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Contents

II *Non-legislative acts*

REGULATIONS

- ★ **Commission Delegated Regulation (EU) 2023/827 of 11 October 2022 laying down regulatory technical standards amending Delegated Regulation (EU) No 241/2014 as regards the prior permission to reduce own funds and the requirements related to eligible liabilities instruments ⁽¹⁾** 1
- ★ **Commission Delegated Regulation (EU) 2023/828 of 2 February 2023 correcting Delegated Regulation (EU) 2020/2015 as regards the survivability exemption for common sole catches by vessels under 12 metres long and using otter bottom trawls, in the Western Waters, ICES division 7e, for 2023** 23

DECISIONS

- ★ **Commission Decision (EU) 2023/829 of 17 April 2023 on relief from import duties and VAT exemption on importation granted for goods to be distributed or made available free of charge to persons fleeing the military aggression in Ukraine and to persons in need in Ukraine (*notified under document C(2023) 2490*)** 25

RECOMMENDATIONS

- ★ **Recommendation No 1/2021 of the EU-Azerbaijan Cooperation Council of 22 December 2021 on the extension of the EU-Azerbaijan Partnership Priorities for the period 2021-2024 [2023/830] ...** 30

⁽¹⁾ Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

GUIDELINES

★ Guideline (EU) 2023/831 of the European Central Bank of 16 December 2022 amending Guideline (EU) 2015/510 on the implementation of the Eurosystem monetary policy framework (ECB/2022/48)	32
★ Guideline (EU) 2023/832 of the European Central Bank of 16 December 2022 amending Guideline (EU) 2016/65 on the valuation haircuts applied in the implementation of the Eurosystem monetary policy framework (ECB/2015/35) (ECB/2022/49)	40
★ Guideline (EU) 2023/833 of the European Central Bank of 16 December 2022 amending Guideline ECB/2014/31 on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral (ECB/2022/50)	48

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2023/827

of 11 October 2022

laying down regulatory technical standards amending Delegated Regulation (EU) No 241/2014 as regards the prior permission to reduce own funds and the requirements related to eligible liabilities instruments

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 ⁽¹⁾, and in particular Article 28(5), third subparagraph, Article 29(6), third subparagraph, Article 52(2), third subparagraph, Article 72b(7), fourth subparagraph, Article 76(4), third subparagraph, Article 78(5), third subparagraph, Article 78a(3), fourth subparagraph, and Article 79(2), third subparagraph, thereof,

Whereas:

- (1) Regulation (EU) 2019/876 of the European Parliament and of the Council ⁽²⁾ amended the terminology used in a number of Articles of Regulation (EU) No 575/2013. Those amendments should be reflected in Commission Delegated Regulation (EU) No 241/2014 ⁽³⁾, which sets out regulatory technical standards for own funds requirements for institutions.
- (2) Regulation (EU) 2019/876 introduced into Regulation (EU) No 575/2013 new requirements for own funds and eligible liabilities for global systemically important institutions (G-SIIs) and for material subsidiaries of non-EU G-SIIs, as well as harmonised criteria for eligible liabilities items and instruments to comply with those requirements. Regulation (EU) 2019/876 also introduced Articles 72b(7) and 78a(3) into Regulation (EU) No 575/2013, which require the European Banking Authority (EBA) to develop draft regulatory technical standards specifying some of the eligibility criteria for eligible liabilities instruments as well as the permission regime for reducing those instruments. The own funds requirements for institutions and the new requirements for own funds and eligible liabilities pursue the same objective of ensuring that institutions have sufficient loss-absorbing capacity. For that reason, the standards for own funds instruments and the standards for eligible liabilities instruments are

⁽¹⁾ OJ L 176, 27.6.2013, p. 1.

⁽²⁾ Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (OJ L 150, 7.6.2019, p. 1).

⁽³⁾ 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 (OJ L 74, 14.3.2014, p. 8).

closely linked with each other, in particular where Regulation (EU) No 575/2013 expressly requires those standards to be fully aligned. To ensure coherence and consistency between the standards for own funds instruments and the standards for eligible liabilities instruments, and to facilitate a comprehensive view and compact access to those standards by persons subject to them, it is appropriate to incorporate the standards for eligible liabilities instruments into Delegated Regulation (EU) No 241/2014.

- (3) The requirements for own funds and eligible liabilities in both Regulation (EU) No 575/2013 and Directive 2014/59/EU of the European Parliament and of the Council ⁽⁴⁾ share the same objective of ensuring that institutions have sufficient loss absorbing-capacity. For that reason, Directive (EU) 2019/879 of the European Parliament and of the Council ⁽⁵⁾ introduced into Directive 2014/59/EU Article 45b(1), which extended, for all resolution entities, the eligibility criteria for eligible liabilities instruments to liabilities eligible for meeting the minimum requirement for own funds and eligible liabilities (MREL), with the exception of the criterion referred to in Article 72b(2), point (d), of Regulation (EU) No 575/2013. In relation to resolution entities that are G-SIIs entities and Union material subsidiaries of non-EU G-SIIs, Directive (EU) 2019/879 introduced into Directive 2014/59/EU Article 45d. That provision provides in its paragraph 1, point (a), and in its paragraph 2, point (a), both read in conjunction with Article 45b(1), second subparagraph, that the eligibility of liabilities for meeting the minimum required level of MREL is conditional upon the compliance of those liabilities with the eligibility criteria for eligible liabilities instruments. Those criteria require, inter alia, that the liabilities are not funded directly or indirectly by the institution, that the liabilities cannot be reduced without prior permission of the resolution authority, and that the liabilities may not contain an incentive to redeem, except in the cases referred to in Article 72c(3) of Regulation (EU) No 575/2013. Similarly, in relation to entities that are not resolution entities, Directive (EU) 2019/879 introduced into Directive 2014/59/EU Article 45f. Paragraph 2, points (a)(ii) and (a)(v), of that Article made the eligibility of liabilities subject to compliance with certain eligibility criteria for eligible liabilities instruments and to the requirement that the acquisition of ownership of the liabilities is not funded directly or indirectly by the entity that is subject to that Article. It is therefore necessary to lay down that the provisions of Delegated Regulation (EU) No 241/2014 related to direct and indirect funding of eligible liabilities instruments, form and nature of incentives to redeem and prior permission to reduce such instruments should also be applied in a consistent manner for the purposes of Article 45b(1) and Article 45f(2), points (a)(ii) and (a)(v), of Directive 2014/59/EU. In order to ensure that consistency, the term 'eligible liabilities instruments' should also be understood as a reference to 'eligible liabilities' as referred to in Article 45b and Article 45f(2), point (a), of Directive 2014/59/EU, regardless of the residual maturity of those liabilities, and the term 'institution' should also apply to any entity subject to MREL in accordance with Article 45(1) of that Directive.
- (4) Article 28(1), point (b), Article 52(1), point (c), and Article 63, point (c), of Regulation (EU) No 575/2013 make the eligibility of own funds instruments conditional on them not being funded directly or indirectly by the institution. Regulation (EU) 2019/876, by introducing in Regulation (EU) No 575/2013 Article 72b(2), point (c), extended that condition to eligible liabilities instruments, with the difference that, in line with the Total Loss-absorbing Capacity (TLAC) standard, eligible liabilities instruments should not be directly or indirectly funded by the resolution entity. Article 72b(7), first subparagraph, point (a), of Regulation (EU) No 575/2013 mandates the EBA to specify, through draft regulatory technical standards, the applicable forms and nature of indirect funding of eligible liabilities instruments. According to Article 72b(7), second subparagraph, of that Regulation, those draft regulatory technical standards are to be fully aligned with the delegated act referred to in Article 28(5), first subparagraph, point (a), of Regulation (EU) No 575/2013, which is Delegated Regulation (EU) No 241/2014. The provisions of that Delegated Regulation should therefore also apply to eligible liabilities instruments.

⁽⁴⁾ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

⁽⁵⁾ Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC (OJ L 150, 7.6.2019, p. 296).

- (5) The eligibility criterion on direct and indirect funding prevents the acquisition of ownership of own funds instruments and eligible liabilities instruments funded directly or indirectly by an institution or resolution entity. Without that criterion, losses could come back to those entities, potentially diminishing or neutralising the loss relief that the instruments were supposed to provide. The risk of such a negative feedback loop also exists within banking and resolution groups, for instance in the context of the issuance and subscription of instruments eligible to meet the new internal MREL requirement laid down in Article 45f of Directive 2014/59/EU. The rules on direct and indirect funding of own funds and eligible liabilities instruments should therefore capture funding chains maintaining risks within a group, irrespective of whether those funding chains involve an external investor or not. Indeed, it is necessary to capture situations of intragroup circular funding so as to avoid circumvention of the rules on direct and indirect funding of own funds and eligible liabilities instruments which could occur, for instance, when funding is provided via subsidiaries of the institution or resolution entity or by other entities with which the institution or resolution entity has interdependencies. It should therefore not be necessary that the funding is provided by that institution to conclude that capital instruments or liabilities are directly or indirectly funded by the institution issuing such instruments or liabilities. Thus, a qualification of funding as direct or indirect funding may also be possible where that funding is provided by an entity included in the scope of prudential or accounting consolidation of the institution, the institutional protection scheme or the network of institutions affiliated to a central body to which the institution belongs, or the scope of supplementary supervision of the institution. That should apply regardless of whether that other entity belongs to another resolution group.
- (6) Regulation (EU) 2017/2401 of the European Parliament and of the Council ⁽⁶⁾ removed the definition of 'excess spread' from Article 242 of Regulation (EU) No 575/2013. Since Article 12(3) of Delegated Regulation (EU) No 241/2014 uses that term by referring to Article 242 of Regulation (EU) No 575/2013, it is necessary to amend Article 12(3) of that Delegated Regulation by introducing a definition of the term 'excess spread' directly into that Article.
- (7) Article 52(1), point (g), and Article 63, point (h), of Regulation (EU) No 575/2013 make the eligibility of Additional Tier 1 instruments and Tier 2 instruments conditional upon the absence of any incentive for their principal amount to be redeemed. Regulation (EU) 2019/876, by introducing in Regulation (EU) No 575/2013 Article 72b(2), point (g), extended that requirement to eligible liabilities instruments, with the difference that for eligible liabilities instruments incentives to redeem are permitted in the cases referred to in Article 72c(3) of Regulation (EU) No 575/2013. That amendment should be reflected in Delegated Regulation (EU) No 241/2014.
- (8) With regard to index holdings, Regulation (EU) 2019/876 introduced into Regulation (EU) No 575/2013 Article 76. That Article extended the scope of the prior permission to be granted by the competent authority – allowing an institution to use a conservative estimate of the underlying exposure of the institution to instruments included in indices – to eligible liabilities instruments of institutions. That amendment should be reflected in Delegated Regulation (EU) No 241/2014. The provisions in that Regulation regarding estimates used as an alternative to the calculation of underlying exposures to own funds instruments included in indices being 'sufficiently conservative' and the meaning of 'operationally burdensome' should thus be amended to also apply to eligible liabilities instruments.
- (9) Regulation (EU) 2019/876 inserted Article 78(1), second subparagraph, into Regulation (EU) No 575/2013 to enable competent authorities to grant to institutions a general prior permission to reduce own funds for a predetermined amount and a limited period of time. It is therefore necessary to remove from Delegated Regulation (EU) No 241/2014 preconditions and limits that are applicable to a prior permission for market-making purposes, since those preconditions and limits are now embedded in the general prior permission regime laid down in Article 78(1), second subparagraph, of Regulation (EU) No 575/2013.

⁽⁶⁾ Regulation (EU) 2017/2401 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms (OJ L 347, 28.12.2017, p. 1).

- (10) The prior permission regimes for reducing own funds, laid down in Article 78 of Regulation (EU) No 575/2013, and for reducing eligible liabilities instruments, laid down in Article 78a of that Regulation, both aim at ensuring compliance with regulatory requirements related to own funds and to own funds and eligible liabilities, and have a number of similar features. It is therefore necessary to standardise the processes followed by competent authorities and resolution authorities for both the general prior permission referred to in Article 78(1), second subparagraph, and Article 78a(1), second subparagraph, of Regulation (EU) No 575/2013, and any other permissions referred to in those Articles. Furthermore, to ensure that the specificities of any prior permission are taken into account, and to ensure that those permissions are appropriately used for their specific purposes, it is necessary to lay down that competent authorities and resolution authorities should be required to specify the period for which a prior permission other than a general prior permission is granted, and a maximum limit for that specified period should be established.
- (11) Articles 78(1), second subparagraph, and 78a(1), second subparagraph, of Regulation (EU) No 575/2013 require the general prior permission for reducing own funds and eligible liabilities instruments to be granted for a specified period that shall not exceed one year. An application for the renewal of a general prior permission which has not yet expired should not require the same level of scrutiny or interaction between authorities as the application for the original permission, if the institution has not requested for an increase in the predetermined amount set when the original permission was granted and has not changed the rationale provided when the original permission was requested. Consequently, in those specific circumstances, the content of the application to be submitted by institutions and the timing for the submission of the application should be reduced.
- (12) Article 77(2) of Regulation (EU) No 575/2013 requires institutions to obtain the prior permission of the resolution authority to effect the call, redemption, repayment or repurchase of eligible liabilities instruments. According to Article 78a(1) of that Regulation, the permission may only be granted where a number of conditions have been complied with, including the condition that the institution replaces the eligible liabilities instruments with own funds or eligible liabilities instruments of equal or higher quality at terms that are sustainable for the income capacity of the institution. Article 78a(3), second subparagraph, of Regulation (EU) No 575/2013 requires that the standards on the meaning of 'sustainable for the income capacity of the institution' in the context of eligible liabilities instruments are fully aligned with its equivalent for own funds. It is therefore necessary to specify that the same meaning of 'sustainable for the income capacity of the institution' is to be used for both types of instruments.
- (13) It is necessary to align the general prior permission regimes for own funds and eligible liabilities instruments to ensure that those regimes are applied coherently across the Union. The predetermined amount to be set by resolution authorities when granting the general prior permission to reduce eligible liabilities instruments should therefore be subject to limits, without preventing resolution authorities to set lower predetermined amounts for a particular institution where justified by the specific circumstances of the case. It is also necessary to prevent institutions from operating at a level of own funds and eligible liabilities instruments that would fail to reflect that a part of the own funds and eligible liabilities instruments would not be available to absorb losses when needed. In case of a general prior permission, the predetermined amount for which the authority concerned has given its permission should therefore be deducted from the moment the authorisation is granted.
- (14) It is necessary to ensure a proportionate treatment for institutions whose resolution plans provide that they are to be wound up under normal insolvency proceedings and for which the resolution authority has set the minimum requirement for own funds and eligible liabilities referred to in Article 45(1) of Directive 2014/59/EU at a level that does not exceed an amount sufficient to absorb losses. Those institutions should therefore be able to request a permission, including a general prior permission, for reducing eligible liabilities instruments based on a simplified application regime. Such a regime should entail reduced information requirements and, to further reduce the administrative burden of those institutions and of resolution authorities, the prior permission should be deemed granted in the absence of a reply from the resolution authority. Given that those institutions do not need to issue eligible liabilities instruments for meeting the minimum requirement for own funds and eligible liabilities, the predetermined amount of eligible liabilities instruments to be reduced should not be subject to the same limits as for other institutions.

