

GUIDELINES

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)

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, 14.3 and Article 16 thereof,

Whereas:

- (1) Article 128(1) of the Treaty on the Functioning of the European Union (hereinafter the 'Treaty') and Article 16 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB') grants the Governing Council of the European Central Bank (ECB) the exclusive right to authorise the issue of euro banknotes within the Union. This exclusive right includes the competence to set the legal framework for the production and procurement of euro banknotes. The ECB may allocate the responsibility for producing euro banknotes to the national central banks of the Member States whose currency is the euro (hereinafter the 'NCBs') in accordance with the percentage shares held by the NCBs in the ECB's subscribed capital for the relevant financial year, calculated using the weightings in the key referred to in Article 29.1 of the Statute of the ESCB (hereinafter the 'capital key'). The legal framework for the production and procurement of euro banknotes must, on the one hand, comply with the requirement laid down in Article 127(1) of the Treaty and in Article 2 of the Statute of the ESCB for the Eurosystem to act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and, on the other hand, take into account the particular nature of euro banknotes, which are produced in order to be issued by the Eurosystem as a safe means of payment. The legal framework for the production and procurement of euro banknotes must also take into account the fact that some NCBs use their own in-house printing works to produce euro banknotes.
- (2) In view of the abovementioned principles, the Governing Council decided on 10 July 2003 that a common Eurosystem competitive approach to tendering (hereinafter the 'single Eurosystem tender procedure') should apply to the procurement of euro banknotes from 1 January 2012 onwards, as set out in Guideline ECB/2004/18 ⁽¹⁾. In March 2011 the Governing Council decided to postpone the start of the single Eurosystem tender procedure until 1 January 2014, unless a different start date was fixed by it in the meantime and subject to further review of the situation ⁽²⁾. In December 2013, the Governing Council further decided that the single Eurosystem tender procedure would start on a date to be set by it owing to a change in the assumptions on which the expected single Eurosystem tender procedure start date had been based ⁽³⁾.
- (3) Taking into account the fact that the market has become more competitive since 2004 and that there is currently no perceived advantage in using the single Eurosystem tender procedure in place of the current arrangements, the Governing Council decided that a Eurosystem production and procurement system (hereinafter the 'EPPS') should be considered as a possible alternative.
- (4) In order to ensure continuity of supply, maintain internal know-how within the Eurosystem, foster competition and reduce costs at the Eurosystem level, and take advantage of innovation from the private and public sector, the EPPS should consist of two pillars: a group of NCBs producing their euro banknotes using an in-house printing works (hereinafter 'in-house group NCBs'), and a group of NCBs which procure their euro banknotes (hereinafter 'tendering group NCBs'). The EPPS should promote the efficient production of euro banknotes

⁽¹⁾ Guideline ECB/2004/18 of 16 September 2004 on the procurement of euro banknotes (OJ L 320, 21.10.2004, p. 21).

⁽²⁾ Guideline ECB/2011/3 of 18 March 2011 amending Guideline ECB/2004/18 on the procurement of euro banknotes (OJ L 86, 1.4.2011, p. 77).

⁽³⁾ Guideline ECB/2013/49 of 18 December 2013 amending Guideline ECB/2004/18 on the procurement of euro banknotes (OJ L 32, 1.2.2014, p. 36).

in the Eurosystem. Furthermore, the EPPS will require the further alignment of the legal requirements applicable to tendering group NCBs, such as in relation to the use of eligibility criteria in the tendering process and contractual terms and conditions. The requirements set in relation to the EPPS should aim to ensure a level playing field in tenders for the production of euro banknotes.

