

# GUIDELINES

## GUIDELINE OF THE EUROPEAN CENTRAL BANK

of 26 November 2012

amending Guideline ECB/2011/14 on monetary policy instruments and procedures of the Eurosystem

(ECB/2012/25)

(2012/791/EU)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

HAS ADOPTED THIS GUIDELINE:

### Article 1

#### Amendment to Annex I

Having regard to the Treaty on the Functioning of the European Union, and in particular the first indent of Article 127(2) thereof,

Annex I to Guideline ECB/2011/14 is amended in accordance with the Annex to this Guideline.

### Article 2

#### Verification

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 12.1, 14.3 and 18.2, and the first paragraph of Article 20 thereof,

The national central banks of the Member States whose currency is the euro (hereinafter the 'NCBs') shall forward details of the texts and means by which they intend to comply with this Guideline to the European Central Bank (ECB) by 19 December 2012 at the latest.

### Article 3

#### Entry into force

Whereas:

(1) Achieving a single monetary policy entails defining the instruments and procedures to be used by the Eurosystem in order to implement such a policy in a uniform manner throughout the Member States whose currency is the euro.

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

It shall apply from 3 January 2013.

### Article 4

#### Addressees

(2) A number of updates are required to address, *inter alia*, the phasing-in of asset-backed security loan-level data reporting requirements, specifications regarding coupon definitions, performance monitoring data and the calculation of financial penalties for non-compliance with counterparty obligations.

This Guideline is addressed to all Eurosystem central banks.

Done at Frankfurt am Main, 26 November 2012.

(3) Therefore, Guideline ECB/2011/14 of 20 September 2011 on monetary policy instruments and procedures of the Eurosystem<sup>(1)</sup> should be amended accordingly,

For the Governing Council of the ECB

The President of the ECB

Mario DRAGHI

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

## ANNEX

Annex I to Guideline ECB/2011/14 is amended as follows:

1. In Section 5.1.3, the following sentence is added:

'The ECB reserves the right to take any action it deems appropriate in order to correct an error in the tender announcement, including cancelling or interrupting a tender under execution.';

2. In Section 5.1.6, the following sentence is added:

'If the tender result contains erroneous information with respect to any of the above, the ECB reserves the right to take any action it deems appropriate to correct such erroneous information.';

3. Section 6.2.1.1 is replaced by the following:

6.2.1.1. Type of asset

1. Common eligibility requirements

It must be a debt instrument having:

- (a) a fixed, unconditional principal amount (\*); and
- (b) a coupon that cannot result in a negative cash flow and is one of the following:
  - (i) fixed, zero and multi-step coupons, i.e. instruments with a predefined coupon schedule and predefined coupon values;
  - (ii) flat floating coupons linked to only one index corresponding to a euro money market rate, e.g. EURIBOR, LIBOR and similar indices, or a constant maturity swap rate, e.g. CMS, EIISDA, EUSA indices;
  - (iii) leveraged and de-leveraged floating coupons linked to only one index corresponding to a euro money market rate, e.g. EURIBOR, LIBOR and similar indices, or a constant maturity swap rate, e.g. CMS, EIISDA, EUSA indices;
  - (iv) flat, leveraged and de-leveraged floating coupons linked to the yield of one euro area government bond that has a maturity of one year or less (either an index or a gross benchmark yield);
  - (v) flat inflation-floaters linked to euro area inflation indices, containing no discrete range, range accrual, ratchet or similar complex structures.

The following coupon structures are notably excluded: all floaters linked to foreign currency interest rates, commodity and equity indices and exchange rates, dual floaters and floaters linked to swap spreads or to another combination of indices, and any kind of ratchet and range accrual coupons, as well as inverse floaters and coupons that depend on a credit rating. Moreover, complex term structures such as target redemption notes and options to change the coupon type by making use of additional calling rights are excluded.

Eligible coupons should have no issuer optionalities, i.e. they should not allow changes in the coupon definition during the life of the instrument that are contingent on an issuer's decision. In addition, if caps or floors exist, these shall be fixed and pre-defined. The classification of an instrument as regards its coupon, in case the coupon is multi-step, will be based on a forward-looking perspective.

Non-compliance with the above-mentioned eligibility criteria also precludes assets from being eligible even if they only apply to parts of the remuneration structure (such as a premium) and even if a non-negative coupon payment and a repayment of at least the principal amount is explicitly guaranteed.

The requirements under paragraph 1(a) and (b) apply until the obligation has been redeemed. Debt instruments may not give rise to rights to the principal and/or the interest that are subordinated to the rights of holders of other debt instruments of the same issuer.

## 2. Additional eligibility criteria applicable to asset-backed securities

For the purpose of the Eurosystem legal framework related to monetary policy, covered bonds are not considered asset-backed securities.