- (15) Article 78a(3) of Regulation (EU) No 575/2013 instructs the EBA to develop regulatory technical standards to specify the procedure for granting a permission to reduce eligible liabilities instruments and to specify the process of cooperation between the competent authority and the resolution authority. In order to ensure compliance with own funds and eligible liabilities requirements laid down in Regulation (EU) No 575/2013, Directive 2013/36/EU of the European Parliament and of the Council ⁽⁷⁾ and Directive 2014/59/EU, the process of cooperation between the competent authority and the resolution authority should include consultation with the competent authority on the application for prior permission received by the resolution authority. That consultation should be conducted in a way that enables the competent authority to express an informed view on the consultation, including where its agreement is required for establishing the margin by which the institution's own funds and eligible liabilities must exceed its requirements, with an adequate exchange of information and sufficient time to respond to the consultation.
- (16) Prior to the entry into force of Regulation (EU) 2019/876, Article 79(1) of Regulation (EU) No 575/2013 provided that a competent authority may temporarily waive the provisions on deductions for own funds instruments where an institution held those instruments in a financial sector entity for the purposes of a financial assistance operation designed to reorganise and save that entity. Regulation (EU) 2019/876, by amending Article 79(1) of Regulation (EU) No 575/2013, extended the scope of the temporary waiver that competent authorities may grant to institutions' holdings of eligible liabilities instruments in an institution. As a result, the provisions of Delegated Regulation (EU) No 241/2014 concerning that temporary waiver should be amended to also apply to institutions' holdings of eligible liabilities instruments in institutions.
- (17) Delegated Regulation (EU) No 241/2014 should therefore be amended accordingly.
- (18) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the EBA.
- (19) EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽⁸⁾.
- (20) In accordance with the procedure set out in Article 10 of Regulation (EU) No 1093/2010, the Commission has endorsed with amendments the draft regulatory technical standards submitted by EBA explaining the reasons for the amendments. EBA provided a formal opinion, accepting the proposed amendments with the exception of those relating to the introduction of an explicit prohibition of indirect intragroup funding and the introduction of a tacit agreement mechanism for the general prior permission to reduce eligible liabilities by entities the MREL of which does not exceed the own funds requirements.
- (21) After carefully assessing the arguments EBA provided to underpin its objection to the introduction of a provision on intragroup funding in the enacting terms of the technical standards, the Commission remains of the view that the prohibition of indirect funding should explicitly capture all relevant funding chains, regardless of whether they involve an external investor.
- (22) The Commission fully recognises the importance of ensuring a proportionate treatment of entities whose MREL does not exceed the own funds requirements. However, the submission of an application requesting the prior permission to reduce their eligible liabilities is an inherent feature of the prior permission regime as set out in Article 78a(1) of Regulation (EU) No 575/2013 and hence cannot be waived. Nevertheless, in order to reduce the

⁽⁷⁾ 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 the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

⁽⁸⁾ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

administrative burden of those entities and of their resolution authorities to a minimum, the former should be allowed to submit a simplified application to request a prior permission and the latter should be allowed to grant such permission on the basis of a tacit agreement,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) No 241/2014

Delegated Regulation (EU) No 241/2014 is amended as follows:

(1) The title is amended as follows:

‘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 and eligible liabilities requirements for institutions’;

(2) Article 1 is amended as follows:

(a) point (c) is replaced by the following:

‘(c) the applicable forms and nature of indirect funding of own funds instruments, in accordance with Article 28(5) of Regulation (EU) No 575/2013 and eligible liabilities instruments in accordance with Article 72b(7), point (a), of that Regulation;’;

(b) the following point (ha) is inserted:

‘(ha) the form and nature of incentives to redeem for the purposes of the condition set out in Article 72b(2), first subparagraph, point (g), and Article 72c(3) of Regulation (EU) No 575/2013, in accordance with Article 72b(7), point (b), of that Regulation;’;

(c) point (i) is replaced by the following:

‘(i) the extent of conservatism required in estimates used as an alternative to the calculation of underlying exposures for indirect holdings arising from index holdings and the meaning of operationally burdensome for the institution to monitor those underlying exposures, in accordance with Article 76(4), points (a) and (b), of Regulation (EU) No 575/2013;’;

(d) the following point (ja) is inserted:

‘(ja) the procedure, including the limits and information requirements, for granting the permission to reduce eligible liabilities instruments, and the process of cooperation between the competent authority and the resolution authority in accordance with Article 78a(3) of Regulation (EU) No 575/2013;’;

(e) point (k) is replaced by the following:

‘(k) the conditions for a temporary waiver for deduction from own funds and eligible liabilities to be provided, in accordance with Article 79(2) of Regulation (EU) No 575/2013;’;

(3) in Chapter I, the following Article 1a is inserted:

‘Article 1a

Application of this Regulation to entities subject to the minimum requirement for own funds and eligible liabilities, and to eligible liabilities referred to in Directive 2014/59/EU

For the purposes of the application of Articles 8, 9 and 20, and Chapter IV, Section 2, of this Regulation, entities subject to the minimum requirement for own funds and eligible liabilities referred to in Article 45(1) of Directive 2014/59/EU shall be considered to be ‘institutions’, and ‘eligible liabilities’ as referred to in Article 45b and Article 45f(2), point (a), of that Directive shall be considered to be ‘eligible liabilities instruments’.

- (4) the title of Chapter II is replaced by the following:

‘CHAPTER II

ELEMENTS OF OWN FUNDS AND ELIGIBLE LIABILITIES’;

- (5) in Chapter II, the title of Section 1 is replaced by the following:

‘SECTION 1

Common Equity Tier 1 capital and eligible liabilities items and instruments’;

- (6) in Article 4(2), the following point (ka) is inserted:

‘(ka) in Lithuania: institutions registered as ‘Centrinė kredito unija’ under the ‘Centrinių kredito unijų įstatymas’;

- (7) in Article 4(2), point (r) is replaced by the following:

‘(r) in Sweden: institutions registered as ‘Medlemsbank’ or as ‘Kreditmarknadsförening’ under Lag (2004:297) om bank- och finansieringsrörelse’;

- (8) Articles 8 and 9 are replaced by the following:

‘Article 8

Indirect funding of capital instruments for the purposes of Article 28(1), point (b), Article 52(1), point (c), and Article 63, point (c), and of liabilities for the purpose of Article 72b(2), point (c), of Regulation (EU) No 575/2013

1. Indirect funding of capital instruments under Article 28(1), point (b), Article 52(1), point (c) and Article 63, point (c), and liabilities under Article 72b(2), point (c), of Regulation (EU) No 575/2013 shall be deemed funding that is not direct.

2. For the purposes of paragraph 1, direct funding shall refer to situations where an institution has granted a loan or other funding in any form to an investor that is used for the acquisition of ownership of the institution’s capital instruments or liabilities.

3. Direct funding shall also include funding granted for other purposes than acquiring ownership of the capital instruments or liabilities of an institution, to any natural or legal person who has a qualifying holding in the institution, as referred to in Article 4(1), point (36), of Regulation (EU) No 575/2013, or who is deemed to be a related party within the meaning of the definitions in paragraph 9 of International Accounting Standard 24 on Related Party Disclosures as applied in the Union in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council (*), taking into account any additional guidance as provided by the competent authority for capital instruments, or the resolution authority in consultation with the competent authority for liabilities, if the institution is not able to demonstrate all of the following:

- (a) the transaction is realised at similar conditions as other transactions with third parties;
- (b) the natural or legal person or the related party does not have to rely on the distributions or on the sale of the capital instruments or liabilities held to support the payment of interest and the repayment of the funding.

Article 9

Applicable forms and nature of indirect funding of capital instruments for the purposes of Article 28(1), point (b), Article 52(1), point (c) and Article 63, point (c), and of liabilities for the purpose of Article 72b(2), point (c), of Regulation (EU) No 575/2013

1. The applicable forms and nature of indirect funding of the acquisition of ownership of the capital instruments and liabilities of an institution shall include all of the following:

- (a) funding of an investor's acquisition of ownership, at issuance or thereafter, of the capital instruments or liabilities of an institution by any entities on which the institution has a direct or indirect control or by entities included in any of the following:
 - (i) the scope of accounting or prudential consolidation of the institution;
 - (ii) the scope of the consolidated balance sheet or extended aggregated calculation, where equivalent to consolidated accounts as referred to in Article 49(3), point (a)(iv), of Regulation (EU) No 575/2013, that is drawn up by the institutional protection scheme or the network of institutions affiliated to a central body that are not organised as a group to which the institution belongs;
 - (iii) the scope of supplementary supervision of the institution in accordance with Directive 2002/87/EC of the European Parliament and of the Council (**);
- (b) funding of an investor's acquisition of ownership, at issuance or thereafter, of the capital instruments or liabilities of an institution by external entities that are protected by a guarantee or by the use of a credit derivative or are secured in some other way so that the credit risk is transferred to the institution, or to any entities on which the institution has a direct or indirect control or any entities included in any of the following:
 - (i) the scope of accounting or prudential consolidation of the institution;
 - (ii) the scope of the consolidated balance sheet or extended aggregated calculation, where equivalent to consolidated accounts as referred to in Article 49(3), point (a)(iv), of Regulation (EU) No 575/2013, that is drawn up by the institutional protection scheme or the network of institutions affiliated to a central body that are not organised as a group to which the institution belongs;
 - (iii) the scope of supplementary supervision of the institution in accordance with Directive 2002/87/EC.
- (c) funding of a borrower that passes the funding on to the ultimate investor for the acquisition of ownership, at issuance or thereafter, of the capital instruments or liabilities of an institution.

2. In order to be considered as indirect funding for the purposes of paragraph 1, the following conditions shall also be met, where applicable:

- (a) the investor is not included in any of the following:
 - (i) the scope of accounting or prudential consolidation of the institution;
 - (ii) the scope of the consolidated balance sheet or extended aggregated calculation, where equivalent to consolidated accounts as referred to in Article 49(3), point (a)(iv), of Regulation (EU) No 575/2013, that is drawn up by the institutional protection scheme or the network of institutions affiliated to a central body that are not organised as a group to which the institution belongs;
 - (iii) the scope of the supplementary supervision of the institution in accordance with Directive 2002/87/EC;
- (b) the external entity is not included in any of the following:
 - (i) the scope of accounting or prudential consolidation of the institution;
 - (ii) the scope of the consolidated balance sheet or extended aggregated calculation, where equivalent to consolidated accounts as referred to in Article 49(3), point (a)(iv), of Regulation (EU) No 575/2013, that is drawn up by the institutional protection scheme or the network of institutions affiliated to a central body that are not organised as a group to which the institution belongs;
 - (iii) the scope of the supplementary supervision of the institution in accordance with Directive 2002/87/EC.

For the purposes of point (a)(ii), an investor shall be deemed to be included in the scope of the extended aggregated calculation where the relevant capital instrument or liability is subject to consolidation or extended aggregated calculation in accordance with Article 49(3), point (a)(iv), of Regulation (EU) No 575/2013 in a way that the multiple use of own funds or eligible liabilities items and any creation of own funds or eligible liabilities between members of the institutional protection scheme is eliminated. Where the permission from competent authorities, referred to in Article 49(3) of Regulation (EU) No 575/2013, has not been granted, that condition shall be deemed to be met where both the entities referred to in paragraph 1, point (a), and the institution are members of the same institutional protection scheme and the entities deduct the funding provided for the acquisition of ownership of the capital instruments or liabilities of the institution, in accordance with Article 36(1), points (f) to (i), Article 56, points (a) to (d), and Article 66, points (a) to (d), for capital instruments, and in accordance with Article 72e, points (a) to (d), of Regulation (EU) No 575/2013, for liabilities, as applicable.

2a. The applicable forms and nature of indirect funding of the acquisition of ownership of the capital instruments and liabilities of an institution shall include intragroup circular funding.

For those purposes, intragroup circular funding means any of the following:

- (a) situations where an institution has granted a loan or other funding in any form to one of the entities referred to in paragraph 1, point (a), through another entity referred to in paragraph 1, point (a), that is used for the acquisition of ownership of the institution's capital instruments or liabilities;
- (b) funding granted to one of the entities referred to in paragraph 1, point (a), for other purposes than acquiring ownership of the capital instruments or liabilities of an institution through another entity referred to in paragraph 1, point (a), provided that, taking into account any additional guidance as provided by the competent authority for capital instruments, or the resolution authority in consultation with the competent authority for liabilities, the institution is not able to demonstrate all of the following:
 - (i) the transaction is realised at similar conditions as other transactions with third parties;
 - (ii) the investor does not have to rely on the distributions or on the sale of the capital instruments or liabilities held to support the payment of interest and the repayment of the funding.

3. When establishing whether the acquisition of ownership of a capital instrument or liability involves direct or indirect funding as referred to in Article 8, the amount to be considered shall be net of any individually assessed impairment allowance made.

4. In order to avoid a qualification of direct or indirect funding as referred to in Article 8 and where the loan or other form of funding or guarantees is granted to any natural or legal person who has a qualifying holding in the institution or who is deemed to be a related party as referred to Article 8(3), the institution shall ensure on an on-going basis that it has not provided the loan or other form of funding or guarantees for the purposes of acquiring ownership directly or indirectly of capital instruments or liabilities of that institution. Where the loan or other form of funding or guarantees is granted to other types of party, the institution shall make this control on a best effort basis.

5. With regard to mutuals, cooperative societies and similar institutions, where a customer is obliged under national law or the statutes of the institution to subscribe capital instruments to receive a loan, that loan shall not be considered as a direct or indirect funding where all of the following conditions are met:

- (a) the competent authority considers the amount of the subscription to be immaterial;
- (b) the purpose of the loan is not the acquisition of ownership of capital instruments or liabilities of the institution providing the loan;

- (c) the subscription of one or more capital instruments of the institution is necessary for the beneficiary of the loan to become a member of the mutual, cooperative society or similar institution.

(*) Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

(**) Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (OJ L 35, 11.2.2003, p. 1).;

- (9) in Article 12, paragraph 3 is replaced by the following:

‘3. The recognised gain on sale which is associated with the future margin income, shall refer, in this context, to the expected future ‘excess spread’ defined as the finance charge collections and other fee income received in respect of the securitised exposures net of costs and expenses.’;

- (10) the title of Chapter III is replaced by the following:

‘CHAPTER III

ADDITIONAL TIER 1 AND TIER 2 CAPITAL AND ELIGIBLE LIABILITIES’

- (11) Article 20 is replaced by the following:

‘Article 20

Form and nature of incentives to redeem for the purposes of Article 52(1), point (g), Article 63, point (h), Article 72b(2), point (g), and Article 72c(3) of Regulation (EU) No 575/2013

1. Incentives to redeem shall mean all features that provide, at the date of issuance, an expectation that the capital instrument or the liability is likely to be redeemed.

