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GUIDELINE (EU) 2015/1938 OF THE EUROPEAN CENTRAL BANK

of 27 August 2015

amending Guideline (EU) 2015/510 of the European Central Bank on the implementation of the Eurosystem monetary policy framework (ECB/2015/27)

(OJ L 282, 28.10.2015, p. 41)

Corrected by:

►C1 Corrigendum, OJ L 332, 18.12.2015, p. 158 (2015/1938)

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GUIDELINE (EU) 2015/1938 OF THE EUROPEAN CENTRAL BANK

of 27 August 2015

amending Guideline (EU) 2015/510 of the European Central Bank on the implementation of the Eurosystem monetary policy framework (ECB/2015/27)

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) Achieving a single monetary policy entails defining the tools, instruments and procedures to be used by the Eurosystem, which consists of the European Central Bank (ECB) and the national central banks of those Member States whose currency is the euro (hereinafter the 'NCBs'), in order to implement such a policy in a uniform manner throughout the Member States whose currency is the euro.

(2) The implementation of the Eurosystem's monetary policy framework should ensure that a broad range of counterparties can participate under uniform eligibility criteria. These criteria are specified to ensure the equal treatment of counterparties across the Member States whose currency is the euro and that counterparties fulfil certain prudential and operational requirements.

(3) In light of recent legislative developments with respect to the implementation of the banking union, the Governing Council has decided to further refine the rules applicable to counterparties to the Eurosystem's monetary policy operations.

(4) The Governing Council decided to introduce a new category of eligible non-marketable assets into the Eurosystem collateral framework, namely, non-marketable debt instruments backed by eligible credit claims.

(5) Therefore, Guideline ECB/2014/60 ([1]) should be amended accordingly,

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

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HAS ADOPTED THIS GUIDELINE:

Article 1

Guideline ECB/2014/60 is amended as follows:

1. the title to Guideline ECB/2014/60 is replaced by the following:

   ‘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)’;

2. in Article 2, paragraph 10 is replaced by the following:

   ‘(10) “competent authority” means a public authority or body officially recognised by national law that is empowered by national law to supervise institutions as part of the supervisory system in the relevant Member State, including the ECB with regard to the tasks conferred on it by Council Regulation (EU) No 1024/2013 (*);

   (*) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).’;

3. in Article 2, paragraph 23 is replaced by the following:

   ‘(23) “domestic use” means the submission, as collateral, by a counterparty established in a Member State whose currency is the euro, of:

   (a) marketable assets issued and held in the same Member State as that of its home NCB;

   (b) credit claims where the credit claim agreement is governed by the laws of the Member State of its home NCB;

   (c) RMBDs issued by entities established in the Member State of its home NCB;

   (d) non-marketable debt instruments backed by eligible credit claims issued and held in the same Member State as that of its home NCB;’;

4. in Article 2, the following paragraph 42a is inserted:

   ‘(42a) “in-kind recapitalisation with public debt instruments” means any form of increase in the subscribed capital of a credit institution where all or part of the consideration is provided through a direct placement with the credit institution of sovereign or public sector debt instruments that have been issued by the sovereign state or public sector entity providing the new capital to the credit institution;’;

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5. in Article 2, paragraph 70 is replaced by the following:

‘(70) “non-marketable asset” means any of the following assets: fixed-term deposits, credit claims, RMBDs and non-marketable debt instruments backed by eligible credit claims;’;

6. in Article 2, the following paragraph 70a is inserted:

‘(70a) “Non-marketable debt instruments backed by eligible credit claims” (hereinafter “DECCs”) means debt instruments:

(a) that are backed, directly or indirectly, by credit claims that satisfy all Eurosystem eligibility criteria for credit claims in accordance with Section 1, Chapter 1 of Title III of Part Four, subject to the provisions of Article 107f;

(b) that offer dual recourse to: (i) a credit institution that is the originator of the underlying credit claims; and (ii) the dynamic cover pool of underlying credit claims referred to in point (a);

(c) for which there is no tranching of risk;’;

