

# THE RELEVANCE OF EMIR FOR NON-FINANCIAL ACTORS

doing OTC business in non-regulated markets  
with volumes of more than EUR 1-3 billion  
gross notional value

Implications of Regulation 648/2012 on OTC derivatives,  
central counterparties and trade repositories (EMIR) in selected  
CEE/SEE countries

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This 2015 Wolf Theiss brochure, "**THE RELEVANCE OF EMIR FOR NON-FINANCIAL ACTORS** doing OTC business in non-regulated markets with volumes of more than EUR 1-3 billion gross notional value", is intended as a practical guide to the general principles and features of the basic legislation and procedures with respect to the Regulation 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR) in the countries included in this publication.

While every effort has been made to ensure that this publication was accurate when finalised, it should be used only as a general reference guide and should not be relied upon as definitive for planning or making legal decisions. In these rapidly changing legal markets, the laws and regulations are frequently revised, either by amended legislation or by administrative interpretation.

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# EUROPEAN LEGISLATIVE BACKGROUND

## **European legislation**

The European regulation on OTC derivatives, central counterparties and trade repositories ("EMIR") is directly applicable under national law in all EU member states and entered into force on 16 August 2012. Commission Delegated Regulations 148/2013, 149/2013, 150/2013, 151/2013, 152/2013 and 153/2013 ("Delegated Regulations") supplementing EMIR entered into force on 15 March 2013. Commission Implementing Regulations 1247/2012, 1248/2012 and 1249/2012 ("Implementing Regulations") implementing EMIR entered into force on 10 January 2013. Implementing Regulations and Delegated Regulations are also directly applicable under national law in all EU member states.

## **Implementation provisions**

Because of the direct applicability of the regulation in each EU member state (currently excluding the three EEA partners as the EEA Joint Committee has not adopted EMIR), no implementation provisions were necessary for the implementation of the regulation itself. However, provisions in the regulations stating for example that member states shall lay down the rules on penalties applicable to violations of the rules under EMIR and will take all measures necessary to ensure that they are implemented, including at least administrative fines, open the field for different provisions in EU member states.

## **Focus of EMIR**

EMIR, the Implementing Regulations and the Delegated Regulations are primarily focused on implementing (i) centralized clearing obligations for certain classes of OTC derivatives, (ii) the obligation to apply risk mitigation techniques for non-centrally cleared OTC derivatives, (iii) the general obligation to report OTC derivatives to trade repositories, (iv) the application of a wide range of requirements for central counterparties ("CCPs"), and (v) the application of a wide range of requirements for trade repositories ("TReps"), including the obligation to make certain data available to the public and relevant authorities.

## **Basic EMIR principles**

Basically, EMIR states that all OTC derivatives have to be cleared with a CCP. Certain exceptions where such a clearing obligation is not applicable are provided (Article 4 in connection with Article 10 EMIR). EMIR brought a fundamental change concerning the target group of regulatory OTC clearing obligations: in addition to financial counterparties, non-financial counterparties having a seat in the European Union, and any other entity established in a third country outside of the EU that would be subject to the clearing obligation if it were established in the EU, fall under EMIR (Article 4 (1) (iv - v EMIR)). For example, if two entities (one established in Switzerland and one established in Ukraine) close an OTC derivative contract that would be subject to the clearing obligation if the Swiss company or the Ukrainian company were established in the EU, and it has a direct, substantial and foreseeable effect within the Union, such contract would have to be cleared with a CCP complying with EMIR. As it can be seen from this example, the scope of application for EMIR also for non-EU companies crosses EU borders. Therefore, the legal set up and internal structuring for OTC deals are a critical concern for EU and non-EU companies.

## **Non-financial counterparties falling under EMIR**

- Any company established in the EU which is not an investment firm, credit institution, insurance company, reinsurance undertaking, UCIT or UCIT manager, pension scheme system, AIFM managed fund (Article 2 EMIR), whose positions in OTC derivative contracts are not used for hedging purposes, which exceeds any of the EMIR clearing thresholds of (Chapter VII EU/149/2013):

- (i) EUR 1 billion in gross notional value for OTC credit derivative contracts;
- (ii) EUR 1 billion in gross notional value for OTC equity derivative contracts;
- (iii) EUR 3 billion in gross notional value for OTC interest rate derivative contracts;
- (iv) EUR 3 billion in gross notional value for OTC foreign exchange derivative contracts;
- (v) EUR 3 billion in gross notional value for OTC commodity derivative contracts and other OTC derivative contracts not provided for under points (i) to (v).

and the execution of such derivatives does not take place on a regulated EU market (MiFID Definition) or a non-EU equivalent third-country market (which list is not yet published by ESMA).

- Any company not established in the EU which is not an investment firm, credit institution, insurance company, reinsurance undertaking, UCIT or UCIT manager, pension scheme system, AIFM managed fund (Article 4 EMIR), those positions against:
  - (i) an EU financial counterparty or an EU non-financial counterparty; or
  - (ii) a non-EU financial counterparty or a non-EU non-financial counterparty with one or more positions that have a direct, substantial and foreseeable effect within the EU or where the applicability of EMIR to the position(s) is necessary or appropriate to prevent the evasion of any provisions of EMIR in the EU,

in OTC derivative contracts not used for hedging purposes and exceeding any of the EMIR clearing thresholds of (Chapter VII EU/149/2013):

- (i) EUR 1 billion in gross notional value for OTC credit derivative contracts;
- (ii) EUR 1 billion in gross notional value for OTC equity derivative contracts;
- (iii) EUR 3 billion in gross notional value for OTC interest rate derivative contracts;
- (iv) EUR 3 billion in gross notional value for OTC foreign exchange derivative contracts;
- (v) EUR 3 billion in gross notional value for OTC commodity derivative contracts and other OTC derivative contracts not provided for under points (i) to (iv), and the execution of such derivatives does not take place on a regulated EU market (MiFID Definition) or a non-EU equivalent third-country market (a list is not yet published by ESMA).

