

Recommendation of the European Central Bank for a Council Regulation (EC) concerning the application of minimum reserves by the European Central Bank

(98/C 246/06)

(Submitted by the European Central Bank on 7 July 1998)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank (the Statute) and in particular Article 19.2 thereof,

Having regard to the recommendation of the European Central Bank (the ECB),

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Commission,

In accordance with the procedure foreseen in Article 106(6) of the Treaty establishing the European Community (the Treaty) and in Article 42 of the Statute,

- (1) Whereas Article 19.2, in conjunction with Article 43.1 of the Statute, paragraph 8 of the Protocol (11) on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland and paragraph 2 of the Protocol (12) on certain provisions relating to Denmark, shall not confer any rights or impose any obligations on a non-participating Member State;
- (2) Whereas Article 19.2 of the Statute requires the Council, *inter alia*, to define the basis for minimum reserves and the maximum permissible ratios between those reserves and their basis;
- (3) Whereas Article 19.2 of the Statute also requires the Council to define the appropriate sanctions in cases on non-compliance with those requirements; whereas specific sanctions are set out herein; whereas the present Regulation refers to the Council Regulation (EC) concerning the powers of the European Central Bank to impose sanctions for the principles and procedures relating to the imposition of sanctions and provides for a simplified procedure for the imposition of sanctions in the event of certain kinds of infringements; whereas in the event of a

conflict between the provisions of the Council Regulation (EC) concerning the powers of the European Central Bank to impose sanctions and the provisions of the present Regulation enabling the ECB to impose sanctions, the provisions of the present Regulation should prevail;

- (4) Whereas Article 19.1 of the Statute provides that the Governing Council of the ECB may establish regulations concerning the calculation and determination of the required minimum reserves;
- (5) Whereas to be effective as an instrument for the performance of money-market management and monetary control functions, the system for the imposition of minimum reserves needs to be structured so that the ECB has the ability and flexibility to impose reserve requirements within the context of and dependent on changing economic and financial conditions among participating Member States; whereas the ECB may impose minimum reserves on liabilities resulting from off-balance-sheet items, in particular those that are either individually or in combination with other on-balance-sheet or off-balance-sheet items, comparable with liabilities recorded on the balance sheet, in order to limit the possibilities of circumvention;
- (6) Whereas the ECB, in establishing detailed regulations for the imposition of minimum reserves, including determining the actual reserve ratios, any remuneration of reserves, any exemptions from minimum reserves or any modifications to such requirements applicable to any specific group or groups of institutions, shall be bound to act pursuant to the objectives of the European System of Central Banks (the ESCB) as set out in Article 105(1) of the Treaty and as reflected in Article 2 of the Statute, which implies, *inter alia*, the principle of not inducing significant undesirable delocation or disintermediation; whereas the imposition of such minimum reserves may constitute an element of the definition and implementation of the monetary policy of the Community, being one of the basic tasks of the ESCB as specified in Article 105(2), first indent, of the Treaty and as reflected in Article 3.1, first indent, of the Statute;

(7) Whereas the sanctions provided in the event of non-compliance with the obligations set out in this Regulation are without prejudice to the possibility of the ESCB establishing appropriate enforcement provisions in its relations with counterparties, including the partial or total exclusion of an institution from monetary policy operations in the case of serious infringements of the minimum reserve requirements;

(8) Whereas the provisions of this Regulation can only be effectively applied in their entirety if participating Member States have adopted the necessary measures with a view to ensuring that their authorities have the powers to assist and collaborate fully with the ECB in carrying out the collection and verification of information as required by Article 6 of this Regulation, in conformity with Article 5 of the Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation:

1. *participating Member State*: shall mean a Member State which has adopted the single currency in accordance with the Treaty;
2. *national central bank*: shall mean the central bank of a participating Member State;
3. *institution*: shall mean any entity in a participating Member State which, under the terms of Article 19.1 of the Statute, the ECB may require to hold minimum reserves;
4. *reserve ratio*: shall mean such percentage as the ECB may specify in accordance with Article 19.2 of the Statute of the basis for minimum reserves;
5. *sanctions*: shall mean fines, periodic penalty payments, penalty interest and non-interest-bearing deposits.

