

II

(Non-legislative acts)

DECISIONS

DECISION (EU) 2021/752 OF THE EUROPEAN CENTRAL BANK**of 30 April 2021****amending Decision (EU) 2019/1311 on a third series of targeted longer-term refinancing operations (ECB/2021/21)**

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

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

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, Article 12.1, the second indent of Article 18.1 and the second indent of Article 34.1 thereof,

Having regard to Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (General Documentation Guideline) (ECB/2014/60) ⁽¹⁾,

Whereas:

- (1) Pursuant to Article 1(4) of Guideline (EU) 2015/510 (ECB/2014/60), the Governing Council may, at any time, change the tools, instruments, requirements, criteria and procedures for the implementation of Eurosystem monetary policy operations.
- (2) On 22 July 2019, in pursuing its price stability mandate and to preserve favourable bank lending conditions and support the accommodative stance of monetary policy in Member States whose currency is the euro, the Governing Council adopted Decision (EU) 2019/1311 of the European Central Bank (ECB/2019/21) ⁽²⁾. This Decision provides for a third series of targeted longer-term refinancing operations (TLTROs-III) to be conducted over the period September 2019 to March 2021.
- (3) On 12 March 2020, in order to support bank lending to those most affected by the spread of the coronavirus disease (COVID-19), in particular small and medium-sized enterprises, the Governing Council decided to change certain key parameters of TLTROs-III. Moreover, on 30 April 2020, in order to further support the provision of credit to households and firms in the face of the prevalent economic disruptions and heightened uncertainty, the Governing Council decided on certain further changes to these parameters. Decision (EU) 2020/407 of the European Central Bank (ECB/2020/13) ⁽³⁾ and Decision (EU) 2020/614 of the European Central Bank (ECB/2020/25) ⁽⁴⁾ implement these changes.

⁽¹⁾ OJ L 91, 2.4.2015, p. 3.

⁽²⁾ Decision (EU) 2019/1311 of the European Central Bank of 22 July 2019 on a third series of targeted longer-term refinancing operations (ECB/2019/21) (OJ L 204, 2.8.2019, p. 100).

⁽³⁾ Decision (EU) 2020/407 of the European Central Bank of 16 March 2020 amending Decision (EU) 2019/1311 on a third series of targeted longer-term refinancing operations (ECB/2020/13) (OJ L 80, 17.3.2020, p. 23).

⁽⁴⁾ Decision (EU) 2020/614 of the European Central Bank of 30 April 2020 amending Decision (EU) 2019/1311 on a third series of targeted longer-term refinancing operations (ECB/2020/25) (OJ L 141, 5.5.2020, p. 28).

- (4) On 10 December 2020, the Governing Council decided to adopt additional monetary policy measures aiming to contribute to preserving favourable financing conditions over the pandemic period, thereby supporting the flow of credit to all sectors of the economy, underpinning economic activity and safeguarding medium-term price stability. As part of these measures, the Governing Council decided to further recalibrate the conditions of TLTROs-III. In particular, it decided to extend the period over which considerably more favourable terms will apply to June 2022, that three additional operations will be conducted between June and December 2021, and to raise the total amount that Eurosystem counterparties will be entitled to borrow in TLTROs-III from 50% to 55% of their stock of eligible loans. In order to provide an incentive for banks to sustain the current level of bank lending, the Governing Council also decided that the extension of the more favourable terms on TLTROs-III to June 2022 will be made available only to banks that achieve a new lending performance target. Decision (EU) 2021/124 of the European Central Bank (ECB/2021/3) implemented these changes ⁽⁵⁾.
- (5) The sanctions related to non-compliance with the deadlines set for submitting reports and auditor evaluations should be adjusted to make the sanctioning regime more proportionate while still aiming to ensure that participants comply with the deadlines set. In addition, the cases in which participants are permitted to switch from individual to group participation or join existing TLTRO-III groups as well as the procedure to be followed in such cases should be clarified. Furthermore, provision should be made for an exemption from the obligation to submit a further auditor's evaluation in relation to reports revised due to corporate reorganisations or changes in the composition of TLTRO-III groups. Lastly, the reporting requirements and relevant interest rate calculations in the event of a change in the TLTRO-III group composition or of a corporate reorganisation that occurs between 1 April 2021 and 31 December 2021 should be clarified.
- (6) The changes to the sanctions for non-compliance with reporting and auditing requirements and the provisions regarding the treatment of corporate reorganisations occurring after 31 March 2021 for the purpose of calculating TLTRO-III interest rates introduced by this Decision should be made known to credit institutions as soon as possible. Therefore, this Decision should enter into force without delay.
- (7) Therefore, Decision (EU) 2019/1311 (ECB/2019/21) should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Amendments

