

EFC SUB-COMMITTEE ON EU SOVEREIGN DEBT MARKETS

2022 COLLECTIVE ACTION CLAUSE

EXPLANATORY NOTE

A. INTRODUCTION

On 4 December 2018, euro area finance ministers announced the reform of the euro area model collective action clause in force since January 2013 (the “2013 euro area model CAC”). This reform is part of a package of policy measures intended to strengthen the Economic and Monetary Union. The commitment to reform the 2013 euro area model CAC was later confirmed by the Heads of State and Government of euro area member states at the Euro Summit held on 14 December 2018.

The main purpose of the reform of the 2013 euro area model CAC is to introduce a “single-limb” voting mechanism. Under a “single-limb” voting mechanism, a proposed “cross-series” modification (which is a modification affecting more than one series of euro area government debt securities issued by a member state) is binding on all holders of series of debt securities aggregated in one voting group if the proposed modification is approved by holders of a majority of all securities aggregated in the voting group. This removes the need for an additional majority at the level of each individual series, which existed under the 2013 euro area model CAC (known as a “double-limb” CAC). This reform of the 2013 euro area model CAC generally intends to improve the process of orderly debt restructuring in the euro area, as well as to reduce the risk of holdout creditors.

As a result of this agreement in December 2018, the updated CAC is included in all new euro area government securities with maturity above one year, which are issued after 1 January 2022. Euro area member states commit to implement the updated CAC through the Treaty Establishing the European Stability Mechanism. Implementation takes place at national level, by way of changes to the conditions of the debt securities in scope in each euro area member state and supporting legislation or regulations, if required.

The updated CAC does not apply retroactively to bonds issued prior to January 2022. Euro area government debt securities with maturity above one year issued between January 2013 and January 2022 continue to include the 2013 euro area model CAC. Similarly, debt securities issued prior to January 2013 do not have their terms changed as a result of this reform (just as they were not changed by the introduction of the 2013 euro area model CAC).

The EFC Sub-Committee on EU Sovereign Debt Markets (the “Committee”) was tasked with producing the updated CAC called for by the euro area authorities. Following an extensive review and consultation process, the Committee approved the model CAC that this note accompanies (the “2022 CAC”).

B. BASIS OF THE 2022 CAC

The 2022 CAC is based on the 2013 euro area model CAC. The Committee took into account the endorsement by the International Monetary Fund in August 2014 of collective action clauses with “single-limb” voting such as the model CAC developed by the International Capital Markets Association (the “ICMA Model CAC”). While significant differences in context and purpose prevented, in the view of the Committee, a complete alignment between the 2022 CAC and the ICMA Model CAC¹, the latter nonetheless influenced some of the solutions adopted in the 2022 CAC.

The design of the 2022 CAC (like that of the 2013 euro area model CAC) takes into account the level of issuance and product sophistication present in euro area sovereign debt markets. The Committee introduced the changes deemed necessary to introduce “single-limb” voting, in line with the following objectives:

- To retain an even playing field among euro area member states, while retaining enough flexibility to allow for the pursuit of different funding strategies by each member state at different points in time.
- To facilitate the agreement of creditors to the possible modification of euro area government debt securities that contain a standardised CAC.

C. SCOPE OF APPLICATION

The 2022 CAC has an identical scope to the 2013 euro area model CAC. This reflects the mandate given to the Committee. The 2022 CAC therefore is mandatory for all new euro area government debt securities with an original stated maturity of more than one year issued by national euro area governments from 1 January 2022, regardless of whether the debt security is listed on a securities exchange, is actively traded or was privately placed. For ease of reading, any euro area government debt security that must contain the 2022 CAC will generally be referred to in this Explanatory Note as a bond.

Like the 2013 euro area model CAC, the 2022 CAC does not apply to retail savings bonds that may not be transferred by their holder. These savings products, sold by some euro area member states, are not capital market instruments and should not be treated as “debt securities” for the purposes of the CAC, even if they are sometimes styled “saving bonds” for retail marketing purposes.

