Regulatory Fitness and Performance Programme

REFIT

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Glossary

EMIR > European Market Infrastructure Regulation
ESMA > European Securities and Markets Authority
REFIT > Regulatory Fitness (and performance programme)
RTS > Regulatory Technical Standards
ITS > Implementing Technical Standards
VR > Validation Rules
NFC > Non-Financial Counterparty
FC > Financial Counterparty
FC+ > Financial Counterparty Above the Threshold
FC- > Financial Counterparty Below the Threshold
SFC > Small financial counterparty
NFC+ > Non-Financial Counterparty Above the Threshold
NFC- > Non-Financial Counterparty Below the Threshold
XML > Extensible Markup Language
XSD > Xml Schema Definition
TR > Trade Repository
RSE > Report Submitting Entity
ERR > Entity Responsible for the Reporting
AIF > Alternative Investment Fund
AIFM > Alternative Investment Fund Manager
OTC > Over The Counter
CTP > Counterparty
UPI > Unique Product Identifier
PTRR > Post-Trade Risk Reduction

Introduction

The European Securities and Markets Authority (ESMA) is conducting the regulatory fitness and performance programme (REFIT), aiming to deliver a set of initiatives to benefit both individuals and businesses, whilst simplifying existing EU laws and increasing the quality of the data reported in EMIR. The review concluded that amendments to the EMIR regulation are necessary to combat rising costs and increase regulatory transparency.

Some of these initiatives will consist of aligning the EU regulatory framework to international standards like the definition, format and usage of key data elements and other critical data elements, along with the implementation of XML schemas developed in line with the ISO 20022 methodology for all communications between reporting entities, TRs and authorities. This in combination with other initiatives such as the harmonisation of data quality requirements across TRs and the standardisation of data access for authorities.

The Financial Conduct Authority (FCA) has completed the equivalent consultation of revised UK EMIR rules; however, EU EMIR REFIT and UK EMIR REFIT are on independent timelines, and we can expect some divergence between the two regarding final implementation timeframes.

EMIR REFIT: To Date

The publication of the Regulation (EU) No 2019/834 initiated a set of changes that would have an impact over all RCs.

Decommissioning backloading

With the amendment of Article 9, it is no longer necessary to report non outstanding derivative contracts entered before 12 February 2014.

Redefining the reporting responsibility of intra-group transactions involving NFCs

The reporting obligation no longer applies to derivate contracts concluded within the same group (Intragroup transactions) where at least one of the counterparties is a NFC would be qualified as such if it meets the conditions set out in the regulation.

Redefining the reporting responsibility for NFC- entities

Since 18 June 2020, Financial counterparties are solely responsible and legally liable for the reporting of OTC derivative contracts on behalf of NFCs- and for the correctness of the details reported. However, the possibility for NFC- entities to report the details of their OTC derivative contracts remains dependant on agreement with the financial counterparty.

REFIT establishes two types of permission delegation: mandatory delegation and voluntary delegation.

EMIR REFIT: Future Changes

ESMA published the final report on draft technical standards on 17 December 2020. The report covers the original proposals and focusses on the harmonisation of the reporting requirements and the enhancement of counterparties' and TR's procedures to ensure data quality.

Subsequently, on 13 July 2021 ESMA launched a public consultation on its draft guidelines and published the draft validation rules to clarify the dependencies between data fields and their applicability in the different use cases.

On 10 June 2022 the European Commission endorsed the EMIR REFIT technical standards, opening the three month non-objection period for the European Parliament and Council. Lastly, the non-objection period concluded in September and the new implementing and reporting technical standards were published in the official journal of the European Union, L 262, on 7 October 2022. The timeline dictates that reporting in the new standards will be on the first Monday 18 months after publication in the European journal, thereby setting reporting start date on 29 April 2024.

Lastly, the "final report – guidelines for reporting under EMIR", containing the assessment of the feedback received from stakeholders on key elements of ESMA Guidelines, was released on 20 December 2022. The Guidelines provide clarification regarding the compliance with the EMIR technical standards, aiming to ensure the consistent implementation of the revised rules.

