

THE CROATIAN PARLIAMENT

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

DECISION

PROMULGATING THE ACT ON AMENDMENTS TO THE ACT ON SETTLEMENT FINALITY IN PAYMENT AND FINANCIAL INSTRUMENTS SETTLEMENT SYSTEMS

I hereby promulgate the Act on Amendments to the Act on Settlement Finality in Payment and Financial Instruments Settlement Systems, passed by the Croatian Parliament at its session on 29 April 2016.

Class: 011-01/16-01/16

No.: 71-06-01/1-16-2

Zagreb, 3 May 2016

The President of the Republic of Croatia

Kolinda Grabar-Kitarović, m.p.

THE ACT ON AMENDMENTS TO THE ACT ON SETTLEMENT FINALITY IN PAYMENT AND FINANCIAL INSTRUMENTS SETTLEMENT SYSTEMS

Article 1

In the Act on Settlement Finality in Payment and Financial Instruments Settlement Systems (Official Gazette 59/2012), Article 2 is amended to read:

"(1) This Act contains provisions that are consistent with the following legislative acts of the European Union:

- Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998);
- Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims (OJ L 146, 10.6.2009); and

– Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance) (OJ L 331, 15.12.2010).

(2) This Act ensures the conditions for the implementation of the following legislative acts of the European Union:

– 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 (Text with EEA relevance) (OJ L 201, 27.7.2012); and

– Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014).".

Article 2

In Article 3, item (1) is amended to read:

"1) *"system"* means any system complying with the following criteria:

1. it consists of at least three participants, without counting an operator of that system, a settlement agent, a central counterparty, a clearing house or an indirect participant,
2. it applies common rules and standardised arrangements for clearing, regardless of whether clearing is carried out through a central counterparty or without its participation, or for the execution of transfer orders,
3. the rules of the system define the moment of entry and the moment of irrevocability of a transfer order,
4. it has been established by law or by a regulation enacted pursuant to a law, or it operates on the basis of the authorisation issued by a competent authority pursuant to a special law and in accordance with a written agreement between the participants of which at least one has its head office in the Republic of Croatia,
5. it operates in financial instruments or in kuna, or, unless otherwise provided for by a special law, in euro or any other currency, or in various currencies which the system converts one against the other,
6. the competent authority has taken a decision on it referred to in Article 5 of this Act, and
7. it has been notified to ESMA in accordance with Article 14 of this Act;".

In item (2), sub-item (8) is amended to read:

"8. the Croatian National Bank, the Croatian Bank for Reconstruction and Development, a credit union as provided for by the law regulating credit unions, the central bank of another Member State, a post office giro institution and institutions of other Member States individually named in Article 2, paragraph (5), items (4) to (23) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC;"

Item (13) is amended to read:

"13) *collateral security*" means all realisable assets, including, without limitations, financial collateral as provided for by the law regulating financial collateral, provided under a pledge (including money provided under a pledge), a repurchase or similar agreement, or otherwise, for the purpose of securing rights and obligations potentially arising in connection with a system, or provided to the Croatian National Bank, the central bank of another Member State or the European Central Bank;"

After item (16), items (17) and (18) are added which read:

"17) *ESMA*" means the European Supervisory Authority – European Securities and Markets Authority, established by 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;

18) *ESRB*" means the European Systemic Risk Board, established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board."

Article 3

In Article 5, paragraphs (1) and (2) are amended to read:

"(1) The Croatian National Bank shall, *ex officio*, take the decision on the compliance of the system, referred to in Article 4, paragraph (1) of this Act, with the criteria referred to in Article 3, item (1), sub-items (1) to (5) of this Act and shall publish it in the Official Gazette.

(2) The Croatian Financial Services Supervisory Agency shall take the decision on the compliance of the system, referred to in Article 4, paragraph (2) of this Act, with the criteria referred to in Article 3, item (1), sub-items (1) to (5) of this Act, in accordance with the law regulating the capital market, and shall publish it in the Official Gazette."

Article 4

In Article 9, paragraph (3) is amended to read:

"(3) The Croatian National Bank and the Croatian Financial Services Supervisory Agency shall, without delay and within their respective fields of competence, send the notification

referred to in paragraph (1) of this Article to the competent authorities of other Member States, the ESRB and ESMA."

Article 5

In Article 11, after paragraph (2), paragraph (3) is added which reads:

"(3) Where the operator of a system has provided collateral security to the operator of another system in connection with an interoperable system, the rights of the providing operator of a system to that collateral security shall not be affected by insolvency proceedings against the receiving operator of a system."

Article 6

The title of Article 14 is amended to read: "Notification and cooperation with ESMA".

Article 14 is amended to read:

"(1) The Croatian National Bank shall notify ESMA of its field of competence referred to in Article 5, paragraph (1) of this Act, of the payment systems which are included in the scope of this Act and of operators of those systems.

(2) The Croatian Financial Services Supervisory Agency shall notify ESMA of its field of competence referred to in Article 5, paragraph (2) of this Act, of the financial instruments settlement systems which are included in the scope of this Act and of operators of those systems.

(3) The competent authorities referred to in paragraphs (1) and (2) of this Article shall cooperate with ESMA for the purposes of this Act and shall without delay provide it with all the information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010."

Entry into force

Article 7

This Act shall enter into force on the eighth day after the day of its publication in the Official Gazette.

Class: 022-03/16-01/17

Zagreb, 29 April 2016

THE CROATIAN PARLIAMENT

The President of the Croatian Parliament

academician Željko Reiner, m.p.