As was the case for the 2013 euro area model CAC, the limitation in the mandatory scope of the 2022 CAC does not preclude voluntary introduction in other instruments. Notably, issuers may decide to adopt the 2022 CAC for debt securities issued by regional and

¹ The Committee took into account that the 2022 CAC (like the 2013 euro area model CAC) will apply to debt securities issued by euro area member states both under foreign and under domestic law. As a significant majority of all euro area sovereign debt is issued under the domestic law of each issuer, the Committee adopted the view that the euro area should develop its own approach.

local governments, state-owned entities, debt securities guaranteed by covered guarantors or actively traded syndicated loans contracted by covered borrowers.

There is also no deviation from the existing situation under the 2013 euro area model CAC concerning the treatment of “tap” issuances. While euro area member states will treat the issuance of bonds under the 2022 CAC as standard, they remain allowed to reopen debt issuances outstanding as at 1 January 2022, in order to preserve market liquidity. Neither the original “tapped” issuance nor the new bonds issued in the “tap” will be required to contain the 2022 CAC. The Economic and Financial Committee will monitor, and may regulate, such “tap” issuances.

D. STRUCTURE SUMMARY

The 2022 CAC distinguishes between four types of modification, grouped according to two dichotomies:

	<u>Only one series affected</u>	<u>More than one series affected</u>
<u>Modification of fundamental terms of the instrument</u>	Reserved Matter Modification (Section 2.1)	Cross-Series Modification (Reserved Matter) (Section 2.2)
<u>Modification of non-fundamental terms of the instrument</u>	Non-Reserved Matter Modification (Section 2.4)	Cross-Series Modification (Non-Reserved Matter) (Section 2.5)

Different approval thresholds apply to each type of modification. In all cases, a proposed modification requires the issuer’s own consent, evidenced in its proposals for modifications, and will also involve other interested parties, if any (for example, a fiscal or paying agent) under other provisions of an issuer’s issuance documentation. Procedural matters relating to such interested-party approvals are generally not addressed in collective actions clauses, and are also not addressed in the 2022 CAC.

Like the 2013 euro area model CAC, the 2022 CAC will not include a technical amendments clause, limit the right of a bondholder to accelerate its bonds and bring legal procedures against the issuer, or grant bondholders the right to rescind a prior acceleration notice. While not a part of the 2022 CAC, all euro area Member States may include such clauses in the definitive documentation for their bonds to the extent that such inclusion is consistent with their existing practice and applicable law. The text of the recommended provisions, identical to the one approved together with the 2013 euro area model CAC, is enclosed.

E. CROSS-SERIES MODIFICATIONS

The 2022 CAC allows “single-limb” voting of cross-series modifications. This means that a proposed modification affecting multiple series of bonds aggregated into one voting group can be binding on all bonds included in the voting group if the proposed modification is approved by a majority of the aggregate principal amount of those bonds. The additional requirement for an approving majority within each (separate) series of bonds being aggregated has been removed so that the so-called “double-limb” majority present in the 2013 euro area model CAC no longer applies.

In line with the mandate received from the Eurogroup Working Group, “single-limb” voting was introduced as the only option for cross-series aggregated voting. In the ICMA Model CAC, “single-limb” and “double-limb” voting are both available to the issuer at the time of proposing the modification. Yet in the case of the euro area, the possible benefits of keeping “double-limb” voting as an option were seen as not outweighing the loss of clarity and predictability.

The Committee chose to introduce the notion of “uniformly applicable” cross-series modifications as a condition for “single-limb” voting on “reserved matters”. The requirement that modifications voted under “single-limb” voting be “uniformly applicable” across all affected series (introduced by the ICMA Model CAC) aims to safeguard investor rights by imposing a measure of equality among those affected by the modification, and is therefore a desirable step to take in ensuring that the added issuer discretion afforded by “single-limb” voting is used in a way that is fair to both issuers and investors. Upon consideration, the Committee decided that a similar safeguard was unnecessary in connection with voting on “non-reserved matters”, as further explained in Section G below.