2. The incentives referred to in paragraph 1 shall include the following forms:

- (a) a call option combined with an increase in the credit spread of the instrument or the liability if the call is not exercised;
- (b) a call option combined with a requirement or an investor option to convert the instrument or the liability into a Common Equity Tier 1 instrument where the call is not exercised;
- (c) a call option combined with a change in reference rate where the credit spread over the second reference rate is greater than the initial payment rate minus the swap rate;
- (d) a call option combined with an increase of the redemption amount in the future;
- (e) a remarketing option combined with an increase in the credit spread of the instrument or the liability or a change in reference rate where the credit spread over the second reference rate is greater than the initial payment rate minus the swap rate where the instrument or the liability is not remarketed;
- (f) a marketing of the instrument or the liability in a way which suggests to investors that the instrument will be called.’;

- (12) Article 25 is replaced by the following:

‘Article 25

Extent of conservatism required in estimates for calculating exposures used as an alternative to the underlying exposures for the purposes of Article 76(2) of Regulation (EU) No 575/2013

1. An estimate shall be sufficiently conservative where either of the following conditions is met:

- (a) where the investment mandate of the index specifies that an own funds instrument of a financial sector entity or an eligible liabilities instrument of an institution which is part of the index cannot exceed a maximum percentage of the index, the institution uses that percentage as an estimate for the value of the holdings that is deducted from its Common Equity Tier 1, Additional Tier 1, or Tier 2 items, as applicable in accordance with Article 17(2) or from Common Equity Tier 1 items in situations where the institution cannot determine the precise nature of the holding, or, for an institution subject to the requirements of Article 92a of Regulation (EU) No 575/2013, its eligible liabilities items;
- (b) where the institution is unable to determine the maximum percentage referred to in point (a) and where the index, as evidenced by its investment mandate or other relevant information, includes own funds instruments of financial sector entities or eligible liabilities instruments of institutions, the institution deducts the full amount of the index holdings from its Common Equity Tier 1, Additional Tier 1, or Tier 2 items, as applicable in accordance with Article 17(2) or from Common Equity Tier 1 items in situations where the institution cannot determine the precise nature of the holding or, for an institution subject to the requirements of Article 92a of Regulation (EU) No 575/2013, its eligible liabilities items.

2. For the purposes of paragraph 1, the following shall apply:

- (a) an indirect holding arising from an index holding comprises the proportion of the index invested in the Common Equity Tier 1, Additional Tier 1 and Tier 2 instruments of financial sector entities and in eligible liabilities instruments of institutions included in the index;
- (b) an index includes index funds, equity or bond indices or any other scheme where the underlying instrument is an own funds instrument issued by a financial sector entity or an eligible liabilities instrument issued by an institution.;

(13) in Article 26, paragraph 1 is replaced by the following:

‘1. For the purpose of Article 76(3) of Regulation (EU) No 575/2013, operationally burdensome shall mean situations under which look-through approaches to capital instruments holdings in financial sector entities or to eligible liabilities instruments holdings in institutions on an ongoing basis are unjustified, as assessed by the competent authorities. In their assessment of the nature of operationally burdensome situations, competent authorities shall take into account the low materiality and short holding period of such positions. A holding period of short duration shall require the strong liquidity of the index to be evidenced by the institution.’;

(14) Section 2 is replaced by the following:

‘SECTION 2

Permission for reducing own funds and eligible liabilities

Subsection 1

Supervisory permission for reducing own funds

Article 27

Meaning of sustainable for the income capacity of the institution for the purposes of Article 78(1), point (a), and Article 78(4), point (d), of Regulation (EU) No 575/2013

Sustainable for the income capacity of the institution under Article 78(1), point (a), and under Article 78(4), point (d), of Regulation (EU) No 575/2013 shall mean that the profitability of the institution, as assessed by the competent authority, continues to be sound or does not see any negative change after the replacement of the instruments or the related share premium accounts referred to in Article 77(1) of that Regulation with own funds instruments of equal or higher quality, at that date and for the foreseeable future. The competent authority’s assessment shall take into account the institution’s profitability in stress situations.

*Article 28***Process requirements including the limits and procedures for an application by an institution to reduce own funds pursuant to Article 77(1) of Regulation (EU) No 575/2013**

1. Redemptions, reductions and repurchases of own funds instruments shall not be announced to holders of the instruments before the institution has obtained the prior permission of the competent authority.
2. Where the actions listed in Article 77(1) of Regulation (EU) No 575/2013 are expected to take place with sufficient certainty, and once the prior permission of the competent authority has been obtained, the institution shall deduct the corresponding amounts of own funds instruments to be redeemed, reduced or repurchased or the amounts of the related share premium accounts to be reduced or distributed, as applicable, from corresponding elements of its own funds before the effective redemptions, reductions, repurchases or distributions occur. Sufficient certainty shall in particular be deemed to exist where the institution has publicly announced its intention to redeem, reduce or repurchase an own funds instrument.
3. In the case of a general prior permission as referred to in Article 78(1), second subparagraph, of Regulation (EU) No 575/2013, the predetermined amount for which the competent authority has given its permission shall be deducted from corresponding elements of the institution's own funds from the moment the authorisation is granted.
4. When applying for a prior permission, including a general prior permission referred to in Article 78(1), second subparagraph, of Regulation (EU) No 575/2013, for actions listed in Article 77(1) of that Regulation, and where the related own funds instruments are purchased for passing them on to employees of the institution as part of their remuneration, institutions shall inform their competent authorities that those instruments are purchased for that specific purpose. By way of derogation from paragraphs 2 and 3, those instruments shall be deducted from corresponding elements of the institution's own funds, for the time they are held by the institution. A deduction shall no longer be required where the expenses related to any action in accordance with this paragraph are already included in own funds as a result of an interim or a year-end financial report.
5. The competent authority shall grant a prior permission, other than the general prior permission referred to in Article 78(1), second subparagraph, of Regulation (EU) No 575/2013, for a specified period of time, necessary to perform any of the actions listed in Article 77(1) of that Regulation, which shall not exceed one year.
6. Paragraphs 1 to 5 shall apply at consolidated, sub-consolidated and individual levels of application of prudential requirements, as applicable.

*Article 29***Submission by the institution of an application to reduce own funds pursuant to Article 77(1) of Regulation (EU) No 575/2013**

1. An institution shall submit an application for prior permission, including the general prior permission referred to in Article 78(1), second subparagraph, of Regulation (EU) No 575/2013, to the competent authority before taking any of the actions referred to in Article 77(1) of that Regulation.
2. Paragraph 1 shall apply at consolidated, sub-consolidated and individual levels of application of prudential requirements, as applicable.

*Article 30***Content of the application to be submitted by the institution for the purposes of Article 77(1) of Regulation (EU) No 575/2013**

1. The application referred to in Article 29 shall be accompanied by all of the following:
 - (a) a well-founded explanation of the rationale for performing any of the actions referred to in Article 77(1) of Regulation (EU) No 575/2013;

- (b) information about whether the permission sought is based on Article 78(1), first subparagraph, point (a) or (b), of Regulation (EU) No 575/2013 or on Article 78(1), second subparagraph, of that Regulation;
- (c) where the institution seeks to call, redeem or repurchase Additional Tier 1 or Tier 2 instruments or related share premium accounts during the five years following their date of issuance pursuant to Article 78(4) of Regulation (EU) No 575/2013, how the conditions of that Article are met;
- (d) present and forward-looking information that shall cover at least a three year period, on the amounts and percentages corresponding to the following requirements for own funds and eligible liabilities:
 - (i) the Common Equity Tier 1 capital requirement laid down in Article 92(1), point (a), of Regulation (EU) No 575/2013, the Tier 1 capital requirement laid down in Article 92(1), point (b), of that Regulation, and the own funds requirement laid down in Article 92(1), point (c), of that Regulation;
 - (ii) to address risks other than the risk of excessive leverage, the additional Common Equity Tier 1 capital requirement referred to in Article 104a of Directive 2013/36/EU, where applicable, the additional Tier 1 capital requirement referred to in Article 104a of that Directive, where applicable, and the additional own funds requirement laid down in Article 104a of that Directive, where applicable;
 - (iii) the combined buffer requirement referred to in Article 128, point (6), of Directive 2013/36/EU;
 - (iv) the leverage ratio requirement laid down in Article 92(1), point (d), of Regulation (EU) No 575/2013, and where applicable any adjustment in accordance with Article 429a(7) of that Regulation;
 - (v) to address the risk of excessive leverage, the additional Common Equity Tier 1 capital requirement referred to in Article 104a of Directive 2013/36/EU, where applicable, and the additional Tier 1 capital requirement referred to in Article 104a of Directive 2013/36/EU, where applicable;
 - (vi) the Tier 1 G-SII leverage ratio buffer requirement laid down in Article 92(1a) of Regulation (EU) No 575/2013, where applicable;
 - (vii) the risk-based requirement for own funds and eligible liabilities laid down in Article 92a(1), point (a), or Article 92b of Regulation (EU) No 575/2013, where applicable, and the non-risk based requirement for own funds and eligible liabilities laid down in Article 92a(1), point (b), or Article 92b of that Regulation, where applicable;
 - (viii) the minimum requirement for own funds and eligible liabilities referred to in Article 45(1) of Directive 2014/59/EU as required in accordance with Articles 45e and 45f of that Directive, as applicable, and calculated as the amount of own funds and eligible liabilities, and expressed as percentages of the total risk exposure amount of the institution, calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, and the amount of own funds and eligible liabilities expressed as percentages of the total exposure measure of the relevant entity, calculated in accordance with Article 429(4) and Article 429a of Regulation (EU) No 575/2013;
- (e) present and forward-looking information on the level and composition of own funds and the level and composition of own funds and eligible liabilities held to ensure compliance, respectively, with the requirements referred to in points (d)(i) to (d)(viii) before and after performing any of the actions listed in Article 77(1) of Regulation (EU) No 575/2013;
- (f) the institution's summary assessment on the impact of the action that the institution has planned to take in accordance with Article 77(1) of Regulation (EU) No 575/2013, and any such action that the institution additionally envisages to undertake within a three year period, on compliance with the requirements referred to in paragraph 1, points (d)(i) to (d)(viii);

- (g) where the institution seeks to replace own funds instruments or the related share premium accounts pursuant to Article 78(1), point (a), or Article 78(4), point (d), of Regulation (EU) No 575/2013:
- (i) information on the residual maturity of the replaced own funds instruments, if any, and the maturity of the own funds instruments replacing them;
- (ii) the ranking in insolvency hierarchy of the replaced own funds instruments and of the own funds instruments replacing them;
- (iii) the cost of the own funds instruments replacing the instruments or the shared premium accounts referred to in Article 77(1) of Regulation (EU) No 575/2013;
- (iv) the planned timing of the issuance of the own funds instruments replacing the instruments or share premium accounts referred to in Article 77(1) of Regulation (EU) No 575/2013;
- (v) the impact on the profitability of the institution pursuant to Article 78(1), point (a), or Article 78(4), point (d), of Regulation (EU) No 575/2013;
- (h) an evaluation of the risks to which the institution is or might be exposed and whether the level of own funds and eligible liabilities ensures an appropriate coverage of such risks, including outcomes of stress tests on main risks evidencing potential losses;
- (i) coverage in terms of own funds of the applicable guidance on the proposed level and composition of additional own funds communicated by the competent authority under Article 104b(3) of Directive 2013/36/EU before and after performing any of the actions listed in Article 77(1) of Regulation (EU) No 575/2013, covering a three year period;
- (j) any other information considered necessary by the competent authority for evaluating the appropriateness of granting a permission in accordance with Article 78 of Regulation (EU) No 575/2013.

For the purposes of point (e), the information shall cover at least a three year period and, with regard to liabilities, shall include specifications of the following amounts, as applicable:

- (a) liabilities which qualify as eligible liabilities instruments pursuant to Article 72b(2) of Regulation (EU) No 575/2013;
- (b) liabilities which the resolution authority has permitted to qualify as eligible liabilities instruments pursuant to Article 72b, paragraphs 3 or 4, of Regulation (EU) No 575/2013;
- (c) liabilities which are included in the amount of own funds and eligible liabilities of resolution entities pursuant to Article 45b(1) of Directive 2014/59/EU;
- (d) liabilities that arise from debt instruments with embedded derivatives included in the amount of own funds and eligible liabilities pursuant to Article 45(b), point (2), of Directive 2014/59/EU;
- (e) liabilities issued by a subsidiary which qualify for inclusion in the consolidated eligible liabilities instruments of an institution subject to Article 92a of Regulation (EU) No 575/2013 pursuant to Article 88a of that Regulation or of a resolution entity pursuant to Article 45b(3) of Directive 2014/59/EU;
- (f) eligible liabilities instruments taken into account for the purpose of complying with the requirement for own funds and eligible liabilities for institutions that are material subsidiaries of non-EU G-SIIs pursuant to Article 92b(3) of Regulation (EU) No 575/2013 and for the purpose of complying with the minimum requirement for own funds and eligible liabilities for entities that are not themselves resolution entities, pursuant to Article 45f(2), point (a), of Directive 2014/59/EU.

2. The competent authority shall waive the submission of some of the information listed in paragraph 1 where it is satisfied that it already has that information.

3. Paragraphs 1 and 2 shall apply at individual, consolidated and sub-consolidated levels of application of requirements, as applicable.

Article 30a

Additional information to be submitted with an application for a general prior permission for actions listed in Article 77(1) of Regulation (EU) No 575/2013

1. Where a general prior permission as referred to in Article 78(1), second subparagraph, of Regulation (EU) No 575/2013 for an action under Article 77(1), point (a), of that Regulation is sought for, the application shall specify the amount of each relevant Common Equity Tier 1 issue that is subject to that application.

2. Where a general prior permission for an action under Article 77(1), point (c), of Regulation (EU) No 575/2013 is sought for, the institution shall specify in the application all of the following:

(a) the amount of each relevant outstanding issue subject to the request;

(b) the total carrying amount of outstanding instruments in each relevant tier of capital.

3. An application for a general prior permission for an action under Article 77(1), points (a) and (c), of Regulation (EU) No 575/2013 may include own funds instruments still to be issued, subject to specification of the information referred to in paragraph 2, points (a) and (b), as applicable, to be provided to the competent authority following the relevant issuance.

4. Paragraphs 1, 2 and 3 shall apply at the consolidated, sub-consolidated and individual levels of application of prudential requirements, as applicable.

Article 30b

Information to be submitted with an application for a renewal of a general prior permission for actions listed in Article 77(1) of Regulation (EU) No 575/2013

1. Before the expiry of a general prior permission as referred to in Article 78(1), second subparagraph, of Regulation (EU) No 575/2013, an institution may submit an application for its renewal for a period of up to one additional year each time, provided that the institution does not request an increase in the predetermined amount set when the general prior permission was granted and does not change the rationale as referred to in Article 30(1), point (a), when the original general prior permission was requested.

