

# ESAs propose to amend bilateral margin requirements to assist Brexit preparations for OTC derivative contracts

The European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA), together the European Supervisory Authorities (ESA), have today published a final report with draft regulatory technical standards (RTS) proposing to amend the Commission Delegated Regulation on the risk mitigation techniques for OTC derivatives not cleared by a CCP (bilateral margin requirements) under the European Market Infrastructure Regulation (EMIR). The draft RTS propose, in the context of the United Kingdom's (UK) withdrawal from the European Union (EU), to introduce a limited exemption in order to facilitate the novation of certain OTC derivative contracts to EU counterparties during a specific time-window. The amendments would only apply if the UK leaves the EU without the conclusion of a withdrawal agreement – a no deal scenario. The draft RTS complement the similar proposal published by ESMA on 8 November<sup>1</sup> with respect to the clearing obligation.

In the context of the on-going withdrawal negotiations between the EU and the UK, and to address the situation where a UK counterparty may no longer be able to provide certain services across the EU, counterparties in the EU may want to novate their OTC derivative contracts by replacing the UK counterparty with an EU counterparty. However, by doing this, they may trigger the clearing obligation or the bilateral margin requirements for these contracts, therefore facing costs that were not accounted for when the contract was originally entered into.

## **Limited exemption from the bilateral margin requirements to facilitate novations**

The draft RTS allows UK counterparties to be replaced with EU ones without triggering the new procedures defined in the bilateral margin RTS. This limited exemption would ensure a level playing field between EU counterparties and the preservation of the regulatory and economic conditions under which the contracts were originally entered into. Its scope, time and intent are aligned with the draft RTS regarding the clearing obligation that ESMA published on 8 November.

The window for the novation of OTC derivative contracts which fall under the scope of this amending regulation and the one published by ESMA would be open for twelve months following the withdrawal of the UK from the EU. Counterparties can however start repapering their contracts ahead of the application date, making the novation conditional upon a no-deal Brexit, given the conditional application date of these two amending regulations.

## Participants Brexit preparations

The ESAs and other EU authorities and institutions have been clear on the importance for market participants to be prepared for Brexit, including the possibility of a no-deal scenario. These draft RTS provide regulatory solutions to support counterparties' Brexit preparations and to maintain a level playing field between EU counterparties, while addressing potential risks to orderly markets and financial stability.

As regards non-centrally cleared OTC derivative contracts, these two measures will be the only regulatory measures the ESAs intend to propose to help address the legal uncertainty raised by the withdrawal of the UK from the EU and to ensure a level-playing field between EU counterparties.

Counterparties should start negotiating as soon as possible the novations of their transactions which are in the scope of these amending regulations, given the twelve month timeframe to benefit from it.

## Next steps

The draft RTS have been submitted to the European Commission for endorsement, and they are subject to the scrutiny of the European Parliament and of the Council.

## Background

1. [Final Report](#)
2. Commission Delegated Regulation on the risk mitigation techniques for OTC derivatives not cleared at a CCP (No )
3. Commission Delegated Regulations on the clearing obligation (No 2015/2205, No 2016/592 and No 2016/1178).
4. The clearing obligation and bilateral margin requirements apply to EU firms that are counterparties to an OTC derivative contract including interest rate, foreign exchange, equity, credit and commodity derivatives.
5. The ESAs' mission is to enhance investor protection and promote stable and orderly financial markets.

The ESAs achieve this mission within the European System of Financial Supervision (ESFS) through active cooperation between the EBA, EIOPA, ESMA, the European Systemic Risk Board, and with national competent authorities.

