



EUROPEAN CENTRAL BANK
BANKING SUPERVISION

ECB-PUBLIC

Dexia Crédit Local S.A.
1, passerelle des Reflets
Tour Dexia – La Défense 2
92913 La Défense Cedex
FRANCE

Dexia S.A.
Bastion Tower
Place du Champ de Mars 5
1050 Bruxelles
BELGIUM

Cc
Nationale Bank van België/Banque Nationale de
Belgique (NBB/BNB)
Autorité de contrôle prudentiel et de résolution (ACPR)

Frankfurt am Main, 27 November 2017

Decision permitting Dexia Crédit Local S.A. on the basis of the consolidated situation of Dexia S.A. to include in Common Equity Tier 1 the instruments issued as a result of the conversion of the preferred shares into ordinary shares.

Dear Sir or Madam,

I am writing to notify you that the Governing Council of the European Central Bank (ECB), on the basis of a draft proposal of the Supervisory Board under Article 26(8) of Council Regulation (EU) No 1024/2013¹ has decided, pursuant to Article 31(1) of Regulation (EU) No 575/2013 of the European Parliament and the Council², in conjunction with Article 4(3) of Council Regulation (EU) No 1024/2013, that Dexia Crédit Local S.A. is permitted on the basis of the consolidated situation of Dexia S.A. to include in Common Equity Tier 1 (hereinafter “**CET1**”) the new ordinary Class A shares that will be issued as a result of the conversion of the preferred shares currently grandfathered until 31 December 2017 as CET1 instruments (the “**new A shares**”), also taking into account the Contingent Liquidation Rights (the “**CLRs**”) that will be issued in parallel, as described in the conversion plan submitted by Dexia S.A. and Dexia Crédit Local S.A. to the ECB on 29 September 2017 (the “**conversion plan**”).

1 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 (OJ L 287, 29.10.2013, p. 63).

2 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 (OJ L 176, 27.6.2013, p. 1).

1. Facts on which the decision is based

- 1.1. The ECB has decided in its Decision on the imposition of early intervention measures notified to Dexia S.A. and Dexia Crédit Local S.A. on 6 September 2017³ to:
- (i) require Dexia S.A. to submit by 30 September 2017 a plan ensuring that the conversion into instruments fulfilling the criteria of CET1 pursuant the Regulation (EU) No 575/2013 of all of the preferred shares, currently grandfathered as CET1 instruments until 31 December 2017, is made effective as of 1 January 2018;
 - (ii) require Dexia Crédit Local S.A. to submit by 30 September 2017 a plan ensuring that Dexia Credit Local S.A. will also, as from 1 January 2018, in accordance with Article 11(2) of Regulation (EU) No 575/2013 comply with the overall capital requirement on the basis of the consolidated situation of Dexia S.A.
- 1.2. On 29 September 2017, Dexia S.A. and Dexia Crédit Local S.A. submitted to the ECB a joint conversion plan in order to meet the requirements set out in the ECB decision establishing prudential requirements notified on 12 December 2016⁴ and in the ECB decision on the imposition of early intervention measures notified on 6 September 2017. The conversion plan aims at ensuring that all of the preferred shares held by the Belgian and the French States (the “States”) in Dexia S.A. and grandfathered as state aid CET1 instruments until 31 December 2017 are converted into instruments fulfilling the criteria of CET1 pursuant the Regulation (EU) No 575/2013, as of 1 January 2018. The conversion plan was accompanied (a) by a legal opinion from Dexia’s legal counsels assessing it and concluding that there are good grounds to conclude that the new A Shares would qualify as CET1 under either Article 31 or 28 of Regulation (EU) No 575/2013; (b) by a legal opinion from Dexia’s legal counsel assessing the compliance of the conversion plan with Belgian corporate law; and, (c) by a preliminary opinion from Dexia’s external auditors stating that the conversion plan will not impact the equity of the Dexia group in its consolidated IFRS financial statements.
- 1.3. The conversion plan consists of two related transactions:
- (i) a weighted conversion of all existing preferred shares held by the States into new A shares, based on a conversion ratio that is a function of a) the consolidated net asset value of Dexia as of 30 June 2017 (i.e. EUR 4,672,943,784 and b) the market value of the current class A ordinary shares (i.e. EUR 21,677,575 as of 18 September 2017); and
 - (ii) the issuance of CLRs taking the form of profit shares (*parts bénéficiaires/winstbewijzen*) not representing capital, entitling the States to a preferential liquidation distribution equivalent to EUR 440 million per year as from 1 January 2018 until the date of liquidation of Dexia S.A..
- 1.4. The conversion of the preferred shares into new A shares and the issuance of the CLRs require an amendment of the Articles of Association of Dexia S.A. to be approved by the general shareholder meeting of Dexia S.A. at specific quorum of presence and vote.
- 1.5. As a consequence of the implementation of the conversion plan, all of Dexia S.A.’s shares will be class A ordinary shares with identical rights. The issuance in parallel of the CLRs aims to