Paragraph 1(a) does not apply to asset-backed securities. The Eurosystem assesses the eligibility of asset-backed securities against the additional criteria laid down in this Section.

The cash flow generating assets backing the asset-backed securities must fulfil the following requirements:

- (a) the acquisition of such assets must be governed by the law of an EU Member State;
- (b) they must be acquired from the originator or from an intermediary by the securitisation special purpose vehicle in a manner which the Eurosystem considers to be a “true sale” that is enforceable against any third party, and is beyond the reach of the originator and its creditors or the intermediary and its creditors, including in the event of the originator’s or the intermediary’s insolvency (\*\*);
- (c) they must be originated and sold to the issuer by an originator incorporated in the EEA and, if applicable, an intermediary incorporated in the EEA;
- (d) they must not consist, in whole or in part, actually or potentially, of tranches of other asset-backed securities (\*\*\*) . In addition, they must not consist, in whole or in part, actually or potentially, of credit-linked notes, swaps or other derivatives instruments (\*\*\*\*) or synthetic securities;
- (e) if they are credit claims, the obligors and the creditors must be incorporated (or, if natural persons, resident) in the EEA and, if relevant, the related security must be located in the EEA. The law governing those credit claims must be the law of an EEA country. If they are bonds, the issuers must be incorporated in the EEA, they must be issued in an EEA country under the law of an EEA country and any related security must be located in the EEA.

As laid down in Section 6.2.1.7, the issuer of an asset-backed security must be established in the EEA.

In cases where originators or, if applicable, intermediaries, were incorporated in the euro area, or in the United Kingdom, the Eurosystem has verified that there were no severe clawback provisions in those jurisdictions. If the originator or, if applicable, the intermediary, is incorporated in another EEA country, the asset-backed securities can only be considered eligible if the Eurosystem ascertains that its rights would be protected in an appropriate manner against clawback provisions considered relevant by the Eurosystem under the law of the relevant EEA country. For this purpose, an independent legal assessment in a form acceptable to the Eurosystem must be submitted setting out the applicable clawback rules in the country, before the asset-backed securities can be considered eligible. To decide whether its rights are adequately protected against clawback rules, the Eurosystem may require other documents, including a solvency certificate from the transferee, for the suspect period. Clawback rules which the Eurosystem considers to be severe and therefore not acceptable include rules under which the sale of cash flow generating assets backing the asset-backed securities can be invalidated by the liquidator solely on the basis that it was concluded within a certain period (suspect period) before the declaration of insolvency of the seller (originator/intermediary), or where such invalidation can only be prevented by the transferee if they can prove that they were not aware of the insolvency of the seller (originator/intermediary) at the time of the sale.

Within a structured issue, in order to be eligible, a tranche (or sub-tranche) may not be subordinated to other tranches of the same issue. A tranche (or sub-tranche) is considered to be non-subordinated vis-à-vis other tranches (or sub-tranches) of the same issue if, in accordance with the priority of payment applicable after the delivery of an enforcement notice, as set out in the prospectus, no other tranche (or sub-tranche) is given priority over that tranche or sub-tranche in respect of receiving payment (principal and interest), and thereby such tranche (or sub-tranche) is last in incurring losses among the different tranches or sub-tranches of a structured issue. For structured issues where the prospectus provides for the delivery of an acceleration and an enforcement notice, non-subordination of a tranche (or sub-tranche) must be ensured under both acceleration and enforcement notice-related priority of payments.

For asset-backed securities to become or to remain eligible for Eurosystem monetary policy operations, the Eurosystem requires comprehensive and standardised loan-level data on the pool of cash flow generating assets underlying an asset-backed security to be submitted by the relevant parties in the asset-backed security, in accordance with Appendix 8.

To determine the eligibility of asset-backed securities, the Eurosystem takes into account the data entered in the mandatory fields in the relevant loan-level data reporting template, within the meaning of Appendix 8. In its eligibility assessment the Eurosystem takes account of: (a) any failure to deliver data; and (b) how frequently individual loan-level data fields are found to contain no meaningful data.

In order to be eligible, an asset-backed security must be backed by cash flow generating assets which the Eurosystem considers to be homogeneous, i.e. that cash flow generating assets backing an asset-backed security consist of only one type of assets belonging to either residential mortgages, commercial real estate mortgages, loans to small- and medium-sized enterprises, auto loans, consumer finance loans or leasing receivables. Asset-backed securities are not eligible for Eurosystem monetary policy operations if the pool of assets underlying them is comprised of heterogeneous assets, because they cannot be reported using a single template for the specific asset class (\*\*\*\*).

