

RÉPUBLIQUE FRANÇAISE

Ministère de l'économie et des finances

Decree No. 2012-1517 of 29 December 2012 on Collective Action Clauses Applying to Government Securities

NOR: EFIT1239723D

Groups concerned: holders of government debt securities

Purpose: this decree stipulates the implementation procedures for the article in the 2013 Budget Act that provides for the inclusion of collective action clauses in new government securities issued on or after 1 January 2013 in order to facilitate decision-making in the context of government debt restructurings.

Entry into force: **1 January 2013.**

Notice: the purpose of this decree is to stipulate the implementation procedures for the article in the 2013 Budget Act on the inclusion of collective action clauses in new government securities issued on or after 1 January 2013. The implementation of these clauses allows the government to modify the terms and conditions of the issuance contract if it obtains the consent of the requisite majority of the holders. For this purpose, the decree stipulates the procedures for votes held, either by calling a meeting of the government security holders or by signing a written resolution (quorum and majority requirements, rules for calling and holding meetings). The approval thresholds depend on the type of modification being put to the bondholders' vote. The most important matters (such as key payment terms, obligation conversions or obligation exchanges) will require a larger qualified majority than other matters. These rules have been harmonised at the European level ("Common Terms of Reference" adopted by the European Union Economic and Financial Committee on 18 November 2011).

***References:** this decree has been issued under the article in the 2013 Budget Act on the inclusion of collective action clauses in the issuance contracts for government securities (Article 59 of Act 2012-1509 of 29 December 2012).*

The Prime Minister,

Acting on a report from the Minister for the Economy and Finance,

Having regard to the Treaty Establishing the European Stability Mechanism, and in particular Article 12(3) thereof;

Having regard to Constitutional Bylaw 2001-692 of 1 August on Budget Acts, and in particular Articles 22, 26 and 34 thereof;

Having regard to the 2013 Budget Act 2012-1509 of 29 December 2012, and in particular Article 59 thereof;

Hereby decrees:

Article 1

Any reserved or non-reserved matter modification to the terms and conditions of the issuance contract of government securities with a maturity of more than one year is subject to the approval of the holders of the outstanding securities. Such approval may be given by a vote at a meeting of the holders or by signing a written resolution in accordance with the procedures stipulated in this decree.

The terms and conditions of the issuance contract for government securities may be modified by the government without the consent of the holders of the securities in order to correct manifest errors, cure an ambiguity or make a modification of a formal or a technical nature or for the benefit of the holders of the securities.

Chapter I General Provisions

Article 2

A reserved matter modification to the terms and conditions of the issuance contract is any modification that would:

- 1° change the date on which any amount is payable on the government securities;
- 2° reduce any amount, including any overdue amount, payable on the government securities;
- 3° change the method used to calculate any amount payable on the government securities;
- 4° reduce the redemption price of the government securities or change any date on which the government securities may be redeemed;

- 5° change the currency or place of payment of any amount payable on the government securities;
- 6° impose any condition on or otherwise modify the government's obligation to make payments on the government securities;
- 7° except as permitted by any related guarantee, release any guarantee issued in relation to the Bonds or change the terms of that guarantee;
- 8° except as permitted by any related security agreement, release any collateral that is pledged or charged as security for the payment of the government securities or change the terms on which that collateral is pledged or charged;
- 9° change any payment-related circumstance under which the government securities may be declared due and payable prior to their stated maturity;
- 10° change the seniority or ranking of the government securities;
- 11° change the principal amount of the outstanding government securities or, in the case of a cross-series modification, the principal amount of debt securities of any other series required to approve a proposed modification in relation to the government securities, the principal amount of outstanding government securities required for a quorum to be present, or the rules for determining whether a government security is outstanding;
- 12° change the definition of a reserved matter.

Article 3

Voting rights are determined by the registration of the securities in question, either in the securities accounts managed by the government or in the securities accounts managed by the intermediary referred to in Article L. 542-1(2-7) of the Monetary and Financial Code. The record date is set three business days prior to the date of the meeting or the signing of the written resolution at 12 am, Paris time. Each intermediary submits the list of holders to the government.