Submitting data to a TR

The Final Report defines the framework for the collection of data and data validation performed by the TRs consisting of:

- **Reporting Format and Schema validations:** ESMA proposes the use of XML schemas developed in line with ISO 20022 methodology for all communications between counterparties and trade repositories (TRs). All submissions should be validated and compliant with the ISO 20022 XML schema definition (XSD). TRs should automatically reject the submissions that are not compliant with the XSD. The final set of two ISO 20022 reports that RSEs will use in their reporting to the TRs is also defined:
  - **DerivativesTradeReport – auth.030.001.03_ESMAUG_DATTAR_1.0.0 – EMIR Refit – Incoming Messages:** will be used by the RSEs to report the derivative transactions to a TR.
  - **DerivativesTradeMarginDataReport – auth.108.001.01_ESMAUG_DATMDA_1.0.0 – EMIR Refit – Incoming Messages:** will be used by the RSEs to report margins exchanged in relation to the derivative transactions.
- **Authorisation / permission:** TRs should only process derivative data from entities that are entitled to report. Therefore, RSEs should clearly identify which entity has made the submission, either in the RC field or the ERR field. TRs must check whether the RSE has permission to report for the entities or parties indicated on the trade message and should reject any unauthorised submissions.

→ **Use of ISO 20022 XML schemas**

Table 1 of the Final Report sets out the population of the fields pertaining to RCs, RSEs and ERRs. You will find how to populate these fields for the different use cases listed below:

- NFC- delegating to FC in accordance with Article 9(1)(a)
- NFC- delegating to FC in accordance with Article 9(1)(a) and FC subdelegating to RSE
- NFC- not delegating to FC
- NFC- not delegating to FC in accordance with Article 9(1)(a) FC delegating to RSE NFC- delegating to RSE2
- NFC+ delegating to FC
- NFC+ delegating to FC and FC subdelegating to RSE
- Fund delegating to Management company / AIFM (IFM)
- Fund delegating to Management Company / AIFM (IFM) who in turns delegates to the CPT
- Fund delegating to Management Company / AIFM (IFM) who in turns delegates to an RSE

- **Logical validation:** TRs should ensure that data follows a logical integrity. Therefore, TRs should check that the report submitted is not modifying an unreported or cancelled derivative. Amendments to terminated and matured derivatives are possible and should be allowed to the extent that the reported amendment took place prior to the termination, or after the derivative is revived.
- **Business rules or content validation:** The content of the validations will be based on the ITS and the additional validation rules provided to TRs and reporting entities prior to the application of the amended reporting standards. These validations will specify dependencies between fields, the conditionality applicable for each field in every action type and the value format permitted for each field.

New and Updated Key Fields

REFIT increases the number of reportable fields to 203 and revisits the reportable values and reporting logic of other fields. The fields are distributed in three tables: Table 1 (Counterparty data) containing 20 fields, Table 2 (Common data) containing 154 fields, and Table 3 (Margin data) containing 29 fields.

Here is a summary of the most important changes:

- **Event Date – NEW:** The date on which the reportable event relating to the derivative contract captured by the report took place or, in case of a modification, when the modification become effective. The date relating to the information contained in the report must be populated.

