

Sven Uiterwijk, *advocaat*
sven.uitervijk@nautadutilh.com

Amsterdam, 23 December 2025

Hugo Blom, *advocaat*
hugo.blom@nautadutilh.com

Addendum

To **Stichting Waarborgfonds Eigen Woningen**
Regarding Eligibility of the National Mortgage Guarantee as
credit protection under the CRR and C&N 2026

1 INTRODUCTION

- 1.1 In 2020, Stichting Waarborgfonds Eigen Woningen (the "**WEW**") asked us to analyse whether the National Mortgage Guarantee (*Nationale Hypotheek Garantie*, "**NHG**", or the "**NHG product**") meets the relevant eligibility requirements for guarantees as set out in Articles 213 - 215 of the Capital Requirements Regulation ("**CRR**")¹. These conditions determine when a bank or other institution within the meaning of the CRR can classify the guarantee as unfunded credit protection. We answered this question in the affirmative in our memorandum of 31 March 2020 (the "**Original Memo**").
- 1.2 Since 2024, the Conditions & Norms (*Voorwaarden & Normen*, "**C&N**") of the NHG product have been written in clear and understandable language and with an updated layout. In our addendum of 4 December 2023, we confirmed that the C&N at that time had no impact on the analysis and conclusions in the Original Memo (the "**2023 Addendum**").
- 1.3 The CRR was amended on 1 January 2025. The amended CRR is also referred to as 'CRR 3'². In addition, the amended C&N version 2026-1 ("**C&N 2026**") will apply from 1 January 2026. In response to this, the WEW has asked us to draw up this second addendum to the Original Memo. In this addendum, we analyse whether CRR 3 and the C&N 2026 have any consequences for the analyses and conclusions in the Original Memo and the 2023 Addendum. Prior to this, at the request of the WEW, we have included a brief introduction to the NHG product.
- 1.4 Like the Original Memo and the 2023 Addendum, this addendum is addressed to the WEW. The WEW may publish this addendum on its

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.

² Regulation (EU) No 2024/1623 of the European Parliament and of the Council of 31 May 2024 amending Regulation (EU) No 575/2013.

This communication is confidential and may be subject to professional privilege. It may not be used, disclosed, copied, distributed or retained by anyone other than the intended addressee. All legal relationships are subject to NautaDutilh N.V.'s general terms and conditions (see www.nautadutilh.com/terms), which include a limitation of liability clause, have been filed with the Rotterdam District Court and will be provided free of charge upon request. Dutch law is applicable and disputes shall be submitted exclusively to the Amsterdam District Court. NautaDutilh N.V.; corporate seat Rotterdam; trade register no. 24338323. For information concerning the processing of your personal data we refer to our privacy policy: www.nautadutilh.com/privacy.

Amsterdam

Brussels

London

Luxembourg

New York

Rotterdam

website so that lenders, regulators and other stakeholders can also take note of it. However, they cannot derive any rights from this addendum.

2 BRIEF INTRODUCTION TO THE NHG PRODUCT

How the NHG product works

- 2.1 The NHG product is a guarantee for a loan granted by a lender to a consumer to purchase, improve or maintain property located in the Netherlands. The WEW acts as guarantor in the event that the consumer is no longer able to repay their loan, the property has to be sold and a residual debt remains. This residual debt is almost entirely reimbursed by the WEW. For the consumer, the advantage of the NHG product is that the residual debt may be waived.
- 2.2 Since the C&N version 2020-2, the WEW also offers lenders the option of receiving a payment for expected loss. Lenders are eligible for this as soon as there is a default on a loan covered by the NHG product. The payment for expected loss is a provisional payment equal to the expected compensation for the residual debt. This payment for expected loss was introduced with in view of qualifying the NHG product as permissible credit protection under the CRR.