The Eurosystem reserves the right to request from any relevant third party, e.g. the issuer, the originator or the arranger, any clarification and/or legal confirmation that it considers necessary to assess the eligibility of asset-backed securities and with regard to the provision of loan-level data. Non-compliance with such requests may lead to suspension of or refusal to grant eligibility to the asset-backed security transaction in question.

### 3. Additional eligibility criteria applicable to covered bonds

Covered bonds shall be subject, from 31 March 2013, to the following additional requirements:

The cover pool of a covered bond shall not contain asset-backed securities, with the exception of asset-backed securities which:

- (a) comply with the requirements laid down in Directives 2006/48/EC and 2006/49/EC in respect of asset-backed securities in covered bonds;
- (b) were originated by a member of the same consolidated group of which the issuer of the covered bonds is also a member or by an entity affiliated to the same central body to which the issuer of the covered bonds is also affiliated;
- (c) are used as a technical tool to transfer mortgages or guaranteed real-estate loans from the originating entity into the cover pool.

Covered bonds which were on the list of eligible asset-backed securities from 28 November 2012 and did not comply with requirements (a) to (c) will remain eligible until 28 November 2014.

(\*) Bonds with warrants or other similar rights attached are not eligible.

(\*\*) An asset-backed security shall not be considered eligible if any of the assets, which are part of the cash flow generating assets backing the asset-backed securities were originated directly by the Special Purpose Vehicle (SPV) issuing the ABS notes.

(\*\*\*) This requirement does not exclude asset-backed securities where the issuance structure includes two special-purpose vehicles and the "true sale" requirement is met in respect of those special-purpose vehicles so that the debt instruments issued by the second special-purpose vehicle are directly or indirectly backed by the original pool of assets and all cash flows from the cash flow generating assets are transferred from the first to the second special-purpose vehicle.

(\*\*\*\*) This restriction does not include swaps used in asset-backed securities transactions strictly for hedging purposes.

(\*\*\*\*\*) Asset-backed securities that do not comply with the loan-level data reporting requirements because they consist of mixed pools of heterogeneous underlying assets and/or do not conform to any of the loan level templates will remain eligible until 31 March 2014.;

4. In Section 6.2.1.7, footnote 58 is deleted;

5. In Section 6.2.2, footnote 60 is deleted;

6. Section 6.2.2.1 is amended as follows:

(a) paragraph (b) is replaced by the following:

'(b) The credit claim must have: (i) a fixed, unconditional principal amount; and (ii) an interest rate that cannot result in a negative cash flow. These features must be maintained until the redemption of the obligation. In addition, the interest rate should be one of the following: (i) zero coupon-style; (ii) fixed; (iii) floating linked to another interest rate reference. Furthermore, credit claims with their interest rate linked to the inflation rate are also eligible.;

(b) paragraph (f) is replaced by the following:

(f) *Minimum size:* At the time of submission for use as collateral (mobilisation) by the counterparty, the credit claim must meet a minimum size threshold. Each NCB may apply a minimum size of its choice for domestic credit claims. For cross-border use, a common minimum threshold of EUR 500 000 is applicable.;

7. In Section 6.2.3, the following paragraph is inserted:

‘Despite their eligibility, national central banks may decide not to accept the following marketable or non-marketable assets as collateral from a counterparty:

(a) debt instruments falling due in the immediate future; and

(b) debt instruments with an income flow, e.g. a coupon payment, occurring in the immediate future.;

8. Section 6.2.3.2 is replaced by the following:

#### ‘6.2.3.2. Rules for the use of eligible assets

Marketable assets can be used for all monetary policy operations which are based on underlying assets, i.e. reverse and outright open market transactions and the marginal lending facility. Non-marketable assets can be used as underlying assets for reverse open market transactions and the marginal lending facility. They are not used in Eurosystem outright transactions. All marketable and non-marketable assets can also be used as underlying assets for intraday credit.

Irrespective of the fact that a marketable or non-marketable asset fulfils all eligibility criteria, a counterparty may not submit as collateral any asset issued or guaranteed by itself or by any other entity with which it has close links (\*).

“Close links” means any of the following situations where the counterparty is linked to an issuer/debtor/guarantor of eligible assets:

- (a) the counterparty owns directly, or indirectly, through one or more other undertakings, 20 % or more of the capital of the issuer/debtor/guarantor;
- (b) the issuer/debtor/guarantor owns directly, or indirectly through one or more other undertakings, 20 % or more of the capital of the counterparty;
- (c) a third party owns more than 20 % of the capital of the counterparty and more than 20 % of the capital of the issuer/debtor/guarantor, either directly or indirectly, through one or more undertakings.

For monetary policy implementation purposes, in particular for the monitoring of compliance with the rules for the use of eligible assets concerning close links, the Eurosystem internally shares information on capital holdings provided by supervisory authorities for such purposes. The information is subject to the same secrecy standards as applied by supervisory authorities.

