

CROATIAN PARLIAMENT

1080

Pursuant to Article 89 of the Constitution of the Republic of Croatia, I hereby issue the

DECISION

PROMULGATING THE ACT IMPLEMENTING 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

I hereby promulgate the Act Implementing 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, passed by the Croatian Parliament at its session on 19 April 2013.

Class: 011-01/13-01/68

Number: 71-05-03/1-13-2

Zagreb, 25 April 2013

The President

of the Republic of
Croatia

Ivo Josipović, m.p.

THE ACT

IMPLEMENTING 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

I GENERAL PROVISIONS

Purpose of the Act

Article 1

This Act determines the competent authorities, the scope of activities and authorities of 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, 27. 7. 2012) and relevant penalty provisions.

Definitions

Article 2

(1) For the purposes of this Act, the following definitions shall apply:

1 *The Agency* means the Croatian Financial Services Supervisory Agency (hereinafter: the Agency), the competencies and the scope of activities of which are prescribed by the Act on the Croatian Financial Services Supervisory Agency and by this Act.

2 *The CNB* means the Croatian National Bank (hereinafter: the CNB), or the central bank of the Republic of Croatia the tasks and competencies of which are prescribed by the Act on the Croatian National Bank, this Act and other acts.

3 *ESMA* means the European Securities and Markets Authority established pursuant to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

4 *Regulation (EU) No 648/2012* means 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.

5 *College* means the college of regulators, the members of which are listed in Article 18, paragraph 2 of Regulation (EU) No 648/2012.

6 *ESCB* means the European System of Central Banks, the competencies and the scope of activities of which are prescribed by the Treaty on European Union and the Treaty on the Functioning of the European Union.

7 *EBA* means the European Banking Authority established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (EU).

(2) For the purposes of this Act, other terms shall have the same meaning as the terms used in Regulation (EU) No 648/2012.

II COMPETENT AUTHORITIES, THEIR COMPETENCIES AND SCOPE OF ACTIVITIES

Competent authorities

Article 3

The competent authorities for the implementation of Regulation (EU) No 648/2012 and this Act shall be the Agency and the CNB.

Division of competencies between the Agency and the CNB

Article 4

(1) For the purposes of implementation of Regulation (EU) No 648/2012 and this Act, the Agency shall be competent for:

1 coordination between and reporting to the European Commission, ESMA and other authorities in accordance with Article 22, paragraph 1 of Regulation (EU) No 648/2012,

2 exercising supervision of compliance with the provisions of Regulation (EU) No 648/2012 and this Act by entities supervised by the Agency, defined by the act regulating the area of activity and the competence of the Agency, in accordance with Article 2, paragraphs 8 and 13 of Regulation (EU) No 648/2012,

3 supervision of non-financial counterparties in accordance with Article 10, paragraph 5 of Regulation (EU) No 648/2012,

4 issuance and withdrawal of authorisations and supervision of the operation of central counterparties in accordance with Article 22, paragraph 1 of Regulation (EU) No 648/2012,

5 imposing supervisory measures on supervised entities referred to in items 2, 3 and 4 of this paragraph,

6 submitting proposals for indictment and issuing misdemeanour warrants where infringements of the provisions of Regulation (EU) No 648/2012 and this Act on the part of the supervised entities referred to in items 2, 3 and 4 of this paragraph have been established.

(2) For the purposes of implementation of Regulation (EU) No 648/2012 and this Act, the CNB shall be competent for:

1 exercising supervision of the entities supervised by the CNB defined by the act which regulates the establishment and operation of credit institutions, in accordance with Article 2, paragraphs 8 and 13 of Regulation (EU) No 648/2012,

2 imposing supervisory measures on the supervised entities referred to in item 1 of this paragraph,

3 submitting proposals for indictment where infringements of the provisions of Regulation (EU) No 648/2012 and this Act on the part of the supervised entities referred to in item 1 of this paragraph have been established.