Article 2

Right to exempt institutions

The ECB may, on a non-discriminatory basis, exempt institutions from minimum reserves in accordance with criteria established by the ECB.

Article 3

Basis for minimum reserves

1. The basis for minimum reserves which the ECB may require institutions to hold according to Article 19.1 of the Statute shall include, subject to the provisions specified in paragraphs 2 and 3, (i) liabilities of the institution resulting from the acceptance of funds together with (ii) liabilities resulting from off-balance-sheet items, but excluding (iii) fully or partly, liabilities which are owed to any other institution according to modalities which shall be specified by the ECB, and (iv) liabilities which are owed to the ECB or to a national central bank.

2. For liabilities in the form of negotiable debt instruments, the ECB may specify, alternatively to the provision in paragraph 1(iii), that liabilities which are owed by one institution to another shall be fully or partly deducted from the basis for minimum reserves of the institution to which they are owed.

3. The ECB may, on a non-discriminatory basis, allow the deduction of specific types of assets from categories of liabilities forming part of the basis for minimum reserves.

Article 4

Reserve ratios

1. Reserve ratios, which the ECB may specify according to Article 19.2 of the Statute, shall not exceed 10 % of any relevant liabilities forming part of the basis for minimum reserves but may be 0 %.

2. Subject to paragraph 1, the ECB may, on a non-discriminatory basis, specify differing reserve ratios for specific categories of liabilities forming part of the basis for minimum reserves.

Article 5

Regulatory power

For the purpose of Articles 2, 3 and 4 of this Regulation, the ECB shall adopt, where appropriate, regulations or decisions.

Article 6

Right to collect and verify information

1. The ECB shall have the right to collect from institutions the information necessary for the application of minimum reserves. Such information shall be confidential.

2. The ECB shall have the right to verify the accuracy and quality of the information which institutions provide to demonstrate compliance with the minimum reserves. The ECB shall notify the institution of its decision to verify data or to effect their compulsory collection.

3. The right to verify data shall include the right to:

- (a) require the submission of documents;
- (b) examine the books and records of the institutions;
- (c) take copies or extracts from such books and records, and
- (d) obtain written or oral explanations.

When an institution obstructs the collection and/or verification of information, the participating Member State in which the relevant premises are located shall afford the necessary assistance, including ensuring access to the premises of the institution, so that the abovementioned rights can be exercised.

4. The ECB may delegate to the national central banks the execution of the tasks to which the previous paragraphs refer. In accordance with Article 34.1, first indent, of the Statute, the ECB shall be empowered to specify further in a regulation the conditions under which the right to verify may be exercised.

Article 7

Sanctions in cases of non-compliance

1. Where an institution fails to hold all or part of the minimum reserves imposed in accordance with this Regulation and ECB regulations or decisions associated herewith, the ECB may impose either of the following sanctions:

- (a) a payment of up to five percentage points above the ESCB's marginal lending rate or two times the ESCB's marginal lending rate, in both cases applied

to the amount of the minimum reserves which the relevant institution fails to provide;

- (b) the requirement for the relevant institution to establish a non-interest-bearing deposit with the ECB or the national central banks up to three times the amount of the minimum reserves which the relevant institution fails to provide. The maturity of the deposit shall not exceed the period during which the institution fails to hold the minimum reserves.

2. Whenever a sanction is imposed in accordance with Article 7(1), the principles and procedures set out in the Council Regulation (EC) concerning the powers of the European Central Bank to impose sanctions shall apply with the following modifications:

- (a) the ECB shall give the undertaking concerned written notification of the decision of its Executive Board;
- (b) Article 2(1) and (3) and Article 3(1), (2), (3) and (4) of the Council Regulation (EC) concerning the powers of the European Central Bank to impose sanctions shall not be applicable, and the periods referred to in Article 3(5), (6) and (7) of that Regulation shall be reduced to 15 days.

3. Where an institution fails to comply with the obligations deriving from this Regulation or ECB regulations or decisions associated therewith, other than those set out in paragraph 1, sanctions in cases of such failure and the limits and conditions relating to the imposition of such sanctions are set out in the Council Regulation (EC) concerning the powers of the European Central Bank to impose sanctions.

Article 8

Final provisions

This Regulation shall enter into force on 1 January 1999.

This Regulation shall be binding in its entirety and directly applicable in all Member States.