

**THIS TEXT IS UNOFFICIAL TRANSLATION AND MAY NOT BE USED AS A BASIS
FOR SOLVING ANY DISPUTE**

- Official Gazette of the Republic of Slovenia, No. 8/19 of 7 February 2019 (in force since 22 February 2019)
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Pursuant to the seventh paragraph of Article 21 of the Government of the Republic of Slovenia Act (Official Gazette of the Republic of Slovenia, Nos. 24/05 [official consolidated version], 109/08, 38/10 [ZUKN], 8/12, 21/13, 47/13 [ZDU-1G], 65/14 and 55/17), the Government of the Republic of Slovenia hereby issues the following

D E C R E E

**on the implementation of the Regulation on OTC derivatives, central
counterparties and trade repositories**

Article 1

(content)

This decree sets out the competent authorities for the implementation of 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 (OJ L 201 of 27 July 2012, p. 1), last amended by Commission Delegated Regulation (EU) 2017/979 of 2 March 2017 amending Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to the list of exempted entities (OJ L 148 of 10 June 2017, p. 1) (hereinafter: Regulation (EU) No 648/2012), the approach to conducting supervision of the implementation of Regulation (EU) No 648/2012, and the supervisory measures and penal provisions in connection with the implementation of Regulation (EU) No 648/2012.

Article 2

(definition of terms)

The terms used in this decree shall have the same meanings as those defined in Regulation (EU) No 648/2012.

Article 3

(competent authorities)

(1) The competent authorities for the implementation of Regulation (EU) No 648/2012 and this decree are the Securities Market Agency, Bank of Slovenia and the Insurance Supervision Agency (hereinafter: the competent authorities).

(2) The Securities Market Agency is responsible for implementing Regulation (EU) No 648/2012 and this decree in connection with:

- investment firms and brokerage houses whose supervision it is responsible for in accordance with the law governing the market in financial instruments, provided that they are deemed financial counterparties in accordance with Regulation (EU) No 648/2012;

- asset management companies, and the investment funds that they manage, whose supervision it is responsible for in accordance with the law governing investment funds and asset management companies, provided that they are deemed financial counterparties in accordance with Regulation (EU) No 648/2012;

- investment funds managed by alternative investment fund managers who hold an authorisation or are registered managers of alternative investment funds in accordance with the law governing alternative investment fund managers, provided that they are deemed financial counterparties in accordance with Regulation (EU) No 648/2012;

- mutual pension funds and umbrella pension funds whose supervision it is responsible for pursuant to the law governing pension and disability insurance, provided that they are deemed financial counterparties in accordance with Regulation (EU) No 648/2012; and

- persons deemed non-financial counterparties in accordance with Regulation (EU) No 648/2012.

(3) Bank of Slovenia is responsible for implementing Regulation (EU) No 648/2012 and this decree in connection with:

- credit institutions whose supervision it is responsible for in accordance with the law governing banking, provided that they are deemed financial counterparties in accordance with Regulation (EU) No 648/2012; and

- managers of mutual pension funds and umbrella pension funds that are banks whose supervision it is responsible for pursuant to the law governing pension and disability insurance, provided that they are deemed financial counterparties in accordance with Regulation (EU) No 648/2012.

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(4) The Insurance Supervision Agency is responsible for implementing Regulation (EU) No 648/2012 and this decree in connection with:

- insurance corporations and reinsurance corporations whose supervision it is responsible for in accordance with the law governing the insurance sector, provided that they are deemed financial counterparties in accordance with Regulation (EU) No 648/2012; and

- managers of open pension funds and pools of open pension funds that are pension companies or insurance corporations whose supervision it is responsible for pursuant to the law governing pension and disability insurance, provided that they are deemed financial counterparties in accordance with Regulation (EU) No 648/2012.

(5) The Securities Market Agency is responsible for issuing authorisations to central counterparties (hereinafter: CCPs), and for implementing Regulation (EU) No 648/2012 and this decree in connection with CCPs.

Article 4

(cooperation between competent authorities and cooperation with other authorities)

(1) In the implementation of Regulation (EU) No 648/2012 and this decree, the competent authorities shall cooperate and exchange notifications and information between one another.