The above provisions concerning close links do not apply to: (a) close links between the counterparty and an EEA public sector entity which has the right to levy taxes, or in the case where a debt instrument is guaranteed by an EEA public sector entity which has the right to levy taxes; (b) covered bank bonds issued in accordance with the criteria set out in Part 1, points 68 to 70 of Annex VI to Directive 2006/48/EC; (c) cases in which debt instruments are protected by specific legal safeguards comparable to those instruments given under (b) such as in the case of: (i) non-marketable RMBDs which are not securities; or (ii) covered bank bonds for which all criteria set out in Part 1, points 68 to 70 of Annex VI to Directive 2006/48/EC are complied with, except for the limits on guaranteed loans in the cover pool.

Moreover, a counterparty may not submit as collateral any asset-backed security if the counterparty (or any third party with which it has close links) provides a currency hedge to the asset-backed security by entering into a currency hedge transaction with the issuer as a hedge counterparty or provides liquidity support for 20 % or more of the outstanding amount of the asset-backed security.

All eligible marketable and non-marketable assets must be usable in a cross-border context throughout the euro area. This implies that all Eurosystem counterparties must be able to use eligible assets either through links with their domestic SSSs in the case of marketable assets or through other eligible arrangements to receive credit from the NCB of the Member State in which the counterparty is established (see Section 6.6).

A counterparty submitting an asset-backed security which has close links to the originator of the underlying assets of the asset-backed security must inform the Eurosystem of any planned modification to that asset-backed security that could potentially have an impact on its credit quality, e.g. alteration in

the interest rate due on the notes, a change in the swap agreement, changes in the composition of underlying loans not provided for in the prospectus, changes to the priority of payments. The Eurosystem must be given one month prior notice of any modification to be made to a submitted asset-backed security. Moreover, at the time of the asset-backed security's submission, the counterparty should provide information on any modification that took place in the preceding six months. In line with Section 6.2, the Eurosystem does not give pre-modification advice.

Table 4

**Eligible assets for Eurosystem monetary policy operations**

Eligibility criteria	Marketable assets <sup>(1)</sup>	Non-marketable assets <sup>(2)</sup>	
Type of asset	ECB debt certificates Other marketable debt instruments <sup>(3)</sup>	Credit claims	RMBDs
Credit standards	The asset must meet high credit standards. The high credit standards are assessed using ECAF rules for marketable assets <sup>(3)</sup> .	The debtor/guarantor must meet high credit standards. The creditworthiness is assessed using ECAF rules for credit claims.	The asset must meet high credit standards. The high credit standards are assessed using ECAF rules for RMBDs.
Place of issue	EEA <sup>(3)</sup>	Not applicable	Not applicable
Settlement/handling procedures	Place of settlement: euro area Instruments must be centrally deposited in book-entry form with NCBs or a SSS fulfilling the ECB's minimum standards	Eurosystem procedures	Eurosystem procedures
Type of issuer/debtor/guarantors	NCBs Public sector Private sector International and supranational institutions	Public sector Non-financial corporations International and supranational institutions	Credit institutions
Place of establishment of the issuer, debtor and guarantor	Issuer <sup>(3)</sup> : EEA or non-EEA G10 countries Debtor: EEA Guarantor <sup>(3)</sup> : EEA	euro area	euro area
Acceptable markets	Regulated markets Non-regulated markets accepted by the ECB	Not applicable	Not applicable
Currency	euro	euro	euro
Minimum size	Not applicable	Minimum size threshold at the time of submission of the credit claim  — for domestic use: choice of the NCB,  — for cross-border use: common threshold of EUR 500 000.	Not applicable

Eligibility criteria	Marketable assets <sup>(1)</sup>	Non-marketable assets <sup>(2)</sup>	
Governing laws	For asset-backed securities the acquisition of the underlying assets must be governed by the law of an EU Member State. The law governing underlying credit claims must be the law of an EEA country	Governing law for credit claim agreement and mobilisation: law of a Member State  The total number of different laws applicable to  (a) the counterparty;  (b) the creditor;  (c) the debtor;  (d) the guarantor (if relevant);  (e) the credit claim agreement; and  (f) the mobilisation agreement  shall not exceed two	Not applicable
Cross-border use	Yes	Yes	Yes

<sup>(1)</sup> Further details are set out in Section 6.2.1.

<sup>(2)</sup> Further details are set out in Section 6.2.2.

<sup>(3)</sup> The credit standard of non-rated marketable debt instruments issued or guaranteed by non-financial corporations is determined on the basis of the credit assessment source chosen by the relevant counterparty in accordance with the ECAF rules applicable to credit claims, as set out in Section 6.3.3. In the case of these marketable debt instruments, the following eligibility criteria for marketable assets have been amended: place of establishment of the issuer/guarantor: euro area; place of issue: euro area.

