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## **Decision**

**on the documentation to be enclosed with the application for permission to classify  
capital instruments as own funds instruments of credit institutions**

**March 2018**

Pursuant to Article 114, paragraph (6) of the Credit Institutions Act (Official Gazette 159/2013, 19/2015, 102/2015 and 15/2018), and in connection with recital 75 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (Official Journal L 176/2013), and pursuant to Article 43, paragraph (2), item (9) of the Act on the Croatian National Bank (Official Gazette 75/2008 and 54/2013), the Governor of the Croatian National Bank hereby issues the

## **Decision**

### **on the documentation to be enclosed with the application for permission to classify capital instruments as own funds instruments of credit institutions**

#### Article 1

(1) This Decision prescribes the documentation to be enclosed by a credit institution with the application for permission to classify capital instruments as own funds instruments referred to in Article 114, paragraph (4) of the Act and Article 26, paragraph (3) of Regulation (EU) No 575/2013.

(2) A credit institution may submit the application for permission to classify capital instruments as own funds instruments only for the instruments that are issued and paid up.

#### Article 2

For the purposes of this Decision, the following terms shall have the following meaning:

1. '*Act*' means the Credit Institutions Act (Official Gazette 159/2013, 19/2015, 102/2015 and 15/2018);
2. '*Regulation (EU) No 575/2013*' means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (Official Journal L 176/2013);
3. '*Commission Delegated Regulation (EU) No 241/2014*' means Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing

Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions (Official Journal L 74/2014);

4. '*Commission Implementing Regulation (EU) No 1423/2013*' means Commission Implementing Regulation (EU) No 1423/2013 of 20 December 2013 laying down implementing technical standards with regard to disclosure of own funds requirements for institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (Official Journal L 355/2013);
5. '*prescribed conditions*' means the conditions in Title I of Part Two of Regulation (EU) No 575/2013 and Chapters II, III and IV of Commission Delegated Regulation (EU) No 241/2014, which are prescribed for individual capital instruments.

(2) The other terms in this Decision shall have the same meaning as the terms used in the regulations referred to in paragraph (1) of this Article.

### Article 3

A credit institution intending to classify capital instruments as own funds instruments shall obtain the prior permission of the Croatian National Bank to classify capital instruments as own funds instruments.

### Article 4

(1) The following needs to be enclosed with the application for permission to classify capital instruments as own funds instruments:

1. information on the class of own funds (common equity tier 1 capital, additional tier 1 capital or tier 2 capital) to which the institution intends to classify a particular capital instrument;
2. a description of the purpose of the capital increase and compliance with the capital plan of the credit institution or, where applicable, the capital plan of the group of credit institutions in the Republic of Croatia;
3. information on the type of the own funds instrument (e.g. ordinary shares, bonds, received deposits, received loans);

4. name and surname or the firm name of the twenty largest holders of/investors in the capital instruments for which the application is submitted and the type of holders of/investors in capital instruments (e.g. institutional investor);
5. a written decision of the credit institution on the issuance of capital instruments;
6. basic documentation associated with the issue of capital instruments (copy of the signed contract on the capital instrument, prospectus and other documentation);
7. for common equity tier 1 instruments and, where applicable, additional tier 1 instruments: the Articles of Association of the credit institution, an invitation to the general meeting, the minutes of the general meeting, evidence of the entry of the share capital increase and amendments to the Articles of Association into the register of companies, evidence of the shareholder structure after the entry into the register of companies, evidence of the effected payment of the instruments;
8. evidence on funding sources for the purchase of the instruments (in connection with Article 28, paragraph (1), item (b), Article 52, paragraph (1), item (c) and Article 63, item (c) of Regulation (EU) No 575/2013);
9. where applicable, evidence that, pursuant to the regulations governing the capital market, the credit institution has obtained all necessary additional authorisations and approvals related to the issue of the capital instruments;
10. information on whether the credit institution has the discretion to decide to pay distributions in a form other than cash or an own funds instrument (in connection with Article 73, paragraph (1) of Regulation (EU) No 575/2013);
11. a written statement by the credit institution's management board that all information submitted is correct and complete and that there are no contracts or agreements that may lead to non-compliance of the capital instruments with the prescribed conditions for that capital instrument;
12. a description of the main features of capital instruments in the manner prescribed in Article 5 of this Decision;
13. a detailed assessment and explanation, for each capital instrument, in accordance with Article 6 of this Decision;
14. an assessment of the compliance of the documentation on the capital instrument with the regulations governing the issuance of that capital instrument and possible limitations arising under these provisions;
15. a description of the accounting treatment of the capital instrument for which the application is submitted;
16. the calculation of the own funds of the credit institution on the last day of the month preceding the month of submitting the application for permission to classify capital instruments as own funds instruments, including the amount and composition of own funds by individual classes and items, unless the credit institution has already delivered to the Croatian National Bank own funds reports for that reporting date;