Article 4

A holder of government securities and their former component parts may cast votes equal in number to the principal amount of the holder's securities.

If the proposed modification or modifications involve obligations denominated in more than one currency, index-linked obligations or zero-coupon obligations, their principal amount is calculated according to the following procedures:

1° If the modification involves securities denominated in more than one currency, the principal amount of each affected security will be equal to the amount of euro that could have been obtained on the record date for the proposed modification with the principal amount of that security, using the applicable euro foreign exchange reference rate for the record date published by the European Central Bank.

2° If the modification involves an index-linked obligation, the principal amount of each such index-linked obligation will be equal to its adjusted nominal amount.

3° If the modification involves a zero-coupon obligation that did not formerly constitute a component part of an index-linked obligation, the principal amount of each such zero-coupon obligation will be equal to its nominal amount, or, if its stated maturity date has not yet occurred, to the present value of its nominal amount.

4° If the modification involves a zero-coupon obligation that formerly constituted a component part of an index-linked obligation, the principal amount of each such zero-coupon obligation will be equal:

- when the obligation formerly constituted the right to receive a non-index-linked payment of principal or interest, to its nominal amount or, if the stated maturity date of the non-index-linked payment has not yet occurred, to the present value of its nominal amount;
- when the obligation formerly constituted the right to receive an index-linked payment of principal or interest, to its adjusted nominal amount or, if the stated maturity date of the index-linked payment has not yet occurred, to the present value of its adjusted nominal amount.

Article 5

No voting rights are attached to securities that, on the record date referred to in Article 3:

- (a) have previously been delivered to the government for cancellation or held by the government for reissuance, but not yet reissued;
- (b) are held by an entity controlled by the government that does not have autonomy of decision.

For the purposes of this article, any entity in which the government directly or indirectly holds the majority of the voting rights or appoints the majority of the members of the administrative, management or supervisory bodies will be deemed to be controlled by the government. An entity will be deemed to have autonomy of decision if it may not, directly or indirectly, take instructions from the government on how to vote or if its articles of association or its corporate purpose require it to comply with an objective prudential standard or it votes in the interest of other stakeholders.

The Minister for the Economy publishes by ministerial order the list of entities referred to in (b) at least 10 days prior to the record date.

Article 6

The Minister for the Economy will appoint a person to calculate whether a quorum is present and the requisite majority has voted to approve the proposed modification.

The Minister publishes a certificate specifying for each series affected by the proposed modification prior to the meeting date or the date of signing of the written resolution:

- 1° The total principal amount of the government securities outstanding on the record date referred to in Article 3 and calculated in accordance with Article 4;
- 2° The total principal amount of the government securities deemed to be not outstanding on the record date referred to in Article 3 and calculated in accordance with Article 5; and
- 3° The identity or names of holders of the government securities referred to in 2°.

Holders of the government security concerned may challenge the certificate only by delivering a substantiated written objection to Minister for the Economy prior to the meeting date or the signing of the written resolution and by showing that the alleged error would affect the result of the voting at the meeting or the signing of the written resolution. If the person referred to in

the first paragraph of this article does not respond to the objection, the interested party will have 15 days after the publication of the result of the vote to challenge the certificate in court. The certificate may only be cancelled if the error has affected the result of the vote.

Chapter II Provisions on Voting at Meetings

Article 7

The Minister for the Economy may convene a meeting of the holders of government securities at any time. Such meetings will be automatically convened if events of default are continuing in relation to the obligations with clauses providing for such events and if a meeting is requested in writing by the holders of not less than 10% of the aggregate principal amount of the government securities then outstanding.

If the proposed modification(s) involve(s) several series of government securities, the number of meetings convened must be equal to the number of series of securities involved. The proposed modification(s) may include several alternative modifications in relation to a reserved matter.

The notice of the meeting will be published at least 21 days prior to the date of the meeting or, in the case of an adjourned meeting, at least 14 days prior to the date of the adjourned meeting. The notice will specify the record date referred to in Article 3 and the name of the person appointed as the calculation agent referred to in Article 6. It will be sent with the proposed modification(s) being put to a vote, including, where applicable, the various proposed options, and the form to be used to appoint a proxy.