(\*) In the event of a counterparty using assets that, owing to an identity with the issuer/debtor/guarantor or the existence of close links, it may not or no longer use to secure an outstanding credit, it is obliged to immediately notify the relevant national central bank thereof. The assets are valued at zero on the next valuation date and a margin call may be triggered (see also Appendix 6). In addition, the counterparty has to remove the asset on the earliest possible date.;

9. In Section 6.3.2, footnote 72 is deleted;

10. In Section 6.3.4.1, the following paragraph is added:

'An ECAI participating in the ECAF is subject to the Eurosystem performance monitoring process (see Section 6.3.5). Together with the performance monitoring data submitted, a signed certification from the CEO, or authorised signatory with responsibility for the audit or compliance function within the ECAI, of the ECAI confirming the accuracy and validity of the performance monitoring information shall also be submitted.;

11. In Section 6.3.4.4, the third subparagraph is replaced by the following:

'An RT provider participating in the ECAF needs to subject itself by agreement to the Eurosystem performance monitoring process (\*) (see Section 6.3.5). The RT provider is obliged to set up and maintain the necessary infrastructure for monitoring the static pool. Construction and evaluation of the static pool have to be in line with the general requirements on performance monitoring under the ECAF. The RT provider has to undertake to inform the Eurosystem of the results of the performance evaluation as soon as it has been carried out by the RT provider. Together with the performance monitoring data submitted, a signed certification from the CEO, or authorised signatory with responsibility for the audit or compliance function within the RT, confirming the accuracy and validity of the performance monitoring data must also be submitted. They have to undertake to keep internal records of static pools and default details for five years.

(\*) The counterparty must inform the RT provider promptly about any credit event that may indicate a deterioration of the credit quality.;

12. Section 6.3.5 is replaced by the following:

*'6.3.5. Performance monitoring of credit assessment systems*

All credit assessment systems are subject to performance monitoring within the ECAF. For each credit assessment system, the ECAF performance monitoring process consists of an annual *ex-post* comparison of: (a) the observed default rates for all eligible entities and instruments rated by the credit assessment system, where these entities and instruments are grouped into static pools based on certain characteristics, e.g. credit rating, asset class, industry sector, credit assessment model; and (b) the appropriate credit quality threshold of the Eurosystem given by the benchmark PD (two benchmark PDs are considered: a 0,10 % PD over a one-year horizon which is considered equivalent to a credit assessment of credit quality step 2; and a 0,40 % PD over a one-year horizon which is considered equivalent to a credit assessment of credit quality step 3 of the Eurosystem harmonised rating scale). The aim of this process is to ensure that the mapping of the ratings provided by the credit assessment system to the Eurosystem harmonised rating scale remains appropriate and that the results from credit assessments are comparable across systems and sources.

The first element of the process is the annual compilation by the credit assessment system provider of the list of entities and instruments with credit assessments that satisfy the Eurosystem credit quality threshold at the beginning of the monitoring period. This list shall then be submitted by the credit assessment system provider to the Eurosystem, using the template provided by the Eurosystem, which includes identification, classification and credit assessment related fields. The second element of the process takes place at the end of the 12-month monitoring period when the credit assessment system provider updates the performance data for the entities and instruments on the list. The Eurosystem reserves the right to request any additional information required to conduct performance monitoring.

The observed default rate of the static pools of a credit assessment system recorded over a one-year horizon serves as input to the ECAF performance monitoring process, which comprises an annual rule and a multi-period assessment. In case of a significant deviation between the observed default rate of the static pools and the credit quality threshold over an annual and/or a multi-annual period, the Eurosystem consults the credit assessment system provider to analyse the reasons for that deviation. This procedure may result in a correction of the credit quality threshold applicable to the system in question.

The Eurosystem may decide to suspend or exclude the credit assessment system where no improvement in performance is observed over a number of years. In addition, in the event of an infringement of the rules governing the ECAF, the credit assessment system will be excluded from the ECAF. If inaccurate or incomplete information is provided by a representative of the credit assessment system for the purposes of performance monitoring, the Eurosystem may abstain from exclusion in case of minor irregularities;'

13. Section 6.4.2 is amended as follows:

(a) point (f) is deleted;

(b) table 8 is deleted;

14. In Section 6.5.1, paragraphs (a) and (b) are replaced by the following:

'(a) For each eligible marketable asset, the Eurosystem defines the most representative price to be used for the calculation of the market value.

