



HNB

EUROSYSTEM

Trg hrvatskih velikana 3, HR-10000 Zagreb

T. +385 1 4564 555 · F. +385 1 4610 551

www.hnb.hr

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

**(Official Gazette 25/2018, 145/2020 and 139/2022 – unofficial
consolidated version)**

2022

CROATIAN NATIONAL BANK

EUROSYSTEM

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.

(3) When carrying out its tasks referred to in Article 4, paragraph (1), item (d) of Regulation (EU) No 1024/2013, the European Central Bank shall have the powers of the Croatian National Bank referred to in the Act and Regulation (EU) No 575/2013.

(4) When deciding on the application for permission to classify capital instruments as own funds instruments of credit institutions, the Croatian National Bank and the European Central Bank shall carry out their tasks within a single supervisory mechanism in accordance with Article 6 of Regulation (EU) No 1024/2013.”

Under Article 1 of the Decision on amendments to the Decision on the documentation to be enclosed with the application for permission to classify capital instruments as own funds instruments of credit institutions, Official Gazette 139/2022, which enters into force on 1 January 2023, paragraphs (3) and (4) have been added.

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, 15/2018, 70/2019, 47/2020 and 146/2020);
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.
6. 'Regulation (EU) No 1024/2013' means Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287/2013).

(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.

Under Article 1 of the Decision on amendments to the Decision on the documentation to be enclosed with the application for permission to classify capital instruments as own funds instruments of credit institutions, Official Gazette 145/2020, which entered into force on 1 January 2021, paragraph (1), item (1) has been amended in part.

Under Article 2 of the Decision on amendments to the Decision on the documentation to be enclosed with the application for permission to classify capital instruments as own funds instruments of credit institutions, Official Gazette 139/2022, which enters into force on 1 January 2023, in paragraph (1), item (1) has been amended.

Under Article 2 of the Decision on amendments to the Decision on the documentation to be enclosed with the application for permission to classify capital instruments as own funds instruments of credit institutions, Official Gazette 139/2022, which enters into force on 1 January 2023, in paragraph (1), item (6) has been added.

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;
18. for instruments with new or complex features: a properly reasoned legal opinion issued by an appropriately qualified independent legal expert confirming that the instrument fulfils the prescribed conditions;
19. where the additional tier 1 instrument has been issued by a subsidiary undertaking

established in a third country and the trigger is calculated in accordance with the national law of that third country, a properly reasoned legal opinion issued by an appropriately qualified independent legal expert confirming that the national law of that third country and the contractual provisions governing the instrument are at least equivalent to the requirements set out in Article 54 of Regulation (EU) No 575/2013; and

20. 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 and the European Central Bank 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.

Under Article 2 of the Decision on amendments to the Decision on the documentation to be enclosed with the application for permission to classify capital instruments as own funds instruments of credit institutions, Official Gazette 145/2020, which entered into force on 1 January 2021, paragraph (1), item (17) has been amended in part.

Under Article 2 of the Decision on amendments to the Decision on the documentation to be enclosed with the application for permission to classify capital instruments as own funds instruments of credit institutions, Official Gazette 145/2020, which entered into force on 1 January 2021, in paragraph (1), items (18) and (19) have been inserted.

Under Article 2 of the Decision on amendments to the Decision on the documentation to be enclosed with the application for permission to classify capital instruments as own funds instruments of credit institutions, Official Gazette 145/2020, which entered into force on 1 January 2021, paragraph (3) has been amended in part.

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 in accordance with the provisions of Article 79a of Regulation (EU) No 575/2013.

(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".

(4) In examining and making a detailed assessment and explanation referred to in this Article, a credit institution shall take into account publicly disclosed interpretations and recommendations by the European Banking Authority and the European Central Bank with regard to the prescribed conditions.

