



To the Significant Institution

Update: The process described below will be applied by the ECB as of 31 January 2020. Additional information on the notification process can be found in the FAQs published at the ECB's website.

SSM-2019-0430-rev

10 October 2019

Clarification of the process regarding recognition of contractual netting agreements as risk-reducing

Dear Sir or Madam,

The European Central Bank (ECB) wishes to clarify the process to be applied by it as of 10 November 2019 for significant credit institutions with regard to the recognition of contractual netting agreements as risk-reducing pursuant to Articles 295 to 298 of Regulation (EU) No 575/2013 of the European Parliament and of the Council¹.

A significant credit institution that intends to treat contractual netting agreements as risk-reducing must notify its Joint Supervisory Team in any of the following circumstances:

- (i) it intends to treat new types of contractual netting agreements as risk-reducing in accordance with Article 298 of Regulation (EU) No 575/2013;
- (ii) it concludes, or intends to conclude, already recognised types of contractual netting agreements with counterparties or branches located in previously non-recognised new jurisdictions;
- (iii) it concludes, or intends to conclude, already recognised types of contractual netting agreements with new types of counterparties.

Such notification is expected to follow the format set out in the Annex to this letter. Significant credit institutions may treat bilateral netting agreements as risk-reducing after they have provided such notification

¹ 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).

to the ECB. This is without prejudice to the competence of the ECB to conduct any follow-up investigations and to decide that a particular bilateral netting agreement, or a particular type of bilateral netting agreement, or a netting agreement with a particular counterparty or with a particular type of counterparty, is not to be recognised as risk-reducing.

Bilateral netting agreements already recognised as risk-reducing may continue to be treated by the relevant significant credit institution as risk-reducing, without the need for a notification.

The significant credit institutions are also reminded of their obligations pursuant to Article 297 of Regulation (EU) No 575/2013.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Andrea Enria". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Andrea Enria

Chair of the Supervisory Board

Encl. Annex - form of notification

ANNEX

[Name and address/contact details of the institution]

[Name and address/contact details of the JST
Coordinator]

[Institution's reference]

[Place, date]

Notification of treatment of contractual netting agreement[s] as risk-reducing

Dear Sir or Madam,

I hereby notify you that the [name of the institution] intends to treat as risk-reducing in accordance with Article 298 of Regulation (EU) No 575/2013 of the European Parliament and of the Council² the type[s] of master agreement[s] specified below.

By this notification, I also confirm that:

- the type[s] of netting agreement notified create[s] a single legal obligation covering all included transactions, such that, in the event of default by the counterparty for which netting recognition is sought, the credit institution is entitled to receive or obliged to pay only the net sum of the positive and negative mark-to-market values of included individual transactions;
- the credit institution has available the opinions in respect of the applicable laws specified in Article 296(2)(b) of Regulation (EU) No 575/2013 covering the type[s] of netting agreement notified which confirm that, in the event of a legal challenge of the netting agreement[s] concluded with the types of counterparties for which netting recognition is sought, the credit institution's claims and obligations would not exceed the net sum of the positive and negative mark-to-market values of included transactions;

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).

- the credit risk to each counterparty for which recognition of netting is sought is aggregated to arrive at a single legal exposure across transactions with that counterparty and that this aggregation is factored into credit limit purposes and internal capital purposes;
- the netting agreement[s] notified do[es] not contain a walk-away clause as referred to in Article 296(2)(d) of Regulation (EU) No 575/2013;
- in the case of cross-product netting agreements, the conditions set out in Article 296(3)(a) and (b) of Regulation (EU) No 575/2013 are fulfilled and the credit institution maintains procedures under Article 296(2)(c) of Regulation (EU) No 575/2013 to verify that any transaction which is to be included in a netting set is covered by a legal opinion, or opinions, referred to in Article 296(2)(b) of Regulation (EU) No 575/2013;
- the credit institution has procedures in place to ensure that the legal validity and enforceability of its contractual netting is reviewed in the light of changes in the law of relevant jurisdictions referred to in Article 296(2)(b) of Regulation (EU) No 575/2013 and maintains all required documentation relating to its contractual netting in its files;
- the credit institution factors the effects of netting into its measurement of each counterparty's aggregate credit risk exposure and manages its counterparty credit risk on the basis of those effects of that measurement.

Yours sincerely,

[Name and position of authorised signatory]

Types of netting agreements notified:

Type of master agreement	Governing law & supporting opinions		Jurisdiction and type of counterparty & supporting opinions		
[type of agreement] ³ [sponsor] ⁴ [cross-product agreement: [yes/no][products covered]] ⁵	[governing law]	[supporting opinion: law firm and date] ⁶	[Jurisdiction A]	[Counterparty type 1] ⁷ [Counterparty type 2]	[supporting legal opinion: law firm and date] ⁸
			[Jurisdiction B]	[Counterparty type 1] [Counterparty type 2]	[supporting legal opinion: law firm and date]

3 Please specify the type of agreement, e.g. industry standard master netting agreement (including its title, e.g. 1992 ISDA Master Agreement (Multicurrency – Cross Border)) or master netting agreement developed by the credit institution itself. The master netting agreement must comply with Article 296(2)(a) of Regulation (EU) No 575/2013. It is not necessary to include details of individually signed master agreements, unless they include material changes to the core netting provision of the agreement (e.g. early termination, events of default, termination events, computation of close-out amount). A master agreement which includes such material changes should be treated as a new type of master agreement for the purposes of this notification. Please specify whether the agreement notified is a new type of master agreement or amends an existing recognised type of master agreement.

4 Please specify who is the sponsor of the master agreement (e.g. ISDA, the European Banking Federation, a local banking association, the credit institution itself, etc.).

5 Please specify whether the master agreement is a cross-product master agreement (as referred to in Article 295(c) of Regulation (EU) No 575/2013) and if it is, please specify the products covered.

6 See Article 296(2)(b)(iii) and (iv) of Regulation (EU) No 575/2013.

7 Counterparty type refers to the general type of counterparty in a given jurisdiction, e.g. ‘corporate’, ‘credit institution’, ‘mutual fund’, ‘municipality’, etc.

8 See Article 296(2)(b)(i) and (ii) of Regulation (EU) No 575/2013.