Scope of activities of the Agency

Article 5

For the purposes of implementation of Regulation (EU) No 648/2012 and this Act, the Agency shall carry out the following tasks:

1 report to ESMA in accordance with the provisions of Regulation (EU) No 648/2012,

2 supervise compliance on the part of the supervised entities referred to in Article 4, paragraph 1, item 2 of this Act with the provisions on clearing obligation through a central counterparty in accordance with Article 4, paragraphs 1 and 3 of Regulation (EU) No 648/2012 and with the provisions on risk-mitigation techniques for OTC derivative contracts not subject to a clearing obligation through a central counterparty in accordance with Article 11 of Regulation (EU) No 648/2012,

3 receive notifications from supervised entities referred to in Article 4, paragraph 1, items 2 and 3 of this Act on the application of exemptions for intragroup transactions referred to in Article 4, paragraph 2 and Article 11, paragraphs 7, 9 and 10 of Regulation (EU) No 648/2012,

4 decide on approving the application of exemptions for supervised entities referred to in Article 4, paragraph 1, items 2 and 3 of this Act in intragroup transactions under the terms referred to in Article 4, paragraph 2 of Regulation (EU) No 648/2012 and Article 11, paragraphs 6, 7, 8, 9 and 10 of Regulation (EU) No 648/2012,

5 supervise non-financial counterparties in accordance with Article 10, paragraph 5 of Regulation (EU) No 648/2012,

6 cooperate with the CNB in decision-taking on the application of exemptions for intragroup transactions where counterparties are entities supervised by both the Agency and the CNB in accordance with the provisions of Article 4 of this Act,

7 impose on supervised entities referred to in Article 4, paragraph 1, items 2, 3 and 4 of this Act the measures prescribed by Regulation (EU) No 648/2012 and supervisory measures referred to in Articles 10 and 11 of this Act,

8 disclose every sanction and supervisory measure imposed, unless such disclosure would jeopardise the stability of the financial markets and publish assessment reports on the effectiveness of the imposed sanctions and supervisory measures in accordance with Article 12, paragraph 2 of Regulation (EU) No 648/2012,

9 decide on authorisations and extensions of authorisations of a central counterparty in accordance with Articles 14, 15, 17, 18, 19, 30 and 41 of Regulation (EU) No 648/2012,

10 immediately notify the other competent authority in accordance with Article 15, paragraph 2 of Regulation (EU) No 648/2012,

11 provide to ESMA, the College and the central counterparty relevant information in accordance with Article 17 of Regulation (EU) No 648/2012,

12 establish, manage and chair the College in accordance with Article 18 of Regulation (EU) No 648/2012,

13 conduct a risk assessment of the central counterparty on the authorisation of which it decides and submit a report to the College in accordance with Article 19 of Regulation (EU) No 648/2012,

14 withdraw authorisation of the central counterparty and notifies thereof ESMA and the College, in accordance with Article 20 of Regulation (EU) No 648/2012,

15 exercise supervision of the operation of the central counterparty in accordance with Article 21 of Regulation (EU) No 648/2012,

16 carry out the duties prescribed by Regulation (EU) No 648/2012 for the authorisation and supervision of central counterparties and cooperate with ESMA, the European Commission, the competent authorities of other Member States, EBA and relevant ESCB members, in accordance with Article 22 of Regulation (EU) No 648/2012,

17 cooperate with ESMA and, if necessary, with the ESCB in accordance with Article 23 of Regulation (EU) No 648/2012,

18 inform ESMA, the College, the relevant members of the ESCB and other relevant authorities without undue delay of any emergency situation relating to a central counterparty in accordance with Article 24 of Regulation (EU) No 648/2012,

19 inform the College, without undue delay, about a refusal to approve the proposed acquisition of a qualifying holding in a central counterparty in accordance with Article 31 of Regulation (EU) No 648/2012,

20 assess the reputation and financial soundness of the qualifying investors and cooperate with other competent authorities in accordance with Article 32 of Regulation (EU) No 648/2012,

21 issue approvals to central counterparties for outsourcing of main activities associated with risk management in accordance with Article 35 of Regulation (EU) No 648/2012,

