GUIDELINES

GUIDELINE OF THE EUROPEAN CENTRAL BANK

of 2 August 2012

on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral and amending Guideline ECB/2007/9

(ECB/2012/18)

(2012/476/EU)

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 5.1, 12.1, 14.3 and 18.2 thereof,

Whereas:

(1) Pursuant to 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 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 Annex I to Guideline ECB/2011/14 of 20 September 2011 on monetary policy instruments and procedures of the Eurosystem [1].

(2) On 8 December 2011 and 20 June 2012 the Governing Council decided on additional enhanced credit support measures to support bank lending and liquidity in the euro area money market, including measures set out in Decision ECB/2011/25 of 14 December 2011 on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral [2]. In addition, references to the reserve ratio in Guideline ECB/2007/9 of 1 August 2007 on monetary, financial institutions and markets statistics [3] need to be aligned with the amendments to Regulation (EC) No 1745/2003 of the European Central Bank of 12 September 2003 on the application of minimum reserves (ECB/2003/9) [4] introduced by Regulation (EU) No 1358/2011 [5].

(3) NCBs should not be obliged to accept as collateral in Eurosystem credit operations eligible bank bonds guaranteed by a Member State under a European Union/International Monetary Fund programme or by a Member State whose credit assessment does not meet the Eurosystem benchmark for establishing its minimum requirement for high credit standards, as set out in Decision ECB/2011/25.

(4) Decision ECB/2011/25 reviewed the exception from the close links prohibition set out in Section 6.2.3.2 of Annex I to Guideline ECB/2011/14 with respect to government-guaranteed bank bonds own used as collateral by counterparties.

(5) Counterparties participating in Eurosystem credit operations should be allowed to increase the levels of own use of government-guaranteed bank bonds that they had on 3 July 2012 subject to the *ex ante* approval of the Governing Council in exceptional circumstances. The requests submitted to the Governing Council for the *ex ante* approval need to be accompanied by a funding plan.

(6) Decision ECB/2011/25 needs to be replaced by this Guideline, which should be implemented by the NCBs in their contractual or regulatory arrangements.

[1] OJ L 331, 14.12.2011, p. 1.
[2] OJ L 341, 22.12.2011, p. 65.
[3] OJ L 341, 27.12.2007, p. 1.
[4] OJ L 250, 2.10.2003, p. 10.
[5] Regulation (EU) No 1358/2011 of the European Central Bank of 14 December 2011 amending Regulation (EC) No 1745/2003 on the application of minimum reserves (ECB/2003/9) (ECB/2011/26) (OJ L 338, 21.12.2011, p. 51).

(7) The additional measures set out in this Guideline should apply temporarily, until the Governing Council considers that they are no longer necessary, to ensure an appropriate monetary policy transmission mechanism,

HAS ADOPTED THIS GUIDELINE:

Article 1

Additional measures relating to refinancing operations and eligible collateral

1. The rules for the conduct of Eurosystem monetary policy operations and the eligibility criteria for collateral laid down in this Guideline shall apply in conjunction with Guideline ECB/2011/14.

2. In the event of any discrepancy between this Guideline and Guideline ECB/2011/14, as implemented at national level by the NCBs, the former shall prevail. The NCBs shall continue to apply all provisions of Guideline ECB/2011/14 unaltered unless otherwise provided for in this Guideline.

Article 2

Option to terminate or modify longer-term refinancing operations

The Eurosystem may decide that, under certain conditions, counterparties may reduce the amount of, or terminate, certain longer-term refinancing operations before maturity. Such conditions shall be published in the announcement of the relevant tender or another format deemed appropriate by the Eurosystem.