(2) The Securities Market Agency is responsible for coordinating, cooperating and exchanging information with the competent authorities of Member States, the European Commission, the European Securities and Markets Authority (hereinafter: the ESMA), the European Banking Authority (hereinafter: the EBA) and relevant members of the European System of Central Banks (hereinafter: the ESCB) in accordance with Regulation (EU) No 648/2012.

(3) Bank of Slovenia shall at the earliest possible juncture communicate to the Securities Market Agency information about orders, regulations and decisions adopted by Bank of Slovenia pursuant to this decree or Regulation (EU) No 648/2012. If in accordance with Regulation (EU) No 648/2012 this information needs to be forwarded to the competent authorities of Member States, the European Commission, the ESMA, the EBA or the relevant members of the ESCB, the Securities Market Agency shall forward the information to the competent authorities of Member States, the European Commission, the ESMA, the EBA or the relevant members of the ESCB.

(4) The Insurance Supervision Agency shall at the earliest possible juncture communicate to the Securities Market Agency information about decisions adopted by the Insurance Supervision Agency pursuant to this decree or Regulation (EU) No 648/2012. If in accordance with Regulation (EU) No 648/2012 this information needs to be forwarded to the competent authorities of Member States, the European Commission, the ESMA, the EBA or the relevant members of the ESCB, the Securities Market Agency shall forward the information to the competent authorities of Member States, the European Commission, the ESMA, the EBA or the relevant members of the ESCB.

Article 5

(approach to supervision)

(1) The competent authorities shall conduct supervision of the implementation of Regulation (EU) No 648/2012 and this decree by:

1. monitoring, collecting and verifying published information and reports and the notifications of persons who pursuant to Regulation (EU) No 648/2012 and this decree or other regulations in connection with Regulation (EU) No 648/2012 are required to report to the competent authority;

2. obtaining information and conducting reviews in accordance with Article 21 of Regulation (EU) No 648/2012;

3. imposing supervisory measures referred to in Article 6 of this decree.

(2) The provisions of the law governing the functioning of the Securities Market Agency shall apply *mutatis mutandis* to decision-making and supervision by the Securities Market Agency in individual cases.

(3) The provisions of the law governing banking shall apply *mutatis mutandis* to decision-making and supervision by Bank of Slovenia in individual cases.

(4) The provisions of the law governing the functioning of the Insurance Supervision Agency shall apply *mutatis mutandis* to decision-making and supervision by the Insurance Supervision Agency in individual cases.

Article 6

(supervisory measures of competent authority)

(1) If when conducting supervision a competent authority identifies breaches of Regulation (EU) No 648/2012 or this decree, it may impose the following supervisory measures:

1. ordering the requisite measures to rectify the identified breach;

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2. imposing a fine in accordance with Article 8 of this decree.

(2) The provisions of the law governing the functioning of the Securities Market Agency shall apply *mutatis mutandis* to the imposition of supervisory measures by the Securities Market Agency in individual cases and to judicial review.

(3) The provisions of the law governing banking shall apply *mutatis mutandis* to the imposition of supervisory measures by Bank of Slovenia in individual cases and to judicial review.

(4) The provisions of the law governing the functioning of the Insurance Supervision Agency shall apply *mutatis mutandis* to the imposition of supervisory measures by the Insurance Supervision Agency in individual cases and to judicial review.

Article 7

(publication of breaches)

(1) In accordance with Article 12 of Regulation (EU) No 648/2012 the competent authority shall publish the imposed supervisory measures and sanctions for misdemeanours imposed for reason of breaches of this decree or Regulation (EU) No 648/2012 on its website, unless a disclosure of this sort would in the competent authority's opinion seriously endanger financial markets or cause disproportionate harm to the parties involved.

(2) The competent authority shall publish information in accordance with the previous paragraph after the proceedings for imposing the measure or sanction have been completed.

(3) The information referred to in the first paragraph of this article shall encompass the following information:

1. about the person responsible for the breach:

- the business name and registered office of the legal person;

2. about the breach:

- a description of the circumstances and conduct constituting the breach of this decree or Regulation (EU) No 648/2012,

- the nature of the identified breaches;

3. the operational part of the decision by which the relevant proceedings are completed;

4. information as to whether judicial review proceedings have been initiated against the decision.

