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REGULATION (EU) [2021/XX] OF THE EUROPEAN CENTRAL BANK
of [date Month YYYY]
amending Regulation (EU) 2016/445 on the exercise of options and discretions
available in Union law
[(ECB/2021/XX)]

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

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

Having regard to 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 institutions¹, and in particular Article 4(3), Article 6, and Article 9(1) and (2) thereof,

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 648/2012², and in particular Articles 400(2), 415(3), 420(2), 428p(10), 428q(2), 428aq(10), 428ar(2), 467(3), 468(3) and 471(1) thereof,

Having regard to Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions³, and in particular Articles 12(3) and 23(2), and Article 24(4) and (5) thereof,

Whereas:

- (1) Legislation adopted since the adoption of Regulation (EU) 2016/445 of the European Central Bank (ECB/2016/4)⁴ has introduced certain new options and discretions into Union law and has also amended or deleted certain options and discretions provided in Union law that the ECB exercised in Regulation (EU) 2016/445 (ECB/2016/4). Therefore, consequential amendments to Regulation (EU) 2016/445 (ECB/2016/4) are necessary to reflect those changes.

¹ OJ L 287, 29.10.2013, p. 63.

² OJ L 176, 27.6.2013, p. 1.

³ OJ L 11, 17.1.2015, p. 1.

⁴ Regulation (EU) 2016/445 of the European Central Bank of 14 March 2016 on the exercise of options and discretions available in Union law (ECB/2016/4) (OJ L 78, 24.3.2016, p. 60).

- (2) Further, pursuant to Article 9(3) of Regulation (EU) 2016/445 (ECB/2016/4), intragroup exposures are exempted from the relevant large exposures limits, provided that credit institutions fulfil certain criteria. Since the adoption of Regulation (EU) 2016/445 (ECB/2016/4) the level of the ECB's prudential concern about credit institutions' booking practices involving entities established in third countries has increased. The scope of Article 9(3) of Regulation (EU) 2016/445 (ECB/2016/4) should therefore be limited to intragroup exposures to entities established within the Union.
- (3) Article 9(3) and (4) of Regulation (EU) 2016/445 (ECB/2016/4) should be amended to allow that, in addition to the full exemption currently available, credit institutions that comply with the relevant criteria by observing a quantitative limit on the value of the relevant exposures are able to make use of a partial exemption.
- (4) In relation to trade finance off-balance-sheet related products, the ECB considers it necessary to introduce greater flexibility in the determination of outflow rates for the purposes of Article 23(2) of Commission Delegated Regulation (EU) 2015/61⁵. Therefore, the specification of a standardised 5% outflow rate in Article 11 of Regulation (EU) 2016/445 (ECB/2016/4) should be removed. Instead, as is the case for the other products and services that fall within the scope of Article 23 of Delegated Regulation (EU) 2015/61, the ECB should determine outflow rates for trade finance off-balance-sheet related products by either accepting the outflow rates applied by the relevant credit institution or by setting a higher outflow rate, capped at 5%.
- (5) To support the objective of consistent application of prudential requirements to credit institutions, a general policy for identifying major stock indices in a Member State or in a third country for the purposes of Article 12(1)(c)(i) of Delegated Regulation (EU) 2015/61 should be established.
- (6) With the introduction of the net stable funding ratio (NSFR) requirement as set out in Title IV of Part Six of Regulation (EU) No 575/2013, competent authorities are empowered to exercise several new options and discretions relating to the NSFR requirement. Regulation (EU) 2016/445 (ECB/2016/4) should, therefore, be updated accordingly.
- (7) To support the principle of equal treatment of credit institutions, options and discretions relating to the application of the NSFR requirement by small and non-complex institutions, as described in Chapter 5 of Title IV of Part Six of Regulation (EU) No 575/2013, should be exercised in the same way as the corresponding options and discretions relating to the application of the NSFR requirement by other credit institutions, as set out in Chapters 1 to 4 of Title IV of Part Six of Regulation (EU) No 575/2013.
- (8) Certain factors have impeded the practical application of the discretion addressed in Article 13 of Regulation (EU) 2016/445 (ECB/2016/4) whereby competent authorities may authorise institutions to apply a 3% outflow rate to stable retail deposits covered by a deposit guarantee scheme (DGS),

⁵ Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for credit institutions (OJ L 11, 17.1.2015, p. 1).

subject to the prior approval of the European Commission in accordance with Article 24(4) and (5) of Delegated Regulation (EU) 2015/61. Further evidence and analysis are necessary in order to demonstrate that the run-off rates for stable retail deposits covered by a DGS as referred to in Article 24(5) of Delegated Regulation (EU) 2015/61 would be below 3% during any stress period experienced consistent with the scenarios referred to in Article 5 of Delegated Regulation (EU) 2015/61. In the absence of such evidence and analysis, the general policy authorising the application of a 3% outflow rate should be removed from Regulation (EU) 2016/445 (ECB/2016/4).