22 promptly inform ESMA, the relevant members of the ESCB and other competent authorities responsible for the supervision of clearing members about the inability of a clearing member of the central counterparty to meet its future obligations, in accordance with Article 48, paragraph 3 of Regulation (EU) No 648/2012,

23 issue approvals to central counterparties to enter into interoperability arrangements in accordance with Article 54 of Regulation (EU) No 648/2012,

24 exchange information with ESMA when authorising a trade repository which is also a supervised entity referred to in Article 4, paragraph 1, items 2 and 3 of this Act, in accordance with Article 57 of Regulation (EU) No 648/2012,

25 at ESMA's request, cooperate with ESMA in the exercise of supervision in accordance with Article 62, paragraph 4 of Regulation (EU) No 648/2012,

26 at ESMA's request, participate in the supervision of a trade repository in accordance with Article 63 of Regulation (EU) No 648/2012,

27 carry out specific supervisory tasks delegated to it by ESMA in accordance with Article 74 of Regulation (EU) No 648/2012,

28 exchange information with competent authorities and other relevant authorities of other Member States, relevant ESCB members and ESMA, required for the purposes of carrying out their duties in accordance with Article 84 of Regulation (EU) No 648/2012.

Scope of activities of the CNB

Article 6

For the purposes of implementation of Regulation (EU) No 648/2012 and this Act, the CNB shall carry out the following tasks:

1 supervise compliance on the part of the supervised entities referred to in Article 4, paragraph 2, item 1 of this Act with the provisions on clearing obligation through a central counterparty in accordance with Article 4, paragraphs 1 and 3 of Regulation (EU) No 648/2012 and with the provisions on risk-mitigation techniques for OTC derivative contracts not subject to a clearing obligation through a central counterparty in accordance with Article 11 of Regulation (EU) No 648/2012,

2 receive notifications on the application of exemptions for supervised entities referred to in Article 4, paragraph 2, item 1 of this Act in the case of intragroup transactions referred to in Article 4, paragraph 2 and Article 11, paragraph 10 of Regulation (EU) No 648/2012,

3 decide on approving the application of exemptions for supervised entities referred to in Article 4, paragraph 2, item 1 of this Act in the case of intragroup transactions under the terms referred to in Article 4, paragraph 2 of Regulation (EU) No 648/2012 and Article 11, paragraphs 6, 8 and 10 of Regulation (EU) No 648/2012,

4 cooperate with the Agency in decision-taking on the application of exemptions for intragroup transactions where counterparties are entities supervised by both the Agency and the CNB in accordance with the provisions of this Act,

5 inform the Agency about the receipt of notification from the supervised entities referred to in Article 4, paragraph 2, item 1 of this Act on the application of the exemption referred to in Article 11, paragraph 10 of Regulation (EU) No 648/2012 and about the decisions referred to in Article 11, paragraphs 6, 8 or 10 of Regulation (EU) No 648/2012,

6 participate in the work of the College in accordance with Article 18, paragraph 2 of Regulation (EU) No 648/2012,

7 exchange information with ESMA when authorising a trade repository which is also a supervised entity referred to in Article 4, paragraph 2, item 1 of this Act, in accordance with Article 57 of Regulation (EU) No 648/2012, about which the CNB informs the Agency in accordance with the provisions of the act regulating cooperation between the Agency and the CNB,

8. impose measures on supervised entities referred to in Article 4, paragraph 2, item 1 of this Act, prescribed by Regulation (EU) No 648/2012 and supervisory measures referred to in Article 12 of this Act,

9 disclose every sanction and supervisory measure imposed, unless such disclosure would jeopardise the stability of the financial markets,

10 at ESMA's request, cooperate with ESMA in the exercise of supervision if a trade repository is an entity supervised by the CNB in accordance with Article 62, paragraph 4 of Regulation (EU) No 648/2012,

11 at ESMA's request, participate in the supervision of a trade repository exercised by an entity supervised by the CNB in accordance with Article 63 of Regulation (EU) No 648/2012,

12 carry out specific supervisory tasks pertaining to its supervised entities delegated to it by ESMA in accordance with Article 74 of Regulation (EU) No 648/2012.