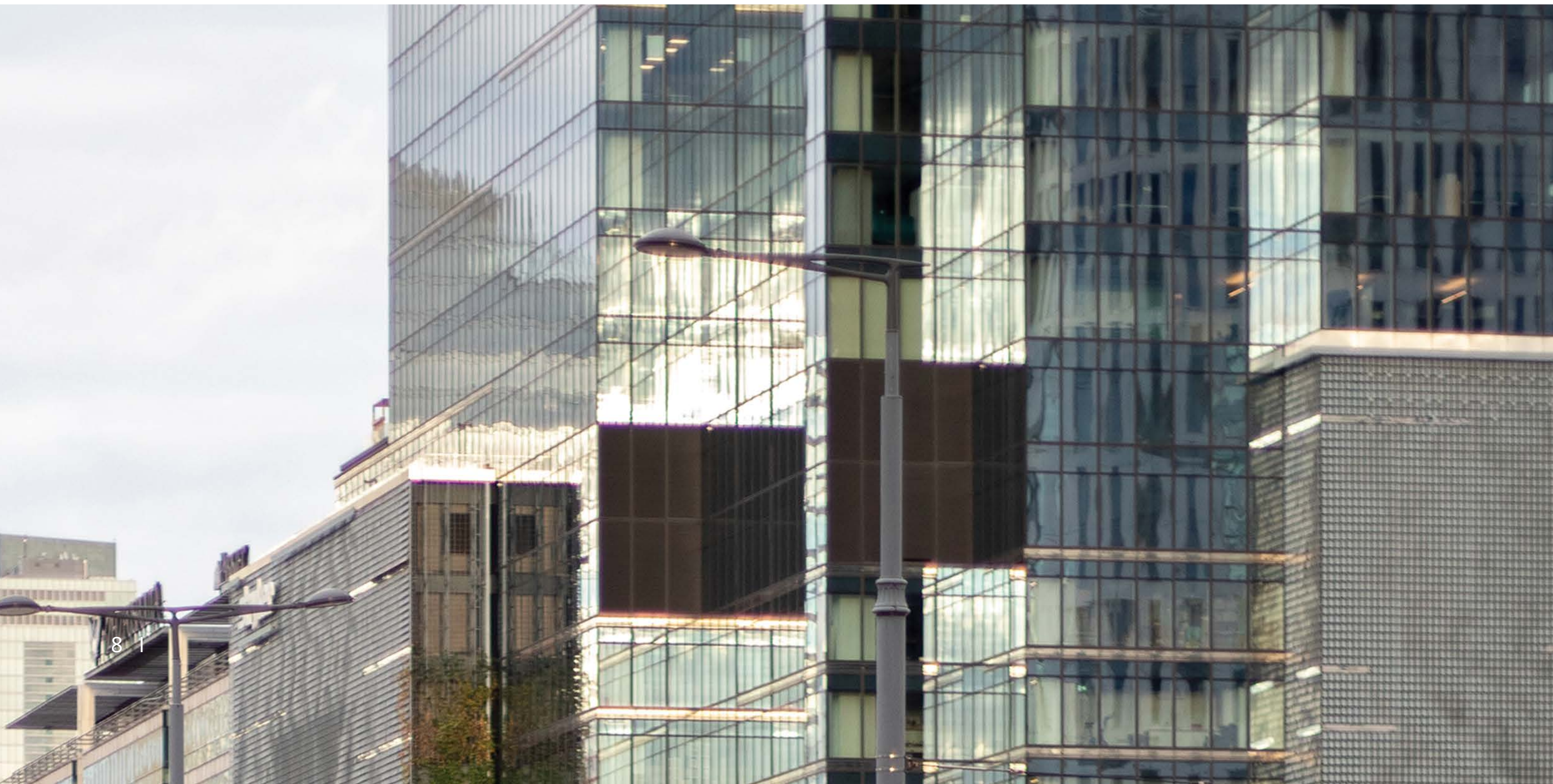
- **Action Type – Updated:** The field logic remains similar to what is currently in place. Values are now defined by a 4-character string and whilst some values remain equivalent, others are grouped or broken down into a single definition:

Value	Usage	New/Equivalent	Validation Rules Definition
NEWT	To report new contracts	Equivalent to current value 'N'	A report of a derivative, at a trade or position level, for the first time.
MODI	To modify an existing contract	Equivalent to the current value 'M'	A modification to the terms or details of a previously reported derivative, at a trade or position level, but not a correction of a report.
CORR	To correct an existing contract	Equivalent to the current value 'R'	A report correcting the erroneous data fields of a previously submitted report.
TERM	To terminate an existing contract	Updated to group up the previous – 'C' for Early Termination and 'Z' for Compression. In combination with the Event Type field, reporting entities will be able to provide the corresponding business logic.	A Termination of an existing derivative, at a trade or position level.
EROR	To cancel an existing contract	Equivalent to the current 'E'	A cancellation of a wrongly submitted entire report in case the derivative, at a trade or position level, never came into existence or was not subject to Regulation (EU) No 648/2012 reporting requirements but was reported to a trade repository by mistake or a cancellation of a duplicate report.*
REVI	To revive an existing contract	New reportable value	Re-opening of a derivative, at a trade or position level, that was cancelled with action type 'Error' or terminated by mistake.
VALU	To valuate an existing contract	Current value 'V' breaks down into two options, VALU and MARU.	An update of a valuation of a derivative, at a trade or position level.
POSC	To report a position component	Equivalent to the current value 'P'	A report of a new derivative that is included in a separate position report on the same day.

