

Imposition of an administrative penalty on Crédit Agricole S.A.

The EUROPEAN CENTRAL BANK,

decided on 12 July 2022 to amend Decision ECB-SSM-FRCAG-2018-75 of 16 July 2018 (the ‘initial ECB decision’) and to impose an administrative penalty on Crédit Agricole S.A. in the amount of EUR 4,275,000 pursuant to Article 18(1) of Council Regulation (EU) No 1024/2013. This penalty is imposed in respect of a breach of Article 26(3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council for having classified capital instruments as Common Equity Tier 1 (CET 1) instruments from 30 June 2015 to 30 June 2016 without the ECB’s prior permission.

On 8 July 2020, the General Court annulled partially the initial ECB sanction decision due to an insufficient statement of reasons concerning the determination of the amount of the penalty imposed in 2018 (case T-576/18). The judgment confirmed Credit Agricole S.A.’s liability for the infringement. On 16 June 2021, the Court of Justice dismissed the appeal brought by Crédit Agricole S.A. against the judgment of the General Court (joined cases C-456/20 to C-458/20).

ECB decision of 12 July 2022 addresses the procedural deficiency identified by the General Court by providing a supplemented statement of reasons, and imposes a penalty on Crédit Agricole S.A. which corresponds to the pecuniary penalty imposed in the initial ECB decision (slightly reduced due to the application of a different rounding practice, in favour of the bank).

When determining an administrative penalty, the ECB follows the principles set out in the ECB’s Guide to the method of setting administrative pecuniary penalties pursuant to Article 18(1) and (7) of Council Regulation (EU) No 1024/2013. The ECB considered all the relevant circumstances of the case, in particular the degree of the misconduct of Crédit Agricole S.A., together with the impact of the breach, the size of the entity and the applicable mitigating factor.

The degree of the entity’s misconduct was assessed as ‘high’, taking into account the fact that the entity continued to classify the capital instruments as CET1 instruments without the ECB’s prior permission even after it had applied for permission and despite an explicit warning by the ECB, which reminded the entity about the scope of its obligations. The ECB assessed the impact of the breach as ‘low’ based on the duration and the effect that the breach had on the prudential situation of the entity and its effective supervision, as determined on the basis of the amount of capital instruments classified without prior

permission and the deviation it represents in basis points on the CET1 ratio of Crédit Agricole S.A., as well as the fact that most of the instruments were issued following the distribution of scrip dividends to the shareholders, automatically fulfilling some of the requirements necessary to obtain the prior permission required by law for the classification of the instruments as CET1 instruments. In view of the specific circumstances determining the 'low' impact of the breach and the level of misconduct, the ECB classified the breach as 'moderately severe'. In addition, the ECB considered as a mitigating circumstance the fact that, following the entity's application, the ECB granted permission to classify the capital instruments concerned as CET1 instruments.

The administrative penalty is published in accordance with Article 18(6) of Council Regulation (EU) No 1024/2013 and Article 132 of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17).

The ECB's decision to impose an administrative penalty on Crédit Agricole S.A. 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.