

BANCO CENTRAL EUROPEU

ORIENTAÇÃO DO BANCO CENTRAL EUROPEU de 3 de Fevereiro de 2000

relativa à gestão dos activos de reserva do Banco Central Europeu pelos bancos centrais nacionais e aos negócios jurídicos relativos às operações relacionadas com os activos de reserva do Banco Central Europeu

(BCE/2000/1)

(2000/516/CE)

O CONSELHO DO BANCO CENTRAL EUROPEU,

Tendo em conta o Tratado que institui a Comunidade Europeia (a seguir designado por «Tratado») e, nomeadamente, o terceiro travessão do n.º 2 do seu artigo 105.º, o terceiro travessão do artigo 3.º-1 e os artigos 12.º-1, 14.º-3 e 30.º-6 dos Estatutos do Sistema Europeu de Bancos Centrais e do Banco Central Europeu (a seguir designados por «Estatutos»),

Considerando que:

(1) Em conformidade com o artigo 30.º-1 dos Estatutos, o Banco Central Europeu (BCE) é dotado pelos bancos centrais nacionais dos Estados-Membros que adoptaram a moeda única de activos de reserva que não são moedas comunitárias e tem o pleno direito de deter e gerir os activos de reserva para ele transferidos.

(2) Em conformidade com os artigos 9.º-2 e 12.º-1 dos Estatutos, o BCE pode delegar a gestão de algumas das suas actividades nos bancos centrais nacionais (BCN) e recorrer aos mesmos para a realização de determinadas operações e que o BCE entende que os BCN devem gerir os activos de reserva do BCE na qualidade de seus mandatários. O BCE considera necessário que os BCN, ao gerirem os activos de reserva do BCE na qualidade de mandatários, apliquem um código de conduta e sigam determinados procedimentos nas suas relações com contrapartes do BCE.

(3) A participação dos BCN na gestão dos activos de reserva transferidos para o BCE e as transacções relacionadas com tal gestão tornam imperativa a preparação da documentação necessária para as operações relacionadas com os activos de reserva do BCE.

(4) Em conformidade com os artigos 12.º-1 e 14.º-3 dos Estatutos, as orientações do BCE constituem parte integrante do direito comunitário,

ADOPTOU A PRESENTE ORIENTAÇÃO:

Artigo 1.º

Definições

Para efeitos da presente orientação:

- por «Estados-Membros participantes» entende-se os Estados-Membros que tenham adoptado a moeda única em conformidade com o Tratado,
- por «BCN», os bancos centrais nacionais dos Estados-Membros participantes.

Artigo 2.º

Qualidade de mandatário dos BCN

1. Cada BCN realiza, na qualidade de mandatário do BCE, operações relacionadas com os activos de reserva do BCE e, ao dar início a tais operações, considera-se que aceita a referida qualidade de mandatário. Relativamente a quaisquer operações conduzidas pelos BCN em nome do BCE, cada BCN deve, ao aceitar cada uma das operações, revelar às partes envolvidas o estatuto de mandante do BCE, mencionando o nome do BCE e fazendo referência a um número de conta ou código de referência.

2. Cada BCN, quando realiza operações relacionadas com os activos de reserva do BCE, na qualidade de mandatário do BCE, deve subordinar os seus próprios interesses, ou os interesses de quaisquer entidades para quem realize operações, aos interesses do BCE.

3. Cada BCN, quando solicitado por uma contraparte do BCE a provar a sua competência para realizar, na qualidade de mandatário do BCE, operações relacionadas com os activos de reserva do BCE, deve apresentar a essa contraparte prova do mandato e dos poderes de representação.

Artigo 3.º

Documentação

1. Todas as operações relacionadas com os activos de reserva do BCE são efectuadas utilizando a documentação exigida em conformidade com o presente artigo.

2. O documento que figura como anexo 1 à presente orientação deve ser anexado e fazer parte integrante de qualquer acordo-quadro ao abrigo do qual são efectuadas operações com garantia (incluindo, nomeadamente, acordos de recompra, venda com acordo de recompra, acordos de compra/revenda, acordos de venda/recompra, acordos de empréstimo de valores mobiliários e acordos de recompra tripartidos) ou operações de derivados em mercados de balcão relacionadas com os activos de reserva do BCE.

3. Deve ser celebrado com cada uma das contrapartes um acordo-quadro de compensação de acordo com um dos modelos que constam do anexo 2 à presente orientação.

4. Todas as operações com garantia relacionadas com os activos de reserva do BCE, incluindo acordos de revenda, venda com acordo de recompra, acordos de compra/revenda e acordos de venda/recompra e operações de derivados em mercados de balcão relacionadas com os activos de reserva do

BCE, devem ser documentadas nos termos dos acordos-quadro enunciados no anexo 3 à presente orientação, de acordo com modelos que o BCE pode aprovar ou alterar.

5. Os serviços financeiros relacionados com os activos de reserva do BCE prestados por intermediários financeiros, incluindo, nomeadamente, serviços bancários, de guarda e de investimento prestados por correspondentes, entidades incumbidas da guarda e depósito, organizações de liquidação e entidades de compensação de derivados transaccionados na bolsa, são documentados sob a forma de acordos específicos que o BCE pode aprovar ocasionalmente.

Artigo 4.º

Disposições finais

Os bancos centrais nacionais dos Estados-Membros participantes são os destinatários da presente orientação.

A presente orientação entra em vigor em 3 de Fevereiro de 2000.

A presente orientação será publicada no *Jornal Oficial das Comunidades Europeias*.

Feito em Frankfurt am Main, em 3 de Fevereiro de 2000.

Em nome do Conselho do BCE

Willem F. DUISENBERG

ANEXO 1

ANEXO DO BCE ⁽¹⁾

As disposições do presente anexo devem ser juntas e fazer parte integrante de todo e qualquer acordo-quadro, ao abrigo do qual são efectuadas operações com garantia (incluindo, nomeadamente, acordos de recompra, venda com acordo de recompra, acordos de compra/revenda e acordos de venda/recompra) ou operações de derivados em mercados de balcão relacionadas com os activos de reserva do BCE, em conformidade com o artigo 3.º da orientação do BCE relativa à gestão das relações entre o BCE e os bancos centrais nacionais para operações relacionadas com os activos de reserva do BCE (BCE/2000/1).