Under Article 3 of the Decision on amendments to the Decision on the documentation to be enclosed with the application for permission to classify capital instruments as own funds instruments of credit institutions, Official Gazette 145/2020, which entered into force on 1 January 2021, paragraph (1) has been amended in part.

Under Article 3 of the Decision on amendments to the Decision on the documentation to be enclosed with the application for permission to classify capital instruments as own funds instruments of credit institutions, Official Gazette 145/2020, which entered into force on 1 January 2021, paragraph (4) has been added.

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 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.

Under Article 3 of the Decision on amendments to the Decision on the documentation to be enclosed with the application for permission to classify capital instruments as own funds instruments of credit institutions, Official Gazette 139/2022, which enters into force on 1 January 2023, in paragraph (2), the words "be considered" have been replaced by the words "be" and the Croatian words translated as "a new capital instrument" have been replaced by the same Croatian words in a different grammatical case, with no relevance to the English translation.

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.

Under Article 4 of the Decision on amendments to the Decision on the documentation to be enclosed with the application for permission to classify capital instruments as own funds instruments of credit institutions, Official Gazette 139/2022, which enters into force on 1 January 2023, the Croatian word translated as "decision" has been replaced by another Croatian word, with no relevance to the English translation.

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.

Under Article 5 of the Decision on amendments to the Decision on the documentation to be enclosed with the application for permission to classify capital instruments as own funds instruments of credit institutions, Official Gazette 139/2022, which enters into force on 1 January 2023, in paragraph (2), the Croatian words translated as "decision establishing" are replaced by other Croatian words, with no relevance to the English translation.

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.

Decision on amendments to the Decision on the documentation to be enclosed with the application for permission to classify capital instruments as own funds instruments of credit institutions (Official Gazette 145/2020)

Article 5

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

Decision on amendments to the Decision on the documentation to be enclosed with the application for permission to classify capital instruments as own funds instruments of credit institutions (Official Gazette 139/2022)

Article 6

This Decision shall be published in the Official Gazette and enter into force on the day the euro is introduced as the official currency in the Republic of Croatia.

**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 7a to 7d 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).

Template for assessing the fulfilment of the conditions for common equity tier 1 instruments		
<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>
Article 28, paragraph (1) of Regulation (EU) No 575/2013		
(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 fully paid up and the acquisition of ownership of those 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);		

(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 75/2013;		
(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;		
(h) the instruments meet the following conditions as regards distributions:		

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		
(related provisions of Articles 7a to 7d of Commission Delegated Regulation (EU) No 241/2014);		
ii. distributions to holders of the instruments may be paid only out of distributable items;		
iii. the conditions governing the instruments do not include a cap or other restriction on the maximum level of distributions;		
iv. the level of distributions is not determined on the basis of the amount for which the instruments were purchased at issuance;		
v. the conditions governing the instruments do not include any obligation for the institution to make 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.		
Article 73, paragraph (1) of Regulation (EU) No 75/2013		
Capital instruments for which an institution has the sole discretion to decide to pay distributions in a form other than cash or own funds instruments shall not be eligible to qualify as common equity tier 1 instruments, unless the institution has received the prior permission of the competent authority.		

Under Article 4 of the Decision on amendments to the Decision on the documentation to be enclosed with the application for permission to classify capital instruments as own funds instruments of credit institutions, Official Gazette 145/2021, which entered into force on 1 January 2021, in Annex 1 "Template for assessing the fulfilment of the conditions for common equity tier 1 instruments" has been amended in part.

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 to 24a of Commission Delegated Regulation (EU) No 241/2014 (indirect funding, incentives to redeem, conversion or write down of the principal amount, features that could hinder the recapitalisation, indirect issuance, broad market indices).

Under Article 4 of the Decision on amendments to the Decision on the documentation to be enclosed with the application for permission to classify capital instruments as own funds instruments of credit institutions, Official Gazette 145/2020, which entered into force on 1 January 2021, in Annex 2, in the introductory text, the second indent has been amended in part.

