

## **OTC DERIVATIVES, CENTRAL COUNTERPARTIES AND TRADE REPOSITORIES**

**Law of 15 March 2016 on OTC derivatives, central counterparties and trade repositories and transposing:**

**Directive 2013/14/EU of the European Parliament and of the Council of 21 May 2013 amending Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) and Directive 2011/61/EU on Alternative Investment Funds Managers in respect of over-reliance on credit ratings; and**

**implementing:**

- 1. Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009;**
- 2. 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; and**
- 3. Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies; and**

**amending:**

- 1. the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;**
- 2. the Law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAVs) and pension savings associations (ASSEPs), as amended;**
- 3. the Law of 10 November 2009 on payment services, as amended;**
- 4. the Law of 17 December 2010 relating to undertakings for collective investment, as amended;**
- 5. the Law of 28 October 2011 implementing Regulation (EC) No 1060/2009 of 16 September 2009; and**
- 6. the Law of 12 July 2013 on alternative investment fund managers, as amended.**

(Mém. A 2016, No. 39)

**as amended by:**

- the Law of 30 May 2018 on markets in financial instruments and:
  1. transposing Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;
  2. transposing Article 6 of Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits;
  3. implementing Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012;
  4. amending:
    - (a) the Law of 5 April 1993 on the financial sector, as amended;
    - (b) the Law of 23 December 1998 establishing a financial sector supervisory commission

- (“Commission de surveillance du secteur financier”), as amended;
  - (c) the Law of 5 August 2005 on financial collateral arrangements, as amended;
  - (d) the Law of 7 December 2015 on the insurance sector, as amended; and
  - (e) the Law of 15 March 2016 on OTC derivatives, central counterparties and trade repositories and amending different laws relating to financial services; and
5. repealing the Law of 13 July 2007 on markets in financial instruments, as amended, with the exception of its Article 37

(Mém. A 2018, No 446)

– the Law of 20 July 2022

1° amending:

- (a) the Law of 15 March 2016 on OTC derivatives, central counterparties and trade repositories and amending different laws relating to financial services, as amended;
- (b) the Law of 23 December 1998 establishing a financial sector supervisory commission (“Commission de surveillance du secteur financier”), as amended;
- (c) the Law of 5 August 2005 on financial collateral arrangements, as amended;
- (d) the Law of 19 May 2006 transposing Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, as amended;
- (e) the Law of 24 May 2011 on the exercise of certain rights of shareholders in listed companies, as amended;
- (f) the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended; and
- (g) Grand-ducal Regulation of 18 December 1981 on fungible deposits of precious metals and amending Article 1 of Grand-ducal Regulation of 17 February 1971 on the circulation of securities; and

2° implementing Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132

(Mém. A 2022, No 371)

## **Chapter 1 – OTC derivatives, central counterparties and trade repositories**

**Article 1.** (1) The CSSF is the competent authority responsible for carrying out, pursuant to 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, the duties with respect to authorisation and supervision of central counterparties established in Luxembourg, without prejudice to the duties of the Banque centrale du Luxembourg under the Treaty on the Functioning of the European Union and the Statute of the European System of Central Banks and of the European Central Bank. The CSSF shall ensure the compliance by the central counterparties with the provisions of Titles IV and V of Regulation (EU) No 648/2012 and is the competent authority for the purposes of applying Article 54 of that regulation. The CSSF is also competent to withdraw the authorisation of a central counterparty pursuant to Article 20 of Regulation (EU) No 648/2012.

(2) The CSSF is the competent authority to ensure that the financial counterparties (...) <sup>1</sup> and the non-financial counterparties comply with the provisions of Title II of Regulation (EU) No 648/2012.

“By way of derogation from the first subparagraph, the” <sup>2</sup> Commissariat aux Assurances is the competent authority to ensure that the financial counterparties subject to its supervision comply with the provisions of Title II of Regulation (EU) No 648/2012.

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<sup>1</sup> Law of 20 July 2022

<sup>2</sup> Law of 20 July 2022

Moreover, the CSSF and the Commissariat aux Assurances are the competent authorities for the purposes of applying Article 88(2) of Regulation (EU) No 648/2012 in accordance with their respective competences.

(3) Without prejudice to paragraph 4, the CSSF is the competent authority referred to in Title VI of Regulation (EU) No 648/2012 in Luxembourg.