#### **Underlyings falling under EMIR with respect to non-financial sector underlyings**

Underlyings are defined indirectly to include underlyings which can be used for MiFID Annex I Section C 5 - 10:

- (i) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties for reasons other than a default or other termination event;
- (ii) Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on an MTF;
- (iii) Options, futures, swaps, forwards and any other derivative contracts relating to commodities that can be physically settled, not otherwise mentioned in (ii) and not being for commercial purposes, which have the characteristics of other derivative financial instruments, with regard to whether they are cleared

and settled through recognised clearing houses or are subject to regular margin calls;

- (iv) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties for reasons other than a default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned so far, which have the characteristics of other derivative financial instruments, with regard to whether they are traded on a MTF, are cleared and settled through recognised clearing houses, or are subject to regular margin calls.

### **Unresolved questions with respect to non-financial sector underlying**

Due to the specifics of the non-financial sector and the variety of trades which may occur there following its implementation, EMIR opened certain questions on the categorisation of the non-financial contracts entered into by the non-financial market participants in the course of their regular business. These include, for instance, the questions about the differentiation between energy spot and energy derivatives, the application of the criteria to physically settled contracts on emission allowances, and the differentiation between contracts entered into for hedging and contracts for commercial purposes. Yet, it is not a pure EMIR issue, as it uses the MiFID definition. Therefore, it is expected that the implementation of MiFID 2 and execution of MiFIR will trigger fundamental changes in the commodity markets, including by amending the definition of derivative financial instruments.

### **Timeline for complying with EMIR obligations**

The general EMIR reporting obligation has been in effect since 12 February 2014, following which all non-financial counterparties were required to report each new position in OTC derivative contracts entered into for commercial purposes. Although the reporting and obtaining of the LEI number as a pre-requisite for this initially caused some confusion among the market players, the notifications duties are much more clear for the non-financial counterparties now, which was primarily driven by the request of the financial counterparties toward the non-financial ones to comply with EMIR. What is forthcoming now is the obligation for the mandatory clearing which is the second key aspect of EMIR. Unlike the reporting requirement, the mandatory clearing will affect only the big players and will be effective for those non-financial counterparties categorised as non-financial counterparties (which exceed certain threshold of derivatives trade) when they enter into a specific class of derivative with a financial counterparty, or another non-financial counterparty. On August 6, 2015 the European Commission has adopted its first delegated regulation / RTS with respect to clearing obligations, ruling that certain interest rate OTC derivatives classes are subject to the clearing obligation. Depending under which category the financial counterparty / non-financial counterparty falls, the following phase-in periods apply:

- (i) For counterparties in category 1, 6 months after the entry into force of the RTS.
- (ii) For counterparties in category 2, 12 months after the entry into force of the RTS.
- (iii) For counterparties in category 3, 18 months after the entry into force of the RTS.
- (iv) For counterparties in category 4, 3 years after the entry into force of the RTS.

In a simplified scheme: the first category includes both financial counterparties and non-financial counterparties which, on the date of entry into force of the delegated regulation, are clearing members of at least one of the relevant CCPs and for at least one of the classes of interest rate OTC derivatives subject to the clearing obligation; the second and third category comprises financial counterparties not included in the first category, grouped according to their levels of legal and operational capacity regarding OTC derivatives; and the fourth category includes non-financial counterparties not included in the other three categories. The clearing obligation for these interest rate OTC derivatives classes will enter into force subject to scrutiny by the European Parliament and Council of the EU.

The next delegated regulation, for which at this point in time no draft has been endorsed by the European Commissions, will concern clearing obligations for credit default swaps. For equity and FX derivatives the timeline for the respective delegated regulations has not been published yet.

#### **Administrative Fines for EMIR violations**

According to Article 12 EMIR the member states must implement administrative national fines and publication obligations regarding EMIR violations.

#### **Competent Authority on European Level**

European Securities and Markets Authority (ESMA)