7. Article 8(3) is replaced by the following:

‘3. The ECB may conduct fine-tuning operations on any Eurosystem business day to counter liquidity imbalances in the reserve maintenance period. If the trade day, settlement day and reimbursement day are not NCB business days, the relevant NCB is not required to conduct such operations.’;

8. Article 55 is replaced by the following:

‘Article 55

Eligibility criteria for participation in Eurosystem monetary policy operations

With regard to Eurosystem monetary policy operations, subject to Article 57, the Eurosystem shall only allow participation by institutions that fulfil the following criteria:

(a) they shall be subject to the Eurosystem's minimum reserve system pursuant to Article 19.1 of the Statute of the ESCB and shall not have been granted an exemption from their obligations under the Eurosystem's minimum reserve system pursuant to Regulation (EC) No 2531/98 and Regulation (EC) No 1745/2003 (ECB/2003/9);

(b) they shall be one of the following:

(i) subject to at least one form of harmonised Union/EEA supervision by competent authorities in accordance with Directive 2013/36/EU and Regulation (EU) No 575/2013;

(ii) publicly owned credit institutions, within the meaning of Article 123(2) of the Treaty, subject to supervision of a standard comparable to supervision by competent authorities under Directive 2013/36/EU and Regulation (EU) No 575/2013;

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(iii) institutions subject to non-harmonised supervision by competent authorities of a standard comparable to harmonised Union/EEA supervision by competent authorities under Directive 2013/36/EU and Regulation (EU) No 575/2013, e.g. branches established in Member States whose currency is the euro of institutions incorporated outside the EEA;

(c) they must be financially sound within the meaning of Article 55a;

(d) they shall fulfil any operational requirements specified in the contractual or regulatory arrangements applied by the home NCB or ECB with respect to the specific instrument or operation.';

9. the following Article 55a is added:

'Article 55a

Assessment of the financial soundness of institutions

1. In its assessment of the financial soundness of individual institutions for the purposes of this Article, the Eurosystem may take into account the following prudential information:

(a) quarterly information on capital, leverage and liquidity ratios reported under Regulation (EU) No 575/2013 on an individual and consolidated basis, in accordance with the supervisory requirements; or

(b) where applicable, prudential information of a standard comparable to information under point (a).

2. If such prudential information is not made available to an institution's home NCB and the ECB by the institution's supervisor, either the home NCB or the ECB may require the institution to make such information available. When such information is provided directly by an institution, the institution shall also submit an assessment of the information carried out by the relevant supervisor. An additional certification from an external auditor may also be required.

3. Branches shall report information on the capital, leverage and liquidity ratios as required under Regulation (EU) No 575/2013, or, where applicable, information of a comparable standard, with respect to the institution to which the branch belongs, on an individual and consolidated basis in accordance with the supervisory requirements.

4. As regards the assessment of the financial soundness of institutions that have been subject to in-kind recapitalisation with public debt instruments, the Eurosystem may take into account the methods used for and the role played by such in-kind recapitalisations, including the type and liquidity of such instruments and the market access of the issuer of such instruments, in ensuring the fulfilment of the capital ratios reported under Regulation (EU) No 575/2013.

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5. Asset management vehicles resulting from a resolution action in the form of the application of an asset separation tool pursuant to Article 26 of Regulation (EU) No 806/2014 of the European Parliament and of the Council (*) or national legislation implementing Article 42 of Directive 2014/59/EU of the European Parliament and of the Council (**) shall not be eligible to access Eurosystem monetary policy operations.

(*) Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

(**) 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);'

10. Article 96(3) is replaced by the following:

'3. For debtors or guarantors that are multilateral development banks or international organisations, the rules in paragraphs 1 and 2, respectively, shall not apply and they shall be eligible irrespective of their place of establishment.';

11. Article 99 is replaced by the following:

'Article 99

Additional legal requirements for credit claims

1. In order to ensure that a valid security is created over credit claims and that the credit claim can be swiftly realised in the event of a counterparty default, additional legal requirements shall be met. These legal requirements relate to:

(a) verification of the existence of credit claims;

(b) validity of the agreement for the mobilisation of credit claims;

(c) full effect of the mobilisation vis-à-vis third parties;

(d) an absence of restrictions concerning the mobilisation and realisation of credit claims;

(e) an absence of restrictions concerning banking secrecy and confidentiality.