1. As disposições do presente anexo constituem os termos e condições suplementares aplicáveis a [designação do acordo-quadro a que o presente anexo se aplica] com data de [data do acordo] (o «acordo») celebrado entre o Banco Central Europeu (o «BCE») e [designação da contraparte] (a «contraparte»). As disposições constantes do presente anexo são juntas e incorporadas no acordo dele fazendo parte integrante. Caso alguma das disposições do acordo (diferente das disposições do presente anexo) ou do acordo-quadro de compensação do BCE com data de [data] (o «acordo-quadro de compensação») celebrado entre o BCE e a contraparte, incluindo quaisquer termos e condições suplementares anexos ao acordo, seja contrária ou produza efeitos iguais ou semelhantes às disposições do presente anexo, as disposições deste último prevalecem e são aplicáveis em vez das referidas disposições.
2. Excepto nos casos em que o contrário seja estipulado por lei ou regulamento, a contraparte aceita manter confidencial e, em circunstância alguma, divulgar a terceiros, quaisquer informações ou pareceres fornecidos pelo BCE, ou quaisquer informações referentes ao BCE obtidas pela contraparte pelo facto de esta ser uma contraparte do acordo, incluindo, nomeadamente, informações respeitantes à existência ou condições do acordo (incluindo o presente anexo) ou à relação por este meio criada entre a contraparte e o BCE. A contraparte não utilizará o nome do BCE em qualquer material de publicidade ou promoção.
3. A contraparte aceita notificar por escrito o BCE, logo que razoavelmente possível, i) de qualquer operação de consolidação, absorção, fusão ou transferência de grande parte ou da totalidade dos seus activos para outra entidade, ii) da eventual nomeação de um liquidatário, fiel depositário, administrador judicial ou agente análogo, bem como do início de qualquer procedimento de liquidação ou reorganização da contraparte ou de qualquer outro procedimento análogo, ou iii) da alteração do nome da contraparte.
4. Pelo presente acordo, o BCE não renuncia à imunidade que porventura lhe assista nos termos da lei aplicável em relação a acções judiciais ou à jurisdição de qualquer tribunal, nem em relação a despachos judiciais que tenham como consequência a adopção de providências cautelares não especificadas ou que envolvam o arrolamento ou o arresto dos seus bens (tanto antes como após julgamento da acção principal).
5. Não serão aplicáveis ao BCE quaisquer causas de incumprimento ou medidas de qualquer tipo em que se faça referência a falência, insolvência ou qualquer outro facto análogo.
6. A contraparte declara que celebra o presente acordo (incluindo o presente anexo) em seu próprio nome e que efectuará todas as transacções em seu próprio nome e não na qualidade de representante de qualquer outra entidade.

⁽¹⁾ O texto original do presente anexo foi redigido em inglês e faz parte dos acordos-quadro existentes, redigidos em inglês, francês e alemão. Os acordos-quadro redigidos em inglês são regidos pela lei inglesa ou pela lei do Estado de Nova Iorque, os acordos-quadro redigidos em francês são regidos pela lei francesa e os acordos-quadro redigidos em alemão são regidos pela lei alemã. A tradução do presente anexo para outras línguas foi realizada apenas com fins exemplificativos e as versões resultantes não são juridicamente vinculativas.

ANEXO 2

ÍNDICE

Anexo 2a

Acordo-quadro de compensação regido pela lei inglesa

(para as contrapartes constituídas em jurisdições que não a França, Alemanha ou Estados Unidos da América; redigido em inglês)

Anexo 2b

Acordo-quadro de compensação regido pela lei francesa

(para as contrapartes constituídas em França; redigido em francês)

Anexo 2c

Acordo-quadro de compensação regido pela lei alemã

(para as contrapartes constituídas na Alemanha; redigido em alemão)

Anexo 2d

Acordo-quadro de compensação regido pela lei do Estado de Nova Iorque

(para as contrapartes constituídas nos Estados Unidos da América; redigido em inglês)

ANEXO 2a

Acordo-quadro de compensação regido pela lei inglesa

(para as contrapartes constituídas em jurisdições que não a França, Alemanha ou Estados Unidos da América; redigido em inglês)

MASTER NETTING AGREEMENT

Dated:

Between:

European Central Bank, Kaiserstrasse 29, D-60311 Frankfurt am Main, Germany (hereinafter referred to as the ECB), and

[Counterparty] whose [address] [registered place of business] is at [address] (hereinafter referred to as the Counterparty)

1. Scope of agreement

- 1.1. The purpose of this Agreement (hereinafter referred to as the Agreement) is to ensure that the ECB is able to net all existing positions under all outstanding transactions made between the ECB and the Counterparty, regardless of any agent or agents authorised to act on behalf of the ECB through whom the transactions giving rise to those positions may have been effected, including the central bank of any Member State of the European Union which has adopted the euro as its currency, and regardless of which office (including the head office and all branches) of the Counterparty may be involved in such transactions, and after taking into account the effect of any existing netting provisions in master or other agreements between the ECB and the Counterparty and/or provisions of mandatory law that operate with similar effect that may apply to certain of such transactions.
- 1.2. In this Agreement, a 'netting agreement' means any agreement for the time being in effect between the Parties (and including, without limitation, this Agreement and agreements of the kind listed in Appendix 1 to this Agreement), including such modifications and additions thereto as may be agreed between the ECB and the Counterparty (hereinafter referred to as the Parties) from time to time, which contains provisions to the effect that, should any event of default as defined for the purposes of such agreement occur, there may be an early termination, liquidation, closing-out or acceleration of transactions or obligations under transactions or any analogous event (a 'default termination') and the respective obligations of the Parties under such agreement may be combined, aggregated or set-off against each other so as to produce a single net balance payable by one Party to the other.

