EUROPEAN CENTRAL BANK

BANKING SUPERVISION

EN **ECB-PUBLIC**

DECISION (EU) [2015/XX] OF THE EUROPEAN CENTRAL BANK

of 4 February 2015

on the conditions under which credit institutions are permitted to include interim or year-end profits in Common Equity Tier 1 capital in accordance with Article 26(2) of Regulation (EU) No 575/2013

(ECB/2015/4)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

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 institutions[1], and in particular Article 4(1)(d) and the second subparagraph of Article 4(3) thereof,

Whereas:

(1) Article 26(2) of Regulation (EU) No 575/2013 of the European Parliament and of the Council[2] has introduced a new procedure whereby the permission of the competent authority is required for the inclusion of interim profits or year-end profits before an institution has taken a formal decision confirming the final profit or loss of the institution for the year in Common Equity Tier 1 (CET1) capital. Such permission shall be granted where the following two conditions are met: profits have been verified by persons independent of the institution that are responsible for the auditing of the accounts of that institution; and the institution has demonstrated that any foreseeable charge or dividend has been deducted from the amount of those profits.

(2) Articles 2 and 3 of Commission Delegated Regulation (EU) No 241/2014[3] specify the meaning of 'foreseeable' for the purposes of Article 26(2)(b) of Regulation (EU) No 575/2013.

(3) Commission Implementing Regulation (EU) No 680/2014[4] lays down uniform requirements in relation to supervisory reporting.

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1 OJ L 287, 29.10.2013, p. 63.

2 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (OJ L 176, 27.6.2013, p. 1).

3 Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions (OJ L 74, 14.3.2014, p. 8).

4 Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 191, 28.6.2014, p. 1).

(4) In accordance with Article 4(1)(d) of Regulation (EU) No 1024/2013, the European Central Bank (ECB) is the competent authority responsible for granting permission to credit institutions under its direct supervision to include interim or year-end profits in CET1 capital, where the abovementioned conditions are met.

(5) Taking into account the fact that Regulation (EU) No 241/2014 has harmonised the approach to the deduction of foreseeable dividends from interim or year-end profits for the purposes of granting the permission referred to in Article 26(2) of Regulation (EU) 575/2013, permission to include interim or year-end profits in CET1 capital should be granted when certain conditions are met.

(6) In cases where the conditions to apply this Decision are not met the ECB will individually assess requests for permission to include interim or year-end profits in CET1 capital,

HAS ADOPTED THIS DECISION:

Article 1

Subject matter and scope

1. This Decision lays down the conditions under which the ECB has determined to grant permission to credit institutions to include interim or year-end profits in CET1 capital pursuant to Article 26(2)(a) and (b) of Regulation (EU) No 575/2013.
2. This Decision is without prejudice to the right of credit institutions to request permission from the ECB to include interim or year-end profits in CET1 capital in cases not covered by this Decision.
3. This Decision applies to credit institutions for which the ECB carries out direct supervision in accordance with Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17)[5].

Article 2

Definitions

For the purposes of this Decision, the following definitions shall apply:

1. ‘credit institution’ means a credit institution as defined in point 1 of Article 4(1) of Regulation (EU) No 575/2013 and which is supervised by the ECB;
2. ‘consolidated basis’ has the same meaning as defined in point 48 of Article 4(1) of Regulation (EU) No 575/2013;
3. ‘sub-consolidated basis’ has the same meaning as defined in point 49 of Article 4(1) of Regulation (EU) No 575/2013;