**Authorized CCPs established in the EU (Status 5.8.2015)**

CCP	Country	Competent authority	Date of authorisation
Nasdaq OMX Clearing AB	Sweden	Finansinspektionen	18.03.2014
European Central Counterparty N.V.	Netherlands	De Nederlandsche Bank (DNB)	01.04.2014
KDPW_CCP	Poland	Komisja Nadzoru Finansowego (KNF)	08.04.2014
Eurex Clearing AG	Germany	Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	10.04.2014
Cassa di Compensazione e Garanzia S.p.A. (CCG)	Italy	Banca d'Italia	20.05.2014
LCH.Clearnet SA	France	Autorité de Contrôle Prudentiel et de Résolution (ACPR)	22.05.2014
European Commodity Clearing	Germany	Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	11.06.2014
LCH.Clearnet Ltd	UK	Bank of England	12.06.2014
Keler CCP	Hungary	Central Bank of Hungary (MNB)	04.07.2014
CME Clearing Europe Ltd	UK	Bank of England	04.08.2014
CCP Austria Abwicklungsstelle für Börsengeschäfte GmbH (CCP.A)	Austria	Austrian Financial Market Authority (FMA)	14.08.2014
LME Clear Ltd	UK	Bank of England	03.09.2014
BME Clearing	Spain	Comisión Nacional del Mercado de Valores (CNMV)	16.09.2014
OMIClear - C.C., S.A.	Portugal	Comissão do Mercado de Valores Mobiliários (CMVM)	31.10.2014
ICE Clear Netherlands B.V.1	Netherlands	De Nederlandsche Bank (DNB)	12.12.2014
Athens Exchange Clearing House (Athex Clear)	Greece	Hellenic Capital Market Commission	22.01.2015

**Authorized CCPs established outside of the EU (Status 7.5.2015)**

CCP	Country	Competent authority	Date of authorisation
ASX Clear (Futures) Pty Limited	Australia	Australian Securities and Investments Commission Reserve, Bank of Australia	27.04.2015
ASX Clear Pty Limited	Australia	Australian Securities and Investments Commission Reserve, Bank of Australia	27.04.2015
Hong Kong Securities Clearing Company Limited	Hong Kong	Hong Kong Monetary Authority Hong Kong Securities and Futures Commission	27.04.2015
HKFE Clearing Corporation Limited	Hong Kong	Hong Kong Monetary Authority, Hong Kong Securities and Futures Commission	27.04.2015
OTC Clearing Hong Kong Limited	Hong Kong	Hong Kong Monetary Authority, Hong Kong Securities and Futures Commission	27.04.2015
The SEHK Options Clearing House Limited	Hong Kong	Hong Kong Monetary Authority, Hong Kong Securities and Futures Commission	27.04.2015
Japan Securities Clearing Corporation	Japan	Prime Minister of Japan, Commissioner of the Financial Services Agency of Japan	27.04.2015
Tokyo Financial Exchange	Japan	Prime Minister of Japan, Commissioner of the Financial Services Agency of Japan	27.04.2015
Central Depository (Pte) Limited	Singapore	Monetary Authority of Singapore	27.04.2015
Singapore Exchange Derivatives Clearing	Singapore	Monetary Authority of Singapore	27.04.2015

**AUSTRIA**

### **Competent national authority responsible for the supervision and execution of EMIR**

In Austria, the authority responsible for the supervision of central counterparties, trade repositories, financial and non-financial counterparties and their activities is the Austrian Financial Market Authority (Finanzmarktaufsichtsbehörde – “FMA”).

### **National implementation laws and regulations**

EMIR, the Delegated Regulations and the Implementing Regulations (“EMIR Regulations”) are directly applicable in Austria. The Austrian Law on Central Counterparties (Zentrale Gegenparteien-Vollzugsgesetz – “ZGVG”), which entered into force on 14 November 2012, executes and manages the EMIR Regulations. In addition to the ZGVG, EMIR also triggered amendments to other existing Austrian regulatory legislation, including the Financial Market Supervising Authority Act (Finanzmarktaufsichtsbehördengesetz – “FMAG”) and the Finality Act (Finalitätsgesetz – “FinalG”).

### **Competent national authority’s measures to control central counterparties**

According to article 3 ZGVG, the FMA is entitled at any time to:

1. review and request copies of books, documents and data-media of the central counterparty;
2. request information from central counterparties and their representatives and to summon and question persons according to the administrative procedure laws;
3. execute on-the-spot audits through auditors, auditor firms or other experts;
4. request the Austrian National Bank (“OENB”) to audit central counterparties; OENB’s competence for on-the-spot audits over central counterparties comprehensively covers all business segments and risk types; OENB is obliged to take measures, including having sufficient personnel and organisational resources, to execute the audits; FMA is authorized to let its own personnel participate in the OENB’s audits;
5. request central counterparties to provide the FMA with existing records of telephone calls and data transfers;
6. request the central counterparties’ auditors to provide information to the FMA;
7. report to the public prosecutor’s office or a security authority, if the FMA suspects the commission of a criminal offence under Section 78 of the Austrian Criminal Procedure Code.

### **National rules on penalties applicable to violations of EMIR and national law provisions**

If a financial counterparty, non-financial counterparty or a central counterparty does not comply with the provisions of EMIR or ZGVG, after conducting an administrative penal proceeding, the FMA will punish such company’s representatives personally (Section 9 Austrian Administrative Penal Proceedings Law (“VStG”)), with a fine in the amount of up to EUR 150.000,00 (Section 6 ZGVG). In addition, the FMA is allowed to, and, for violation of rules under Articles 4,5,7,8,9,10 and 11 EMIR, is obliged to make public the company’s violation of the EMIR / ZGVG rules. In such cases the publication could only be prevented if it seriously jeopardises the financial markets or causes disproportionate damage to the parties involved.

### **Derivative trades on the following regulated markets do not fall under EMIR**

- Wiener Börse AG Amtlicher Handel (Official Market)
- Wiener Börse AG Geregelter Freiverkehr (Second Regulated Market)

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**BULGARIA**

### **Competent national authority responsible for the supervision and execution of EMIR**

In Bulgaria, the supervision over financial and non-financial counterparties is within the competence of the Bulgarian Financial Supervision Commission ("FSC") (Комисия за Финансов Надзор – "КФН") which ensures compliance of their activity with EMIR.

