

## Deloitte regulatory news alert

### Draft Law 6846 voted - Sanctions for non-respect of EMIR

**2 March 2016**

On 23 February 2016, the Luxembourg Parliament voted the Draft Law 6846 on OTC derivatives, central counterparties and trade repositories (Draft Law). A request to waive the second vote was introduced.

One particular objective of the Draft 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).

In this context, the *Commission de Surveillance du Secteur Financier* (CSSF) is responsible to ensure the correct application of EMIR.

#### Powers conferred to the CSSF

The CSSF 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 CSSF is empowered to sanction financial counterparties and non-financial counterparties subject to its supervision for the non-respect of EMIR (Article 3).

#### Sanction powers

The CSSF 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 CSSF
- Do not comply with the CSSF injunctions

The following sanctions may be pronounced by the CSSF, 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 CSSF.

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