17. for additional tier 1 instruments: a detailed analysis by the credit institution of the expected amount of common equity tier 1 capital that would be generated if the principal amount of the additional tier 1 instruments were fully written down or converted to common equity tier 1 instruments after deductions of all foreseeable tax liabilities or due tax payments associated with the instruments at the time of the write-down or conversion; and
18. other information, facts and circumstances that have or might have an impact on the fulfilment of the conditions for the issuance of the permission to classify capital instruments as own funds instruments of the credit institution.

(2) In addition to the documentation referred to in paragraph (1) of this Article, the Croatian National Bank may request other documentation, data or information evidencing the fulfilment of the prescribed conditions.

(3) In assessing whether a capital instrument fulfils the prescribed conditions, the Croatian National Bank shall take into account the opinions of the European Banking Authority related to the prescribed conditions.

(4) A credit institution shall notify the Croatian National Bank without delay of any change in the information or documentation referred to in paragraphs (1) and (2) of this Article which has arisen in the course of the decision-making procedure on the application for permission to classify capital instruments as own funds instruments, and deliver to it additional or new information and documentation.

#### Article 5

A credit institution shall deliver a description of the main features of capital instruments in the prescribed template provided in Annex II to Commission Implementing Regulation (EU) No 1423/2013 entitled "Capital instruments' main features template", which it shall complete in accordance with the Instructions for completing the capital instruments main features template provided in Annex III to Commission Implementing Regulation (EU) No 1423/2013.

#### Article 6

(1) A credit institution shall examine and make a detailed assessment and explanation for each capital instrument with regard to the prescribed conditions.

- (2) The assessment referred to in paragraph (1) of this Article shall contain in particular:
- 1) the provisions prescribing the conditions for an own funds instrument (prescribed conditions);
  - 2) indications of or references to the relevant provisions of the contract governing the capital instrument or another document relevant for evidencing the fulfilment of each prescribed condition for an own funds instrument; and
  - 3) a reasoned assessment by the credit institution of the fulfilment of each prescribed condition.

(3) The comparative overview referred to in paragraph (2) of this Article shall be submitted in the template provided in Annex 1 to this Decision, entitled " Template for assessing the fulfilment of the conditions for common equity tier 1 instruments", Annex 2 to this Decision, entitled "Template for assessing the fulfilment of the conditions for additional tier 1 instruments" or Annex 3 to this Decision, entitled "Template for assessing the fulfilment of the conditions for tier 2 instruments".

#### Article 7

A credit institution may not by its actions contribute to the emergence of the circumstances due to which the capital instrument for which it has obtained permission to classify capital instruments as own funds instruments no longer fulfils the prescribed conditions.

#### Article 8

(1) A credit institution shall notify the Croatian National Bank of any intended change related to the capital instrument for which it has obtained permission to classify capital instruments as own funds instruments.

(2) Where the capital instrument for which the credit institution has obtained permission to classify capital instruments as own funds instruments has been altered in a way that has an impact or might have an impact on the fulfilment of the prescribed conditions, such instrument shall, for the purpose of this Decision, be considered a new capital instrument and the credit institution shall obtain a new permission of the Croatian National Bank to classify capital instruments as own funds instruments.

## Article 9

In the cases where the conditions referred to in Articles 30, 55 or 65 of Regulation (EU) No 575/2013 are no longer fulfilled, the Croatian National Bank shall issue a decision establishing the expiry of the permission to classify capital instruments as own funds instruments.

