



EUROPEAN CENTRAL BANK

EUROSYSTEM

LEGAL FRAMEWORK OF THE EUROSYSTEM AND THE EUROPEAN SYSTEM OF CENTRAL BANKS

OCTOBER 2011

ECB LEGAL ACTS
AND INSTRUMENTS
2011 Update

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FOREWORD

As a European institution and legislator, the European Central Bank (ECB) is committed to building a sound and transparent legal framework in line with best practice. This publication updates the presentation of the ECB's legal acts and instruments, first published in July 2008 as part of the series of legal booklets produced by the ECB's Legal Services. It contains new information to take into account amendments to the legal framework adopted between 1 January 2009 and 31 December 2010. Some of the most notable developments that it covers are:

- a number of Decisions adopted in reaction to the financial crisis, in particular: (i) a Decision on the establishment of a covered bond purchase programme; (ii) a Decision establishing a Securities Market Programme; and (iii) two Decisions containing measures in response to the fiscal crisis in Greece;
- a number of financial crisis-related changes to Guideline ECB/2000/7 (the General Documentation);
- a Guideline establishing the TARGET2-Securities Programme, following a Decision setting up the TARGET2-Securities Programme Board; and
- recasts of a number of key legal acts relating to: government finance statistics; the legal framework for accounting and financial reporting; the ECB's annual accounts; the allocation of monetary income; the distribution of the ECB's income from banknotes in circulation and securities purchases; and the issue of euro banknotes.

I am sure that this updated booklet will provide readers everywhere with a concise overview of the most important legal acts and instruments underpinning the work of the Eurosystem and the European System of Central Banks. The summaries in this booklet are a user-friendly supplement to the full legal texts of the ECB's legal acts and instruments, which are available on the ECB's website at www.ecb.europa.eu.

Frankfurt am Main, October 2011



Lorenzo Bini Smaghi
Member of the Executive Board of the ECB

I INTRODUCTION

This seventh legal booklet published by the ECB¹ provides summaries of the main legal acts and instruments in the legal framework of the Eurosystem and the ESCB. The booklet is designed to act as a useful reference tool for ECB and NCB staff who want to learn more about ECB legal acts and instruments in a particular field or about the relationship between different legal acts. The overall objective is thus to publish a concise summary of ECB legal acts and instruments constituting the legal framework of the Eurosystem and the ESCB in a practical format. To this end, the booklet covers:

- ECB institutional provisions;
- Monetary policy and operations;
- Payment and settlement systems (TARGET2 and TARGET2-Securities);
- Banknotes and coins, means of payments and currency matters;
- Foreign reserves, foreign exchange and Eurosystem reserve management services;
- Statistics; and
- Fraud prevention, transparency and data protection.

The booklet contains brief summaries of each ECB legal act and instrument in the above areas. It includes all main public legal acts and instruments adopted by the ECB prior to 31 December 2010, as well as recommendations of general interest and certain key Council regulations.

The booklet does not include institutional and employment-related legal acts², some legal acts which are still technically in force but no longer of great relevance (e.g. legal acts in preparation for the adoption of the euro by various Member States) or non-public ECB legal acts that have not been published.

The booklet gives dynamic publication references. For details regarding any particular legal act, reference is made to the version published in the *Official Journal of the European Union* (OJ)³.

1 The other booklets in the series are: (1) Institutional provisions (2004); (2) Guide to consultation of the ECB by national authorities (2005); (3) European legislation on financial markets (2007); (4) Legal framework of the Eurosystem and the ESCB (2008); (5) the ECB's Advisory Role (2009); and (6) Legal framework of the Eurosystem and the ESCB (2009).

2 Many of the institutional provisions (e.g. the Statute of the European System of Central Banks and of the European Central Bank, as well as the Rules of Procedure of the ECB, the Executive Board and the Governing Council) are set out in a separate legal booklet.

3 Full text and all amending legal acts are available on the EUR-Lex website at www.eur-lex.europa.eu and in the Legal Framework section on the ECB's website at www.ecb.europa.eu.

2 ECB INSTITUTIONAL PROVISIONS

2.1 ECB'S CAPITAL

Each NCB in the ESCB must contribute a proportion of the ECB's capital. Articles 28 to 29 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB') lay down the rules for calculating how much each NCB has to contribute. The key for subscription to the ECB's capital, known as the 'capital key', works as follows. Each NCB is assigned a weighting by reference to the relevant Member State's population and GDP, and the weightings are adjusted every five years. The percentages are rounded up to the nearest multiple of 0.05 percentage points and the European Commission provides the statistical data.

Pursuant to Article 48.3 of the Statute of the ESCB, each time a new Member State joins the ESCB the total amount of the ECB's capital is automatically increased and each NCB's weighting has to be adjusted accordingly.

There is an important distinction between the subscribed capital and the paid-up capital. Member States which have not yet adopted the euro only pay 3.75% of their share of the capital until they adopt the euro. This rate was previously 7% but was reduced by means of **Decision ECB/2010/28 of 13 December 2010 on the paying-up of the European Central Bank's capital by the non-euro area national central banks**⁴.

Decision ECB/2008/23 of 12 December 2008 on the national central banks' percentage shares in the key for subscription to the European Central Bank's capital⁵ is the legal instrument setting out the weightings for each NCB in the ESCB. Examples of NCB weightings are 0.1790% for Eesti Pank and 12.4966% for the Banca d'Italia.

The level of the ECB's capital was most recently set at EUR 10,760,652,402.58, by means of **Decision ECB/2010/26 of 13 December 2010 on the increase of the European Central Bank's capital**⁶. This Decision raised the preceding level of capital by EUR 5,000,000 with effect from 29 December 2010. A further legal act, **Decision ECB/2010/27 of 13 December 2010 on the paying-up of the increase of the European Central Bank's capital by the national central banks of Member States whose currency is the euro**⁷, sets out the resulting sum that each NCB in the Eurosystem (not the ESCB) has had to pay. Part of this has already been paid, but this Decision provides for the payment by each Eurosystem NCB of its share of the increase in the ECB's capital. Although the percentage of the subscribed capital that non-euro area NCBs had to pay up was reduced at the end of 2010, due to the

4 OJ L 11, 15.1.2011, p. 56.

5 OJ L 21, 24.1.2009, p. 66.

6 OJ L 11, 15.11.2011, p. 53.

7 OJ L 11, 15.11.2011, p. 54.

increase in the level of the ECB's capital they had to pay up extra sums pursuant to the aforementioned Decision ECB/2010/28.

The provisions on the payment-up of the share in the subscribed capital of the most recent Member State to join the euro, Estonia, are set out in **Decision ECB/2010/34 of 31 December 2010 on the paying-up of capital, transfer of assets and contributions by Eesti Pank to the European Central Bank's reserves and provisions**⁸.

2.2 ACCOUNTING, REPORTING AND AUDITING

Article 15 of the Statute of the ESCB lays down various reporting commitments for the ESCB. Article 26.3 of the Statute of the ESCB requires the Executive Board to draw up a consolidated balance sheet of the ESCB, which comprises those of the NCBs' assets and liabilities that fall within the ESCB. The Governing Council establishes the necessary rules for standardising the accounting and reporting of NCB operations, pursuant to Article 26.4 of the Statute of the ESCB.

Guideline ECB/2010/20 of 11 November 2010 on the legal framework for accounting and financial reporting in the European System of Central Banks (recast)⁹ amends and recasts the previous Guideline in this area. Like the previous Guideline, Guideline ECB/2010/20 provides for the harmonisation of the NCBs' published annual financial statements in respect of the following items: disclosure relating to euro banknotes in circulation; remuneration of net intra-Eurosystem claims/liabilities resulting from the allocation of euro banknotes within the Eurosystem; and monetary income.

Article 2 of the Guideline makes clear that the scope of its application is limited to the Eurosystem accounting and financial reporting regime laid down in the Statute of the ESCB. It recommends that NCBs should, to the extent possible, follow the rules set out in the Guideline for their national reports and financial accounts in the interests of consistency and comparability between the Eurosystem and national regimes, but acknowledges that there is no legal duty to do so.

The Guideline sets out the relevant basic accounting assumptions (e.g. the accruals principle), as well as rules on:

- how balance sheets must be composed;
- the valuation of items on balance sheets;

⁸ OJ L 11, 15.1.2011, p. 58.

⁹ OJ L 35, 9.2.2011, p. 31.

- income recognition (e.g. realised gains and losses must be taken to the profit and loss account);
- the accounting of off-balance-sheet instruments (e.g. interest rate swaps);
- the application by the NCBs of the same consolidation techniques and processes; and
- reporting formats (the Guideline sets out the format to be used by NCBs).

There are also transitional rules providing that NCBs must revalue all financial assets and liabilities at the date they join the Eurosystem.

The majority of the Guideline is taken up by the Annexes, which contain detailed rules on, for example, what is meant by the ‘economic approach’, how balance sheets are to be structured and what valuation rules to apply to them.

The new Guideline also includes rules that were already adopted in 2009, namely valuation principles for covered bonds purchased under **Decision ECB/2009/16** for the establishment of a programme for the purchase of covered bonds (see Section 3.2 below). These cover: the way in which liabilities arising from monetary policy operations initiated by an NCB prior to joining the Eurosystem must be recorded; the accounting treatment of outstanding claims arising from defaults by Eurosystem counterparties in the context of Eurosystem credit operations and of related assets; and the accounting treatment of provisions for counterparty risks arising from such operations. As well as recasting the previous Guideline, **Guideline ECB/2010/20** introduced new provisions on the hedging of interest rate risk and the revaluation of synthetic instruments.

There are specific rules detailing how the ECB’s annual accounts are to be drawn up. These are contained in **Decision ECB/2010/21 of 11 November 2010 on the annual accounts of the European Central Bank (recast)**¹⁰, which recast and amended the previous Decision in relation to this topic. The rules apply to the balance sheet, off-balance sheet items that are recorded in the ECB’s books, the profit and loss account and the notes to the ECB’s annual accounts. Many of the provisions of Guideline ECB/2010/20 (e.g. on the cost of transactions) are incorporated by reference into this Decision, and the basic accounting assumptions referred to in Guideline ECB/2010/20 also apply to this Decision. Current market rates and prices are used for balance sheet valuation purposes except where otherwise specified. The Annexes specify:

- the composition and valuation rules for the balance sheet;
- the format of the balance sheet; and
- the format of the profit and loss account.

¹⁰ OJ L 35, 9.2.2011, p. 1.

The Decision provides that when it is interpreted, account should be taken of the preparatory work, the accounting principles harmonised by Union law and generally accepted international accounting standards. It also specifies that if a specific type of accounting treatment is not laid down in the Decision, and in the absence of a decision to the contrary by the Governing Council, the ECB must follow valuation principles in accordance with International Accounting Standards, as adopted by the European Union, that are relevant to the ECB's activities and accounts.