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2. The content of these legal requirements is set out in Articles 100 to 105. Further details of the specific features of the national jurisdictions are provided in the relevant national documentation of the NCBs.';

12. in Chapter 1 of Title III of Part Four, the following section is added:

'Section 4

Eligibility criteria for DECCs

Article 107a

Eligible type of asset

1. The eligible type of asset shall be debt instruments within the definition of DECCs given in Article 2(70a).

2. DECCs shall have a fixed, unconditional principal amount and a coupon structure that complies with the criteria set forth in Article 63. The cover pool shall only contain credit claims for which either:

(a) a specific DECC loan-level data template; or

(b) an ABS loan-level data template in accordance with Article 73;

is available.

3. The underlying credit claims shall be those granted to debtors established in a Member State whose currency is the euro. The originator shall be a Eurosystem counterparty established in a Member State whose currency is the euro and the issuer shall have acquired the credit claim from the originator.

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4. The DECC issuer shall be a special purpose entity established in a Member State whose currency is the euro. Parties to the transaction, other than the issuer, the debtors of the underlying credit claims, and the originator, shall be established in the EEA.

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5. The DECCs shall be denominated in euro or in one of the former currencies of the Member States whose currency is the euro.

6. After having carried out a positive assessment, the Eurosystem shall approve the DECC structure as being eligible as Eurosystem collateral.

7. The governing law applicable to the DECC, the originator, the debtors and, where relevant, the guarantors of the underlying credit claims, the underlying credit claim agreements and any agreements ensuring the direct or indirect transfer of the underlying credit claims from the originator to the issuer shall be the law of the jurisdiction where the issuer is established.

8. DECCs shall comply with the requirements on the place of issue and settlement procedures as laid down in Articles 66 and 67.

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Article 107b

Non-subordination with respect to DECCs

DECCs shall not give rise to rights to the principal and/or the interest that are subordinated to the rights of holders of other debt instruments of the same issuer.

Article 107c

Credit quality requirements

DECCs shall comply with the Eurosystem's credit quality requirements as laid down in Section 3 of Chapter 2 of Title III of this Part Four.

Article 107d

Acquisition of the underlying credit claims by the issuer

The pool of underlying credit claims shall have been acquired by the issuer from the originator in a manner which the Eurosystem considers to be a "true sale" or equivalent to a "true sale" that is enforceable against any third party, and which is beyond the reach of the originator and its creditors, including in the event of the originator's insolvency.

Article 107e

Transparency requirements for DECCs

1. DECCs shall fulfil transparency requirements at the level of the DECCs' structure and at the level of the underlying individual credit claims.

2. At the level of the DECCs' structure, detailed information on the DECCs' key transaction data, such as identification of the parties to the transaction, a summary of the DECCs' key structural features, a summary description of collateral and the DECCs' terms and conditions shall be made publicly available. The Eurosystem may, in the course of its assessment, require any transaction documentation and legal opinions deemed necessary from any third party it considers relevant, including, but not restricted to, the issuer and/or the originator.

3. At the level of the underlying individual credit claims, comprehensive and standardised loan-level data on the pool of underlying credit claims shall be made available in accordance with the procedures set out in Annex VIII, except with respect to the reporting frequency and transitional period. In order for DECCs to be eligible, all underlying credit claims shall be homogenous, i.e. it must be possible to report them using a single loan-level data template. The Eurosystem may determine that a DECC is not homogenous after evaluating the relevant data.

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4. Loan-level data shall be reported on at least a monthly basis, no later than one month following the cut-off date. The cut-off date for which loan-level data shall be reported is the last calendar day of the month. If loan-level data are not reported or updated within one month following the cut-off date, then the DECC shall cease to be eligible.