Article 3

Admission of certain additional asset-backed securities

1. In addition to asset-backed securities (ABS) eligible under Chapter 6 of Annex I to Guideline ECB/2011/14, ABS which do not fulfil the credit assessment requirements under Section 6.3.2 of Annex I to Guideline ECB/2011/14 but which otherwise comply with all eligibility criteria applicable to ABS pursuant to Guideline ECB/2011/14, shall be eligible as collateral for Eurosystem monetary policy operations, provided that they have two ratings of at least triple B ([1]), at issuance and at any time subsequently. They shall also satisfy all the following requirements:

(a) the cash-flow generating assets backing the ABS shall belong to one of the following asset classes: (i) residential mortgages; (ii) loans to small and medium-sized enterprises (SMEs); (iii) commercial mortgages; (iv) auto loans; (v) leasing; and (vi) consumer finance;

(b) there shall be no mix of different asset classes in the cash-flow generating assets;

(c) the cash-flow generating assets backing the ABS shall not contain loans which are any of the following:

(i) non-performing at the time of issuance of the ABS;

(ii) non-performing when incorporated in the ABS during the life of the ABS, for example by means of a substitution or replacement of the cash-flow generating assets;

(iii) at any time, structured, syndicated or leveraged;

(d) the ABS transaction documents shall contain servicing continuity provisions.

2. ABS referred to in paragraph 1 that have two ratings of at least single A ([2]) shall be subject to a valuation haircut of 16 %.

3. ABS referred to in paragraph 1 that do not have two ratings of at least single A shall be subject to the following valuation haircuts: (a) ABS backed by commercial mortgages shall be subject to a valuation haircut of 32 %; and (b) all other ABS shall be subject to a valuation haircut of 26 %.

4. A counterparty may not submit ABS, which are eligible pursuant to paragraph 1 as collateral, if the counterparty, or any third party with which it has close links, acts as an interest rate hedge provider in relation to the ABS.

5. An NCB may accept as collateral for Eurosystem monetary policy operations ABS whose underlying assets include residential mortgages or loans to SMEs or both and which do not fulfil the credit assessment requirements under Section 6.3.2 of Annex I to Guideline ECB/2011/14 and the requirements referred to in paragraph 1(a) to (d) and paragraph 4 above but which otherwise comply with all eligibility criteria applicable to ABS pursuant to Guideline ECB/2011/14 and have two ratings of at least triple B. Such ABS shall be limited to those issued before 20 June 2012 and shall be subject to a valuation haircut of 32 %.

([1]) A 'triple B' rating is a rating of at least 'Baa3' from Moody's, 'BBB-' from Fitch or Standard & Poor's, or a rating of 'BBB' from DBRS.

([2]) A 'single A' rating is a rating of at least 'A3' from Moody's, 'A-' from Fitch or Standard & Poor's, or a rating of 'AL' from DBRS.

6. For the purposes of this Article:

(1) 'residential mortgage', besides residential real estate mortgage-backed loans, shall include guaranteed residential real estate loans (without a real estate mortgage) if the guarantee is payable promptly on default. Such guarantee may be provided in different contractual formats, including contracts of insurance, provided they are granted by a public sector entity or a financial institution subject to public supervision. The credit assessment of the guarantor for the purposes of such guarantees must comply with credit quality step 3 in the Eurosystem's harmonised rating scale over the life of the transaction;

(2) 'small enterprise' and 'medium-sized enterprise' shall mean an entity engaged in an economic activity, irrespective of its legal form, where the reported sales for the entity or if the entity is a part of a consolidated group, for the consolidated group is less than EUR 50 million;

(3) 'non-performing loan' shall include loans where payment of interest or principal is past due by 90 or more days and the obligor is in default, as defined in point 44 of Annex VII to Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions [1], or when there are good reasons to doubt that payment will be made in full;

(4) 'structured loan' means a structure involving subordinated credit claims;

(5) 'syndicated loan' means a loan provided by a group of lenders in a lending syndicate;

(6) 'leveraged loan' means a loan provided to a company that already has a considerable degree of indebtedness, such as buy-out or take-over-financing, where the loan is used for the acquisition of the equity of a company which is also the obligor of the loan;

(7) 'servicing continuity provisions' means provisions in the legal documentation of an ABS which ensure that a default by the servicer does not lead to a termination of servicing and which include triggers for the appointment of a back-up servicer and a high-level action plan outlining the operational steps to be taken once a back-up servicer is appointed and how the administration of the loans will be transferred.