The rules developed in 2009 in relation to Guideline ECB/2010/20, as referred to above, also apply in relation to the annual accounts. Furthermore, as part of the recasting process, Decision ECB/2010/21 incorporated certain new provisions, in particular on the hedging of interest rate risk.

Article 27.1 of the Statute of the ESCB requires the accounts of the ECB and the NCBs to be audited by independent external auditors recommended by the Governing Council and approved by the Council of the European Union. Each time the ECB itself or an NCB wishes to appoint or reconfirm the appointment of its external auditors the ECB adopts a recommendation¹¹, and the Council of the European Union then follows this up with a decision.

Decision ECB/2007/5 of 3 July 2007 laying down the Rules on Procurement¹² sets out the rules for tendering supply, service and works contracts. Tenders may be carried out by the ECB alone, or in conjunction with one or more NCBs. Procurement procedures must be carried out in accordance with the general principles of transparency and publicity, equal access and equal treatment, as well as the principles of non-discrimination and fair competition. The Decision sets out, inter alia, the thresholds for application of the public tender procedures; the normal duration of contracts; the types of public tender procedure; the time limits for receipt of applications and tenders; the means of communication with candidates and tenderers; and the rules in relation to selection and award criteria. **Decision ECB/2009/2 of 27 January 2009 amending Decision ECB/2007/5 laying down the Rules on Procurement**¹³ made three principal changes: it provided for a reduction in the thresholds for public tenders in accordance with EU procurement legislation; it specified the rules on establishing lists of suitable suppliers following publication of a contract notice; and it defined the rules on the exclusion of suppliers from future tender procedures.

Decision ECB/2010/8 of 27 July 2010 amending Decision ECB/2007/5 laying down the Rules on Procurement¹⁴ again revised the ECB's thresholds for public tender procedures in

11 e.g. Recommendation ECB/2008/2 of 30 April 2008 to the Council of the European Union on the external auditors of the European Central Bank (OJ C 114, 9.5.2008, p. 1); and Recommendation ECB/2010/11 of 23 August 2010 to the Council of the European Union on the external auditors of the Banca d'Italia (OJ C 233, 28.8.2010, p. 1).

12 OJ L 184, 14.7.2007, p. 34.

13 OJ L 51, 24.2.2009, p. 10.

14 OJ L 51, 24.2.2009, p. 10.

line with that applied by other EU institutions, clarified the nature of certain exemptions from the procurement procedures, and provided for greater access by unsuccessful candidates and tenderers to internal ECB documents.

By means of **Decision ECB/2008/17 of 17 November 2008 laying down the framework for joint Eurosystem procurement**¹⁵, the ECB adopted a framework for the joint procurement of goods and services by the Eurosystem, with the aim of fostering the participation of Eurosystem central banks in joint procurement and exploiting synergies and economies of scale. The Decision formalised the mandate of the Eurosystem Procurement Coordination Office (EPCO), which will be hosted by the Banque centrale du Luxembourg from 2008 to 2012. Moreover, the Decision defines general rules for joint tender procedures conducted by one central bank under the procurement law applicable to that central bank. Joint tender procedures may be used for the procurement of goods and services necessary for the performance of Eurosystem tasks. Participation in such tender procedures is voluntary. The Governing Council may invite NCBs of Member States that have not yet adopted the euro to participate in EPCO's activities and in joint tender procedures.

2.3 MONETARY INCOME

Under Article 32 of the Statute of the ESCB, the income accruing to the NCBs in the performance of the ESCB's monetary policy function (hereinafter 'monetary income') is allocated at the end of each financial year. The amount of monetary income that an NCB is allocated is equal to the annual income that it derives from its assets held against notes in circulation and deposit liabilities to credit institutions. NCBs must earmark these assets in accordance with Governing Council guidelines. The amount of each NCB's monetary income is reduced by an amount equivalent to any interest paid by that NCB on its deposit liabilities to credit institutions in accordance with Article 19 of the Statute of the ESCB.

Decision ECB/2010/23 of 25 November 2010 on the allocation of monetary income of the national central banks of Member States whose currency is the euro (recast)¹⁶ amended and recast the previous Decision in this area. Decision ECB/2010/23 is closely linked to **Decision ECB/2010/29 of 13 December 2010 on the issue of euro banknotes (recast)**¹⁷. The allocation of euro banknotes among Eurosystem members gives rise to intra-Eurosystem balances and the remuneration of these intra-Eurosystem balances on euro banknotes in circulation has a direct effect on the income of each Eurosystem member. Since 2003 the amount of each NCB's monetary income has been determined by measuring the actual income that derives from the earmarkable assets recorded in its books.

¹⁵ OJ L 319, 29.11.2008, p. 76.

¹⁶ OJ L 35, 9.2.2011, p. 17.

¹⁷ OJ L 35, 9.2.2011, p. 26.

New Eurosystem NCBs are treated in the same way financially as existing Eurosystem NCBs, for reasons of fairness, consistency and equal treatment, which is achieved by means of an adjustment procedure to be applied each time a Member State adopts the euro.

Decision ECB/2010/23 also includes some amendments that were already adopted in 2009 to take account of three developments: the establishment of the programme for the purchase of covered bonds for monetary policy purposes; widened access to Eurosystem open market operations and standing facilities by credit institutions; and the necessity, as shown by experience, of specifying the treatment of outstanding claims arising from defaults by Eurosystem counterparties in the context of Eurosystem credit operations, and of related financial assets.

Income accrues to the ECB on the remuneration of its intra-Eurosystem claims on NCBs relating to its share of euro banknotes in circulation and also arises from securities purchased under the Securities Market Programme (SMP) established in the first half of 2010 (see Section 3.2 below). **Decision ECB/2010/24 of 25 November 2010 on the interim distribution of the income of the European Central Bank on euro banknotes in circulation and arising from securities purchased under the securities markets programme**¹⁸ provides that the ECB's income on euro banknotes in circulation and its income arising from the purchase of SMP securities is due in full to the euro area NCBs in the same financial year it accrues and must be distributed to those NCBs in proportion to their paid-up shares in the ECB's subscribed capital. However, the Governing Council may decide that all or part of the ECB's income arising from SMP securities and, if necessary, all or part of the ECB's income on euro banknotes in circulation should be retained, to the extent that this is necessary to ensure that the amount of distributed income does not exceed the ECB's net profit for that year. Any such decision must be taken where, on the basis of a reasoned estimate prepared by the Executive Board, the Governing Council expects that the ECB will have an overall annual loss or will make an annual net profit that is less than the estimated amount of its income on euro banknotes in circulation and the estimated amount of its income arising from SMP securities. Furthermore, Decision ECB/2010/24 gives the Governing Council the power to decide to transfer all or part of the ECB's income arising from SMP securities and, if necessary, all or part of the ECB's income on euro banknotes in circulation to a provision for foreign exchange rate, interest rate, credit and gold price risks.

18 OJ L 6, 11.1.2011, p. 35.

3 MONETARY POLICY AND OPERATIONS

3.1 MONETARY POLICY INSTRUMENTS

Guideline ECB/2000/7 on monetary policy instruments and procedures of the Eurosystem¹⁹ has very few enacting terms; the bulk of the Guideline consists of two annexes. Annex I is better known as the ‘General Documentation’ and sets out the Eurosystem’s legal framework for monetary policy instruments and procedures. Annex II sets out additional minimum common features applicable to all arrangements for monetary policy operations. One of the main aims of Guideline ECB/2000/7, as set out in the introduction, is to provide counterparties with the information they need in relation to the Eurosystem’s monetary policy framework and to set out the framework to be implemented by the NCBs in their jurisdiction. Guideline ECB/2000/7 does not itself confer rights or impose obligations on counterparties; the legal relationship between the Eurosystem and its counterparties is established in NCBs’ contractual or regulatory arrangements. The General Documentation has been amended on a number of occasions, but the entire Annex is not replaced with each amendment.

The General Documentation consists of seven chapters. Chapter 1 gives an overview of the operational framework for the Eurosystem’s monetary policy, setting out, for example, a list of the monetary policy instruments which are available to the Eurosystem (e.g. open market operations and standing facilities). Chapter 2 sets out the eligibility criteria for counterparties which participate in Eurosystem monetary policy operations. Chapter 3 covers open market operations, which the Eurosystem uses to steer interest rates, manage liquidity and signal its monetary policy stance. There are four categories of open market operations in the Eurosystem: (i) main refinancing operations; (ii) longer-term refinancing operations; (iii) fine-tuning operations; and (iv) structural operations. This Chapter sets out the features of the different types of open market instruments (e.g. reverse transactions). Chapter 4 sets out the two types of standing facility that are available to counterparties: (i) the marginal lending facility (by which counterparties can obtain overnight liquidity from NCBs); and (ii) the deposit facility (by which counterparties can make overnight deposits with NCBs). Chapter 5 specifies the various procedures that are applied in the execution of monetary policy operations: (i) tender procedures; (ii) procedures for bilateral operations; and (iii) settlement procedures. In Chapter 6, the eligibility criteria for the use of underlying assets as collateral in monetary policy operations are defined. All Eurosystem credit operations must be based on adequate collateral and consequently all Eurosystem operations which provide liquidity are based on underlying assets provided by counterparties as collateral. This can either take the form of a transfer in ownership of assets (for outright transactions or repurchase agreements) or the form of a pledge, or a charge granted over relevant assets. The rules set out in this chapter are very detailed, covering, for example, the Eurosystem’s credit assessment framework. Chapter 7 presents the Eurosystem’s minimum reserve system,

¹⁹ OJ L 310, 11.12.2000, p. 1.

which sets out, for example, how the level of minimum reserves that a credit institution must hold is calculated.

The rest of the General Documentation consists of appendices, containing:

- examples of monetary policy operations and procedures;
- a glossary;
- criteria for the selection of counterparties for Eurosystem foreign exchange intervention operations and foreign exchange swaps for monetary policy purposes;
- a presentation of the reporting framework for the ECB’s money and banking statistics;
- a list of the Eurosystem websites;
- a description of the procedures and sanctions to be applied in the event of non-compliance with counterparty obligations; and
- additional legal requirements for the creation of a valid security over credit claims.

Annex II to Guideline ECB/2000/7 sets out additional minimum common features applicable to all arrangements for monetary policy operations, which should be introduced by the NCBs in the arrangements with their counterparties. Such minimum common features also relate to reverse transactions and foreign exchange swaps.