2. General

- 2.1. All transactions of whatever nature (hereinafter referred to as transactions) entered into between the Parties at any time after the date of this Agreement shall be governed by this Agreement, unless the Parties specifically agree otherwise.
- 2.2. The Parties acknowledge that the terms of this Agreement, all transactions governed by this Agreement, any amendments to the terms of such transactions, and the single net balance payable under any netting agreement constitute a single business and contractual relationship and arrangement.
- 2.3. The Counterparty has entered into this Agreement as principal and represents and warrants that it has entered and shall enter into all transactions as principal.
- 2.4. This Agreement is supplemental to the netting agreements entered into between the Parties prior to the date of this Agreement, and all further netting agreements and transactions entered into between the Parties after the date of this Agreement shall be supplemental to this Agreement.

3. Base currency

The base currency for the purposes of this Agreement shall be the US dollar or, at the ECB's option, any other currency. Wherever it is necessary in accordance with the terms of this Agreement to convert amounts into the base currency, such amounts shall be converted at the daily reference rate published by the ECB for the currency to be converted into the base currency or, in the absence of such reference rate, at the rate of exchange at which the ECB can buy or sell, as appropriate, such amounts with or against the base currency on such day, all as determined by the ECB.

4. Cross acceleration

Should any default termination occur under any netting agreement (including under Appendix 2 to this Agreement), then the ECB shall have the right to declare, by written notice to the Counterparty, that a default termination has occurred under each other netting agreement in respect of which default termination has not occurred in accordance with the provisions thereof.

5. Global netting

- 5.1. Should a default termination occur, the ECB shall, as soon as is reasonably practicable, take an account of what is due from each Party to the other under each netting agreement (including under Appendix 2 to this Agreement) in respect of which default termination has occurred and aggregate the sums due from each Party to the other under such netting agreements (including under Appendix 2 to this Agreement), in every case in or converted into the base currency, and only the net balance of the account shall be payable by the Party owing the larger aggregate sum.
- 5.2. Clause 5.1 shall continue to operate to the extent possible notwithstanding the unenforceability under applicable law of any provisions contained in any netting agreement (including under Appendix 2 of this Agreement).

6. Notices and other communications

All notices, instructions and other communications to be given under this Agreement shall be effective only upon receipt and shall be made in writing (including by electronic means).

7. Severability

Each provision contained herein (including, without limitation, Appendix 2 to this Agreement) shall be treated as separate from any other provision herein and shall be enforceable notwithstanding the unenforceability of any such other provision.

8. Non-assignability

The rights and obligations of the Counterparty under this Agreement may not be assigned, charged, pledged or otherwise transferred or dealt with by the Counterparty.

9. Governing law and jurisdiction

- 9.1. This Agreement shall be governed by and construed in accordance with English law.
- 9.2. For the benefit of the ECB, the Counterparty hereby irrevocably submits for all purposes of or in connection with this Agreement to the jurisdiction of the District Court (*Landgericht*) of Frankfurt am Main, Germany. Nothing in this clause 9 shall limit the right of the ECB to take proceedings before the courts of any other country of competent jurisdiction.

European Central Bank	[Name of Counterparty]
By _____	By _____
Title _____	Title _____
	(Address for the service of notices under this Agreement)
Date _____	Date _____

(In case of Luxembourg Counterparties:

In addition to clause 9 of this Agreement the Parties agree that for purpose of Article 1 of the Protocol annexed to the Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters, signed in Brussels on 27 September 1998 and without prejudice to the foregoing execution of this Agreement by the parties hereto, (Luxembourg Counterparty) expressly and specifically confirms its agreement to the provisions of clause 9 of this Agreement, stipulating that the District Court (*Landgericht*) of Frankfurt am Main shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement and, for such purposes, irrevocably submits to the jurisdiction of such courts.

Luxembourg Counterparty

By _____
 Title _____)

*Appendix 1***Netting agreements (*)**

1. ISDA Master Agreement (Multicurrency-Cross Border 1992)
2. PSA-ISMA Global Master Repurchase Agreement
3. Convention-cadre AFB relative aux opérations de marché à terme
4. Convention-cadre AFB relative aux opérations de pension livrée
5. Rahmenvertrag für Finanztermingeschäfte
6. Rahmenvertrag für echte Pensionsgeschäfte

*Appendix 2***Transactions not subject to any netting agreement**

1. The provisions of this Appendix apply to transactions entered into between the Parties that are not effectively subject to any other netting agreement.
2. Should:
 - a) a default termination occur under any netting agreement, or
 - b) an event that is defined as an event of default or other analogous event under any netting agreement occur, which event would, assuming there were outstanding transactions under any such netting agreement, result in, or entitle the ECB to take steps which would result in, a default termination under such netting agreement,(any such event under (a) or (b) above is referred to in this Appendix as an 'event of default'), then all transactions to which this Appendix applies (but not less than all, unless any such transaction may not be so closed out under applicable law) under which obligations have or would otherwise have fallen due by or after the date of such event of default (the 'close out date') may by notice in writing from the ECB to the Counterparty be liquidated and closed-out as described under paragraphs 3 and 4 of this Appendix, and the ECB shall, without prejudice to paragraphs 3 and 4 of this Appendix, not be obliged to make any further payments or deliveries under any such transactions.
3. Should liquidation and close-out under paragraph 2 of this Appendix occur, the ECB shall, as soon as is reasonably practicable, take an account of what is due from each Party to the other, including, as necessary, determining in respect of each transaction the ECB's total gain or loss, as the case may be, resulting from the liquidation and close-out of such transaction as at the date of such liquidation and close-out, in every case in or converted into the base currency. The ECB shall then aggregate such gains and losses and only the balance of the account shall be payable by the Counterparty, if the aggregate losses exceed the aggregate gains, or by the ECB, if the aggregate gains exceed the aggregate losses.
4. In determining in respect of each transaction the ECB's total gain or loss, the ECB shall, subject to applicable law, use a commercially reasonable method of calculation which (a) is based on, to the extent practicable and available, quotations from at least four leading dealers in the relevant market operating in the same financial centre, and (b) takes into account, where applicable, the liquidation and close-out of such transaction earlier than its scheduled value date or delivery date.
5. The Parties agree that the calculation of the net sum under paragraphs 3 and 4 of this Appendix is a reasonable pre-estimate of losses suffered.