ESMA's publication regarding the clearing obligation is available at the following address:

<https://www.esma.europa.eu/press-news/esma-news/esma-proposes-regulatory-change-support-brexit-preparations-counterparties>

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## Travailler dans un futur numérique – une nouvelle étude prévoit les risques à venir pour la sécurité et la santé

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## Arbeiten in der digitalen Zukunft – eine neue Studie prognostiziert künftige Sicherheits- und Gesundheitsrisiken

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## [Working in the digital future – new study anticipates the safety and health risks that lie ahead](#)

**In a new report, EU-OSHA publishes the findings of a major 2-year project to anticipate the effects of digitalisation on occupational safety and health (OSH) in the EU. The final results of this foresight project highlight developments in ICT-enabled technologies, the potential impact of these technologies on the nature and organisation of work, and the challenges and opportunities to OSH that they may bring.**

Increased monitoring of workers, 24/7 availability, frequent job changes and the management of work by algorithm can raise levels of workers' stress. Increased ergonomic risks, caused by human-machine interfaces and the growth in on-line, mobile working are also identified as likely outcomes of augmented digitalisation in the workplace.

Digitalisation and the emergence of new technologies is influencing the nature of jobs and tasks, the sectors and industries that people will work in and even their perception of work. Trends indicate that, by 2025, ICT-enabled

technologies will have changed the equipment, tools and systems used to organise, manage and provide products, services and knowledge. The report – *Foresight of new and emerging risks to occupational safety and health associated with digitalisation by 2025* – examines the potential impacts of digitalisation: collaborative robotics, artificial intelligence, Internet of Things, autonomous vehicles, bionics, virtual and augmented reality, wearable technology, big data, 3D and 4D printing, and online platforms.

To this end, four scenarios of working life in 2025 were built, taking societal, technological, economic, environmental and political contexts into account. These scenarios consider potential differences in the attitudes of governments and the public to digital developments. They also look at the level of economic growth and the application of new technologies over the next few years. A range of potential impacts that developments in digital technologies could have on OSH are explored to stimulate informed debate on how robust planning and policy-making could shape the future of OSH in a digital world. The scenarios (*Evolution, Transformation, Exploitation and Fragmentation*) integrate expert information gathered through literature review, telephone interviews, web surveys and workshops.



For instance, the '*Evolution*' scenario presumes that the pace of economic growth and the application of new technologies will be slow and that there will be a high level of government focus on workers' rights, social welfare, health and education. In this scenario, OSH risks and their prevention might be better known than in others as new technologies are not rapidly adopted. However, some of these technologies may not be well maintained owing to businesses' constrained finances.

Challenges and opportunities for OSH are examined for each scenario individually, but issues common to all four scenarios are also identified. Some positive outcomes are anticipated; for instance, people are less likely to work in traditionally hazardous environments thanks to robotics and automation.

However, psychosocial and organisational factors are likely to become more important as digitalised working drives changes such as increased workers monitoring, an assumption of 24/7 availability, more frequent job changes and the management of work and workers by algorithms. All this can raise levels of workers' stress. Increased ergonomic risks, caused by human-machine interfaces and the growth in online, mobile working, and heightened cyber-security risks are also identified as likely outcomes of augmented digitalisation in the workplace.

Digital technologies also facilitate new forms of employment status, with an increasing numbers of workers treated (rightly or wrongly) as self-employed and who could fall outside existing OSH regulation, which challenges existing mechanisms for managing and regulating OSH.

To meet the challenges anticipated, some possible OSH strategies are proposed, such as advanced workplace risk assessments, using the unprecedented

opportunities offered by digital technologies (wearables and Big Data), but also taking the new challenges they bring into account. Furthermore, a proactive worker-centred approach in the planning and implementation of digitalisation strategies and a framework to clarify OSH liabilities and responsibilities in relation to new systems and new ways of working is suggested.

This research is intended to inform EU policy-makers, governments, trade unions and employers on how digitalisation could affect workers' safety and health in the EU in the long term and support the design of appropriate OSH research, policies and strategies. It advocates a holistic preventive approach to OSH to minimise the negative impact of the emerging challenges on workers, businesses, the economy and society.

**Links:**

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