Article 8

The Minister for the Economy will appoint the chair of the meeting. If this chair is not present, the chair of the meeting will be appointed by the holders of more than half of the aggregate principal amount of the securities outstanding on the record date referred to in Article 3 represented at the meeting.

The chair of the meeting ensures that a record of attendance is taken and that the minutes are written up.

Article 9

I. The meeting may only transact business if the following are present or represented:

- 1° The persons holding not less than two-thirds of the aggregate principal amount of the securities outstanding on the record date referred to in Article 3, in the case of a reserved matter modification;
- 2° The persons holding not less than one half of the aggregate principal amount of the securities outstanding on the record date referred to in Article 3, in the case of non-reserved matter modification;

If a quorum required to vote on the proposed modification is not present within thirty minutes of the time appointed for the meeting, the chair of the meeting will adjourn the meeting for a period of not more than 42 days and not less than 14 days.

II. The adjourned meeting may only transact business if the following are present or represented:

1° The persons holding not less than two-thirds of the aggregate principal amount of the securities outstanding on the record date referred to in Article 3, in the case of a reserved matter modification;

2° The holders of securities representing not less than one quarter of the aggregate principal amount of the securities outstanding on the record date referred to in Article 3, in the case of non-reserved matter modification.

Article 10

The proposed modification will be deemed to be approved if it obtains:

1° The affirmative votes of not less than three-quarters of the aggregate principal amount of the outstanding securities represented at the meeting, in the case of a reserved matter modification involving a single series of securities;

2° The affirmative votes of not less than three-quarters of the aggregate principal amount of the securities represented at separate duly called meetings of the holders of all the series taken in the aggregate, as well as the affirmative votes of more than two-thirds of the aggregate principal amount of the securities represented at separate duly called meetings of the holders of each series of securities taken individually, in the case of a reserved matter modification involving more than one series of securities. If the latter requirement is met only for certain series of securities, the modification is deemed to be approved for those series only, provided that the holders of the securities were notified of this possible result prior to the record date referred to in Article 3; if there is no notification of this possible result, the modification is not approved for any series;

3° The affirmative votes of more than one half of the aggregate principal amount of the securities represented at the meeting, in the case of non-reserved matter modification.

Chapter III Provisions on Written Resolutions

Article 11

The Minister for the Economy will publish the date on which the proposed modifications to the issuance contract will be submitted for the written approval of holders of government securities outstanding and the procedures for the vote.

The appointed date will be no less than 15 days after the notice.

Article 12

The proposed modification will be deemed to be approved if it obtains:

1° The written approval of the holders or their proxies representing not less than two-thirds of the aggregate principal amount of the securities outstanding, in the case of a reserved matter modification involving a single series of securities;

2° The written approval of the holders or their proxies representing not less than two-thirds of the aggregate principal amount of the securities of all series taken in aggregate, as well as the written approval of the holders or their proxies representing more than one half of the aggregate principal amounts of all series taken individually, in the case of a reserved matter modification involving more than one series of securities. If the latter requirement is met only for certain series of securities, the modification is deemed to be approved for those series only, provided that the holders of the securities were notified of this possible result; if there is no notification of this possible result, the modification is not approved for any series;

3° The affirmative votes of the holders or their proxies representing not less than one half of the aggregate principal amount of the securities, in the case of a non-reserved matter modification.

Chapter IV Common Provisions

Article 13

The resolution approving the modification will be published no more than 15 days after its approval.

Article 14

Any modification that is approved in accordance with the provisions above may give rise to the conversion of all of the government securities affected or the exchange of said securities for new securities, provided that the holders have been notified of the planned exchange or conversion prior to the record date referred to in Article 3.

Article 15

An order from the Minister for the Economy will define, as necessary, the procedures for arranging representation of holders of government securities, calculating the value of certain obligations, holding meetings of government security holders and the signing of written resolutions.

Article 16

This decree will enter into force on 1 January 2013.

Article 17

The Minister for the Economy and Finance is responsible for the enforcement of this decree, which will be published in the Official Journal of the French Republic.

Done on 29 December 2012

By the Prime Minister:

Jean-Marc AYRAULT

The Minister for the Economy and Finance

Pierre MOSCOVICI