Decision (EU) 2019/1311 (ECB/2019/21) is amended as follows:

- (1) in Article 1, point 17 is replaced by the following:

'(17) "participant" means a counterparty eligible for Eurosystem monetary policy open market operations in accordance with Guideline (EU) 2015/510 (ECB/2014/60), which submits bids in TLTRO-III tender procedures either on an individual basis or on a group basis as lead institution, and which is subject to all rights and obligations associated with its participation in the TLTRO-III tender procedures, excluding a credit institution which has fully repaid all TLTRO-III borrowings;'

- (2) in Article 3(2), point (d) is replaced by the following:

'(d) the composition and the lead institution of a TLTRO-III group shall remain unchanged for all TLTROs-III, subject to paragraphs 5, 5a, 6 and 6a of this Article.'

⁽⁵⁾ Decision (EU) 2021/124 of the European Central Bank of 29 January 2021 amending Decision (EU) 2019/1311 on a third series of targeted longer-term refinancing operations (ECB/2021/3) (OJ L 38, 3.2.2021, p. 93).

- (3) in Article 3, paragraph (5a) is replaced by the following:

'5a. In exceptional cases, where there are objective reasons, the Governing Council may decide to allow institutions participating in TLTROs-III on an individual basis to instead participate in future TLTROs-III on a group basis by joining an existing TLTRO-III group or by forming a new TLTRO-III group. That TLTRO-III group and each of its members shall comply with the provisions of Article 3.'

- (4) in Article 3(6), the introductory phrase in point (b) is replaced by the following:

'If, in relation to the TLTRO-III group, a credit institution that is not a participant or a member of a TLTRO-III group fulfils the conditions set out in Article 3(3)(a)(i) or (ii) with effect after, but not on or before, the last day of the month preceding the application referred to in point (d) of paragraph 3, the TLTRO-III group composition may change to reflect the addition of that credit institution as a new member, provided that:'

- (5) in Article 3, the following paragraph 6a is inserted:

'6a. Without prejudice to paragraph 5a, an institution participating in TLTROs-III on an individual basis may instead participate in future TLTROs-III on a group basis by forming a TLTRO-III group, provided that:

(a) the members of that TLTRO-III group are credit institutions that are not participating in TLTROs-III on an individual basis or as members of another TLTRO-III group and fulfil the conditions set out in Article 3(3)(a)(i) or Article 3(3)(a)(ii) with effect after, but not on or before, the last day of the month preceding the application referred to in Article 3(3)(d); and

(b) that TLTRO-III group and each of its members comply with the provisions of Article 3.'

- (6) in Article 3(7), the introductory phrase is replaced by the following:

'Where changes in the composition of a TLTRO-III group have been accepted by the Governing Council in accordance with paragraph 5, a new TLTRO-III group has been formed in accordance with paragraph 5a or paragraph 6a, or changes in the composition of TLTRO-III groups have taken place in accordance with paragraph 6, unless otherwise decided by the Governing Council, the following shall apply:'

- (7) the second subparagraph of Article 5(6) is replaced by the following:

'If due to the exercise of remedies available to an NCB in accordance with its contractual or regulatory arrangements, a participant is required to repay the TLTRO-III outstanding amounts in the eighth or subsequent TLTROs-III before the resulting interest rate for the additional special reference period has been communicated to the participant, the interest rate applicable to the amounts borrowed by that participant under the eighth or subsequent TLTROs-III and subject to mandatory repayment shall be set in accordance with paragraph 3c. If such repayment is required after the interest related data of the additional special reference period have been communicated to the participant, the interest rate applicable to the amounts borrowed by that participant under the eighth or subsequent TLTROs-III and subject to mandatory repayment shall be set in accordance with paragraphs 3b and 3c.'

- (8) in Article 6, the following paragraph 7a is inserted:

'7a. Where a revised first report is submitted due to a change in the TLTRO-III group composition or a corporate reorganisation pursuant to point (a) of paragraph 7, such change in the TLTRO-III group composition or corporate reorganisation shall be taken into account in the submission of the second and third reports pursuant to paragraph 1.

Where a revised first report is submitted due to a change in the TLTRO-III group composition or a corporate reorganisation pursuant to points (b) and (c) of paragraph 7, such change in the TLTRO-III group composition or corporate reorganisation shall be taken into account in the submission of the third report pursuant to paragraph 1, and the second report shall not be revised.'