## Article 10

(1) Where, after the issuance of the permission to classify capital instruments as own funds instruments, the European Banking Authority, in connection with Article 80 of Regulation (EU) No 575/2013, issues an opinion with regard to the prescribed conditions, the Croatian National Bank may review the compliance of an instrument with that opinion in the course of supervision. Where the Croatian National Bank assesses that the instrument does not comply with the opinion, it shall order the credit institution to reconcile the instrument with the opinion of the European Banking Authority, make an assessment of the compliance of the instrument with the prescribed conditions in accordance with Article 6 of this Decision and submit the reconciled documentation and assessment to the Croatian National Bank.

(2) In the cases referred to in paragraph (1) of this Article, where the credit institution fails to reconcile the instrument within the specified time limit, it shall cease to include that instrument in the own funds calculation after the expiry of the time limit. The Croatian National Bank shall issue a decision establishing that the permission to classify capital instruments as own funds instruments expired on the date of the expiry of the specified time limit.

## Article 11

This Decision shall be published in the Official Gazette and shall enter into force on the eighth day after the day of its publication.

**ANNEX 1 TEMPLATE FOR ASSESSING THE FULFILMENT OF THE CONDITIONS FOR COMMON EQUITY TIER 1 INSTRUMENTS**

In the Template for assessing the fulfilment of the conditions for common equity tier 1 instruments, a credit institution shall assess the compliance of common equity tier 1 instruments with at least the conditions prescribed in the following provisions:

- Article 28 and Article 73, paragraph (1) of Regulation (EU) No 575/2013 (conditions for instruments, conditions for distributions on instruments);
- Articles 7.a to 7.d of Commission Delegated Regulation (EU) No 241/2014 (conditions for distributions on instruments); and
- Articles 8 and 9 of Commission Delegated Regulation (EU) No 241/2014 (indirect funding).

<b>Template for assessing the fulfilment of the conditions for common equity tier 1 instruments</b>		
<i>(name of the instrument)</i>		
<i>(number and indication of the provision prescribing each condition for an individual capital instrument)</i>	<i>(indication of and reference to the relevant provisions of the contract governing the capital instrument or another relevant document associated with the fulfilment of each prescribed condition for the capital instrument)</i>	<i>(reasoned assessment of the fulfilment of each prescribed condition)</i>
<b>Article 28, paragraph (1) of Regulation (EU) No 575/2013</b>		
(a) the instruments are issued directly by the institution with the prior approval of the owners of the institution or, where permitted under applicable national law, the management body of the institution;		

(b) the instruments are paid up and their purchase is not funded directly or indirectly by the institution		
(related provisions of Articles 8 and 9 of Commission Delegated Regulation (EU) No 241/2014);		
(c) the instruments meet all the following conditions as regards their classification:		
i. they qualify as capital within the meaning of Article 22 of Directive 86/635/EEC;		
ii. they are classified as equity within the meaning of the applicable accounting framework;		
iii. they are classified as equity capital for the purposes of determining balance sheet insolvency, where applicable under national insolvency law;		
(d) the instruments are clearly and separately disclosed on the balance sheet in the financial statements of the institution;		
(e) the instruments are perpetual;		
(f) the principal amount of the instruments may not be reduced or repaid, except in either of the following cases:		
i. the liquidation of the institution;		
ii. discretionary repurchases of the instruments or other discretionary means of reducing capital, where the institution has received the prior permission of the competent authority in accordance with Article 77 of Regulation (EU) No 575/2013;		