5. Data quality requirements applied for ABS shall apply to DECCs, including the specific DECC loan-level data templates. There shall be no transition period applied for a DECC to achieve the minimum acceptable loan-level data quality score.

6. In its eligibility assessment, the Eurosystem shall take into account: (a) any failure to deliver mandatory data; and (b) how often individual loan-level data fields do not contain meaningful data.

Article 107f

Types of eligible underlying credit claims

1. Each underlying credit claim shall comply with the eligibility criteria for credit claims provided for in Section 1, Chapter 1 of Title III of Part Four, subject to the modifications set out in this Article.

2. To ensure that a valid security is created over the underlying credit claims, enabling the issuer and the holders of the DECCs to swiftly realise those claims in the event of the originator's default, the following additional legal requirements as specified in paragraphs 3 to 9 shall be met:

(a) verification of the existence of the underlying credit claims;

(b) validity of the agreement for the mobilisation of underlying credit claims;

(c) full effect of the mobilisation vis-à-vis third parties;

(d) an absence of restrictions on the transfer of the underlying credit claims;

(e) an absence of restrictions on the realisation of the underlying credit claims;

(f) an absence of restrictions related to banking secrecy and confidentiality.

Further details of the specific features of the national jurisdictions shall be provided in the relevant national documentation of the NCBs.

3. The NCB of the country where the originator is established, or supervisors or external auditors, shall conduct a one-off verification of the appropriateness of the procedures used by the originator to submit the information on the underlying credit claims to the Eurosystem.

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4. The NCB of the country where the originator is established shall, as a minimum, take all of the following steps to verify the existence of the underlying credit claims:

(a) It shall obtain written confirmation from the originator, at least on a quarterly basis, by which the originators shall confirm:

(i) the existence of the underlying credit claims: this confirmation could be replaced with cross-checks of information held in central credit registers, where these exist;

(ii) compliance of the underlying credit claims with the eligibility criteria applied by the Eurosystem;

(iii) that the underlying credit claims are not used simultaneously as collateral to the benefit of any third party and that the originator will not mobilise such underlying credit claims as collateral to the Eurosystem or any third party;

(iv) that the originator will undertake to communicate to the relevant NCB no later than within the course of the next business day, any event that materially affects the collateral value of the underlying credit claims, in particular early, partial or total repayments, downgrades and material changes in the conditions of the underlying credit claims.

(b) The NCB of the country where the originator is located or the relevant central credit registers, banking supervision competent authorities or external auditors, shall perform random checks in respect of the quality and accuracy of the written confirmation of originators, by means of delivery of physical documentation or through on-site visits. The information checked in relation to each underlying credit claim shall cover as a minimum the characteristics that determine the existence and the eligibility of underlying credit claims. For originators with ECAF-approved internal ratings-based (IRB) systems, additional checks on the credit quality assessment of underlying credit claims shall be carried out involving checks of PDs with respect to debtors of credit claims backing DECCs that are used as collateral in Eurosystem credit operations.

(c) For the checks that are undertaken in accordance with Article 107f(3), (4)(a) or (4)(b) by NCB of the country where the originator is located, supervisors, external auditors or central credit registers, those undertaking the checks shall be authorised to carry out these investigations, if necessary contractually or in accordance with the applicable national requirements.

5. The agreement for the transfer of the underlying credit claims to the issuer or for their mobilisation by way of transfer, assignment or pledge shall be valid between the issuer and the originator and/or the transferee/assignee/pledgee, as appropriate, under the applicable national law. All the necessary legal formalities to ensure the validity of the agreement and to ensure the valid indirect or

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direct transfer of the underlying credit claims as collateral shall be fulfilled by the originator and/or the transferee, as appropriate. As regards notification of the debtor, the following shall apply, depending on the applicable national law.