- (9) in Article 6, paragraph 8a is replaced by the following:

'8a. A participant that submits a revised first report pursuant to paragraph 7 shall ensure that the quality of the data submitted in that revised first report is evaluated by an external auditor in accordance with the rules laid down in paragraph 6. That auditor's evaluation of the revised first report shall be made available to the relevant NCB as follows:

- (a) where the revisions concern the supplementary items, the auditor's evaluation of these supplementary items shall be provided together with the revised first report;
- (b) where the participant submits a revised first report pursuant to paragraph 7(a), the auditor's evaluation of those revisions shall be made available to the relevant NCB by 30 July 2021, as specified in the indicative calendar for TLTROs-III published on the ECB's website;
- (c) where the participant submits a revised first report pursuant to paragraph 7(b) or paragraph 7(c), the auditor's evaluation of those revisions shall be made available to the relevant NCB by the deadline specified in the indicative calendar for TLTROs-III published on the ECB's website for the submission of the results of the auditor's evaluation for participants participating for the first time in the eighth or subsequent TLTROs-III operations.;

(10) in Article 6, the following paragraph 8b is inserted:

'8b. By way of exception from paragraph 8a, a participant that has made the results of the auditor's evaluation of the first report available to the relevant NCB and subsequently submits a revised first report pursuant to paragraph 7 shall not be required to make available to the relevant NCB a new auditor's evaluation of that revised first report if all of the following criteria are fulfilled:

- (a) the corporate reorganisation is a merger or acquisition involving one or more acquired credit institutions that are all participants in TLTROs-III on an individual basis, or involving credit institutions that comprise an entire TLTRO-III group;
- (b) the auditor's evaluation of the first report for each acquired participant on an individual basis or for the acquired TLTRO-III group was made available, separately, to the relevant NCB before the corporate reorganisation occurred; and
- (c) the revisions do not concern the supplementary items referred to in the first report.;

(11) the following Article 6a is inserted:

'Article 6a

Calculation of interest rate in the event of a change in the TLTRO-III group composition or of a corporate reorganisation that occurs between 1 April 2021 and 31 December 2021

1. In the event of a change in the TLTRO-III group composition or of a corporate reorganisation that involves participants participating in the first seven TLTROs-III on an individual or on a group basis where that change occurs between 1 April 2021 and 31 December 2021, the interest rate applicable to amounts borrowed under each of the first seven TLTROs-III shall be calculated as follows:

- (a) during the period until 23 June 2021, the interest rate shall be calculated on the basis of the interest rate related data relating to the second reference period and the special reference period taking into account the individual lending performance of each of the participants, and also taking into account the provisions of Article 5 of this Decision with respect to interest rate calculation;
- (b) during the period starting on 24 June 2021 and continuing until maturity, the interest rate shall be calculated on the basis of the interest rate related data for the additional special reference period relating to the institution resulting from the corporate reorganisation or relating to the TLTRO-III group after the change in group composition (unless a more favourable rate would have been warranted on the basis of the interest rate related data relating to the second reference period and the special reference period depending on the participant's individual lending performance(s)) and also taking into account the provisions of Article 5 of this Decision with respect to interest rate calculation.

2. In the event of a change in the TLTRO-III group composition or of a corporate reorganisation that involves participants participating in the first seven TLTROs-III on an individual or on a group basis where that change occurs between 1 April 2021 and 31 December 2021, the interest rate applicable to amounts borrowed under each of the eighth or subsequent TLTROs-III shall be calculated on the basis of the interest rate related data for the additional special reference period relating to the institution resulting from the corporate reorganisation or relating to the TLTRO-III group after the change in group composition.;

(12) Article 7 is replaced by the following:

'Article 7

Non-compliance with reporting requirements

1. Where a participant fails to submit a report or comply with audit requirements, or where errors are identified in the data reported, the following shall apply:

- (a) if a participant fails to make the first report available to the relevant NCB by the relevant deadline, its borrowing allowance shall be set at zero;
- (b) if a participant fails to make the results of the auditor's evaluation of the first report available to the relevant NCB by the relevant deadline specified in the indicative calendar for TLTROs-III published on the ECB's website, the following rules shall apply:
 - (i) if the auditor's evaluation of the first report is received by the relevant NCB within the period of 14 calendar days starting on the day after the expiry of the relevant deadline, the participant shall incur for each day until such evaluation is received a penalty equal to the total outstanding amount borrowed by the participant under TLTROs-III divided by 1 000 000 (or if that amount is less than EUR 1 000, a penalty of EUR 1 000 for each day until the auditor's evaluation of the first report is received). The penalties incurred per day shall be accumulated and charged to the participant by the relevant NCB after receipt of the auditor's evaluation of the first report;
 - (ii) if the auditor's evaluation of the first report is not received by the relevant NCB within the period of 14 calendar days specified in point (i), the participant shall repay the outstanding amounts borrowed under those TLTROs-III operations with reference to which the borrowing allowance has been calculated on the basis of the first report for which the auditor's evaluation has not been received. The participant shall repay such amounts on the settlement day of the next main refinancing operation at the average rate on the main refinancing operation over the life of each respective TLTRO-III until the settlement day of the repayment, except during the special interest rate period and the additional special interest rate period, when the average rate on the main refinancing operations over each such period minus 50 basis points shall apply;
- (c) if a participant in one of the first seven TLTROs-III fails to make the data relating to the second reference period in the second report or the results of the auditor's evaluation of those data available to the relevant NCB by the relevant deadline specified in the indicative calendar for TLTROs-III published on the ECB's website, the following rules shall apply:
 - (i) if either the data relating to the second reference period in the second report or the results of the auditor's evaluation of those data are received by the relevant NCB within the period of 14 calendar days starting on the day after the expiry of the relevant deadline, the participant shall incur for each day until receipt a penalty equal to the total outstanding amount borrowed by the participant under TLTROs-III divided by 1 000 000 (or if that amount is less than EUR 1 000, a penalty of EUR 1 000 for each day until receipt). The penalties incurred per day shall be accumulated and charged to the participant by the relevant NCB after receipt of all data relating to the second reference period in the second report or of the results of the auditor's evaluation of those data. The interest rate related data relating to the second reference period shall be communicated by the relevant NCB to the participant on 1 October 2021;
 - (ii) if either the data relating to the second reference period in the second report or the results of the auditor's evaluation of those data are not received by the relevant NCB within the period of 14 calendar days specified in point (i), the average rate on the main refinancing operation over the life of each respective TLTRO-III shall apply to the amounts borrowed by that participant under TLTROs-III, except during the special interest rate period and the additional special interest rate period, when the average rate on the main refinancing operations over each such period minus 50 basis points shall apply unless the participant is granted a better

rate as a result of its lending performance during the third reference period. If it is the data relating to the second reference period in the second report that are not received by the relevant NCB within the period of 14 calendar days specified in point (i), the participant shall also incur a penalty of EUR 5 000 which shall be charged to the participant by the relevant NCB after receipt of all data relating to the second reference period in the second report.

Notwithstanding the previous paragraph of this point (ii), if the participant only provides the data for the special reference period of the second report and the auditor's evaluation of this data, and the participant's eligible net lending during the special reference period equals or exceeds its benchmark net lending, the interest rate applicable to the amounts borrowed by the participant shall be calculated pursuant to Article 5(1) or Article 5(3a) subject to the conditions set out in Article 6(3a) and Article 6(3b) respectively;

- (d) if a participant in one of the first seven TLTROs-III fails to make the data relating to the special reference period in the second report or the results of the auditor's evaluation of those data available to the relevant NCB by the relevant deadline specified in the indicative calendar for TLTROs-III published on the ECB's website, the following rules shall apply:
- (i) if either the data relating to the special reference period in the second report or the results of the auditor's evaluation of those data are received by the relevant NCB within the period of 14 calendar days starting on the day after the expiry of the relevant deadline, the participant shall incur for each day until receipt a penalty equal to the total outstanding amount borrowed by the participant under TLTROs-III divided by 1 000 000 (or if that amount is less than EUR 1 000, a penalty of EUR 1 000 for each day until receipt). The penalties incurred per day shall be accumulated and charged to the participant by the relevant NCB after receipt of all data relating to the special reference period in the second report or of the results of the auditor's evaluation of those data. The interest rate related data relating to the second reference period shall be communicated by the relevant NCB to the participant on 1 October 2021;
 - (ii) if either the data relating to the special reference period in the second report or the results of the auditor's evaluation of those data are not received by the relevant NCB within the period of 14 calendar days specified in point (i), the participant's eligible net lending during the special reference period shall be considered lower than its benchmark net lending and the participant may not take advantage of the interest rate set out in Article 5(1);
- (e) if the pecuniary penalty pursuant to point (c)(i) is charged by the relevant NCB, the pecuniary penalty pursuant to point (d)(i) shall not be charged. Similarly, if the pecuniary penalty pursuant to point (d)(i) is charged by the relevant NCB, the pecuniary penalty pursuant to point (c)(i) shall not be charged;
- (f) if a participant fails to make the data relating to the third report or the results of the auditor's evaluation of the data relating to the third report available to the relevant NCB by the relevant deadline specified in the indicative calendar for TLTROs-III published on the ECB's website, the following rules shall apply:
- (i) if either the data relating to the third report or the results of the auditor's evaluation of those data are received by the relevant NCB within the period of 14 calendar days starting on the day after the expiry of the relevant deadline, the participant shall incur for each day until receipt a penalty equal to the total outstanding amount borrowed by the participant under TLTROs-III divided by 1 000 000 (or if that amount is less than EUR 1 000, a penalty of EUR 1 000 for each day until receipt). The penalties incurred per day shall be accumulated and charged to the participant by the relevant NCB after receipt of all data relating to the third report or of the auditor's evaluation of those data. The interest rate related data relating to the second reference period shall be communicated by the relevant NCB to the participant on 1 July 2022;
 - (ii) if either the data relating to the third report or the results of the auditor's evaluation of those data are not received by the relevant NCB within the period of 14 calendar days specified in point (i), the interest rate calculated pursuant to Article 5(1)(b), 5(2)(b) or 5(3)(b) (if the participant has already participated in one of the first seven TLTROs-III), or pursuant to Article 5(3c)(a) (if the participant participated in the eighth or subsequent TLTROs-III), shall apply during the additional special interest rate period to the amounts

