

# NEW RULES

**Claudio Cortese of the Assiom Forex Regulatory Commission**



With the publication in the Official Journal of the European Union of the Delegated Regulations on reporting and registration rules for trade repositories (TRs) on 7 October, 2022, the long process of reviewing reporting rules came to a conclusion. The process began on 26 March, 2020 with the publication of the consultation paper (CP), which allowed all stakeholders to submit their comments by responding to the questions in the document. **Claudio Cortese of the Assiom Forex Regulatory Commission** reviews the new rules and identifies new hurdles that they create.

## The European legislative process

The European legislative process relating to financial regulation is quite complex: it starts with the publication by the European Securities and Markets Authority (ESMA) of one or more CPs (depending on the complexity of the subject matter) aimed at explaining the regulation and gathering stakeholder opinion. The first phase ends with the publication of a Final Report to be submitted to the European Commission (EC). After analysing and approving it (that is, sending it back to ESMA with a request for changes), the EC forwards it to the legislative bodies of the European Union for discussion and subsequent publication in the Official Journal. In this case, the reporting review process took more than 2 years, although the huge impact of Brexit, the effects of which became apparent during that period, should not be forgotten.

The reporting review is part of the broader programme of a complete revision of the EMIR regulation, the first results of which were seen in 2019 with the publication of Regulation 2019/834, commonly known as “EMIR REFIT”, which amends several important points of the original regulation (648/2012).

The acronym REFIT (Regulatory Fitness and Performance Programme) identifies the work of the Regulatory Adequacy and Effectiveness Review Commission which, as part of its 2017 policy document, included EMIR among the regulations subjected to its analysis. The Commission's aim is to analyse the existing regulations in order to balance the obligations of the parties involved, while limiting compliance costs as much as possible, without jeopardising the achieved objectives which, in the case of EMIR, were threefold:

- Increased transparency of OTC derivatives markets
- Increased awareness of the various derivatives markets
- Increased resilience of the financial system in crisis situations

## What's new in the Regulation?

In order to better illustrate the disruptive effect of the new regulation, it may be enough to point out that ESMA itself has provided for a transition phase of 18 months prior to the application of the rules. In fact, while the implementation orders came into force on 29 October 2022, the application of the new rules is scheduled for 29 April 2024. It can therefore be said that we are faced with a situation comparable to that experienced at the start of the reporting obligation which, coincidentally, started approximately 18 months after the publication of the EMIR regulation.

Below is a list of the most impacted topics:

Topic	Current rules	New rules
<b>Format</b>	Various formats accepted	ISO 20022 XML
<b>Number of fields</b>	129	203
<b>Type of action</b>	8	9
<b>Type of event</b>	Not envisaged	11
<b>Reconciliation</b>	General obligations foreseen, limited to 55 fields	Formalisation of specific tasks in the TR that have an impact on obligated parties, it affects 145 fields (62 after 2 years since the start of the new rules).
<b>Backloading</b>	N/A	All transactions outstanding on 28 April 2024 must be reported again under the new rules.

## What this means

**Format:** although ISO 20022 XML is already a widely adopted standard in MiFID and SFTR reporting, it is new to EMIR, so it will be necessary to review the procedures for generating reporting records according to the new standard. Using ISO 20022 will certainly help to automate the process of generating and transmitting reports, as well as processing the feedback received from its TR.

**Number of fields:** the main driver behind the implementation of the new rules was the proclaimed poor quality of current reporting, as evidenced by the statistics provided by ESMA itself (see for example “EMIR and SFTR data quality report 2021” published on 1 April 2022). The solution, according to the regulator, is to broaden the range of information required, effectively making reporting more complex. In my opinion, this approach does not achieve the stated objective, which could have been more easily accomplished by simplifying the reporting rules. Therefore, it will be necessary to analyse all the fields of the reporting to find out how and where to find the required information.

**Type of Action & Type of Event:** the new rules introduce the concept of ‘event’ combined with the type of action in order to classify in more detail the reason for which a report is made; the CP (and consequently the final report) illustrates all the possible combinations between action and event, again introducing a greater level of complexity in the reporting, implicitly suggesting the opportunity to carry out a pre-reconciliation of one's own reports with those made by the counterparty. While the need to agree with the counterparty on how to represent transactions is not a new concept and has been recalled several times in the regulation, it is worth noting that this requirement is already present in SFTR and will also be taken up in the considerations on the following points.

One certainly positive element of the new regulation is the introduction of a new type of action, **REVIVE**, which allows the ‘recovery’ of a report cancelled or extinguished prematurely by mistake, restoring it with the original Unique Transaction Identifier (UTI) used, without the need to resubmit the report using a new UTI to be agreed with the counterparty.

**Reconciliation:** of course, this is not a new concept. But, similarly to SFTR, with the new rules, TRs are obliged to inform their customers in a timely manner about the status of their reports, following schemes outlined in the specific delegated regulation (2022/1858). It is worth noting the considerable increase in the number of fields subject to reconciliation, 83 at go-live to which a further 62 fields are added after two years, with no or extremely limited tolerances. The legislator's intention to emphasise the need to carry out a timely and thorough reconciliation is therefore evident. And in this regard I'd like to highlight the introduction of the new field ‘6’ in Table 2 (cf. Delegated Regulation 2022/1855), called “package identifier”, which must be used for the reporting of complex trades consisting of more than one derivative. The value of this field must be agreed with the counterparty, with whom it will also be necessary to agree on the way in which the complex derivative is to be reported (number of trades and type). This request which is reasonable in theory, clashes with real-life operations, where the representation of trades in one's own systems is strongly conditioned by the same systems, in particular the position keeping one, which may not be the same as those used by the counterparty.

**Backloading:** the regulation requires that all transactions outstanding at the time of the new rules' application must be reported again, even with the same UTI. The legislator allows six months to carry out this activity. During this phase, it is obviously impossible to guarantee the reconciliation of one's own deals carried out before 29 April 2024 with those of the counterparty, unless the date of execution of the backloading is agreed upon, which is an objectively complex activity to carry out. On the other hand, it should be remembered that after the specified date, it will be impossible to report new events relating to pre-existing deals that have not been re-submitted. Therefore, it is advisable to perform the backloading activity immediately, to avoid discarding reports lacking the original report. These two requirements risk being incompatible, creating a further criticality in an already extremely complex context.

## How to approach the matter properly?

Given the considerable complexity of the new regulation, organisations impacted by these rules should be devoting resources into preparing for compliance, with advisory support if necessary. The aim of this activity should be to:

1. **Analyse the legislation in depth:** this is basically a new way of reporting. The legislation issued is voluminous and complex.
2. **Carry out an accurate gap analysis:** identify information gaps with respect to the current situation and decide how and where to find the missing information in order to be compliant with the regulations.
3. **Assess whether and what to delegate to third parties in terms of reporting:** delegation is always permitted. In deciding whether or not to delegate one's reporting, it is necessary to take into account both the regulator's emphasis on reconciliation and the responsibility for the quality of what is reported, which in any case remains with the financial intermediaries.
4. **Plan for a thorough test phase:** a good test phase is essential for the success of the project, and it is advisable to contact your TR, which will certainly have made arrangements to support their stakeholders.

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