(b) The value of a marketable asset is calculated on the basis of the most representative price on the business day preceding the valuation date. In the absence of a representative price for a particular asset on the business day preceding the valuation date, the Eurosystem defines a theoretical price;'

15. In Appendix 6, Section 1 is replaced by the following:

**1. Financial Penalties**

If a counterparty infringes the rules on tender operations (\*), bilateral transactions (\*\*), the use of underlying assets (\*\*\*), end-of-day procedures or access conditions for the marginal lending facility (\*\*\*\*), the Eurosystem shall apply financial penalties as follows:

(a) For infringements of rules related to tender operations, bilateral transactions and the use of underlying assets, for the first and for the second infringements that occur within a 12-month period a financial penalty shall be applied to each infringement. The financial penalties are calculated using the marginal lending rate that applied when the infringement began plus 2,5 percentage points.

- (i) For infringements of rules related to tender operations and bilateral transactions, the financial penalties are calculated on the basis of the amount of collateral or cash that the counterparty could not settle, multiplied by the coefficient  $X/360$ , where  $X$  is the number of calendar days, with a maximum of seven, during which the counterparty was unable to collateralise or supply the allotted amount during the maturity of an operation. A flat penalty of EUR 500 applies where the calculation results in an amount of less than EUR 500; and
  - (ii) For infringements of rules related to the use of underlying assets (\*\*\*\*), the financial penalties are calculated on the basis of the amount of ineligible assets, or assets that may not be used by the counterparty, which are either: provided by the counterparty to an NCB or the ECB; or not removed by the counterparty by or before the start of the eighth calendar day following an event after which the eligible assets become ineligible or may no longer be used by the counterparty, multiplied by the coefficient  $X/360$ . Where  $X$  is the number of calendar days, with a maximum of seven, during which the counterparty was in breach of the rules relating to the use of underlying assets. A flat penalty of EUR 500 applies where the calculation results in an amount less than EUR 500.
- (b) The first time the rules for end-of-day procedures or for access to the marginal lending facility are infringed, the applicable financial penalties are calculated using the marginal lending rate that applied when the infringement began plus 5 percentage points. For repeated infringements, the penalty interest rate increases by a further 2,5 percentage points each time this occurs within a 12-month period, calculated on the basis of the amount of the unauthorised access to the marginal lending facility. A flat penalty of EUR 500 applies where the calculation results in an amount less than EUR 500.

(\*) This applies if a counterparty fails to transfer a sufficient amount of underlying assets or cash (when applicable, as regards margin calls) to settle on the settlement day, or to collateralise, until the maturity of the operation by means of corresponding margin calls, the amount of liquidity it has been allotted in a liquidity-providing operation, or if it fails to transfer a sufficient amount of cash to settle the amount it has been allotted in a liquidity-absorbing operation.

(\*\*) This applies if a counterparty fails to transfer a sufficient amount of eligible underlying assets or if it fails to transfer a sufficient amount of cash to settle the amount agreed in bilateral transactions, or if it fails to collateralise an outstanding bilateral transaction at any time until its maturity by means of corresponding margin calls.

(\*\*\*) This applies if a counterparty is using assets that are or have become ineligible or that may not be used by the counterparty, e.g., owing to close links between, or the identity of, the issuer/guarantor and the counterparty.

(\*\*\*\*) This applies if a counterparty has a negative balance on the settlement account at the end of the day and does not fulfil the access conditions for the marginal lending facility.

(\*\*\*\*\*) The following provisions also apply where: (a) the counterparty has been using ineligible assets or has provided information affecting the collateral value negatively, e.g. on the outstanding amount of a used credit claim that is or has been false or out of date; or (b) the counterparty is using assets which are ineligible owing to close links between the issuer/guarantor and the counterparty.;

16. Appendix 7 is replaced by the following:

*Appendix 7*

**CREATION OF A VALID SECURITY OVER CREDIT CLAIMS**

To ensure that a valid security interest is created over credit claims and that the credit claims can be swiftly realised in the event of a counterparty default, the following additional legal requirements need to be met:

- (a) *Verification of the existence of credit claims:* As a minimum, NCBs shall use the following measures to verify the existence of credit claims submitted to the Eurosystem as collateral: (i) self-certification and undertaking by the counterparty to the NCB, at least every quarter, to confirm the existence of the credit claims submitted as collateral, which could be replaced with cross-checks of information held in central credit registers, where these exist; (ii) one-off verification by NCBs, supervisors or external auditors of the procedures used by the counterparty to submit the information on the existence of credit claims to the Eurosystem; (iii) random checks by the NCBs, relevant credit registers, supervisors or external auditors on the quality and accuracy of the self-certification.