III SUPERVISION

Supervisory procedures conducted by the Agency

Article 7

(1) The supervision of the implementation of Regulation (EU) No 648/2012 and this Act in accordance with the division of competencies referred to in Article 4 of this Act shall be exercised by the Agency pursuant to the provisions of the act regulating the capital market in the Republic of Croatia.

(2) The Agency shall exercise the supervision referred to in paragraph 1 of this Article by:

1 monitoring, collecting and verifying the disclosed data and notifications submitted to the Agency pursuant to the provisions of Regulation (EU) No 648/2012 and by exercising supervision in accordance with Articles 21 and 22 of Regulation (EU) No 648/2012,

2 imposing supervisory measures referred to in Articles 10 and 11 of this Act.

Article 8

(1) Where necessary for the purposes of supervision of compliance with the provisions of Regulation (EU) No 648/2012 and this Act, the Agency may require each natural or legal person to allow:

1 access to any document in any format and submission of a photocopy of each such document,

2 inspection of data exchange, including records of telephone calls.

(2) The Agency may require each natural or legal person, including the persons involved in transfers of transfer orders or persons carrying out other tasks associated with entering into transactions which are subject to Agency supervision, to provide all data and reports required for supervision by the Agency. Where this is required for the purposes of supervision, the Agency shall be authorised to summon these persons.

(3) Where necessary for the purposes of supervision of compliance with the provisions of Regulation (EU) No 648/2012 and this Act, the Agency may carry out an on-site inspection with or without giving a previous notice of such an inspection.

(4) When this is required for the purposes of supervision of a legal or a natural person to whom Regulation (EU) No 648/2012 and this Act apply, the Agency may, in accordance with the division of competencies referred to in Article 4 of this Act, require relevant data, documentation and reports from the following persons and examine their operation;

1 persons linked by close links to a legal or a natural person of which the Agency conducts the procedure of supervision,

2 persons to which a legal or a natural person of which the Agency conducts the procedure of supervision has outsourced business processes,

3 holders of qualifying holdings in a legal or a natural person of which the Agency conducts the procedure of supervision.

(5) When another competent authority is authorised for the supervision of the person referred to in paragraph 4 of this Article, the Agency shall, in accordance with Regulation (EU) No 648/2012, carry out the inspection of the operation of that person in cooperation with the other competent authority.

Supervisory procedures conducted by the CNB

Article 9

The supervision of the implementation of Regulation (EU) No 648/2012 and this Act, in accordance with the division of competencies referred to in Article 4 of this Act, shall be exercised by the CNB, in accordance with the provisions of Regulation (EU) No 648/2012, this Act and the act regulating the establishment and operation of credit institutions in the Republic of Croatia.

Supervisory measures of the Agency

Article 10

(1) When the Agency, in accordance with the division of competencies referred to in Article 4 of this Act, establishes infringements of the provisions of Regulation (EU) No 648/2012 and/or this Act it shall, in addition to the measures envisaged by Regulation (EU) No 648/2012 and this Act, also be authorised to impose the following supervisory measures:

1 impose discontinuation of all activities which are in contravention of the provisions of Regulation (EU) No 648/2012 and this Act,

2 issue a warning to the legal or natural person acting in contravention of the provisions of Regulation (EU) No. 648/2012 and this Act,

3 order the market operator to suspend trading in a financial instrument and lift the already issued order for suspension, to an extent necessary for removing or preventing detrimental consequences on a regulated market,

4 impose on the central depository and clearing company, i.e. the operator of the central register or central counterparty, a temporary blocking of financial instruments.

(2) The Agency may publicly disclose each measure that will be imposed due to infringement of the provisions of Regulation (EU) No 648/2012 and/or this Act, unless such disclosure would seriously jeopardise the financial market or cause disproportionate damage to the parties involved.

Article 11

When the Agency establishes infringements of the provisions of Regulation (EU) No 648/2012 and/or this Act on the part of the supervised entities referred to in Article 4, paragraph 1, item 2 of this Act, the Agency may, in addition to the supervisory measures referred to in Article 10 of this Act, depending on the severity and materiality of infringements:

1 temporarily prohibit the conduct of business for which the Agency has issued authorisation to supervised entities,

2 withdraw authorisation or approval issued,

3 impose temporary measures contributing to the re-establishment of the legality of operations.

