

GUIDELINE OF THE EUROPEAN CENTRAL BANK

of 11 March 2005

amending Guideline ECB/2000/1 on the management of the foreign reserve assets of the European Central Bank by the national central banks and the legal documentation for operations involving the foreign reserve assets of the European Central Bank

(ECB/2005/6)

(2005/328/EC)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty establishing the European Community and in particular the third indent of Article 105(2) thereof,

Having regard to the third indent of Article 3.1 and to Articles 12.1, 14.3 and 30.6 of the Statute of the European System of Central Banks and of the European Central Bank,

Whereas:

(1) Guideline ECB/2000/1 of the European Central Bank of 3 February 2000 on the management of the foreign reserve assets of the European Central Bank by the national central banks and the legal documentation for operations involving the foreign reserve assets of the European Central Bank ⁽¹⁾ stipulates, *inter alia*, what legal documentation should be used for such operations.

(2) In 2004, the Banking Federation of the European Union (*Fédération Bancaire Européenne*) (FBE) published a revised edition of the Master Agreement for Financial Transactions. The ECB considers it appropriate to use the FBE Master Agreement for Financial Transactions (Edition 2004): (i) for all collateralised operations involving the ECB's foreign reserve assets (comprising repurchase agreements, reverse repurchase agreements, buy/sell-back agreements and sell/buy-back agreements) where the counterparties are incorporated or organised under the laws of any of the following jurisdictions: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, United Kingdom (England and Wales, Northern Ireland and Scotland) or Switzerland; and (ii) for all over-the-counter derivative operations involving the ECB's foreign reserve assets where the counterparties are incorporated or organised under the laws of any of the following jurisdictions: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, United Kingdom (England and Wales only) or Switzerland.

(3) Annex 3 to Guideline ECB/2000/1 should therefore be amended to provide for the use of the FBE Master Agreement for Financial Transactions (Edition 2004) for operations with counterparties as described in the second recital. Article 3 of the Guideline should consequently be amended to reflect the following: (i) the fact that it is unnecessary to apply Annex 1 to the Guideline to operations documented by the FBE Master Agreement for Financial Transactions (Edition 2004); and (ii) the ECB's decision no longer to use the ECB Master Netting Agreement with counterparties with which it uses the FBE Master Agreement for Financial Transactions (Edition 2004) and which are organised or incorporated under the laws of any of the following jurisdictions: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain, United Kingdom (England and Wales only), or Switzerland.

(4) Two further minor amendments to Annex 1 to Guideline ECB/2000/1 are required.

(5) In accordance with Article 12.1 and Article 14.3 of the Statute, ECB guidelines form an integral part of Community law.

HAS ADOPTED THIS GUIDELINE:

Article 1

Guideline ECB/2000/1 is amended as follows:

1. Article 3(2) is replaced by the following:

'2. A document in the format attached as Annex 1 to this Guideline shall be annexed to and form an integral part of every standard agreement except the FBE Master Agreement for Financial Transactions (Edition 2004) under which collateralised operations (including without limitation repurchase agreements, reverse repurchase agreements, buy/sell-back agreements, sell/buy-back agreements, securities lending agreements and triparty repo arrangements) or over-the-counter derivatives operations involving the ECB's foreign reserve assets are conducted.'

⁽¹⁾ OJ L 207, 17.8.2000, p. 24. Guideline as last amended by Guideline ECB/2002/6 (OJ L 270, 8.10.2002, p. 14).

2. Article 3(3) is replaced by the following:

'3. There shall be in place with all counterparties a master netting agreement in one of the forms attached as Annex 2 to this Guideline, except with counterparties with which the ECB has signed an FBE Master Agreement for Financial Transactions (Edition 2004) and which are organised or incorporated under the laws of any of the following jurisdictions: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain, United Kingdom (England and Wales only) or Switzerland.'

3. Annex 1 is amended as follows:

(a) The introductory paragraph is replaced by the following:

'This Annex is to be annexed to and form an integral part of any standard agreement, except the FBE Master Agreement for Financial Transactions (Edition 2004), under which collateralised operations (including without limitation repurchase agreements, reverse repurchase agreements, buy/sell-back agreements, sell/buy-back agreements, securities lending agreements and triparty repo arrangements) or over-the-counter derivatives operations involving the ECB's foreign reserve assets are conducted in accordance with Article 3(4) of this Guideline.'

