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The ECB eligibility criteria and asset purchase programmes after the implementation period

Beyond Brexit – Part of the Horizon Scanning series

July 2020

In response to the COVID-19 pandemic, central banks across the world set out a range of monetary stimulus packages. One such scheme is the European Central Bank's Pandemic Emergency Purchase Programme ("PEPP"), aimed at supporting Eurozone monetary policy during the crisis. The PEPP was launched in March 2020 as a temporary asset purchase programme, and has a capacity of €1,350 billion which can be used to purchase all assets categories eligible under the ECB's existing asset purchase programmes, including both long-term debt securities and short-term commercial paper under the corporate sector purchase programme ("CSPP").

It has been widely reported that this injection of capital by the ECB has had a significant pricing impact: debt securities eligible for the CSPP may benefit from a reduced coupon relative to commercially equivalent debt securities of the same issuer that are not eligible for the CSPP. This has focused attention on the ECB's criteria for eligible collateral for marketable assets and the specific criteria for the CSPP.

Purchases under the PEPP will continue until at least June 2021, meaning that it will likely outlive the Brexit implementation period, due to expire on 31 December 2020. It is also likely that even when the PEPP is wound down, the ECB's asset purchase programmes (initiated in 2014) will continue in some form for the foreseeable future. In any event some issuers may continue to want to structure their debt offerings to ensure that they meet the ECB's criteria for eligible collateral.

Under the Withdrawal Agreement, during the Brexit implementation period, the UK continues to be treated as part of the EU single market. Because some of the ECB eligibility criteria contain jurisdictional restrictions, a question for corporate issuers who wish to access the CSPP or meet the ECB eligibility criteria is how the expiry of the Brexit implementation period may impact the analysis.

The ECB eligibility criteria are set out in a 'General Framework', complemented by a 'Temporary Framework'. There are additional specific criteria for the CSPP. The key criteria that currently apply are summarized in the below table. Note that the ECB may change the criteria from time to time.

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	ECB eligible collateral criteria (general framework[1] complemented by temporary framework[2])	CSPP (eligible collateral criteria with variations[3])
Credit quality	The first-best rating (of either the bonds, issuer or guarantor) must have a minimum credit assessment of credit quality step 3 (currently equivalent to an ECAI rating of BBB-/Baa3/BBB-).[4] Alternatively, if either the bonds, issuer or guarantor (as applicable) had a public credit rating of at least credit quality step 3 as at 7 April 2020, provided that the first-best rating (of the bonds, issuer or guarantor, as applicable) continues to be at least credit quality step 5 (currently equivalent to an ECAI rating of BB/Ba2/BB) after 7 April 2020 the asset will continue to eligible.[5]	The first-best rating must have a minimum credit assessment of credit quality step 3 (currently equivalent to an ECAI rating of BBB-/Baa3/BBB-).
Maturity	No maturity requirements for bonds.	At least 28 days (in relation to minimum remaining maturity at the time of purchase by the ECB for commercial paper). Between six months and 31 years (in relation to minimum and maximum

[1] Guideline (EU) 2015/510 of the European Central Bank on the implementation of the Eurosystem monetary policy framework (unofficial consolidated text with amendments as at 7 April 2020)

[2] Guideline (ECB/2014/31) of the European Central Bank on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral (unofficial consolidated text with amendments as at 7 May 2020)

[3] Decision (EU) 2016/948 of the European Central Bank on the implementation of the corporate sector purchase programme (unofficial consolidated text with amendments as at 24 March 2020)

[4] Article 82, general framework

[5] Article 8(b)(4), temporary framework

		remaining maturity at the time of purchase by the ECB for bonds).[6]
Nature of the issuer	Issuing entities include both credit institutions and non-financial corporates.[7]	Issuing entities include non-financial corporates. Issuer may not be a credit institution or have any parent undertaking which is a credit institution.[8]
Currency	EUR, USD, JPY or GBP[9]	EUR[10]
Location of issuer	If EUR, the issuer must be established in the EEA or a non-EEA G10 country.[11] If USD, JPY or GBP, the issuer must be established in the EEA.[12]	The issuer must be established in the Eurozone.[13]

[6] Article 2(2) CSPP decision
[7] Article 69, general framework
[8] Article 2(1)(b) CSPP decision
[9] Article 7, temporary framework
[10] Article 2(4) CSPP decision
[11] Article 70(1), general framework
[12] Article 7, temporary framework
[13] Article 2(1)(a) CSPP decision