The Eurosystem’s monetary policy instruments and therefore the General Documentation were amended in 2009 and in the first half of 2010 in connection with the financial crisis. **Guideline ECB/2009/1 of 20 January 2009 amending Guideline ECB/2000/7 on monetary policy instruments and procedures of the Eurosystem**²⁰ changed rating requirements relating to asset-backed securities and excluded a certain category of asset-backed securities from use in the Eurosystem’s credit operations. In addition, the Guideline limited issuer concentration in the use of uncovered bank bonds as collateral in order to safeguard the Eurosystem against credit exposure. **Guideline ECB/2009/10 of 7 May 2009 amending Guideline ECB/2000/7 on monetary policy instruments and procedures of the Eurosystem**²¹ introduced access to Eurosystem open market operations and standing facilities by financially sound credit institutions within the meaning of Article 123(2) of the Treaty on the Functioning of the European Union which, in view of their specific institutional nature under Union law, are subject to scrutiny of a standard comparable to supervision by competent national authorities. **Guideline ECB/2010/1 of 4 March 2010 amending Guideline ECB/2000/7 on monetary**

20 OJ L 36, 5.2.2009, p. 59.

21 OJ L 123, 19.5.2009, p. 99.

policy instruments and procedures of the Eurosystem²² introduced certain changes to the Eurosystem credit assessment framework, in particular amending the rating requirements for asset-backed securities to be eligible for use in Eurosystem credit operations.

Furthermore, **Guideline ECB/2010/13 of 16 September 2010 amending Guideline ECB/2000/7 on monetary policy instruments and procedures of the Eurosystem**²³ made a number of amendments to the monetary policy framework, including: (a) revising the risk control framework for Eurosystem credit operations, *inter alia* in relation to asset-backed securities and close links; (b) enhancing and strengthening the provisions on discretionary measures that the Eurosystem may invoke to address concerns regarding the financial soundness of a counterparty; (c) allowing the Governing Council to decide that the ECB may, in exceptional circumstances, carry out outright transactions in a centralised manner; and (d) introducing new eligibility criteria for the own use of non-UCITS compliant covered bonds. Further amendments were made to Guideline ECB/2000/7 at the end of 2010²⁴ introducing: (i) the eligibility of fixed-term deposits as collateral; (ii) additional exemptions from the prohibition on ‘close links’; and (iii) amendments relating to the Eesti Pank joining the Eurosystem.

In addition, **Guideline ECB/2008/18 of 21 November on temporary changes to the rules relating to eligibility of collateral**²⁵, as amended by **Guideline ECB/2009/24 of 10 December 2009 amending Guideline ECB/2008/18 on temporary changes to the rules relating to eligibility of collateral**²⁶ temporarily widened the eligibility of collateral admissible for Eurosystem credit operations. Guideline ECB/2008/18 was to apply until 31 December 2010 or until the maturity date of the last 12-month refinancing operation launched by 31 December 2010, whichever was the latest, and is therefore no longer in force.

3.2 CRISIS-RELATED MEASURES AND PROGRAMMES

As a response to the exceptional circumstances prevailing in the financial markets in 2009, **Decision ECB/2009/16 of 2 July 2009 on the implementation of the covered bond purchase programme**²⁷ was adopted. Pursuant to Article 18.1 of the Statute of the ESCB, the NCBs of euro area Member States may operate in the financial markets by, amongst other things, buying and selling outright marketable instruments. The Eurosystem, by adopting

22 OJ L 63, 12.3.2010, p. 22.

23 OJ L 267, 9.10.2010, p. 21.

24 Guideline ECB/2010/30 of 13 December 2010 amending Guideline ECB/2000/7 on monetary policy instruments and procedures of the Eurosystem (OJ L 336, 21.12.2010, p. 63).

25 OJ L 314, 25.11.2008, p.17.

26 OJ L 330, 16.12.2009, p. 95.

27 OJ L 175, 4.7.2009, p. 18.

Decision ECB/2009/16, launched a programme under which the NCBs, and exceptionally the ECB, could carry out, in direct contact with counterparties, the outright purchase of eligible covered bonds in accordance with their share in the key for subscription of the ECB's capital, as referred to in Article 29 of the Statute of the ESCB; the total purchase at Eurosystem level was targeted at a nominal amount of EUR 60 billion. The Decision applied until 30 June 2010.

Furthermore, in reaction to the exceptional circumstances in financial markets, including securities markets, **Decision ECB/2010/5 of 14 May 2010 establishing a securities markets programme**²⁸ established a temporary securities market programme under which the euro area NCBs, in accordance with their shares in the key for subscription of the ECB's capital, and the ECB, were authorised to conduct outright interventions in the euro area public and private debt securities markets. The Decision set out the eligibility criteria for the Securities Market Programme (SMP). Under the SMP, Eurosystem central banks may purchase: (i) on the secondary market, eligible marketable debt instruments issued by euro area central governments or public entities; and (ii) on the primary and secondary markets, eligible marketable debt instruments issued by private entities incorporated in the euro area. The duration of the SMP and therefore the application of the Decision are not specified.

Finally, two Decisions were adopted in relation to the fiscal crisis in Greece. **Decision ECB/2010/3 of 6 May 2010 on temporary measures relating to the eligibility of marketable debt instruments issued or guaranteed by the Greek Government**²⁹ temporarily suspended the applicability of certain provisions of the General Documentation (relating to credit quality thresholds) in reaction to the fiscal difficulties experienced by the Greek Government and its approval of an economic and financial adjustment programme negotiated with the European Commission, the ECB and the International Monetary Fund. This was to ensure that marketable debt instruments issued or fully guaranteed by the Greek Government would continue to constitute eligible collateral for the purposes of Eurosystem monetary policy operations, irrespective of their external credit rating. **Decision ECB/2010/4 of 10 May 2010 concerning the management of pooled bilateral loans for the benefit of the Hellenic Republic and amending Decision ECB/2007/7**³⁰ lays down provisions for the opening of a cash account with the ECB for the operation of: (i) a Loan Level Facility Agreement between the euro area Member States (other than Greece and Germany) and KfW with Greece, and the Bank of Greece as its agent; and (ii) an Intercreditor Agreement between the euro area Member States (other than Greece) entrusting the management of pooled bilateral loans under the Loan Level Facility Agreement to the European Commission.

28 OJ L 124, 20.5.2010, p. 8.

29 OJ L 117, 11.5.2010, p. 102.

30 OJ L 119, 13.5.2010, p. 24.

3.3 MINIMUM RESERVES

Article 19.1 of the Statute of the ESCB provides that, subject to Article 2 (on the ESCB's objectives), the ECB 'may require credit institutions established in Member States to hold minimum reserves on accounts with the ECB and national central banks in pursuance of monetary policy objectives'. It provides that the Governing Council may establish regulations on the calculation and determination of the required minimum reserves and that the ECB is entitled to levy penalty interest or other sanctions with comparable effect in the event of non-compliance.

Regulation ECB/2003/9 of 12 September 2003 on the application of minimum reserves³¹ lays down detailed rules on minimum reserves. It sets out the categories of institutions which are subject to reserve requirements: credit institutions, other than NCBs, of euro area Member States, and branches of credit institutions that are located in euro area Member States. The terms 'credit institution' and 'branch' are both as defined in the Capital Requirements Directive³². The ECB has the power to exempt institutions from reserve requirements in certain circumstances. **Regulation ECB/2008/10 of 22 October 2008 amending Regulation ECB/2003/9 on the application of minimum reserves**³³ amended the types of institutions that the ECB may exempt from the obligation to hold minimum reserves, including: (i) institutions subject to reorganisation measures; (ii) institutions subject to the freezing of funds and/or other measures imposed by the Union or a Member State restricting the use of their funds; and (iii) institutions for which the aims of the ECB's minimum reserve system would not be met by imposing reserve requirements upon them.

The reserve base comprises two types of liability resulting from the acceptance of funds: deposits; and debt securities issued. There are two different levels of reserve ratio: 0% for four liability categories (e.g. repos) with a maturity period of over two years; and 2% for all other liabilities that are included in the reserve base.

The amount of minimum reserves to be held by each institution in respect of a particular maintenance period is calculated by applying the reserve ratios to each relevant item of the reserve base for that period. A maintenance period (over a period of one month) is defined as the 'period over which compliance with reserve requirements is calculated and for which such minimum reserves must be held on reserve accounts'. Each institution is given an allowance of EUR 100,000, which is deducted from the amount of the minimum reserves.

The Eurosystem NCBs each determine procedures for notifying an individual institution's minimum reserves: either the NCB or the institution calculates the level required for a

31 OJ L 250, 2.10.2003, p. 10.

32 Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (OJ L 177, 30.6.2006, p. 1).

33 OJ L 282, 25.10.2008, p. 14.

particular maintenance period and notifies the other party of the amount at least three NCB business days before the start of the maintenance period.

An institution must hold its minimum reserves on one or more reserve (or other) accounts with the NCB in each euro area Member State in which it is established, in relation to its reserve base in the corresponding Member State. An institution may apply for permission to hold all its minimum reserves through an intermediary resident in the same Member State. The intermediary must be an institution subject to reserve requirements which normally effects part of the administration, e.g. treasury management, of the institution for which it is acting as intermediary, beyond the holding of minimum reserves. An institution is regarded as having complied with its reserve requirement if the average end-of-day balance on its reserve accounts over the maintenance period is not less than the amount calculated for that period. Specific rules cover the situations in which either a merger or division take place during a maintenance period.

Holders of required reserves are remunerated at the average (taken over the maintenance period) of the ECB rate for the main Eurosystem refinancing operations, according to a detailed formula.

When non-euro area Member States adopt the euro, there are transitional provisions to ensure a smooth integration of credit institutions and branches of credit institutions located in the Member State in question into the minimum reserve system, without creating a disproportionate burden on them³⁴.

Regulation ECB/2003/9 also provides for general criteria governing transitional maintenance periods for institutions which become subject to the ECB's reserve requirements due to the adoption of the euro by the Member State in which they are located.

3.4 SANCTIONS

Although Article 19.1 of the Statute of the ESCB provides that the ECB may impose sanctions for breaches of the minimum reserve requirements, Article 19.2 provides that it is the Council of the European Union which determines the appropriate sanctions.

Council Regulation (EC) No 2531/98 of 23 November 1998 concerning the application of minimum reserves by the European Central Bank³⁵ sets out the basis for minimum reserves which the ECB may require institutions to hold, as well as the range of permissible reserve ratios. It provides for the ECB's right to collect and verify information necessary for the

³⁴ e.g. Decision ECB/2010/18 of 26 October 2010 on transitional provisions for the application of minimum reserves by the European Central Bank following the introduction of the euro in Estonia (OJ L 285, 30.10.2010, p. 37).

³⁵ OJ L 318, 27.11.1998 p. 1.

application of the minimum reserve regime and establishes the possible sanctions in cases of non-compliance.

Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions³⁶ is a more general measure covering the ECB's powers to impose sanctions in the event of breaches of obligations under ECB regulations and decisions, i.e. it does not only cover breaches of the minimum reserve obligations. It sets out the upper limit for fines and periodic penalty payments, the factors the ECB must take into account, the procedural rules, the time limits and the right to seek judicial review by the Court of Justice of the European Union.

Regulation ECB/1999/4 of 23 September 1999 on the powers of the European Central Bank to impose sanctions³⁷ builds on Council Regulation (EC) No 2532/98. The net effect of the two abovementioned Council Regulations and Regulation ECB/1999/4 is that before a sanction is imposed, a credit institution must be notified in writing of the breach of its obligation to hold minimum reserves and of the relevant sanction. The sanction is calculated as a penalty of 2.5 percentage points above the average, taken over the maintenance period in which the breach occurred, of the marginal lending rate of the ESCB, applied to the daily average amount of minimum reserves which the institution concerned failed to provide.

If an institution breaches the minimum reserves requirement more than twice in any 12-month period, the sanction for the third and any subsequent infringement is calculated in the same way as for the earlier breaches, except that the penalty is five, not 2.5, percentage points above the average of the ESCB's marginal lending rate during the maintenance period.

There are three possible options for an institution when it is notified of the alleged breach of its minimum reserve obligations³⁸. The institution may:

- (i) acknowledge the breach and agree to pay the penalty, within five working days of receipt of the notification;
- (ii) raise objections, presenting any relevant written information within five working days of receipt of the notification, in which case the Executive Board considers the objections and takes a decision; or
- (iii) remain silent, i.e. neither raise objections to nor accept the sanction within the time limit of five working days. When that time limit expires, the sanction is deemed to be imposed by the Executive Board³⁹. However, at this point the sanction is not yet final,

³⁶ OJ L 318, 27.11.1998, p. 4.

³⁷ OJ L 264, 12.10.1999, p. 21. See also Notice of the European Central Bank on the imposition of sanctions for breaches of the obligation to hold minimum reserves (OJ C 39, 11.2.2000, p. 3).

³⁸ See Article 11(4) of Regulation ECB/1999/4.

³⁹ See Article 11(5) of Regulation ECB/1999/4.

as the credit institution still has the right to request a review of the Executive Board's decision by the Governing Council.

Any request for a review by the Governing Council⁴⁰ must be made within 15 working days from the date on which the sanction is deemed to have been imposed by the Executive Board in the situations referred to in paragraphs (ii) and (iii) above, i.e. either because the Executive Board has rejected the institution's objections because it does not accept its explanation of the breach, or because the deadline for submitting objections has expired. If the institution does not request such a review within the time limit or following its review, the Governing Council confirms the Executive Board's decision, the sanction becomes final.

Once the decision has become final (or, if no decision has been taken, within two months of the request for a review by the Governing Council), the institution may request a judicial review of the decision by the Court of Justice⁴¹, in accordance with the Treaty. Pursuant to Article 261 of the Treaty, the Court of Justice has unlimited jurisdiction in respect of the review of the penalties. If, following a final decision, a sanction is imposed on a credit institution, the NCB notifies the relevant supervisory authority on behalf of the ECB's Executive Board.

3.5 FINANCIAL ASSISTANCE

There is a Union medium-term assistance facility which enables loans to be granted to one or more Member States which are experiencing, or are seriously threatened with, difficulties in their balance of current payments or capital movements⁴². Only Member States which have not adopted the euro may benefit from the facility. Under Regulation (EC) No 332/2002, the ECB must make the necessary arrangements for the administration of the loans. **Decision ECB/2003/14 of 7 November 2003 concerning the administration of the borrowing-and-lending operations concluded by the European Community under the medium-term financial assistance facility**⁴³ sets out those detailed arrangements, (e.g. what types of accounts the ECB must open in its books) and was amended by **Decision ECB/2009/17 of 19 June 2009 amending Decision ECB/2003/14 concerning the administration of the borrowing-and-lending operations concluded by the European Community under the medium-term financial assistance facility**⁴⁴, which requires NCBs of Member States receiving loans under the financial assistance facility to open specific accounts with the ECB in order to take account of new requirements at Union level relating to the timing of such Member States' payments to the EU.

40 See Article 3(6) of Regulation (EC) No 2532/98 and Article 7(2) of Regulation (EC) No 2531/98.

41 See Article 3(7) and Article 5 of Regulation (EC) No 2532/98.

42 Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments (OJ L 53, 23.2.2002, p. 1).

43 OJ L 297, 15.11.2003, p. 35.

44 OJ L 190, 22.7.2009, p. 11.

Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism⁴⁵ provides for possible EU financial assistance to Member States experiencing or threatened with a severe economic or financial disturbance. In connection with this mechanism, **Decision ECB/2010/17 of 14 October 2010 concerning the administration of the borrowing and lending operations concluded by the Union under the European financial stabilisation mechanism**⁴⁶ was adopted in order to provide for the opening of specific accounts, upon request, in the name of the European Commission and NCBs of beneficiary Member States.

An EFSF Framework Agreement between euro area Member States and European Financial Stability Facility SA (EFSF)⁴⁷ dated 7 June 2010 entered into force and became binding on 4 August 2010. Under this Agreement, EFSF provides financing in the form of loan facility agreements to euro area Member States where such Member States are in financial difficulties. **Decision ECB/2010/15 of 21 September 2010 concerning the administration of EFSF loans to Member States whose currency is the euro**⁴⁸ and **Decision ECB/2010/31 of 20 December 2010 concerning the opening of accounts for the processing of payments in connection with EFSF loans to Member States whose currency is the euro**⁴⁹ lay down provisions concerning the cash accounts to be opened with the ECB for the operation of the loan facility agreements.

45 OJ L 118, 12.5.2010, p. 1.

46 OJ L 275, 20.10.2010, p. 10.

47 Available on the EFSF website at www.efsf.europa.eu.

48 OJ L 253, 28.9.2010, p. 58.

49 OJ L 10, 14.1.2011, p. 7.

4 PAYMENT AND SETTLEMENT SYSTEMS

4.1 TARGET2

The original Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET) was a decentralised payment system linking national real-time gross settlement (RTGS) systems and the ECB payment mechanism. TARGET2 replaced it from November 2007. TARGET2 is based on a single technical platform, known as the Single Shared Platform (SSP), through which all payment orders are submitted and processed and through which payments are received in the same technical manner. Although TARGET2 is, like TARGET, based on a multiplicity of legal systems, **Guideline ECB/2007/2 of 26 April 2007 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2)**⁵⁰ reflected the Governing Council's decision to harmonise the rules of the TARGET2 component systems to the greatest extent possible; there are only derogations to the Harmonised Conditions of TARGET2 where there are national legal constraints.

The ECB and the Eurosystem NCBs each manage their own TARGET2 component, but the rules of each system must implement the Harmonised Conditions contained in Annex II to Guideline ECB/2007/2. These Harmonised Conditions cover the rules on, *inter alia*, access criteria, the application procedure, the obligations of participants and the relevant central bank, and rules on suspension and termination. The Harmonised Conditions also contain detailed provisions covering, for example: contingency procedures; the TARGET2 compensation scheme; the operating and fee schedules; the two types of liquidity pooling arrangements (one on information-sharing and one on the aggregation of the balances of different group members' accounts); and the technical specifications for the processing of payment orders.

There are various ways of accessing TARGET2: (a) as direct participants, e.g. credit institutions with their head office in the European Economic Area; (b) as indirect participants, i.e. participants which have entered into an agreement under which the payment orders are legally submitted by the direct participant; (c) via 'multi-addressee access', which is a facility by which branches and credit institutions established in the EEA can access a TARGET2 component system by submitting payment orders and/or receiving payments directly to and from the TARGET2 component system through the direct participant's account, but are protected by the Settlement Finality Directive⁵¹ since the payment orders are in legal terms submitted by the direct participant; and (d) as 'addressable BIC holders', which are correspondents or customers of direct participants or a branch of either a direct or indirect participant that are able to submit payment orders to and receive payments from the

⁵⁰ OJ L 237, 8.9.2007, p. 1.

⁵¹ Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).

TARGET2 component system via a direct participant – they are essentially mere entries in the TARGET2 directory.

The non-Eurosystem NCBs may also join TARGET2 if they conclude an agreement with the Eurosystem; the agreement specifies that the connected NCBs will comply with Guideline ECB/2007/2, subject to any mutually agreed appropriate specifications and modifications.

TARGET2 has three levels of governance. Level 1 comprises the Governing Council, which has final competence in relation to TARGET2 and safeguards its public function. Level 2 consists of the Eurosystem NCBs and the ECB who together have subsidiary competence in relation to TARGET2. Finally, Level 3 consists of the three NCBs (the Deutsche Bundesbank, the Banque de France and the Banca d'Italia) which built and now operate the SSP on behalf of the Eurosystem.

Guideline ECB/2007/2 also lays down detailed rules on the provision of intraday credit to certain categories of entities, e.g. credit institutions established in the EEA that are eligible counterparties for Eurosystem monetary policy operations and have access to the marginal lending facility, and the provision of fund transfer services in central bank money to ancillary systems. Such fund transfer services are governed by bilateral arrangements between the central banks and the ancillary systems. Annex IV to the Guideline sets out the requirements for the bilateral arrangements between central banks and ancillary systems. There are two interfaces: the Participant Interface (whereby the ancillary system is admitted as a direct participant); and the Ancillary System Interface (ASI). Under both interfaces certain provisions of the Harmonised Conditions must also be contained in the bilateral arrangements. Annex V sets out the conditions under which TARGET2 participants can access a TARGET2 Payments Module (PM) account by means of the Internet.

The Governing Council determines the cost methodology, the security requirements and the audit rules.

Guideline ECB/2009/10 of 7 May 2009 amending Guideline ECB/2007/2 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2)⁵² made changes to some of the Annexes to Guideline ECB/2007/2. The aim of these changes was to: reflect the new release of the SSP and the need to define the newly introduced cross-system settlement; and allow access to TARGET2 by publicly-owned credit institutions which, in view of their specific institutional nature under Union law, are subject to scrutiny of a standard comparable to supervision by competent national authorities. **Guideline ECB/2009/21 of 17 September 2009 amending Guideline ECB/2007/2 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2)**⁵³ made further amendments to, amongst other things: reflect the new release of

⁵² OJ L 123, 19.5.2009, p. 94.

⁵³ OJ L 260, 3.10.2009, p. 31.

the SSP; clarify the specific oversight location principles with which entities offering services in euro are required to comply; and introduce a derogation in relation to bilateral arrangements with ancillary systems which open PM accounts and cannot be subject to pledge or set-off of claims. **Guideline ECB/2010/12 of 15 September 2010 amending Guideline ECB/2007/2 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2)**⁵⁴ contains further amendments which, inter alia, allow participants to access PM accounts using Internet-based access.