2. When applying for the renewal of the general prior permission referred to in paragraph 1, the institution shall be exempted from the obligation to provide the information referred to in Article 30(1), points (a) to (d), (f), (g) and (i).

Article 31

Timing of the application to be submitted by the institution and processing of the application by the competent authority for the purposes of Article 77(1) of Regulation (EU) No 575/2013

1. For a prior permission, other than a general prior permission as referred to in Article 78(1), second subparagraph, of Regulation (EU) No 575/2013, the institution shall transmit a complete application and the information referred to in Article 30 to the competent authority at least four months before the date on which one of the actions listed in Article 77(1) of Regulation (EU) No 575/2013 will be announced to the holders of the instruments.

2. For a general prior permission as referred to in Article 78(1), second subparagraph, of Regulation (EU) No 575/2013, the institution shall transmit a complete application and the information referred to in Articles 30 and 30a to the competent authority at least four months before the date on which any of the actions listed in Article 77(1) of Regulation (EU) No 575/2013 will be carried out.

3. By way of derogation from paragraph 2, where a renewal of a general prior permission pursuant to Article 78(1), second subparagraph, of Regulation (EU) No 575/2013 and Article 30b is sought, the institution shall transmit the application and the information required under Articles 30, 30a and 30b to the competent authority at least three months before the expiration of the period for which the original general prior permission was granted.

4. Competent authorities may allow institutions on a case-by-case basis and under exceptional circumstances to transmit the application referred to in paragraphs 1, 2 and 3 within a time frame shorter than the periods set out in those paragraphs.

5. The competent authority shall process an application during either the period of time referred to in paragraphs 1, 2 and 3 or during the period of time referred to in paragraph 4. Competent authorities shall take into account new information received during that period, where any such new information is available and where they consider that information to be material. The competent authorities shall process the application only where they are satisfied that the institution has provided them with all the information required under Article 30 and, where applicable, Articles 30a and 30b.

Article 32

Applications for redemptions, reductions and repurchases by mutuals, cooperative societies, savings institutions or similar institutions for the purposes of Article 77(1) of Regulation (EU) No 575/2013

1. With regard to the redemption of Common Equity Tier 1 instruments of mutuals, cooperative societies, savings institutions or similar institutions, the application referred to in Article 29, paragraphs 1 and 2, and the information referred to in Article 30(1) shall be submitted to the competent authority with the same frequency as that used by the competent body of the institution to examine redemptions.

2. Competent authorities may give their permission in advance to an action listed in Article 77(1) of Regulation (EU) No 575/2013 for a certain predetermined amount to be redeemed, net of the amount of the subscription of new paid in Common Equity Tier 1 instruments during a period up to one year. That predetermined amount may go up to 2 % of Common Equity Tier 1 capital, if they are satisfied that this action will not pose a danger to the current or future solvency situation of the institution.

Subsection 2

Permission for reducing eligible liabilities instruments

Article 32a

Meaning of sustainable for the income capacity of the institution for the purposes of Article 78a(1), point (a), of Regulation (EU) No 575/2013

Sustainable for the income capacity of the institution under Article 78a(1), point (a), of Regulation (EU) No 575/2013 shall mean that the profitability of the institution, as assessed by the resolution authority, continues to be sound or does not see any negative change after the replacement of the eligible liabilities instruments with own funds or eligible liabilities instruments of equal or higher quality, at that date and for the foreseeable future. The resolution authority's assessment shall take into account the institution's profitability in stress situations.

Article 32b

Process requirements, including the limits and procedures for an application by an institution to reduce eligible liabilities instruments pursuant to Article 77(2) of Regulation (EU) No 575/2013

1. Calls, redemptions, repayments and repurchases of eligible liabilities instruments shall not be announced to holders of those instruments before the institution has obtained the prior permission of the resolution authority.

2. Where the actions listed in Article 77(2) of Regulation (EU) No 575/2013 are expected to take place with sufficient certainty, and once the prior permission of the resolution authority has been obtained, the institution shall deduct the amounts to be called, redeemed, repaid or repurchased from the institution's eligible liabilities instruments before the effective calls, redemptions, repayments or repurchases occur. Sufficient certainty shall in particular be deemed to exist where the institution has publicly announced its intention to call, redeem, repay or repurchase an eligible liabilities instrument.
3. In the case of a general prior permission as referred to in Article 78a(1), second subparagraph, of Regulation (EU) No 575/2013, the predetermined amount for which the resolution authority has given its permission shall be deducted from the institution's eligible liabilities instruments from the moment the authorisation has been granted.
4. The resolution authority shall grant a prior permission, other than the general prior permission referred to in Article 78a(1), second subparagraph, of Regulation (EU) No 575/2013, for a specified period of time, necessary to perform any of the actions listed in Article 77(2) of that Regulation, which shall not exceed one year.
5. Where a general prior permission as referred to in Article 78a(1), second subparagraph, of Regulation (EU) No 575/2013 is sought for, the predetermined amount for which the general prior permission is granted shall not exceed 10 % of the total amount of outstanding eligible liabilities instruments.
6. Paragraphs 1 to 5 shall apply at consolidated, sub-consolidated and individual levels of application of requirements for own funds and eligible liabilities, as applicable.

Article 32c

Submission by the institution of an application to reduce eligible liabilities instruments pursuant to Article 77(2) of Regulation (EU) No 575/2013

1. An institution shall submit an application for prior permission, including the general prior permission as referred to in Article 78a(1), second subparagraph, of Regulation (EU) No 575/2013, to the resolution authority before taking an action as referred to in Article 77(2) of that Regulation.
2. Paragraph 1 shall apply at individual, consolidated and sub-consolidated levels of application of requirements for own funds and eligible liabilities, as applicable.

Article 32d

Content of the application to be submitted by the institution for the purposes of Article 77(2) of Regulation (EU) No 575/2013

1. The application referred to in Article 32c shall be accompanied by all of the following:
 - (a) a well-founded explanation of the rationale for performing any of the actions referred to in Article 77(2) of Regulation (EU) No 575/2013;
 - (b) information about whether the permission sought is based on Article 78a(1), first subparagraph, points (a), (b) or (c), of Regulation (EU) No 575/2013, or on Article 78a(1), second subparagraph, of that Regulation;
 - (c) present and forward-looking information that shall cover at least a three year period, on the following requirements for own funds and eligible liabilities:
 - (i) the risk-based requirement for own funds and eligible liabilities laid down in Article 92a(1), point (a), or Article 92b of Regulation (EU) No 575/2013, where applicable, and the non-risk based requirement for own funds and eligible liabilities laid down in Article 92a(1), point (b), or Article 92b of that Regulation, where applicable;

- (ii) the minimum requirement for own funds and eligible liabilities laid down in Article 45 of Directive 2014/59/EU calculated in accordance with Article 45e and 45f of that Directive, as applicable, the amount of own funds and eligible liabilities expressed as percentages of the total risk exposure amount of the relevant entity, calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, and the amount of own funds and eligible liabilities expressed as percentages of the total exposure measure of the relevant entity, calculated in accordance with Article 429(4) and Article 429a of Regulation (EU) No 575/2013;
 - (iii) the combined buffer requirement referred to in Article 128, point (6), of Directive 2013/36/EU;
- (d) present and forward-looking information on the level and composition of own funds and eligible liabilities held to ensure compliance, respectively, with the requirements referred to in paragraph 1, points (c)(i), (c)(ii) and (c)(iii), before and after performing the action referred to in Article 77(2) of Regulation (EU) No 575/2013. The information shall cover at least a three year period and shall, with regard to eligible liabilities, include specifications of the following amounts, as applicable:
- (i) liabilities which qualify as eligible liabilities instruments pursuant to Article 72b(2) of Regulation (EU) No 575/2013;
 - (ii) liabilities which the resolution authority has permitted to qualify as eligible liabilities instruments pursuant to Article 72b, paragraphs 3 or 4, of Regulation (EU) No 575/2013;
 - (iii) liabilities which are included in the amount of own funds and eligible liabilities of resolution entities pursuant to Article 45b(1) of Directive 2014/59/EU;
 - (iv) liabilities that arise from debt instruments with embedded derivatives included in the amount of own funds and eligible liabilities pursuant to Article 45b(2) of Directive 2014/59/EU;
 - (v) liabilities issued by a subsidiary which qualify for inclusion in the consolidated eligible liabilities instruments of an institution subject to Article 92a of Regulation (EU) No 575/2013 pursuant to Article 88a of that Regulation or of a resolution entity pursuant to Article 45b(3) of Directive 2014/59/EU;
 - (vi) eligible liabilities instruments taken into account for the purposes of complying with the requirement for own funds and eligible liabilities for institutions that are material subsidiaries of non-EU G-SIIs pursuant to Article 92b(3) of Regulation (EU) No 575/2013 and for the purpose of complying with the minimum requirement for own funds and eligible liabilities for entities that are not themselves resolution entities, pursuant to Article 45f(2), point (a), of Directive 2014/59/EU;
- (e) the institution's summary assessment on the impact of the action that the institution has planned to take in accordance with Article 77(2) of Regulation (EU) No 575/2013, and any such action that the institution additionally envisages to undertake within a three year period, on compliance with the requirements referred to in paragraph 1, points (c)(i), (c)(ii) and (c)(iii);
- (f) where the institution seeks to replace eligible liabilities instruments pursuant to Article 78a(1), point (a), of Regulation (EU) No 575/2013:
- (i) information on the residual maturity of the replaced eligible liabilities instruments and the maturity of the own funds or eligible liabilities instruments replacing them;
 - (ii) the ranking in insolvency of the replaced eligible liabilities instruments and of the own funds or eligible liabilities instruments replacing them;
 - (iii) the cost of the own funds or eligible liabilities instruments replacing the eligible liabilities instruments;

- (iv) the planned timing of the issuance of the own funds or eligible liabilities instruments replacing the eligible liabilities instruments referred to in Article 77(2) of Regulation (EU) No 575/2013;
 - (v) the impact on the profitability of the institution pursuant to Article 78a(1), point (a), of Regulation (EU) No 575/2013;
 - (g) an evaluation of the risks to which the institution is or might be exposed, in particular whether the level of own funds and eligible liabilities ensures an appropriate coverage of such risks, including outcomes of stress tests on main risks evidencing potential losses;
 - (h) where Article 78a(1), point (c), of Regulation (EU) No 575/2013 applies, demonstration that the partial or full replacement of the eligible liabilities instruments with own funds instruments is necessary to ensure compliance with the own funds requirements;
 - (i) any other information considered necessary by the resolution authority for evaluating the appropriateness of granting a permission in accordance with Article 78a of Regulation (EU) No 575/2013.
2. The resolution authority shall waive the submission of some of the information listed in paragraph 1 where it is satisfied that it already has that information.
3. Paragraphs 1 and 2 shall apply at individual, consolidated and sub-consolidated levels of application of requirements for own funds and eligible liabilities, as applicable.

Article 32e

Additional information to be submitted with the application for a general prior permission for actions listed in Article 77(2) of Regulation (EU) No 575/2013

1. Where a general prior permission as referred to in Article 78a(1), second subparagraph, of Regulation (EU) No 575/2013 for an action under Article 77(2) of that Regulation is sought for, the institution shall specify in the application the total amount of outstanding eligible liabilities instruments, including the total amount of outstanding eligible liabilities instruments that meet the conditions of Article 88a of Regulation (EU) No 575/2013 or Article 45b(3) of Directive 2014/59/EU.
2. An application for a general prior permission for an action under Article 77(2) of Regulation (EU) No 575/2013 may include eligible liabilities instruments still to be issued, subject to specification of the final amount referred to in paragraph 1, to be provided to the resolution authority following the issuance concerned.

Article 32f

Information to be submitted with an application for a renewal of a general prior permission for actions listed in Article 77(2) of Regulation (EU) No 575/2013

1. Before the expiry of the general prior permission granted pursuant to Article 78a(1), second subparagraph, of Regulation (EU) No 575/2013, an institution may submit an application for its renewal for a period of up to one additional year each time, provided that the institution does not request an increase in the predetermined amount set when the original general prior permission was granted and does not change the rationale referred to in Article 32d(1), point (a), when the original general prior permission was requested.
2. When applying for the renewal of a general prior permission referred to in paragraph 1, the institution shall be exempted from the obligation to provide the information referred to in Article 32d(1), points (a), (b), (c), (e), (f) and (h).

*Article 32g***Timing of the application to be submitted by the institution and processing of the application by the resolution authority for the purposes of Article 77(2) of Regulation (EU) No 575/2013**

1. For a prior permission, other than the general prior permission referred to in Article 78a(1), second subparagraph, of Regulation (EU) No 575/2013, the institution shall transmit a complete application and the information referred to in Article 32d to the resolution authority at least four months before the date on which one of the actions listed in Article 77(2) of Regulation (EU) No 575/2013 will be announced to the holders of the instruments.
2. For the general prior permission referred to in Article 78a(1), second subparagraph, of Regulation (EU) No 575/2013, the institution shall transmit a complete application and the information referred to in Articles 32d and 32e to the resolution authority at least four months before the date on which one of the actions listed in Article 77(2) of Regulation (EU) No 575/2013 will be carried out.
3. By way of derogation from paragraph 2, where a renewal of the general prior permission pursuant to Article 78a(1), second subparagraph, of Regulation (EU) No 575/2013 and Article 32f is sought, the institution shall transmit a complete application and the information required under Articles 32d, 32e and 32f to the resolution authority at least three months before the expiration of the period for which the original general prior permission was granted.
4. Resolution authorities may allow institutions on a case-by-case basis and under exceptional circumstances to transmit the application referred to in paragraphs 1, 2 and 3 within a time frame shorter than the periods set out in those paragraphs.
5. The resolution authority shall process an application during either the period of time referred to in paragraphs 1, 2 and 3 or during the period of time referred to in paragraph 4. Resolution authorities shall take into account new information received during that period, where any such new information is available and where they consider that information to be material. The resolution authorities shall process the application only where they are satisfied that the institution has provided them with all the information required under Article 32d and, where applicable, Articles 32e and 32f.

*Article 32h***Simplified requirements for institutions for which the resolution authority has set the minimum requirement for own funds and eligible liabilities laid down in Article 45(1) of Directive 2014/59/EU at a level that does not exceed an amount sufficient to absorb losses**

1. By way of derogation from Articles 32d, 32e and 32f, where the application referred to in Article 32c is submitted by an institution for which the resolution authority has set the minimum requirement for own funds and eligible liabilities laid down in Article 45(1) of Directive 2014/59/EU at a level that does not exceed an amount sufficient to absorb losses in accordance with Article 45c(2), first subparagraph, point (a), of that Directive, that application shall be accompanied by all of the following:
 - (a) a well-founded explanation of the rationale for performing any of the actions referred to in Article 77(2) of Regulation (EU) No 575/2013;
 - (b) information about whether the permission sought is based on Article 78a(1), first subparagraph, points (a), (b) or (c), of Regulation (EU) No 575/2013, or on Article 78a(1), second subparagraph, of that Regulation.
2. A general prior permission as referred to in Article 78a(1), second subparagraph, of Regulation (EU) No 575/2013, granted following an application made in accordance with paragraph 1, shall not be subject to the restriction set out in Article 32b(5) of this Regulation.