(a) At times it may be necessary to have debtor notification or public registration of: (i) the transfer (direct or indirect) of the underlying credit claims to the issuer; or (ii) when counterparties mobilise DECCs as collateral to the home NCB to ensure full effectiveness of such a transfer or mobilisation vis-à-vis third parties; and in particular (iii) to ensure the priority of the issuer's security interest (with respect to the underlying credit claims) and/or the home NCB's security interest (with respect to the DECCs as collateral) vis-à-vis other creditors. In such cases, these notification or registration requirements shall be completed: (i) in advance or at the time of the underlying credit claims' actual transfer (direct or indirect) to the issuer; or (ii) at the time that counterparties mobilise the DECCs as collateral to the home NCB.

(b) If *exante* notification of the debtor or public registration is not required in accordance with point (a), as specified in the applicable national documentation, *ex post* notification of the debtor is required. *Ex post* notification means that the debtor shall be notified, as specified by national documentation, about the underlying credit claims being transferred or mobilised immediately following an event of default or similar credit event as further specified in the applicable national documentation.

(c) Points (a) and (b) are minimum requirements. The Eurosystem may decide to require *ex ante* notification or registration in addition to the situations above, including in the case of bearer instruments.

6. The underlying credit claims shall be fully transferable and capable of being transferred to the issuer without restriction. The underlying credit claims agreements or other contractual arrangements between the originator and the debtor shall not contain any restrictive provisions on transfer of collateral. The underlying credit claims agreements or other contractual arrangements between the originator and the debtor shall not contain any restrictive provisions regarding the realisation of the underlying credit claims, including any restrictions regarding form, time or other requirement with regard to realisation, so the Eurosystem shall be able to realise the DECCs' collateral.

7. Notwithstanding paragraph 6, the provisions restricting the assignment of syndicated loan shares to banks, financial institutions and entities which are regularly engaged in or established for the purpose of creating, purchasing or investing in loans, securities or other financial assets shall not be considered as a restriction on the realisation of the underlying credit claims.

8. Notwithstanding the paragraphs 6 and 7, a facility agent for the collection and distribution of payments and administration of the loan shall not be considered as a restriction on the transfer and realisation of a syndicated loan share, provided that:

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(a) the facility agent is a credit institution located in a Member State; and

(b) the service relationship between the relevant syndicate member and the facility agent can be transferred alongside or as part of the syndicated loan share.

9. The originator and the debtor shall have agreed contractually that the debtor unconditionally consents to disclosure by the originator, issuer and any counterparty mobilising the DECC to the Eurosystem of details in respect of that underlying credit claim and on the debtor that are required by the relevant NCB for the purpose of ensuring that a valid security is created over the underlying credit claims and that the underlying credit claims can be swiftly realised in the event the originator/issuer defaults.';

13. in Chapter 2 of Title III of Part Four, the following section is added:

'Section 3

The Eurosystem's credit quality requirements for DECCs

Article 112a

The Eurosystem's credit quality requirements for DECCs

1. DECCs shall not be required to be assessed by one of the four credit assessment sources accepted by the Eurosystem in accordance with the general acceptance criteria in Title V of Part Four.

2. Each underlying credit claim in the cover pool of DECCs shall have a credit assessment provided by one of the four credit assessment sources accepted by the Eurosystem in accordance with the general acceptance criteria in Title V of Part Four. In addition, the credit assessment system or source used shall be the same system or source selected by the originator in accordance with Article 110. The rules on the Eurosystem's credit quality requirements for the underlying credit claims laid down in Section 1 shall be applicable.

3. The credit quality of each underlying credit claim in the cover pool of DECCs shall be assessed on the basis of the credit quality of the debtor or guarantor, which shall comply, as a minimum, with credit quality step 3, as specified in the Eurosystem's harmonised rating scale.';

14. in Chapter 2 of Title VI of Part Four, the following Article is added:

'Article 133a

Establishment of risk control measures for DECCs

Each underlying credit claim included in the cover pool shall be subject to a valuation haircut applied at an individual level following the rules set out in Article 131. The aggregate value of the underlying credit claims included in the cover pool after the application of valuation haircuts shall, at all times, remain equal to