* Consultation paper, paragraph 107, " if one counterparty reports 'Error' by mistake, it will not prevent the other counterparty from timely reporting relevant lifecycle events.

- **Event Type - NEW:** this field provides information about the type of business event triggering a given report. The new technical standards and validation rules propose the following values and usage:

Value	Usage
TRAD = Trade	Conclusion of a derivative or renegotiation of its terms that does not result in change of a counterparty
NOVA = Step-In	An event, where part or entirety of the derivative is transferred to a counterparty 2 (and reported as a new derivative) and the existing derivative is either terminated or its notional is modified
COMP = PTRR	Post-trade risk reduction exercise
ETRM = Early termination	Termination of a derivative, at a trade or position level
CLRG = Clearing	Clearing as defined in Article 2(3) of Regulation (EU) No 648/2012
EXER = Exercise	The exercise of an option or a swaption by one counterparty of the transaction, fully or partially
ALOC = Allocation	Allocation event, where an existing derivative is allocated to different counterparties and reported as new derivatives with reduced notional amounts
CREV = Credit event	Applies only to credit derivatives. A credit event that results in a modification of a derivative, at a trade or position level
CORP = Corporate Event	A corporate action on equity underlying that impacts the derivatives on that equity
INCP = Inclusion in Position	Inclusion of CCP-cleared derivative or CFD into a position, where an existing derivative is terminated and either a new position is created or the notional of an existing position is modified
UPDT = Update	Update of an outstanding derivative performed during the transition period in order to ensure its conformity with the amended reporting requirements



- **Entity Responsible for Reporting – NEW:** This field provides information of the ERR as described in the regulation:
  "Where a financial counterparty is solely responsible, and legally liable, for reporting on behalf of both counterparties in accordance with Article 9(1)(a) of Regulation (EU) No 648/2012 of the Parliament and of the Council and the non-financial counterparty does not decide to report itself the details of its OTC derivative contracts with the financial counterparty, the unique code identifying that financial counterparty. Where a management company is responsible, and legally liable, for reporting on behalf of an Undertaking for Collective Investment in Transferable Securities (UCITS) in accordance with Article 9(1)(b) of that Regulation, the unique code identifying that management company. Where an Alternative Investment Fund Manager (AIFM) is responsible, and legally liable, for reporting on behalf of an Alternative Investment Fund (AIF) in accordance with Article 9(1)(c) of that Regulation, the unique code identifying that AIFM. Where an authorised entity that is responsible for managing and acting on behalf of an IORP is responsible, and legally liable, for reporting on its behalf in accordance with Article 9(1)(d) of that Regulation, the unique code identifying that entity. This field is applicable only to the OTC derivatives."

- **Unique Trade Identifier – UPDATE:** This field will be identified through a unique trade identifier agreed by the counterparties. If the counterparties fail to agree, a waterfall approach will be used to determine the entity responsible for generating the UTI.

  The format for new UTIs (action types NEWT and POSC) after REFIT will be restricted to solely upper-case alphabetic characters A-Z or digits 0-9. However, the UTI will be backwards compatible with the current technical standards allowing the use of four special characters: ":", ".", "-", "_" for pre-REFIT contracts.

  Aligning to the UTI structure proposed by CPMI-IOSCO, new UTIs are a concatenated combination of:
  - **20 alphanumerical:** The LEI of the UTI generating entity as it was valid at the moment of generation, and
  - **35 alphanumerical:** A unique value created by the UTI generating entity (where this value only needs to be unique within the set of such values generated by that entity since the combination with the LEI will guarantee uniqueness).

  The uniqueness of the contract for trades newly reported after REFIT go-live will be calculated as the concatenation of Counterparty 1's LEI code and the value UTI.

- **Unique Product Identifier (UPI) – NEW:** This field provides information of the UPI identifying the product. As per the validation rules, the UPI code is in accordance with the ISO standard implemented pursuant to the FSB governance arrangements for the UPI.

- **Prior UTI – NEW:** This field contains the UTI assigned to the predecessor transaction that has given rise to the reported transaction due to a lifecycle event, in a one-to-one relation between transactions (e.g. in the case of a novation, when a transaction is terminated and a new transaction is generated) or in a one-to-many relation between transactions (e.g., in clearing or if a transaction is split into several different transactions).

