



EMIR Transparency (Article 38)

[25.APR.2018]

The purpose of this document is to show evidence on OMIClear's compliance with the rules laid down in **article 38 (Transparency)** of Regulation (EU) No 648/2012 of the European Parliament and of the Council, of 4 July 2012, hereafter EMIR.

Table 1 – Details on OMIClear's compliance to Article 38 (Transparency) of EMIR

Par. Art.38	Content of Article 38 of EMIR	How OMIClear complies with EMIR transparency rules (item-by-item)
1.	A CCP and its clearing members shall publicly disclose the prices and fees associated with the services provided. They shall disclose the prices and fees of each service provided separately, including discounts and rebates and the conditions to benefit from those reductions.	<ul style="list-style-type: none"> ☞ All the fees (including discounts and rebates) applied by OMIClear within the scope of its clearing and settlement services are included in Instruction A02/2014 - Price List disclosed in its public website¹.
	A CCP shall allow its clearing members and, where relevant, their clients separate access to the specific services provided.	<ul style="list-style-type: none"> ☞ The requisites to become a participant of OMIClear are clearly stated in the following rules available to download in its public website: <ul style="list-style-type: none"> • <u>Clearing Members' access</u>: see Instruction B02/2014 - Requirements for Clearing Members; • <u>Registration Agents' access</u>: see Instruction B05/2014 - Requirements for Registration Agents; • <u>Financial and Physical Agents' access</u> - see Instruction A03/2014 - Requirements for Settlement Agents. ☞ The requisites to become Clearing Member and Financial Settlement Agent are the same for the derivatives contracts on both commodities cleared by OMIClear (power and natural gas). ☞ The requisites applicable to Registration Agents and Physical Settlement Agents include common conditions as well as some special requirements depending on the commodity on which the entity intends to participate.
	A CCP shall account separately for costs and revenues of the services provided and shall disclose that information to the competent authority.	<ul style="list-style-type: none"> ☞ The financial statements of OMIClear segregates the costs and revenues resulting from the service provided. These statements are disclosed both to the public (through its website) and to the competent authority (CMVM - Portuguese Securities Market Commission).

¹ OMIClear's public website: www.omiclear.eu

2.	A CCP shall disclose to clearing members and clients the risks associated with the services provided.	<p>⚡ OMIClear advises its Clearing Members and respective clients that the use of its clearing services exposes them to financial loss, including, but not limited to:</p> <p>a) <u>Clearing Member default</u>: non-defaulting Clearing Members must contribute to the Clearing Fund (pre-funded resources) and can also be subject to a 'Clearing Fund Additional Responsibility'² (not prefunded), as part of OMIClear's default waterfall. For further information please refer to Instructions B07/2014 - Clearing Fund and B12/2014 - Default Waterfall.</p> <p>In addition, Clearing Members may be subject to loss allocation (positions tier up procedure), as described in Instruction B18/2014 - Procedures in Case of Default.</p> <p>b) <u>Custodian bank default</u>: the custodian bank on which OMIClear deposits the cash collateral collected from its Clearing Members and their clients (with collateral segregation) may default. For further information please refer to the website: https://www.omiclear.pt/en/content/investment-policy</p> <p>c) <u>Termination of OMIClear's services</u>: if the activity of the services provided by OMIClear is closed, the Clearing Members must close out their positions within 20 clearing days. For further information please refer to article 70 (Termination clause) of OMIClear's Rulebook.</p> <p>The rules mentioned in the subparagraphs a) and c) are available to download in the public website.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Disclaimer: The above description is a non-exhaustive list of the financial losses to which Clearing Members and/or their clients may be exposed. Clearing Members and clients cannot rely on this disclosure and should undertake their own risk assessment and analysis of OMIClear's rules and associated documentation and processes.</p> </div>
3.	<p>A CCP shall disclose to its clearing members and to its competent authority the price information used to calculate its end-of-day exposures to its clearing members.</p> <p>A CCP shall publicly disclose the volumes of the cleared transactions for each class of instruments cleared by the CCP on an aggregated basis.</p>	<p>⚡ The clearing prices used to calculate the end-of-day exposures of OMIClear's Clearing Members are disclosed in its public website and clearing platform³. The methodology to determine these prices are included Instruction B11/2014 - Reference Prices available to download in the public website.</p> <p>⚡ The cleared volumes and open interest are updated by OMIClear on a daily basis and available to download in its public website: https://www.omiclear.pt/en/downloads</p>

² The 'Additional Responsibility' contribution consists of an assessment power tool of OMIClear. Contrary to the clearing fund contribution this responsibility of the Clearing Member is not covered with pre-funded resources. Further details are provided in in Instruction B07/2014 - Clearing Fund.

³ OMIClear's clearing platform – MiClear is accessible by registered users from its clients: Registration Agents (usually called NCM – Non-Clearing Members), clients of Registration Agents and Clearing Members.

4.	A CCP shall publicly disclose the operational and technical requirements relating to the communication protocols covering content and message formats it uses to interact with third parties, including the operational and technical requirements referred to in Article 7.	<p>☞ Currently OMIClear have in place communication protocols with several counterparties. For each one of them OMIClear discloses through its public website the operational and technical features implemented to ensure the interaction with the CCP:</p> <ul style="list-style-type: none"> • Market Operators: please refer to https://www.omiclear.pt/en/content/information-systems • Trade Repository: please refer to 'EMIR Reporting Operational Guide' available to download in https://www.omiclear.pt/en/downloads • TARGET2 payment settlement system: please refer to https://www.omiclear.pt/en/content/settlement-target2-system • OMIE power spot market: please refer to Instruction B13/2014 - Settlement in the Delivery Period • Enagás GTS: please refer to Instruction B19/2017 - Notification of Positions in Natural Gas Derivatives Contracts
5.	A CCP shall publicly disclose any breaches by clearing members of the criteria referred to in Article 37(1) and the requirements laid down in paragraph 1 of this Article, except where the competent authority, after consulting ESMA, considers that such disclosure would constitute a threat to financial stability or to market confidence or would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.	<p>☞ So far there were no breaches of the Clearing Members' admission criteria referred to in article 37(1) of EMIR. In case such occurred OMIClear would evaluate with its competent authority (CMVM) the impact of disclosing such information to the market.</p>