Template for assessing the fulfilment of the conditions for additional tier 1 instruments		
<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>

Article 52, paragraph (1) of Regulation (EU) No 75/2013		
(a) the instruments are directly issued by an institution and fully paid up;		
(b) the instruments are not owned 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 acquisition of ownership 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 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 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;		
(h) where the instruments include one or more early redemption options, including call options, the options are exercisable at the sole discretion of the issuer;		

<p>(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 75/2013 are met;</p>		
<p>(j) the provisions governing the instruments do not indicate explicitly or implicitly that the instruments would be called, redeemed or repurchased, as applicable, by the institution other than in the case of the insolvency or liquidation of the institution and the institution does not otherwise provide such an indication;</p>		
<p>(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;</p>		
<p>(l) distributions under the instruments meet the following conditions:</p>		
<p>i. they are paid out of distributable items;</p>		
<p>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;</p>		
<p>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;</p>		
<p>iv. cancellation of distributions does not constitute an event of default of the institution;</p>		
<p>v. the cancellation of distributions imposes no restrictions on the institution;</p>		
<p>(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;</p>		

<p>(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;</p>		
<p>(o) the provisions governing the instruments include no feature that could hinder the recapitalisation of the institution;</p>		
<p>p) where the issuer is established in a third country and has been designated in accordance with Article 12 of Directive 2014/59/EU as part of a resolution group the resolution entity of which is established in the Union or where the issuer is established in a Member State, the law or contractual provisions governing the instruments require that, upon a decision by the resolution authority to exercise the write-down and conversion powers referred to in Article 59 of that Directive, the principal amount of the instruments is to be written down on a permanent basis or the instruments are to be converted to common equity tier 1 instruments; where the issuer is established in a third country and has not been designated in accordance with Article 12 of Directive 2014/59/EU as part of a resolution group the resolution entity of which is established in the Union, the law or contractual provisions governing the instruments require that, upon a decision by the relevant third-country authority, the principal amount of the instruments is to be written down on a permanent basis or the instruments are to be converted into common equity tier 1 instruments;</p>		
<p>(q) where the issuer is established in a third country and has been designated in accordance with Article 12 of Directive 2014/59/EU as part of a resolution group the resolution entity of which is established in the Union or where the issuer is established in a Member State, the instruments may only be issued under, or be otherwise subject to the laws of a third country where, under those laws, the exercise of the write-down and conversion powers referred to in Article 59 of that Directive is effective and enforceable on the basis of statutory provisions or legally enforceable contractual provisions that recognise resolution or other write-down or conversion actions;</p>		

(r) the instruments are not subject to set-off or netting arrangements that would undermine their capacity to absorb losses		
(related provisions of Articles 20 to 24a of Commission Delegated Regulation (EU) No 241/2014).		
Article 53 of Regulation (EU) No 75/2013		
Restrictions on the cancellation of distributions on additional tier 1 instruments and features that could hinder the recapitalisation of the institution		
Article 54 of Regulation (EU) No 75/2013		
Write down or conversion of additional tier 1 instruments		
Article 73, paragraph (1) of Regulation (EU) No 75/2013		
Capital instruments for which an institution has the sole discretion to decide to pay distributions in a form other than cash or own funds instruments shall not be eligible to qualify as additional tier 1 instruments, unless the institution has received the prior permission of the competent authority.		

Under Article 4 of the Decision on amendments to the Decision on the documentation to be enclosed with the application for permission to classify capital instruments as own funds instruments of credit institutions, Official Gazette 145/2021, which entered into force on 1 January 2021, in Annex 2 "Template for assessing the fulfilment of the conditions for additional tier 1 instruments" has been amended in part.

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, 20, 24 and 24a of Commission Delegated Regulation (EU) No 241/2014 (indirect funding, incentives to redeem, indirect issuance, broad market indices).

