EMIR Refit Regulation, June is coming

In this short article, we wanted to remind a major change in the EMIR regulation (i.e. EMIR Refit). One of the provision of the EMIR V.2 transfers the responsibility of reporting by FC's to TR's on behalf of NFC-'s. But is it as great as it looks like?

18th of June, important milestone for EMIR Refit

After a long lockdown period, you may need some fitness to recuperate a good physical shape, as EMIR did with its so-called "Refit". The big date is approaching. On next June the 18th (a famous date for French peers, with the well-known "*appel du 18 juin*"), EMIR regulation will enter a new phase, part of the renegotiation, European associations of treasurers have obtained. As you may remember, the European Commission's Regulatory Fitness and Performance Programme (the so-called REFIT) in respect of the European Market Infrastructure Regulation (EMIR) h s been revisited to be better aligned to corporates' expectations and demands. One of these measures is related to the reporting on behalf of. Under EMIR financial counterparties are required to report trade data to TR (i.e. Trade Repositories), on behalf of their non-financial counterparties who are still below the thresholds (NFC-). It is better known as the Mandatory Reporting, which may oblige, if requested by customer, the bank to report to the TR on its behalf. Of course, it already exists since inception, couple of years ago. Some banks already regularly report financial instruments of some customers, upon demand, on their behalf. But the major change concerns the responsibility.

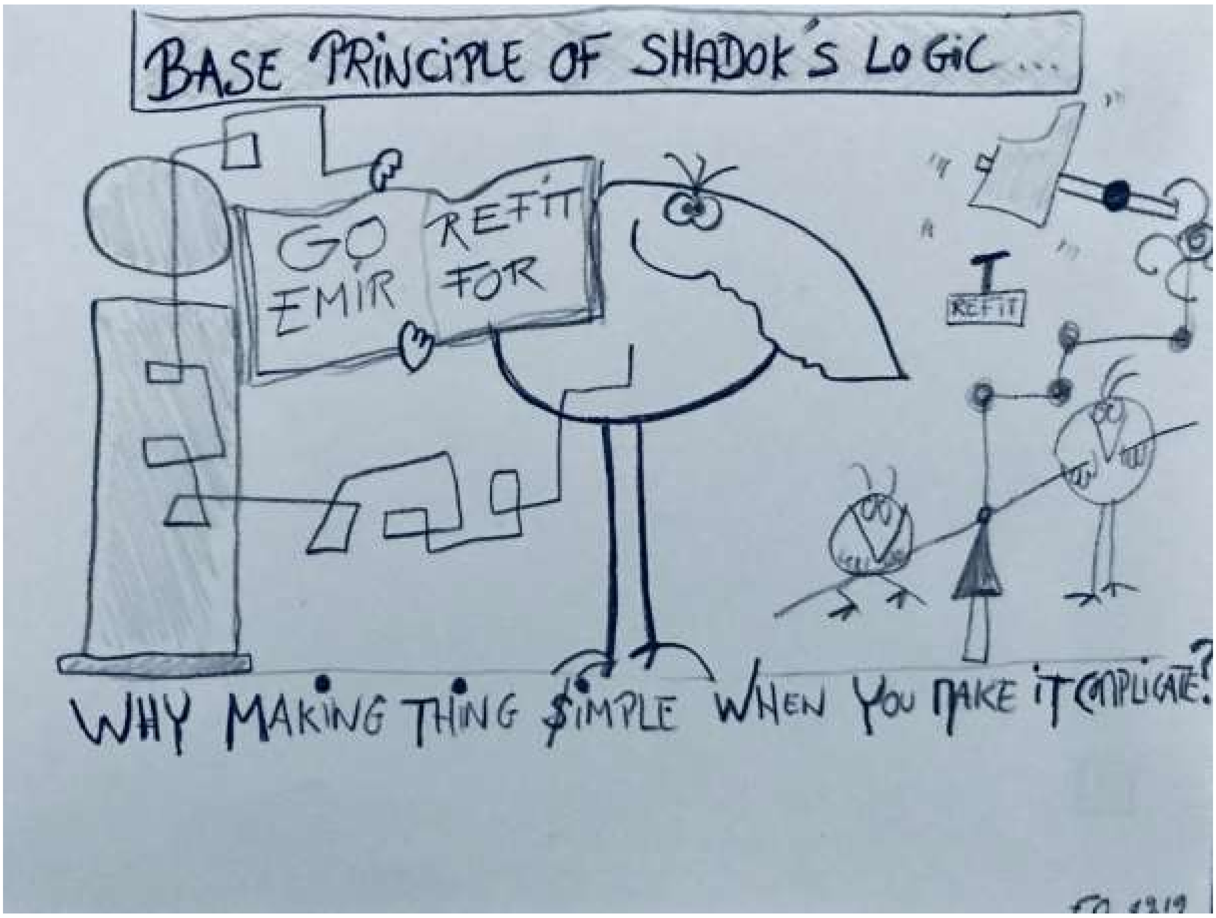
Transfer of reporting responsibility

Starting on 18th if June, the financial institutions will be in charge and responsible for proper reporting. Before, the ultimate responsibility belonged to the customer. In case of error, in case of absence of reporting by the bank, the MNC's was still responsible. As it was a free service in principle, we couldn't complain too much. By now, legally, they are responsible for the reporting on time.

The banks have been required to contact their clients re. EMIR refit to inform about reporting obligations. A customer as for GDPR must decide to opt out or to benefit from bank reporting. Obviously if you have intercompany transactions, it removes part of your obligations, unless you have asked end of last year an exemption for interco reporting. If not, time to do it! For proceeding so, you need to sign a new EMIR Mandatory Reporting Agreement with your banks (one per bank if you decide not to opt out). The new agreement would supersede the former one if you had one in place. It requires a minimum of administration and must be comprehensive to make sure all banks have a signed agreement in place. Better to be safe than sorry, isn't it? Another surprise, I would say, is related to the TR's. Some MNC's had faced problems in the past as some TR's were increasing prices overtime (not all). They thought they could get rid of such unnecessary costs. However, it will not be the case. If you were using luckily a cheap one but now need to move to the bank one (more expensive) it would be too bad. The reporting entity must maintain a TR agreement with the one used by the bank. We do not know where TR prices will go after the reform. TR's may lose part of their former businesses given the new revised EMIR provisions. It seems that banks want logically work with one TR, theirs for efficiency, systems, and cost reasons. It seems that there are discussions between FC's and NFC-'s. At the end of the day, it is rather logical that a (still) free service, including responsibility of the service provider requires a contract (e.g. SLA) and constraints like using their TR. You cannot expect choice for a free service and do not expect the banks to on top on-board your TR costs. It is an issue that is not as crystal clear as it looked like last year. We will see whether customers pay for the TR and use the one of their bankers (i.e. usually DTCC). It is one of the surprises we face with new regulations. Technocrats often forget the practicability of provisions they initiate.

It looks like the intercompany exemption, which was supposed to be automatic and eventually was based on demand by reporting unit, in each country concerned, to each national supervisor, in different languages and different unstandardized formats. It was not that easy to achieve. I am convinced lots of corporates are not compliant. If you are controlled by your local supervisor, be sure it will hit you severely, not financially but on a reputation side.

At least, the treasury associations did their job and have lobbied, negotiated, and informed about changes. EMIR will be easier with reduced but not fully offset costs. Another "EMIRage" I guess.



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