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"(3a) The CSSF, as the competent authority designated in paragraph 1, is also the competent authority in Luxembourg for the recovery of central counterparties under Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132, hereinafter "Regulation (EU) 2021/23".

(4) In Luxembourg, the Commissariat aux Assurances is the competent authority referred to in Title VI of Regulation (EU) No 648/2012, where a trade repository is an entity authorised by or registered at the Commissariat aux Assurances.

(5) For the purposes of applying Regulation (EU) No 648/2012, the CSSF may exchange information and cooperate with the competent authorities of other Member States, the European Commission, the European Securities and Markets Authority, the European Banking Authority, the European Central Bank, the Banque centrale du Luxembourg and the other members concerned of the European System of Central Banks, within the limits, under the conditions and according to the terms defined by that regulation.

**Article 2.** (1) For the purposes of applying Regulation (EU) No 648/2012 "and Regulation (EU) 2021/23"<sup>3</sup>, the CSSF has all the powers of supervision, intervention, inspection and investigation which are necessary to exercise its functions within the limits set in the above-mentioned "regulations"<sup>4</sup>.

The powers of the CSSF include the right to:

1. have access to any document in any form whatsoever, and to receive a copy of it;
2. request information from financial counterparties subject to its supervision "pursuant to Article 1(2)"<sup>5</sup>, non-financial counterparties, central counterparties and trading venues including persons who are successively involved in the transmission of orders or execution of the operations concerned, as well as their principals, and if necessary, to summon and hear any person;
3. carry out on-site inspections and investigations at financial counterparties subject to its supervision "pursuant to Article 1(2)"<sup>6</sup>, central counterparties and trading venues;
4. require financial counterparties subject to its supervision "pursuant to Article 1(2)"<sup>7</sup>, non-financial counterparties, central counterparties and trading venues to communicate the existing telephone and existing data traffic records;
5. order financial counterparties subject to its supervision "pursuant to Article 1(2)"<sup>8</sup>, non-financial counterparties, central counterparties and trading venues to cease any practice that is contrary to Regulation (EU) No 648/2012.

(2) For the purposes of applying Regulation (EU) No 648/2012, the Commissariat aux Assurances has all the powers of supervision, intervention, inspection and investigation which are necessary to exercise its functions within the limits set in the above-mentioned regulation.

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<sup>3</sup> Law of 20 July 2022

<sup>4</sup> Law of 20 July 2022

<sup>5</sup> Law of 20 July 2022

<sup>6</sup> Law of 20 July 2022

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<sup>8</sup> Law of 20 July 2022

The powers of the Commissariat aux Assurances include the right to:

1. have access to any document in any form whatsoever, and to receive a copy of it;
2. request information from financial counterparties subject to its supervision, including persons who are successively involved in the transmission of orders or execution of the operations concerned, as well as their principals, and if necessary, to summon and hear any person;
3. carry out on-site inspections or investigations at financial counterparties subject to its supervision;
4. require financial counterparties subject to its supervision to communicate the existing telephone and data traffic records;
5. order financial counterparties subject to its supervision to cease any practice that is contrary to Regulation (EU) No 648/2012.

**Article 3.** (1) The CSSF may sanction:

1. financial counterparties subject to its supervision "pursuant to Article 1(2)"<sup>9</sup> and non-financial counterparties for non-compliance with the provisions laid down in Articles 4, "4a,"<sup>10</sup> 5, 9, 10 or 11 of Regulation (EU) No 648/2012 or with the measures taken in execution of these articles;
2. central counterparties for non-compliance with the provisions laid down in Articles 7, 9, 15, 16, 26 to 31 or 33 to 53 of Regulation (EU) No 648/2012 or with the measures taken in execution of these articles;
3. trading venues for non-compliance with the provisions laid down in Article 8 of Regulation (EU) No 648/2012 or with the measures taken in execution of this article;
4. financial counterparties subject to its supervision "pursuant to Article 1(2)"<sup>11</sup>, non-financial counterparties, central counterparties and trading venues in cases where, in the framework of or pursuant to the provisions of Regulation (EU) No 648/2012 or measures taken in execution of this regulation:
  - a) they publish information that is incomplete, incorrect or false;
  - b) they refuse to provide documents or other requested information required by the CSSF for the purposes of applying Regulation (EU) No 648/2012;
  - c) they provided documentation or other information that is incomplete, incorrect or false;
  - d) they preclude the performance of the powers of supervision, intervention and, where applicable, inspection and investigation of the CSSF;
  - e) they fail to act in response to the orders of CSSF issued in accordance with point (5) of Article 2(1);

