



# Brochure European Market Infrastructure Regulation (EMIR)

What you need to know about EMIR

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# European Market Infrastructure

## Regulation (EMIR)

What you need to know about EMIR



The information in this brochure is intended to inform you about the European Market Infrastructure Regulation (EMIR). EMIR is European legislation that directly applies to all the companies that enter or have entered into transactions in derivatives. EMIR contains various rules which gradually came into effect in 2013 and the beginning of 2014.

### Why these rules?

After the financial crisis of 2008, the members of the G20 agreed upon a range of far reaching measures in order to limit, as much as possible, the risk of repetition of such a financial crisis. The G20 members agreed to prepare new regulations at a national and/or international level for derivative transactions, with the objective to improve the safety and transparency of the financial markets. A number of the G20 agreements, applicable to Europe, are laid down in the EMIR. EMIR has direct effect in the EU/EEA\*.

### What is EMIR?

EMIR is a European Regulation which applies to all companies based in the EU/EEA who enter or have entered into transactions in derivatives. EMIR primarily contains new rules for Over-The-Counter (OTC) derivative transactions, but there are also a few new rules for listed derivatives.

Not all the rules apply to all types of companies. There are specific rules for financial institutions and for companies with a very large OTC derivatives portfolio. For example, these parties are subject to the rule that they have to settle ('clear') their mutual OTC derivative transactions via a neutral 'central counterparty'. In this way, they shift their mutual risk to this central counterparty. Furthermore, financial institutions and companies with very large derivatives portfolios have to follow strict directives on the (prior) exchange of collateral for their mutual transactions.

This brochure is mainly focused on the rules and obligations that apply to companies that have a limited derivatives portfolio.

### Most important rules of EMIR

In 2013 and 2014, a number of EMIR rules gradually came into effect. These rules also contain obligations for companies with a limited derivatives portfolio. The rules are listed below.

**Timely confirmation:** EMIR contains specific directives for the timely confirmation - back and forth - of new OTC derivative transactions.

Over-The-Counter (OTC) derivatives: derivative transactions that arise directly between two parties without any exchange being involved. Examples of OTC derivatives are foreign exchange derivatives, such as FX Forward transactions and FX Swaps. Franx B.V. exclusively offers FX Forward transactions.

Listed derivatives: derivative transactions that arise through an exchange. An example of a listed derivative is an option to a share which can be traded on the AEX.

**Reconciliation:** financial institutions and/or companies who mutually enter into OTC derivative transactions have to periodically compare and match the transaction details of their mutual derivative transactions. This is called reconciliation. The frequency of this mandatory reconciliation depends on the number of mutual OTC derivative transactions.

\*EEA = EU + Norway, Liechtenstein and Iceland.

**Dispute resolution:** financial institutions and/or companies who enter into OTC derivative transactions with one another have to agree upon procedures for:

- a. the recording of disputes on the acknowledgement or valuation of the transactions and on the establishment or exchange of collateral;
- b. the timely settlement of disputes, with a specific process for those disputes that are not settled within five business days.

**Reporting obligation:** EMIR contains the obligation both for OTC derivatives and for listed derivatives, that companies, who enter or entered into such transactions, have to report such transactions to a trade repository. The objective of this mandatory reporting is for supervisory authorities to gain more insight into the use of derivative transactions in the financial markets, as well as in the individual derivatives portfolios of companies. The reporting obligation is further discussed below.

Franx B.V. (hereinafter referred to as Franx) has incorporated the EMIR rules within the Conditions of Foreign Exchange Derivatives Service Provision Franx B.V. ("CFEDSP"), which contain, among other things, the rules with respect to timely confirmation, reconciliation, dispute resolution and the reporting obligation. You can read these conditions on [www.franx.com](http://www.franx.com).

## Reporting is necessary in order to achieve the desired transparency.

### Which codes are required in order to be able to report?

In order to ensure derivative transactions go smoothly, the EU instructed the development of two codes. These codes are intended to facilitate efficient processing of the reports and to guarantee good matching.

**Legal Entity Identifier (LEI):** in order to be able to report your derivative transactions in the correct way, your company has to have an active Legal Entity Identifier, also called LEI. The LEI is a unique code that enables the identification of your company. With this method, supervisory authorities are able to monitor which parties have entered into derivative transactions with one another. You have to individually apply for a LEI with the Chamber of Commerce. Franx cannot do this for you. The application for and the extension of a LEI entails costs. For the application procedure and the costs, please refer to the website of the Chamber of Commerce ([www.kvk.nl/lei](http://www.kvk.nl/lei)).

**Unique Trade Identifier (UTI):** each new OTC derivative transaction that you conclude with Franx will receive its own unique code (UTI). This reporting obligation applies to all the derivative transactions that you have entered into, are outstanding and/or have expired on the Franx platform.

Franx is responsible for the creation of the UTI. The UTI is stated on each transaction confirmation that you receive from Franx. These UTIs can also be found on the transaction overview, which Franx provides you with. The UTI ensures a careful match between the reporting of both parties to the transaction.

### Who has to report OTC derivative transactions?

- The reporting obligation applies to each party to a derivative transaction and for each transaction.
- If you conclude OTC derivative transactions via Franx, Franx will implement the reporting on your behalf. Franx does not charge any fees for this service.
- By signing the 'Foreign Exchange Derivatives Service Provision Agreement Franx B.V.', you explicitly assign Franx with the task to report OTC derivatives on your behalf.

All the relevant documentation can be found on our website: [www.franx.com](http://www.franx.com).

### Summary

Companies with an OTC derivatives portfolio are subject to a number of EMIR rules. These rules cover the subjects of timely confirmation, periodic reconciliation (comparison) of transaction details and the way in which any disputes will be settled.

In addition, the parties to a derivative transaction (both you and Franx) have the obligation to report on their derivative transactions. Franx offers you a reporting service. Franx will report the derivative transactions on your behalf. The conditions for this reporting service can be found in CFEDSP.

### What does Franx expect from you?

It is important that you are aware of your obligations under EMIR. This brochure is intended as a guideline in this respect. Furthermore, a lot of information on EMIR can be found on the Internet, for example, on the websites of the different supervisory authorities. You will find some useful links in this brochure.

## Your acceptance of the EMIR conditions

If your company enters or has entered into OTC derivative transactions with Franx, you have to, in accordance with EMIR, agree with Franx upon certain written procedures. You can do so by signing the 'Foreign Exchange Derivatives Service Provision Agreement Franx B.V.',

## Your LEI

Franx would like to receive your LEI if you become a client of Franx. We need your LEI in order to be able to properly report the OTC derivative transactions we mutually concluded, both for ourselves and on your behalf. However, you must first apply for a LEI with the Chamber of Commerce.

## Where can you find information on EMIR?

It is important that you adequately inform yourself about EMIR.

Various national and European supervisory authorities and government institutions have published information on EMIR. For example, you can consult the following websites:

- Website European Union: <http://europa.eu>
- Website European Securities and Markets Authority - ESMA: [www.esma.europa.eu](http://www.esma.europa.eu)
- Website Authority for the Financial Markets - AFM: [www.afm.nl](http://www.afm.nl)

You also have the possibility to pose questions on EMIR to the FMA:

- Email address Authority for the Financial Markets - AFM: [EMIR@afm.nl](mailto:EMIR@afm.nl)
- Website Chamber of Commerce: [www.kvk.nl/lei](http://www.kvk.nl/lei)

Obviously, you can also seek the advice of your own financial or legal adviser in order to gain more insight into your obligations.

## Disclaimer

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