5 Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

4. ‘consolidating entity’ means the credit institution which shall comply with the requirements laid down in Regulation (EU) No 575/2013 on consolidated basis or sub-consolidated basis, as applicable, in accordance with Articles 11 and 18 of Regulation (EU) No 575/2013;
5. ‘interim profits’ means profits as laid down in the applicable accounting framework, computed for a reference period shorter than a full financial year, and before the credit institution has taken a formal decision confirming such a profit or loss of the institution;
6. ‘year-end profits’ means profits as defined in the applicable accounting framework, computed for a reference period equal to a full financial year, and before the credit institution has taken a formal decision confirming such a profit or loss of the institution.
7. ‘pay-out ratio at consolidated level’ means the ratio between: (a) dividends, other than those paid in a form that does not reduce CET1 capital (e.g. scrip-dividends), distributed to owners of the consolidating entity; and (b) profit after tax attributable to owners of the consolidating entity. If, for a given year, the ratio between (a) and (b) is negative or above 100%, the pay-out ratio shall be deemed to be 100%. If for a given year (b) is zero, the pay-out ratio shall be deemed to be 0% if (a) is zero, and 100% if (a) is above zero.
8. ‘pay-out ratio at solo level’ means the ratio between: (a) dividends, other than those paid in a form that does not reduce CET1 capital (e.g. scrip-dividends), distributed to owners of the entity; and (b) profit after tax. If for a given year the ratio between (a) and (b) is negative or above 100%, the pay-out ratio shall be deemed to be 100%. If for a given year (b) is zero, the pay-out ratio shall be deemed to be 0% if (a) is zero and 100% if (a) is above zero.

Article 3

Permission to include interim or year-end profits in CET1 capital

1. For the purposes of Article 26(2) of Regulation (EU) No 575/2013, credit institutions shall be permitted to include interim or year-end profits in CET1 capital before a formal decision confirming the final profit or loss of the institution for the year has been taken, provided that the credit institution has met the conditions set out in Articles 4 and 5 of this Decision.
2. The conditions set out in Articles 4 and 5 shall be met prior to submission of the applicable reporting on own funds and own funds requirements in accordance with the reporting remittance dates laid down in Article 3 of Regulation (EU) No 680/2014.
3. Credit institutions that intend to include interim or year-end profits in CET1 capital shall send a letter addressed to the ECB that includes the documentation required in Articles 4 and 5 of this Decision. Within three working days from receipt of the relevant documentation, the ECB shall notify credit institutions whether such documentation contains the information required in this Decision.

Article 4

Verification of the profits

1. The ECB shall consider that the verification requirement under Article 26(2)(a) of Regulation (EU) No 575/2013 has been met if the notifying credit institution provides the ECB with a document signed by its external auditor that complies with the requirements set out in paragraphs 3 and 4.
2. Credit institutions notifying their intention to include interim or year-end profits as CET 1 capital, at various levels of consolidation or on an individual basis, may provide the document referred to in paragraph 1 at the highest level of consolidation.
3. For year-end profits, the verification shall consist either of an audit report or of a comfort letter stating that the audit has not been completed and nothing has come to the attention of the auditors that causes them to believe that the final report will include a qualified opinion.
4. For interim profits, the verification shall consist either of an audit report or of a review report (as defined by the International Standards on Review Engagements 2410 issued by the International Auditing and Assurance Standards Board or a comparable standard applicable at national level) or, provided that the verification carried out by the credit institution consists of an audit report, a comfort letter along the lines set out in paragraph 3.

Article 5

Deduction from profits of any foreseeable charge or dividend

1. In order to demonstrate that any foreseeable charges or dividends have been deducted from the amount of profits, the credit institution shall:
   (a) provide a declaration that those profits have been recorded in accordance with the principles set out in the applicable accounting framework and that the scope of prudential consolidation is not materially wider than the scope of verification referred to in the external auditor's document referred to in Article 4; and
   (b) submit to the ECB a document signed by a qualified person detailing the main components of those interim or year-end profits, including deductions for any foreseeable charges or dividends.
2. In those cases where interim or year-end profits are to be included on a consolidated or sub-consolidated basis, the requirements referred to in paragraph 1 shall be satisfied by the consolidating entity.
3. The dividends to be deducted shall be the amount formally proposed or decided by the management body. If such formal proposal or decision has not yet been taken, the dividend to be deducted shall be the highest of the following:
   (a) the maximum dividend calculated in accordance with internal dividend policy;
   (b) the dividend calculated on the basis of the average pay-out ratio over the last three years;
   (c) the dividend calculated on the basis of the previous year's pay-out ratio.
4. Any deduction of dividends based on an approach not listed in paragraph 3 shall not be covered by this Decision.