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- "5. central counterparties as well as the members of their management body, their effective directors or any other natural person responsible for the breach, in case of failure:
  - a) to comply with the requirements laid down in 9(1) to (4), Article 9(6), the first subparagraph of Article 9(7), Article 9(9) to (11), Article 9(13) and (14) and Article (16) to (21) of Regulation (EU) 2021/23;
  - b) to submit their recovery plan to the CSSF, as required under Article 10(1) of Regulation (EU) 2021/23; or
  - c) by the central counterparty to maintain at all times a sufficient amount of instruments of ownership, as required under Article 35(1);
6. clearing members subject to its supervision as well as the members of their management body, their effective directors or any other natural person responsible for the breach, in case of failure to comply with Article 9(23) of Regulation (EU) 2021/23."

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<sup>9</sup> Law of 20 July 2022

<sup>10</sup> Law of 20 July 2022

<sup>11</sup> Law of 20 July 2022

(2) The Commissariat aux Assurances may sanction financial counterparties subject to its supervision where:

1. they do not comply with the provisions laid down in Articles 4, 5, 9, 10 or 11 of Regulation (EU) No 648/2012 or with the measures taken in execution of these articles;
2. in the framework of or pursuant to the provisions of Regulation (EU) No 648/2012 or its implementing measures, they publish information that is incomplete, incorrect or false;
3. in the framework of or pursuant to the provisions of Regulation (EU) No 648/2012 or measures taken in execution of this regulation, they refuse to provide documents or other requested information required by the Commissariat aux Assurances for the purposes of applying Regulation (EU) No 648/2012;
4. in the framework of or pursuant to the provisions of Regulation (EU) No 648/2012 or measures taken in execution of this regulation, they provided documents or other information that is incomplete, incorrect or false;
5. in the framework of or pursuant to the provisions of Regulation (EU) No 648/2012 or measures taken in execution of this regulation, they preclude the performance of the powers of supervision, intervention, inspection and investigation of the Commissariat aux Assurances;
6. in the framework of or pursuant to the provisions of Regulation (EU) No 648/2012 or measures taken in execution of this regulation, they fail to act in response to the orders of the Commissariat aux Assurances issued in accordance with point (5) of Article 2(2).

(3) "For breaches referred to in points (1) to (4) of paragraph 1, the"<sup>12</sup> CSSF and the Commissariat aux Assurances may issue, in order of gravity:

1. a warning;
2. a reprimand;
3. an administrative fine amounting to not less than EUR 125 and not more than EUR 1,500,000, or if the infringement procured direct or indirect pecuniary benefit to the persons referred to in this article, a fine of an amount that cannot be less than the profit made or exceed five times that amount;
4. a prohibition, either limited in time or permanent, to carry out one or several activities or transactions on a category of financial instruments or to provide certain services.

When imposing a sanction, the CSSF and the Commissariat aux Assurances take into account the nature, the duration and the gravity of the infringement, the conduct and the background of the natural or legal person to be sanctioned, the damage to third parties and the advantages or profits which could have been or which were made through the infringement.

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"(3a) For breaches referred to in points (5) and (6) of paragraph 1, the CSSF may issue:

1. a warning or reprimand;
2. a public statement which indicates the natural person, central counterparty, or other legal person responsible and the nature of the breach;
3. an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;
4. a temporary ban to exercise functions in a central counterparty against any member of the management body or the authorised management of the central counterparty or any other natural person, who is held responsible;
5. the suspension of the exercise of the voting rights attached to the shares or units held by the shareholders or members held responsible for the breaches referred to in points (5) and (6) of paragraph 1;
6. in the case of a legal person, administrative fines of up to EUR 5,000,000 or 10 per cent of the total annual net turnover of that legal person in the preceding business year. Where the legal person is a subsidiary of a parent undertaking, the relevant turnover shall be the

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<sup>12</sup> Law of 20 July 2022

- turnover resulting from the consolidated accounts of the ultimate parent undertaking in the preceding business year;
7. in the case of a natural person, administrative fines of up to EUR 5,000,000;
  8. administrative fines of up to twice the amount of the benefit derived from the breach where that benefit can be determined.

When determining the type of administrative sanctions or other administrative measures and the level of administrative fines, the CSSF shall take into account all the circumstances provided for in Article 85 of Regulation (EU) 2021/23."

