Deutsches Aktieninstitut
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Make the EMIR reporting exemption for Intra-Group Transactions Feasible

Maintain the MiFID Ancillary Activity Exemption and Provide Additional Burden Relief

Position Paper on proposed Amendments as part of the European Commission’s Market Integration and Supervision Package (“MISP”), 1 September 2026

Provide Significant Burden Relief for Non-financial Companies Using Risk-Mitigating Derivatives

In order to boost Europe's competitiveness, we welcome the objective "simplifying rules" of the European Parliament, the Council of the European Union and the European Commission expressed in its One Europe, One Market Roadmap from 23 April 2026. From the view of non-financial companies burden reduction should include rules governing the use of derivatives. Non-financial companies apply these instruments as hedges against risks arising from fluctuations in exchange rates, interest rates or commodity prices.

The following proposed amendments tabled as part of the European Commission's Market Integration and Supervision Package ("MISP") concern the use of derivatives by non-financial companies. In this regard, Deutsches Aktieninstitut suggests

- simplifying the reporting exemption framework for intra-group derivatives under Article 9 of EMIR;

- maintaining the Ancillary Activity Exemption (AAE) under Article 2(1)(j) of MiFID, which exempts, under certain conditions, non-financial firms from the obligations of an investment firm when using commodity derivatives, emission allowances and derivatives on emission allowances. Therefore, we reject proposals deleting the AAE or introducing additional restrictive requirements. Qualifiying as investment firm would e.g. trigger the application of prudential requirements under the Investment Firm Directive/Regulation as well as the clearing obligation and collateralisaton requirements under EMIR resulting in margining requirements of billions of euros;

- using the legislative procedure for further simplifications of EMIR rules, e.g. extending the single sided reporting regime to cleared derivatives and to instruments fallling in the scope or Regulation (EU) No 2015/2365 (SFTR) like repos. We welcome reporting once approaches, integrating EMIR, SFTR and MiFIR in one template, which should be seen as opportunity to streamline reporting requirements and to significantly decrease number of data fields. We strictly oppose the introduction of new data fields.

Simplify the reporting exemption for intra-group derivatives (Art. 9 EMIR)

According to Article 9 of EMIR, non-financial companies are not required to report intragroup transactions if, for example, they have centralised risk management processes in place. So far, non-financial companies are required to submit a notification to the national competent authorities (NCA) of both, the parent company and its subsidiary. The exemption becomes valid if the NCA explicitly confirms or a period of three months elapses.

The notification process is very complex. If new group companies are integrated into the central risk management system by providing intra-group transactions, these transactions must be reported as long as the exemption is not valid. The company must set up a reporting infrastructure for this period, only to be switched off again afterwards. This is inefficient and contradicts the aim of the legislator to provide burden relief for non-financial companies. In addition, two different NCAs must be approached in EU-wide situations: the NCA of the parent company and the NCA of the group company. Notification processes differ from NCA to NCA, resulting in significant additional efforts.

In July 2026, ESMA sets out proposals to streamline the reporting exemption for intra-group transactions in its report on the simplification of financial transaction reporting.[1] ESMA proposes a centralised exemption process. The company must submit a notification only to the NCA of the parent company. In addition, ESMA proposes that the exemption is valid once the NCA confirms that the notification contains the required information.

The proposals for amendments 15 and 90 in the Draft Report of Master Regulation (Markus Ferber) follow a similar line.

We welcome these proposals as an important step towards simplification. However, these proposals can only reduce the burden on non-financial firms if the legislator makes clear that

- the reporting is a one-off process and considers all group companies, those already part of the group and those newly added by M&A etc.;
- the exemption applies immediately after submission by the non-financial company;
- exemptions already granted remain valid;

1 See ESMA (2026): Final Report**.** On the Call for Evidence on a comprehensive approach for the simplification of financial transaction reporting, Paris.

- companies are only required to report those derivatives entered into after the date on which the national competent authority rejects a notification (no 'backloading').

Maintain the Ancillary Activity Exemption (Art. 2(1)(j) MiFID)

The AAE is important for non-financial companies using commodity derivatives, emission allowances and derivatives on emission allowances. Otherwise, they would be classified as investment firms accompanied by additional requirements which do not reflect their core operative business, e.g. producing cars, electronic devices etc. Qualifying as an investment firm would entail, for example, that non-financial companies are treated as financial counterparties under EMIR and must centrally clear their entire derivatives exposure. In addition, they would become subject to prudential requirements under Investment Firm Directive/Regulation. This would create liquidity needs for prudential and margin requirements in the billions of euros, tying up funds that would no longer be available for investment in their core business.