### **National implementation laws and regulations**

EMIR, the Delegated Regulations and the Implementing Regulations ("EMIR Regulations") are directly applicable across the European Union and do not require Bulgaria as a Member State to pass further implementing legislation. Therefore, no specific legal act has been introduced in Bulgaria to transpose EMIR. The only local legislative changes resulting from the EMIR Regulations were those implemented with regard to the administrative control over EMIR compliance. Those were amendments as of December 2013 to the Financial Supervision Commission Act, ("FSCA"), promulgated in the State Gazette, vol. 8/28 January 2003, (Закон за Комисията за Финансов Надзор – "ЗКФН"), and the Market in Financial Instruments Act ("MiFIA"), promulgated in the State Gazette, vol. 52/29 June 2007, effective as of 1 November 2007 (Закон за Пазарите на Финансови Инструменти – "ЗПФИ").

### **Competent national authority's measures to control central counterparties**

Bulgarian law does not permit specific local measures with regard to the control over the activities of central counterparties. Though this has been discussed for more than a decade now among the market participants and certain draft bills have been proposed by the FSC, Bulgaria is still lacking regulation on clearing houses. Local financial and non-financial counterparties must use central counterparties authorised to offer services and activities in the European Union.

### **National rules on penalties applicable to violations of EMIR and national law provisions**

For breach of Title II of EMIR, i.e., "Clearing, Reporting and Risk Mitigation of OTC Derivatives", the Bulgarian Financial Supervision Commission may sanction the individuals committing the violations by fines in the range of BGN 5,000 (approximately EUR 2,500) to BGN 20,000 (approximately EUR 10,000) and with double sanctions for repeated breach. The Market in Financial Instruments Act (ЗПФИ) further envisages that breaches by legal entities and sole entrepreneurs are to be sanctioned by fines in the range of BGN 10,000 (approximately EUR 5,000) to BGN 40,000 (approximately EUR 20,000) and by double sanctions for repeated breach. Pursuant to the FSCA (ЗКФН) the members of the FSC are entitled to access the office premises and the information systems of financial and non-financial counterparties and to request explanations in writing, documents and other data from any financial and non-financial counterparties, for which indications exist that they are violating EMIR. The FSC has the authority to issue administrative acts for violations of EMIR.

### **Derivative trades on the following regulated markets do not fall under EMIR**

- БЪЛГАРСКА ФОНДОВА БОРСА (Bulgarian Stock Exchange)

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**CROATIA**

### **Competent national authority responsible for the supervision and execution of EMIR**

The Croatian Financial Services Supervisory Agency (Hrvatska agencija za nadzor financijskih usluga – "HANFA") and the Croatian National Bank (Hrvatska narodna banka – "HNB") are the bodies that supervise the implementation of EMIR in the Republic of Croatia. HANFA is obliged to supervise financial and non-financial counterparties, excluding credit institutions which are supervised by the HNB.

### **National implementation laws and regulations**

The EMIR Regulations are directly applicable in Croatia since Croatia's accession to the EU on 1 July 2013. The Croatian Act on Implementation of the EU Regulation 648/2012 (Zakon o provedbi Uredbe (EU) br. 648/2012 – "ZOPU") which entered into force on 1 July 2013 executes and manages the obligation under EMIR. In addition to ZOPU, the Croatian Capital Market Act (Zakon o tržištu kapitala) and the Credit Institutions Act (Zakon o kreditnim institucijama) are also applicable to EMIR implementation in Croatia.

### **Competent national authority's measures to control central counterparties**

According to ZOPU, HANFA is authorised to:

1. request from central counterparties access to: (i) and copy of any document in any form; and (ii) any existing records of telephone calls and data transfers;
2. request from central counterparties access to all required data, statements and to summon and question persons;
3. perform on-the-spot inspections, with or without prior notification;
4. when necessary, request any data, documents and statements and inspect the business activities of the following persons: (i) persons closely connected with the central counterparties that are subject to HANFA's supervision; (ii) individuals / legal entities with whom the supervised central counterparties have externalised a business process; and (iii) qualifying investors of the central counterparties;
5. cooperate with all other competent bodies, including HNB.

When a violation is established, HANFA may: (i) order the termination of wrongful conduct; (ii) issue a warning; (iii) order the suspension of trading with a financial instrument (or abolish a suspension that it has already ordered); and (iv) order the blocking of a financial instrument. In addition, HANFA may: (v) temporarily prohibit the performance of activities for which the supervised entity has a license / approval issued by HANFA; (vi) abolish the licence / approval; or (vii) order appropriate measures that contribute to maintaining lawful conduct.

HANFA is allowed to make public actions taken resulting from violations of the EMIR Regulations and the ZOPU public. In such cases publication can only be prevented should the publication seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

According to ZOPU, HNB performs supervisory activities pursuant to the laws regulating credit institutions.