The Committee opted to extend the notion of “uniformly applicable” beyond the meaning ascribed to it in the ICMA Model CAC. Under the 2022 CAC, issuers may combine series of bonds in a “single limb” vote if any of the following is proposed to all bondholders in the series that are combined:

- A modification to the principal amount outstanding under the bonds (which may reduce both future interest payments and the repayment of principal at maturity) that is proportionate across all series participating in the “single-limb” vote²;
- A modification to extend the date for payment of principal under the bonds that is either an identical or a proportional extension of the term of the relevant payment³;

² For example, a modification of the terms of all bonds in all affected series to reduce the principal amount of each bond in each series by the same percentage.

³ For example, a modification of the terms of all bonds in all affected series to extend the residual maturity of the bonds of each series (as of the time of the modification) by the same amount of time (so that a two-year bond becomes a three-year bond, a four-year bond becomes a five-year bond, etc.) or by a proportional period of time (so that a two-year bond becomes a three-year bond, a four-year bond becomes a six-year bond, etc.). A modification of this type may include adding new coupon payments for the period of the extension.

- An offer of the same instrument (or choice of instruments) to all holders of all series participating in the vote⁴, or an amendment to the terms of existing instruments producing an equivalent effect;
- In relation to certain reserved matters not linked to dates or amounts of payments, the Committee found that series of bonds can be aggregated if the relevant terms of the bonds, being identical before a modification (notably, when all affected bonds are issued under the same programme), are modified in a uniform manner for the different series without a need to make the position of the relevant investors in those different series identical in all other ways⁵; or
- A modification to extend one or more interest payment dates (other than in connection with an extension of principal) under all series combined in the voting procedure in a uniform way, as a form of “re-profiling”.

These additional approaches to the definition of “uniformly applicable” represent, in the Committee’s view, a reasonable compromise between flexibility for issuers to efficiently manage the debt and safeguards for investors. Taking into account the differences in debt volumes and types of debt instruments across the euro area member states, the Committee took the view that it was necessary to have a number of formulations of the “uniformly applicable” investor safeguard. On the other hand, the Committee believed it necessary for investors to be informed about how issuers might prepare proposals for voting under a “single-limb” voting mechanism.

An issuer is not required to combine all series of bonds in a “single-limb” vote and may aggregate series of bonds for voting purposes into different groups, by adopting the so-called “sub-aggregation” approach. This is where an issuer groups its bonds in separate aggregated pools, each voting under “single-limb” on its own “uniformly applicable” modification proposal – which would not necessarily be “uniformly applicable” across all aggregated pools.

Upon consideration, the Committee decided not to restrict the use of “sub-aggregation” within the 2022 CAC to a pre-determined set of circumstances. The benefits of “single-limb” voting for issuers increase when the proposal is made in respect of as many outstanding bonds as possible, so there is an incentive to have as few groups as possible. As such, issuers are generally expected to use sub-aggregation only when specific circumstances make it

⁴ This corresponds to the notion of “uniformly applicable” set out in the ICMA Model CAC.

⁵ This part of the definition covers cases such as the release of a guarantee, an amendment to an event of default, a change in governing law, etc. Its objective is to ensure that if a certain condition applies equally to a number of bond series (as will often be the case for different series issued under the same programme having the same governing law or events of default), that condition can still be amended for existing bonds while keeping other existing differences between those bonds, for example as regards interest rate or maturity.

useful in light of their debt profile – for example, when the nature and/or the characteristics of the bonds would justify it (e.g., having all Sukuk bonds in one group, all green bonds in another group, all inflation-linked bonds in another, and all plain vanilla bonds in a fourth), or to group series of outstanding bonds based on their residual maturity. Decisions on sub-aggregation, including these or other factors, should take into account the principle of non-discrimination for similarly placed holders as well as the objective of sufficient involvement of the private sector in debt restructuring.

