



EUROPEAN CENTRAL BANK
EUROSYSTEM

DECISION OF THE EUROPEAN CENTRAL BANK

of 18 December 2008

on the sharing of losses arising from monetary policy operations undertaken by certain national central banks for the Eurosystem

(ECB/2008/NP23)

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 the 'ESCB Statute'), and in particular Article 32.4 thereof,

Whereas:

- (1) Pursuant to the second subparagraph of Article 32.4 of the ESCB Statute, the Governing Council may decide that national central banks should be indemnified in exceptional circumstances for specific losses arising from monetary policy operations undertaken for the Eurosystem. Indemnification is in a form deemed appropriate in the judgement of the Governing Council and the amounts may be offset against the national central banks' monetary income.
- (2) Article 1 of Decision ECB/2003/NP13 of 17 October 2003 on the allocation of risks in relation to losses arising in Eurosystem credit operations provides that losses arising from monetary policy operations undertaken for the Eurosystem are to be borne by all NCBs except where they arise as a result of the wilful or negligent act or omission of an NCB, in which case the losses are borne by the NCB in question.
- (3) The Deutsche Bundesbank, the Banque centrale du Luxembourg and De Nederlandsche Bank are likely in the financial year 2008 and in subsequent financial years to suffer losses arising from monetary policy operations undertaken for the Eurosystem in 2008. The losses arise from monetary policy operations with five counterparties in default which have provided collateral which in the meantime has proved to be insufficient.
- (4) The major part of the abovementioned collateral cannot be realised at short notice at a reasonable price due to current market conditions. Since the estimated value of the collateral is likely to fall below the nominal value of the claims, provisions need to be established to cover the unrealised losses.

- (5) Pursuant to Article 3(3) of Decision ECB/2003/NP13, when confronted with the default of a counterparty, NCBs must take appropriate action to realise assets or otherwise mitigate their losses. For that purpose the NCBs concerned have engaged or may engage external consultants to manage and realise the collateral and the fees and expenses paid to such consultants should be included in the losses to be shared to the extent that they are reasonable.
- (6) For the specific cases arising in the financial year 2008, Decision ECB/2003/NP13 should be supplemented since it does not provide for the treatment of unrealised losses and the treatment of expenses incurred by NCBs in managing and realising collateral.
- (7) Until now there has been no indication that the losses arising from the abovementioned monetary policy operations are the result of the wilful or negligent acts or omissions of any NCB or that the Deutsche Bundesbank, the Banque centrale du Luxembourg or De Nederlandsche Bank, have breached their duty to mitigate losses. If these assumptions prove false after the adoption of this Decision the loss-sharing mechanism will need to be adjusted.
- (8) The ECB favours transparency and official publication of its legal instruments, which means that any exception to the principle of transparency needs to be applied restrictively. The decision on whether or not to publish an ECB legal instrument should be made in accordance with the same criteria that determine whether or not public access to the instrument would be granted, if requested, pursuant to Decision ECB/2004/3 of 4 March 2004 on public access to European Central Bank documents¹. The Governing Council considers that publication of this Decision would undermine the protection of the public interest as regards the internal finances of the ECB or of the NCBs and as a result this Decision will not be published,

HAS DECIDED AS FOLLOWS:

Article 1

Definitions

For the purposes of this Decision:

- (a) 'NCB entitled to be indemnified' means any of the following: (i) the Deutsche Bundesbank; (ii) the Banque centrale du Luxembourg; (iii) De Nederlandsche Bank;
- (b) 'NCB' means the national central bank of a Member State that has adopted the euro prior to 1 January 2009;
- (c) 'subscribed capital key' means the NCBs' shares (expressed as percentages) in the financial year 2008 in the ECB's subscribed capital key that result from applying to the NCBs the weightings in the key referred to in Article 29.1 of the ESCB Statute.

¹ OJ L 80, 18.3.2004, p. 42.

