

**Regulation of the “Banque centrale du Luxembourg” 2012/ N° 12 of 12 September 2012 implementing the 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)**

**Unofficial English translation – For information purposes only**

In case of discrepancy between the French and the English text, the French text shall prevail
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## **BANQUE CENTRALE DU LUXEMBOURG**

### **Regulation of the “Banque centrale du Luxembourg” 2012/ N° 12 of 12 September 2012 implementing the 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)**

The “Direction” of the “Banque centrale du Luxembourg”;

Having regard to the Treaty on the functioning of the European Union and notably to article 127(2), first indent;

Having regard to the Statute of the European System of Central Banks and of the European Central Bank and notably to their articles 3.1., first indent, and their articles 5.1., 12.1., 14.3. and 18.2.;

Having regard to article 108 *bis* of the Constitution;

Having regard to the law of 23 December 1998 concerning the monetary status and the “Banque centrale du Luxembourg” (hereafter the “Banque centrale”) as amended, in particular articles 2 (1), 2 (2) and 34 (1);

Considering that, 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 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 Banque centrale stands 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 the General Conditions of the operations of the Banque

centrale implementing annex I to Guideline ECB/2011/14 of 20 September 2011 on monetary policy instruments and procedures of the Eurosystem<sup>1</sup>;

Considering that 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<sup>2</sup>;

Considering that 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;

Considering that 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;

Considering that 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;

Considering that Decision ECB/2011/25 needed to be replaced by the 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, which shall be implemented by the Banque centrale;

Considering that the additional measures set out in this Regulation should apply temporarily, until the Governing Council considers that they are no longer necessary, to ensure an appropriate monetary policy transmission mechanism.

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<sup>1</sup> OJ L 331, 14.12.2011, p. 1.

<sup>2</sup> OJ L 341, 22.12.2011, p. 65.

## **Art. 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 Regulation shall apply in conjunction with the General Conditions of the operations of the Banque centrale.

2. In the event of any discrepancy between this Regulation and the General Conditions of the operations of the Banque centrale, the former shall prevail. The Banque centrale shall continue to apply all provisions of the General Conditions of the operations of the Banque centrale unaltered unless otherwise provided for in this Regulation.

## **Art. 2. Option to terminate or modify longer-term refinancing operations**

The Eurosystem, and thus the Banque centrale, 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.

## **Art. 3. Admission of certain additional asset-backed securities**

1. In addition to asset-backed securities (ABS) eligible under chapter 4 of annex 8 to the General Conditions of the operations of the Banque centrale<sup>3</sup>, ABS which do not fulfil the credit assessment requirements under section 4.5.2. of annex 8 to the General Conditions of the operations of the Banque centrale<sup>4</sup>, but which otherwise comply with all eligibility criteria applicable to ABS pursuant to the General Conditions of the operations of the Banque centrale<sup>5</sup>, shall be eligible as collateral for Eurosystem monetary policy operations, provided that they have two ratings of at least 'triple B'<sup>6</sup>, 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;

<sup>3</sup> Chapter 6 of annex I to Guideline ECB/2011/14.

<sup>4</sup> Section 6.3.2 of annex I to Guideline ECB/2011/14.

<sup>5</sup> Guideline ECB/2011/14.

<sup>6</sup> 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.

- (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’<sup>7</sup> 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. The Banque centrale 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 4.5.2. of annex 8 to the General Conditions of the operations of the Banque centrale<sup>8</sup> 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 the General Conditions of the operations of the Banque centrale<sup>9</sup> 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 %.
  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<sup>10</sup>, or when there are good reasons to doubt that payment will be made in full;

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<sup>7</sup> 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.

<sup>8</sup> Section 6.3.2 of annex I to Guideline ECB/2011/14.

<sup>9</sup> Guideline ECB/2011/14.

<sup>10</sup> OJ L 177, 30.6.2006, p. 1.

- (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.

#### **Art. 4. Acceptance of certain government-guaranteed bank bonds**

1. The Banque centrale 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 4.5.1. and 4.5.2. of annex 8 to the General Conditions of the operations of the Banque centrale<sup>11</sup>.

2. 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.

3. In exceptional cases, the Governing Council may decide on derogations from the requirement laid down in paragraph 2. A request for a derogation shall be accompanied by a funding plan.

#### **Art. 5. Entry into force**

This Regulation shall enter into force on the day of its publication.

#### **Art. 6. Publication**

This Regulation shall be published in the Mémorial and on the Banque centrale’s website ([www.bcl.lu](http://www.bcl.lu)).

BANQUE CENTRALE DU LUXEMBOURG  
La Direction

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<sup>11</sup> Sections 6.3.1 and 6.3.2 of annex I to Guideline ECB/2011/14 of 20 September 2011 on monetary policy instruments and procedures of the Eurosystem.