The issuer’s choice at the time of a proposed modification to exclude some bonds from cross-series modification and/or apply “sub-aggregation” will need to take into account the law applicable to the issuer and, if different, to the relevant series of bonds.

Depending on the circumstances, the following bodies/sources of law may apply:

- The European Convention on Human Rights;
- European Union law (notably where equal treatment among EU nationals comes into play); and
- Legislation and constitution of the euro area member state issuing the bonds and, if different, the law governing the bonds themselves (particularly as they relate to equal treatment and the protection of property rights against undue expropriation).

F. RESERVED MATTERS

The 2022 CAC brings little change to the list of “reserved matters” requiring approval by qualified majority that is set out in the 2013 euro area model CAC. In the Committee’s view, the list remains broadly consistent with current market practice.

Given the broad range of instruments to which the 2022 CAC is meant to apply, the list of “reserved matters” is expressed in general terms. For example, the 2022 CAC treats as a reserved matter a reduction in “any amount” payable on a bond. This formulation covers, among other things, any reduction in the principal, interest or “additional amounts” that may be payable on that bond. This is because, like the 2013 euro area model CAC, the 2022 CAC should cover bearer, registered and dematerialised bonds, zero-coupon and interest bearing bonds, redeemable and non-redeemable bonds and domestic and international bonds, among others.

The 2022 CAC treats as a reserved matter a modification that would impose a condition on or otherwise modify an issuer’s obligation to make payments on a bond. This formulation covers, among other things, a change in the nature of the issuer’s obligation – for example, a modification of the issuer’s unconditional obligation to make payments on the bonds – or the substitution of a new obligor in place of the original issuer through an exchange of existing bonds for a new series of bonds.

The 2022 CAC treats a change of the law governing a bond as a reserved matter whether a bond is governed by domestic or foreign law. The 2022 CAC includes “single-limb” cross-series modification in respect of non-reserved matters, and the application of the

relevant threshold to a change of the governing law of a series of bonds (which forms an essential part of its conditions) was deemed inadequate. Consequently, the Committee decided to make any change to the governing law of a series of bonds a reserved matter modification.

Due to the adoption of “single-limb” voting, the Committee added to the definition of “reserved matters” any changes to the definitions of “uniformly applicable”, “cross-series modification” and “Relevant Series”. The goal is to ensure that modifying the investor safeguard requires the same voting thresholds as the reserved matter modifications to which it applies.

Other items on the list of “reserved matters” in the 2022 CAC are manifestly not relevant to all euro area government debt securities. For example, a change in the terms on which collateral is pledged to secure payment of a series of bonds is relevant only in the case of bonds that are collateralised in the first place. These items are footnoted in the 2022 CAC, as they were in the 2013 euro area model CAC, to indicate when they are to be included in the terms and conditions of a bond.

G. QUORUMS AND MAJORITY THRESHOLDS

The 2022 CAC allows “cross-series” modifications on reserved matters to be approved by at least 66 2/3% of the outstanding principal amount of all relevant series. In most euro area member states, domestic law bonds represent a large part of the total stock of bonds issued by euro area member states. Under many such domestic laws, the majority threshold now adopted reflects that which is used in voting processes requiring super-majorities. The Committee has set the majority threshold by reference to total outstanding principal of the bonds rather than to the principal amount of the votes represented at a meeting. Therefore, there is no longer a requirement to maintain a quorum in relation to “cross-series” modifications.

The 2022 CAC maintains the quorums and majority thresholds of the 2013 euro area model CAC with regard to “single-series” (i.e., non cross-series) modifications. As a result:

- For “reserved matter” modifications, Section 2.1 continues to require the affirmative vote of holders of not less than 75% of the outstanding principal amount of a series of bonds represented at a meeting of bondholders at which a quorum of 66 2/3% of the outstanding principal amount of the series of bonds is present, or a written resolution signed on behalf of the holders of at least 66 2/3% of the outstanding principal amount of the series of bonds in question.
- For “non-reserved matter” modifications, Section 2.4 also maintains the requirements of Section 2.5 of the 2013 euro area model CAC.