3. By way of derogation from Article 32g, the institutions referred to in paragraph 1 shall submit the application referred to in Article 32c to the resolution authority at least three months before the date on which one of the actions listed in Article 77(2) of Regulation (EU) No 575/2013 will be announced to the holders of the instruments or, in the case of an application for a general prior permission as referred to in Article 78a(1), second subparagraph, of that Regulation, at least three months before the date on which one of the actions listed in Article 77(2) of Regulation (EU) No 575/2013 will be carried out.
4. Where the resolution authority does not oppose in writing the application referred to in Article 32c within the periods specified in paragraph 3, the permission shall be deemed granted.
5. This article shall apply at individual, consolidated and sub-consolidated levels of application of requirements for own funds and eligible liabilities, as applicable.

Article 32i

Process of cooperation between the competent authority and the resolution authority when granting the permission referred to in Article 78a of Regulation (EU) No 575/2013

1. Where a complete application for a prior permission, including the general prior permission referred to in Article 78a(1), second subparagraph, of Regulation (EU) No 575/2013, is submitted by an institution, the resolution authority shall promptly transmit that application to the competent authority, including the information referred to in Article 32d and, where applicable, Article 32e, Article 32f or Article 32h.
2. At the same time of the transmission of the information referred to in paragraph 1, the resolution authority shall make a request for consultation to the competent authority on the application received, which shall include the reciprocal exchange of any other relevant information for the assessment of the application by the resolution or competent authority.
3. The competent authority and the resolution authority shall agree on an adequate time limit for providing a response to the consultation referred to in paragraph 2, which shall not exceed three months from the moment of receipt of the request for consultation and that shall be reduced to two months where the consultation concerns the renewal of a general prior permission pursuant to Article 32f or a general prior permission pursuant to Article 32h. The resolution authority shall consider the views received from the competent authority before taking a decision on the permission.
4. Where the agreement of the competent authority is required in accordance with Article 78a(1), point (b), of Regulation (EU) No 575/2013, the resolution authority shall communicate to the competent authority, within two months from the request for consultation referred to in paragraph 2, or within one month where the consultation concerns the renewal of a general prior permission pursuant to Article 32f or a general prior permission pursuant to Article 32h, the proposed margin by which, following the action referred to in Article 77(2) of that Regulation, the resolution authority considers necessary that the own funds and eligible liabilities of the institution must exceed its requirements.
5. Within three weeks or, where the consultation concerns the renewal of a general prior permission pursuant to Article 32f or a general prior permission pursuant to Article 32h, within two weeks, after receiving the communication referred to in paragraph 4, the competent authority shall transmit its written agreement to the resolution authority. In the event that the competent authority disagrees or partially disagrees with the resolution authority, it shall inform the resolution authority within that period, stating its reasons.
6. By way of derogation from paragraph 3, where the agreement of the competent authority is required in accordance with Article 78a(1), point (b), of Regulation (EU) No 575/2013, the competent authority shall provide a response to the consultation referred to in paragraph 2 at the same time as the transmission of its written agreement to the resolution authority referred to in paragraph 5.
7. By way of derogation from paragraphs 3 to 6, where the maximum time period for processing the application referred to in paragraph 1 is shorter than four months in accordance with Article 32g, paragraphs 3 or 4, the periods of time referred to in paragraphs 3, 4 and 5 shall be agreed between the resolution authority and the competent authority taking into account the relevant maximum time period.

8. The resolution authority and the competent authority shall endeavour to reach the agreement referred to in paragraph 5 in order to ensure that the application referred to in paragraph 1 is processed in any event within the period of time referred to in Article 32g, paragraphs 1, 2, 3 or 4.

9. The resolution authority shall communicate to the competent authority the decision taken on the permission without undue delay. The resolution authority shall also inform the competent authority in case of withdrawal of the general prior permission where an institution breaches any of the criteria provided for the purposes of that permission.'

(15) in Chapter IV, Section 3 is amended as follows:

(a) the title of Section 3 is replaced by the following:

'SECTION 3

Temporary waiver from deduction from own funds and eligible liabilities;

(b) the title of Article 33 is replaced by the following:

'Article 33

Temporary waiver from deduction from own funds and eligible liabilities for the purposes of Article 79(1) of Regulation (EU) No 575/2013;

(c) in Article 33, paragraphs 2 and 3 are replaced by the following:

'2. The waiver shall apply only in relation to new holdings of own funds instruments in a financial sector entity or eligible liabilities instruments in an institution subject to the financial assistance operation.

3. For the purposes of providing a temporary waiver for deduction from own funds and eligible liabilities, as applicable, a competent authority may deem the holdings referred to in Article 79(1) of Regulation (EU) No 575/2013 to be held for the purposes of a financial assistance operation designed to reorganise and save a financial sector entity or institution where the operation is carried out under a plan and approved by the competent authority, and where the plan clearly states phases, timing and objectives and specifies the interaction between the holdings and the financial assistance operation.'

Article 2

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11 October 2022.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION DELEGATED REGULATION (EU) 2023/828**of 2 February 2023****correcting Delegated Regulation (EU) 2020/2015 as regards the survivability exemption for common sole catches by vessels under 12 metres long and using otter bottom trawls, in the Western Waters, ICES division 7e, for 2023**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/472 of the European Parliament and of the Council of 19 March 2019 establishing a multiannual plan for stocks fished in the Western Waters and adjacent waters, and for fisheries exploiting those stocks, amending Regulations (EU) 2016/1139 and (EU) 2018/973, and repealing Council Regulations (EC) No 811/2004, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007 and (EC) No 1300/2008 ⁽¹⁾, and in particular Article 13 thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2020/2015 ⁽²⁾ provides details on how to implement the landing obligation for certain demersal fisheries in the Western Waters for the period 2021–2023.
- (2) Delegated Regulation (EU) 2020/2015 was last amended by Commission Delegated Regulation (EU) 2022/2290 ⁽³⁾.
- (3) On 25 October 2022, France informed the Commission of an error introduced in Delegated Regulation (EU) 2020/2015 by Delegated Regulation (EU) 2022/2290. It concerns a new survivability exemption for common sole (*Solea solea*) below the minimum conservation reference size (MCRS) caught in ICES division 7e by vessels under 12 m long and using otter bottom trawls (OTB), with a cod end mesh size larger than 80 mm. The error consists in not including cod end mesh size of 80 mm and not defining a size limit.
- (4) France requested the Commission to correct that error, in order for the exemption concerned to include a mesh size equivalent to 80 mm. France explained that vessels in need of this exemption use mesh sizes ranges including the 80 mm. The confusion arises from a drafting difference between the main body of the joint recommendation on which the delegated act is based and its annex. While the annex of the joint recommendation included explicitly the 80 mm mesh size to 99 mm, the drafting was unfortunately different in the main body of the joint recommendation.
- (5) Moreover, in its advice, the STECF had assessed the requested exemption also for 80 mm mesh size (and not only larger than 80 mm mesh size) with a limit of 99 mm.
- (6) The exemption for common sole below MCRS made using otter trawl gears with a cod end mesh size of 80 to 99 mm, by vessels under 12 m should therefore be granted until 31 December 2023.
- (7) Therefore, Article 4(1) of Delegated Regulation (EU) 2020/2015 should be corrected to cover otter trawl gears with a cod end mesh size of 80 to 99 mm, instead of only those larger than 80 mm.
- (8) As the measures provided for in this Regulation have a direct impact on the planning of the fishing season for Union vessels and on related economic activities, this Regulation should enter into force as soon as possible. It should apply from 1 January 2023, as vessels under 12 m, in need of this exemption, use mesh sizes ranges including the 80 mm,

⁽¹⁾ OJ L 83, 25.3.2019, p. 1.

⁽²⁾ Commission Delegated Regulation (EU) 2020/2015 of 21 August 2020 specifying details of the implementation of the landing obligation for certain fisheries in Western Waters for the period 2021–2023 (OJ L 415, 10.12.2020, p. 22).

⁽³⁾ Commission Delegated Regulation (EU) 2022/2290 of 19 August 2022 amending Delegated Regulation (EU) 2020/2015 as regards certain exemptions to the landing obligation in the Western Waters for 2023 (OJ L 303, 23.11.2022, p. 12).

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2020/2015

Article 4(1) of Delegated Regulation (EU) 2020/2015 is replaced by the following:

- ‘1. The survivability exemption provided for in Article 15(4)(b) of Regulation (EU) No 1380/2013 shall apply to:
- in ICES division 7d, within six nautical miles of the coast but outside identified nursery areas, to catches of common sole (*Solea solea*) below the minimum conservation reference size made using otter trawl gears (gear codes: OTT, OTB, TBS, TBN, TB, PTB, OT, PT, TX) with a cod end mesh size of 80 to 99 mm, by vessels:
 - having a maximum length of 10 metres and a maximum engine power of 221 kW; and
 - fishing in waters with the depth of 30 metres or less and with tow durations of no more than 90 minutes;
 - in ICES division 7e, within six nautical miles of the coast but outside identified nursery areas, to catches of common sole (*Solea solea*) below the minimum conservation reference size made using otter trawl gears (gear code: OTB) with a cod end mesh size of 80 to 99 mm, by vessels under 12 metres.’

Article 2

Date of entry into force and period of application

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2023 until 31 December 2023.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 2 February 2023.

For the Commission
The President
Ursula VON DER LEYEN

DECISIONS

COMMISSION DECISION (EU) 2023/829

of 17 April 2023

on relief from import duties and VAT exemption on importation granted for goods to be distributed or made available free of charge to persons fleeing the military aggression in Ukraine and to persons in need in Ukraine

(notified under document C(2023) 2490)

(Only the Dutch, Estonian, French, German, Latvian, Lithuanian, Polish, Romanian and Slovak texts are authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2009/132/EC of 19 October 2009 determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods ⁽¹⁾, and in particular Article 53, first paragraph, thereof,

Having regard to Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty ⁽²⁾, and in particular Article 76, first paragraph, thereof,

Whereas:

- (1) On 24 February 2022, Russia started an unprovoked and unjustified military aggression against Ukraine. As a result, millions of people fled from Ukraine, and Member States in the EU have granted temporary protection ⁽³⁾ to around 4 million persons. The inflow of persons fleeing the military aggression in Ukraine continues to pose a challenge for the Member States concerned when it comes to ensuring sufficient humanitarian assistance and meeting the primary needs of those persons.
- (2) On 24 February 2022, Ukraine requested assistance in accordance with Article 16(1) of Decision No 1313/2013/EU of the European Parliament and of the Council ⁽⁴⁾ regarding civil protection supplies.
- (3) As an expression of solidarity and support, Member States and the international community have responded by supplying humanitarian assistance goods to be distributed to persons fleeing the military aggression and arriving in the Union and to other persons affected by the military aggression in Ukraine.
- (4) On 1 July 2022, Commission Decision (EU) 2022/1108 ⁽⁵⁾ was adopted. That Decision grants, in respect of certain Member States, relief from import duties and exemption from value added tax ("VAT") on importation of goods to be distributed or made available free of charge to persons fleeing the military aggression in Ukraine and to persons in need in Ukraine, from 24 February 2022 until 31 December 2022.

⁽¹⁾ OJ L 292, 10.11.2009, p. 5.

⁽²⁾ OJ L 324, 10.12.2009, p. 23.

⁽³⁾ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (OJ L 71, 4.3.2022, p. 1).

⁽⁴⁾ Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism (OJ L 347, 20.12.2013, p. 924).

⁽⁵⁾ Commission Decision (EU) 2022/1108 of 1 July 2022 on relief from import duties and VAT exemption on importation granted for goods to be distributed or made available free of charge to persons fleeing the war in Ukraine and to persons in need in Ukraine (OJ L 178, 5.7.2022, p. 57).

- (5) On 25 November 2022, the Commission consulted Member States regarding whether an extension of the validity of the measures laid down in that Decision was necessary. Following that consultation, requests to apply, or continue to apply, those measures were made by Estonia, Latvia, Lithuania, Luxembourg, the Netherlands, Austria, Poland, and Romania, on 2 December 2022, by Slovakia on 5 December 2022, and by France on 30 December 2022 ('requesting Member States').
- (6) As the humanitarian crisis caused by the Russian invasion of Ukraine is ongoing, and is having major consequences not only for Ukraine, but also for a number of Member States, it constitutes a disaster affecting the territory of a number of Member States within the meaning of Title II, Chapter XVII, Section C, of Regulation (EC) No 1186/2009 and of Title VIII, Chapter 4, of Directive 2009/132/EC.
- (7) It is therefore appropriate to authorise the requesting Member States to grant relief from import duties chargeable on goods imported for the purposes set out in Article 74 of Regulation (EC) No 1186/2009 and an exemption from VAT chargeable on goods imported for the purposes set out in Article 51 of Directive 2009/132/EC by, or on behalf of, State organisations, as well as charitable or philanthropic organisations approved by the competent authorities of the requesting Member States. Considering the unprecedented situation, it is appropriate to authorise the requesting Member States to grant relief from import duties and VAT exemption for goods for humanitarian assistance imported to be released for free circulation also by State organisations or other charitable or philanthropic organisations that are approved and carry out similar activities in another requesting Member State where the goods are intended to be used. In order to respond to Member States' requests to provide assistance to persons who have remained in Ukraine and are seriously affected by the military aggression, it is also necessary to authorise further transfer of those goods to Ukrainian State organisations or charitable or philanthropic organisations approved by the Ukrainian competent authorities for the distribution of those goods free of charge to persons in need in Ukraine. In addition, it is appropriate to authorise the requesting Member States to grant relief from import duties chargeable on goods imported for the purposes set out in Article 74 of Regulation (EC) No 1186/2009 and an exemption from VAT chargeable on goods imported for the purposes set out in Article 51 of Directive 2009/132/EC where they are imported for release for free circulation by, or on behalf of, disaster-relief agencies in order to meet their needs during the period they provide disaster relief to persons fleeing the military aggression in Ukraine.
- (8) In order to monitor importations for which relief from import duties or VAT exemption is granted, the requesting Member States should inform the Commission of the nature, quantities and value of the goods admitted free of import duties and VAT for distribution, or made available free of charge, to persons fleeing the military aggression in Ukraine, of the organisations they have approved for the distribution, or making available, of those goods and of the measures taken to prevent the goods from being used for purposes other than addressing the needs of the persons fleeing the military aggression in Ukraine.
- (9) In order to ensure compliance with the conditions laid down in this Decision, prevent irregularities and protect the financial interests of the Union and of the Member States, the requesting Member States should ensure the application of risk management and pertinent customs control measures with respect to the release for free circulation and use, and the subsequent transfer to Ukraine, of goods for which relief from import duties or VAT exemption is granted. Measures taken should be reported to the Commission within the deadline laid down in this Decision.
- (10) Taking into consideration the challenges that the requesting Member States face, relief from import duties and exemption from VAT should be granted in respect of importations made from 1 January 2023. The relief and the exemption should remain in place until 31 December 2023.
- (11) On 16 January 2023, the Member States were consulted in accordance with Article 76, first paragraph, of Regulation (EC) No 1186/2009 and Article 53, first paragraph, of Directive 2009/132/EC,

HAS ADOPTED THIS DECISION:

Article 1

1. Goods shall be admitted free of import duties within the meaning of Article 2(1), point (a), of Regulation (EC) No 1186/2009 and exempted from value added tax (VAT) on the imports within the meaning of Article 2(1), point (a), of Directive 2009/132/EC, where the following conditions are fulfilled:

(a) the goods are intended for one of the following uses:

- (i) distribution free of charge by the bodies and organisations referred to in point (c) for the benefit of the persons fleeing the military aggression in Ukraine;
- (ii) being made available free of charge for the benefit of the persons fleeing the military aggression in Ukraine while remaining the property of the bodies and organisations referred to in point (c);

(b) the goods satisfy the requirements laid down in Articles 75, 78, 79 and 80 of Regulation (EC) No 1186/2009 and Articles 52, 55, 56 and 57 of Directive 2009/132/EC;

(c) the goods are imported for release for free circulation by, or on behalf of, State organisations including State bodies, public bodies and other bodies governed by public law or by, or on behalf of, charitable or philanthropic organisations approved by the competent authorities of the requesting Member States where the goods are intended to be used.

