared exposure test creates incentives for counterparties to clear derivatives through CCPs, FCs must continue to monitor their aggregate OTC derivatives activity and perform both the Aggregate OTC Position Test and the Uncleared OTC Position Test. Exceeding either test may result in the application of the clearing obligation.

The reforms nevertheless represent a significant shift in regulatory focus from overall OTC derivatives activity towards the volume of derivatives risk that remains outside central clearing. Counterparties that make extensive use of CCP clearing may find it easier to remain below the new uncleared thresholds.

Fund managers, ICAVs and other market participants should monitor developments closely and assess the impact of the revised methodology ahead of implementation.

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