

## Margin Exemption for Intragroup Transactions User Guide

### Applications and notifications for intragroup exemptions from the margin requirements under the European Market Infrastructure Regulation (EMIR)

Under some circumstances (set out in Article 11 of EMIR and Commission Delegated Regulation 2016/2251 (the '**Margin RTS**')), an exemption from the margin requirements in relation to non-cleared OTC derivatives is available to undertakings for their intragroup transactions. Certain conditions will have to be met and (except for domestic intragroup transactions) undertakings will have to apply to their national competent authority(ies) and have to be granted the exemption.

Finanstilsynet is the national competent authority ('**NCA**') responsible for receiving and assessing application and notification forms from all Norwegian counterparties (both financial and non-financial). This user guide should be used by undertakings to help them complete their application or notification form. Undertakings will need to refer to EMIR and the relevant supporting Regulatory Technical Standards (Commission Delegated Regulation 2013/149 and the Margin RTS) to assess their compliance with the legal requirements.

#### ***Types of Application or Notification***

If your undertaking is a Norwegian counterparty who wants to be exempt from the margin obligation in relation to non-centrally cleared OTC derivative transactions with another Norwegian counterparty belonging to your group, no formal application is required. You should therefore satisfy yourself that you meet the relevant conditions (**Article 11(5) of EMIR**).

If your undertaking is a Norwegian financial counterparty who wants to be exempt from the margin obligation in relation to non-centrally cleared OTC derivative transactions with another EEA financial counterparty belonging to your group, you must apply to Finanstilsynet for an exemption (**Article 11(6) EMIR**).

If your undertaking is a Norwegian non-financial counterparty who wants to be exempt from the margin obligation in relation to OTC derivative transactions with another EEA non-financial counterparty belonging to your group, you must notify Finanstilsynet for an exemption (**Article 11(7) EMIR**).

If your undertaking is a Norwegian non-financial counterparty who wants to be exempt from the margin obligation in relation to non-centrally cleared OTC derivative transactions with an EEA financial counterparty belonging to your group, no formal application or notification is required by the Norwegian non-financial counterparty (**Article 11(10) EMIR**). A notification of this exemption will be provided to Finanstilsynet by the NCA of the EEA financial counterparty.

If your undertaking is a Norwegian counterparty who wants to be exempt from the margin obligation in relation to non-centrally cleared OTC derivative transactions with another counterparty belonging to your group established in a third country in respect of which the European Commission has adopted an equivalence decision, you must apply to or notify Finanstilsynet for an exemption (**Article 11 (8) and (9) EMIR**).

If your undertaking is a Norwegian counterparty who wants to benefit from a derogation from the margin obligation in relation to non-centrally cleared OTC derivative transactions with another counterparty belonging to your group established in a third country in respect of which the European Commission has not adopted an equivalence decision, you must apply to Finanstilsynet to benefit from the derogation (**Article 36 of the Margin RTS**). Such

derogation will be time limited and expire in accordance with Article 36 of the Margin RTS (after which counterparties will need to apply for an exemption pursuant to Article 11(8) or (9) of EMIR once the European Commission has adopted an equivalence decision).

### **General Process**

undertaking

The form is in Excel format. Please save a copy of the form before editing. The form has three tabs that the applicant or notifying counterparty needs to complete.

Applicant or notifying counterparty will need to provide supporting documentation to the form. See Part 3, Section G (below) for further details.

The form and supporting documentation should be sent to [post@finanstilsynet.no](mailto:post@finanstilsynet.no). The supporting documentation should be in PDF-format.

Finanstilsynet has three months to assess each application or notification. A decision will be communicated via email to the submitter of the form. Please note that where counterparties are established in two different EEA States and the relevant NCAs disagree on whether the relevant conditions are met, counterparties should not rely on the exemption.

### **Application Form**

#### **Part 1 (Applicant or Notifying Counterparty Details and Risk Management Procedures)**

Part 1 consists of Sections A to C and relates to details on the applicant counterparty, risk management procedures and the existence of any impediment to the transfer of own funds or repayment of liabilities between the counterparties.

The table below provides further detail on the information an applicant or notifying undertaking should provide.

