

Pursuant to Article 4, paragraph (2) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, Article 4, paragraph (2), Article 6, items (2), (3) and (4) and Article 14, paragraph (2) of the Act Implementing Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (Official Gazette 54/2013), and Article 101, paragraph (2), item (1) of the Credit Institutions Act (Official Gazette 159/2013, 19/2015 and 102/2015), and 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 notification of intention to apply an intragroup exemption from the clearing obligation referred to in Article 4, paragraph (2) of Regulation (EU) No 648/2012

Article 1

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

1. 'Regulation (EU) No 648/2012' means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;
2. 'Regulation (EU) 2015/2205' means Commission Delegated Regulation (EU) 2015/2205 of 6 August 2015 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation;
3. 'Act' means the Act Implementing Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (Official Gazette 54/2013);
4. 'CNB' means the Croatian National Bank, i.e. the central bank of the Republic of Croatia, the tasks and competences of which are prescribed by the Act on the Croatian National Bank, the Act and other acts;
5. 'ESMA' means the European Securities and Markets Authority established pursuant to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC;
6. 'group' means the group of undertakings referred to in Article 2, item (16) of Regulation (EU) No 648/2012;
7. 'intragroup transaction' means an OTC derivative contract entered into with another counterparty which is part of the same group, as defined in Article 3, paragraph (1) of Regulation (EU) No 648/2012 for non-financial counterparties, and Article 3, paragraph (2) of Regulation (EU) No 648/2012 for financial counterparties;
8. 'clearing obligation' means the obligation of counterparties referred to in Article 4, paragraph (1), item (a) of Regulation (EU) No 648/2012 to clear OTC derivatives that are subject to the clearing obligation in accordance with Article 4, paragraph (1) of Regulation (EU) No 648/2012

through a central counterparty authorised under Article 14 of Regulation (EU) No 648/2012 or recognised under Article 25 of Regulation (EU) No 648/2012 to clear that class of OTC derivatives and listed in the register in accordance with Article 6, paragraph (2), item (b) of Regulation (EU) No 648/2012;

9. 'Form' means a form for submission of the notification of intention to apply the exemption referred to in Article 4, paragraph (2), item (a) of Regulation (EU) No 648/2012, or the application referred to in Article 4, paragraph (2), item (b) of Regulation (EU) No 648/2012.

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

Article 2

This Decision prescribes:

a) a list of the documentation that must be enclosed with:

– a notification of intention to apply an intragroup exemption from the clearing obligation for OTC derivatives referred to in Article 4, paragraph (2), item (a) of Regulation (EU) No 648/2012, which the CNB needs to assess whether transactions between the counterparties meet the conditions laid down in Article 3 of Regulation (EU) No 648/2012 and whether the application of the exemption is permitted;

– an application for authorisation to apply an intragroup exemption from the clearing obligation for OTC derivatives referred to in Article 4, paragraph (2), item (b) of Regulation (EU) No 648/2012, which the CNB needs to assess whether transactions between the counterparties meet the conditions laid down in Article 3 of Regulation (EU) No 648/2012 and whether the application of the exemption is permitted;

– a notification of the application of the delay of the clearing obligation for intragroup transactions between counterparties from the Member States, belonging to categories 1 to 3 referred to in Article 2, paragraph (1) of Regulation (EU) 2015/2205, and counterparties from third countries, which is prescribed in Article 3, paragraph (2) of Regulation (EU) 2015/2205;

b) the format of the notification or application referred to in item (a) of this Article and the method of submission of such notification or application to the CNB as the competent authority;

c) the method of application of the periods referred to in Article 4, paragraph (2) of Regulation (EU) No 648/2012.

Article 3

(1) The notification referred to in Article 2, item (a), first indent of this Decision shall be submitted to the CNB by credit institutions with head offices in the Republic of Croatia that have been authorised by the CNB, in case the other counterparty in the intragroup transaction is established in the Republic of Croatia or another Member State.

(2) A collective notification may be submitted to the CNB when the credit institution referred to in paragraph (1) of this Article intends to apply the exemption with several counterparties in a group where, if one or more of such counterparties are also credit institutions, it shall be deemed

that upon receipt of the notification from the applicant credit institution, the notification has also been received for its credit institution counterparties referred to in paragraph (1) of this Article, provided that authorised persons of the credit institution counterparties referred to in paragraph (1) of this Article to which the collective notification refers co-sign the summary notification referred to in Article 5 of this Decision.

(3) The application referred to in Article 2, item (a), second indent of this Decision shall be submitted by the credit institutions referred to in paragraph (1) of this Article when the other counterparty in the intragroup transaction is established in a third country.