Under Article 4 of the Decision on amendments to the Decision on the documentation to be enclosed with the application for permission to classify capital instruments as own funds instruments of credit institutions, Official Gazette 145/2020, which entered into force on 1 January 2021, in Annex 3, in the introductory text, the second indent has been amended in part.

Template for assessing the fulfilment of the conditions for tier 2 instruments		
<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>

Article 63 of Regulation (EU) No 75/2013		
(a) the instruments are directly issued by an institution and fully paid up;		
(b) the instruments are not owned 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 acquisition of ownership 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 claim on the principal amount of the instruments under the provisions governing the instruments ranks below any claim from eligible liabilities instruments;		
(e) the instruments are not secured or are not 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 are not subject to any arrangement that otherwise enhances the seniority of the claim under the instruments;		
(g) the instruments have an original maturity of at least five years;		
(h) the provisions governing the instruments do not include any incentive for their principal amount to be redeemed or repaid, as applicable, by the institution prior to their maturity;		

(i) where the instruments include one or more early repayment options, including call options, the options are exercisable at the sole discretion of the issuer;		
(j) the instruments may be called, redeemed, repaid or repurchased 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, except where the conditions laid down in Article 78, paragraph (4) of Regulation (EU) No 75/2013 are met;		
(k) the provisions governing the instruments do not indicate explicitly or implicitly that the instruments would be called, redeemed, repaid or repurchased early, as applicable, by the institution other than in the case of the insolvency or liquidation of the institution and the institution does not otherwise provide such an indication;		
(l) the provisions governing the instruments do not give the holder the right to accelerate the future scheduled payment of interest or principal, other than in the case of the insolvency or liquidation of the institution;		
(m) the level of interest or dividends payments, as applicable, due on the instruments will not be amended on the basis of the credit standing of the institution or its parent undertaking;		

<p>n) where the issuer is established in a third country and has been designated in accordance with Article 12 of Directive 2014/59/EU as part of a resolution group the resolution entity of which is established in the Union or where the issuer is established in a Member State, the law or contractual provisions governing the instruments require that, upon a decision by the resolution authority to exercise the write-down and conversion powers referred to in Article 59 of that Directive, the principal amount of the instruments is to be written down on a permanent basis or the instruments are to be converted to common equity tier 1 instruments; where the issuer is established in a third country and has not been designated in accordance with Article 12 of Directive 2014/59/EU as part of a resolution group the resolution entity of which is established in the Union, the law or contractual provisions governing the instruments require that, upon a decision by the relevant third-country authority, the principal amount of the instruments is to be written down on a permanent basis or the instruments are to be converted into common equity tier 1 instruments;</p>		
<p>(o) where the issuer is established in a third country and has been designated in accordance with Article 12 of Directive 2014/59/EU as part of a resolution group the resolution entity of which is established in the Union or where the issuer is established in a Member State, the instruments may only be issued under, or be otherwise subject to the laws of a third country where, under those laws, the exercise of the write-down and conversion powers referred to in Article 59 of that Directive is effective and enforceable on the basis of statutory provisions or legally enforceable contractual provisions that recognise resolution or other write-down or conversion actions;</p>		
<p>(p) the instruments are not subject to set-off or netting arrangements that would undermine their capacity to absorb losses</p>		
<p>(related provisions of Articles 20, 24 and 24a of Commission Delegated Regulation (EU) No 241/2014).</p>		

Article 73, paragraph (1) of Regulation (EU) No 75/2013		
Capital instruments for which an institution has the sole discretion to decide to pay distributions in a form other than cash or own funds instruments shall not be eligible to qualify as tier 2 instruments, unless the institution has received the prior permission of the competent authority.		

Under Article 4 of the Decision on amendments to the Decision on the documentation to be enclosed with the application for permission to classify capital instruments as own funds instruments of credit institutions, Official Gazette 145/2020, which entered into force on 1 January 2021, in Annex 3 "Template for assessing the fulfilment of the conditions for tier 2 instruments" has been amended in part.