The ECB's own participation in TARGET2 (to process the ECB's own payments and the payments of its customer in TARGET2, and to supply through TARGET2 settlement services to clearing and settlement organisations) is governed by **Decision ECB/2007/7 of 24 July 2007 concerning the terms and conditions of TARGET2-ECB**⁵⁵. This Decision is based on the Harmonised Conditions under Guideline ECB/2007/2 and was amended twice in 2009⁵⁶ to reflect similar changes to those made to Guideline ECB/2007/2 that year. Decision ECB/2007/7 was further amended in one respect in 2010, in Decision ECB/2010/4 (as detailed above, in Section 3.2). That Decision extended the category of persons eligible to be customers of the ECB, so as to make possible the loan facility agreement between the euro area Member States and Greece, as well as the intercreditor agreement under which the euro area Member States other than Greece authorised the European Commission to organise pooled bilateral loans to Greece and represent them in managing such loans. Consequential amendments to Decision ECB/2007/7 resulting from the adoption of Guideline ECB/2010/12 (mentioned in the preceding paragraph) were adopted in late 2010⁵⁷.

Finally, **Decision ECB/2010/9 of 29 July 2010 on access to and use of certain TARGET2 data**⁵⁸ lays down the rules governing access by euro area NCBs to transaction-level data. Such access is limited to what is necessary to enable those NCBs to conduct quantitative analyses of transaction flows between TARGET2 participants or to make numerical simulations of the settlement process of TARGET2.

4.2 TARGET2-SECURITIES (T2S)

T2S will be a service based on a single platform allowing for core, neutral and borderless pan-European cash and securities settlement, which will be offered to central securities depositories (CSDs) to enable them to provide their customers with harmonised and

⁵⁴ OJ L 261, 5.10.2010, p. 6.

⁵⁵ OJ L 237, 8.9.2007, p. 71.

⁵⁶ Decision ECB/2009/13 of 9 June 2009 amending Decision ECB/2007/7 concerning the terms and conditions of TARGET2-ECB (OJ L 151, 16.6.2009, p. 39) and Decision ECB/2009/22 of 6 October 2009 amending Decision ECB/2007/7 concerning the terms and conditions of TARGET2-ECB (OJ L 274, 20.10.2009, p. 38).

⁵⁷ Decision ECB/2010/19 of 2 November 2010 amending Decision ECB/2007/7 concerning the terms and conditions of TARGET2-ECB (OJ L 290, 6.11.2010, p. 53).

⁵⁸ OJ L 211, 12.8.2010, p. 45.

commoditised delivery-versus-payment settlement services in central bank money in an integrated technical environment. **Decision ECB/2009/6 of 19 March 2009 on the establishment of the TARGET2-Securities Programme Board**⁵⁹ established a T2S Programme Board to assist the ECB decision-making bodies in relation to strategic and technical tasks relating to the establishment of the T2S Programme.

Guideline ECB/2010/2 of 21 April 2010 on TARGET2-Securities⁶⁰ lays down the basic foundations of the T2S Programme in its specification and development phase. It specifies the roles and responsibilities of the T2S Programme Board and of the four central banks which will develop and operate T2S (the Deutsche Bundesbank, the Banco de España, the Banque de France and the Banca d'Italia, collectively known as the '4CB'), as well as their mutual relationship. It also specifies the main decisions to be taken in relation to T2S by the Governing Council. Like TARGET2, the T2S Programme is based on three governance levels: at the first level, ultimate decision-making lies with the Governing Council, which has overall responsibility for the Programme; at the second level, there is the T2S Programme Board; and the third level is the 4CB. Finally, the Guideline provides for the basic principles of all of the following in relation to T2S: the financial regime; the eligibility criteria and contractual arrangement for access to T2S services by central securities depositories; the eligibility criteria for using currencies other than the euro in T2S; and the planning of the T2S Programme.

59 OJ L 102, 22.4.2009, p. 12.

60 OJ L 118, 12.5.2010, p. 65.

5 BANKNOTES AND COINS, MEANS OF PAYMENT AND CURRENCY MATTERS

5.1 EURO BANKNOTES ISSUANCE

Under Article 16 of the Statute of the ESCB and in accordance with Article 128(1) of the Treaty, the Governing Council has the exclusive right to authorise the issue of banknotes within the European Union, and the ECB and the NCBs may issue such notes.

Decision ECB/2010/29 of 13 December 2010 on the issue of euro banknotes (recast)⁶¹ sets out the banknote allocation key according to which the value of the euro banknotes in circulation are allocated to Eurosystem NCBs, which has a direct impact on the monetary income of those NCBs. The calculation of the banknote allocation key is based on the subscribed capital key, but also includes the ECB for a constant share of 8%. The Decision also lays down the obligations of NCBs in their capacity as issuers of euro banknotes, e.g. their responsibility for putting euro banknotes into circulation (and withdrawing them from circulation), and their obligations in relation to the physical handling of banknotes. The obligations of NCBs cover all euro banknotes, including those issued by the ECB. The Decision is updated each time a new NCB joins the Eurosystem and also each time the key for NCBs' subscription to the ECB's capital is adjusted.

Decision ECB/2003/4 of 20 March 2003 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes⁶² sets out the specifications, e.g. colour and dimensions, of the seven denominations in the first series of euro banknotes, running from 5 euro to 500 euro banknotes. Decision ECB/2003/4 also contains the rules governing reproductions of euro banknotes. It provides that reproductions are unlawful if they might be mistaken by the public for genuine euro banknotes, and sets out a list of criteria for reproductions to be deemed lawful, e.g. where the dimensions are very different. The NCBs (in the case of reproductions produced in the territory of its Member State) and the ECB (in all other situations) must, on request, provide confirmation that reproductions that do not fulfil these criteria, but nevertheless cannot be mistaken by the general public for a genuine banknote, are also lawful.

Furthermore, Decision ECB/2003/4 sets out the rules pursuant to which NCBs may exchange mutilated or damaged euro banknotes. If banknotes have been intentionally mutilated or damaged they will only be exchanged if the NCB knows or has sufficient reason to believe that applicant is *bona fide*, or the applicant can prove that they are *bona fide*. NCBs charge professional banknote handlers a fee if they seek the exchange of 100 or more banknotes, in the event that such banknotes have been mutilated or damaged by using anti-theft devices.

61 OJ L 35, 9.2.2011, p. 35.

62 OJ L 78, 25.3.2003, p. 16.

Finally, Decision ECB/2003/4 establishes that the withdrawal of a euro banknote type or series would be regulated by a decision of the Governing Council published in the *Official Journal* and sets out the minimum points which would have to be covered in such a decision.

Guideline ECB/2003/5 of 20 March 2003 on the enforcement of measures to counter non-compliant reproductions of euro banknotes and on the exchange and withdrawal of euro banknotes⁶³ complements Decision ECB/2003/4. It provides for the enforcement of measures to counter non-compliant reproductions: if Eurosystem NCBs become aware of non-compliant reproductions in their Member State they must order the non-compliant party to stop producing the non-compliant reproduction and in some cases to hand it over. In such cases, the NCB must use a standard communication provided by the ECB. In the case of non-compliant reproductions that are made available electronically, the ECB must take all possible steps to remove the non-compliant reproduction from such electronic locations.

5.2 EURO BANKNOTES PRODUCTION

Guideline ECB/2004/18 of 16 September 2004 on the procurement of euro banknotes⁶⁴ follows from the decentralisation of euro banknote production. The rules for procurement of such banknote production seek to balance, on the one hand, the need for free competition and, on the other hand, the particular security needs relating to banknotes.

The recitals to Guideline ECB/2004/18 note that the Governing Council decided on 10 July 2003 that a common Eurosystem competitive approach to tendering (hereinafter the ‘single Eurosystem tender procedure’) should apply to the procurement of euro banknotes at the latest from 1 January 2012. The aim of the single Eurosystem tender procedure is to ensure a level playing field. Some NCBs currently have their own in-house printing works or use public printing works to produce euro banknotes. The Guideline sets out the eligibility criteria for printing works to participate in the single Eurosystem tender procedure. Private, in-house and public printing works are all eligible to participate in the single Eurosystem tender procedure, provided they meet the same eligibility criteria; in-house and public printing works must also meet certain additional eligibility criteria.

The Guideline sets out the requirements for the procurement procedure, for example the requirements for *Official Journal* notices and the minimum time limit for receipt of written tender bids, and details the criteria for awarding production orders. Annex II lists the minimum common features with which supply agreements for euro banknotes must comply, e.g. they must specify the price of the euro banknotes to be printed and they must contain a clause on overproduction and underproduction.

63 OJ L 78, 25.3.2003, p. 20.

64 OJ L 320, 21.10.2004, p. 21.

Decision ECB/2008/3 of 15 May 2008 on security accreditation procedures for manufacturers of euro secure items for euro banknotes⁶⁵ lays down a full accreditation procedure and a temporary accreditation procedure for manufacturers of euro secure items. In order to be involved in the production of euro secure items, manufacturers must have been granted full security accreditation.

Decision ECB/2010/22 of 25 November 2010 on the quality accreditation procedure for manufacturers of euro banknotes⁶⁶ lays down a full quality accreditation procedure and a temporary quality accreditation procedure for manufacturers of euro banknotes and euro banknote raw materials. A manufacturer must be granted full quality accreditation by the ECB before starting or continuing a euro banknote production activity.

5.3 COIN ISSUANCE

Under Article 128(2) of the Treaty on the Functioning of the European Union, Member States may issue coins subject to the ECB's approval of the volume of the issue. Since 1999 there have therefore been annual decisions concerning the volume of coin issuance for each euro area Member State for the subsequent year. The most recent one is **Decision ECB/2010/25 of 29 November 2010 on the approval of the volume of coin issuance in 2011**⁶⁷.

5.4 DATA COLLECTION ON EURO BANKNOTES AND COINS

The ECB and NCBs have to collect statistical information on euro banknote and coin issuance. To this end, **Guideline ECB/2008/8 of 11 September 2008 on data collection regarding the euro and the operation of the Currency Information System 2**⁶⁸ implements the Currency Information System 2 (CIS 2), replacing the Currency Information System which was established upon the introduction of euro banknotes and coins. The CIS 2 is a sophisticated database and information system offering a web-based application and reporting module to which both ECB and NCB users have access. The competent authorities of the Member States also have access to the CIS 2 database on euro coins. Guideline ECB/2008/8 also covers data on the cash infrastructure, the Banknote Recycling Framework, euro cash changeovers, and the administration of the CIS 2 by the ECB.

