



EUROPEAN CENTRAL BANK

EUROSYSTEM

DECISION OF THE EUROPEAN CENTRAL BANK

of 18 January 2010

**on the sharing of losses arising from monetary policy operations undertaken by
De Nederlandsche Bank for the Eurosystem**

(ECB/2010/NP1)

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

Whereas:

- (1) Pursuant to the second subparagraph of Article 32.4 of the Statute of the ESCB, 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 national central banks (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) Decision ECB/2008/NP23 of 18 December 2008 on the sharing of losses arising from monetary policy operations undertaken by certain national central banks for the Eurosystem provides for the sharing of the losses that some NCBs incurred when carrying out monetary policy operations for the Eurosystem in 2008.
- (4) De Nederlandsche Bank (DNB) may suffer losses in the financial year 2009 and in subsequent financial years arising from monetary policy operations undertaken for the Eurosystem in 2009. The potential losses arise from monetary policy operations with DSB Bank NV which has been declared insolvent.

- (5) The Governing Council considers that the accounting treatment of the expenses and of the potential losses incurred by DNB in connection with the insolvency of DSB Bank NV should be the same as the one laid down in Decision ECB/2008/NP23.
- (6) 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, DNB has engaged and may engage external consultants to manage and realise the collateral provided by DSB Bank NV, and the fees and the expenses paid to such consultants may give rise to losses which should be shared to the extent that they are reasonable.
- (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 DNB has breached its 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 Governing Council considers that the publication of the loss-sharing mechanism contained in this Decision could have a significantly adverse effect on the operational or legal activities of the ESCB and as a result this Decision should not be published,

HAS ADOPTED THIS DECISION:

Article 1

Definitions

For the purposes of this Decision:

- (a) 'NCB' means the national central bank of a Member State that has adopted the euro prior to 1 January 2010;
- (b) 'subscribed capital key' means the NCBs' shares (expressed as percentages) in the financial year 2009 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 Statute of the ESCB;
- (c) 'appropriation' means the act of taking ownership of securities, loans or any assets which have been received by DNB as collateral or as a means of enforcing the original claim.

Article 2

Sharing of losses

Losses arising from monetary policy operations undertaken with DSB Bank NV by DNB on behalf of the Eurosystem 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 DNB for indemnification 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. Unrealised losses incurred by DNB, if any, shall be valued as the difference between: (a) the nominal value of the claim against DSB Bank NV; and (b) the estimated value of the collateral and the estimated residual value of the claim against DSB Bank NV. The value of the collateral and of the claim 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 values after the end of the financial year shall not be retroactively taken into account for the calculation of the unrealised losses as at the end of the respective financial year. The calculation of the unrealised losses shall be adjusted by the revaluation effects of any assets (including financial contracts or off-balance-sheet instruments) that DNB has acquired with the aim of repairing, restructuring or realising collateral submitted by DSB Bank NV.
2. When calculating its unrealised losses, DNB shall deduct any existing liabilities towards DSB Bank NV to the extent that it is legally entitled to set off its outstanding claims against such liabilities.
3. DNB shall deduct from its losses any income earned on the appropriated collateral or on any assets (including financial contracts or off-balance-sheet instruments) that it has acquired with the aim of repairing, restructuring or realising collateral submitted by DSB Bank NV. To the extent that income earned on such assets is used to reduce the losses, it shall not be treated as income within the meaning of Article 3(2) of the Decision ECB/2001/16 of 6 December 2001 on the allocation of monetary income of the national central banks of participating Member States from the financial year 2002¹ and shall not be pooled in the monetary income scheme.
4. Any appropriated collateral denominated in a foreign currency shall not form part of the overall currency position but shall be part of a separate currency holding.
5. DNB 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.

¹ OJ L 337, 20.12.2001, p. 55.

Article 4

Accounting treatment of unrealised losses

1. DNB shall record its outstanding claims against DSB Bank NV at their original nominal value.
2. If DNB appropriates the collateral provided by DSB Bank NV 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 DSB Bank NV, if DNB purchases the collateral from the liquidator or administrator; (c) at the price at which DNB acquires the collateral following a tender procedure carried out by it; or (d) any other valuation method approved by the Governing Council. The claim against DSB Bank NV shall be written down so that the aggregate value 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 revaluation undertaken by the Governing Council.

Article 5

Settlement of losses

1. Should losses arise from the fees and expenses that DNB has paid to third parties for managing and realising the claims and the related collateral, such fees and expenses shall be part of the losses to 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. DNB 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 DSB Bank NV, DNB 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 DNB 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, DNB receives any payment in respect of the original claim against DSB Bank NV, this amount shall be treated as exceptional income to be shared in proportion to the subscribed capital key, and DNB 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 DNB 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 2009, with retroactive effect.

Done at Frankfurt am Main, 18 January 2010.

[signed]

The President of the ECB

Jean-Claude TRICHET