

EUROPEAN CENTRAL BANK

GUIDELINE OF THE EUROPEAN CENTRAL BANK

of 15 December 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/2005/15)

(2005/951/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 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, 14.3 and 30.6 thereof,

Whereas:

(1) Guideline ECB/2000/1 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) Guideline ECB/2000/1 was amended on 11 March 2005 to reflect the ECB's decision to use the Banking Federation of the European Union (*Fédération Bancaire Européenne*) (FBE) Master Agreement for Financial Transactions (Edition 2004) for collateralised and over-the-counter derivatives operations involving the ECB's foreign reserve assets with counterparties incorporated or organised under the laws of certain European jurisdictions.

(3) In respect of counterparties that are incorporated or organised under Swedish law, the ECB now considers that it would be appropriate to use the FBE Master Agreement for Financial Transactions (Edition 2004):

(i) for all over-the-counter derivatives operations involving the ECB's foreign reserve assets with such counterparties; and

(ii) to document deposits involving the ECB's foreign reserve assets with such counterparties provided that they are eligible for deposits as well as repo and/or FX transactions.

(4) Guideline ECB/2000/1 should therefore be amended to provide for the use of the FBE Master Agreement for Financial Transactions (Edition 2004) for over-the-counter derivatives operations and deposits with counterparties that are incorporated or organised under Swedish law and consequently to reflect the ECB's decision no longer to use the ECB Master Netting Agreement with such counterparties.

(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(3) is replaced by the following:

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, Sweden, the United Kingdom (England and Wales only) or Switzerland.;

⁽¹⁾ OJ L 207, 17.8.2000, p. 24. Guideline as last amended by Guideline ECB/2005/6 (OJ L 109, 29.4.2005, p. 107).

2. the title of Annex 2a is replaced by the following:

'Master Netting Agreement governed by English law and drafted in the English language (for use with all counterparties except counterparties):

- (i) incorporated in the United States of America; or
- (ii) incorporated in France and Germany which are eligible only for deposits; or
- (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, Sweden, the United Kingdom (England and Wales only) or Switzerland.;

3. paragraph 2(a) of Annex 3 is replaced by the following:

'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, the United Kingdom (England and Wales only) or Switzerland.;

4. paragraph 3 of Annex 3 is replaced by the following:

'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, Sweden, the United Kingdom (England and Wales only) or Switzerland.'

Article 2

Entry into force

This Guideline shall enter into force on 15 March 2006.

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.

Done at Frankfurt am Main, 15 December 2005.

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