Regulation (EU) 2018/1845 of the European Central Bank of 21 November 2018 on the exercise of the discretion under Article 178(2)(d) of Regulation (EU) No 575/2013 in relation to the threshold for assessing the materiality of credit obligations past due (ECB/2018/26)

REGULATION (EU) 2018/1845 OF THE EUROPEAN CENTRAL BANK

of 21 November 2018

on the exercise of the discretion under Article 178(2)(d) of Regulation (EU) No 575/2013 in relation to the threshold for assessing the materiality of credit obligations past due *(ECB/2018/26)*

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union,

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(3), Article 6, and Article 9(1) and (2) thereof,

Having regard to 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 and amending Regulation (EU) No 648/2012[(2)], and in particular Article 178(2) thereof,

Having regard to Commission Delegated Regulation (EU) 2018/171 of 19 October 2017 on supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the materiality threshold for credit obligations past due[(3)], in particular Articles 1 to 3 and 6 thereof,

Having regard to the public consultation and the analysis carried out pursuant to Article 4(3) of Regulation (EU) No 1024/2013,

Having regard to the proposal from the Supervisory Board approved in accordance with Article 26(7) of Regulation (EU) No 1024/2013,

Whereas:

(1) The European Central Bank (ECB) is empowered to adopt regulations in accordance with Article 132 of the Treaty on the Functioning of the European Union. In addition, Article 132 of the Treaty and Article 34 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'), by referring to Article 25.2 of the Statute of the ESCB, entrust the ECB with regulatory powers to the extent necessary to implement specific tasks concerning policies relating to the prudential supervision of credit institutions.

(2) European Union law concerning prudential requirements for credit institutions provides for options and discretions that competent authorities may exercise.

Changes to legislation: *There are outstanding changes not yet made to Regulation (EU) 2018/1845 of the European Central Bank. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) The ECB is the competent authority in the participating Member States as established by relevant Union law for the purpose of carrying out its microprudential tasks within the single supervisory mechanism (SSM) under Regulation (EU) No 1024/2013 in respect of credit institutions that are classified as significant in accordance with Article 6(4) of that Regulation and Part IV and Article 147(1) of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17)[(4)]. Therefore, it has all the powers and obligations that competent authorities have under relevant Union law. In particular, the ECB has the power to exercise the options and discretions available in Union law.

(4) The ECB carries out its supervisory tasks within the SSM, which should ensure that the Union's policy relating to the prudential supervision of credit institutions is implemented in a coherent and effective manner, that the single rulebook for financial services is applied in the same manner to credit institutions in all Member States concerned, and that those credit institutions are subject to supervision of the highest quality. In carrying out its supervisory tasks, the ECB should have full regard to the diversity of credit institutions and their size and business models, as well as the systemic benefits of diversity in the Union's banking industry.

(5) The consistent application of prudential requirements for credit institutions within the Member States participating in the SSM is a specific objective of Regulation (EU) No 1024/2013 and Regulation (EU) No 468/2014 (ECB/2014/17) and is entrusted to the ECB.

(6) In accordance with Regulation (EU) No 1024/2013, the ECB applies all relevant Union law and, where this Union law is composed of directives, the national legislation transposing those directives. Where the relevant Union law is composed of regulations and where currently those regulations explicitly grant options and discretions for Member States, the ECB should also apply the national legislation exercising those options and discretions. Such national legislation should not affect the smooth functioning of the SSM, for which the ECB is responsible.

(7) Such options and discretions do not include those granted by Union law to competent authorities which the ECB is solely competent to exercise and should exercise as appropriate.

(8) In exercising options and discretions, the ECB should take account of the general principles of Union law, in particular equal treatment, proportionality and the legitimate expectations of supervised credit institutions.

(9) With regard to the legitimate expectations of supervised credit institutions, the ECB acknowledges the need to allow for transitional periods where its exercise of discretions significantly departs from the approach taken by the national competent authorities prior to the entry into force of this Regulation. In this respect, both credit institutions applying the Standardised Approach and the Internal Ratings Based Approach should have an appropriate transitional period. Therefore, credit institutions must apply the threshold for the assessment of the materiality of a credit obligation past due set by this Regulation not later than 31 December 2020 and must notify the ECB, before 1 June 2019, of the exact date on which they will commence applying such threshold.

***Changes to legislation:** There are outstanding changes not yet made to Regulation (EU) 2018/1845 of the European Central Bank. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(10) Article 178(2)(d) of Regulation (EU) No 575/2013 gives the competent authorities the power to set a threshold for assessing the materiality of a credit obligation past due as referred to in Article 178(1)(b). In setting such a threshold, the ECB should take into account the criteria set out in Delegated Regulation (EU) 2018/171.

(11) The ECB considers that the threshold in this Regulation for assessing the materiality of a credit obligation past due as referred to in Article 178(1)(b) of Regulation (EU) No 575/2013 reflects a reasonable level of risk and its application will enable increased comparability of capital requirements among supervised credit institutions.

(12) Article 143(1)(b) of Directive 2013/36/EU of the European Parliament and of the Council[5] requires competent authorities to publish the manner of exercise of the options and discretions available in Union law,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

The ECB hereby exercises the discretion conferred on competent authorities under Article 178(2)(d) of Regulation (EU) No 575/2013 in relation to the threshold for assessing the materiality of credit obligations past due. This Regulation shall apply exclusively with regard to credit institutions classified as significant in accordance with Article 6(4) of Regulation (EU) No 1024/2013 and Part IV and Article 147(1) of Regulation (EU) No 468/2014 (ECB/2014/17) and irrespective of the method used for the calculation of their risk-weighted exposure amounts.

Article 2

Definitions

For the purpose of this Regulation, the definitions contained in Article 4 of Regulation (EU) No 575/2013, Article 2 of Regulation (EU) No 1024/2013 and Article 2 of Regulation (EU) No 468/2014 (ECB/2014/17) shall apply.

Article 3

Article 178(2)(d) of Regulation (EU) No 575/2013: threshold for the assessment of the materiality of a credit obligation past due

1 For the purpose of Article 178(2)(d) of Regulation (EU) No 575/2013, credit institutions shall assess the materiality of a credit obligation past due against the following threshold, which comprises two components:

a a limit in terms of the sum of all amounts past due owed by the obligor to the credit institution, the parent undertaking of that credit institution or any of its subsidiaries (hereinafter the ‘credit obligation past due’), equal:

(i) for retail exposures, to EUR 100;

(ii) for exposures other than retail exposures, to EUR 500; and