Legal structure of the NHG product

- 2.3 The guarantee is provided for eligible loans on the basis of a guarantee agreement³ between the WEW and the lender. In that agreement, the C&N are declared applicable to the relationship between the WEW and the lender. The C&N contain further terms and conditions about the guarantee, including the possibility of a payment for expected loss.
- 2.4 The Dutch State and (for loans offered before 1 January 2011) the participating municipalities have undertaken in various backstop agreements with the WEW to ensure that the WEW can meet its payment obligations to lenders. In the event of an impending liquidity shortage, the WEW can claim subordinated, interest-free loans from the Dutch State and (if applicable) the participating municipalities. These loans only need to be repaid once the WEW's capital has been restored to its previous level. The backstop agreements are relevant for the eligibility of the NHG product as credit protection under the CRR, as they qualify as counter-guarantees from a government.

³ Article 7:850 of the Dutch Civil Code.

3 CHANGES TO C&N 2026

- 3.1 The Original Memo is based on the C&N version 2020-2 (**C&N 2020**). The 2023 Addendum dealt with the most important changes to the C&N version 2024-1 (**C&N 2024**) compared to C&S 2020. C&S 2026 will come into effect on 1 January 2026.
- 3.2 Based in part on the overviews of changes in C&N 2024-2025⁴ and C&N 2025-2026⁵, it appears that the sections that affect our analysis of the eligibility of the NHG product as credit protection, including section A (*the guarantee*) and section B (*payment of expected loss*), have not undergone any relevant changes.
- 3.3 We note that the C&N 2026 contains an expansion of the types of property for which a cash loan is eligible for the NHG product. For the purposes of our analysis of the NHG product, we assume that there will always be a mortgage loan on non-commercial real estate as referred to in the CRR. This is relevant, among other things, for the applicability of the standard referred to in Article 215(1) CRR, which states that in the case of credit protection relating to mortgage loans on non-commercial real estate, the requirements set out in Article 213(1)(c)(iii) and Article 215(1), first paragraph, CRR only need to be met within 24 months. See our Original Memorandum for more information about this standard and its relevance to the admissibility of the NHG product as credit protection under the CRR.
- 3.4 In short, the C&N 2026 and the amendments since the C&N 2024 do not in themselves give rise to any need to amend the previous analysis and conclusions in the Original Memorandum and the 2023 Addendum.

4 CHANGES TO CRR 3

- 4.1 CRR 3 has amended the eligibility requirements for guarantees, including sureties such as the NHG product, in a few areas. Below, we discuss the amendments that may be relevant to the eligibility of the NHG product as credit protection.⁶

⁴ [amendment-overview-vn-2024-2025.pdf](#)

⁵ [amendment-summary-un-2025-2026.pdf](#)

⁶ For example, we do not discuss the paragraph added to Article 213(1) CRR, according to which the guarantor is permitted to make a one-off payment of the amount due under the claim covered by the guarantee or to assume the future payment obligations covered by the guarantee. This addition is intended to enable the latter modality, whereas the NHG product has always been based on a one-off payment. We also disregard purely textual changes.

Clause beyond the control of the lender – Article 213 CRR

- 4.2 Article 213(1)(c) CRR stipulates that, in short, the NHG product may not contain any conditions that are beyond the control of the lender and that could undermine the protection provided by the NHG product.
- 4.3 It follows from CRR 3 that a clause stipulating that a guarantee lapses or is reduced in the event of inadequate accounting checks or fraud on the part of the lender does *not* affect the admissibility of the guarantee. A communication from the European Banking Authority on this amendment suggests that a clause stipulating that a guarantee lapses or is reduced in the event of fraud by the obligor (the consumer) does affect the admissibility of the guarantee.⁷
- 4.4 According to C&N 2026 (C.3.3.), the lender must screen the consumer (the borrower). This must be done at the time the lender makes a binding offer. If the lender considers that the consumer poses a risk to the security and integrity of the lender or the WEW, the lender should not grant a loan with the NHG product. In our opinion, these are conditions that fall within the lender's control. If, nevertheless, fraud on the part of the consumer is discovered, the C&N 2026 does not contain any exception or reduction in the payments by the WEW under the guarantee or the payment of expected loss.
- 4.5 Pre-CRR 3, Article 213(1)(c)(i) already stated that a clause beyond the lender's control should not enable the guarantor (the WEW) to terminate the guarantee (the NHG product). CRR 3 adds that, in addition to the right to terminate, there should also be no unilateral possibility for the lender to adjust the guarantee. In our opinion, this was already implied in the requirements of Article 213(1)(c) and, in our view, mainly concerns a textual clarification. It therefore does not affect our analysis in the Original Memo and 2023 Addendum, which already takes into account any unilateral adjustment powers of the WEW.