2. Goods referred to in paragraph 1 of this Article may also be admitted free from import duties within the meaning of Article 2(1), point (a), of Regulation (EC) No 1186/2009, and exempted from VAT upon importation within the meaning of Article 2(1), point (a), of Directive 2009/132/EC, in a requesting Member State other than the requesting Member State where the goods are intended to be used, provided that the goods are imported for release for free circulation by a State organisation, or other charitable or philanthropic organisation, that is approved by the competent authorities and carries out similar activities in the Member State where the goods are intended to be used.

3. The transfer of the goods between the two Member States shall be subject to prior notification by an approved charitable or philanthropic organisation to the competent authorities of the requesting Member State granting the import duty relief and VAT exemption.

4. Subject to prior notification to the competent authorities of the requesting Member State granting the relief from import duties, organisations benefiting from the relief from import duties and VAT exemption in accordance with paragraphs 1 and 2 may transfer goods referred to in paragraph 1, for which relief from import duties and VAT exemption has been granted, to Ukrainian State organisations, or charitable or philanthropic organisations approved by the Ukrainian competent authorities, for distribution of the goods free of charge to persons in need in Ukraine.

5. Subject to Articles 75 to 80 of Regulation (EC) No 1186/2009 and Articles 52 to 57 of Directive 2009/132/EC, goods shall also be admitted free of import duties within the meaning of Article 2(1), point (a), of Regulation (EC) No 1186/2009 and exempted from VAT upon importation within the meaning of Article 2(1), point (a), of Directive 2009/132/EC where they are imported for release for free circulation by, or on behalf of, disaster relief agencies in order to meet their needs during the period they provide disaster relief to persons fleeing the military aggression in Ukraine.

Article 2

Member States shall report information regarding the nature, quantities and value of the goods they have admitted free of import duties and VAT pursuant to Article 1 to the Commission on a monthly basis, on the fifteenth day of the month following the reporting month.

By 31 March 2024, Member States shall communicate the following information to the Commission:

- (a) a list of organisations approved by the competent authorities in the Member States as referred to in Article 1(1), point (c);
- (b) the following consolidated information regarding the goods admitted free of import duties and VAT pursuant to Article 1:
 - (i) the customs declaration number;
 - (ii) the acceptance date of the customs declaration;
 - (iii) the customs procedure code;
 - (iv) the requesting Member State or the destination country where the goods were intended to be used;
 - (v) the Combined Nomenclature code;
 - (vi) the Integrated Tariff of the European Communities code (TARIC);
 - (vii) the net mass;
 - (viii) the supplementary unit, if applicable;
 - (ix) the value of the goods;
 - (x) the duty rate;
 - (xi) the VAT rate;
 - (xii) the amount of uncollected duties and VAT;
 - (xiii) the origin of the goods;
 - (xiv) the titles of bodies and organisations referred to in Article 1(1), point (c);
- (c) the measures taken to ensure compliance with Articles 78, 79 and 80 of Regulation (EC) No 1186/2009 and with Articles 55, 56 and 57 of Directive 2009/132/EC and, as appropriate, risk management and customs control measures taken pursuant to Article 46 of Regulation (EU) No 952/2013 of the European Parliament and of the Council ⁽⁹⁾, with regard to goods falling within the scope of this Decision.

Article 3

Article 1 shall apply to importations into Estonia, France, Latvia, Lithuania, Luxembourg, the Netherlands, Austria, Poland, Romania and Slovakia from 1 January 2023 to 31 December 2023.

Article 4

This Decision is addressed to the Republic of Estonia, the French Republic, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, Romania and the Slovak Republic.

⁽⁹⁾ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

It shall apply from 1 January 2023.

Done at Brussels, 17 April 2023.

For the Commission
Paolo GENTILONI
Member of the Commission

RECOMMENDATIONS

RECOMMENDATION No 1/2021 OF THE EU-AZERBAIJAN COOPERATION COUNCIL

of 22 December 2021

on the extension of the EU-Azerbaijan Partnership Priorities for the period 2021-2024 [2023/830]

THE EU-AZERBAIJAN COOPERATION COUNCIL,

Having regard to the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other part ⁽¹⁾, and in particular Article 81 thereof,

Having regard to Recommendation No 1/2018 of the EU-Azerbaijan Cooperation Council of 28 September 2018 on the EU-Azerbaijan Partnership Priorities ⁽²⁾,

Whereas:

- (1) The Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other part (the 'Agreement') was signed on 22 April 1996 and entered into force on 1 July 1999.
- (2) In accordance with Article 81 of the Agreement, the Cooperation Council may make appropriate recommendations for the purpose of attaining the objectives of the Agreement.
- (3) In accordance with Article 98 of the Agreement, the Parties to the Agreement are to take any general or specific measures required to fulfil their obligations under the Agreement and are to see to it that the objectives set out in the Agreement are attained.
- (4) The European Union and Azerbaijan endorsed on 28 September 2018 the EU Azerbaijan Partnership Priorities for the period 2018-2020.
- (5) The EU and Azerbaijan will bilaterally take into account in the Partnership Priorities long-term objectives and deliverables to be agreed between them in the context of the Eastern Partnership, including strengthening cooperation on public health,

HAS ADOPTED THE FOLLOWING RECOMMENDATION:

Article 1

The Cooperation Council recommends the extension of the EU-Azerbaijan Partnership Priorities, as adopted by the Cooperation Council in its meeting of 28 September 2018, until 2024. The Partnership Priorities may be updated or further extended by agreement of the Cooperation Council.

Article 2

This Recommendation shall take effect on the day of its adoption.

⁽¹⁾ OJ L 246, 17.9.1999, p. 3.

⁽²⁾ OJ L 265, 24.10.2018, p. 18.

Done at Brussels, 22 December 2021.

For the Cooperation Council

The European Union
J. BORRELL FONTELLES

The Republic of Azerbaijan
J. BAYRAMOV

GUIDELINES

GUIDELINE (EU) 2023/831 OF THE EUROPEAN CENTRAL BANK

of 16 December 2022

amending Guideline (EU) 2015/510 on the implementation of the Eurosystem monetary policy framework (ECB/2022/48)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first indent of Article 127(2) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular the first indent of Article 3.1, Articles 9.2, 12.1, 14.3 and 18.2 and the first paragraph of Article 20 thereof,

Whereas:

- (1) Achieving a single monetary policy entails defining the tools, instruments and procedures to be used by the Eurosystem in order to implement such a policy in a uniform manner throughout the Member States whose currency is the euro.
- (2) In accordance with the second indent of Article 18.1 of the Statute of the European System of Central Banks and of the European Central Bank, the European Central Bank (ECB) and the national central banks of the Member States whose currency is the euro (hereinafter the 'NCBs') may conduct credit operations with credit institutions and other market participants, with lending being based on adequate collateral.
- (3) With the aim of safeguarding the adequacy of Eurosystem collateral, eligible assets mobilised as collateral for Eurosystem credit operations are subject to specific risk control measures in order to protect the Eurosystem against financial losses in circumstances in which its collateral has to be realised due to an event of default of a counterparty. The Eurosystem risk control framework is regularly reviewed in order to ensure adequate protection.
- (4) As a result of the regular review of the risk control framework for Eurosystem credit operations, and considering that the risk profile of other legislative covered bonds and of *multi cédulas* is similar to that of jumbo covered bonds, the Governing Council decided on 15 July 2022 that they should be subject to the same haircut valuations, and therefore all legislative covered bonds and *multi cédulas* should be included in haircut category II. Consequently, since there is no longer a distinction between jumbo covered bonds and other types of legislative covered bonds in the Eurosystem monetary policy framework, references to jumbo covered bonds should be removed from Guideline (EU) 2015/510 of the European Central Bank (ECB/2014/60) ⁽¹⁾.
- (5) Therefore, Guideline (EU) 2015/510 (ECB/2014/60) should be amended accordingly,

HAS ADOPTED THIS GUIDELINE:

Article 1

Amendments

Guideline (EU) 2015/510 (ECB/2014/60) is amended as follows:

- (1) in Article 2, point (48) is deleted;
- (2) Annex XII is amended in accordance with the Annex to this Guideline.

⁽¹⁾ Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (General Documentation Guideline) (ECB/2014/60) (OJ L 91, 2.4.2015, p. 3).

*Article 2***Taking effect and implementation**

1. This Guideline shall take effect on the day of its notification to the NCBs.
2. The NCBs shall take the necessary measures to comply with this Guideline and apply them from 29 June 2023. They shall notify the ECB of the texts and means relating to those measures by 17 February 2023 at the latest.

*Article 3***Addressees**

This Guideline is addressed to all Eurosystem central banks.

Done at Frankfurt am Main, 16 December 2022.

For the Governing Council of the ECB
The President of the ECB
Christine LAGARDE

ANNEX

In Annex XII to Guideline (EU) 2015/510 (ECB/2014/60), Section VI is replaced by the following:

‘VI. EXAMPLE 6: RISK CONTROL MEASURES

1. This example illustrates the risk control framework applied to assets mobilised as collateral in the Eurosystem credit operations. It is based on the assumption that, in the calculation of the need for a margin call, accrued interest on the liquidity provided is taken into account and a trigger point of 0,5 % of the liquidity provided is applied. The example is based on the assumption that a counterparty participates in the following Eurosystem monetary policy operations:
 - (a) a main refinancing operation starting on 21 September 2022 and ending on 28 September 2022 where the counterparty is allotted EUR 50 million at an interest rate of 1,25 %;
 - (b) a longer-term refinancing operation starting on 22 September 2022 and ending on 21 December 2022 where the counterparty is allotted EUR 45 million at an interest rate of 1,25 %;
 - (c) a main refinancing operation starting on 28 September 2022 and ending on 5 October 2022 where the counterparty is allotted EUR 35 million at an interest rate of 1,25 %.
2. The characteristics of the marketable assets mobilised by the counterparty to cover these operations are specified in Table 1.

Table 1

Marketable assets mobilised in the transactions

Characteristics

Name	Asset class	Maturity date	Coupon definition	Coupon frequency	Residual maturity	CQS	Haircut (%)
Asset A	Covered bond	21.12.2026	Fixed rate	6 months	4 years	1-2	2,50
Asset B	Central government bond	24.2.2027	Variable rate	12 months	4 years	1-2	1,50
Asset C	Corporate bond	24.1.2035	Zero coupon rate		12 years	1-2	10,00

Prices in percentages (including accrued interest) (*)

21.9.2022	22.9.2022	23.9.2022	26.9.2022	27.9.2022	28.9.2022	29.9.2022
101,61	101,21	99,50	99,97	99,73	100,01	100,12
	98,62	97,95	98,15	98,56	98,59	98,57
					53,71	53,62

(*) The prices shown for a specific valuation date correspond to the most representative price on the business day preceding this valuation date.

EARMARKING SYSTEM

First, it is assumed that the transactions are carried out with a national central bank (NCB) using a system where underlying assets are earmarked for each transaction. The valuation of assets mobilised as collateral is carried out on a daily basis. The risk control framework can then be described as follows (see also Table 2 below):

1. On 21 September 2022, the counterparty enters into a collateralised lending transaction with the NCB, which receives EUR 50,6 million of Asset A. Asset A is a covered bond with a fixed coupon maturing on 21 December 2026 and allocated to credit quality step 1-2. It thus has a residual maturity of four years, therefore requiring a valuation haircut of 2,5 %. The market price of Asset A on its reference market on that day is 101,61 %, which includes the accrued interest on the coupon. The counterparty is required to provide an amount of Asset A, which, after deduction of the 2,5 % valuation haircut, exceeds the allotted amount of EUR 50 million. The counterparty therefore delivers Asset A for a nominal amount of EUR 50,6 million, the haircut-adjusted market value of which is EUR 50 129 294 on that day.
2. On 22 September 2022, the counterparty enters into a repurchase transaction with the NCB, which purchases EUR 21 million of Asset A (market price 101,21 %, valuation haircut 2,5 %) and EUR 25 million of Asset B (market price 98,62 %). Asset B is a central government bond with variable rate coupon payments and allocated to credit quality step 1-2, to which a 1,5 % valuation haircut is applied. The haircut-adjusted market value of Asset A and Asset B on that day is EUR 45 007 923, thus exceeding the required amount of EUR 45 000 000.
3. On 22 September 2022, the assets underlying the main refinancing operation initiated on 21 September 2022 are revalued. With a market price of 101,21 %, the haircut-adjusted market value of Asset A is still within the lower and upper trigger amounts. The collateral that was mobilised initially is consequently considered to cater for both the initial amount of liquidity provided and the accrued interest amounting to EUR 1 736.
4. On 23 September 2022, the underlying assets are revalued: the market price of Asset A is 99,50 % and the market price of Asset B is 97,95 %. Accrued interest amounts to EUR 3 472 on the main refinancing operation initiated on 21 September 2022 and EUR 1 563 on the longer-term refinancing operation initiated on 22 September 2022. As a result, the haircut-adjusted market value of Asset A in the first transaction falls below the transaction's amount to be covered, i.e. the liquidity provided plus the accrued interest, by EUR 915 147, but also below the lower trigger level of EUR 49 753 455.

The counterparty delivers EUR 950 000 of Asset A in nominal value terms, which, after deducting a 2,5 % haircut from the market value based on a price of 99,50 %, restores sufficient collateral coverage. NCBs may perform margin calls in cash rather than securities.

A margin call is also needed on the second transaction since the haircut-adjusted market value of the underlying assets used in this transaction (EUR 44 492 813) is below the lower trigger level (EUR 44 776 555). The counterparty therefore provides EUR 550 000 of Asset B with an haircut-adjusted market value of EUR 530 644.