<p>(g) the provisions governing the instruments do not indicate expressly or implicitly that the principal amount of the instruments would or might be reduced or repaid other than in the liquidation of the institution, and the institution does not otherwise provide such an indication prior to or at issuance of the instruments where the refusal by the institution to redeem such instruments is prohibited under applicable national law;</p>		
<p>(h) the instruments meet the following conditions as regards distributions:</p>		
<p>i. there is no preferential distribution treatment regarding the order of distribution payments, including in relation to other common equity tier 1 instruments, and the terms governing the instruments do not provide preferential rights to payment of distributions</p>		
<p>(related provisions of Articles 7.a to 7.d of Commission Delegated Regulation (EU) No 241/2014);</p>		
<p>ii. distributions to holders of the instruments may be paid only out of distributable items;</p>		
<p>iii. the conditions governing the instruments do not include a cap or other restriction on the maximum level of distributions;</p>		
<p>iv. the level of distributions is not determined on the basis of the amount for which the instruments were purchased at issuance;</p>		
<p>v. the conditions governing the instruments do not include any obligation for the institution to make</p>		

distributions to their holders and the institution is not otherwise subject to such an obligation;		
vi. non-payment of distributions does not constitute an event of default of the institution;		
vii. the cancellation of distributions imposes no restrictions on the institution;		
(i) compared to all the capital instruments issued by the institution, the instruments absorb the first and proportionately greatest share of losses as they occur, and each instrument absorbs losses to the same degree as all other common equity tier 1 instruments;		
(j) the instruments rank below all other claims in the event of insolvency or liquidation of the institution;		
(k) the instruments entitle their owners to a claim on the residual assets of the institution, which, in the event of its liquidation and after the payment of all senior claims, is proportionate to the amount of such instruments issued and is not fixed or subject to a cap;		
(l) the instruments are not secured, or subject to a guarantee that enhances the seniority of the claim by any of the following:		
i. the institution or its subsidiaries;		
ii. the parent undertaking of the institution or its subsidiaries;		
iii. the parent financial holding company or its subsidiaries;		
iv. the mixed activity holding company or its subsidiaries;		

v. the mixed financial holding company or its subsidiaries;		
vi. any undertaking that has close links with the entities referred to in sub-items (i) to (v) of this item;		
(m) the instruments are not subject to any arrangement, contractual or otherwise, that enhances the seniority of claims under the instruments in insolvency or liquidation.		
<b>Article 73, paragraph (1) of Regulation (EU) No 575/2013</b>		
Capital instruments for which an institution has the sole discretion to decide to pay distributions in a form other than cash or an own funds instrument shall not be capable of qualifying as common equity tier 1, additional tier 1 or tier 2 instruments unless the institution has received the prior permission of the competent authorities.		

**ANNEX 2 TEMPLATE FOR ASSESSING THE FULFILMENT OF THE CONDITIONS FOR ADDITIONAL TIER 1 INSTRUMENTS**

In the Template for assessing the fulfilment of the conditions for additional tier 1 instruments, a credit institution shall assess the compliance of additional tier 1 instruments with at least the conditions prescribed in the following provisions:

- Articles 52 to 54 and Article 73, paragraph (1) of Regulation (EU) No 575/2013 (conditions for instruments, conditions for distributions on instruments); and
- Articles 8, 9 and 20 of Commission Delegated Regulation (EU) No 241/2014 (indirect funding, incentives to redeem).

<b>Template for assessing the fulfilment of the conditions for additional tier 1 instruments</b>		
<i>(name of the instrument)</i>		
<i>(number and indication of the provision prescribing each condition for an individual capital instrument)</i>	<i>(indication of and reference to the relevant provisions of the contract governing the capital instrument or another relevant document associated with the fulfilment of each prescribed condition for the capital instrument)</i>	<i>(reasoned assessment of the fulfilment of each prescribed condition)</i>

<b>Article 52, paragraph (1) of Regulation (EU) No 575/2013</b>		
(a) the instruments are issued and paid up;		
(b) the instruments are not purchased by any of the following:		
i. the institution or its subsidiaries;		
ii. an undertaking in which the institution has a participation in the form of ownership, direct or by way of control, of 20% or more of the voting rights or capital of that undertaking;		
(c) the purchase of the instruments is not funded directly or indirectly by the institution		
(related provisions of Articles 8 and 9 of Commission Delegated Regulation (EU) No 241/2014);		
(d) the instruments rank below tier 2 instruments in the event of the insolvency of the institution;		
(e) the instruments are not secured, or subject to a guarantee that enhances the seniority of the claims by any of the following:		
i. the institution or its subsidiaries;		
ii. the parent undertaking of the institution or its subsidiaries;		
iii. the parent financial holding company or its subsidiaries;		
iv. the mixed activity holding company or its subsidiaries;		
v. the mixed financial holding company or its subsidiaries;		
vi. any undertaking that has close links with the entities referred to in sub-items (i) to (v) of this item;		
(f) the instruments are not subject to any arrangement, contractual or otherwise, that enhances the seniority of the claim under the instruments in insolvency or liquidation;		