### **National rules on penalties applicable to violations of EMIR and national law provisions**

If a financial counterparty, non-financial counterparty or a central counterparty does not comply with the provisions of EMIR or provisions of ZOPU, HANFA will punish such company with a fine in the amount of up to HRK 500,000 (approximately EUR 67,000), and its responsible representatives with a fine of up to HRK 50,000 (approximately EUR 6,700). In addition, for not complying with the provisions of EMIR or the provisions of ZOPU, fines may also be imposed on the: (i) trading venue, in the amount of up to HRK 500,000 (approximately EUR 67,000); responsible persons will be punished with a fine in the amount of up to HRK 50,000 (approximately EUR 6,700); (ii) clearing members, in the amount of up to HRK 150,000 (approximately EUR 20,000); responsible persons will be punished with a fine in the amount of up to HRK 30,000 (approximately EUR 4,000); and (iii) qualifying investors, in the amount of up to HRK 150,000 (approximately EUR 67,000); responsible persons (in the case of legal entities) will be punished with a fine in the amount of up to HRK 30,000 (approximately EUR 4,000).

### **Derivative trades on the following regulated markets do not fall under EMIR**

- Zagrebačka Burza (Zagreb Stock Exchange)

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**CZECH REPUBLIC**

### **Competent national authority responsible for the supervision and execution of EMIR**

Act No. 256/2004 Coll., on business activities on the capital market, as amended (the "Capital Market Act"), provides for the regulation of the financial market in the Czech Republic. The Czech National Bank (the "CNB") supervises and executes EMIR in the Czech Republic. The CNB will, at the national level, cooperate with ESMA.

### **National implementation laws and regulations**

EMIR Regulations have been implemented into Czech law by Act No. 241/2013 Coll., on amending certain acts with respect to the adoption of the act on investment companies and investment funds and the adoption of a directly applicable EU regulation on the clearing of certain derivatives (the "Implementing Act"). The Implementing Act amended the Capital Market Act and Act No. 15/1998 Coll., on supervision in the capital market sector, as amended (the "Capital Market Supervision Act") and came into effect on 19 August 2013.

### **Competent national authority's measures to control central counterparties**

The CNB controls the performance of the obligations set forth by EMIR Regulations and national laws. In addition to the regular obligatory reporting, which aims to guarantee better overall supervision, the CNB is, under Sec. 4(1) and Sec. 8(1) of the Capital Market Supervision Act, authorised to:

1. request information from anyone, including auditors;
2. request clarification of facts from anyone;
3. request provision of records, reports or associated data transmitted via electronic communications networks;
4. perform on-the-spot control; for the purpose of such control, the CNB can invite an auditor, an audit company or an expert to be present at the on-the-spot control; and
5. request publishing of information that is required to be published.

Financial counterparties, non-financial counterparties as well as CCPs are obliged to collaborate and comply with the CNB's demands and requests. In case they do not comply, the CNB may impose a disciplinary fine up to the amount of CZK 5,000,000 (approximately EUR 185,000). The disciplinary fine can be imposed repeatedly up to a total amount of CZK 20,000,000 (approximately EUR 740,000).

### **National rules on penalties applicable to violations of EMIR and national law provisions**

The CNB is authorised to impose (i) financial penalties as well as (ii) non-financial measures for any breach of EMIR Regulations and national laws. In case a financial counterparty, non-financial counterparty or a CCP does not comply with the provisions of EMIR Regulations, Capital Market Act and / or Capital Market Supervision Act, i.e., does not perform its duties or breaches any prohibition, the CNB can impose a fine up to the amount of CZK 10,000,000 (approximately EUR 370,000). The CNB can also impose remedial measures such as:

1. order an extraordinary audit;
2. order a change in the auditor;
3. suspend the performance of a supervised activity for up to 5 years;
4. prohibit the performance of supervised activities; and
5. request publishing of, or publish itself, information that is required to be published.

**Derivative trades on the following regulated markets do not fall under EMIR**

- Burza Cenných Papírů Praha, a.s. (Prague Stock Exchange)
- Power Exchange Central Europe, a.s. (Power Exchange Central Europe)
- RM-Systém, Česká Burza Cenných Papírů a.s. (RM-System)

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**HUNGARY**

### **Competent national authority responsible for the supervision and execution of EMIR**

In Hungary, the authority responsible for the supervision of central counterparties, trade repositories, financial and non-financial counterparties and their activities is the Hungarian National Bank (Magyar Nemzeti Bank – “MNB”).

### **National implementation laws and regulations**

The EMIR Regulations are directly applicable in Hungary. In order to properly execute and manage the obligations under the EMIR Regulations, Act XCVIII of 2013 has been issued which amended existing Hungarian regulatory legislation, the Capital Market Act, Act on Settlement Finality in Payment and Securities Settlement Systems. Detailed provisions on the regulatory powers of MNB are set forth in Act CXXXIX of 2013 on the National Bank of Hungary (“MNB Act”).

### **Competent national authority's measures to control central counterparties**

According to subheading 27 (control procedure) of the MNB Act, the MNB is entitled to conduct on-site audits. On-site audits may be conducted at any location where evidence necessary for ascertaining the relevant facts of the case can be found. Within their sphere of authority, persons conducting the audit may

1. enter premises necessary for conducting the audit;
2. inspect documents, data storage media, objects, and work procedures related to the object of the inspection;
3. request and prepare information and statements from an inspected person, its representatives, and any other persons at the site of the inspection; and
4. carry out trial transactions.

In the interest of ascertaining the relevant facts of a case, any person or organisation is required to provide requested information in writing and to send to the MNB documents relating to the object of the inspection.

MNB may also use any documents, data or other evidence acquired legally within the framework of its proceedings in the course of other proceedings. MNB is authorised to prepare a hard mirror image of any data storage media and to inspect the data stored on the data storage media using the copy.