Change in classification - Article 215(1) CRR

- 4.6 Furthermore, the classification of Article 215(1) CRR has been amended as a result of CRR 3. This article states that the lender must be entitled to payment by the guarantor as soon as possible on the basis of the borrower's default or non-payment. Previously, that article also stated that: (i) a payment under the guarantee may not be subject to the obligation for the lender to first call on the borrower, and (ii) the requirement to be paid as

⁷ [EBA report on credit insurance](#) (EBA/REP/2024/21), p. 12.

soon as possible under the guarantee in relation to mortgage loans on non-commercial real estate only has to be met within 24 months.

- 4.7 Article 215(2) CRR then stipulates that if the guarantee is covered by a valid counter-guarantee, the requirement set out in Article 215(1)(a) is deemed to have been met if the lender is entitled to provisional payment as soon as possible. This is implemented by the back-up agreement between the WEW and the Dutch State, respectively the possibility under the NHG product of a payment of expected loss. The timelines for eligibility for a payment of expected loss are based on the aforementioned 24 months.
- 4.8 With effect from CRR 3, the two conditions mentioned above have been moved to separate paragraphs at the bottom of Article 215(1) CRR. They are therefore disconnected from Article 215(1)(a). However, the exception in Article 215(2) continues to refer to Article 215(1)(a). This raises the question of whether the requirement that the payment under the guarantee is not subject to the lender's obligation to first call on the borrower must still be considered to have been met thanks to the back-up agreement and the payment of expected loss. Similarly, the question arises as to whether the aforementioned 24 months can still be considered 'as soon as possible' for the purposes of the payment of expected loss.
- 4.9 There is no explanation of this change from CRR 3, which makes it unclear whether a substantive change is intended or whether it is merely an editorial change. However, it seems plausible to us that this is only an editorial change. After all, Article 215(1)(a) CRR still states that the lender must have the right to bring a claim against the guarantor as soon as possible. The two standards that have been moved to the end of Article 215(1) can logically be associated with this, and it is obvious that Article 215(2) will continue to form an exception to this. We therefore see no reason to amend the analyses and conclusions from the Original Memo and 2023 Addendum as a result of this revised structure.

Textual clarification – Article 215(2)(a) CRR

- 4.10 Finally, Article 215(2)(a) CRR clarifies that the lender is entitled to a provisional payment by the guarantor as soon as possible on the basis of the borrower's default or non-payment. This clarification is in line with the moment of payment as stated in Article 215(1)(a) CRR, and confirms, with regard to the NHG product, the moment at which the lender should be eligible for a payment for expected loss. In our opinion, this merely confirms what was already implicitly decided in the article, and the structure of the payment for expected loss already took this into account.

Therefore, in our opinion, this change also has no consequences for the admissibility of the NHG product as credit protection.

5 ANALYSIS AND CONCLUSION

- 5.1 Based on the above analysis, we believe that the changes between the C&N 2024 and C&N 2026 on the one hand and the introduction of CRR 3 on the other hand have no impact on the analysis and conclusions in the Original Memo and the 2023 Addendum.
- 5.2 Taking into account the Original Memo, the 2023 Addendum and this addendum, we therefore believe that the NHG product based on C&N 2026 meets the relevant eligibility requirements for guarantees as set out in Articles 213 - 215 CRR (CRR 3).

~o~