



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 30 March 2016

on the regime applicable to negotiable debt securities

(CON/2016/20)

Introduction and legal basis

On 1 March 2016 the European Central Bank (ECB) received a request from the French Ministry of Finance and Public Accounts for an opinion on a draft decree and a draft ministerial order amending the regime applicable to negotiable debt securities (hereinafter the 'draft regulatory acts').

The ECB's competence to deliver this opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the third, fourth and sixth indents of Article 2(1) of Council Decision 98/415/EC¹, as the draft regulatory acts relate to the Banque de France, the collection, compilation and distribution of monetary, financial, banking, payment systems and balance of payments statistics and rules applicable to financial institutions insofar as they materially influence the stability of the financial institutions and markets. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. Purpose of the draft regulatory acts

- 1.1 The purpose of the draft regulatory acts is to simplify further the regulatory framework applicable to the issue of negotiable debt securities (*titres de créances négociables*, TCNs) with the aim of enlarging the investor and issuer base and increasing the transparency of the TCN market.
- 1.2 To that effect, the draft regulatory acts provide for (a) a simplified regime of TCNs based on two different categories, 'short term TCNs (*titres négociables à court terme*)' and 'medium term TCNs (*titres négociables à moyen terme*)'; (b) a further standardisation of the issuance documentation for TCNs; (c) a clearer and more accessible framework for non-domestic TCN issuers; (d) an extension to the list of eligible rating agencies (under specific conditions) whose rating is required for certain issuers to access the TCN market; and (e) an extension to the type of guarantors eligible to guarantee TCNs.
- 1.3 Aside from these simplification measures the issuance regime for TCNs is not materially changed. The Banque de France remains the competent authority required to ensure that issuers of TCNs comply with the relevant provisions of the French Monetary and Financial Code (*Code monétaire et financier*, CMF) and is therefore the addressee of the issuance documentation established by

¹ Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

issuers of TCNs. The Banque de France also performs other tasks in relation to the issuance of TCNs (including the suspension of issuances) and receives certain statistics from TCN issuers².

2. Observations of the ECB

- 2.1 The ECB generally welcomes the initiative of the French authorities to simplify the regulatory framework applicable to the issuance of TCNs, in particular, the fact that the relevant provisions are now grouped together in the CMF and one ministerial order, thereby increasing the overall readability of the framework.
- 2.2 The draft regulatory acts are intended to simplify further the regime applicable to the issue of TCNs. The former categories of certificates of deposit (*certificats de dépôts*) and treasury bills (*billets de trésorerie*), with different issuers but identical maturities (of one year or less), are replaced by a single category for all issuers known as ‘short term TCNs (*titres négociables à court terme*)’. The former medium term negotiable notes (*bons à moyen terme négociables*) become the second category and are now known as ‘medium term TCNs (*titres négociables à moyen terme*)’. The ECB welcomes the simplification of the categorisation of TCNs through the creation of two clear categories of TCN distinguished by their maturities and issuers³.
- 2.3 The ECB notes, as regards the standardisation of the issuance documentation, that the draft regulatory acts simplify further the language regime applicable to the issuance documentation published in respect of TCNs issued for an amount of at least EUR 200 000 by allowing the issuer to publish the documentation in a language other than French provided such language is customarily used in the financial sphere. This is intended to facilitate the issue of TCNs as issuers will no longer have to produce a summary of the full issuance documentation in French. A short disclaimer in the issuance documentation will nevertheless be required, inviting investors, if necessary, to have recourse to a French translation. Second, the description of the activities of the issuers of TCNs will be standardised, putting an end to the former specific description of activities based on the issuer’s status as either an industrial and commercial entity or a credit institution or investment firm. These arrangements do not give rise to any specific remarks from the ECB.
- 2.4 The amendment of Article D. 213-9 of the CMF will allow the inclusion, in the TCN issuance documentation, of financial statements established pursuant to a standard considered by the European Commission as equivalent to international financial reporting standards. This clarifies the former requirement for non-domestic issuers to provide financial information of an ‘equivalent nature’ to international financial reporting standards, thereby increasing legal certainty for non-domestic issuers. Where the registered office of the issuer is located outside the European Economic Area (EEA), the issuer will have to provide accounting data subject to a statutory audit under an equivalent public oversight system recognised as such by the European Commission. These measures aim to facilitate the issue of TCNs by non-domestic issuers and, at the same time,

² See Articles D.213-2, D.213-6, D. 213-9, D. 213-11, D.213-12, D. 213-13 and D.213-14 of the CMF.

³ Under the simplified regime all issuers mentioned in Article L. 213-3 of the CMF will be entitled to issue short term TCNs (*titres négociables à court terme*). The same issuers with the exception of those mentioned in Article L. 213-3 paragraph 12 will be entitled to issue medium term TCNs (*titres négociables à moyen terme*).

ensure the reliability of the accounting data provided by non-EEA issuers. The ECB has no particular observations on these measures.

- 2.5 The draft regulatory acts also extend the list of eligible rating agencies whose rating is required for certain issuers to access the TCN market. Under the current regime, non-supervised entities (i.e. entities which are not credit institutions, investment firms or insurance companies), the securities of which are not admitted to trading on a regulated market, must provide a rating of their issue programme or be guaranteed by a guarantor benefitting from such a rating. At present only four rating agencies are specified as eligible. The draft regulatory acts extend this list to all agencies authorised to operate by the European Securities Markets Authority (ESMA) and which fulfil certain specific coverage requirements over a historic period of three years. Moreover, issuers whose securities are admitted to trading on a regulated market outside the EEA assessed by the European Commission as equivalent to EEA regulated markets are now exempted from having to provide a rating for their issue programme. The ECB welcomes these amendments.
- 2.6 The envisaged extension to the type of entities entitled to guarantee TCN issuance programmes does not give rise to any specific remarks from the ECB.
- 2.7 Finally, the ECB observes that, in accordance with Article 68 of Guideline (EU) 2015/510 of the European Central Bank (ECB/2014/60)⁴, in order to be eligible as collateral for Eurosystem credit operations, debt instruments must be admitted to trading either on a regulated market or on certain acceptable non-regulated markets. The current list of acceptable non-regulated markets, published by the ECB on its website, includes the French treasury bills market and medium term negotiable notes market. In this regard, the selection process for non-regulated markets is defined exclusively in terms of the performance of the Eurosystem collateral management function and should not be regarded as an assessment by the Eurosystem of the intrinsic quality of any market. The ECB considers the changes envisaged in the draft regulatory acts unlikely to alter the Eurosystem's assessment of the treasury bills market and medium term negotiable notes market as acceptable non-regulated markets in the context of the Eurosystem collateral framework.

This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 30 March 2016.

[signed]

The President of the ECB

Mario DRAGHI

⁴ 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).