5. On 26 September 2022, the underlying assets are revalued, without resulting in any margin call for the transactions entered on 21 and 22 September 2022.

On 27 September 2022, the revaluation of assets underlying the long-term refinancing operation initiated on 22 September 2022 reveals that the haircut-adjusted market value of the assets provided exceeds the upper trigger level and leads to the NCB returning EUR 300 000 of Asset B in nominal value to the counterparty. If a margin had to be paid to the counterparty by the NCB in relation to the second transaction, such a margin could, in certain cases, be netted out with the margin paid to the NCB by the counterparty in relation to the first transaction. As a result, there would only be one margin settlement.

6. On 28 September 2022, the counterparty repays the liquidity provided under the main refinancing operation initiated on 21 September 2022, including the accrued interest of EUR 12 153. The NCB returns EUR 51 550 000 of Asset A in nominal value.

On the same day the counterparty enters into a new collateralised lending transaction with the NCB, which purchases EUR 72,5 million of Asset C in nominal value terms. Since Asset C is a zero-coupon corporate bond with a residual maturity of 12 years and allocated to credit quality step 1-2, requiring a valuation haircut of 10 %, the corresponding haircut-adjusted market value on that day is of EUR 35 045 775.

POOLING SYSTEM

Second, it is assumed that the transactions are carried out with an NCB using a pooling system where assets included in the pool of assets used by the counterparty are not earmarked for specific transactions:

1. The same sequence of transactions is used in this example as in the above example illustrating an earmarking system. The main difference is that, on the revaluation dates, the haircut-adjusted market value of all the assets in the pool has to cover the total amount of all of the counterparty's outstanding operations with the NCB. The margin call of EUR 1 423 897 occurring on 23 September 2022 is identical in this example to the one required in the earmarking system case. The counterparty delivers EUR 1 500 000 of Asset A in nominal value terms, which, after deducting a 2,5 % haircut from the market value based on a price of 99,50 %, restores sufficient collateral coverage.
2. Moreover, on 28 September 2022, when the main refinancing operation entered into on 21 September 2022 matures, the counterparty may keep the assets on its pool account. An asset can also be exchanged for another asset as shown in the example, where EUR 52,1 million of Asset A in nominal value are replaced with EUR 72,5 million of Asset C in nominal value to cover the liquidity provided and the accrued interest under all refinancing operations.
3. The risk control framework in the pooling system is described in Table 3.

Table 2

Earmarking System

Date	Outstanding transactions	Start date	End date	Interest rate (%)	Liquidity provided	Accrued interest	Total amount to be covered	Lower trigger amount	Upper trigger amount	Haircut-adjusted market value	Margin call
21.9.2022	Main refinancing	21.9.2022	28.9.2022	1,25	50 000 000	—	50 000 000	49 750 000	50 250 000	50 129 294	
22.9.2022	Main refinancing	21.9.2022	28.9.2022	1,25	50 000 000	1 736	50 001 736	49 751 727	50 251 745	49 931 954	
	Longer-term refinancing	22.9.2022	21.12.2022	1,25	45 000 000	—	45 000 000	44 775 000	45 225 000	45 007 923	
23.9.2022	Main refinancing	21.9.2022	28.9.2022	1,25	50 000 000	3 472	50 003 472	49 753 455	50 253 490	49 088 325	– 915 147
	Longer-term refinancing	22.9.2022	21.12.2022	1,25	45 000 000	1 563	45 001 563	44 776 555	45 226 570	44 492 813	– 508 750
26.9.2022	Main refinancing	21.9.2022	28.9.2022	1,25	50 000 000	8 681	50 008 681	49 758 637	50 258 724	50 246 172	
	Longer-term refinancing	22.9.2022	21.12.2022	1,25	45 000 000	6 250	45 006 250	44 781 219	45 231 281	45 170 023	
27.9.2022	Main refinancing	21.9.2022	28.9.2022	1,25	50 000 000	10 417	50 010 417	49 760 365	50 260 469	50 125 545	
	Longer-term refinancing	22.9.2022	21.12.2022	1,25	45 000 000	7 813	45 007 813	44 782 773	45 232 852	45 515 311	507 499
28.9.2022	Main refinancing	28.9.2022	5.10.2022	1,25	35 000 000	—	35 000 000	34 825 000	35 175 000	35 045 775,00	
	Longer-term refinancing	22.9.2022	21.12.2022	1,25	45 000 000	9 375	45 009 375	44 784 328	45 234 422	44 997 612,88	
29.9.2022	Main refinancing	28.9.2022	5.10.2022	1,25	35 000 000	1 215	35 001 215	34 826 209	35 176 221	34 987 050,00	
	Longer-term refinancing	22.9.2022	21.12.2022	1,25	45 000 000	10 938	45 010 938	44 785 883	45 235 992	45 015 161,13	

Table 3

Pooling System

Date	Outstanding transactions	Start date	End date	Interest rate (%)	Liquidity provided	Accrued interest	Total amount to be covered	Lower trigger amount ⁽¹⁾	Upper trigger amount ⁽²⁾	Haircut-adjusted market value	Margin call
21.9.2022	Main refinancing	21.9.2022	28.9.2022	1,25	50 000 000	—	50 000 000	49 750 000	Not applicable	50 129 294	
22.9.2022	Main refinancing	21.9.2022	28.9.2022	1,25	50 000 000	1 736	95 001 736	94 526 727	Not applicable	94 939 876	
	Longer-term refinancing	22.9.2022	21.12.2022	1,25	45 000 000	—					
23.9.2022	Main refinancing	21.9.2022	28.9.2022	1,25	50 000 000	3 472	95 005 035	94 530 010	Not applicable	93 581 138	– 1 423 897
	Longer-term refinancing	22.9.2022	21.12.2022	1,25	45 000 000	1 563					
26.9.2022	Main refinancing	21.9.2022	28.9.2022	1,25	50 000 000	8 681	95 014 931	94 539 856	Not applicable	95 420 556	
	Longer-term refinancing	22.9.2022	21.12.2022	1,25	45 000 000	6 250					
27.9.2022	Main refinancing	21.9.2022	28.9.2022	1,25	50 000 000	10 417	95 018 229	94 543 138	Not applicable	95 350 464	
	Longer-term refinancing	22.9.2022	21.12.2022	1,25	45 000 000	7 813					
28.9.2022	Main refinancing	28.9.2022	5.10.2022	1,25	35 000 000	—	80 009 375	79 609 328	Not applicable	79 800 610	

	Longer-term refinancing	22.9.2022	21.12.2022	1,25	45 000 000	9 375					
29.9.2022	Main refinancing	28.9.2022	5.10.2022	1,25	35 000 000	1 215	80 012 153	79 612 092	Not applicable	79 759 483	
	Longer-term refinancing	22.9.2022	21.12.2022	1,25	45 000 000	10 938					

(¹) In a pooling system, the lower trigger amount is the lowest threshold for margin calls. In practice most NCBs require additional collateral whenever the haircut-adjusted market value of the collateral pool falls below the total amount to be covered.

(²) In a pooling system, the notion of upper trigger amount is not relevant, since the counterparty will constantly target an excess amount of collateral provided in order to minimise operational transactions.'

GUIDELINE (EU) 2023/832 OF THE EUROPEAN CENTRAL BANK**of 16 December 2022****amending Guideline (EU) 2016/65 on the valuation haircuts applied in the implementation of the
Eurosystem monetary policy framework (ECB/2015/35) (ECB/2022/49)**

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union and in particular the first indent of Article 127(2) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular the first indent of Article 3.1, Articles 9.2, 12.1, 14.3, 18.2 and the first paragraph of Article 20 thereof,

Whereas:

- (1) In accordance with Article 18.1 of the Statute of the European System of Central Banks and of the European Central Bank, the European Central Bank (ECB) and the national central banks of the Member States whose currency is the euro (hereinafter the 'NCBs') may conduct credit operations with credit institutions and other market participants, with lending being based on adequate collateral. The general conditions under which the ECB and the NCBs stand ready to enter into credit operations, including the criteria determining the eligibility of collateral for the purposes of Eurosystem credit operations, are laid down in Guideline (EU) 2015/510 of the European Central Bank (ECB/2014/60) ⁽¹⁾.
- (2) All eligible assets for Eurosystem credit operations are subject to specific risk control measures in order to protect the Eurosystem against financial losses in circumstances in which the collateral has to be realised due to an event of default of a counterparty. The Eurosystem risk control framework is regularly reviewed in order to ensure adequate protection. As a result of that regular review, the Governing Council decided on 15 July 2022 to introduce certain changes to the risk control framework.
- (3) The Governing Council decided to further phase out the temporary reduction of valuation haircuts that had been decided as part of the temporary collateral easing measures taken by the Eurosystem in response to the exceptional economic and financial circumstances associated with the spread of coronavirus disease (COVID-19). This is the second step of the gradual phasing out of the valuation haircut reduction that was decided by the Governing Council on 23 March 2022, and will conclude that phasing out.
- (4) As the risk profile of other legislative covered bonds and of *multi cédulas* is similar to that of jumbo covered bonds, the Governing Council also decided that they should be subject to the same haircut valuations, and therefore all legislative covered bonds and *multi cédulas* should be included in haircut category II and references to jumbo covered bonds should be removed from Guideline (EU) 2016/65 of the European Central Bank (ECB/2015/35) ⁽²⁾.

⁽¹⁾ Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (General Documentation Guideline) (ECB/2014/60) (OJ L 91, 2.4.2015, p. 3).

⁽²⁾ Guideline (EU) 2016/65 of the European Central Bank of 18 November 2015 on the valuation haircuts applied in the implementation of the Eurosystem monetary policy framework (ECB/2015/35) (OJ L 14, 21.1.2016, p. 30).

- (5) In addition, the Governing Council decided to change the allocation of debt instruments issued by the European Union from haircut category II to haircut category I, given their comparability to debt instruments in the latter category in terms of pricing as well as market and liquidity risk, when controlling for the credit rating or residual maturity of an instrument. This is in line with the risk management principles of protection, consistency, simplicity and transparency which underpin the design of the Eurosystem's collateral framework, including valuation haircuts.
- (6) In order to allow for a more granular and apposite treatment of the risks associated with long maturity instruments, and thereby improve the risk coverage of the haircuts schedule, it was decided to split the category of instruments with the longest residual maturity, (i.e. more than 10 years ($[10, \infty)$) into three new categories, ten to 15 years ($[10, 15)$), fifteen to thirty years ($[15, 30)$) and thirty years or more ($[30, \infty)$). This decision, combined with the decision to apply a maturity-dependent theoretical valuation markdown, is also intended to improve the granularity of the risk coverage of that theoretical valuation, which is especially relevant for instruments with longer maturities.
- (7) It was also considered necessary to further specify and adjust the definition of the residual maturity for own-use covered bonds, distinguishing between those with a soft bullet structure, and those with a conditional pass-through structure, in order to avoid an unwarranted increase (i.e. not justified by risk considerations) in the valuation haircuts applied to the latter, as a consequence of the abovementioned splitting up of the category of long maturity debt instruments into three distinct categories.
- (8) Furthermore, the Governing Council decided to replace, in both the permanent and the temporary collateral framework, the current flat 5 % theoretical valuation markdown applicable to marketable assets in accordance with Article 134 of Guideline (EU) 2015/510 (ECB/2014/60) with a maturity-graduated markdown schedule, for all theoretically valued marketable assets except those falling under haircut category I. The reason for this is to protect the Eurosystem's collateral in a more granular way against model risks arising from theoretical valuation of marketable assets.
- (9) Furthermore, with a view to adequately reflecting the risks of marketable assets with floating coupons, and to improving the risk protection of the Eurosystem, it was decided to align the haircut classification of marketable assets with a fixed coupon and those with a floating coupon, as they demonstrated comparable levels of total risk.
- (10) Therefore, Guideline (EU) 2016/65 (ECB/2015/35) should be amended accordingly,

HAS ADOPTED THIS GUIDELINE:

Article 1

Amendments

Guideline (EU) 2016/65 (ECB/2015/35) is amended as follows:

- (1) in Article 2, points (a), (b) and (c) are replaced by the following:

- (a) debt instruments issued by central governments, debt instruments issued by the European Union, ECB debt certificates and debt certificates issued by NCBs prior to the date of adoption of the euro in their respective Member State whose currency is the euro are included in haircut category I;
- (b) debt instruments issued by:
 - (i) local and regional governments;
 - (ii) entities which are credit institutions or non-credit institutions classified by the Eurosystem as agencies and which meet the quantitative criteria set out in Annex XIlA to Guideline (EU) 2015/510 (ECB/2014/60);
 - (iii) multilateral development banks and international organisations other than the European Union; as well as legislative covered bonds and *multi cédulas*; are included in haircut category II;

(c) debt instruments issued by:

- (i) non-financial corporations;
- (ii) corporations in the government sector; and
- (iii) agencies which are non-credit institutions that do not meet the quantitative criteria set out in Annex XIIa to Guideline (EU) 2015/510 (ECB/2014/60), are included in haircut category III;;

(2) Article 3 is replaced by the following:

Article 3

Valuation haircuts for marketable assets

1. The valuation haircuts for marketable assets allocated to haircut categories I to IV shall be determined based on:

- (a) the allocation of the specific asset to credit quality step 1, 2 or 3;
- (b) the residual maturity of the asset as detailed in paragraph 2;
- (c) the coupon structure of the asset as detailed in paragraph 2.

2. For marketable assets allocated to haircut categories I to IV, the applicable valuation haircut shall depend on the residual maturity and coupon structure of the asset (fixed/floating or zero), as determined based on Table 2 in the Annex to this Guideline. The relevant maturity for determining the valuation haircut to be applied shall be the residual maturity of the asset, irrespective of the type of coupon structure.

2a. The determination of the residual maturity for own-use covered bonds shall depend on whether the own-use covered bonds have a soft bullet structure or a conditional pass-through structure, as follows:

- (a) in the case of own-use covered bonds with a soft bullet structure, the residual maturity shall be defined as the maximum length to which the maturity may be extended as reflected in the terms and conditions for the specific covered bond;
- (b) in the case of own-use covered bonds with a conditional pass-through structure, the residual maturity shall correspond to the [10,15) year category.

For the purposes of this paragraph 2a, 'own-use' shall mean the submission or use by a counterparty of covered bonds that are issued or guaranteed by the counterparty itself or by any other entity with which that counterparty has close links as determined in accordance with Article 138 of Guideline (EU) 2015/510 (ECB/2014/60).

3. For marketable assets allocated to haircut category V, regardless of their coupon structure, the valuation haircuts shall be determined based on the weighted average life of the asset as detailed in paragraphs 4 and 5. The valuation haircuts applicable to marketable assets in category V are laid down in Table 2a in the Annex to this Guideline.

4. The weighted average life of the senior tranche of an asset-backed security shall be estimated as the expected weighted average time remaining until repayment has been made for that tranche. For retained mobilised asset-backed securities, the calculation of the weighted average life shall assume that issuer call options will not be exercised.