### **National rules on penalties applicable to violations of EMIR and national law provisions**

If a financial counterparty, non-financial counterparty or a central counterparty does not comply with the provisions of EMIR or the relevant Hungarian laws, the MNB may take various measures against and impose sanctions on the non-compliant party as specified in detail in the MNB Act and in the Capital Market Act. Such measures and sanctions include initiating the dismissal of executive employees or initiating disciplinary actions against an employee, calling an extraordinary general meeting and specifying a mandatory agenda, ordering the disclosure of specific data or information, requiring the submission of a restoration plan, appointing a regulatory commissioner, and issuing an official warning.

The MNB also has the power to impose administrative fines in the amount of up to HUF 2 billion (approximately EUR 6,6 million), or up to 200% of the annual supervision fee (including both the minimum charge and the variable-rate fee) if this is higher than HUF 2 billion (approximately EUR 6,6 million). Fines which can be imposed on directors and executive employees range from HUF 100,000 (approximately EUR 330), to HUF 20 million (approximately EUR 66,000). Fines imposed on a director or an executive employee may not be covered by the audited organisation.

**Derivative trades on the following regulated markets do not fall under EMIR**

- Budapesti Értéktőzsde (Budapest Stock Exchange)

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**POLAND**

### **Competent national authority responsible for the supervision and execution of EMIR**

In Poland, the authorities responsible for the supervision of central counterparties, trade repositories, financial and non-financial counterparties and their activities are the Polish Financial Supervision Authority (Komisja Nadzoru Finansowego – “KNF”) and the National Depository of Securities (Krajowy Depozyt Papierów Wartościowych – “KDPW”).

### **National implementation laws and regulations**

The EMIR Regulations are directly applicable in Poland. In order to properly execute and manage the obligations under the EMIR Regulations, Poland has already implemented changes in the Polish Act on Trading in Financial Instruments (Ustawa o obrocie instrumentami finansowymi) and the Polish Act on Capital Markets Supervision (Ustawa o nadzorze nad rynkiem kapitałowym) by legislation dated 28 June 2012, 24 October 2012, 24 April 2014 and 5 December 2014. Apart from implementing measures required by the EMIR Regulations, the amendments also implemented Regulation No. 236/2012 on short selling and certain aspects of credit default swaps. The last changes entered into force on 16 July 2015.

### **Competent national authority’s measures to control central counterparties**

According to the implementing measures applied under EMIR, the KNF is the competent administrative body for regulatory filings relating to a CCP license. As such, KNF is entitled to exercise administrative control over CCPs, including the right to request information relating to their functioning and financial standing as well as the right to direct audits. KNF’s competences are as in EMIR. The procedure of requesting information from national authorities of other Member States is regulated by agreements concluded with them. The KDPW is authorised to assign Legal Entity Identifiers and to collect information on financial instruments transactions.

### **National rules on penalties applicable to violations of EMIR and national law provisions**

If a financial counterparty, non-financial counterparty or a central counterparty does not comply with the provisions of EMIR or national legislation, the KNF will be entitled to impose fines on such companies. According to the current draft, the fine may amount up to 10% of turnover disclosed in the latest financial statement; but not exceeding PLN 10,000,000 (approximately EUR 2,4 million) in the case of financial counterparties and CCPs and PLN 1,000,000 (approximately EUR 244,000) in the case of non-financial counterparties. Such penalties would be subject to the completion of required administrative proceedings against the infringing parties. Beside penalties, the KNF may prohibit CCPs from investing, profits distributing or performing transactions in the case of probable violation of interests of market participants or a non-performance of obligations towards its members. There are also criminal sanctions provided for revealing or usage of confidential information otherwise than specified in EMIR: up to 3 years of imprisonment and up to PLN 1,000,000 fine.

### **Derivative trades on the following regulated markets do not fall under EMIR**

- Bondspot Securities Market
- Warsaw Stock Exchange / Bonds / Catalyst / Main Market
- Warsaw Stock Exchange / Commodity Derivatives
- Warsaw Stock Exchange / Financial Derivatives
- Warsaw Stock Exchange / Etps
- Warsaw Stock Exchange / Equities / Main Market

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**ROMANIA**

### **Competent national authority responsible for the supervision and execution of EMIR**

In Romania, the authority responsible for the supervision of central counterparties, trade repositories, financial and non-financial counterparties and their activities is the Romanian Financial Supervisory Authority (Autoritatea de Supraveghere Financiară – “FSA”, formerly called the National Securities Commission).

### **National implementation laws and regulations**

EMIR Regulations are directly applicable in Romania. In order to properly execute and manage the obligations under the EMIR Regulations the FSA has issued certain implementing regulations as follows: (i) Regulation no. 3/2013 on the authorisation and functioning of CCPs which entered into force on 30 August 2013, as amended (“FSA Regulation no. 3”); (ii) Regulation no. 6/2013 issued in accordance with the provisions of article 12(1) of EMIR, regarding the sanctions regime which entered into force on 21 January 2014 (“FSA Regulation no. 6”); and (iii) Regulation no. 12/2014 regarding the interoperability arrangements between CCPs which entered into force on 22 July 2014.

Besides these regulations, the FSA issued Norm no. 6/2014 on the application of the ESMA Guidelines and recommendations regarding written agreements between members of colleges of CCPs.