(*) This documentation is maintained by the ECB Legal Services and the legal departments of the national central banks.

ANEXO 2b

Acordo-quadro de compensação regido pela lei francesa**(para as contrapartes constituídas em França; redigido en francês)****CONVENTION-CADRE DE COMPENSATION**

Date:

Entre:

La Banque centrale européenne, Kaiserstrasse 29, D-60311 Francfort-sur-le-Main, Allemagne (ci-après dénommée la «BCE») et
(ci-après dénommée la «contrepartie»)

1. Champ d'application de la convention

- 1.1 La présente convention (ci-après dénommée la «convention») a pour objet de permettre à la BCE de compenser l'ensemble des positions existantes dans le cadre de l'ensemble des transactions en cours effectuées entre la BCE et la contrepartie, sans distinction de l'agent ou des agents autorisés à agir pour le compte de la BCE par l'intermédiaire duquel ou desquels les transactions génératrices de ces positions ont pu être effectuées, y compris la banque centrale de tout État membre de l'Union européenne ayant adopté l'euro comme monnaie nationale, et sans distinction de l'établissement (y compris le siège social et l'ensemble des succursales) de la contrepartie impliqué dans ces transactions, et après prise en considération de l'incidence de toutes les dispositions existantes relatives à la compensation qui figurent dans la convention-cadre ou dans les autres conventions conclues entre la BCE et la contrepartie et/ou des dispositions de la législation applicable ayant un effet similaire et susceptibles de s'appliquer à certaines de ces transactions.
- 1.2 Dans la présente convention, on entend par «convention de compensation» toute convention en vigueur entre les parties (y compris, sans restriction, la présente convention et les conventions de l'espèce énumérées dans l'additif 1 de la présente convention), y compris les modifications et les avenants aux textes susceptibles d'être convenus, s'il y a lieu, entre la BCE et la contrepartie (ci-après dénommées les «parties»), qui comporte des dispositions prévoyant, lors de la survenance d'un cas de défaillance tel que défini dans le cadre de cette convention, une possibilité de résiliation, d'exigibilité anticipées ou de «close out» des transactions ou des obligations afférentes aux transactions ou de tout événement analogue (une «résiliation pour défaillance»), les obligations respectives des parties dans le cadre de cette convention pouvant dès lors être regroupées, globalisées ou compensées réciproquement de manière à donner lieu à un solde net unique payable par l'une des parties à l'autre.

2. Dispositions d'ordre général

- 2.1 L'ensemble des transactions de toute nature (ci-après dénommées «transactions») conclues entre les parties à tout moment après la date de la présente convention sera régi par la présente convention, sauf si les parties en décident spécifiquement autrement.
- 2.2 Les parties reconnaissent que les termes de la présente convention, l'ensemble des transactions régies par elle, toutes les modifications apportées aux termes de ces transactions et le solde net unique payable dans le cadre de toute convention de compensation constituent une relation et un accord professionnels et contractuels uniques.
- 2.3 La contrepartie a conclu cette convention en son nom propre; elle déclare et atteste qu'elle a conclu et conclura toutes les transactions en son nom propre.
- 2.4 La présente convention complète les conventions antérieures de compensation conclues antérieurement entre les parties; toutes les autres conventions de l'espèce et transactions qui seront conclues ultérieurement entre les parties compléteront la présente convention.

3. Devise de référence

La devise de référence utilisée dans le cadre de cette convention sera le dollar des États-Unis ou, au choix de la BCE, une autre devise. Dans les cas où il sera nécessaire, conformément aux termes de la présente convention, de convertir les montants dans la devise de référence, la conversion s'effectuera au taux de référence quotidien publié par la BCE pour la devise à convertir dans la devise de référence ou, à défaut de ce taux de référence, au taux de change auquel la BCE peut acheter ou vendre, selon le cas, ces montants avec ou contre la devise de référence ce même jour, selon les conditions définies par la BCE.

4. Clause de défaillance croisée

Lors de la survenance d'une résiliation pour défaillance dans le cadre d'une convention de compensation (y compris dans le cadre de l'additif 2 de la présente convention), la BCE sera habilitée à prononcer, par notification écrite à la contrepartie, la résiliation pour défaillance de chacune des autres conventions de compensation pour lesquelles il n'y a pas eu résiliation pour défaillance dans les conditions prévues par les dispositions précitées.

5. Compensation globale

5.1 Lors de la survenance d'une résiliation pour défaillance, la BCE comptabilisera dans les meilleurs délais les montants dus par chacune des parties à l'autre au titre de chaque convention de compensation (y compris dans le cadre de l'additif 2 de la présente convention) pour laquelle est intervenue une résiliation pour défaillance et globalisera les sommes dues par chaque partie à l'autre au titre de ces conventions de compensation (y compris dans le cadre de l'additif 2 de la présente convention) libellées ou converties dans tous les cas dans la devise de référence, seul le solde net étant payable par la partie débitrice du montant brut le plus élevé.

5.2 La clause 5.1 restera en vigueur dans la mesure du possible nonobstant le caractère inapplicable, en vertu de la loi en vigueur, de toute disposition pouvant être contenues dans une convention de compensation (y compris dans le cadre de l'additif 2 de la présente convention).

6. Notifications et autres communications

L'ensemble des notifications, instructions et autres communications à donner dans le cadre de la présente convention ne prendront effet qu'à la date de leur réception et seront adressées par écrit (y compris par les moyens électroniques).

7. Gestion séparée

Chacune des dispositions de la présente convention (y compris, sans restriction, l'additif 2 de ladite convention) sera traitée isolément des autres dispositions et sera applicable nonobstant le caractère inapplicable de ces autres dispositions.

8. Incessibilité

Les droits et les obligations de la contrepartie dans le cadre de la présente convention ne peuvent être cédés, transférés ou autrement négociés par la contrepartie.