The quarterly self-certification and undertaking under (i) above include the requirement that Eurosystem counterparties do the following in writing:

- (i) confirm and warrant compliance of credit claims submitted to an NCB with the eligibility criteria applied by the Eurosystem;

- (ii) confirm and warrant that no credit claim submitted as an underlying asset is being simultaneously used as collateral to the benefit of any third party and undertake that the counterparty shall not mobilise any credit claim as collateral to any third party;
- (iii) confirm and warrant to communicate to the relevant NCB immediately but no later than within the course of the next business day any event which materially affects the actual contractual relationship between the counterparty and the relevant NCB, in particular early, partial or total repayments, downgrades and material changes in the conditions of the credit claim.

For such checks to take place in accordance with (ii) and (iii), supervisors, NCBs or external auditors must be authorised to carry out this investigation, if necessary contractually or in accordance with the applicable national requirements.

- (b) *Validity of the agreement for the mobilisation of credit claims*: The agreement for the mobilisation of the credit claim as collateral also needs to be valid between the parties (transferor and transferee) under national law. All legal formalities necessary to ensure the validity of the agreement and to ensure the mobilisation of a credit claim as collateral must be fulfilled.
- (c) *Full effect of the mobilisation vis-à-vis third parties*: regarding debtor notification about the mobilisation of a credit claim as collateral, taking into account the specific features of the different jurisdictions involved, the following are required:
  - (i) In certain Member States where debtor notification of the mobilisation of a credit claim as collateral is necessary to be fully effective vis-à-vis third parties, and in particular for the priority of the NCB's security interest vis-à-vis other creditors, as specified by the applicable national documentation, *ex-ante* notification of the debtor is required in advance or at the time of the credit claim's actual mobilisation as collateral.
  - (ii) In other Member States where public registration of the mobilisation of a credit claim as collateral is necessary to be fully effective vis-à-vis third parties, and in particular for the priority of the NCB's security interest vis-à-vis other creditors, as specified by the applicable national documentation, such registration is required in advance or at the time of the credit claim's actual mobilisation as collateral;
  - (iii) Finally, in Member States where *ex-ante* notification of the debtor or public registration of the mobilisation of a credit claim as collateral is not required in accordance with (i) and (ii), as specified by applicable national documentation, *ex-post* notification of the debtor is required. *Ex-post* notification of the debtor requires that the debtor be notified by the counterparty or the NCB (as specified by the national documentation) about the credit claim being mobilised as collateral by the counterparty to the benefit of the NCB immediately following a credit event. "Credit event" means default or similar events as further defined by the applicable national documentation.

There is no notification requirement in cases where the credit claims are bearer instruments for which applicable national law does not require notification. In such cases, the NCB concerned may require that such bearer instruments are physically transferred to it or to a third party in advance or at the time of actual mobilisation as collateral.

The above are minimum requirements. NCBs may decide to require *ex-ante* notification or registration in addition to the cases above, as specified by applicable national documentation.

All other legal formalities necessary to ensure the mobilisation of a credit claim as collateral must also be fulfilled.

- (d) *Absence of restrictions related to banking secrecy and confidentiality*: The counterparty shall not be under an obligation to obtain the debtor's approval for disclosure of information about the credit claim and the debtor that is required by the Eurosystem for the purpose of ensuring that a valid security is created over credit claims and that the credit claims can be swiftly realised in the event of a counterparty default. The counterparty and the debtor shall agree contractually that the debtor unconditionally consents to the disclosure to the Eurosystem of such details on the credit claim and the debtor. No such provision is necessary if there are no rules restricting the provision of such information under national law, as specified in the applicable national documentation.
- (e) *Absence of restrictions on the mobilisation of the credit claim*: Counterparties shall ensure that credit claims are fully transferable and can be mobilised without restriction as collateral for the benefit of the Eurosystem. There should not be any restrictive provisions on mobilisation in the credit claim agreement or in other contractual arrangements between the counterparty and the debtor, unless national legislation provides that any such contractual restrictions are without prejudice to the Eurosystem with respect to the mobilisation of collateral.

- (f) *Absence of restrictions on the realisation of the credit claim:* The credit claim agreement or other contractual arrangements between the counterparty and the debtor should not contain any restrictions regarding the realisation of the credit claim used as collateral, including any form, time or other requirement with regard to realisation.’;

17. The following Appendix 8 is added:

‘Appendix 8

**LOAN-LEVEL DATA REPORTING REQUIREMENTS FOR ASSET-BACKED SECURITIES**

Loan-level data are submitted to and published electronically in the loan-level data repository in compliance with Eurosystem requirements, *inter alia*, open access, coverage, non-discrimination, appropriate governance structure, transparency, and designated as such by the ECB, in accordance with the requirements set out in this Appendix. For this purpose, the relevant loan-level data reporting template is used for each individual transaction, depending on the asset class comprising the pool of cash flow generating assets (\*).