3 ECB/SSM/2017 - D3K6HXMBBB6SK9OXH394/45.

4 ECB/SSM/2016 – D3K6HXMBBB6SK9OH394/28

preserve the economic rights currently attached to the preferred shares held by the States so as to satisfy the burden sharing requirements imposed by the European Commission.

- 1.6. By letters of 1 and 4 September 2017, the States notified their intention to convert their preferred shares into new A shares with the adjacent CLRs to the European Commission pursuant to Article 108(3) of the Treaty on the Functioning of the European Union (the “TFEU”) and Article 2 of Regulation 1589/2015. On 19 September 2017, the European Commission adopted a decision stating that (a) the notified measure constitutes an additional State aid and (b) the other measures of 2012 and the notified measure are compatible with the internal market under Article 107(3)(b) of the TFUE.
- 1.7. By letter dated 20 November 2017, Dexia S.A. and Dexia Crédit Local S.A. was given the opportunity to comment on a draft of this Decision with a time limit of two weeks. By e-mail dated 20 November 2017 Dexia S.A. and Dexia Crédit Local S.A. declared not to have any comments.

2. Assessment

- 2.1. The ECB has assessed the conversion plan to determine whether the new A shares resulting from the conversion, taking into account the CLRs that will be issued in parallel (the “Instruments”), fulfil the criteria to be classified as CET1 set in Article 28 and Article 31 of Regulation (EU) No 575/2013. In order to safeguard consistency in the interpretation of applicable laws, the ECB has also consulted the European Commission, the EBA and the SRB on some interpretative issues related to both Article 28 and Article 31 of Regulation (EU) No 575/2013.
- 2.2. The ECB has come to the conclusion that the Instruments do not qualify as CET1 instruments under Article 28 of Regulation (EU) No 575/2013 since the parallel issuance of CLRs has to be taken into account when assessing the new A shares, so that the overall substance of the instrument/transaction is captured⁵:
 - (i) the parallel issuance of CLRs with new A shares constitutes an arrangement which enhances the seniority of claims under the new A shares in insolvency or liquidation since the CLRs held by the States entitle them to a preferential liquidation distribution vis-à-vis historical shareholders of A shares in case of insolvency or liquidation of Dexia S.A., thereby violating Article 28(1)(m) of Regulation (EU) No 575/2013;
 - (ii) the preferential rights attached to the CLRs give an advantage to the States over residual assets in case of liquidation, which contravenes the requirement of proportionate entitlement to the claims among all shareholders in case of liquidation, thereby violating Article 28(1)(k) of Regulation (EU) No 575/2013.
- 2.3. The ECB has assessed whether the Instruments can be included in CET1 by application of Article 31 of Regulation (EU) No 575/2013, which entitles the ECB, as competent authority, to permit institutions to include in CET1 capital instruments subscribed by public authorities in emergency situations, provided that they comply with the conditions set out therein.