Article 8

(misdemeanours)

(1) A fine of between EUR 12,000 and EUR 150,000 for a misdemeanour shall be imposed upon a legal person that:

1. fails to perform the clearing obligation in accordance with Article 4 of Regulation (EU) No 648/2012;

2. is a CCP and fails to accept clearing OTC derivative contracts in accordance with Article 7 of Regulation (EU) No 648/2012;

3. is a trading venue and fails to grant a CCP access to trade feeds in accordance with Article 8 of Regulation (EU) No 648/2012;

4. is a counterparty or CCP and fails to report to or to provide for the possibility of reporting to a trade repository in accordance with Article 9(1) of Regulation (EU) No 648/2012;

5. is a counterparty and fails to keep a record of all derivative contracts that it has concluded and any modification thereto for at least five years following the termination of the contract in accordance with Article 9(2) of Regulation (EU) No 648/2012;

6. is a non-financial counterparty and fails to notify the ESMA or the Securities Market Agency in accordance with point (a) of Article 10(1) of Regulation (EU) No 648/2012 of positions in OTC derivative contracts that exceed the clearing threshold referred to in Article 10(3) of Regulation (EU) No 648/2012;

7. is a non-financial counterparty and fails to take account of the clearing obligation for future contracts in accordance with Article 4 of Regulation (EU) No 648/2012 if it takes a position in derivatives where the rolling average position over more than 30 working days exceeds the clearing threshold in accordance with point (b) of Article 10(1) of Regulation (EU) No 648/2012;

8. is a non-financial counterparty and fails to execute clearing for all future contracts referred to in Article 10(1) of Regulation (EU) No 648/2012 within four months of becoming subject to the clearing obligation in accordance with point (c) of Article 10(1) of Regulation (EU) No 648/2012;

9. is a financial or non-financial counterparty and fails to put appropriate procedures and arrangements in place to measure, monitor and mitigate operational risk and counterparty credit risk in accordance with Article 11(1) of Regulation (EU) No 648/2012;

10. is a financial or non-financial counterparty and fails to mark-to-market on a daily basis the value of outstanding contracts in accordance with Article 11(2) of Regulation (EU) No 648/2012;

11. is a financial or non-financial counterparty and fails to put risk management procedures in place in accordance with Article 11(3) of Regulation (EU) No 648/2012, unless the conditions for exemptions set out in Article 11 of Regulation (EU) No 648/2012 are met;

12. is a financial counterparty and fails to hold an appropriate and proportionate amount of capital to manage risk in accordance with Article 11(4) of Regulation (EU) No 648/2012;

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13. is a financial or non-financial counterparty and fails to publicly disclose information on an exemption in accordance with Article 11(11) of Regulation (EU) No 648/2012.

(2) A fine of between EUR 25,000 and EUR 250,000 for a misdemeanour shall be imposed upon a legal person classed as a medium-sized or large enterprise pursuant to the law governing companies that commits a misdemeanour referred to in the previous paragraph.

(3) A fine of between EUR 4,000 and EUR 100,000 for a misdemeanour shall be imposed on a sole trader or an individual independently pursuing registered business activities who commits a misdemeanour referred to in the first paragraph of this article.

(4) A fine of between EUR 500 and EUR 10,000 for a misdemeanour shall be imposed on the responsible person of a legal person, a sole trader or an individual independently pursuing registered business activities who commits a misdemeanour referred to in the first paragraph of this article.

FINAL PROVISIONS

Article 9

(cessation of validity)

On the day that this decree enters into force, the Decree on the implementation of the Regulation on OTC derivatives, central counterparties and trade repositories (Official Gazette of the Republic of Slovenia, No. 22/13) shall cease to be in force.

Article 10

(entry into force)

This decree shall enter into force on the fifteenth day after its publication in the Official Gazette of the Republic of Slovenia.

No. 00712-2/2019
Ljubljana, 31 January 2019
EVA 2018-1611-0069

Government of the Republic of Slovenia
Marjan Šarec
prime minister