9. Loi applicable, attribution de compétences

9.1 La présente convention sera soumise au droit français et interprétée selon ledit droit.

9.2 Dans l'intérêt de la BCE, la contrepartie soumet irrévocablement par la présente convention tous les cas afférents à celle-ci ou s'y rapportant à la compétence de la juridiction du tribunal (*Landgericht*) de Francfort-sur-le-Main, Allemagne. Aucune disposition de cette clause 9 ne limitera le droit de la BCE d'entamer une procédure judiciaire devant les tribunaux compétents d'un autre pays.

Banque centrale européenne**Contrepartie**

Par _____

Par _____

En qualité de _____

En qualité de _____

Date _____

Date _____

*Additif 1***Conventions de compensation**

1. Convention-cadre AFB relative aux opérations de marché à terme
2. Convention-cadre AFB relative aux opérations de pension livrée
3. ISDA Master Agreement (Multicurrency-Cross Border 1992)
4. PSA-ISMA Global Master Repurchase Agreement
5. The Bond Market Association Master Repurchase Agreement
6. Rahmenvertrag für Finanztermingeschäfte
7. Rahmenvertrag für echte Pensionsgeschäfte

*Additif 2***Transactions non soumises à une convention de compensation**

1. Les dispositions du présent additif s'appliquent aux transactions conclues entre les parties qui ne sont pas effectivement soumises à une autre convention de compensation.
2. Lors de la survenance:
 - a) d'une résiliation pour défaillance dans le cadre d'une convention de compensation ou
 - b) d'un événement défini comme étant un cas de défaillance ou un événement analogue dans le cadre d'une quelconque convention de compensation, lequel événement, dans l'hypothèse où des transactions seraient en cours au titre de cette convention de compensation, amènerait ou habiliterait la BCE à prendre des mesures qui entraîneraient une résiliation pour défaillance dans le cadre de ladite convention,[les événements prévus aux points a) ou b) étant dénommés dans le présent additif «cas de défaillance»],

l'ensemble des transactions concernées par le présent additif (sans exception, sauf dans le cas où une transaction ne peut faire l'objet d'une résiliation dans ces conditions aux termes de la loi applicable) dans le cadre desquelles les obligations sont ou seraient arrivées à échéance à la date ou après la date de survenance de ce cas de défaillance (la «date de résiliation») pourront être résiliées par notification écrite de la BCE à la contrepartie dans les conditions prévues aux points 3 et 4 du présent additif et la BCE ne sera pas tenue d'effectuer, sans préjudice des points 3 et 4 du présent additif, d'effectuer d'autres paiements ou livraisons au titre de ces transactions.

3. En cas de résiliation selon les termes du point 2 du présent additif, la BCE comptabilisera dans les meilleurs délais les sommes dues par chacune des parties à l'autre, notamment, le cas échéant, en déterminant pour chaque transaction la perte ou le gain total de la BCE résultant de la résiliation de ladite transaction à la date de résiliation, le montant étant dans tous les cas libellé ou converti dans la devise de référence. La BCE globalisera ensuite ces gains et pertes et seul le solde net sera payable par la contrepartie si le total des pertes excède celui des gains, ou par la BCE si le total des gains excède celui des pertes.
 4. Pour déterminer, dans le cadre de chaque transaction, le montant total du gain ou de la perte de la BCE, celle-ci utilisera, sous réserve de la législation applicable, une méthode de calcul commercialement raisonnable: a) fondée, dans la mesure du possible, sur les cotations fournies par au moins quatre intervenants de premier rang du marché considéré et opérant dans le même centre financier et b) prenant en compte, le cas échéant, la résiliation de la transaction intervenue antérieurement à la date de valeur ou de livraison prévue.
 5. Les parties conviennent que le calcul de la somme nette aux termes des points 3 et 4 du présent additif constitue une estimation raisonnable des pertes encourues.
-

ANEXO 2c

**Acordo-quadro de compensação regido pela lei alemã
(para as contrapartes constituídas na Alemanha; redigido em alemão)**

**EZB-AUFRECHNUNGSVERTRAG
(„MASTER NETTING AGREEMENT“)**

vom:

zwischen

der Europäischen Zentralbank, Kaiserstraße 29, D-60311 Frankfurt am Main, Deutschland (im nachfolgenden „EZB“) und

.....

(im nachfolgenden „Vertragspartner“)

1. Anwendungsbereich dieses Vertrags

- 1.1. Der Zweck dieses Vertrages (im Folgenden: „Vertrag“) besteht darin, die Verrechnung aller bestehenden Positionen aus allen offenen Geschäften zwischen der EZB und dem Vertragspartner zu ermöglichen. Der Vertrag schließt Geschäfte ein, die die EZB über Stellvertreter (z. B. Teilnehmerzentralbanken) abschließt. Er umfasst auch ferner alle diejenigen Geschäfte, die über die Hauptverwaltung oder eine unselbständige Zweigniederlassung des Vertragspartners mit der EZB abgeschlossen werden. Der Vertrag berücksichtigt ferner alle sonst zwischen den Parteien bestehenden Rahmenverträge oder sonstigen Vereinbarungen, die Aufrechnungsklauseln enthalten, sowie zwingende gesetzliche Vorschriften mit ähnlichen Wirkungen.
- 1.2. Unter einem Aufrechnungsvertrag (Netting Agreement) im Sinne dieses Vertrags (im Folgenden: „Aufrechnungsvertrag“) sind alle die zwischen den Parteien getroffenen (einschließlich dieses Vertrags sowie der im Anhang 1 zum Vertrag aufgeführten) Vereinbarungen in ihrer jeweiligen Fassung zu verstehen, die Klauseln enthalten, wonach im Fall eines wichtigen Grundes (event of default) insbesondere eine vorzeitige Beendigung eintritt oder eine Kündigung ausgesprochen werden kann (im folgenden: „Beendigung oder Kündigung aus wichtigem Grund“); ferner muss dort vereinbart sein, dass infolge einer Beendigung oder Kündigung Geschäfte oder Verpflichtungen fällig bzw. in verrechenbare, fällige Forderungen umgewandelt werden, die anschließend zusammengefasst, ver- oder aufgerechnet werden mit der Folge, dass lediglich ein einziger Nettosaldo durch eine der beiden Parteien geschuldet wird.