<b>Question(s)</b>	<b>Detail required</b>	<b>Relevant regulation</b>
<b>A1 – A5</b>	Fill in relevant details about the applicant or notifying counterparty.	N/A
<b>A6</b>	Select option from drop-down menu	N/A
<b>B1</b>	Select option from drop-down menu	Article 3, EMIR
<b>B2</b>	Summarise the applicant or notifying counterparty's group risk management procedures. Supporting documentation will need to be provided in Section G2 to support	Article 3, EMIR

	<p>this answer. However, note that a summary is required here <b>in addition</b> to the relevant supporting documentation.</p> <p>Refer to OTC Q&amp;A 6(d) from ESMA EMIR Q&amp;As (intragroup exemptions from the clearing exemption) for guidance.</p>	
<b>B3</b>	Select option from drop-down menu	Paragraph (a), Articles 11(6) to (10), EMIR
<b>B4</b>	<p>Describe how the applicant or notifying counterparty's group risk management procedures ensure the regular monitoring of the intragroup exposures. Describe how they ensure the timely settlement of the obligations resulting from the intragroup OTC derivative contracts is guaranteed based on the monitoring and liquidity tools at group level.</p> <p>Describe how the monitoring and liquidity tools are consistent with the complexity of the intragroup transactions.</p>	Paragraph (a), Articles 11(6) to (10), EMIR
<b>C1</b>	Select option from drop-down menu	Paragraph (b), Articles 11(6) to (10), EMIR
<b>C2</b>	Describe the test/measures the applicant or notifying counterparty has undertaken to determine whether there is any current or foreseen legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties.	Paragraph (b), Articles 11(6) to (10), EMIR Article 33 of Commission Delegated Regulation 2016/2551
<b>C3</b>	Select option from drop-down menu	Paragraph (b), Articles 11(6) to (10), EMIR
<b>C4</b>	Describe the test/measures the applicant or notifying counterparty has undertaken to determine whether there is any current or foreseen practical impediment	Paragraph (b), Articles 11(6) to (10), EMIR

	to the prompt transfer of own funds or repayment of liabilities between the counterparties.	Article 34 of Commission Delegated Regulation 2016/2551
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## **Part 2 (Intragroup Counterparty and Transaction Details)**

Part 2 consists of Sections D to F and relates to information on the intragroup counterparty and transaction details.

The table below provides further detail on the information an applicant undertaking should provide.

<b>Question(s)</b>	<b>Detail required</b>	<b>Relevant regulation</b>
<b>D1 – D5</b>	Fill in relevant details about the intragroup counterparty	N/A
<b>D6</b>	Select option from drop-down menu.	N/A
<b>E1</b>	Select option from drop-down menu.	Article 11 (6) to (10), EMIR Article 36, Commission Delegated Regulation 2016/2551
<b>E2</b>	Select option from drop-down menu.	Article 3, EMIR
<b>E3</b>	Select option from drop-down menu. Supporting documentation will need to be provided in Section G1 to support this answer.	Article 18, Commission Delegated Regulation 2013/149
<b>E4</b>	Provide the name of the national competent authority to whom the intragroup counterparty will send its application form (if applicable, i.e. if the intragroup counterparty is also an EEA undertaking).	N/A

<b>E5</b>	Select option from drop-down menu.	Article 3, EMIR
<b>E6</b>	Describe how the intragroup counterparties are included in the same consolidate accounts.	Article 3, EMIR
<b>E7</b>	Select option from drop-down menu.	Article 3, EMIR
<b>E8 – E9</b>	Provide information about the national competent authority who is responsible for exercising consolidated supervision of the counterparties.	N/A
<b>F1 – F3</b>	Select "X" from the drop-down menu for all the options that apply between the applicant and intragroup counterparty.	Article 18, Commission Delegated Regulation 2013/149
<b>F4</b>	Fill in all the relevant currencies for each asset class relevant to the OTC derivatives contracts between the applicant and intragroup counterparty.	Article 18, Commission Delegated Regulation 2013/149
<b>F5</b>	Fill in the maximum tenure (in years) of the OTC derivatives contracts between the applicant and intragroup counterparty.	Article 18, Commission Delegated Regulation 2013/149
<b>F6</b>	Select "X" from the drop-down menu for all the options that apply between the applicant and intragroup counterparty.	Article 18, Commission Delegated Regulation 2013/149