(4) The CSSF and the Commissariat aux Assurances publish on their website, without undue delay, the sanctions imposed pursuant to this article for infringements to Articles 4, 5 and 7 to 11 of Regulation (EU) No 648/2012, in accordance with Article 12(2) of that regulation. "The CSSF publishes on its website, without undue delay, the decisions imposing an administrative sanction or measure which are into force (*force de chose décidée*) or which have become res judicata (*force de chose jugée*) and which were issued pursuant to this article for breach of Articles 9, 10 and 35 of Regulation (EU) 2021/23, in accordance with Article 83 of that regulation."<sup>13</sup>

Any information published pursuant to the first subparagraph shall remain on the website of the CSSF and of the Commissariat aux Assurances for five years.

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"Personal data of natural persons contained in the publications referred to in the first subparagraph shall only be kept on their website for a maximum period of 12 months."

**Article 4.** An action for reversal against the decisions adopted by the CSSF or by the Commissariat aux Assurances in implementation of this law may be brought before the *Tribunal administratif* (Administrative Tribunal).

(Law of 20 July 2022)

## **"Chapter 1a – Resolution of central counterparties**

### **Article 4-1. Resolution authority and competent minister**

(1) The CSSF is the resolution authority in Luxembourg within the meaning of Article 3(1) of Regulation (EU) 2021/23.

The CSSF shall exercise the tasks and powers conferred on it as the resolution authority by this law and by Regulation (EU) 2021/23 through the Resolution Board referred to in Article 4 of the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended.

Any reference to the Resolution Board in this law shall be read as a reference to the CSSF in its capacity as resolution authority in Luxembourg.

(2) The Resolution Board and the Executive Board of the CSSF and the various services and departments reporting to these bodies shall closely cooperate when drawing up, planning and applying the resolution decisions of central counterparties. The Resolution Board shall carry out the resolution functions independently from the supervisory functions of the CSSF.

(3) The Minister responsible for the financial sector is the competent minister to exercise the functions assigned to the "competent ministry" under Article 3(8) of Regulation (EU) 2021/23. The Resolution Board shall inform, without delay, the Minister responsible for the financial sector of draft decisions which lead, immediately or in the future, to a call for public support, irrespective of the form

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<sup>13</sup> Law of 20 July 2022

of support or which may have systemic consequences. These draft decisions shall be subject to prior approval by the Minister responsible for the financial sector. Where such a decision has systemic implications, the Resolution Board shall inform the Comité du risque systémique (Systemic Risk Committee) thereof.

#### **Article 4-2. Sanctions and other administrative measures**

(1) As part of its remit, the Resolution Board may impose administrative sanctions and other administrative measures referred to in paragraph 2:

1. on central counterparties, members of the management body, as well as on other natural persons responsible for the breach, in case of breach of Article 13, Article 15(3), Article 16(3), (6) and (7), the first subparagraph of Article 27(6), the first subparagraph of Article 29(3), Article 39, Article 70(1) and Article 75(2) of Regulation (EU) 2021/23;
2. on clearing members, members of the management body, as well as on other natural persons responsible for the breach, in case of breach of letter (b) of Article 15(3), the second subparagraph of Article 29(3), Article 31(1) and Article 51(1).

(2) The Resolution Board may impose one or several of the following sanctions and measures:

1. a warning or reprimand;
2. a public statement which indicates the natural person, central counterparty, or other legal person responsible and the nature of the breach;
3. an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;
4. a temporary ban to exercise functions in a central counterparty against any member of the management body or the authorised management of the central counterparty or any other natural person, who is held responsible;
5. the suspension of the exercise of the voting rights attached to the shares or units held by the shareholders or members held responsible for the breaches referred to in paragraph 1;
6. in the case of a legal person, administrative fines of up to EUR 5,000,000 or 10 per cent of the total annual net turnover of that legal person in the preceding business year. Where the legal person is a subsidiary of a parent undertaking, the relevant turnover shall be the turnover resulting from the consolidated accounts of the ultimate parent undertaking in the preceding business year;
7. in the case of a natural person, administrative fines of up to EUR 5,000,000;
8. administrative fines of up to twice the amount of the benefit derived from the breach where that benefit can be determined.

When determining the type of administrative sanctions or other administrative measures and the level of administrative fines, the Resolution Board shall take into account all the circumstances provided for in Article 85 of Regulation (EU) 2021/23.