The ECB has come to the conclusion that the Instruments comply with the conditions of Article 31

5 See EBA Report on the monitoring of CET1 instruments issued by EU institutions, 23 May 2017.

of Regulation (EU) No 575/2013 and, consequently, the ECB permits Dexia Crédit Local S.A. on the basis of the consolidated situation of Dexia S.A. to include the Instruments in CET1 capital⁶.

2.4. The conclusion of the ECB is based on the following assessment:

2.4.1. Emergency situation (Article 31(1) of Regulation (EU) No 575/2013)

The preferred shares held by the States are grandfathered as State aid CET1 instruments until 31 December 2017, under Article 483(1) of the CRR. In the absence of conversion of these shares into instruments recognised as CET1 instruments under Regulation (EU) No 575/2013 by 31 December 2017, Dexia Crédit Local S.A. on the basis of the consolidated situation of Dexia S.A. will no longer comply with the capital requirements of Regulation (EU) No 575/2013 as from 1 January 2018. The potential effects of non-compliance, in particular given the size of Dexia's balance sheet and the threat to financial stability that its failure would represent, shows that the emergency situation that led to the 2012 public capital injection did not yet disappear and is still being dealt with via the ongoing resolution plan. This risk of non-compliance therefore constitutes an exceptional emergency situation. The condition of Article 31(1) of Regulation (EU) No 575/2013 in relation to the emergency situation is therefore fulfilled.

2.4.2. Issuance after 1 January 2014 (Article 31(1)(a) of Regulation (EU) No 575/2013)

The issuance of the new A Shares and the CLRs require an amendment of the articles of association of Dexia S.A. to be decided by a general shareholders' meeting for which a convening notice has been sent. The implementation of the conversion plan implies the material modification of the respective rights of the two existing classes of shares (A and B). The issuance will take place after 1 January 2014. The condition of Article 31(1)(a) of Regulation (EU) No 575/2013 will therefore be fulfilled.

2.4.3. Capital Instruments as a recapitalisation measure and State aid (Article 31(1)(b) & (c) of Regulation (EU) No 575/2013)

The current preferred shares qualify as State aid pursuant to the decision of the European Commission of 28 December 2012 relating to the State aid granted to Dexia Group.

On 1 and 4 September 2017, the States notified to the EU Commission their intention to convert their preferred shares into ordinary shares (and CLRs) in accordance with the conversion plan.

In its decision of 19 September 2017 notified to the States, the EU Commission decided that (a) the notified measure constitutes an additional State aid and (b) the other measures of 2012 and the notified measure are compatible with the internal market under Article 107(3)(b) of the TFUE.

The conditions of Article 31(1)(b) & (c) of Regulation (EU) No 575/2013 are therefore fulfilled.

⁶ According to Article 205(1) in conjunction with Article 171(2), subparagraph 4 of the Belgian banking Law, Dexia S.A. is responsible that Dexia Crédit Local complies with the capital requirements on the basis of the consolidated situation of its parent company.

2.4.4. Public ownership (Article 31(1)(d) of Regulation (EU) No 575/2013)

The new A shares and the CLRs will be granted to the States as they are the sole holders of the preferred shares to be fully converted. Therefore, as long as the States remain holders of the Instruments, the condition of Article 31(1)(d) of Regulation (EU) No 575/2013 will be fulfilled.

2.4.5. Loss absorption (Article 31(1)(e) of Regulation (EU) No 575/2013)

The new A shares will be ordinary shares under Belgian Corporate law. They are representative of the capital and are able to absorb losses in going concern and in liquidation. The existence of CLRs does not modify such characteristics since they only grant a preferential right to their holders for the residual amount of assets in case of liquidation, after absorption of all the losses. Therefore, the condition of Article 31(1)(e) of Regulation (EU) No 575/2013 will be fulfilled.