Article 2

Sharing of losses

Losses arising from monetary policy operations undertaken by an NCB entitled to be indemnified on behalf of the Eurosystem in relation to a counterparty in default shall be borne by all NCBs in proportion to the subscribed capital key and shall be shared in accordance with Articles 4 and 5 of this Decision. The claim of an NCB entitled to be indemnified for such losses shall be subject only to satisfaction of the conditions set out in Article 3.

Article 3

Amount and valuation of losses

1. The unrealised losses incurred by an NCB entitled to be indemnified shall be valued as the difference between: (a) the nominal value of the claim against the counterparty in default; and (b) the estimated value of the collateral. The value of the collateral shall be estimated at the end of each financial year in accordance with the principles of prudence, diligence and consistency using a common method approved by the Governing Council. A change of the estimated value after the end of the financial year shall not retroactively be taken into account for the calculation of the unrealised losses as at the end of the respective financial year.
2. When calculating its unrealised losses, an NCB entitled to be indemnified shall deduct any existing liabilities towards the counterparty in default to the extent that it is legally entitled to set-off its outstanding claims against such liabilities.
3. An NCB entitled to be indemnified shall deduct any income earned on the collateral from its losses.
4. An NCB entitled to be indemnified shall provide appropriate evidence of the amounts of unrealised losses to be shared. The total amount of unrealised losses to be shared shall be subject to confirmation by the Governing Council.

Article 4

Accounting treatment of unrealised losses

1. An NCB entitled to be indemnified shall record its outstanding claims against a counterparty in default at their original nominal value.
2. If the NCB entitled to be indemnified appropriates the collateral provided by the counterparty in default either in whole or in part, it shall record the appropriated collateral on its balance sheet in accordance with any of the following: (a) at market price if such market price exists; (b) at the price agreed with the liquidator or administrator of the counterparty in default if the NCB entitled to be indemnified purchases the collateral from the liquidator or administrator; (c) at the price at

which the NCB entitled to be indemnified acquires the collateral following a tender procedure carried out by it; or (d) any other valuation method approved by the Governing Council. In such cases, the claim against the counterparty in default shall be written down so that the aggregate of the appropriated collateral plus the residual value of the claim is equal to the original nominal value of the claim.

3. Each NCB shall establish a provision equal to its share in the total amount of unrealised losses to be determined in accordance with the subscribed capital key.
4. The abovementioned provisions shall be adjusted at the end of each financial year on the basis of a reevaluation undertaken by the Governing Council.

Article 5

Settlement of losses

1. The losses arising from the fees and expenses that an NCB entitled to be indemnified has paid to third parties for managing and realising the claims and the related collateral shall be shared in accordance with the subscribed capital key and be settled annually via TARGET2 payments within the operational framework for the annual allocation of monetary income of NCBs. The amount to be shared is subject to the approval of the Governing Council. The NCB entitled to be indemnified shall provide appropriate evidence of: (a) the reasonableness of such fees and expenses; and (b) the amounts of losses to be shared.
2. After having realised all the collateral provided by a counterparty in default, the NCB entitled to be indemnified shall submit a request for indemnification to the Governing Council specifying the total amount of realised losses arising from the monetary policy operation concerned. Subject to the Governing Council's approval, the other NCBs shall transfer their contributions in respect of the realised losses to the NCB entitled to be indemnified via TARGET2 within the operational framework for the annual allocation of the monetary income of NCBs. The provisions established by all NCBs shall be adjusted accordingly.
3. If after the settlement of realised losses the NCB entitled to be indemnified receives any payment in respect of the original claim against the counterparty, this amount shall be treated as exceptional income to be shared in proportion to the subscribed capital key and the NCB entitled to be indemnified shall transfer to the other NCBs their portion of the income.

Article 6

Readjustment of the loss-sharing mechanism

If after the adoption of this Decision it emerges that losses have arisen as a result of the wilful or negligent acts or omissions of an NCB, or if an NCB entitled to be indemnified fails to take appropriate action to mitigate any losses, the Governing Council shall adjust the loss-sharing mechanism.

Article 7

Final provision

This Decision shall enter into force on 31 December 2008.

Done at Frankfurt am Main, 18 December 2008.

[signed]

The President of the ECB

Jean-Claude TRICHET