

# GUIDELINES

## GUIDELINE (EU) 2017/2193 OF THE EUROPEAN CENTRAL BANK

of 27 October 2017

### amending Guideline (EU) 2015/280 on the establishment of the Eurosystem Production and Procurement System (ECB/2017/31)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 128(1) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Articles 12.1 and 14.3 and Article 16 thereof,

Whereas:

- (1) Guideline (EU) 2015/280 of the European Central Bank (ECB/2014/44) <sup>(1)</sup> provides the possibility for the national central banks of the Member States whose currency is the euro (hereinafter the 'NCBs'), which are part of the in-house group within the meaning of Article 6(1) thereof, to establish a separate legal person to jointly fulfil public tasks, in particular the production of euro banknotes. Article 1(2) provides the conditions that such a separate legal person has to meet to qualify as an in-house printing works. One of these conditions is that NCBs exercise joint control over the entity. Currently, the possibility for joint control to be exercised through another jointly controlled legal person, if applicable jointly with one or more NCBs, is not explicitly provided for. However, to allow the NCBs to choose the legal form for the cooperation they consider appropriate and in line with the applicable provisions in national law implementing Article 12 of Directive 2014/24/EU of the European Parliament and of the Council <sup>(2)</sup>, the possibility of such indirect joint control should be included in the legal framework. Hence, in accordance with Article 6(1) of Guideline (EU) 2015/280 (ECB/2014/44) and its recital 7, an NCB that has closed its former in-house printing works and starts using another in-house printing works organised as a separate legal entity by exercising indirect joint control over this entity, is to remain part of the in-house group.
- (2) Guideline (EU) 2015/280 (ECB/2014/44) also allows NCBs that are part of the in-house group to establish non-institutionalised horizontal cooperation to jointly fulfil public tasks. For the sake of legal certainty and clarity, the legal framework should establish that an NCB which closes its printing works can remain part of the in-house group by participating in such horizontal cooperation provided that it fulfils the relevant requirements. As such, an NCB which closes its printing works can choose between becoming part of the tendering group within the meaning of Article 3 of Guideline (EU) 2015/280 (ECB/2014/44) or participating in horizontal cooperation.
- (3) Article 12 of Guideline (EU) 2015/280 (ECB/2014/44) provides for the Governing Council to review this Guideline every 2 years. The Governing Council should have full discretion to determine when and if there is a need for such a review.
- (4) Therefore, Guideline (EU) 2015/280 (ECB/2014/44) should be amended accordingly,

<sup>(1)</sup> Guideline (EU) 2015/280 of the European Central Bank of 13 November 2014 on the establishment of the Eurosystem Production and Procurement System (ECB/2014/44) (OJ L 47, 20.2.2015, p. 29).

<sup>(2)</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

HAS ADOPTED THIS GUIDELINE:

*Article 1*

**Amendments**

Guideline (EU) 2015/280 (ECB/2014/44) is amended as follows:

1. in point (2) of Article 1, the following subparagraph is added:

‘Control over in-house printing works organised as a separate legal entity may also be exercised, if applicable jointly with one or more NCBs, by another legal person which is jointly controlled in the sense of the previous paragraph by NCBs.’;

2. Article 3 is replaced by the following:

*Article 3*

**General Principles**

NCBs that neither use in-house printing works nor participate in non-institutionalised horizontal cooperation pursuant to Article 6(3) and Article 8 shall be part of the tendering group (tendering group NCBs).’;

3. in Article 6, the following paragraph 3 is added:

‘3. Without prejudice to applicable Union and national legislation on public procurement, an NCB that closes its in-house printing works may decide to remain part of the in-house group on the condition that it participates in non-institutionalised horizontal cooperation on the basis of a cooperation agreement within the meaning of Article 8.’;

4. in Article 8, paragraph 1 is replaced by the following:

‘1. To jointly fulfil public tasks, in-house group NCBs shall explore the establishment of: (a) a separate legal person consisting of or holding a participation in their in-house printing works; or (b) non-institutionalised horizontal cooperation on the basis of a cooperation agreement.’;

5. Article 12 is deleted.

*Article 2*

**Taking effect**

This Guideline shall take effect on the day of its notification to the NCBs.

*Article 3*

**Addressees**

This Guideline is addressed to all Eurosystem central banks.

Done at Frankfurt am Main, 27 October 2017.

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

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