2. Allgemeines

- 2.1. Für alle Geschäfte, die die Parteien nach Unterzeichnung dieses Vertrags tätigen (im Folgenden „Einzelabschlüsse“), gelten die nachfolgenden Bestimmungen, sofern die Parteien im Einzelabschluss nichts Abweichendes vereinbaren.
- 2.2. Die Parteien sind sich darüber einig, dass dieser Vertrag in seiner jeweiligen Fassung, alle Einzelabschlüsse, die von diesem Vertrag erfasst werden, und die aus Aufrechnungsverträgen resultierenden Nettosalde ein einheitliches Vertragsverhältnis bilden.
- 2.3. Die Vertragsparteien sichern zu, dass sie den Vertrag in eigenem Namen abgeschlossen haben und alle Einzelabschlüsse ebenfalls in eigenem Namen tätigen werden.

3. Vertragswährung („base currency“)

Vertragswährung ist der US-Dollar oder jede andere Währung, die die Parteien vereinbaren. Die Umrechnung von auf andere Währungen lautenden Beträgen in die Vertragswährung erfolgt jeweils zum täglichen Referenzkurs, den die EZB für die umzurechnende Währung veröffentlicht oder, hilfsweise, zum jeweiligen Marktkurs, zu dem die EZB an diesem Geschäftstag den umzurechnenden Währungsbetrag gegen die Vertragswährung kaufen oder verkaufen kann.

4. Vertragsübergreifendes Kündigungs- oder Beendigungsrecht aus wichtigem Grund

Sofern die EZB ein Kündigungs- oder Beendigungsrecht aus wichtigem Grund im Rahmen eines Aufrechnungsvertrags (sowie auch gemäß Anhang 2 zu diesem Vertrag) hat, erstreckt sich dieses Recht auch auf jeden anderen Aufrechnungsvertrag, auch wenn nach den dortigen Vereinbarungen ein vergleichbarer Kündigungs- oder Beendigungsgrund noch nicht gegeben ist.

5. Allumfassende Aufrechnungsvereinbarung („global netting“)

- 5.1. Sollte eine Beendigung oder Kündigung aus wichtigem Grund stattfinden, wird die EZB unverzüglich die aus den jeweiligen Aufrechnungsverträgen (sowie auch aus Anhang 2 zu diesem Vertrag) resultierenden Nettosalde errechnen und diese, nach Umrechnung in die Vertragswährung, zu einer einzigen Forderung oder Verbindlichkeit zusammenfassen mit der Folge, dass nurmehr dieser Betrag zwischen den Parteien geschuldet wird.
- 5.2. Z. 5.1 gilt ungeachtet dessen, dass Klauseln in Aufrechnungsverträgen (einschließlich Anhang 2 zu diesem Vertrag) nach dem jeweils anwendbaren Recht nicht wirksam bzw. nichtig sind.

6. Erklärungen und andere Mitteilungen

Alle Erklärungen, Weisungen und andere Mitteilungen im Rahmen dieses Vertrags sind nur dann wirksam, wenn sie in Schriftform oder in elektronischer Form übermittelt werden und der Gegenseite auch zugegangen sind.

7. Teilbarkeit

Sollte eine Bestimmung dieses Vertrags (einschließlich des Anhangs 2) ganz oder teilweise unwirksam sein oder werden, bleiben die übrigen Bestimmungen wirksam. An Stelle der unwirksamen Bestimmungen tritt eine wirksame Regelung, die dem wirtschaftlichen Zweck mit der unwirksamen Bestimmung soweit wie möglich Rechnung trägt.

8. Abtretungsverbot

Die Rechte und Pflichten aus dem Vertrag darf der Vertragspartner weder abtreten noch in sonstiger Weise hierüber verfügen.

9. Anwendbares Recht und Gerichtsstand

9.1. Dieser Vertrag unterliegt dem Recht der Bundesrepublik Deutschland.

9.2. Nicht ausschließlicher Gerichtsstand ist Frankfurt am Main.

Europäische Zentralbank

Vertragspartner

Name _____

Name _____

Titel _____

Titel _____

Ort, Datum _____

Ort, Datum _____

*Anlage 1***Liste der Aufrechnungsverträge**

1. Rahmenvertrag für Finanztermingeschäfte
2. Rahmenvertrag für echte Pensionsgeschäfte
3. ISDA Master Agreement (Multicurrency-Cross Border 1992)
4. The Bond Market Association Master Repurchase Agreement
5. PSA-ISMA Global Master Repurchase Agreement
6. Convention-Cadre AFB Relative aux Opérations de Marché à Terme
7. Convention-Cadre AFB Relative aux Opérations de Pension Livrée

*Anlage 2***Geschäfte, die keinem Aufrechnungsvertrag unterliegen:**

1. Vorschriften dieses Anhangs finden Anwendung auf solche Einzelabschlüsse zwischen den Parteien, die von keinem anderen Aufrechnungsvertrag erfasst werden.
 2. Sofern
 - a) eine Beendigung oder Kündigung aus wichtigem Grund nach Maßgabe eines Aufrechnungsvertrags eintritt oder
 - b) ein Beendigungs- oder Kündigungsgrund nach Maßgabe eines Aufrechnungsvertrags vorliegt, der zur Beendigung führen oder zur Kündigung durch die EZB berechtigen würde, sofern Einzelabschlüsse im Rahmen dieses Aufrechnungsvertrags getätigt worden wären, (im Folgenden: „beendigendes Ereignis im Sinne dieses Anhangs“)und die EZB eine Kündigung im Hinblick auf diesen Anhang ausgesprochen hat, dann können alle unter diesen Anhang fallenden Einzelabschlüsse gemäß den Punkten 3 und 4 dieses Anhangs durch eine schriftliche Mitteilung der EZB an den Vertragspartner beendet und abgerechnet werden, sofern diese Einzelabschlüsse Verpflichtungen enthalten, die im Zeitpunkt des Wirksamwerdens der Beendigung oder Kündigung noch nicht fällig sind. Die Hauptpflichten aus diesen Einzelgeschäften erlöschen, vorbehaltlich der nachfolgenden Punkte 3 und 4 dieses Anhangs.
 3. Sollte eine Beendigung oder Kündigung gemäß Punkt 2 dieses Anhangs eintreten, wird die EZB unverzüglich die beiderseitigen Ansprüche ermitteln und hierbei, sofern erforderlich, den aus jedem Einzelabschluss für die EZB resultierenden Gewinn oder Verlust ermitteln, der sich aus der vorzeitigen Kündigung oder Beendigung an dem Tag ergibt, an dem die Kündigung oder Beendigung wirksam wird; sie wird ferner diese Positionen gegebenenfalls in die Vertragswährung umrechnen. Die EZB fasst dann diese Forderungen und Verbindlichkeiten zu einer einzigen Forderung oder Verbindlichkeit zusammen mit der Folge, dass nurmehr dieser Betrag zwischen den Parteien geschuldet wird.
 4. Zur Ermittlung der Gewinne und Verluste der EZB aus den jeweiligen Einzelabschlüssen wird die EZB, vorbehaltlich des anwendbaren Rechtes, eine für beide Seiten angemessene Berechnungsmethode verwenden, die a), soweit möglich und vorhanden, auf den von mindestens vier bedeutenden Marktteilnehmern an dem maßgeblichen Finanzplatz gestellten Kursen oder Preisen beruht und b) hierbei in Rechnung stellt, dass die Beendigung oder Kündigung des jeweiligen Einzelabschlusses vorzeitig stattgefunden hat.
-