65 OJ L 140, 30.5.2008, p. 26.

66 OJ L 330, 15.12.2010, p. 14.

67 OJ L 318, 4.12..2010, p. 52.

68 OJ L 346, 23.12.2008, p. 89.

5.5 PROTECTION OF THE EURO

Guideline ECB/1999/3 of 7 July 1998 on certain provisions regarding euro banknotes, as amended on 26 August 1999⁶⁹ provides for the establishment and running of a Counterfeit Analysis Centre (CAC) and counterfeit currency database (CCD⁷⁰) under the aegis of the ECB. The CAC centralises the technical analysis of and data relating to the counterfeiting of banknotes issued by the ECB and the NCBs. The CCD stores all relevant technical and statistical data concerning the counterfeiting of euro banknotes centrally. Subject to national legal constraints, NCBs are required to provide the CAC with originals of new types of counterfeit euro banknotes in their possession, for the purpose of technical investigation and central classification. The NCBs carry out the preliminary investigation of whether a specific counterfeit belongs to a classified type or to a new category.

The Guideline also provides that all the technical data within the CCD is available to the ECB and the Eurosystem NCBs. The CAC is required to cooperate with euro area Member States' police forces, Europol and the Commission. Finally, any contacts between the CAC and individual national authorities must be effected together with the relevant NCB.

The recitals to **Decision ECB/2001/11 of 8 November 2001 on certain conditions regarding access to the Counterfeit Monitoring System (CMS)**⁷¹ refer to Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting⁷² (a 'first pillar' measure) and imports the definitions therein. The Decision renames the CCD the Counterfeit Monitoring System (CMS). In addition to the NCBs' existing access to the CMS, it grants access to the CMS to the other competent national authorities, including the National Analysis Centres (NACs) and Coin National Analysis Centres (CNACs). It also grants access to third party authorities and third countries in certain limited circumstances.

The Decision makes it clear that the introduction of information relating to counterfeit banknotes in the CMS by NACs must take place in accordance with Regulation (EC) No 1338/2001 and with a manual of procedures approved by the Governing Council. The task of administering access to the CMS at national level is performed by National Counterfeit Centres (NCCs), which are established in each NCB. The NCCs also facilitate communication regarding all CMS-related matters in the Member States. The Decision also provides for the need to respect security standards and the confidentiality of data in the CMS. Both the ECB and the relevant NCC can suspend a user's access to the CMS where this is necessary to

69 OJ L 258, 5.10.1999, p. 32; originally dated 26 August 1998, but date corrected by corrigendum (OJ L 287, 14.11.2000, p. 68).

70 See Decision ECB/2001/11 below in relation to the renaming of the CCD.

71 OJ L 337, 20.12.2001, p. 49.

72 OJ L 181, 4.7.2001, p. 6. See also Regulation (EC) No 1339/2001 of 28 June 2001 extending the effects of Council Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting to those Member States which have not adopted the euro as their single currency.

preserve the confidentiality of the data. Finally, the Decision provides for the monitoring of compliance with the security and confidentiality requirements and that the Executive Board is responsible for adopting any implementation measures which may be necessary.

The aforementioned Regulation (EC) No 1338/2001 was amended in late 2008⁷³ to extend the scope of its addressees and obliging all its addressees to ensure that euro banknotes they have received and which they intend to put back into circulation are checked for authenticity and that counterfeits are detected. The amended version of Regulation (EC) No 1338/2001 stipulates that the ECB defines the procedures for such checks, and such procedures are laid down in **Decision ECB/2010/14 of 16 September 2010 on the authenticity and fitness checking and recirculation of euro banknotes**⁷⁴. Decision ECB/2010/14 is the successor to the Banknote Recycling Framework, which was published by the ECB in January 2005 and was the first document laying down the procedures to be followed by credit institutions and professional cash handlers to check euro banknotes for authenticity and fitness before putting them back into circulation. The procedures laid down in Decision ECB/2010/14 have been enhanced and now address all institutions listed in Article 6(1) of Regulation (EC) No 1338/2001 (referred to as ‘cash handlers’ in the Decision). In addition to the procedures for checking the authenticity and fitness of euro banknotes, Decision ECB/2010/14 also lays down specific reporting requirements, according to which cash handlers must report master and operational statistical data to their NCB. It also allows NCBs, subject to national law requirements, to carry out monitoring activities to check that cash handlers comply with the procedures laid down in the Decision.

5.6 CASH CHANGEOVER

Article 49 of the Statute of the ESCB provides that ‘following the irrevocable fixing of exchange rates ..., the Governing Council shall take the necessary measures to ensure that banknotes denominated in currencies with irrevocably fixed exchange rates are exchanged by national central banks at their respective par values’. In the past, guidelines regulated this process in respect of the Member States that adopted the euro initially⁷⁵. While they are mainly of historical interest, as part of the package of measures preparing for Slovenia’s adoption of the euro, **Guideline ECB/2006/10 of 24 July 2006 on the exchange of banknotes after the irrevocable fixing of exchange rates in connection with the introduction of the euro** applies to future adoptions of the euro⁷⁶.

73 By means of Council Regulation (EC) No 44/2009 of 18 December 2008 amending Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting (OJ L 17, 22.1.2009, p. 1).

74 OJ L 267, 9.10.2010, p. 1.

75 Guideline ECB/2000/6 of 20 July 2000 on the implementation of Article 52 of the Statute of the European System of Central Banks and of the European Central Bank after the end of the transitional period (OJ L 55, 24.2.2001, p. 66).

76 OJ L 215, 5.8.2006, p. 44.

As the recitals to Guideline ECB/2006/10 explain, Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro⁷⁷ provides for different possible cash changeover regimes for Member States that adopt the euro. The aim of Guideline ECB/2006/10 is to ensure that the exchange of new euro area Member States' banknotes can take place regardless of the chosen national changeover regime.

Article 2 of Guideline ECB/2006/10 lays down that all Eurosystem NCBs must, at least in one location in the national territory, by themselves or through their appointed agent, ensure that banknotes of a new euro area Member State can be either: (a) exchanged into euro banknotes and coins; or (ii) on request, credited to an account held with the institution effecting the exchange, if national legislation provides for this possibility. In both cases the exchange is at the relevant par value, i.e. the value resulting from the conversion rates adopted by the Council of the European Union under the Treaty, without any spread between buying and selling rates.

However, if more than one Member State adopts the euro at the same time and there is a transitional period in one of the new euro area Member States, then that Member State (X) may not exchange the banknotes of the other euro area Member State (Y) into euro banknotes and coins. During the transitional period the exchange is effected by means of crediting an account, as in the normal case, or by exchanging the banknotes of Y into banknotes and coins of X.

The Eurosystem NCBs are allowed to set a limit to the number and/or total value of banknotes of a new euro area Member State that they are prepared to accept from any given party.

Guideline ECB/2006/9 of 14 July 2006 on certain preparations for the euro cash changeover and on frontloading and sub-frontloading of euro banknotes and coins outside the euro area⁷⁸ establishes a framework whereby future Eurosystem NCBs are able to borrow euro banknotes and coins from the Eurosystem for the purpose of frontloading and sub-frontloading in advance of the cash changeover date.

'Frontloading' means the physical delivery of unissued euro banknotes and coins by a future Eurosystem NCB to eligible counterparties⁷⁹ in the territory of a future euro area Member State during the period in which frontloading/sub-frontloading takes place. To be able to frontload eligible counterparties before the cash changeover date, the future Eurosystem NCB may borrow euro banknotes from Eurosystem NCBs under the conditions laid down in the Guideline.

⁷⁷ OJ L 139, 11.5.1998, p. 1.

⁷⁸ OJ L 207, 28.7.2006, p. 39.

⁷⁹ Eligible counterparties are defined in Article 5 as 'credit institutions in a future participating Member State, including branches of foreign credit institutions located in the future participating Member State, and national post offices that have an account with their future Eurosystem NCB'. In both cases, the relevant counterparty has to enter into the contractual arrangements provided for in Article 4(9) with the relevant NCB.

‘Sub-frontloading’ means the delivery of frontloaded banknotes and coins by an eligible counterparty to professional third parties⁸⁰ in the territory of a future euro area Member State during the frontloading/sub-frontloading period. Before sub-frontloading takes place, the frontloaded eligible counterparties must undertake only to carry out sub-frontloading if this is done in accordance with the rules and procedures laid down in the Guideline.

Frontloading and sub-frontloading must not amount to putting euro banknotes and coins into circulation. Therefore one of the most important principles enshrined in the legal framework for frontloading and sub-frontloading is that measures such as secure and separate storage of euro banknotes and granting of inspection rights to the future Eurosystem NCB must be put in place to ensure that the frontloaded (and sub-frontloaded) euro banknotes do not enter into circulation before the cash changeover date.

Certain amendments were made to this regime by **Guideline ECB/2008/4 of 19 June 2008 amending Guideline ECB/2006/9 on certain preparations for the euro cash changeover and on frontloading and sub-frontloading of euro banknotes and coins outside the euro area**⁸¹. In addition to allowing a new Eurosystem NCB, in the year after the cash changeover, to carry out bulk transfers of euro banknotes to re-adjust the denominational structure of its stocks by swapping the bulk transfer with a surplus of euro banknotes of an equivalent amount, the new Guideline also introduces a simplified sub-frontloading procedure for retailers, by minimising the requirements to be met by certain sub-frontloaded entities if they meet the conditions laid down in the Guideline (especially as regards their size and the volume of sub-frontloaded banknote). Finally, the amending Guideline allows future Eurosystem NCBs to entrust the inspection and auditing of the premises of frontloaded and sub-frontloaded entities to other competent public authorities, such as the police.

80 Professional third parties are defined in Article 1 as ‘certain commercial target groups, such as retailers, the cash-operated machine industry and cash in transit companies which are located in the same future participating Member State as an eligible counterparty, and which the eligible counterparty considers to have a legitimate need to be sub-frontloaded and to be able to satisfy the requirements in relation to sub-frontloading’. In addition, Guideline ECB/2008/4 introduces the possibility for an eligible counterparty to appoint a cash in transit company as an agent for sub-frontloading.

81 OJ L 176, 4.7.2008, p. 16.

6 FOREIGN RESERVES, FOREIGN EXCHANGE AND EUROSISTEM RESERVE MANAGEMENT SERVICES

6.1 ECB's FOREIGN RESERVES

Article 3 of the Statute of the ESCB entrusts the ESCB with the task of holding and managing the official foreign reserves of the Member States. This comprises both the ECB's and the Member States' foreign reserves.

When a Member State adopts the euro, not only does it have to pay up its share in the ECB's subscribed capital and contribute to the ECB's net equity, but it is also obliged to transfer foreign reserve assets to the ECB. Under Article 30.1 of the Statute of the ESCB, the total amount for all the Eurosystem NCBs is equivalent to EUR 50,000 million. Pursuant to this Article, the ECB has the right to hold and manage the foreign reserve assets that are transferred to it by NCBs of Member States that have adopted the euro; in practice, these foreign reserve assets are held and managed by Eurosystem NCBs, acting in the name and on behalf of the ECB (i.e. as its agents). Under Article 48.3 of the Statute of the ESCB, when countries become Member States and their NCBs become part of the ESCB, the ECB's subscribed capital and the limit on the amount of foreign reserve assets that may be transferred to the ECB is automatically increased⁸².

