



**EUROPEAN CENTRAL BANK**

**DECISION OF THE EUROPEAN CENTRAL BANK  
of 22 December 1998**

**ON THE ALLOCATION OF RISKS IN RELATION TO LOSSES ARISING IN ESCB  
CREDIT OPERATIONS  
(ECB/1998/NP29)**

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the “Statute”) and in particular to Articles 32.4 and 32.7 thereof;

- (1) Whereas, in accordance with Article 32.4 of the Statute, the Governing Council of the European Central Bank (Governing Council) may decide that national central banks (NCBs) will be indemnified in exceptional circumstances for specific losses arising from monetary policy operations undertaken for the European System of Central Banks (ESCB);
- (2) Whereas this Decision is aimed at establishing a set of principles on the basis of which the Governing Council may make decisions for specific losses arising in particular in relation to the use of eligible assets in the exceptional event of the default of a counterparty in ESCB liquidity-providing operations;
- (3) Whereas any indemnification will be in a form deemed appropriate in the judgement of the Governing Council and the amount of any such indemnification may be offset against the NCBs’ monetary income;
- (4) Whereas, in exceptional circumstances to be decided upon by the Governing Council, the European Central Bank (ECB) may enter into monetary policy operations undertaken for the ESCB;
- (5) Whereas the general principles established in this Decision are without prejudice to the specific provisions on risk allocation stated in any other ECB legal acts or any agreement;

- (6) Whereas the provisions of Article 1.2 and the table annexed to this Decision relate to the legal aspects of the collateralisation of assets as at the date of this Decision and may need to be reassessed from time to time, in particular upon the implementation of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, which, according to the terms of the Directive, is to occur before 11 December 1999;

HAS ADOPTED THIS DECISION:

### **Article 1**

#### *Allocation of losses relating to eligible assets*

1. Subject to paragraph 2 below:
  - (a) if losses arising from monetary policy operations undertaken for the ESCB arise in relation to assets listed on the tier one list maintained by the ECB as referred to in the ECB Guideline of 11 September 1998 on monetary policy instruments and procedures of the European System of Central Banks (ECB/1998/NP16), such losses shall be borne by all NCBs, except where such losses arise as a result of the wilful or negligent action or inaction of an NCB, in which circumstances the losses shall be borne by the NCB in question;
  - (b) if losses arising from monetary policy operations undertaken for the ESCB arise in relation to assets listed on the tier two list established and maintained by an NCB as referred to in the ECB Guideline of 11 September 1998 on monetary policy instruments and procedures of the European System of Central Banks (ECB/1998/NP16), such losses shall be borne by that NCB, except where such losses arise as a result of the wilful or negligent action or inaction of the NCB using the assets as collateral, in which circumstances the losses shall be borne by the NCB in question.
2. If and to the extent that the losses would not have occurred but for the use by the NCB accepting the assets as collateral of a method of taking collateral that is designated in the table annexed to this Decision, the losses shall be borne by the NCB adopting that method.

## **Article 2**

### *Allocation of risks relating to foreign exchange swap operations*

Losses incurred by any NCB in relation to the failure of a counterparty to comply with its obligations under a foreign exchange swap operation entered into for the purposes of ESCB monetary policy shall be borne by that NCB.

## **Article 3**

### *Assessment of the amount of losses*

1. Any NCB which asserts that it has suffered losses that should be borne by all NCBs or by another NCB shall make a reasoned submission to the Governing Council requesting that the latter should exercise its discretion to award compensation in accordance with this Decision.
2. In any transaction involving assets used as collateral, losses shall be the difference between the amount intended to be collateralised and the amount actually realised. NCBs are required, when confronted with the default of a counterparty, to take appropriate action to realise assets or otherwise mitigate their losses, both before and after any settlement of losses.
3. NCBs shall furnish one another with all reasonable assistance in the pursuit of loss recovery.
4. Any subsequent recovery received at any time by any NCB shall be duly accounted for.

## **Article 4**

### *Settlement of losses*

Losses shall be accounted for in accordance with the arrangements for the accounting of monetary income.

Done at Frankfurt am Main on 22 December 1998.

The President of the ECB

[signed]

Willem F. Duisenberg

ECB-PUBLIC

**ANNEX**

<b>Member State</b>	<b>Method of collateralisation</b>
France	Pledge.
Ireland	Pledge.
Italy	Pledge for operations with a maturity longer than overnight.
The Netherlands	If the law recognising the validity of the transfer of securities under a repo enters into force as at 1 January 1999: none. If such law has not entered into force as at 1 January 1999: from 1 January 1999 until the date of entry into force of the said law, repo.
Portugal	Pledge.

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