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Pursuant to Article 114, paragraph (6) of the Credit Institutions Act (Official Gazette 159/2013, 19/2015, 102/2015, 15/2018, 70/2019 and 47/2020), 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 (10) of the Act on the Croatian National Bank (Official Gazette 75/2008, 54/2013 and 47/2020), the Governor of the Croatian National Bank hereby issues 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

Article 1

In 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 25/2018), in Article 2, paragraph (1), item (1) is amended to read:

"1. 'Act' means the Credit Institutions Act (Official Gazette 159/2013, 19/2015, 102/2015, 15/2018, 70/2019 and 47/2020);".

Article 2

In Article 4, paragraph (1), item (17) is amended to read:

"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;"

In Article 4, paragraph (1), after item (17), items (18) and (19) are inserted which read:

"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".

In Article 4, paragraph (1), item (18) becomes item (20).

In Article 4, paragraph (3) is amended to read:

"(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."

Article 3

In Article 6, paragraph (1) is amended to read:

"(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."

Paragraph (4) is added which reads:

"(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."

Article 4

In Annex 1 "Template for assessing the fulfilment of the conditions for common equity tier 1 instruments" is amended to read:

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 575/2013;		
(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 575/2013		
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,		



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unless the institution has received the prior permission of the competent authority.		
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In Annex 2, in the introductory text, the second indent is amended to read:

"– 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)."

In Annex 2 "Template for assessing the fulfilment of the conditions for additional tier 1 instruments" is amended to read:

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 575/2013		
(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;		
(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 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;		
(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;		

<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;</p> <p>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>		
<p>(r) 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 to 24a of Commission Delegated Regulation (EU) No 241/2014);</p>		
<p>Article 53 of Regulation (EU) No 575/2013</p>		
<p>Restrictions on the cancellation of distributions on additional tier 1 instruments and features that could hinder the recapitalisation of the institution</p>		
<p>Article 54 of Regulation (EU) No 575/2013</p>		
<p>Write down or conversion of additional tier 1 instruments</p>		



Article 73, paragraph (1) of Regulation (EU) No 575/2013		
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.		

In Annex 3, in the introductory text, the second indent is amended to read:

"– 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).".

In Annex 3 "Template for assessing the fulfilment of the conditions for tier 2 instruments" is amended to read:

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 575/2013		
(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 575/2013 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;		
(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;		
(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) the instruments are not subject to set-off or netting arrangements that would undermine their capacity to absorb losses		
(related provisions of Articles 20, 24 and 24a of Commission Delegated Regulation (EU) No 241/2014).		
Article 73, paragraph (1) of Regulation (EU) No 575/2013		
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.		

Article 5

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

No.: 407-020/12-20/BV
Zagreb, 17 December 2020

Croatian National Bank

Governor

Boris Vujčić