The contribution of each Eurosystem NCB is fixed in proportion to its share in the capital of the ECB subscribed by the Eurosystem NCBs, as laid down in Article 30.2 of the Statute of the ESCB. Pursuant to Article 49.1, the sum to be transferred is determined by multiplying the euro value at current exchange rates of the foreign reserve assets which have already been transferred to the ECB in accordance with Article 30.1, by the ratio between the number of shares subscribed by the NCB concerned and the number of shares already paid up by the other Eurosystem NCBs.

Further calls of foreign reserve assets beyond the limit set in Article 30.1 may be effected by the ECB in accordance with Article 30.2, within the limits and under the conditions set by the Council. Council Regulation (EC) No 1010/2000 of 8 May 2000 concerning further calls of foreign reserve assets by the European Central Bank⁸³ provides that the ECB may effect further calls of foreign reserve assets from the NCBs beyond the limit set in Article 30.1 of the Statute of the ESCB, up to an amount equivalent to an additional EUR 50,000 million, if such foreign reserve assets are needed.

⁸² Article 48.3 provides that the increase is determined by multiplying the respective amounts then prevailing (i.e. foreign reserves that have already been transferred to the ECB by the Eurosystem NCBs) by the ratio, within the expanded capital key, between the weighting of NCBs that are joining and the weighting of the NCBs that are already ESCB members.

⁸³ OJ L 115, 16.5.2000, p. 2.

Under Article 30.3 of the Statute of the ESCB, each NCB is credited by the ECB with a claim equivalent to its contribution.

Guideline ECB/2000/15 of 3 November 1998 as amended by the Guideline of 16 November 2000 on the composition, valuation and modalities for the initial transfer of foreign-reserve assets, and the denomination and remuneration of equivalent claims⁸⁴ provides that all Eurosystem NCBs must transfer to the ECB foreign assets in or denominated in US dollars, Japanese yen and gold in accordance with their shares in the subscribed capital. It provides for the ECB to credit the Eurosystem NCBs with a corresponding claim denominated in euro.

Guideline ECB/2000/15 applied to the first group of NCBs joining the Eurosystem. Since then, the Governing Council has decided the composition of the foreign reserves to be transferred by NCBs of Member States adopting the euro on a case-by-case basis. Thus, a decision providing for the paying-up of capital and the contribution to the reserves and provisions of the ECB and for the initial transfer of foreign-reserve assets to the ECB was adopted when Greece adopted the euro⁸⁵ and each time thereafter when a new NCB joined the Eurosystem.

Decision ECB/2008/27 of 12 December 2008 laying down the measures necessary for the contribution to the European Central Bank's accumulated equity value and for adjusting the national central banks' claims equivalent to the transferred foreign reserve assets⁸⁶, which was adopted further to the quinquennial adjustment of the weightings assigned to each NCB in the key for subscription of the ECB's capital, provides that if the Eurosystem NCB's share in the accumulated equity value (i.e. the total of the ECB's reserves, revaluation accounts and provisions equivalent to reserves) increases due to the increase in its capital key weighting with effect from 1 January 2009, that NCB has to transfer the relevant amount on a set date. Conversely, the Decision provides that any NCB whose share decreases receives the relevant amount.

Articles 9.2 and 12.1 of the Statute of the ESCB provide that the ECB may manage certain of its activities through the NCBs and has recourse to the NCBs to carry out certain of its operations. **Guideline ECB/2008/5 of 20 June 2008 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 (recast)**⁸⁷ provides that each Eurosystem NCB is entitled to participate in the operational management of the foreign reserve assets that have been transferred to the ECB. Eurosystem NCBs may, however, also abstain from such management, or may pool their operational management activities with

84 OJ L 336, 30.12.2000, p. 114.

85 Guideline ECB/2001/8 of 13 September 2001 adopting certain provisions on the frontloading of euro banknotes outside the euro area (OJ L 257, 26.9.2001, p. 6).

86 OJ L 21, 24.1.2009, p. 77.

87 OJ L 192, 19.7.2008, p. 63.

one or more other Eurosystem NCBs. If an NCB does not participate in the operational management of the ECB's foreign reserve assets, the other NCBs manage the assets that that NCB would have managed.

Guideline ECB/2008/5 further provides that when Eurosystem NCBs carry out operations involving the ECB's foreign reserve assets with counterparties, they do so as agents of the ECB, and that this agency can be proved on request by means of the mandate of agency given by the ECB to each NCB. NCBs must disclose their agency status to counterparties before entering into transactions with them, the ECB being the principal to all counterparties. Furthermore, the NCB must subordinate its own interests, or the interests of any entity for which it carries out operations, to the ECB's interests. All operations involving the ECB's foreign reserve assets must be conducted using the standard legal documentation referred to in Article 3 of Guideline ECB/2008/5.

Among the ESCB's basic tasks under Article 3 of the Statute of the ESCB are the definition and implementation of the monetary policy of the Union, conducting foreign exchange operations consistent with the Treaty and holding and managing the official reserves of the Member States.

Guideline ECB/2002/6 of 26 September 2002 on minimum standards for the European Central Bank and national central banks when conducting monetary policy operations, foreign exchange operations with the ECB's foreign reserves and managing the ECB's foreign reserve assets⁸⁸ sets out the minimum standards (code of conduct) that the ECB and the NCBs must apply when:

- (i) conducting monetary policy operations;
- (ii) conducting foreign exchange with the ECB's foreign reserves; and
- (iii) managing the ECB's foreign reserve assets.

These minimum standards apply to the members of the Executive Board and members of the decision-making bodies of NCBs of Member States that have adopted the euro, except when they are exercising functions as members of the Governing Council. The standards also apply to all ECB and NCB employees who are involved in activities or operations relating to monetary policy operations, foreign exchange operations with the ECB's foreign reserves and the management of the ECB's foreign reserves. The standards are minimum requirements, so the internal rules of the ECB or the NCBs may be more stringent.

The minimum standards include the following requirements: managers must supervise the activities of employees engaged in operations with market counterparties; and decision-making

⁸⁸ OJ L 270, 8.10.2002, p. 14.

bodies and affected employees must avoid potential conflicts of interest, must not engage in insider trading and must not misuse confidential information. The ECB and the NCBs must have appropriate arrangements in place to check that financial transactions entered into by the decision-making bodies and employees conform to the prohibition on insider trading. Finally, decision-making bodies and affected employees may not solicit gifts or entertainment from third parties, and may not accept gifts or entertainment in excess of a negligible amount.

6.2 NCBs' AND MEMBER STATES' FOREIGN RESERVES

Article 31 of the Statute of the ESCB provides that NCBs may perform transactions to fulfil their obligations towards international organisations, pursuant to Article 23 of the Statute of the ESCB. All other operations in foreign reserve assets that remain with the NCBs after the transfers of foreign reserve assets pursuant to Article 30 of the Statute of the ESCB, as well as Member States' transactions with their foreign exchange working balances, are (above a certain limit) subject to the ECB's approval, to ensure consistency with the Union's exchange rate and monetary policies.

Guideline ECB/2003/12 of 23 October 2003 for participating Member States' transactions with their foreign exchange working balances pursuant to Article 31.3 of the Statute of the European System of Central Banks and of the European Central Bank⁸⁹ sets out the modalities of transactions carried out by public authorities of euro area Member States with their foreign exchange working balances. Foreign exchange working balances are defined as 'holdings of assets denominated in any unit of account or currency other than the euro that are maintained by euro area Member States and are not recorded in the national central banks' financial accounts'.

Annex I to the Guideline sets out the thresholds at or below which euro area Member States' public authorities may conduct transactions on any given trade day with their foreign exchange working balances without needing to notify the ECB in advance. Any transaction that is above the threshold and which therefore requires prior notification must be notified to the ECB as far in advance of the transaction as possible. The ECB must consider prior notifications with a view to ensuring consistency with the Union's monetary and exchange rate policies and having regard to the transactions' impact on the liquidity of the euro area banking system.

Guideline ECB/2003/12 covers ex ante and ex post reporting to the ECB on transactions involving foreign exchange working balances. Euro area Member States' central governments must provide monthly estimates of all their forthcoming transactions involving foreign exchange working balances and also provide their foreign exchange working balances ex post.

⁸⁹ OJ L 283, 31.10.2003, p. 81.

All information and data that exchanged pursuant to Guideline ECB/2003/12 must be treated as confidential.

6.3 EXCHANGE RATE MECHANISM

The Exchange Rate Mechanism II (ERM II) was introduced at the start of Stage Three of EMU on 1 January 1999, replacing the European Monetary System and the Exchange Rate Mechanism. ERM II is a system of fixed but adjustable exchange rates. It links the currencies of non-euro area Member States to the euro, which is the hub of the mechanism.

ERM II is based on two legal documents:

- Resolution of the European Council of 16 June 1997 on the establishment of an exchange-rate mechanism in the third stage of economic and monetary union⁹⁰.
- Agreement of 13 December 2010 between the European Central Bank and the national central banks of the Member States outside the euro area amending the Agreement of 16 March 2006 between the European Central Bank and the national central banks of the Member States outside the euro area laying down the operating procedures for an exchange rate mechanism in stage three of economic and monetary union⁹¹ (hereinafter the ‘Central Bank Agreement’).

ERM II has two roles. Firstly, it constitutes an arrangement for managing exchange rates between the euro and the currencies of the Member States participating in the mechanism. Secondly, participation in ERM II for a minimum period of two years without severe tensions is a convergence criterion for the adoption of the euro.

ERM II helps to ensure that non-euro area Member States participating in the mechanism orient their policies to ensuring stability and fostering convergence, thereby helping them in their efforts to adopt the euro. ERM II can be considered to be a testing phase for both the central rate and the sustainability of convergence in general, prior to joining the euro area. At the same time, ERM II provides protection from unwarranted pressures in the foreign exchange markets.

Participation in the exchange rate mechanism is voluntary for non-euro area Member States. However, as ERM II membership is one of the convergence criteria for the eventual adoption of the euro, non-euro area Member States are expected to join the mechanism at some stage. At present, Denmark, Latvia and Lithuania participate in ERM II.

⁹⁰ OJ C 236, 2.8.1997, p. 5.

⁹¹ OJ C 5, 8.1.2001, p. 3.