- (5) Tendering group NCBs will remain responsible for the production and procurement of the euro banknotes that have been allocated to them in accordance with the capital key. To fulfil their obligations, those NCBs will tender for the production of euro banknotes, and carry out tender procedures individually or jointly with other NCBs in accordance with applicable procurement rules. In order to ensure a level playing field, tendering group NCBs should seek to align their tendering requirements, in accordance with the requirements of Union and national procurement law.
- (6) In-house group NCBs will remain responsible for the production of the euro banknotes that have been allocated to them in accordance with the capital key. Taking into account the need to ensure a level playing field between all printing works, such NCBs should ensure that in-house printing works do not participate in any tender procedures for the production of euro banknotes organised and carried out within the Union and do not accept orders for the production of euro banknotes from third parties outside the in-house group NCBs.
- (7) If they enter into a form of cooperation, in-house group NCBs must comply with applicable national laws and with Union law. Where a separate legal person is established in order to achieve this cooperation, an NCB may become an in-house group NCB if it jointly controls this legal person within the meaning of this Guideline.
- (8) Euro banknotes are of a sensitive and technologically advanced nature. They therefore have to be produced in a fully secure, controlled and confidential environment that guarantees a reliable, high-quality and sustained supply over time. In addition, the Eurosystem needs to pay due regard to the possible impact of the production of euro banknotes on public health and safety and on the environment.
- (9) The Governing Council will monitor developments with respect to all key raw materials and factors of production involved in the procurement and production of euro banknotes and, if necessary, take adequate measures to ensure that they are selected and/or procured so as to ensure the continuity of supply of euro banknotes, and, without prejudice to Union competition law and the European Commission's powers, to prevent the abuse of a dominant market position by any contractor or supplier.
- (10) The provisions of this Guideline should be interpreted, where necessary, in accordance with the rules contained in Directive 2004/18/EC of the European Parliament and of the Council ⁽¹⁾ and, from 18 April 2016, Directive 2014/24/EU of the European Parliament and of the Council ⁽²⁾,

HAS ADOPTED THIS GUIDELINE:

TITLE I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Guideline the following definitions shall apply:

- (1) 'arm's length principle' means effective internal arrangements ensuring full separation between a public printing works and its public authority's accounts and reimbursement by a public printing works of the costs of all administrative and organisational support that it receives from its public authority. In order to ensure fair competition when public printing works are responding to a call for tenders, it is necessary that euro banknote printing activities be fully separated financially from their other activities in order to ensure that no direct or indirect state aid is provided that is in any way incompatible with the Treaty. This financial separation shall be checked and certified annually by an independent external audit and reported to the Governing Council;

⁽¹⁾ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 34, 30.4.2004, p. 114).

⁽²⁾ 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).

- (2) 'in-house printing works' means any printing works which is (a) legally and organisationally part of an NCB; or (b) a separate legal person, provided that the following cumulative conditions are fulfilled:
- (i) the NCB or NCBs exercise over the legal person concerned control which is similar to that which it exercises over its own departments;
 - (ii) more than 80 % of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling NCB or NCBs;
 - (iii) there is no direct private participation in the controlled legal person.

For the determination of the percentage of activities referred to in point (b)(ii), the average total turnover, or an appropriate alternative activity-based measure, such as costs incurred by the relevant legal person with respect to services, supplies and works for the three years preceding the contract award, shall be taken into consideration.

Where, because of the date on which the relevant legal person was created or commenced activities or because of a reorganisation of its activities, the turnover, or alternative activity-based measure such as costs, are either not available for the preceding three years or no longer relevant, it shall be sufficient to show that the measurement of activity is credible, particularly by means of business projections.

An NCB shall be deemed to exercise over a legal person control similar to that which it exercises over its own departments within the meaning of point (b)(i) of the first subparagraph where it exercises a decisive influence over both the strategic objectives and significant decisions of the controlled legal person.

NCBs shall be deemed to jointly control a legal person where the following cumulative conditions are fulfilled: (a) the decision-making bodies of the controlled legal person are composed of representatives of all participating NCBs; individual representatives may represent several or all of the participating NCBs; (b) those NCBs are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person; (c) the controlled legal person does not pursue any interests which are contrary to those of the controlling NCBs;

- (3) 'public authorities' means all public authorities, including the State and regional, local or other territorial authorities and central banks;
- (4) 'public printing works' means any printing works over which the public authorities may directly or indirectly exercise a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A dominant influence on the part of the public authorities shall be presumed when these authorities, directly or indirectly in relation to a printing works: (a) hold the major part of its subscribed capital; (b) control the majority of the votes attaching to shares issued by it; or (c) can appoint more than half of the members of its administrative, managerial or supervisory body.