- (9) In accordance with the procedure set out in Article 4(3) of Regulation (EU) No 1024/2013, the ECB has conducted an open public consultation on this Regulation.
- (10) The decision of the Supervisory Board of the ECB to approve the proposal to adopt this Regulation has been taken in accordance with Article 26(7) of Regulation (EU) No 1024/2013.
- (11) Therefore, Regulation (EU) 2016/445 (ECB/2016/4) should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments

Regulation (EU) 2016/445 (ECB/2016/4) is amended as follows:

1. Article 5 is deleted;
2. In Article 9, paragraphs 3 to 5 are replaced by the following:
 - '3. The exposures listed in Article 400(2)(c) of Regulation (EU) No 575/2013 incurred by a credit institution to the undertakings referred to therein, in so far as those undertakings are established in the Union, shall be exempted from the application of Article 395(1) of that Regulation, provided that the conditions set out in Article 400(3) of that Regulation, as further specified in Annex I to this Regulation, are fulfilled and insofar those undertakings are covered by the same supervision on a consolidated basis in accordance with Regulation (EU) No 575/2013, Directive 2002/87/EC of the European Parliament and of the Council(*), or with equivalent standards in force in a third country, as further specified in Annex I to this Regulation.
4. The exposures listed in Article 400(2)(d) of Regulation (EU) No 575/2013 shall be exempted from the application of Article 395(1) of that Regulation, provided that the conditions set out in Article 400(3) of that Regulation, as further specified in Annex II to this Regulation, are fulfilled.

5. The exposures listed in Articles 400(2)(e) to (l) of Regulation (EU) No 575/2013 shall be exempted in full, or in the case of Article 400(2)(i) shall be exempted up to the maximum allowed amount, from the application of Article 395(1) of that Regulation, provided that the conditions set out in Article 400(3) of that Regulation are fulfilled.

(*) 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 and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).';

3. In Chapter IV, after the heading 'Liquidity', the following heading is inserted:

'Section I

Liquidity Coverage Requirement';

4. Articles 10 and 11 are deleted;
5. The following Article 11a is inserted:

'Article 11a

Article 12(1)(c)(i) of Delegated Regulation (EU) 2015/61:

Identification of Member State or third country major stock indices

The following indices qualify as major stock indices for the purpose of determining the scope of shares that could qualify as Level 2B assets pursuant to Article 12(1)(c) of Delegated Regulation (EU) 2015/61:

- (a) the indices listed in Annex I to Commission Implementing Regulation (EU) No 2016/1646(*);
- (b) any major stock index, not included under point (a), in a Member State or in a third country, identified as such for the purposes of this point by the competent authority of the relevant Member State or third country public authority;
- (c) any major stock index, not included under points (a) or (b), which comprises leading companies in the relevant jurisdiction.

(*) Commission Implementing Regulation (EU) 2016/1646 of 13 September 2016 laying down implementing technical standards with regard to main indices and recognised exchanges in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms (OJ L 245, 14.9.2016, p. 5).';

6. In Chapter IV, following Article 12, the following Section II is inserted:

'Section II

Net Stable Funding Ratio (NSFR)

Article 12a

Article 428p(10) of Regulation (EU) No 575/2013:

Required stable funding factors for off-balance-sheet exposures

Unless the ECB determines different required stable funding factors, for the off-balance-sheet exposures in the scope of Article 428p(10) of Regulation (EU) No 575/2013 institutions shall apply to off-balance sheet exposures not referred to in Chapter 4 of Title IV of Part Six of Regulation (EU) No 575/2013 required stable funding factors that correspond to the outflow rates that they apply to related products and services in the context of Article 23 of Delegated Regulation (EU) 2015/61 in the liquidity coverage requirement.

Article 12b

Article 428q(2) of Regulation (EU) No 575/2013:

Determination of the term of encumbrance for assets that have been segregated

Where assets have been segregated in accordance with Article 11(3) of Regulation (EU) No 648/2012 of the European Parliament and of the Council(*) and institutions are not able to freely dispose of such assets, institutions shall consider such assets as encumbered for a period corresponding to the term of the liabilities to the institutions' customers to whom that segregation requirement relates.

Article 12c

Article 428aq(10) of Regulation (EU) No 575/2013:

Required stable funding factors for off-balance-sheet exposures

Institutions to which the ECB has granted permission to apply the simplified net stable funding requirement referred to in Chapter 5 of Title IV of Part Six of Regulation (EU) No 575/2013 shall follow the approach laid down in Article 12a.

Article 12d

Article 428ar(2) of Regulation (EU) No 575/2013:

Determination of the term of encumbrance for assets that have been segregated

Institutions to which the ECB has granted permission to calculate the net stable funding ratio as referred to in Chapter 5 of Title IV of Part Six of Regulation (EU) No 575/2013 shall follow the approach laid down in Article 12b.

(*) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).¹;

7. Articles 13 to 16 are deleted;
8. Annex I is amended in accordance with the Annex to this Regulation.

Article 2

Final provisions

This Regulation shall enter into force on [date Month YYYY].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Frankfurt am Main, [date Month YYYY].

For the Governing Council of the ECB

The President of the ECB

Christine LAGARDE

Annex I to Regulation (EU) 2016/445 (ECB/2016/4) is amended as follows:

1. point (ii) of subparagraph (a) of paragraph 2 is replaced by the following:
‘(ii) the intragroup exposures are justified by the group's funding structure and strategy;’;

2. point (ii) of subparagraph (c) of paragraph 3 is replaced by the following:
‘(ii) intragroup exposures are justified by the group's funding structure and strategy;’.