

The indicators and instruments used for the supervision of entities conducting depository and clearing activities

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The requirements set by EU legislation in terms of implementation and supervision of clearing derivatives

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Legal standpoint: 25th of May 2017

Structure

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- Supervision
- EU legal framework
 - instruments in EMIR and CSDR
- National legal framework (Poland)
 - organizational structure within NCA
 - instruments in Trading Financial Instruments Act
 - indicators

Supervision

Supervision

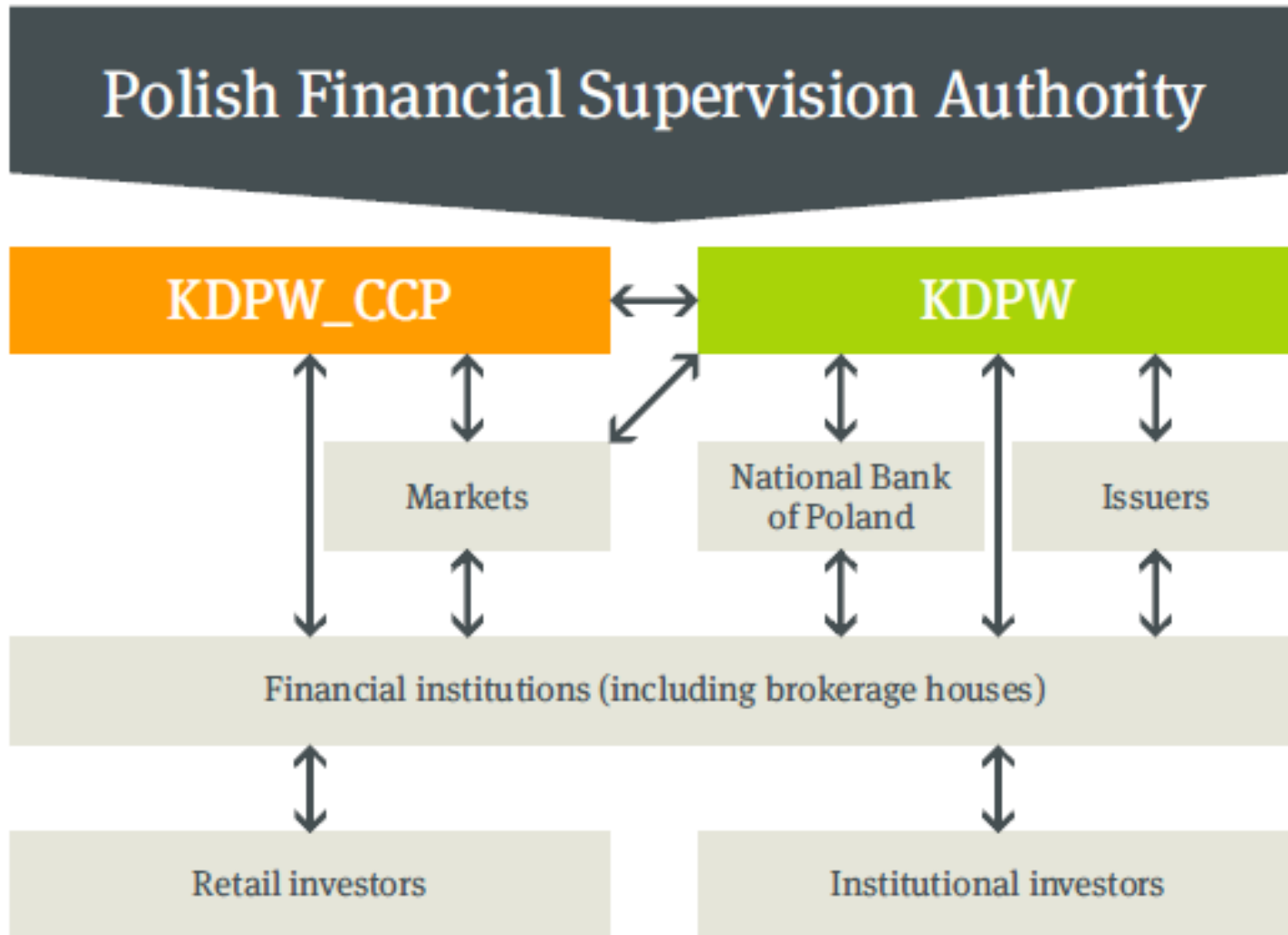
- Licensing (new activities & changes in existing)
- Compliance supervision
- Financial stability supervision
- Control
- Cooperation at EU level (ESMA PTSC)

Practical challenges of supervising CCPs

Legal and practical challenges of supervising CCPs :

- New regulations (Level 1) in pipeline (EMIR Review & Brexit rules)
- New requirements in EMIR Level 2 (RTS) and Level 3 (Q&A, Guidelines)
- Thus: new (or adapting existing) policies and procedures in CCPs;
- The necessity of combining the requirements of the EU regulations with the requirements of national law, especially regarding the administrative procedures;
- Practical and technical aspects of the cooperation between Members of the College;
- Difficulties with the interpretation of EMIR and RTSs (requirement of unilateral application of EMIR in the whole EU).

CCP and CSD structure in Poland



Significance of CCP Supervision I

comes with cleared volumes:

In 2015, KDPW_CCP cleared transactions on regulated markets and in alternative trading systems covered by the clearing guarantee system based on a multi-tiered SPAN risk management system.