Article 4

Admission of certain additional credit claims

1. NCBs may accept as collateral for Eurosystem monetary policy operations credit claims that do not satisfy the Eurosystem eligibility criteria.

2. NCBs which decide to accept credit claims in accordance with paragraph 1 shall establish eligibility criteria and risk control measures for this purpose by specifying deviations from the requirements of Annex I to Guideline ECB/2011/14. Such eligibility criteria and risk control measures shall include the criterion that the credit claims are governed by the laws of the Member State of the NCB establishing the eligibility criteria and risk control measures. The eligibility criteria and risk control measures shall be subject to the Governing Council's prior approval.

3. In exceptional circumstances NCBs may, subject to the Governing Council's prior approval, accept credit claims: (a) in application of the eligibility criteria and risk control measures established by another NCB pursuant to paragraphs 1 and 2; or (b) governed by the law of any Member State other than the Member State in which the accepting NCB is established.

4. Another NCB shall only provide assistance to an NCB accepting credit claims pursuant to paragraph 1 if bilaterally agreed between both NCBs and subject to prior approval by the Governing Council.

Article 5

Acceptance of certain government-guaranteed bank bonds

1. NCBs shall not be obliged to accept as collateral for Eurosystem credit operations eligible bank bonds guaranteed by a Member State under a European Union/International Monetary Fund programme, or by a Member State whose credit assessment does not comply with the Eurosystem's benchmark for establishing its minimum requirement for high credit standards for issuers and guarantors of marketable assets in accordance with Sections 6.3.1 and 6.3.2 of Annex I to Guideline ECB/2011/14.

2. NCBs shall inform the Governing Council whenever they decide not to accept the securities described in paragraph 1 as collateral.

3. Counterparties may not submit bank bonds issued by themselves and guaranteed by an EEA public sector entity with the right to impose taxes and such bonds issued by closely linked entities as collateral for Eurosystem credit operations in excess of the nominal value of these bonds already submitted as collateral on 3 July 2012.

4. In exceptional cases, the Governing Council may decide on derogations from the requirement laid down in paragraph 3. A request for a derogation shall be accompanied by a funding plan.

[1] OJ L 177, 30.6.2006, p. 1.

Article 6

Verification

The NCBs shall forward to the ECB by 14 August 2012 at the latest the texts and means by which they intend to comply with Articles 1 to 5.

Article 7

Amendment to Guideline ECB/2007/9

In Part 5 of Annex III the paragraph following Table 2 is replaced by the following:

'***Calculation of lump-sum allowance for control purposes (R6):***

Lump-sum allowance: The allowance is applied to every credit institution. Each credit institution deducts a maximum lump sum designed to reduce the administrative cost of managing very small reserve requirements. Should [reserve base × reserve ratio] be less than EUR 100 000, then the lump sum allowance equals [reserve base × reserve ratio]. Should [reserve base × reserve ratio] be greater than or equal to EUR 100 000, then the lump sum allowance equals EUR 100 000. Institutions allowed to report statistical data regarding their consolidated reserve base as a group (as defined in Part 2, Section 1 of Annex III to Regulation (EC) No 25/2009 (ECB/2008/32)) hold minimum reserves through one of the institutions in the group which is acting as an intermediary exclusively for these institutions. In accordance with Article 11 of Regulation (EC) No 1745/2003 of the European Central Bank of 12 September 2003 on the application of minimum reserves (ECB/2003/9) (*), in the latter case only the group as a whole is entitled to deduct the lump sum allowance.

The minimum (or "required") reserves are computed as follows:

Minimum (or "required") reserves = reserve base × reserve ratio - lump sum allowance

The reserve ratio applies in accordance with Regulation (EC) No 1745/2003 (ECB/2003/9).

(*) OJ L 250, 2.10.2003, p. 10.'.

Article 8

Entry into force

This Guideline shall enter into force two days following its adoption.

It shall apply from 14 September 2012.

Article 9

Addressees

This Guideline is addressed to all Eurosystem central banks.

Done at Frankfurt am Main, 2 August 2012.

For the Governing Council of the ECB
The President of the ECB
Mario DRAGHI