Loan-level data must be reported at least on a quarterly basis, no later than one month following the due date for payment of interest on the asset-backed security in question. If loan-level data are not reported or updated within one month following the relevant interest rate payment date, then the asset-backed security will cease to be eligible. To ensure compliance with these requirements, the loan-level data repository will conduct automated consistency and accuracy checks on reports of new and/or updated loan-level data for each transaction.

From the application date of the loan-level data reporting requirements for asset-backed securities, i.e. the relevant asset class according to the template, detailed loan-by-loan level information regarding the pool of cash flow generating assets must be provided for an asset-backed security to become or remain eligible. Within three months the asset-backed security must achieve a compulsory minimum compliance level, assessed by reference to the availability of information in particular data fields of the loan-level data reporting template. To capture non-available fields, a set of six “No data” (ND) options are included in each such template and must be used whenever particular data cannot be submitted in accordance with the template. There is also a seventh ND option which is only applicable for the CMBS template.

The ND options and their meanings are set out in the following table:

“No data” options	Explanation
ND1	Data not collected as not required by the underwriting criteria
ND2	Data collected at application but not loaded in the reporting system at completion
ND3	Data collected at application but loaded in a separate system from the reporting one
ND4	Data collected but will only be available from YYYY-MM
ND5	Not relevant
ND6	Not applicable for the jurisdiction
ND7	Only for CMBS loans with a value less than EUR 500 000, i.e. the value of the whole commercial loan balance at origination

The following nine-month transitional period applies to all asset-backed securities (depending on the date the loan-level data reporting requirements apply for the relevant asset class):

- the first quarter following the date the requirements apply is a testing period. Loan-level data must be reported, but there are no specific limits regarding the number of mandatory fields containing ND1 to ND7,
- in the second quarter, the number of mandatory fields which contain ND1 may not exceed 30 % of the total number of mandatory fields and the number of mandatory fields which contain ND2, ND3 or ND4 may not exceed 40 % of the total number of mandatory fields,

- in the third quarter, the number of mandatory fields which contain ND1 may not exceed 10 % of the total number of mandatory fields and the number of mandatory fields which contain ND2, ND3 or ND4 may not exceed 20 % of the total number of mandatory fields,
- at the end of the nine-month transitional period, there must be no mandatory fields in the loan-level data containing ND1, ND2, ND3 or ND4 values for an individual transaction.

Applying these thresholds, the loan-level data repository will generate and assign a score to each asset-backed security transaction upon submission and processing of loan-level data. This score will reflect the number of mandatory fields which contain ND1 and the number of mandatory fields which contain ND2, ND3 or ND4, compared in each case against the total number of mandatory fields. In this regard, the options ND5, ND6 and ND7 may only be used if the relevant data fields in the relevant loan-level data reporting template permit. Combining the two threshold references produces the following range of loan-level data scores:

Scoring value matrix		ND1 fields			
		0	≤ 10 %	≤ 30 %	> 30 %
ND2	0	A1	B1	C1	D1
or	≤ 20 %	A2	B2	C2	D2
or	≤ 40 %	A3	B3	C3	D3
ND4	> 40 %	A4	B4	C4	D4

According to the transitional period set out above, the score must gradually improve for each quarter, in accordance with the following overview:

Timeline	Scoring value (eligibility treatment)
first quarter (initial submission)	(no minimum scoring value enforced)
second quarter	C3 (at a minimum)
third quarter	B2 (at a minimum)
from the fourth quarter onwards	A1

For residential-mortgage backed securities (RMBS), the loan-by-loan information requirements will apply from 3 January 2013 and the nine-month transitional period ends on 30 September 2013.

For asset-backed securities where the cash flow generating assets comprise loans to small- and medium-sized enterprises (SME), the loan-by-loan information requirements will apply from 3 January 2013 and the nine-month transition period ends on 30 September 2013.

For commercial-mortgage backed securities (CMBS), the loan-by-loan information requirements will apply from 1 March 2013 and the nine-month transition period ends on 30 November 2013.

For asset-backed securities where the cash flow generating assets comprise auto loans, consumer finance loans, or leasing receivables, the loan-by-loan information requirements will apply from 1 January 2014 and the nine-month transition period ends on 30 September 2014.

Asset-backed securities issued later than nine months after the date the new loan-level data reporting requirements apply (\*\*) must comply fully with the reporting requirements from the initial submission of loan-level data, i.e. upon issuance. Already existing asset-backed security transactions that do not conform to any of the loan-level data reporting templates will remain eligible until 31 March 2014. The Eurosystem will assess on a case-by-case basis whether a particular asset-backed security transaction can benefit from this grandfathering provision.

(\*) The relevant versions of the loan-level data reporting templates for the specific asset classes are published on the ECB's website.

(\*\*) i.e. on 30 September 2013 for RMBS and SME, 30 November 2013 for CMBS and 30 September 2014 for auto loans, consumer finance loans and leasing receivables.