Supervisory measures of the CNB

Article 12

When the CNB, in accordance with the division of competencies referred to in Article 4 of this Act, establishes infringements of the provisions of Regulation (EU) No 648/2012 and/or this Act it shall, in addition to the measures envisaged by Regulation (EU) No 648/2012, also be authorised to impose supervisory measures prescribed by law regulating the establishment and operation of credit institutions.

Cooperation with authorised bodies

Article 13

(1) For the purposes of implementation of Regulation (EU) No 648/2012 and this Act, the Agency shall cooperate with other authorised bodies and exchange information with them, in accordance with the relevant legal provisions and cooperation agreements.

(2) In the implementation of Regulation (EU) No 648/2012 and this Act, the Agency shall cooperate with the CNB as the other competent authority under the terms of this Act, in accordance with the provisions of act regulating cooperation between these two institutions.

IV THE LANGUAGE AND MANNER OF DELIVERY AND DISCLOSURE OF NOTIFICATIONS

Article 14

(1) All notifications which natural and legal persons are obligated to deliver to the competent authorities and publicly disclose in accordance with the provisions of Regulation (EU) No 648/2012 and this Act shall be subject, as appropriate, to the provisions on the language of disclosure of information referred to in the act regulating the capital market in the Republic of Croatia.

(2) The competent authorities referred to in Article 3 of this Act shall, in accordance with the division of competencies referred to in Article 4 of this Act, prescribe by its decisions the manner in which the prescribed notifications referred to in Regulation (EU) No 648/2012 are to be delivered.

V PENALTY PROVISIONS

Infringements on the part of the central counterparty

Article 15

(1) A central counterparty shall be fined between HRK 200,000.00 and HRK 500,000.00 for an infringement if it:

1 does not accept or refuses a request for access by a trading venue in accordance with Article 7 of Regulation (EU) No 648/2012,

2 fails to ensure that the details of any derivative contract it has concluded with a counterparty and of any modification or termination of the contract are reported to a trade repository within the deadline determined in accordance with Article 9, paragraph 1 of Regulation (EU) No 648/2012,

3 fails to ensure that the details of a derivative contract are reported to ESMA where a trade repository is not available to record the details, in accordance with Article 9, paragraph 3 of Regulation (EU) No 648/2012,

4 carries out activities not authorised by the Agency in accordance with Article 14, paragraph 1 and Article 15 of Regulation (EU) No 648/2012,

5 fails to notify the Agency, without undue delay, of any material changes affecting the conditions for authorisation in accordance with Article 14, paragraph 4 of Regulation (EU) No 648/2012,

6 fails to meet the capital requirements in accordance with Article 16 of Regulation (EU) No 648/2012,

7 fails to meet the organisational requirements in accordance with Article 26 and Article 27 of Regulation (EU) No 648/2012,

8 fails to make available to the Agency and the auditor the minutes of the supervisory board meetings, in accordance with Article 27, paragraph 3 of Regulation (EU) No 648/2012,

9 fails to establish the procedures and criteria for the selection of the Risk-committee members and the duration of their term of office and fails to inform the Agency of any procedure that is in contravention of the recommendations of the Risk-committee in accordance with Article 28 of Regulation (EU) No 648/2012,

10 fails to maintain, within the prescribed time limits, all the records on the services and activity provided and terminated agreements and fails to make them available on Agency request in accordance with Article 29 of Regulation (EU) No 648/2012,

11 fails to notify the Agency of any changes to its management in accordance with Article 31, paragraph 1 of Regulation (EU) No 648/2012,

12 fails to prescribe and operate adequate measures and procedures for identifying, preventing and managing potential conflicts of interest in accordance with Article 33 of Regulation (EU) No 648/2012,

13. fails to ensure business continuity in accordance with Article 34 of Regulation (EU) No 648/2012,