ANEXO 2d

Acordo-quadro de compensação regido pela lei do Estado de Nova Iorque
(para as contrapartes constituídas nos Estados Unidos da América; redigido em inglês)

MASTER NETTING AGREEMENT

Dated as of:

Between:

European Central Bank, Kaiserstrasse 29, D-60311 Frankfurt am Main, Germany (hereinafter referred to as the ECB), and

[Counterparty] whose [address] [registered place of business] is at [address] (hereinafter referred to as the Counterparty)

1. Scope of agreement

1.1. The purpose of this Agreement (hereinafter referred to as the Agreement) is to ensure that the ECB is able to net all existing positions under all outstanding transactions made between the ECB and the Counterparty, regardless of any agent or agents authorised to act on behalf of the ECB through whom the transactions giving rise to those positions may have been effected, including the central bank of any Member State of the European Union which has adopted the euro as its currency, and regardless of which office (including the head office and all branches) of the Counterparty may be involved in such transactions, and after taking into account the effect of any existing netting provisions in master or other agreements between the ECB and the Counterparty and/or provisions of mandatory law that operate with similar effect that may apply to certain of such transactions.

1.2. In this Agreement, a 'netting agreement' means any agreement for the time being in effect between the Parties (and including, without limitation, this Agreement and agreements of the kind listed in Appendix 1 to this Agreement), including such modifications and additions thereto as may be agreed between the ECB and the Counterparty (hereinafter referred to as the Parties), from time to time, which contains provisions to the effect that, should any event of default as defined for the purposes of such agreement occur, there may be an early termination, liquidation, closing-out or acceleration of transactions or obligations under transactions or any analogous event (a 'default termination') and the respective obligations of the parties under such agreement may be combined, aggregated or netted against each other so as to produce a single net balance payable by one Party to the other.

2. General

2.1. All transactions of whatever nature (hereinafter referred to as transactions) entered into between the ECB and the parties at any time after the date of this Agreement shall be governed by this Agreement, unless the parties specifically agree otherwise.

2.2. The parties acknowledge that the terms of this Agreement, all transactions governed by this Agreement, any amendments to the terms of such transactions, and the single net balance payable under any netting agreement constitute a single business and contractual relationship and arrangement.

2.3. Each party represents and warrants to the other that it is a financial institution for purposes of the US Deposit Insurance Corporation Improvement Act of 1991 (hereinafter referred to as FDICIA), and the parties agree that this Agreement shall be a netting contract, as defined in FDICIA, and that each receipt or payment obligation under the Agreement shall be a covered contractual payment entitlement or covered contractual payment obligation respectively, as defined in and subject to FDICIA.

2.4. The Counterparty has entered into this Agreement as principal and represents and warrants that it has entered and shall enter into all transactions as principal.

[2.5.] The Counterparty represents and warrants to, and covenants and agrees with the ECB, that:

(a) it has the power to execute and deliver this Agreement and any other documentation relating to this Agreement to which it is a party and that it is required to deliver; it has the power to perform its obligations under this Agreement and any obligations under any netting agreement to which it is a party; it has taken all necessary action to authorise such execution, delivery and performance, including authorisations required under the US Federal Deposit Insurance Act, as amended, including amendments effected by the US Federal Institutions Reform, Recovery and Enforcement Act of 1989, and under any agreement, writ, decree or order entered into with a party's supervisory authorities; and

(b) at all times during the term of this Agreement, it will continuously include and maintain as part of its official written books and records this Agreement, the netting agreements and evidence of all necessary authorisations] ⁽¹⁾.

[2.5.] [2.6.] This Agreement is supplemental to the netting agreements entered into between the parties prior to the date of this Agreement, and all further netting agreements and transactions entered into between the Parties after the date of this Agreement shall be supplemental to this Agreement.

⁽¹⁾ Representation to be used where the Counterparty is a US depository institution.