This data element is not applicable when reporting many-to-one and many-to-many relations between transactions (e.g., in the case of a compression).

- **PTRR set of fields – NEW:** The fields PTRR, PTRR ID and PTRR service provider will provide all the information related to post-trade risk reduction exercises.

- **Direction of Leg 1 / Leg 2 – NEW:** Indicator of whether counterparty 1 or 2 is the payer or the receiver of leg 2 or 1 as determined at the time of the of the conclusion of the derivative.

- **Reporting Obligation of Counterparty 2 – NEW:** Indicator of whether counterparty 2 has a reporting obligation under EMIR.

- **Notional Schedule set of Fields – NEW:** These fields will contain information across different schedules under the conditions set out in the validation rules. RSEs should report the schedule information upfront therefore is no longer required to send a modification message for every change to the notional.

  - Price schedules – Fields 50 to 52
  - Notional amount schedules – Fields 57 to 59 for leg 1 and fields 66 to 68 for leg 2
  - Notional quantity schedules – fields 61 to 63 for leg 1 and fields 70 to 72 for leg 2

- **Package set of fields – NEW:** This set of fields is composed by the package identifier – currently known as 'Complex trade component ID'), the others introduce information on the package price, price currency, transaction spread and transaction spread currency.

→ Annex1 contains a deeper overview of the field-to-field comparison between the current EMIR fields and EMIR REFIT.

Transition Period

The Final Report sets out a transition period of 6 months to update the outstanding contracts to the new REFIT standards.

Derivative contracts can be updated by reporting the next lifecycle event via modification or correction during the transition period. Additionally, contracts can be updated by submitting a modification with the event type "update".

Reporting entities may be able to report valuation updates and margins during the transition period regardless of whether the derivative contract is updated to the REFIT standards.

Furthermore, those derivates contracts still need to be updated to complete the missing information.

Receiving information from a TR

Use of ISO 20022 XML schemas

REFIT enforces the use of XML schemas developed in line with ISO 20022 methodology for all communications between TRs and counterparties.

REFIT defines a minimum set of end-of-day reports that should be made available to RCs, ERRs and RSEs which have been granted access under article 78(7) EMIR.

End of Day Report	
Daily activity report	Based on the **ISO 20022 DerivativesTradeReport – auth.030.001.03_ESMAUG_DATTAR_1.0.0 – EMIR Refit – Incoming Messages** and it contains all daily accepted submissions.
Daily activity report (margins)	Based on the **ISO 20022 DerivativesTradeMarginDataReport – auth.108.001.01_ESMAUG_DATMDA_1.0.0 – EMIR Refit – Incoming Messages** and it contains all daily accepted margin submissions.
Trade-state report	Based on the **ISO 20022 DerivativesTradeStateReport – auth.107.001.01_ESMAUG_DATTSR_1.0.0 – EMIR Refit – Outgoing Messages** and it contains the latest state of the contract and the reconciliation status of every outstanding derivative.
Margin-state report	Based on the **ISO 20022 DerivativesTradeMarginDataTransactionStateReport – auth.109.001.01_ESMAUG_DATMDS_1.0.0 – EMIR Refit – Outgoing Messages** and it contains the latest state of the margins exchanged in relation to the derivatives transactions.
Rejection report	Based on the **ISO 20022 DerivativesTradeRejectionStatisticalReport – auth.092.001.02_ESMAUG_DATREJ_1.3.0 – EMIR Refit – Outgoing Messages** this report should contain all UTIs of derivatives reports which have been rejected, together with the relevant error code for rejection.
Reconciliation status report	Based on the **ISO 20022 DerivativesTradeReconciliationStatisticalReport – auth.091.001.02_ESMAUG_DATREC_1.0.0 – EMIR Refit – Outgoing Messages** and it contains the reconciliation details and status of all the derivatives involved in the reconciliation process.
Missing valuation report	Based on the **ISO 20022 DerivativesTradeWarningsReport – auth.106.001.01_ESMAUG_DATWRN_1.0.0 – EMIR Refit – Outgoing Messages** and it contains the outstanding contracts for which no valuation has been reported, or the valuation that was reported is dated more than 14 days.
Missing valuation collateral	Based on the **ISO 20022 DerivativesTradeWarningsReport – auth.106.001.01_ESMAUG_DATWRN_1.0.0 – EMIR Refit – Outgoing Messages** and it contains the outstanding contracts for which no margin has been reported, or the margin information that was reported is dated more than 14 days.
Abnormal values report	Based on the **ISO 20022 DerivativesTradeWarningsReport – auth.106.001.01_ESMAUG_DATWRN_1.0.0 – EMIR Refit – Outgoing Messages** and it contains the outstanding derivatives which comprise abnormal values.