14 fails to meet the conditions for outsourcing operational functions, services and activities and does not hold an approval by the Agency, in accordance with Article 35, paragraph 1 of Regulation (EU) No 648/2012,

15 fails to make available, on Agency request, all information necessary for the assessment of the compliance of the performance of the outsourced operational functions, services or activities, in accordance with Article 35, paragraph 3 of Regulation (EU) No 648/2012,

16 fails to act in the best interests of clearing members and has no accessible and transparent rules for the handling of complaints, in accordance with Article 36 of Regulation (EU) No 648/2012,

17 fails to prescribe the categories of admissible clearing members and the criteria for their admission in the clearing system, in accordance with Article 37, paragraphs 1 and 3, of Regulation (EU) No 648/2012,

18 fails to ensure that the clearing members meet on ongoing basis the application of the criteria referred to in paragraph 1 of Article 37 of Regulation (EU) No 648/2012, in accordance with Article 37, paragraph 2 of Regulation (EU) No 648/2012,

19 fails to conduct a comprehensive review of compliance by its clearing members, in accordance with Article 37, paragraph 2 of Regulation (EU) No 648/2012, at least once a year,

20 fails to prescribe procedures for the suspension and exit of clearing members, in accordance with Article 37, paragraph 4 of Regulation (EU) No 648/2012,

21 fails to publicly disclose the prices, the risks and other information associated with the services provided in accordance with Article 38 of Regulation (EU) No 648/2012,

22 fails to keep records of assets and accounts in accordance with Article 39 of Regulation (EU) No 648/2012,

23 fails to measure and assess its liquidity and credit exposures to each clearing member and, where relevant, to other central counterparties with which it has concluded an interoperability arrangement, in accordance with Article 40 of Regulation (EU) No 648/2012,

24 fails to collect margins to ensure against credit risk in accordance with Article 41 of Regulation (EU) No 648/2012,

25 fails to maintain a default fund to cover losses that exceed the losses to be covered by margin requirements, in the manner prescribed by Article 42 of Regulation (EU) No 648/2012,

26 fails to maintain additional available financial resources to cover potential losses that exceed the losses to be covered by margin requirements and the default fund, in accordance with Article 43 of Regulation (EU) No 648/2012,

27 fails to have access, at all times, to adequate liquidity and measure, on a daily basis, its potential liquidity needs in accordance with Article 44 of Regulation (EU) No 648/2012,

28 fails to use the instruments of collateral in accordance with a default waterfall, in accordance with Article 45 of Regulation (EU) No 648/2012,

29 fails to meet collateral margining and securing requirements in accordance with Article 46 of Regulation (EU) No 648/2012,

30 fails to invest its financial resources in accordance with Article 47 of Regulation (EU) No 648/2012,

31 fails to have detailed procedures in place in accordance with Article 48, paragraph 1 of Regulation (EU) No 648/2012 and/or fails to review such procedures at least annually,

32 fails to act in accordance with Article 48, paragraph 2 of Regulation (EU) No 648/2012 in case of a default by a clearing member,

33 fails to inform the Agency when it considers that the clearing member will not be able to meet its obligations in accordance with Article 48, paragraph 3 of Regulation (EU) No 648/2012,

34 fails to ensure that its default procedures regarding the inability of a clearing member to meet its obligations can be implemented and are legally enforceable, in accordance with Article 48, paragraph 4 of Regulation (EU) No 648/2012,

35 fails to commit itself, at least contractually, in the case referred to in Article 39 of paragraph 2 of Regulation (EU) No 648/2012 to trigger the procedures for the transfer of the

assets held by the defaulting clearing member, in accordance with Article 48, paragraph 5 of Regulation (EU) No 648/2012,

36 fails to commit itself, at least contractually, in the case referred to in Article 39, paragraph 3 of the Regulation, to trigger the procedures for the transfer of the assets held by the defaulting clearing member, in accordance with Article 48, paragraph 6 of Regulation (EU) No 648/2012,

37 fails to use clearing member clients' collateral in accordance with Article 48, paragraph 7 of Regulation (EU) No 648/2012,