Location of guarantor and governing law of guarantee	If a guarantee is needed to establish credit quality requirements (the guarantor must be established in the EEA[14] and governing law of the guarantee must be that of an EU Member State.[15]
Trading venue	EEA regulated markets and certain non-regulated markets accepted by the ECB.[16]
Form of instrument	If global registered form: issued under the new safekeeping structure for international debt instruments. If global bearer form: issued in new global note form and deposited with a common safekeeper.[17]

The 'trading venue' criterion

During the Brexit implementation period, the London Stock Exchange's Main Market is an 'EEA regulated market' for EU regulatory purposes. Following the Brexit implementation period, it will no longer be an EEA regulated market, and therefore debt admitted to trading on the LSE's Main Market will no longer meet the ECB eligibility criteria.

The LSE has therefore established a process to allow debt admitted to trading on LSE's markets to be admitted to MTS BondVision Europe MTF ("BondVision", a trading venue operated in Italy under the supervision of the Italian financial regulator, Consob), which is an acceptable non-regulated market for the purposes of the ECB eligibility criteria. This process is automatic for new and existing debt securities admitted to LSE's Main Market, but can be implemented on a case by case basis as required on London Stock Exchange's other non-regulated markets such as International Security Market, for any securities meeting the relevant BondVision admission criteria (which are straightforward).

Main Market securities admitted to BondVision automatically will not require any further action or fee from the issuer. This also means that the issuer will not be subject to certain EU MAR obligations

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14 Article 70(2), general framework
15 Article 114(4), general framework
16 Article 68, general framework. The ECB maintains a list of acceptable non-regulated markets on its website.
17 Article 66(3), general framework

as a consequence of the BondVision admission (e.g. the Article 17 requirement to disclose inside information and the Article 18 requirement to maintain insider lists) because those obligations only arise if the issuer has requested or approved the admission. The issuer will still have UK MAR obligations in relation to the LSE Main Market admission (which initially will be aligned to EU MAR obligations).

The 'location of issuer' criterion

Given that the UK is in the G10, EUR denominated bonds issued by entities established in the UK should continue to meet the ECB eligibility criteria after the end of the Brexit implementation period. For new issuances, a legal assessment will be required in a form and substance acceptable to the Eurosystem confirming that relevant UK laws protect the Eurosystem in an appropriate manner.

GBP, USD and JPY denominated bonds issued by entities established in the UK will no longer meet the 'issuer established in the EEA' criterion for the purposes of ECB eligibility and EUR denominated bonds issued by entities established in the UK will no longer be eligible for the CSPP.

In these circumstances it may make sense for some issuers to establish a Eurozone SPV, given that the location of the ultimate parent is not of itself a criterion. Since the PEPP was launched we have advised a number of issuers on establishing a Eurozone SPV to access the CSPP.

The 'Location of guarantor and governing law of guarantee' criterion

To the extent that a guarantee is required to meet the credit quality criteria, a UK established guarantor or an English law guarantee will no longer meet the 'location of guarantor and governing law of guarantee' criterion after the end of the Brexit implementation period.

It is worth noting that from an ECB perspective this will only arise in circumstances where neither the bonds nor the issuer has a credit rating. Even in circumstances in which there is an SPV issuer and a credit rating is given to the bonds on the basis of the guarantee, the ECB will not 'look through' the credit rating of the bonds, making any question over the location of the guarantor or the governing law of the guarantee moot.

What about grandfathering for existing securities?

In the event that a given debt security no longer meets the ECB eligibility criteria (either because of the expiry of the Brexit implementation period or for some other reason, e.g. a ratings downgrade) the ECB's CSPP Q&A state that Eurosystem may choose to, but is not required to, sell its CSPP holdings.

From the issuer's perspective this may not make a significant difference: any pricing advantage is likely to be realised on issuance.

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If you would like further information about this topic, please speak to your usual Slaughter and May contact.

Oliver Storey
T +44 (0)20 7090 3987
E Oliver.Storey@slaughterandmay.com

Edward Fife
T +44 (0)20 7090 3662
E Edward.Fife@slaughterandmay.com

Matthew Tobin
T +44 (0)20 7090 3445
E Matthew.Tobin@slaughterandmay.com

Eric Phillips
T +44 (0)20 7090 3055
E Eric.Phillips@slaughterandmay.com