<b>F7</b>	<b>Size:</b> Fill in the anticipated average size of OTC derivative transactions between the applying counterparties for the forthcoming year. Applicants should provide the average notional amount of OTC transactions in million euros per transaction.	Article 18, Commission Delegated Regulation 2013/149
<b>F8</b>	<b>Volume:</b> Fill in the anticipated volume of OTC derivative transactions between the applying counterparties for the forthcoming year. Applicants should provide the total gross notional in million euros for all transactions.	Article 18, Commission Delegated Regulation 2013/149
<b>F9</b>	<b>Frequency:</b> Fill in the anticipated number of OTC derivative transactions between applying counterparties for the forthcoming year.	Article 18, Commission Delegated Regulation 2013/149

### ***Part 3 (Supporting Documentation and Declaration)***

Part 3 consists of Sections G and H and relates to the applicant or notifying counterparty confirming that they have provided the relevant supporting documentation and understand the terms under which they have submitted the application or notification.

All supporting documentation should be PDF format and attached to the cover email along with the accompanying completed form.

Under Section G ("Supporting Documentation"), Finanstilsynet does not require counterparties to submit a legal opinion to support the application or notification. However, note that **Finanstilsynet may request a legal opinion from a counterparty, if required, to further support their application or notification.**

The table below provides further detail on the information an applicant or notifying undertaking should provide.

<b>Question(s)</b>	<b>Detail required</b>	<b>Relevant regulation</b>
<b>G1</b>	<p>Applicant or notifying counterparty will need to provide documentation to support the answer provided in Question E3 on the corporate relationship between the counterparty(ies). A group structure chart or documentation detailing the relationship between the intragroup counterparties will be sufficient.</p>	Article 18(2), Commission Delegated Regulation 2013/149
<b>G2</b>	<p>Applicant or notifying counterparty will need to provide documentation to support the answer provided in Question B2 on the group risk management procedures.</p>	Article 18(2), Commission Delegated Regulation 2013/149
<b>G3</b>	<p>Applicant or notifying counterparty will need to provide documentation to support the answers provided in Section F on transaction details between the intragroup counterparties. Applicant or notifying counterparty should provide details of intragroup transactions (including the outstanding notional positions and the number of trades entered into) for the previous 12 months unless a different period of time is necessary to provide Finanstilsynet with visibility of the intragroup pairs' typical trading activity. A snapshot of trading for the above period of time will be sufficient for each entity pair.</p>	Article 18(2), Commission Delegated Regulation 2013/149

<b>G4</b>	<p>Applicant or notifying counterparty will need to provide documentation to support the answers provided in Section F on transaction details between the intragroup counterparties.</p> <p>Copies of contracts of the relevant ISDA schedules (if available) will need to be provided for each entity pair.</p>	Article 18(2), Commission Delegated Regulation 2013/149
<b>H1 – H2</b>	<p>Select the option from the drop-down menu to confirm the information you have provided is correct and that you have attached the relevant supporting documentation.</p> <p>Applications or notifications that do not provide supporting documentation as requested in Section G above will be deemed incomplete.</p>	N/A
<b>H3</b>	<p>This question should be answered for all Norway to EEA intragroup applications or notifications. Select the option from the drop-down menu to conundertaking the scope of the application or notification (and therefore, the details provided about the transactions for which the applicant or notifying counterparty seeks the exemption) is the same in the application or notification as the scope and transaction detail described in the application or notification submitted by the intragroup counterparty to their relevant national competent authority.</p> <p>Leave blank if not applicable (i.e. if the intragroup</p>	N/A



	counterparty is not an EEA undertaking).	
<b>H4</b>	Select the option to confirm the applicant or notifying counterparty agrees to notify Finanstilsynet immediately of any change that may affect the fulfilment of the conditions of Article 3 and Article 11 (6) to (10) of EMIR, and Articles 32 to 34 of the Commission Delegated Regulation 2016/2251, as applicable. Undertakings should notify Finanstilsynet of any change as described above via email to <a href="mailto:post@finanstilsynet.no">post@finanstilsynet.no</a> as soon as the change has occurred.	N/A
<b>H5</b>	Select the option to confirm that the declaration has been read and understood.	N/A
<b>H6 – H9</b>	Fill in contact details of the person submitting the form. That person must verify that all of the information in the form is accurate.	N/A