

Deloitte regulatory news alert

Law voted - Sanctions for non-respect of EMIR

18 March 2016

On 17 March 2016, the **Law of 15 March 2016** on OTC derivatives, central counterparties and trade repositories has been published in Memorial A.

One particular objective of the Law is to ensure the effective implementation of Regulation (EU) N° 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR).

Powers conferred to the CAA

The CAA is vested with all the supervision, intervention, inspection and investigation powers necessary for the exercise of its functions within the limits defined by EMIR (Article 2).

The CAA is empowered to sanction financial counterparties subject to its supervision for the non-respect of EMIR.

Sanction powers

The CAA can use its power of sanction in case of non-respect of the requirements of

- Article 4 - clearing obligation
- Article 5 - clearing obligation procedure
- Article 9 - reporting obligation
- Article 10 - non-financial counterparties
- Article 11 - risk-mitigation techniques for OTC derivatives contracts not cleared by a central counterparty

Furthermore, in the application of the provisions of the Regulation (EU) N° 648/2012, the before mentioned counterparties can be sanctioned if they:

- Publish inaccurate, false or incomplete information
- Refuse to provide the requested documents
- Provide inaccurate, false or incomplete documents or information when requested
- Interfere with the exercise of the supervision, intervention and inspection powers of the CAA
- Do not comply with the CAA injunctions

The following sanctions may be pronounced by the CAA, depending on the severity of the breach:

- A warning
- A blame
- An administrative fine (from 125 EUR to 1.500.000 EUR)
- A withdrawal of the authorisation to exercise one or more operations and/or activities

The sanctions will be published by the CAA.

Deloitte Assistance

Deloitte Luxembourg has a proven track record of helping firms perform EMIR requirements review.

We have developed an efficient methodology and toolkit to identify the gaps and propose remediating actions, in line with:

- Risk Mitigation Techniques (portfolio reconciliation, portfolio compression, daily valuation of trades, dispute resolution, timely confirmation, exchange of collateral – as from September 1st, 2016)
- Daily reporting to the competent authority (including delegated reporting)
- Collateral (margin requirements) and clearing obligations

Our team includes local and international regulatory experts to bring our clients insight regarding leading practices in managing EMIR regulatory compliance and other connected regulations (MiFIR, SFTR, CSDR, UCITS V, AIFMD).

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