(b) Footnote 1 is replaced by the following:

'This Annex has been drawn up in English and is incorporated into master agreements drawn up in English which are governed by English or New York law. The translation of this Annex into other languages is for illustrative purposes only and is not legally binding.'

4. Annex 2 is amended as follows:

(a) The title of Annex 2a is replaced by the following:

'Master Netting Agreement governed by English law (for use with all counterparties except counterparties: (i) incorporated in the United States of America, (ii) incorporated in France and Germany which are eligible only for deposits, and (iii) with which the ECB has signed an FBE Master Agreement for Financial Transactions (Edition 2004) and which are organised or incorporated under the laws of any of the following jurisdictions: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain, United Kingdom (England and Wales only) or Switzerland; drafted in the English language).'

(b) The title of Annex 2b is replaced by the following:

'Master Netting Agreement governed by French law (for use with counterparties incorporated in France which are eligible only for deposits; drafted in the French language).'

(c) The title of Annex 2c is replaced by the following:

'Master Netting Agreement governed by German law (for use with counterparties incorporated in Germany which are eligible only for deposits; drafted in the German language).'

(d) The list of netting agreements in Appendix 1 to each of Annexes 2a, 2b, 2c and 2d is replaced by the following:

1. FBE Master Agreement for Financial Transactions (Edition 2004)
2. ISDA Master Agreement (Multi-currency — Cross-border 1992)
3. TBMA/ISMA Global Master Repurchase Agreement (2000 version)
4. The Bond Market Association Master Repurchase Agreement.'

5. Annex 3 is replaced by the text set out in the Annex to this Guideline.

*Article 2***Entry into force**

This Guideline shall enter into force on 15 June 2005.

*Article 3***Addressees**

This Guideline is addressed to the national central banks of the Member States that have adopted the euro in accordance with the Treaty establishing the European Community.

Done at Frankfurt am Main, 11 March 2005.

For the Governing Council of the ECB

The President of the ECB

Jean-Claude TRICHET

ANNEX

'ANNEX 3

Standard agreements for collateralised operations, over-the-counter derivatives operations and deposits

1. All collateralised operations involving the foreign reserve assets of the ECB (comprising repurchase agreements, reverse repurchase agreements, buy/sell-back agreements and sell/buy-back agreements) must be documented using the following standard agreements, in such form as may be approved or amended by the ECB from time to time:
 - (a) The FBE Master Agreement for Financial Transactions (Edition 2004) for operations with counterparties organised or incorporated under the laws of any of the following jurisdictions: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, United Kingdom (England and Wales, Northern Ireland and Scotland) or Switzerland;
 - (b) The Bond Market Association Master Repurchase Agreement for operations with counterparties organised or incorporated under US federal or state laws;and
 - (c) The TBMA/ISMA Global Master Repurchase Agreement (2000 version) for operations with counterparties organised or incorporated under the laws of any jurisdiction other than those listed in subparagraphs (a) or (b).
 2. All over-the-counter derivatives operations involving the ECB's foreign reserve assets must be documented using the following standard agreements, in such form as may be approved or amended by the ECB from time to time:
 - (a) The FBE Master Agreement for Financial Transactions (Edition 2004) for operations with counterparties organised or incorporated under the laws of any of the following jurisdictions: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, United Kingdom (England and Wales only) or Switzerland;
 - (b) The 1992 International Swaps and Derivatives Association Master Agreement (Multi-currency — cross-border, New York law version) for operations with counterparties organised or incorporated under US federal or state laws;and
 - (c) The 1992 International Swaps and Derivatives Association Master Agreement (Multi-currency — cross-border, English law version) for operations with counterparties organised or incorporated under the laws of any jurisdiction other than those listed in subparagraphs (a) or (b).
 3. All deposits involving the ECB's foreign reserve assets with counterparties which are eligible for collateralised operations as described in paragraph 1 and/or over-the-counter derivatives operations as described in paragraph 2 and which are organised or incorporated under the laws of any of the following jurisdictions must be documented using the FBE Master Agreement for Financial Transactions (Edition 2004), in such form as may be approved or amended by the ECB from time to time: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain, United Kingdom (England and Wales only) or Switzerland.'
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