5. For the purposes of paragraph 4, "retained mobilised asset-backed securities" shall mean asset-backed securities used in a percentage greater than 75 % of the outstanding nominal amount by a counterparty that originated the asset-backed security or by entities closely linked to the originator. Such close links shall be determined in accordance with Article 138 of Guideline (EU) 2015/510 (ECB/2014/60).;

(3) Article 4 is replaced by the following:

‘Article 4

Additional valuation haircuts applied to specific types of marketable assets

In addition to the valuation haircuts laid down in Article 3 of this Guideline, the following additional valuation haircuts shall apply for specific types of marketable assets:

- (a) all marketable assets allocated to haircut categories II, III, IV and V that are theoretically valued in accordance with the rules contained in Article 134 of Guideline (EU) 2015/510 (ECB/2014/60) shall be subject to an additional valuation haircut in the form of a valuation markdown. The valuation markdown, also for own-use covered bonds, shall depend on the expected residual maturity or, in the case of haircut category V, the weighted average life of the asset, at the levels set out in Table 4 in the Annex to this Guideline. For the purpose of computing the valuation markdown for own-use covered bonds, the expected residual maturity, shall be the originally scheduled maturity date unless and until a maturity extension has been triggered;
 - (b) own-use covered bonds shall be subject to an additional valuation haircut of: (i) 8 % applied to the value of the debt instruments allocated to credit quality steps 1 and 2; and (ii) 12 % applied to the value of the debt instruments allocated to credit quality step 3. For the purposes of this paragraph, “own-use” shall have the same meaning as “own-use” as defined in Article 3(2a);
 - (c) if the additional valuation haircut referred to in paragraph (b) cannot be applied with respect to a collateral management system of an NCB, triparty agent, or TARGET for auto-collateralisation, the additional valuation haircut shall be applied in such systems or platform to the entire issuance value of the covered bonds that can be own used.’;
- (4) in Article 5, paragraph 5 is replaced by the following:
- ‘5. Non-marketable retail mortgage-backed debt instruments shall be subject to a valuation haircut of 31,5 %.’;
- (5) the Annex is replaced by the Annex to this Guideline.

Article 2

Taking effect and implementation

- 1. This Guideline shall take effect on the day of its notification to the NCBs.
- 2. The NCBs shall take the necessary measures to comply with this Guideline and apply them from 29 June 2023. They shall notify the ECB of the texts and means relating to those measures by 17 February 2023 at the latest.

Article 3

Addressees

This Guideline is addressed to the NCBs.

Done at Frankfurt am Main, 16 December 2022.

For the Governing Council of the ECB
The President of the ECB
Christine LAGARDE

ANNEX

The Annex to Guideline (EU) 2016/65 (ECB/2015/35) is replaced by the following:

‘ANNEX

Table 1

Haircut categories for eligible marketable assets based on the type of issuer and/or type of asset

Category I	Category II	Category III	Category IV	Category V
Debt instruments issued by central governments	Debt instruments issued by local and regional governments	Debt instruments issued by non-financial corporations, corporations in the government sector and agencies which are non-credit institutions that do not meet the quantitative criteria set out in Annex XIl a to Guideline (EU) 2015/510 (ECB/2014/60)	Unsecured debt instruments issued by credit institutions and agencies which are credit institutions that do not meet the quantitative criteria set out in Annex XIl a to Guideline (EU) 2015/510 (ECB/2014/60)	Asset-backed securities
Debt instruments issued by the European Union	Debt instruments issued by entities (credit institutions or non-credit institutions) classified by the Eurosystem as agencies and which meet the quantitative criteria set out in Annex XIl a to Guideline (EU) 2015/510 (ECB/2014/60)		Unsecured debt instruments issued by financial corporations other than credit institutions	
ECB debt certificates	Debt instruments issued by multilateral development banks and international organisations other than the European Union			
Debt certificates issued by national central banks (NCBs) prior to the date of adoption of the euro in their respective Member State	Legislative covered bonds			
	Multi cédulas			

Table 2

Valuation haircut levels applied to eligible marketable assets in haircut categories I to IV

(in %)

		<i>Haircut categories</i>							
Credit quality	Residual maturity (years) (*)	Category I		Category II		Category III		Category IV	
		fixed or floating coupon	zero coupon	fixed or floating coupon	zero coupon	fixed or floating coupon	zero coupon	fixed or floating coupon	zero coupon
Steps 1 and 2	[0,1)	0,5	0,5	1,0	1,0	1,0	1,0	7,5	7,5
	[1,3)	1,0	2,0	1,5	2,5	2,0	3,0	10,0	11,5
	[3,5)	1,5	2,5	2,5	3,5	3,0	4,5	12,0	13,0
	[5,7)	2,0	3,0	3,5	4,5	4,5	6,0	14,0	15,0
	[7,10)	3,0	4,0	4,5	6,5	6,0	8,0	16,0	17,5
	[10,15)	4,0	5,0	6,5	8,5	7,5	10,0	18,0	22,5
	[15,30)	5,0	6,0	8,0	11,5	9,0	13,0	21,0	25,0
	[30, ∞)	6,0	9,0	10,0	13,0	11,0	16,0	24,0	31,5
		<i>Haircut categories</i>							
Credit quality	Residual maturity (years)	Category I		Category II		Category III		Category IV	
		fixed or floating coupon	zero coupon	fixed or floating coupon	zero coupon	fixed or floating coupon	zero coupon	fixed or floating coupon	zero coupon
Step 3	[0,1)	5,0	5,0	5,5	5,5	6,5	6,5	11,5	11,5
	[1,3)	6,0	7,0	7,5	10,5	9,5	12,0	18,5	20,0
	[3,5)	8,5	10,0	11,0	16,0	13,0	18,0	23,0	27,0
	[5,7)	10,0	11,5	12,5	17,0	15,0	21,5	25,5	29,5
	[7,10)	11,5	13,0	14,0	21,0	17,0	23,5	26,5	31,5
	[10,15)	12,5	14,0	17,0	25,5	19,5	28,0	28,5	35,0
	[15,30)	13,5	15,0	20,0	28,5	22,0	31,0	31,5	39,0
	[30, ∞)	14,0	17,0	22,0	32,5	25,0	35,5	34,5	43,0

(*) i.e. [0,1) residual maturity less than one year, [1,3) residual maturity equal to or greater than one year and less than three years, etc.

Table 2a

Valuation haircut levels applied to eligible marketable assets in haircut category V

(in %)

Credit quality	Weighted Average Life (*)	Category V
		Valuation haircut
Steps 1 and 2	[0,1)	4,0
	[1,3)	5,0
	[3,5)	7,0
	[5,7)	9,0
	[7,10)	12,0
	[10,15)	18,0
	[15,30)	20,0
	[30, ∞)	22,0

(*) i.e. [0,1) WAL less than one year, [1,3) WAL equal to or greater than one year and less than three years, etc.

Table 3

Valuation haircut levels applied to eligible credit claims

(in %)

Credit quality	Residual maturity (years) (*)	Fixed interest payment	Floating interest payment
Steps 1 and 2	[0,1)	8,0	8,0
	[1,3)	11,5	8,0
	[3,5)	15,0	8,0
	[5,7)	20,0	11,5
	[7,10)	26,0	15,0
	[10,15)	33,0	20,0
	[15,30)	38,0	26,0
	[30, ∞)	40,0	33,0
Step 3	[0,1)	16,0	16,0
	[1,3)	25,0	16,0
	[3,5)	35,0	16,0
	[5,7)	42,0	25,0
	[7,10)	46,0	35,0
	[10,15)	48,0	42,0
	[15,30)	50,0	46,0
	[30, ∞)	52,0	48,0

(*) i.e. [0,1) residual maturity less than one year, [1,3) residual maturity equal to or greater than one year and less than three years, etc.;

Table 4

Valuation markdown levels applied to marketable assets in haircut categories II to V that are theoretically valued

(in %)

Residual maturity/Weighted Average Life (WAL) (years) (*)	Valuation markdown
[0,1)	1,5
[1,3)	2,5
[3,5)	3,0
[5,7)	3,5
[7,10)	4,5
[10,15)	6,0
[15,30)	8,0
[30, ∞)	13,0

(*) i.e. [0,1) Residual maturity/WAL less than one year, [1,3) residual maturity/WAL equal to or greater than one year and less than three years, etc.'

GUIDELINE (EU) 2023/833 OF THE EUROPEAN CENTRAL BANK**of 16 December 2022****amending Guideline ECB/2014/31 on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral (ECB/2022/50)**

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first indent of Article 127(2) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular the first indent of Article 3.1, and Articles 12.1, 14.3 and 18.2 thereof,

Whereas:

- (1) In accordance with Article 18.1 of the Statute of the European System of Central Banks and of the European Central Bank, the European Central Bank (ECB) and the national central banks of the Member States whose currency is the euro (hereinafter the 'NCBs') may, in order to achieve the objectives of the European System of Central Banks, conduct credit operations with credit institutions and other market participants, with lending being based on adequate collateral. The general conditions under which the ECB and the NCBs stand ready to enter into credit operations, including the criteria determining the eligibility of collateral for the purposes of Eurosystem credit operations, are laid down in Guideline (EU) 2015/510 of the European Central Bank (ECB/2014/60) ⁽¹⁾.
- (2) All eligible assets for Eurosystem credit operations are subject to specific risk control measures in order to protect the Eurosystem against financial losses in circumstances in which the collateral has to be realised due to an event of default of a counterparty. The Eurosystem risk control framework is regularly reviewed in order to ensure adequate protection. As a result of that regular review, the Governing Council decided on 15 July 2022 to introduce certain changes to the risk control framework.
- (3) The Governing Council decided to further phase out the temporary reduction of valuation haircuts that had been decided as part of the temporary collateral easing measures taken by the Eurosystem in response to the exceptional economic and financial circumstances associated with the spread of coronavirus disease (COVID-19). This is the second step of the gradual phasing out that was decided by the Governing Council on 23 March 2022, which will conclude the phasing out of the valuation haircut reduction.
- (4) In order to allow for a more granular and apposite treatment of the risks associated with long maturity instruments, and thereby improve the risk coverage of the haircuts schedule, it was decided to split the category of instruments with the longest residual maturity, (i.e. more than ten years ([10, ∞)) into three new categories, ten to fifteen years ([10, 15)), fifteen to thirty years ([15, 30)) and thirty years or more ([30, ∞)). This decision, combined with the decision to apply a maturity-dependent theoretical valuation markdown, is also intended to improve the granularity of the risk coverage of that theoretical valuation, which is especially relevant for instruments with longer maturities.
- (5) Furthermore, the Governing Council decided to replace, in both the permanent and the temporary collateral framework, the current flat 5 % theoretical valuation markdown applicable to marketable assets in accordance with Article 134 of Guideline (EU) 2015/510 (ECB/2014/60) with a maturity-graduated markdown schedule, for all theoretically valued marketable assets except those falling under haircut category I. The reason for this is to protect the Eurosystem's collateral in a more granular way against model risks arising from theoretical valuation of marketable assets.

⁽¹⁾ Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (General Documentation Guideline) (ECB/2014/60) (OJ L 91, 2.4.2015, p. 3).

- (6) Furthermore, with a view to adequately reflecting the risks of marketable assets with floating coupons, and to improving the risk protection of the Eurosystem, it was decided to align the haircut classification of marketable assets with a fixed coupon and those with a floating coupon as they demonstrated comparable levels of total risk.
- (7) Therefore, Guideline ECB/2014/31 of the European Central Bank ⁽²⁾ should be amended accordingly,

HAS ADOPTED THIS GUIDELINE:

Article 1

Amendments

Guideline ECB/2014/31 is amended as follows:

- (1) in Article 3, the following paragraph is inserted:

‘2b. ABS eligible under Article 3(1) that are theoretically valued in accordance with the rules contained in Article 134 of Guideline (EU) 2015/510 (ECB/2014/60) shall be subject to an additional valuation haircut in the form of a valuation markdown. The valuation markdown shall depend on the weighted average life of the asset, at the levels set out in Table 4 in the Annex to Guideline (EU) 2016/65 of the European Central Bank (ECB/2015/35) ^(*).

^(*) Guideline (EU) 2016/65 of the European Central Bank of 18 November 2015 on the valuation haircuts applied in the implementation of the Eurosystem monetary policy framework (ECB/2015/35) (OJ L 14, 21.1.2016, p. 30).’;

- (2) Article 8b entitled ‘Admission of certain marketable assets and issuers eligible on 7 April 2020’ is deleted;
- (3) Annex IIa is replaced by Annex I to this Guideline;
- (4) Annex IIb is replaced by Annex II to this Guideline.

Article 2

Taking effect and implementation

1. This Guideline shall take effect on the day of its notification to the NCBs.
2. The NCBs shall take the necessary measures to comply with this Guideline and apply them from 29 June 2023. They shall notify the ECB of the texts and means relating to those measures by 17 February 2023 at the latest.

Article 3

Addressees

This Guideline is addressed to all Eurosystem central banks.

Done at Frankfurt am Main, 16 December 2022.

For the Governing Council of the ECB
The President of the ECB
Christine LAGARDE

⁽²⁾ Guideline ECB/2014/31 of the European Central Bank of 9 July 2014 on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral and amending Guideline ECB/2007/9 (OJ L 240, 13.8.2014, p. 28).

ANNEX I

Annex IIa to Guideline ECB/2014/31 is replaced by the following:

‘ANNEX IIa

Valuation haircut levels (in %) applied to asset-backed securities (ABS) eligible under Article 3(2) of this Guideline

Credit quality	Weighted Average Life (*)	Valuation haircut
	[0,1)	7,0
Step 3	[1,3)	10,0
	[3,5)	13,0
	[5,7)	15,0
	[7,10)	18,0
	[10,15)	27,0
	[15,30)	31,0
	[30, ∞)	33,0

(*) i.e. [0-1) WAL less than one year, [1-3) WAL equal to or greater than one year and less than three years, etc.’

ANNEX II

Annex IIb to Guideline ECB/2014/31 is replaced by the following:

‘ANNEX IIb

Valuation haircut levels (in %) applied to marketable assets eligible under Article 8a of this Guideline

Credit quality	Residual maturity (years) (*)	Category I	
		fixed or floating coupon	zero coupon
Step 4	[0,1)	8,0	8,0
	[1,3)	12,0	13,0
	[3,5)	14,0	15,0
	[5,7)	15,5	17,0
	[7,10)	16,5	18,0
	[10,15)	17,0	20,0
	[15,30)	19,0	22,0
	[30, ∞)	20,0	23,0
Step 5	[0,1)	10,0	10,0
	[1,3)	14,0	15,0
	[3,5)	16,5	17,5
	[5,7)	18,0	19,5
	[7,10)	19,0	20,5
	[10,15)	20,0	23,0
	[15,30)	21,0	24,0
	[30, ∞)	23,0	26,0

(*) i.e. [0-1) residual maturity less than one year, [1-3) residual maturity equal to or greater than one year and less than three years, etc.’

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