Like the 2013 euro area model CAC, the 2022 CAC does not include a technical amendments clause. These clauses allow issuers to unilaterally modify the terms and

conditions of a bond, or an agreement governing the issuance or administration of a series of bonds, without the consent of bondholders if (a) the modification is to correct a manifest error or cure an ambiguity, (b) the modification is of a formal, minor or technical nature, or (c) the modification does not materially prejudice the interests of bondholders. The Committee maintained its previous understanding that this is not an essential element of a collective action clause. All euro area member states remain free to include a technical amendments clause in the terms and conditions of their bonds.

The Committee also decided to adopt a “single-limb” voting mechanism for cross-series modifications pertaining to “non-reserved matters”. The Committee found this to be a logical step in light of the adoption of “single-limb” voting on “reserved matters”. “Non-reserved matters” may include modifications that might have fallen under a technical amendments provision but where no such provision is included in the relevant issuance documentation. The Committee believes that only matters with reduced impact on the position of bondholders will be dealt with under this alternative voting mechanism. This means less interest in the topic from investors, and hence possible difficulties in attracting the interest of enough bondholders to vote through the required approvals. With this in mind, the Committee decided to set the majority threshold for these modifications at more than 50% of the aggregate outstanding principal of the bonds affected by the modification.

The concept of “reserved matters” covers all elements of the bonds that are of material importance to bondholders. With that in mind, the Committee decided that no additional investor safeguard (namely, the requirement that changes proposed are “uniformly applicable”) was needed in the context of cross-series modification in respect of “non-reserved matters” and that there the voting threshold for “non-reserved matters” suffices as an investor safeguard.

H. INDEX-LINKED AND ZERO-COUPON BONDS

The Committee decided to maintain the approach set out in 2013 euro area model CAC for index-linked bonds. This consists in taking into account the adjusted nominal amount to compute the voting rights. As a result, and in summary, under the 2022 CAC:

- The adjusted nominal amount of any index-linked bond is the amount of the payment that would be due on the stated maturity date, based on the value of the related index on the record date published by the issuer or, in the absence of such publication, on the interpolated value of the related index; and
- The adjusted nominal amount of such index-linked bond will be at least its nominal amount, unless the terms and conditions of the bond state that the amount of the payment made on the bond may be less than its nominal amount.

The Committee also decided to maintain the approach set out in the 2013 euro area model CAC for calculating the voting rights inherent to zero-coupon bonds. The Committee re-considered both the existing and alternative methodologies. It concluded that no alternative brought advantages that would outweigh the drawbacks of the fragmentation

resulting from having two sets of methodologies (one under the 2013 euro area model CAC and one under the 2022 CAC). In its assessment, the Committee took into account a range of possible scenarios, including in relation to the interest rate environment. As a result, and in summary, under the 2022 CAC:

- the **voting rights of bonds issued without express provision for the accrual of interest** will continue to be determined by discounting the nominal amount of these bonds against their yield-to-maturity at issuance⁶.
- the **voting rights associated to the “stripped” component of a former interest-bearing bond** will continue to be determined by discounting the amount of the “stripped” component against the coupon rate of the original bond⁷.

I. DISENFRANCHISEMENT

As per market practice and the 2013 euro area model CAC, the 2022 CAC disenfranchises government bonds held by the issuer or by anyone whose decision on how to vote is controlled by the issuer. An issuer’s holdings of its own bonds, and the bonds held by other governmental bodies controlled by it, are therefore treated as not being outstanding for purposes of determining whether a voting threshold is met and thus whether a proposed modification has been approved. The principal amount of the relevant bonds may not be voted for or against a proposed modification or counted towards the quorum required for a duly called meeting of bondholders. As with the 2013 euro area model CAC, the 2022 CAC casts the net wide in disenfranchising entities whose voting rights are directly or indirectly controlled by an issuer even if the issuer has never sought to instruct the relevant entity on the day-to-day management of its affairs or investments.