(g) the instruments are perpetual and the provisions governing them include no incentive for the institution to redeem them		
(related provisions of Article 20 of Commission Delegated Regulation (EU) No 241/2014);		
(h) where the provisions governing the instruments include one or more call options, the option to call may be exercised at the sole discretion of the issuer;		
(i) the instruments may be called, redeemed or repurchased only where the conditions laid down in Article 77 of Regulation (EU) No 575/2013 are met, and not before five years after the date of issuance except where the conditions laid down in Article 78, paragraph (4) of Regulation (EU) No 575/2013 are met;		
(j) the provisions governing the instruments do not indicate explicitly or implicitly that the instruments would or might be called, redeemed or repurchased and the institution does not otherwise provide such an indication, except in the following cases:		
i. the liquidation of the institution;		
ii. discretionary repurchases of the instruments or other discretionary means of reducing the amount of additional tier 1 capital, where the institution has received the prior permission of the competent authority in accordance with Article 77 of Regulation (EU) No 575/2013;		
(k) the institution does not indicate explicitly or implicitly that the competent authority would consent to a request to call, redeem or repurchase the instruments;		
(l) distributions under the instruments meet the following conditions:		
i. they are paid out of distributable items;		
ii. the level of distributions made on the instruments will not be amended on the basis of		

the credit standing of the institution or its parent undertaking;		
iii. the provisions governing the instruments give the institution full discretion at all times to cancel the distributions on the instruments for an unlimited period and on a non-cumulative basis, and the institution may use such cancelled payments without restriction to meet its obligations as they fall due;		
iv. cancellation of distributions does not constitute an event of default of the institution;		
v. the cancellation of distributions imposes no restrictions on the institution;		
(m) the instruments do not contribute to a determination that the liabilities of an institution exceed its assets, where such a determination constitutes a test of insolvency under applicable national law;		
(n) the provisions governing the instruments require that, upon the occurrence of a trigger event, the principal amount of the instruments be written down on a permanent or temporary basis or the instruments be converted to common equity tier 1 instruments;		
(o) the provisions governing the instruments include no feature that could hinder the recapitalisation of the institution;		
(p) where the instruments are not issued directly by an institution, both the following conditions shall be met:		
i. the instruments are issued through an entity within the consolidation pursuant to Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013;		
ii. the proceeds are immediately available to the institution without limitation and in a form that satisfies the conditions laid down in this paragraph.		
<b>Article 53 of Regulation (EU) No 575/2013</b>		

Restrictions on the cancellation of distributions on additional tier 1 instruments and features that could hinder the recapitalisation of the institution		
<b>Article 54 Regulation (EU) No 575/2013</b>		
Write down or conversion of additional tier 1 instruments		
<b>Article 73, paragraph (1) of Regulation (EU) No 575/2013</b>		
Capital instruments for which an institution has the sole discretion to decide to pay distributions in a form other than cash or an own funds instrument shall not be capable of qualifying as common equity tier 1, additional tier 1 or tier 2 instruments unless the institution has received the prior permission of the competent authorities.		

**ANNEX 3 TEMPLATE FOR ASSESSING THE FULFILMENT OF THE CONDITIONS FOR TIER 2 INSTRUMENTS**

In the Template for assessing the fulfilment of the conditions for tier 2 instruments, a credit institution shall assess the compliance of capital instruments and subordinated loans with at least the conditions prescribed in the following provisions:

- Article 63 and Article 73, paragraph (1) of Regulation (EU) No 575/2013 (conditions for instruments, conditions for distributions on instruments); and
- Articles 8, 9 and 20 of Commission Delegated Regulation (EU) No 241/2014 (indirect funding, incentives to redeem).

