

EUROPEAN CENTRAL BANK

GUIDELINE OF THE EUROPEAN CENTRAL BANK

of 20 July 2007

amending Guideline ECB/2006/28 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 such assets

(ECB/2007/6)

(2007/536/EC)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

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

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

Whereas:

- (1) Pursuant to Article 30.1 of the Statute, the European Central Bank (ECB) is provided by the national central banks (NCBs) of the Member States that have adopted the euro with foreign reserve assets and has the full right to hold and manage the foreign reserves that are transferred to it.
- (2) Pursuant to Articles 9.2 and 12.1 of the Statute, the ECB may manage certain of its activities through the NCBs and have recourse to the NCBs to carry out certain of its operations. Accordingly, the ECB considers that the NCBs should, as its agents, manage the foreign reserves transferred to it.
- (3) Pursuant to Guideline ECB/2006/28 of 21 December 2006 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 such assets ⁽¹⁾, each NCB of a participating Member State is required to carry out operations involving the foreign reserve assets of the ECB as the ECB's agent using the legal documentation specified in such Guideline.
- (4) The definition of 'European jurisdictions' in Guideline ECB/2006/28 should be modified to cater for the future entry of Member States to the EMU.

- (5) For the purpose of including, in the list of eligible instruments, a new instrument relating to interest rate swaps that qualify as over-the-counter derivatives operations where an exposure beyond certain thresholds is secured, Guideline ECB/2006/28 should be further amended to provide for interest rate swaps to be documented as over-the-counter derivatives operations,

HAS ADOPTED THIS GUIDELINE:

Article 1

Guideline ECB/2006/28 is amended as follows:

1. Article 1 is replaced by the following:

'For the purposes of this Guideline:

- "European jurisdictions" means the jurisdictions of all Member States that have adopted the euro in accordance with the Treaty, as well as Denmark, Sweden, Switzerland and the United Kingdom (England and Wales only),
- "participating NCB" means the NCB of a Member State that has adopted the euro.'

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

'1. All operations involving the foreign reserve assets of the ECB shall be conducted using standard legal documentation as required by this Article. However, the Executive Board may decide to use a standard agreement set out in Annex I, point 1(c) or 2(c) rather than the agreement set out in Annex I, point 1(a) or 2(a) to this Guideline with respect to a Member State upon the adoption of the euro if a legal assessment in a form and with a substance acceptable to the ECB is not available regarding the use of the indicated standard agreement in that Member State. The Executive Board shall promptly inform the Governing Council of any decision taken under this provision.'

⁽¹⁾ OJ C 17, 28.1.2007, p. 5.

2. 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, and all over-the-counter derivatives operations involving the foreign reserve assets of the ECB shall be documented under the standard agreements listed in Annex I, in such forms as may be approved or amended by the ECB from time to time.’

3. Annex I, point 2 is replaced by the following:

‘2. All over-the-counter derivatives operations involving the ECB’s foreign reserve assets (and including interest rate swaps where the exposure is secured by collateral) 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 European jurisdictions;
- (b) the 1992 International Swaps and Derivatives Association Master Agreement (Multicurrency — 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 (Multicurrency — 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).’

Article 2

This Guideline shall enter into force on 27 July 2007.

Article 3

This Guideline is addressed to the NCBs of the Member States that have adopted the euro.

Done at Frankfurt am Main, 20 July 2007.

For the Governing Council of the ECB
The President of the ECB
Jean-Claude TRICHET