16,660,582 guaranteed transactions on the regulated cash market (GPW and BondSpot) were cleared in 2015, an increase of 19.54% year on year (13,937,619 transactions cleared in 2014).

1,147,479 transactions in the alternative trading systems organised by GPW and BondSpot were cleared in aggregate, an increase of 25.86% year on year (911,678 transactions cleared in 2014).

2,916,951 transactions on the derivatives market operated by GPW were cleared, a modest increase of 0.02% year on year (2,916,255 transactions cleared in 2014).

Significance of CCP Supervision II

comes with cleared volumes:

The volumes of trading in all derivatives decreased modestly year on year in 2015. The trading volumes were as follows:

- The volume of trading in WIG20 and WIG40 futures was **4,563,690** contracts, a decrease of ca. 25.9% year on year (6,159,158 contracts in 2014).
- The volume of trading in WIG20 options was **438,206** contracts, a decrease of 8.52% year on year (479,020 contracts in 2014).
- The volume of trading in WIBOR futures was **1,718** contracts, a decrease of 58.93% year on year (4,183 contracts in 2014).
- The volume of trading in currency futures was **2,167,603** contracts, a decrease of 3.9% year on year (2,255,517 contracts in 2014).
- The volume of trading in single-stock futures was **1,033,300** contracts, an increase of ca. 78.1% year on year (580,185 contracts in 2014).

EU legal framework for supervision of CCPs

EU legal framework for supervision of CCPs

EMIR, Art. 14:

4. A CCP shall, without undue delay, notify the competent authority of any material changes affecting the conditions for authorisation.

5. Authorisation referred to in paragraph 1 shall not prevent Member States from adopting or continuing to apply, in respect of CCPs established in their territory, additional requirements including certain requirements for authorisation under Directive 2006/48/EC.

EU legal framework for supervision of CCPs

EMIR, Art. 21: **Review and evaluation**

1. Without prejudice to the role of the college, the competent authorities referred to in Article 22 shall review the arrangements, strategies, processes and mechanisms implemented by CCPs to comply with this Regulation and evaluate the risks to which CCPs are, or might be, exposed.
2. The review and evaluation referred to in paragraph 1 shall cover all the requirements on CCPs laid down in this Regulation. [...]

EU legal framework for supervision of CCPs

Supervision of KDPW_CCP according to EMIR and RTSs:

- ▶ After authorisation of KDPW_CCP, KNF obligated the KDPW_CCP to send information about any changes that KDPW_CCP would introduce in its procedures, policies, methodologies and other rules;
- ▶ KDPW_CCP is obligated to obtain validation of the KNF and ESMA before adopting any significant change to the models and parameters (Article 49 of EMIR);
- ▶ KNF obligated KDPW_CCP to send some information monthly, for example liquidity reports, back and sensitivity tests reports;
- ▶ KNF cooperates with ESMA in the field of stress tests organised by ESMA;
- ▶ KNF is obliged to fill in the EMIR Peer Review questionnaires prepared by ESMA;
- ▶ KNF is obligated to send information regarding KDPW_CCP and answer to ESMA's questions with this regard.

National legal framework for supervising CCPs (PL)

National legal framework for supervising CCPs (PL)

Supervision of KDPW_CCP according to the Polish law:

- KDPW_CCP is subject to the supervision of KNF;
- National Bank of Poland (NBP) supports KNF in performing oversight tasks;
- Supervision and oversight activities of KNF and NBP are regulated by the Act on Trading in Financial Instruments, Act on Financial Market Supervision, Act on Capital Market Supervision;
- In particular, KDPW_CCP's Rules (the Rules of Transaction Clearing (Organised Trading) and the Rules of Transaction Clearing (Non-organised Trading)) and amendments thereto are subject to KNF approval; KNF can refuse to approve amendments to the KDPW_CCP's Rules if the proposed amendments are contrary to the law or could impair the security of trading.

Supervisory tools in national law (PL)

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Pursuant to the mentioned Acts, KNF is entitled to impose the following supervisory tools:

- the right to enter the registered offices of KDPW_CCP in order to inspect the books, documents and information stored in other forms;
- competence to request KDPW_CCP to promptly prepare and deliver, at the cost of the company, the copies of documents and other data carriers and to provide necessary written or oral explanations;
- right to participate in meetings of the supervisory boards of KDPW_CCP as well as in general shareholders meetings;
- competence to raise objections to any intended direct or indirect acquisition of or subscription for a specified number of shares of KDPW_CCP;

Supervisory tools in national law (PL)

Pursuant to the mentioned Acts, KNF is entitled to impose the following supervisory tools:

- competence to request assembling the extraordinary general shareholders meeting, or include the matters indicated by KNF in the agenda of the general shareholders meeting;
- competence to order the supervisory boards of KDPW_CCP to promptly, and in any case no later than within ten business days, adopt a resolution on a specific matter;
- the right to appeal to court against the resolution of the general shareholders meeting or the supervisory board within 30 days of becoming aware of such a resolution if it was adopted in contradiction or violation of law, the articles of association, the rules or the principles of secure trading;
- competence to supervise the financial statements or other financial information of KDPW_CCP.

Supervisory tools in national law (PL)

Pursuant to the mentioned Acts, KNF is entitled to impose the following supervisory tools:

- competence to supervise the financial statements or other financial information of KDPW_CCP.
- Further supervisory instruments on the basis of Commodity Exchanges Act if an entity that operates on the basis of this Act acquires EMIR authorisation
- Very similar supervisory tools in case of CSD

Thank you for your attention!

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