The 2022 CAC also follows the 2013 euro area model CAC in not disenfranchising bonds held by entities with autonomy of decision vis-à-vis the issuer. The Committee is strongly of the view that it would be inconsistent with the issuer’s own laws to disenfranchise an entity’s holdings of government securities on the basis of its assumed disregard of binding legal obligations. To do otherwise would not only undermine the presumption of lawful action enjoyed by all euro area entities, but would also call into question the issuer’s commitment to its own laws intended to ensure a state-owned entity’s autonomy of decision.

Like the 2013 euro area model CAC, the 2022 CAC defines “autonomy of decision” through three safe-harbours. The first safe-harbour is available to government-controlled entities that under applicable law may not take instructions from the relevant issuer on how to vote on a proposed modification. The second safe-harbour is available to government-

⁶ This is consistent with the approach adopted more generally for interest-bearing bonds as the 2022 CAC assumes, like the 2013 CAC, that the interest-bearing bonds were issued at par (e.g. with a coupon rate equals to the yield at issuance).

⁷ This approach aims to assign the same number of total votes to the zero-coupon component parts of a “stripped” bond as were allocated to that same bond before it was “stripped”. When the interest-bearing bond cannot be identified due to the fungibility of all of the issuer’s zero-coupon bonds maturing on the same date, the applicable discount rate is a weighted average of the coupons.

controlled entities that are required under applicable law to act in accordance with an objective prudential standard, in the interest of all of its stakeholders (and not just that of the issuer) or in its own self-interest. The final safe-harbour is available to issuer-controlled entities owing a fiduciary (or similar) duty to one or more third parties independently of any obligation it may owe to the issuer.

The Committee believes that the safe-harbours are consistent with the underlying rationale of the disenfranchisement clause. That rationale is to prevent an issuer from voting in favour of the modification of its own securities either directly or by instructing entities it controls to so vote their holdings of the issuer's debt securities.

The Committee maintained the orientation followed in the 2013 euro area model CAC in relation to three disenfranchisement-related decisions. These are:

- **Not to disenfranchise creditors on the basis of predictability of action.** The Committee does not believe that predictability of action constitutes a sound basis for disenfranchisement. The Committee is mindful in this regard that the actions of many private creditors are at least as predictable as those of government-controlled entities – for example, the holder of a credit default swap is almost certain to vote in favour of a proposed modification that will result in a “credit event” – and yet it has never been suggested that private investors should be disenfranchised because their actions are often predictable in practice.
- **Not to disenfranchise creditors on the basis of their motivation.** Experience suggests that it is often difficult, if not impossible, to discern a creditor's real motivation, or to distinguish among the arguably acceptable and arguably unacceptable motivations that may together inform an investor's decision. In any event, it is not clear to the Committee what motives would even arguably constitute grounds for an investor's disenfranchisement.
- **Not to disenfranchise bonds held by Eurosystem central banks.** It follows from the considerations in this section that the Committee's approach to disenfranchisement takes into account only if an investor is acting in its own interest, independently from the issuer's. Eurosystem members are legally prohibited from seeking or taking instructions from European Union institutions or bodies, or from euro area governments⁸.

The 2022 CAC requires issuers to publish a list of disenfranchised entities prior to a vote. This publication is to be carried out by issuers promptly following the formal announcement of the relevant proposal. The Committee believes that this requirement, which was carried over from the 2013 euro area model CAC (where it had been included at the request of investors during the public consultation), helps promote a transparent voting process.

⁸ Article 130 of the Treaty on the Functioning of the European Union.