38 fails to review regularly the models and parameters for risk control and fails to conduct stress tests and back tests and fails to publicly disclose key information on its risk-management model, in accordance with Article 49 of Regulation (EU) No 648/2012,

39 fails to use, where practical and available, central bank money to settle transactions, in accordance with Article 50 of Regulation (EU) No 648/2012,

40 fails to regulate the management of risks arising from interoperability arrangements in accordance with Article 52 of Regulation (EU) No 648/2012,

41 fails to regulate relationships arising from interoperability arrangements in accordance with Article 53 of Regulation (EU) No 648/2012,

42 fails to act in accordance with Agency decision on supervisory measures, imposed in accordance with Article 10 of this Act.

(2) The responsible person of the central counterparty shall also be fined between HRK 20,000.00 and HRK 50,000.00 for infringements referred to in paragraph 1 of this Article.

Infringements on the part of the counterparty

Article 16

(1) A counterparty shall be fined between HRK 200,000.00 and HRK 500,000.00 for an infringement if it:

1 fails to clear all OTC derivative contracts meeting the clearing criteria through a central counterparty, in accordance with Article 4, paragraphs 1 and 3 of Regulation (EU) No 648/2012,

2 fails to notify the Agency, i.e. the CNB of the application of exemption for intragroup transactions within the deadline prescribed by Article 4, paragraph 2 of Regulation (EU) No 648/2012,

3 fails to report the details of any derivative contract it has concluded and of any modification or termination of the contract to a trade repository and fails to keep a record of these details within the prescribed time limit, in accordance with Article 9, paragraphs 1 and 2 of Regulation (EU) No 648/2012,

4 fails to report the details of a derivative contract to ESMA in the case where a trade repository is not available to record the details in accordance with Article 9, paragraph 3 of Regulation (EU) No 648/2012,

5 as a non-financial counterparty, fails to notify ESMA and the Agency about exceeding the clearing threshold with regard to OTC derivative contracts in accordance with Article 10, paragraph 1 of Regulation (EU) No 648/2012,

6 as a non-financial counterparty, fails to clear all future contracts within four months of becoming subject to the clearing obligation, in accordance with Article 10, paragraph 1 of Regulation (EU) No 648/2012,

7 as a non-financial counterparty fails to include in the calculation of the value of contracts all the OTC derivative contracts entered into within the group, in accordance with Article 10, paragraph 3 of Regulation (EU) No 648/2012,

8 fails to ensure, exercising due diligence, that appropriate procedures and arrangements are in place to measure, monitor and mitigate operational risk and counterparty credit risk in the case of entering into an OTC derivative contract not cleared by a central counterparty, in accordance with Article 11, paragraph 1 of Regulation (EU) No 648/2012,

9 fails to mark-to-market on a daily basis the value of outstanding contracts when OTC derivative contracts entered into exceed the clearing threshold in accordance with Article 11, paragraph 2 of Regulation (EU) No 648/2012,

10 fails to have risk-management procedures that require the timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts in accordance with Article 11, paragraph 3 of Regulation (EU) No 648/2012,

11 fails to hold an appropriate and proportionate amount of capital to manage the risk not covered by appropriate collateral in accordance with Article 11, paragraph 4 of Regulation (EU) No 648/2012,

12 as a non-financial counterparty, fails to notify the Agency of its intention to apply the exemption in accordance with Article 11, paragraph 7 of Regulation (EU) No 648/2012,

13 as a non-financial counterparty, fails to notify the Agency of its intention to apply the exemption in accordance with Article 11, paragraph 9 of Regulation (EU) No 648/2012,

14 fails to publicly disclose information on the exemption for an intragroup transaction in accordance with Article 11, paragraph 11 of Regulation (EU) No 648/2012,

15 fails to act in accordance with Agency decision on supervisory measures, imposed in accordance with the provisions of Article 10 of this Act,

16 fails to act in accordance with CNB decision on supervisory measures, imposed in accordance with the provisions of Article 12 of this Act.