borrowed by that participant under those TLTROs-III, while during the period after the additional special interest rate period, the rate shall be calculated pursuant to Articles 5(1)(c), 5(2)(c), 5(3)(c) or 5(3c)(b). If it is the data relating to the third report that are not received by the relevant NCB within the period of 14 calendar days specified in point (i), the participant shall also incur a penalty of EUR 5 000, which shall be charged to the participant by the relevant NCB after receipt of all data relating to the third report;

- (g) if a participant fails to otherwise comply with the obligations set out in Article 6(6), (7) or (8a), the average rate on the main refinancing operations over the life of each respective TLTRO-III shall apply to the amounts borrowed by that participant under TLTROs-III, except during the special interest rate period and the additional special interest rate period when the average rate on the main refinancing operations minus 50 basis points over each such period shall apply;
- (h) if a participant, either in connection with the audit referred to in Article 6(6) and 6(8a) or by any other means, identifies errors in the data submitted in the reports, including inaccuracies or incompleteness, it shall notify the relevant NCB thereof within the shortest timeframe possible. Where the relevant NCB has been notified of such errors, inaccuracies or omissions, or where such errors, inaccuracies or omissions come to its attention by other means: (i) the participant shall provide any additional information requested by the relevant NCB within the shortest timeframe possible to assist in assessing the impact of the errors, inaccuracies or omissions concerned; and (ii) the relevant NCB may take appropriate action, which may include a recalculation of the relevant values that in turn may affect the interest rate applied to the participant's borrowing under TLTROs-III and a requirement to repay the amounts borrowed which, due to the error, inaccuracy or omission exceed the participant's borrowing allowance. Participants shall demonstrate that any shortcomings identified by the audit referred to in Articles 6(6) and 6(8a) have been addressed in the data reported to NCBs in accordance with the timeframe requested by the relevant NCB and, where shortcomings are identified by the auditor's evaluation of the second report or the third report, by a deadline which allows for the timely communication of interest rate related data by the relevant NCB based on the respective data in accordance with the indicative calendar on the ECB's website.

2. Paragraph 1 shall be without prejudice to any sanction that may be imposed pursuant to Decision ECB/2010/10 of the European Central Bank (*) in respect of the reporting obligations laid down in Regulation (EU) No 1071/2013 (ECB/2013/33).

3. For the avoidance of doubt, the reporting requirements and related sanctions in case of non-compliance laid down in paragraph 1 shall only apply if the participant participates in TLTROs-III.

(*) Decision ECB/2010/10 of the European Central Bank of 19 August 2010 on non-compliance with statistical reporting requirements (OJ L 226, 28.8.2010, p. 48).;

(13) in Annex II, point (3) in the third indent (Reclassifications (3.2C)) of point (c)(ii) of Section 4 is replaced by the following:

'(3) Adjustments that result from the correction of reporting errors, in accordance with instructions received from the relevant NCB pursuant to point (h) of Article 7(1);'

Article 2

Entry into force

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Frankfurt am Main, 30 April 2021.

For the Governing Council of the ECB
The President of the ECB
Christine LAGARDE