The following laws should also be observed: Law no. 297/2004 on capital markets, as amended (the “Romanian Capital Markets Law”); Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, as amended; and the Government Emergency Ordinance no. 93/2012 regarding the establishment, organisation and functioning of the FSA, as amended.

### **Competent national authority’s measures to control central counterparties**

The FSA is empowered to supervise the activity of CCPs and may:

1. require them to communicate data, information and documents;
2. organise inspections at their premises;
3. require them to make available all the necessary documents, indicating the means and the deadline for their delivery; and
4. ask them to amend their regulations in order to comply with the relevant applicable legal provisions.

### **National rules on penalties applicable to violations of EMIR and national law provisions**

If a financial counterparty (including the members of the administrative / supervisory board, directors and the representatives of the internal control department), a non-financial counterparty, a CCP (including its “board”, “independent board” and “senior management”, as defined in EMIR), or a market / system operator which manages a trading venue (including the members of the administrative / supervisory board, directors and the representatives of the internal control department) does not comply with the provisions of EMIR or of FSA Regulation no. 6 or of FSA Regulation no. 3, the FSA may sanction such entities in accordance with the provisions of the Romanian Capital Markets Law, which may consist of:

1. warnings;
2. fines (i.e., fixed fines which may range from RON 1,000 (approximately EUR 225) to RON 100,000 (approximately EUR 22,500) or a percentage which may range from 0.1% to 10% of the turnover achieved by the infringer or, if no turnover is

achieved, a fine ranging from RON 10,000 (approximately EUR 2,250) to RON 2,500,000 (approximately EUR 563,063));

3. suspension of the authorisation; and
4. withdrawal of authorisation, or temporary prohibition from carrying out certain activities and services or temporary prohibition from holding a certain office.

In addition the FSA should publish the company's violation of the EMIR provisions or of the above mentioned national regulations. The publication may be prevented only if it seriously jeopardises the financial markets or causes disproportionate damage to the parties involved.

**Derivative trades on the following regulated markets do not fall under EMIR**

- Sibex-Sibiu Stock Exchange SA (Derivatives Regulated Market)
- Sibex-Sibiu Stock Exchange SA (Spot Regulated Market)
- Bucharest Stock Exchange (Derivatives Regulated Market)
- Bucharest Stock Exchange (Spot Regulated Market)

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**SLOVAKIA**

### **Competent national authority responsible for the supervision and execution of EMIR**

In Slovakia, the authority responsible for the supervision and execution of EMIR is the National Bank of Slovakia (in Slovak: Národná banka Slovenska, "NBS") under its function as financial market supervisor.

### **National implementation laws and regulations**

EMIR, the Delegated Regulations and the Implementing Regulations ("EMIR Regulations") are directly applicable in the Slovak Republic. In order to properly execute and manage the obligations under the EMIR Regulations, the Act No.132/2013 Coll. was passed (entering into force on 10 June 2013) and amended, inter alia, by the Act. No. 483/2001 Coll. on Banks, the Act No. 566/2001 Coll. on Securities and Investment Services, the Act No. 747/2004 on Supervision of the Financial Market and in amendments and supplements to certain laws the Act No. 186/2009 Coll. on Financial Intermediation and Financial Counselling and in amendments and supplements to certain other acts. Further, NBS adopted recommendations and guidelines which must be observed.

### **Competent national authority's measure to control central counterparties**

NBS controls the central counterparties as well as due performance of obligations set forth by the EMIR Regulations and national laws. Within the scope of this control, NBS is authorised to, inter alia:

1. request information and documents pertaining to the supervised entities and their activities;
2. review due compliance with national and EU laws and obligations under the licenses;
3. request cooperation from the supervised entities and their employees;
4. enter the premises of the supervised entities;
5. request explanations, opinions and other oral and written information pertaining to the supervision.

Supervised parties are obliged to cooperate and comply with NBS's demands and requests. In case of non-compliance NBS may impose a disciplinary fine in the maximum amount of EUR 5,000 (natural person) and EUR 50,000 (legal entity).

### **National rules on penalties applicable to violations of EMIR and national law provisions**

NBS is authorised to impose financial penalties and non-financial measures for breach of EMIR Regulations and national laws, such as:

1. a fine in the amount of EUR 330 to 664,000;
2. measures to eliminate and revise any identified deficiencies;
3. an obligation to submit separate statements, notifications and messages;
4. an order to publish correction of incomplete, incorrect or false mandatorily published information.

### **Derived trades on the following regulated markets do not fall under EMIR**

- Burza cenných papierov v Bratislave, a.s.

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**SLOVENIA**

### **Competent national authority responsible for the supervision and execution of EMIR**

In Slovenia, the authority responsible for the supervision of central counterparties, trade repositories, financial and non-financial counterparties and their activities is the Slovenian Securities Market Agency (Agencija za trg vrednostnih papirjev – "ATVP").

### **National implementation laws and regulations**

The EMIR Regulations are directly applicable in Slovenia. The Slovenian Decree on the implementation of the Regulation (EC) on OTC derivatives, central counterparties and trade repositories (Uredba o izvajanju Uredbe (EU) o izvedenih finančnih instrumentih OTC, centralnih nasprotnih strankah in repozitorijih sklenjenih poslov – "SloDec"), which has entered into force on 30 March 2013, executes and manages the obligations under the Emir Regulations.