2.4.6. Claim on the residual assets of Dexia S.A. (Article 31(1)(f) of Regulation (EU) No 575/2013)

After implementation of the conversion plan, in the event of liquidation, all A shares will provide for a claim on the residual assets of Dexia S.A, after the payment of all senior claims. CLRs are only granting their holders a preferential right on the amounts exceeding the amount of capital (and share premium) after redemption of all creditors including subordinated creditors (boni of liquidation). Therefore, the condition of Article 31(1)(f) of Regulation (EU) No 575/2013 which does not require that the claim on the residual assets is proportional, will be fulfilled.

2.4.7. Adequate exit mechanisms (Article 31(1)(g) of Regulation (EU) No 575/2013)

The Orderly Resolution Plan approved by the European Commission in 2012 which defines a framework to wind down the Dexia group within a precisely defined timeframe on which Dexia regularly reports is considered as a sufficient exit mechanism for the States in order to fulfil the requirement under Article 31(1)(g) of Regulation (EU) No 575/2013).

2.4.8. Instruments fully paid up and not funded by Dexia (Articles 31(1) and 28(1)(b) of Regulation (EU) No 575/2013)

Under the conversion plan, the new A shares will be issued after full conversion of all existing preferred shares, which are fully paid up and are not funded directly or indirectly by Dexia. Therefore, the condition of Article 31(1) in combination with Article 28(1)(b) of Regulation (EU) No 575/2013 will be fulfilled.

2.4.9. Classification as equity (Articles 31(1) and 28(1)(c) of Regulation (EU) No 575/2013)

Under the conversion plan, the new A shares will be ordinary shares which are representative of the capital of Dexia S.A. under Belgian company law and the articles of association of Dexia S.A. and qualify as equity capital within the meaning of Article 22 of Directive 86/635/EEC⁷ and IFRS. They also qualify as equity under the applicable accounting framework. Therefore, the condition of Article 31(1) in combination with Article 28(1)(c) of Regulation (EU) No 575/2013 will be fulfilled.

⁷ Council directive of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (86/635/EEC).

2.4.10. Disclosure in financial statements (Articles 31(1) and 28(1)(d) of Regulation (EU) No 575/2013)

The new A shares will be ordinary shares which will be clearly and separately disclosed on the balance sheet in the financial statements of Dexia S.A. Therefore, the condition of Article 31(1) in combination with Article 28(1)(d) of Regulation (EU) No 575/2013 will be fulfilled

2.4.11. Perpetuity (Articles 31(1) and 28(1)(e) of Regulation (EU) No 575/2013)

Under the conversion plan, the new A shares will be ordinary shares, which are perpetual instruments, without any fixed repayment date. Therefore, the condition of Article 31(1) in combination with Article 28(1)(e) of Regulation (EU) No 575/2013 will be fulfilled.

2.5. The ECB notes that Dexia S.A. and Dexia Crédit Local S.A. submitted a conversion plan within the deadline as set out in the decision on the imposition of early intervention measures notified on 6 September 2017.

3. General

3.1 The ECB has taken this Decision on the basis of the facts provided and statements made by Dexia S.A. and Dexia Crédit Local S.A., in particular that the new A shares will be issued as ordinary shares in accordance with the conversion plan. If any of those facts or statements will not be true, or no longer reflect the state of affairs described, this could constitute sufficient grounds to revoke this Decision.

3.2 This Decision takes effect on the later of the day of its notification and publication on the ECB website.

4. Administrative and judicial review

4.1 In accordance with Article 24 of Regulation (EU) No 1024/2013, within one month of the date of notification, the addressees of this Decision may write to the ECB's Administrative Board of Review requesting an internal administrative review of the Decision. A request for a review should be sent, preferably by electronic mail, to ABoR@ecb.europa.eu or by post to:

The Secretary of the Administrative Board of Review
European Central Bank
Sonnemannstrasse 22
60314 Frankfurt am Main
Germany.

4.2 This Decision may be challenged before the *Court of Justice of the European Union* under the conditions and within the time limits provided for in Article 263 of the Treaty on the Functioning of the European Union.

Yours sincerely,

The Secretary of the Governing Council

Pedro Gustavo TEIXEIRA