3. **Base currency**
The base currency for the purposes of this Agreement shall be the US dollar or, at the ECB's option, any other currency. Wherever it is necessary in accordance with the terms of this Agreement to convert amounts into the base currency, such amounts shall be converted at the daily reference rate published by the ECB for the currency to be converted into the base currency or, in the absence of such reference rate, at the rate of exchange at which the ECB can buy or sell, as appropriate, such amounts with or against the base currency on such day, all as determined by the ECB.
4. **Cross acceleration**
Should any default termination occur under any netting agreement (including under Appendix 2 to this Agreement), then the ECB shall have the right to declare, by written notice to the Counterparty, that a default termination has occurred under each other netting agreement in respect of which default termination has not occurred in accordance with the provisions thereof.
5. **Global netting**
- 5.1. Should a default termination occur, the ECB shall, as soon as is reasonably practicable, take an account of what is due from each party to the other under each netting agreement (including under Appendix 2 of this Agreement) in respect of which default termination has occurred and aggregate the sums due from each party to the other under such netting agreements (including under Appendix 2 to this Agreement), in every case in or converted into the base currency, and only the net balance of the account shall be payable by the party owing the larger aggregate sum.
- 5.2. Clause 5.1 shall continue to operate to the extent possible notwithstanding the unenforceability under applicable law of any provisions contained in any netting agreement (including under Appendix 2 to this Agreement).
6. **Notices and other communications**
All notices, instructions and other communications to be given under this Agreement shall be effective only upon receipt and shall be made in writing (including by electronic means).
7. **Severability**
Each provision contained herein (including, without limitation, Appendix 2 to this Agreement) shall be treated as separate from any other provision herein and shall be enforceable notwithstanding the unenforceability of any such other provision.
8. **Non-assignability**
The rights and obligations of the Counterparty under this Agreement may not be assigned, charged, pledged or otherwise transferred or dealt with by the Counterparty.
9. **Governing law and jurisdiction**
- 9.1. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, United States of America.
- 9.2. For the benefit of the ECB, the Counterparty hereby irrevocably submits for all purposes of or in connection with this Agreement to the jurisdiction of the District Court (*Landgericht*) of Frankfurt am Main, Germany. Nothing in this clause 9 shall limit the right of the ECB to take proceedings before the courts of any other country of competent jurisdiction.

European Central Bank

[Name of Counterparty] ^(?)

By _____

By _____

Title _____

Title _____

[Address for the service of notices under this Agreement]

Date _____

Date _____

(?) In the case of US depository institution counterparties, to be executed by a bank officer at the level of Vice President or higher.

*Appendix 1***Netting agreements**

1. ISDA Master Agreement (Multicurrency-Cross Border 1992)
2. The Bond Market Association Master Repurchase Agreement
3. PSA-ISMA Global Master Repurchase Agreement
4. Convention-cadre AFB relative aux opérations de marché à terme
5. Convention-cadre AFB relative aux opérations de pension livrée
6. Rahmenvertrag für Finanztermingeschäfte
7. Rahmenvertrag für echte Pensionsgeschäfte

*Appendix 2***Transactions not subject to any netting agreement**

1. The provisions of this Appendix apply to transactions entered into between the Parties that are not effectively subject to any other netting agreement.
 2. Should:
 - a) a default termination occur under any netting agreement, or
 - b) an event that is defined as an event of default or other analogous event under any netting agreement occur, which event would, assuming there were outstanding transactions under any such netting agreement, result in, or entitle the ECB to take steps which would result in, a default termination under such netting agreement,
(any such event under (a) or (b) above is referred to in this Appendix as an 'event of default'), then all transactions to which this Appendix applies (but not less than all, unless any such transaction may not be so closed out under applicable law) under which obligations have or would otherwise have fallen due by or after the date of such event of default (the 'close out date') may by notice in writing from the ECB to the Counterparty be liquidated and closed-out as described under paragraphs 3 and 4 of this Appendix, and the ECB shall, without prejudice to paragraphs 3 and 4 of this Appendix, not be obliged to make any further payments or deliveries under any such transactions.
 3. Should liquidation and close-out under paragraph 2 of this Appendix occur, the ECB shall, as soon as is reasonably practicable, take an account of what is due from each Party to the other, including, as necessary, determining in respect of each transaction the ECB's total gain or loss, as the case may be, resulting from the liquidation and close-out of such transaction as at the date of such liquidation and close-out, in every case in or converted into the base currency. The ECB shall then aggregate such gains and losses and only the balance of the account shall be payable by the Counterparty, if the aggregate losses exceed the aggregate gains, or by the ECB, if the aggregate gains exceed the aggregate losses.
 4. In determining in respect of each transaction the ECB's total gain or loss, the ECB shall, subject to applicable law, use a commercially reasonable method of calculation which (a) is based on, to the extent practicable and available, quotations from at least four leading dealers in the relevant market operating in the same financial centre, and (b) takes into account, where applicable, the liquidation and close-out of such transaction earlier than its scheduled value date or delivery date.
 5. The Parties agree that the calculation of the net sum under paragraphs 3 and 4 of this Appendix is a reasonable pre-estimate of losses suffered.
-

ANEXO 3

ACORDOS-QUADRO PARA OPERAÇÕES COM GARANTIA E OPERAÇÕES DE DERIVADOS EM MERCADOS DE BALCÃO

1. Todas as operações com garantia relacionadas com os activos de reserva do BCE, incluindo, nomeadamente, acordos de recompra, venda com acordo de recompra, acordos de compra/revenda e acordos de venda/recompra, são documentadas nos termos dos seguintes acordos-quadro, segundo modelos que o BCE pode aprovar ou alterar: para as contrapartes com estabelecimento em França, a «Convention-cadre AFB Relative aux Opérations de Pension Livrée», para as contrapartes com estabelecimento na Alemanha, a «Rahmenvertrag für echte Pensionsgeschäfte», para as contrapartes com estabelecimento fora de França e da Alemanha e não constituídas nos Estados Unidos, o «PSA/ISMA Global Master Repurchase Agreement» e para as contrapartes constituídas nos Estados Unidos, o «The Bond Market Association Master Repurchase Agreement».
 2. Todas as operações de derivados em mercados de balcão relacionadas com os activos de reserva do BCE são documentadas nos termos dos seguintes acordos-quadro, segundo modelos que o BCE pode aprovar ou alterar: para as contrapartes com estabelecimento em França, a «Convention-cadre AFB Relative aux Opérations de Marché à Terme», para as contrapartes com estabelecimento na Alemanha, a «Rahmenvertrag für echte Finanztermingeschäfte», para as contrapartes com estabelecimento fora de França e da Alemanha e não constituídas nos Estados Unidos, o «1992 International Swaps and Derivatives Association Master Agreement» (multidivisas — transfronteiras, versão da lei inglesa) e para as contrapartes constituídas nos Estados Unidos, o «1992 International Swaps and Derivatives Association Master Agreement» (multidivisas — transfronteiras, versão da lei do Estado de Nova Iorque).
-