### **Competent national authority's measures to control central counterparties**

According to Article 4 SloDec the ATVP conducts supervision:

1. by monitoring, collecting and verifying the published information and reports and notices of persons, who are required under EMIR and the Decree, or any other provisions in respect of EMIR, to report to the ATVP;
2. by acquiring information and inspection of operations in accordance with Article 21 of EMIR;
3. by imposing control measures from Article 5 of SloDec which impose measures necessary to remedy any infringements, and to impose a fine in accordance with Article 5 of SloDec.

The rules stipulated by the Slovenian Financial Instruments Market Act (Zakon o trgu finančnih instrumentov – "ZTFI") govern the decision process of the ATVP in each individual case as applicable.

### **National rules on penalties applicable to violations of EMIR and national law provisions**

If a financial counterparty, non-financial counterparty or a central counterparty does not comply with the provisions of EMIR or SloDec, after conducting an administrative proceeding, the ATPV will punish such company's representatives personally (Article 7 of the SloDec) with a fine in the amount of up to EUR 10,000. A fine may also be imposed on the company itself in the amount of up to EUR 250,000, depending on the size of the company and the magnitude of the violation. Furthermore, the ATVP is allowed to make public the company's violation of the EMIR or SloDec. In such cases the publication could only be prevented if the publication seriously jeopardises the financial markets or causes disproportionate damage to the parties involved.

### **Derivative trades on the following regulated markets do not fall under EMIR**

- Ljubljana Stock Exchange Official Market

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**UKRAINE**

On 27 June 2014, Ukraine signed the Association Agreement with the EU which beginning from 1 November 2014 applies provisionally and will become fully effective upon its ratification by the EU Member States, the European Parliament and Verkhovna Rada of Ukraine (the Parliament of Ukraine). The Association Agreement contemplates binding provisions on Ukraine to align its laws and policies with those of the EU, including the regulation and supervision of financial services. Although EMIR is not specifically listed, the Association Agreement does refer to the principal EU banking, securities and market infrastructure directives.

Turning to the internal laws, Ukraine has not yet introduced legislation governing the derivatives market. The Ukrainian Government committed to developing the draft law on derivative financial instruments by the end of 2015. In the absence of a developed regulatory framework, the Ukrainian market for derivatives is generally recognised as being undeveloped and undersized. The volume of transactions on the OTC market is rather insignificant with practically all transactions being done on exchanges. Cross-border transactions in derivatives and other financial instruments by Ukrainian residents are restricted by currency control laws and regulations of the National Bank of Ukraine (the "NBU").

However, recently the NBU has slightly liberalised the market in derivatives by allowing exchanges to trade in selected derivatives including currency, metals and interest rate derivatives. Based on these new rules, certain Ukrainian exchanges have approved standard form derivative documentations with the regulators and started trading.

In terms of market infrastructure, Ukraine currently operates as a central securities depository system with all Ukrainian securities except for government securities and municipal bonds being processed by the depository of the National Bank of Ukraine. The single settlement center has been established to service DVP settlements for both exchange and OTC transactions in securities. Due to the lack of other licensed clearing houses at the moment, the settlement center is the only institution which is allowed to function as a central counterparty. The principles of its work though are still behind the established international practice, and derivative instruments are still not part of its operation. These issues are expected to be settled by the law on derivative financial instruments.

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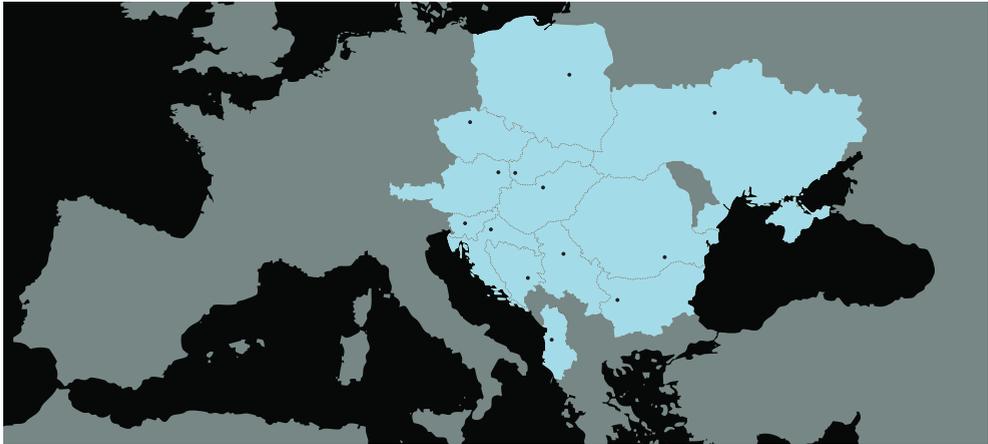
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# LIST OF ABBREVIATIONS

<b>CCP</b>	Central Counterparty as defined in Article 2(1) EMIR
<b>Delegated Regulations</b>	Commission Delegated Regulations 148/2013, 149/2013, 150/2013, 151/2013, 152/2013 and 153/2013
<b>EMIR</b>	Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories
<b>EMIR Regulations</b>	Commission Implementing Regulations 1247/2012, 1248/2012 and 1249/2012
<b>OTC</b>	Over the Counter as defined in Article 1 (1) EMIR
<b>TRep</b>	Trade Repository as defined in Article 2 (2) EMIR
<b>MiFID</b>	Markets in Financial Instruments Directive
<b>MiFIR</b>	Markets in Financial Instruments Regulation

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