5. For the purposes of paragraph 1(b), a qualified person means a person who has been duly authorised by the institution's management body to sign on its behalf.
6. For the purposes of paragraph 1, institutions shall use the model letter in the Annex to this Decision.

Article 6

Entry into force

1. This Decision shall enter into force on 6 February 2015.
2. This Decision shall apply from the reporting reference date of 31 December 2014 in accordance with Article 2 of Regulation (EU) No 680/2014.

Done at Frankfurt am Main, 4 February 2015.

[signed]

The President of the ECB

Mario DRAGHI

Annex

[Name and details of the institution]

[Name and details of the JST Coordinator]

[Place, date]

[Institution's reference]

Inclusion of profits in Common Equity Tier 1 (CET1) capital

Dear [Sir/Madam],

For the purpose of the submission of supervisory reporting referred to [regulatory reporting reference date], pursuant to Article 26(2) of Regulation (EU) No 575/2013 of the European Parliament and of the Council and to Decision (EU) [2015/XX] of the European Central Bank (ECB/2015/4), I hereby notify the intention of [name of the institution/banking group/banking sub-group] to include in its [individual/consolidated] CET1 capital the net profits resulting from its [interim/annual] financial statements as of [balance sheet date].

The net profits to be included in CET1 capital have been calculated as follows:

(a)	undistributed pre-tax profit	[EUR 0]
(b)	taxes	[EUR 0]
(c)	other charges imposed by the supervisor[6]	[EUR 0]
(d)	other foreseeable charges not included in profit and loss statement[7]	[EUR 0]
(e)	total charges (b+c+d)	[EUR 0]
(f)	decided or proposed dividend[8]	[EUR 0/blank]
(g)	maximum dividend under internal policy[9]	[EUR 0]
(h)	dividend according to average pay-out ratio (last three years)[10]	[EUR 0]
(i)	dividend according to last year's pay-out ratio	[EUR 0]
(j)	dividend to be deducted (max (g,h,i) if f is blank; f otherwise)	[EUR 0]
(k)	impact of regulatory restrictions[11]	[EUR 0]

6 Article 3(1)(b) of Regulation (EU) No 241/2014.

7 Article 3(2) of Regulation (EU) No 241/2014.

8 Article 2(2) and (10) of Regulation (EU) No 241/2014. This should only be zero if there is a formal decision or proposal not to distribute any dividend. If there is no formal proposal or decision the field is left blank.

9 Article 2(4) to (6) of Regulation (EU) No 241/2014.

10 Article 2(7) of Regulation (EU) No 241/2014.

11 Article 2(9) of Regulation (EU) No 241/2014.

(l) profit that can be included in CET1 (a-e-j+k) [EUR 0]

For the purposes of the above, I hereby declare that:

- the figures above are accurate to the best of my knowledge;
- the profits have been verified by persons who are independent of this institution and who are responsible for the auditing of this institution's accounts, as required by Article 26(2) of Regulation (EU) No 575/2013 and by Decision (EU) [2015/XX] (ECB/2015/4). In this regard, I enclose the [audit report/review report/comfort letter] from [auditor's name].
- the profits have been evaluated in accordance with the principles set out in the applicable accounting framework;
- any foreseeable charge or dividend has been deducted from the amount of the profits, as shown above;
- the amount of dividends to be deducted has been estimated in accordance with Decision (EU) [2015/XX] (ECB/2015/4). In particular, deductible dividends are based on a formal decision/proposal or, if such formal decision/proposal is not available, on the highest of: (i) maximum dividend according to dividend policy; (ii) dividend based on the average pay-out ratio over the last three years; (iii) dividend based on last year's pay-out ratio. If the expected dividend pay-out has been calculated by using a pay-out range instead of a fixed value, the upper end of that range has been used.
- the management body of [name of the institution/banking group/banking sub-group] commits to make a proposal for distributing dividends that <u>is fully consistent with the above calculation of the net profits</u>.

Yours sincerely,

[Name and position of authorised signatory]