<b>Template for assessing the fulfilment of the conditions for tier 2 instruments</b>		
<i>(name of the instrument)</i>		
<i>(number and indication of the provision prescribing each condition for an individual capital instrument)</i>	<i>(indication of and reference to the relevant provisions of the contract governing the capital instrument or another relevant document associated with the fulfilment of each prescribed condition for the capital instrument)</i>	<i>(reasoned assessment of the fulfilment of each prescribed condition)</i>

<b>Article 63 of Regulation (EU) No 575/2013</b>		
(a) the instruments are issued or the subordinated loans are raised, as applicable, and fully paid-up;		
(b) the instruments are not purchased or the subordinated loans are not granted, as applicable, by any of the following:		
i. the institution or its subsidiaries;		
ii. an undertaking in which the institution has a participation in the form of ownership, direct or by way of control, of 20% or more of the voting rights or capital of that undertaking;		
(c) the purchase of the instruments or the granting of the subordinated loans, as applicable, is not funded directly or indirectly by the institution		
(related provisions of Articles 8 and 9 of Commission Delegated Regulation (EU) No 241/2014);		
(d) the claim on the principal amount of the instruments under the provisions governing the instruments or the claim of the principal amount of the subordinated loans under the provisions governing the subordinated loans, as applicable, is wholly subordinated to claims of all non-subordinated creditors;		
(e) the instruments or subordinated loans, as applicable, are not secured, or subject to a guarantee that enhances the seniority of the claim by any of the following:		
i. the institution or its subsidiaries;		
ii. the parent undertaking of the institution or its subsidiaries;		
iii. the parent financial holding company or its subsidiaries;		
iv. the mixed activity holding company or its subsidiaries;		
v. the mixed financial holding company or its subsidiaries;		

vi. any undertaking that has close links with the entities referred to in sub-items (i) to (v) of this item;		
(f) the instruments or subordinated loans, as applicable, are not subject to any arrangement that otherwise enhances the seniority of the claim under the instruments or subordinated loans respectively;		
(g) the instruments or subordinated loans, as applicable, have an original maturity of at least five years;		
(h) the provisions governing the instruments or subordinated loans, as applicable, do not include any incentive for their principal amount to be redeemed or repaid, as applicable, by the institution prior to their maturity		
(related provisions of Article 20 of Commission Delegated Regulation (EU) No 241/2014);		
(i) where the instruments or subordinated loans, as applicable, include one or more call options or early repayment options, as applicable, the options are exercisable at the sole discretion of the issuer or debtor, as applicable;		
(j) the instruments or subordinated loans, as applicable, may be called, redeemed or repurchased or repaid early only where the conditions laid down in Article 77 of Regulation (EU) No 575/2013 are met, and not before five years after the date of issuance or raising, as applicable, except where the conditions laid down in Article 78, paragraph (4) of Regulation (EU) No 575/2013 are met;		
(k) the provisions governing the instruments or subordinated loans, as applicable, do not indicate explicitly or implicitly that the instruments or subordinated loans, as applicable, would or might be called, redeemed, repurchased or repaid early, as applicable, by the institution other than in the insolvency or		

liquidation of the institution and the institution does not otherwise provide such an indication;		
(l) the provisions governing the instruments or subordinated loans, as applicable, do not give the holder the right to accelerate the future scheduled payment of interest or principal, other than in the insolvency or liquidation of the institution;		
(m) the level of interest or dividend payments, as applicable, due on the instruments or subordinated loans, as applicable, will not be amended on the basis of the credit standing of the institution or its parent undertaking;		
(n) where the instruments are not issued directly by an institution, or where the subordinated loans are not raised directly by an institution, as applicable, both of the following conditions shall be met:		
i. the instruments are issued or subordinated loans are raised, as applicable, through an entity, which is part of the consolidation pursuant to Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013;		
ii. the proceeds are immediately available to the institution without limitation and in a form that satisfies the conditions laid down in this paragraph.		
<b>Article 73, paragraph (1) of Regulation (EU) No 575/2013</b>		
Capital instruments for which an institution has the sole discretion to decide to pay distributions in a form other than cash or an own funds instrument shall not be capable of qualifying as common equity tier 1, additional tier 1 or tier 2 instruments unless the institution has received the prior permission of the competent authorities.		