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or above the value of the principal amount outstanding of the DECC. If the aggregate value falls below the threshold referred to in the previous sentence, the DECC shall be valued at zero.';

15. in Title VIII of Part Four, the following Article 138a is added:

'Article 138a

Use of debt instruments in connection with in-kind recapitalisation with public debt instruments

Public debt instruments used in an in-kind recapitalisation of a counterparty may only be used as collateral by that counterparty or by any other counterparty which has "close links", as defined in Article 138(2), to that counterparty if the Eurosystem considers that the level of market access of their issuer is adequate, also taking into account the role played by such instruments in the recapitalisation.';

16. Article 148 is replaced by the following:

'Article 148

General principles

1. Counterparties may use eligible assets on a cross-border basis throughout the euro area for all types of Eurosystem credit operations.

2. Counterparties may mobilise eligible assets other than fixed-term deposits and DECCs, for cross-border use in accordance with the following.

(a) marketable assets shall be mobilised via: (i) eligible links between EEA SSSs that have been positively assessed pursuant to the Eurosystem User Assessment Framework; (ii) applicable CCBM procedures; (iii) eligible links in combination with the CCBM; and

(b) credit claims and RMBDs shall be mobilised in accordance with applicable CCBM procedures as they cannot be transferred through SSSs.

3. Marketable assets may be used through an NCB account in an SSS located in a country other than that of the NCB in question if the Eurosystem has approved the use of such an account.

4. De Nederlandsche Bank shall be authorised to use its account with Euroclear Bank to settle collateral transactions in Eurobonds issued in that ICSD. The Central Bank of Ireland shall be authorised to open a similar account with Euroclear Bank. This account can be used for all eligible assets held in Euroclear Bank, i.e. including eligible assets transferred to Euroclear Bank through eligible links.

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5. Counterparties shall execute the transfer of eligible assets via their securities settlement accounts with an SSS that has been positively assessed pursuant to the Eurosystem User Assessment Framework.

6. A counterparty that does not have a safe custody account with an NCB or a securities settlement account with an SSS that has been positively assessed pursuant to the Eurosystem User Assessment Framework may settle transactions through the securities settlement account or the safe custody account of a correspondent credit institution.';

17. Article 158 is replaced by the following:

'Article 158

Discretionary measures on the grounds of prudence or following an event of default

1. On the grounds of prudence, the Eurosystem may take any of the following measures:

(a) suspend, limit or exclude a counterparty's access to Eurosystem monetary policy operations, pursuant to any contractual or regulatory arrangements applied by its home NCB or by the ECB;

(b) reject, limit the use of or apply supplementary haircuts to assets mobilised as collateral in Eurosystem credit operations by a specific counterparty on the basis of any information the Eurosystem considers relevant, in particular if the credit quality of the counterparty appears to exhibit a high correlation with the credit quality of the assets mobilised as collateral.

2. Counterparties that are subject to supervision as referred to in Article 55(b)(i) but which do not meet the own funds requirements laid down in Regulation (EU) No 575/2013, on an individual and/or consolidated basis, in accordance with the supervisory requirements, and counterparties that are subject to supervision of a comparable standard as referred to in Article 55(b)(iii) but which do not meet requirements comparable to the own funds requirements laid down in Regulation (EU) No 575/2013, on an individual and/or consolidated basis, shall be suspended, limited or excluded from accessing Eurosystem monetary policy operations on the grounds of prudence. There is an exception for cases where the Eurosystem considers that compliance can be restored through adequate and timely recapitalisation measures, as established by the Governing Council.

3. In the context of its assessment of financial soundness of a counterparty pursuant to Article 55(c) and without prejudice to any other discretionary measures, the Eurosystem may suspend, limit or exclude, on the grounds of prudence, access to Eurosystem monetary policy operations by the following counterparties:

(a) counterparties for which information on capital ratios under Regulation (EU) No 575/2013 is not made available to the relevant NCB and the ECB in a timely manner and at the latest within 14 weeks from the end of the relevant quarter;

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(b) counterparties which are not required to report capital ratios under Regulation (EU) No 575/2013 but for which information of a comparable standard as referred to in Article 55(b)(iii) is not made available to the relevant NCB and the ECB in a timely manner and at the latest within 14 weeks from the end of the relevant quarter.