Reconciliation

The Final Report defines that the number of reconcilable fields increases to 148. The reconciliation process will consider 87 fields in the first reconciliation wave, and a further 61 on the second wave.

- First reconciliation wave starts on the REFIT reporting start date
- Second reconciliation wave starts two years after the REFIT reporting start date

It also defines the reconcilable fields and their reconciliation specificities, rules and tolerances under which the comparison process must be carried out. Valuation-related fields (2.21 to 2.22 and 2.24 to 2.25) have been added to the reconciliation process, but only come into effect in the second wave.

Moreover, it defines that the reconciliation process should start at the earliest possible opportunity after the reporting deadline, i.e. T+1. Once the process is over, the TRs should notify in the reconciliation status report any field which did not reconcile.

Scope of the reconciliation process

The reconciliation process will consider all outstanding, revived, matured, and terminated contracts except:

- Those with a maturity or termination date greater than 30 calendar days
- Those contracts that were cancelled with the action type error
- Those contracts where only one of the counterparties has a reporting obligation.

Reconciliation during the transition period (what happens with non-updated contracts)

Outstanding contracts reported prior to REFIT, will be incorporated to the reconciliation process regardless of whether they are updated to the REFIT new technical standards or not.

Written procedures to amend the reconciliation

In the Final Report (paragraph 68), ESMA proposes that RCs, RSEs and ERRs, should have written procedures in place to resolve any reconciliation break identified during the reconciliation process. These procedures should be internal procedures rather than mutual between the relevant parties.

UK EMIR REFIT

UK EMIR REFIT reporting start date will take place on 30 September 2024. More details can be found in our UK EMIR REFIT brochure available on our website.

REGIS-TR: Your natural choice of TR

We understand that the challenges imposed by EMIR REFIT are significant and we are committed to supporting you through your preparations and the go live of the regime. From the support of your dedicated Relationship Manager and Client Services team, to updated REFIT collateral and information on our website and a series of REFIT preparation videos, we are here to help you every step of the way.

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Further Reading

https://www.esma.europa.eu/press-news/esma-news/esma-publishes-guidelines-and-technical-documentation-reporting-under-emir

https://ec.europa.eu/info/law/derivatives-emir-regulation-eu-no-648-2012/amending-and-supplementary-acts/implementing-and-delegated-acts_en

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2022:262:TOC

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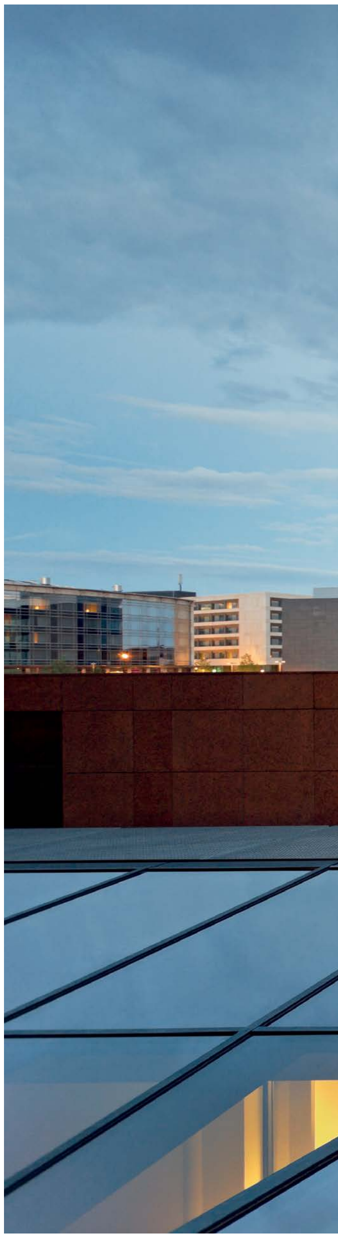

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