(2) The responsible person of the counterparty shall also be fined between HRK 30,000.00 and HRK 50,000.00 for infringements referred to in paragraph 1 of this Article.

Infringements on the part of the trading venue

Article 17

(1) A trading venue shall be fined between HRK 200,000.00 and HRK 500,000.00 for an infringement if it:

1 fails to provide, upon request by the central counterparty, trade feeds on OTC derivative contracts entered into in accordance with Article 8, paragraph 1 of Regulation (EU) No 648/2012,

2 fails to act in accordance with the request by the central counterparty to access a trading venue in accordance with Article 8, paragraphs 2 and 3 of Regulation (EU) No 648/2012,

3 fails to act in accordance with the Agency decision imposing supervisory measures, imposed in accordance with the provisions of Article 10 of this Act.

(2) The responsible person of the trading venue shall also be fined between HRK 30,000.00 and HRK 50,000.00 for infringements referred to in paragraph 1 of this Article.

Infringements on the part of the members of the central counterparty

Article 18

(1) A member of the central counterparty shall be fined between HRK 50,000.00 and HRK 150,000.00 for an infringement if it:

1 fails to publicly disclose the prices and fees associated with the services provided in accordance with Article 38 of Regulation (EU) No 648/2012,

2 fails to keep records of assets and accounts in accordance with Article 39, paragraph 4 of Regulation (EU) No 648/2012,

3 fails to segregate clients, inform them of the costs and level of protection and fails to offer those services on commercial terms in accordance with Article 39, paragraphs 5, 6 and 7 of Regulation (EU) No 648/2012,

4 fails to act in accordance with Agency decision on supervisory measures, imposed in accordance with Article 10 of this Act.

(2) The responsible person of the member of the central counterparty shall also be fined between HRK 10,000.00 and HRK 30,000.00 for infringements referred to in paragraph 1 of this Article.

Infringements on the part of qualifying investors

Article 19

(1) A qualifying investor, as a legal person, shall be fined between HRK 50,000 and HRK 150,000.00 for an infringement if it fails to notify in writing the Agency of a decision to

acquire, dispose or change a qualifying holding in a central counterparty, and fails to indicate the size of the holding it intends to dispose or acquire, in accordance with Article 31, paragraph 2 of Regulation (EU) No 648/2012.

(2) The responsible person of the qualifying investor shall also be fined between HRK 10,000.00 and HRK 30,000.00 for infringements referred to in paragraph 1 of this Article.

(3) A qualifying investor, as a natural person, shall be fined between HRK 20,000.00 and HRK 50,000.00, if he/she fails to notify in writing the Agency of a decision to acquire, dispose or change a qualifying holding in the central counterparty and fails to indicate the size of the holding he/she intends to dispose or acquire, in accordance with Article 31, paragraph 2 of Regulation (EU) No 648/2012.

Proposals for indictment

Article 20

(1) The Agency may issue a proposal for indictment for infringements laid down in the provisions of this Act.

(2) The Agency may issue a proposal for indictment if it has established an infringement:

1 following on-site inspection or supervision or in the course of exercise of supervision and other authorities within its competence, accompanied by an official record or a report on inspection findings, or

2 based on credible documentation, including, among others, a report on inspection findings.

Expiry of misdemeanour prosecution due to limitation

Article 21

(1) A misdemeanour proceeding may not be initiated after expiry of three years from the date when the infringement was committed.

(2) The expiry due to limitation shall be discontinued by each procedural action undertaken by the Agency and the CNB for the purpose of misdemeanour persecution of the perpetrator on account of the committed infringement.

(3) After each discontinuation, expiry due to limitation shall shall retake its temporal course.

(4) Expiry due to limitation of misdemeanour persecution takes effect in all cases when twice as much time as determined by law for the expiry due to limitation elapses.

VI FINAL PROVISION

Article 22

This Act shall be published in the Official Gazette and shall enter into force on the date of accession of the Republic of Croatia to the European Union.

Class: 022-03/13-01/51

Zagreb, 19 April 2013

CROATIAN PARLIAMENT

The President
of the Croatian
Parliament

Josip Leko, m.p.