Article 2

Scope of application

1. The EPPS establishes a two-pillar model for the production and procurement of euro banknotes. It shall include the tendering of the production of euro banknotes by tendering group NCBs, as well as the production of euro banknotes by in-house group NCBs using an in-house printing works.
2. NCBs shall be responsible for the production and procurement of the euro banknotes that have been allocated to them in accordance with the capital key.

TITLE II

TENDERING GROUP NCBs

Article 3

General principles

NCBs that do not have in-house printing works shall be part of the tendering group (tendering group NCBs).

*Article 4***Tender procedures**

1. Each tendering group NCB shall be responsible for the tendering of the production of euro banknotes and shall carry out tender procedures individually or jointly with other tendering group NCBs in accordance with applicable procurement rules and in line with the requirements laid down in this Guideline.
2. In order to maintain competition in the market for the production of euro banknotes, in principle and subject to applicable national procurement law, tendering group NCBs shall divide tenders into several lots and multiple lots should not be awarded to the same tenderer(s).
3. Tendering group NCBs shall state in tender documentation that in order to be eligible for any tender, public printing works must have implemented the arm's length principle prior to taking part in the tender.

*Article 5***Harmonisation of requirements**

In order to ensure a level playing field, tendering group NCBs shall seek to align their tendering requirements, including eligibility criteria, in accordance with the requirements of Union and national procurement law.

TITLE III

IN-HOUSE GROUP NCBs*Article 6***General principles**

1. NCBs producing euro banknotes using an in-house printing works shall be part of the in-house group (in-house group NCBs).
2. The in-house group NCBs shall ensure that their in-house printing works do not participate in any tender procedures for the production of euro banknotes organised and carried out within the Union and do not accept orders for the production of euro banknotes from third parties outside the in-house group NCBs.

*Article 7***Cooperation among in-house group NCBs**

1. In order to improve the cost-efficiency of the production of euro banknotes, in-house group NCBs shall consider establishing appropriate forms of cooperation such as joint purchasing and sharing and implementing best practices for the production process in order to fulfil their public task of banknote production in the best possible way.
2. In-house group NCBs may decide whether or not to join in any such forms of cooperation, provided that if they do so they commit to remain involved in the relevant initiatives for at least three years (unless they become a tendering group NCB within this period), given the need for continuity and in view of the investments made by the parties.

*Article 8***Establishment of a separate legal person, or non-institutionalised horizontal cooperation, to jointly fulfil public tasks**

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

2. The following conditions shall apply to the forms of cooperation mentioned in paragraph 1:
- (a) If a legal person established under Article 8(1)(a) is directly awarded a contract for the production of euro banknotes, it must be jointly controlled by the NCBs concerned within the meaning of the definition of joint control under point (2) of Article 1.
 - (b) Any agreement entered into under Article 8(1)(b) shall comply with the following cumulative conditions:
 - (i) the agreement establishes or implements cooperation between the in-house group NCBs with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;
 - (ii) the implementation of that cooperation is governed solely by considerations relating to the public interest;
 - (iii) in-house group NCBs perform on the open market less than 20 % of the activities concerned by the cooperation. For the determination of the percentage of the abovementioned activities the second and third paragraphs of point (2) of Article 1 shall apply accordingly.

TITLE IV

FINAL PROVISIONS

Article 9

Repeal

Guideline ECB/2004/18 is repealed with effect from 1 January 2015.

Article 10

Taking effect and implementation

This Guideline shall take effect on the day of its notification to the national central banks of the Member States whose currency is the euro. The Eurosystem central banks shall comply with this Guideline from 1 January 2015.

Article 11

Transitional period with respect to the application of Article 4(3)

By way of derogation from Article 4(3), tender procedures launched before 1 July 2015 may apply differing requirements with respect to the exclusion of tender participants.

Article 12

Review

The Governing Council shall review this Guideline at the beginning of 2017 and every two years thereafter.

Article 13

Addressees

This Guideline is addressed to all Eurosystem central banks.

Done at Frankfurt am Main, 13 November 2014.

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