(4) Up to the expiry of the delay of the clearing obligation for intragroup transactions between counterparties from the Member States, belonging to categories 1 to 3 referred to in Article 2, paragraph (1) of Regulation (EU) 2015/2205, and counterparties from third countries, which is prescribed in Article 3, paragraph (2) of Regulation (EU) 2015/2205, the credit institutions referred to in paragraph (1) of this Article that enter into such transactions shall not be obliged to submit to the CNB the application referred to in Article 2, item (a), second indent of this Decision. In that case, the notification referred to in Article 4, paragraph (1) of this Decision shall be submitted.

(5) Paragraph (4) of this Article shall also apply *mutatis mutandis* to subsequent delegated regulations that prescribe the clearing obligation for other classes of OTC derivatives which comprise provisions on the delay of the clearing obligation for intragroup transactions with counterparties from third countries equivalent to the provisions of Regulation (EU) 2015/2205.

(6) If necessary, the CNB shall amend this Decision in such a way to enable the application of intragroup exemptions or delays of the application of the clearing obligation under subsequent delegated regulations prescribing the clearing obligation.

Article 4

(1) In the case referred to in Article 3, paragraph (3) of this Decision, in order to be able to apply the delay of the clearing obligation, credit institutions shall notify the CNB in writing that the conditions laid down in Article 3, paragraph (2), items (a) to (d) of Regulation (EU) 2015/2205 have been met and shall submit the documentation referred to in Article 5 of this Decision.

(2) Within 30 days of receipt of the notification, the CNB shall establish whether the conditions referred to in paragraph (1) of this Article have been met and shall notify the credit institution thereof.

Article 5

(1) Credit institutions that submit the notification or application referred to in Article 2, item (a) of this Decision shall submit to the CNB the following documentation:

a) a summary notification in writing which shall comprise:

– the firm name of the credit institution;

– an explanation of the type of the notification or application referred to in Article 2, item (a) of this Decision that is being submitted;

- data on the type of OTC derivatives for which the exemption is sought;
 - a list of counterparties in intragroup transactions to which the exemption or the delay of the clearing obligation would apply;
 - the identifier of the Form (PIN of the entity subject to supervision and the date of application, in the following format: PIN_yyyy-mm-dd);
 - the name and surname, function and signature of the authorised person;
 - where a collective notification is submitted, the name and surname, function and co-signature of authorised persons of other counterparties for which the notification is being submitted;
- b) a completed form set out in Annex to this Decision.

(2) The authorised person who signs the summary notification referred to in paragraph (1), item (a) of this Article shall be the same as the signatory of the statement of responsibility set out in Section F of the Form.

Article 6

(1) The periods specified in Article 4, paragraph (2), items (a) and (b) of Regulation (EU) No 648/2012, as well as the period specified in Article 3, paragraph (2) of Regulation (EU) 2015/2205 shall start to run from the day when the credit institution submits the complete notification or application referred to in Article 2, item (a) of this Decision.

(2) The notification or application referred to in Article 2, item (a) of this Decision shall be deemed complete when the credit institution submits to the CNB the data prescribed in Article 5 of this Decision.

(3) Within 5 working days of receipt of the notification or application referred to in Article 2, item (a) of this Decision, the CNB shall establish its completeness and shall notify thereof the credit institution that submitted the notification or application. Where the CNB establishes that the notification or application referred to in Article 2, item (a) of this Decision is incomplete, the CNB shall notify the credit institution thereof and invite it to supplement the notification or application within 10 working days of the delivery of the invitation to supplement the documentation.

(4) On the application referred to in Article 2, item (a), second indent of this Decision, the CNB shall adopt a decision within the meaning of the act regulating the general administrative procedure.

(5) In case of the notification referred to in Article 2, item (a) of this Decision, the CNB shall within the prescribed period notify the credit institution whether the application of the intragroup exemption is permitted. It shall be deemed that the application is permitted where the CNB does not notify the credit institution within the specified period.

(6) Where the CNB establishes in the course of examining the submitted documentation that the application of the intragroup exemption is not permitted, it shall, within the period referred to in paragraph (5) of this Article, issue a decision to the credit institution on the objection to the application of the exemption and shall forward a notification thereof to the competent authority of the other counterparty to which the intragroup exemption relates.

Article 7

Truthfulness, accuracy and completeness of data

- (1) The signatory of the statement of responsibility set out in Section F of the Form shall be fully responsible for the truthfulness, accuracy and completeness of the submitted data.
- (2) The CNB shall be empowered to require from credit institutions additional data which confirm the truthfulness, accuracy and completeness of the submitted data, including certificates and attestations from other competent domestic and foreign authorities.

Article 8

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

No.: NN, br. 64/2016

Zagreb, 14.07.2016.

Croatian National Bank
Governor
Boris Vujčić

Annex:

Notification of intention to apply the exemption referred to in Article 4, paragraph (2), item (a) of Regulation (EU) No 648/2012, or the application referred to in Article 4, paragraph (2), item (b) of Regulation (EU) No 648/2012