Recently, the European Commission comprehensively assessed the markets for commodity derivatives, for emission allowances and for derivatives of emission allowances and published the results in a report from May 2026. Regarding the AAE the Commission concluded that, based on the feedback received, the AAE is functioning well and changing its scope "may have significant and far-reaching consequences, potentially impacting the competitiveness of EU firms."[2]

Legislator should follow the assessment of the Commission and retain the AAE in its current form. This is stated by Regina Doherty (amendment 182), Markus Ferber (amendment 186) and Janusz Lewandowski (amendment 638) in the Draft Report of Master Directive.

We reject the proposal deleting the AAE tabled by Eero Heinäluoma (amendment 97) and amendments 637 and 639 (Kira Marie Peter-Hansen) in the Draft Report of Master Directive, adding further restrictive requirements to the AAE, e.g. that market participants benefiting from the AAE are only allowed to provide exclusively investment services for hedging purposes. These further requirements contradict the above-mentioned Commission's conclusion that the AAE is well functioning.

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2 European Commission (2026): Report from the Commission to the European Parliament and the Council on the Commission's assessment of the markets for commodity derivatives, for emission allowances and for derivatives of emission allowances, pursuant to Article 90(5) of the Markets in Financial Instruments Directive (MiFID II) (Directive (EU) 2014/65), as amended in February 2024, Brussels, p. 11.

Other issues on EMIR, MiFIR and SFTR

We support…

- …amendments 14, 91 and 92 in the Draft Report of Master Regulation (Markus Ferber) to extend the single sided reporting regime, currently available for OTC-derivative-transactions between financial counterparties and non-financial counterparties not exceeding the clearing thresholds. Within the single sided system, the financial counterparty reports transaction data on behalf of both counterparties and is liable for its correctness. Nevertheless, the amendments limit the extension to derivative transactions between two financial counterparties. As the single sided system provides significant burden relief, we propose to extend the regime to securities financing transactions like repos covered by the Regulation (EU) No 2015/2365 (SFTR). Furthermore, amendment 91 deletes the possibility for companies to opt-out from the single sided mechanism and to submit reports for themselves. Although most companies make use of the single sided system, we are in favour of maximum flexibility – legislator should allow companies to report for themselves in future as well. Finally, we advocate including financial counterparties from third countries in the single side reporting scheme, which is one of the main reasons why non-financial companies have not yet switched off their EMIR reporting completely;

- …amendments 636 to 639 in the Draft Report of Master Regulation (Anouk Van Brug), which excludes centrally cleared derivatives from the reporting requirements according to Art. 9 of EMIR. This is justified, as cleared derivatives are subject to margining requirements and other robust risk management requirements. At least, the single sided reporting system mentioned above should apply to cleared derivatives;

- …amendments 250 and 641 in the Draft Report of Master Regulation (Markus Ferber) restricting the notional value of derivative transactions, relevant for non-financial counterparties calculating the clearing thresholds under EMIR, to the value attributable to the twelve-month period following the date of calculation. The proposal reduces significantly the notional value especially of virtual purchase power agreements, commonly used to facilitate green projects. According to the proposal the nominal value corresponds only to the quantity of power, which the supplier agreed to deliver, over the relevant one-year period. That is significantly less than the total delivery volume, for example, over a period of 5 years;

- …amendment 640 and 1116 in the Draft Report of Master Regulation (Markus Ferber) proposing that those market participants required to report their derivative exposure under MiFIR are no longer required to report the same derivatives under EMIR and SFTR. This would help to avoid double reporting. We also welcome amendment 861 in the Draft Report of Master Regulation (Markus Ferber) proposing a reporting once principle for EMIR, MiFIR and SFTR. Nevertheless, the integrated reporting template proposed should be seen as an opportunity to streamline reporting requirements and to significantly decrease number of data fields. We strictly oppose the introduction of new data fields.

We reject amendments 641 and 642 (Kira Marie Peter-Hansen) in the Draft Master Directive restricting the position limit regime by re-defining the hedging exemption. So far, risk reducing derivatives following the definition under EMIR are exempted from the position limit regime which is justified as those instruments are part of the risk management of non-financial companies. The amendments propose to narrow the hedging exemption to a substitute for a position taken or going to be taken on a physical market. We also reject the re-extension of the position limit regime to any energy commodity derivatives, which was abolished during the last review of MiFID II's commodity derivatives regime. Position limits would apply to all exchange-traded contracts, which would contradict the simplification and burden reduction agenda and constrain the development of liquidity in new contracts.

Amendments 944, 945 and 946 (Sirpa Pietikäinen) in the Draft Report of Master Regulation propose that ESMA establishes a central data base for the reports prepared by market participants according to EMIR, MiFIR, REMIT (and SFTR, which is not included in the amendment). So far, market participants report e.g. their derivative transaction to trade repositories acknowledged by ESMA. Therefore, the central database proposed should not result in an additional requirement that market participants should report to trade repositories and to ESMA, which would cause additional burden and a duplicaton or reporting infrastrucure. It is important that the proposal bases on existing streamlined reporting systems and should not require market participants to implement an additional infrastructure, e.g. regarding interfaces, contractual agreements.

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