In the event that the access to Eurosystem monetary policy operations has been suspended, limited or excluded, access may be restored once the relevant information has been made available to the relevant NCB and the ECB and the Eurosystem determines that the counterparty fulfils the criterion of financial soundness pursuant to Article 55(c).

4. Without prejudice to any other discretionary measures, the Eurosystem shall, on the grounds of prudence, limit access to Eurosystem monetary policy operations by counterparties deemed to be "failing or likely to fail" by the relevant authorities based on the conditions laid down in Article 18(4)(a) to (d) of Regulation (EU) No 806/2014 or laid down in national legislation implementing Article 32(4)(a) to (d) of Directive 2014/59/EU. The limitation shall correspond to the level of access to Eurosystem credit operations prevailing at the time when such counterparties are deemed to be "failing or likely to fail".

5. In addition to limiting access to Eurosystem monetary policy operations under paragraph 4, the Eurosystem may, on the grounds of prudence, suspend, further limit or exclude counterparties from accessing Eurosystem monetary policy operations if they are deemed to be "failing or likely to fail" under paragraph 4 and they meet any of the following:

(a) are not made subject to a resolution action by the resolution authority because there are reasonable prospects that an alternative private sector measure or supervisory action, as referred to in Article 18(1)(b) of Regulation (EU) No 806/2014 and national legislation implementing Article 32(1)(b) of Directive 2014/59/EU, would prevent the failure of the institution within a reasonable timeframe, in view of the development of the alternative private sector measure or supervisory action;

(b) are assessed as meeting the conditions for resolution pursuant to Article 18(1) of Regulation (EU) No 806/2014 or national legislation implementing Article 32(1) of Directive 2014/59/EU, in view of the development of the resolution action;

(c) result from a resolution action as defined under Article 3(10) of Regulation (EU) No 806/2014 and national legislation implementing Article 2(40) of Directive 2014/59/EU or from an alternative private sector measure or supervisory action as referred to in Article 18(1)(b) of Regulation (EU) No 806/2014 and national legislation implementing Article 32(1)(b) of Directive 2014/59/EU.

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6. Beyond a limitation of access to Eurosystem monetary policy operations pursuant to paragraph 4, the Eurosystem shall suspend, further limit or exclude from access to Eurosystem monetary policy operations on the grounds of prudence counterparties which have been deemed to be "failing or likely to fail" but for which neither a resolution action has been provided for, nor are there reasonable prospects that an alternative private sector measure or supervisory action would prevent the failure of the institution within a reasonable time-frame as referred to in Article 18(1)(b) of Regulation (EU) No 806/2014 and national legislation implementing Article 32(1)(b) of Directive 2014/59/EU.

7. In the event that a discretionary measure is based on prudential information, the Eurosystem shall use any such information, provided either by supervisors or by counterparties, in a manner strictly commensurate with, and necessary for, the performance of the Eurosystem's tasks of conducting monetary policy.

8. In the case of an occurrence of an event of default, the Eurosystem may suspend, limit or exclude access to Eurosystem monetary policy operations with regard to counterparties that are in default pursuant to any contractual or regulatory arrangements applied by the Eurosystem.

9. All discretionary measures of the Eurosystem shall be applied in a proportionate and non-discriminatory manner and shall be duly justified by the Eurosystem.';

18. Article 170(2) is replaced by the following:

'2. The place of dispute resolution shall be, without prejudice to the competence of the Court of Justice of the European Union, the courts or tribunals of the Member State whose currency is the euro in which the NCB is situated.'.

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 2 November 2015. They shall notify the ECB of the texts and means relating to those measures by 6 October 2015 at the latest.

Article 3

Addressees

This Guideline is addressed to all Eurosystem central banks.