J. INFORMATION REQUIREMENTS

The Committee believes that the transparency and information requirements of the 2013 euro area model CAC continue to be sufficient to ensure that investors have enough information available to inform their decisions. The standards of economic and financial disclosure for sovereigns in the euro area – particularly after the introduction of the “Two-Pack” Regulations in 2013⁹ – ensure that investors have access to sufficient data to inform their decisions in connection to their holdings of euro area government bonds. This does not preclude the prerogative of euro area governments to disclose to investors any additional information that they deem useful.

Nevertheless, the introduction of “single-limb” voting justifies the addition of some elements to the mandatory requirements of the notice convening a meeting. Issuers will be required to state whether the proposed modification is a cross-series modification and, if so, which other bonds it will affect. Additionally, if the issuer intends to use sub-aggregation, it is required to describe the proposed treatment of each sub-aggregated pool of bonds. Together, these requirements aim to ensure that investors have the information to assess how their proposed treatment compares to the proposed treatment of the remainder of the issuer’s debt stock.

K. CREDITOR ENGAGEMENT

The Committee also believes that there is no need to deviate from the 2013 euro area model CAC to introduce provisions for the formation of creditor committees or any other form of creditor engagement ahead of the vote. As the absence of creditor committee formation language does not preclude the formation of ad hoc or other committees or bilateral engagement with creditors, the Committee opted not to include in the 2022 CAC any provisions relating to the formation and operation of creditor committees.

L. BONDHOLDER MEETINGS AND WRITTEN RESOLUTIONS

Like the 2013 euro area model CAC, the 2022 CAC includes mandatory rules for holding bondholder meetings, intended to ensure that the CAC operates in the same manner and with the same legal effect in all euro area Member States. In light of the wide diversity of bondholder meeting rules and practices in the euro area, issuers may adopt supplementary rules for the holding of bondholder meetings that are consistent with the mandatory rules included in the 2022 CAC. For example, the documentary evidence required to be presented by a bondholder in order to vote on a proposed modification will vary depending on the nature – registered, bearer or dematerialised – of the debt securities

⁹ Particularly Regulation (EU) No 473/2013 of the European Parliament and of the Council of 21 May 2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area.

in question. The 2022 CAC accordingly contemplates that the issuer will specify the required evidence in the notice convening a bondholder meeting.

The 2022 CAC makes explicit that the notion of “venue” for a meeting can be construed as referring to any platform or equivalent system used to facilitate meetings at any given time. This clarification is only meant to assist in future readings of the 2022 CAC as developments in technology may change the way in which bondholders are asked to meet and express their consent. Additionally, it is without prejudice to the possibility of using written resolutions, which means for valid authentication by each bondholder may also change over time.

M. CALCULATION AGENT

As in the 2013 euro area model CAC, euro area issuers shall appoint a calculation agent to calculate whether a proposed modification has been approved by the requisite majority. For ease of administration, the same person will be appointed as the calculation agent for each series of affected bonds in the case of a cross-series modification.

The calculation agent may rely on a certificate prepared by the issuer, listing the principal amount of outstanding bonds and specifying the principal amount of “disenfranchised” bonds. Any information relied on by the calculation agent will be conclusive and binding on the issuer and bondholders, unless an affected bondholder timely delivers a substantiated written objection that, if sustained, would affect the outcome of the vote taken on a proposed modification.

N. GOVERNING LAW AND ENFORCEMENT

Once included in a bond issued by a euro area government, the 2022 model CAC will be governed by the law that governs that bond. Any dispute in connection with the CAC (as included in that bond) will be resolved before the same courts as all other disputed in connection with any other provision of that bond.

The Committee maintained the decision, taken in the context of the 2013 euro area model CAC, not to submit disputes to an agreed international forum or before the courts of a (single) euro area member state. This would either have voided, in practice, the choices of governing law and jurisdiction in euro area government bonds or created the risk of overlap between different laws and jurisdictions when dealing with certain conflicts. The Committee found both these outcomes undesirable.