#### **Article 4-3. Remedies**

(1) Any decision to take a resolution action under Regulation (EU) 2021/23 may be subject to proceedings for annulment before the *Tribunal administratif* (Administrative Tribunal) within one month from the date of notification of the decision or, where applicable, of its publication as referred to in Article 72(3) of Regulation (EU) 2021/23, or else shall be time-barred.

It shall be carried out in accordance with the Law of 21 June 1999 laying down the rules of procedure of administrative courts, as amended, except the derogations laid down in this article.

The proceedings shall not have suspensive effect.

(2) Where it is necessary to protect the interests of third parties acting in good faith who have acquired shares, other instruments of ownership, assets, rights or liabilities of a central counterparty under resolution by virtue of the use of a resolution tool or exercise of a resolution power by the Resolution Board, the annulment of a decision of the Resolution Board shall not affect any subsequent

administrative acts or transactions concluded by the Resolution Board which were based on the annulled decision. In that case, remedies for a wrongful decision or action by the Resolution Board shall be limited to compensation for the loss suffered by the applicant as a result of the decision or act.

(3) Within two working days from the publication referred to in Article 72(3) of Regulation (EU) 2021/23, a stay of execution or safeguards may be filed with the President of the *Tribunal administratif* (Administrative Tribunal) under the conditions of Article 11 and 12 of the Law of 21 June 1999 laying down the rules of procedure of administrative courts. The referral to the President of the *Tribunal administratif* (Administrative Tribunal) shall not have suspensive effect.

The decisions referred to in paragraph 1 shall appear in the form of a mere presumption according to which the suspension of enforcement of the decision would be against the public interest.

(4) The courts hearing the case shall adjudicate urgently by taking into account the circumstances surrounding the decision taken and, in particular, complex economic assessments of the facts carried out by the Resolution Board or, where applicable, by the supervisory authority.

#### **Article 4-4. Remedies in relation to administrative sanctions**

The decisions taken by the Resolution Board pursuant to this chapter to issue an administrative sanction or to take any other administrative measure in accordance with Article 4-2 may be referred to the *Tribunal administratif* (Administrative Tribunal) which deals with the substance of the case. The action shall be filed within one month, or else shall be time-barred.

#### **Article 4-5. Publication of decisions**

(1) The Resolution Board shall publish on its website, in accordance with the arrangements provided for in Article 83 of Regulation (EU) 2021/23, the decisions imposing an administrative sanction or measure which are into force (*force de chose décidée*) or which have become res judicata (*force de chose jugée*) and which were issued due to a breach referred to in Article 4-2(1).

(2) The Resolution Board shall ensure that any decision published in accordance with this article remains available on its website for a period of five years following its publication.

Personal data of natural persons contained in the publications referred to in the first subparagraph shall only be kept on the website for a maximum period of 12 months."

### **Chapter 2 – Amending provisions<sup>14</sup>**

(Law of 30 May 2018)

#### **"Chapter 3 – Transitional and final provisions"**

(Law of 30 May 2018)

**"Article 10-1.** The CSSF may grant the following exemptions:

1. until 3 January 2021, the clearing obligation set out in Article 4 of Regulation (EU) No 648/2012 and the risk mitigation techniques set out in Article 11(3) thereof shall not apply to C6 energy derivative contracts as defined in Article 1, point 8, of the Law of 30 May 2018 on markets in financial instruments (hereinafter "C6 energy derivative contracts") entered into by non-financial counterparties that meet the conditions in Article 10(1) of Regulation (EU) No 648/2012 or by non-

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<sup>14</sup> These provisions are not included in this coordinated version

financial counterparties that shall be authorised for the first time as investment firms as from 3 January 2018; and

2. until 3 January 2021, such C6 energy derivative contracts shall not be considered to be OTC derivative contracts for the purposes of the clearing threshold set out in Article 10 of Regulation (EU) No 648/2012.

C6 energy derivative contracts benefiting from the transitional regime set out in the first subparagraph shall be subject to all other requirements laid down in Regulation (EU) No 648/2012.

The CSSF shall notify ESMA of the C6 energy derivative contracts which have been granted an exemption in accordance with the first subparagraph."

**Article 11.** Reference to this law shall be made in abbreviated form by using the following designation: "Law of 15 March 2016 on OTC derivatives, central counterparties and trade repositories and amending different laws relating to financial services".