For the currency of each Member State participating in the mechanism, a central rate against the euro and a standard fluctuation band of $\pm 15\%$ are defined. Decisions on central rates and the standard fluctuation band must be taken by mutual agreement of the ministers of the euro area Member States, the ECB and the ministers and central bank governors of the non-euro area Member States participating in ERM II⁹². Such decisions are preceded by a common procedure involving the European Commission and a consultation of the Economic and Financial Committee. Narrower fluctuation bands than the standard band may be agreed if this is appropriate in the light of progress towards convergence.

If the exchange rate of a currency participating in ERM II reaches the margin of the agreed fluctuation band, the mechanism foresees interventions which are in principle automatic and unlimited. For this purpose, a very short-term financing facility has been set up. However, the ECB and the participating non-euro area NCBs could suspend automatic intervention if this were to conflict with their primary objective of maintaining price stability.

6.4 EUROSISTEM RESERVE MANAGEMENT SERVICES

Guideline ECB/2006/4 of 7 April 2006 on the Eurosystem's provision of reserve management services in euro to central banks and countries located outside the euro area and to international organisations⁹³ identifies the general terms and conditions covering the provision of the abovementioned services. Article 2 of the Guideline sets out a list of what are classified as 'Eurosystem reserve management services', i.e. cash and investment as well as custody and settlement services. Article 3 (in conjunction with Article 1) distinguishes between two categories of service providers: (i) Eurosystem Service Providers (ESPs), which are Eurosystem members that undertake to provide the complete set of Eurosystem reserve management services; and (ii) Individual Service Providers (ISPs), which are Eurosystem members that do not provide the complete set of such services. In addition to Eurosystem reserve management services, both ESPs and ISPs may also offer other reserve management services to customers. Such services are not subject to Guideline ECB/2006/4.

Eurosystem members are obliged to provide authorised ECB personnel with any relevant information on the provision of Eurosystem reserve management services to new and existing customers and inform such personnel when a potential customer approaches them.

The ECB maintains for consultation by Eurosystem members a list of existing, new and potential customers whose reserves are either affected by a freezing order or a similar measure imposed by a Member State or by the EU, or on the basis of a United Nations Security Council resolution. A Eurosystem member may also unilaterally suspend the

⁹² The ministers and Governors of the NCBs of the Member States not participating in ERM II will take part but do not have the right to vote in the procedure.

⁹³ OJ L 107, 20.4.2006, p. 54.

provision of Eurosystem reserve management services to existing customers or refuse to provide such services to new or potential customers. However, this must be based on reasons of national policy or national interest. In such cases, the Eurosystem member involved must inform the ECB, which will in turn inform the other Eurosystem members.

Each Eurosystem member is responsible for the execution of any contractual arrangements with its customers that it considers appropriate for the provision of Eurosystem reserve management services and bears the liability for any such services that it provides. Eurosystem members must ensure that their contractual arrangements with customers contain certain minimum common features. For example, they must state that the counterparty of the customer is the Eurosystem member with whom that customer has concluded an arrangement for the provision of Eurosystem reserve management services or any part thereof, and that such arrangement does not in itself create customer rights or entitlements in relation to other Eurosystem members. An additional minimum common feature involves the inclusion of a clause stipulating that certain transactions within the framework of Eurosystem reserve management services are carried out on a 'best effort' basis.

Finally, Guideline ECB/2006/4 provides that the ECB coordinates the general provision of Eurosystem reserve management services and the related information framework.

Guideline ECB/2006/4 was amended in mid-2009⁹⁴, changing the definition of 'reserves' to take account of the replacement of the two-tier system with the single framework for eligible collateral common to all Eurosystem credit operations and amending Article 2(4)(b) to provide for the introduction of fixed-term deposit services on a principal basis.

⁹⁴ Guideline ECB/2009/11 of 28 May 2009 amending Guideline ECB/2006/4 on the Eurosystem's provision of reserve management services in euro to central banks and countries located outside the euro area and to international organisations (OJ L 139, 5.6.2009, p. 34).

7 STATISTICS

Apart from providing the legal basis for the collection, compilation and production of Union statistics, the Treaty recognises the role and powers of the ESCB in that field by expressly providing that, when the Council of the European Union adopts measures for the production of statistics necessary for the performance of the tasks of the EU, that is without prejudice to Article 5 of the Statute of the ESCB. Article 5.1 of the Statute of the ESCB provides that, to undertake the tasks of the ESCB, the ECB, assisted by the NCBs, must collect the necessary statistical information either from the competent national authorities or directly from economic agents.

Further details of the ECB's competence to collect statistical data are set out in Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank⁹⁵. Regulation (EC) No 2533/98 defines the reference reporting population (Article 2), confidentiality regime (Articles 8, 8a, 8b, 8c and 8d) and enforcement (Article 7) and gives the ECB the regulatory power to adopt regulations for the definition and imposition of its statistical reporting requirements (Article 5(1)). The most recent amendment to Regulation (EC) No 2533/98 has introduced relevant changes to facilitate carrying out the statistical information collection tasks of the ESCB⁹⁶. The changes under Regulation (EC) No 2533/98 related, *inter alia*, to the reference reporting population, the statistical principles, and mirroring *mutatis mutandis* the provisions on the exchange of confidential information set out in Regulation (EC) No 223/2009 of 11 March 2009 on European statistics⁹⁷.

The competence to collect statistics is shared, in certain fields, with the European Commission. According to the Memorandum of Understanding on Economic and Financial Statistics of 10 March 2003 between the Directorate General Statistics of the ECB and the Commission's Statistical Office (Eurostat)⁹⁸, monetary, financial markets and institutions statistics are primarily the ECB's responsibility, while general economic statistics are primarily the responsibility of the Commission (Eurostat). The two institutions share statistical responsibility, e.g. in relation to the balance of payments, and for quarterly financial and non-financial accounts for institutional sectors.

7.1 MONETARY, FINANCIAL INSTITUTIONS AND MARKET STATISTICS

The ECB compiles and disseminates a wide range of monetary, financial and market statistics and indicators. The monetary aggregates and their counterparts are compiled based on the

⁹⁵ OJ L 318, 27.11.1998, p. 8.

⁹⁶ Council Regulation (EC) No 951/2009 of 9 October 2009 amending Regulation (EC) No 2533/98 concerning the collection of statistical information by the European Central Bank (OJ L 269, 14.10.2009, p. 1).

⁹⁷ OJ L 87, 31.3.2009, p. 164.

⁹⁸ Available on the ECB's website at www.ecb.europa.eu.

balance sheet data of the monetary and financial institutions (MFI) sector. The ECB also compiles harmonised statistics on interest rates paid and charged by MFIs.

(i) MFI balance sheet statistics

Regulation ECB/2008/32 of 19 December 2008 concerning the balance sheet of the monetary financial institutions sector (Recast)⁹⁹ covers the compilation of statistics on aggregate financial assets and liabilities of MFIs in terms of stocks and transactions, net flows of loans and holdings of securities.

According to Article 2(1), the actual reporting population consists of the MFIs resident in the territory of the euro area Member States. According to the definition of ‘MFI’ in Article 1, MFIs comprise resident credit institutions, as defined under Union law, and other resident financial institutions whose business is to receive deposits and/or close substitutes for deposits from entities other than MFIs and, for their own account, to grant credits and/or make investments in securities.

Pursuant to Article 3(1) of Regulation ECB/2008/32, the ECB is required to establish and maintain a list of MFIs for statistical purposes. This list of MFIs is accessible to the reporting agents concerned.

The Annexes to Regulation ECB/2008/32 cover: identification principles of monetary financial institutions; statistical reporting requirements; consolidation principles and definitions; the application of minimum reserve requirements and related special rules and minimum standards to be applied by the actual reporting population.

According to Article 8 of Regulation ECB/2008/32, NCBs may grant derogations to small MFIs, provided that their combined contribution to the national MFI balance sheet in terms of stocks does not exceed 5%.

Regulation ECB/2008/32 is aligned with Regulation ECB/2003/9 (mentioned above in Section 3.3 on minimum reserves) and the statistical information reported by credit institutions must be used by credit institutions to calculate their reserve base in accordance with the latter Regulation. In particular, based on Article 11(1) of Regulation ECB/2008/32, each credit institution must use this information to verify the fulfilment of its reserve requirement over the maintenance period.

Regulation ECB/2008/30 of 19 December 2008 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions¹⁰⁰ introduces a new statistics regime for holdings of securitised assets and the issuance of

⁹⁹ OJ L 15, 20.1.2009, p. 14.

¹⁰⁰ OJ L 15, 20.1.2009, p. 1.

securities based on these assets by financial vehicle corporations engaged in securitisation transactions (FVCs). The collection of these statistics further enhances the comprehensiveness of the ESCB statistics and enhances transparency in this market segment.

The close links between the securitisation activities of FVCs and MFIs require consistent, complementary and integrated reporting. Therefore, the statistical information required under this Regulation is linked to the requirements for MFIs to provide data on securitised loans, as laid down in Regulation ECB/2008/32. This integrated reporting approach in relation to FVCs and MFIs, and in respect of derogations, aims at minimising the reporting burden for reporting agents and avoiding reporting overlaps.

Both Regulation ECB/2008/30 and Guideline ECB/2007/9 of 1 August 2007 on monetary, financial institutions and markets statistics (recast)¹⁰¹ provide certain flexibility on data collection methods in order to minimise the reporting burden.

Regulation ECB/2006/8 of 14 June 2006 on statistical reporting requirements in respect of post office giro institutions that receive deposits from non-monetary financial institution euro area residents¹⁰²

Article 2(2)(b) of Regulation (EC) No 2533/98 provides that post office giro institutions (POGIs) are part of the reference reporting population, to the extent necessary to fulfil the ECB's statistical reporting requirements in the field of money and banking statistics.

Regulation ECB/2006/8 defines POGIs as post offices that belong to the 'non-financial corporations' sector of the ESA 95 (S.11) and, as a complement to postal services, they receive deposits from non-MFI euro area residents with a view to providing money transfer services for their depositors. Statistical information on such deposits cannot be reported within the framework of Guideline ECB/2007/9 and hence the reporting requirements are laid down in Regulation ECB/2006/8. POGIs that receive deposits from non-MFI euro area residents in this respect undertake similar activities to those undertaken by MFIs and the statistical reporting requirements are similar to those laid down in Regulation ECB/2008/32.

Regulation ECB/2007/8 of 27 July 2007 concerning statistics on the assets and liabilities of investment funds¹⁰³ is in part similar in structure to Regulation ECB/2008/32 and Regulation ECB/2006/8. Investment funds (IFs) fall within the reference reporting population in Article 2(2)(a) of Regulation (EC) No 2533/98. Regulation ECB/2007/8 contains a detailed definition of IFs: they are collective investment undertakings (CIUs) that invest in relevant financial and non-financial assets to the extent that those CIUs' objective is investing capital raised from the public. They must be constituted in one of four ways under Union or national

101 OJ L 341, 27.12.2007, p. 1.

102 OJ L 184, 6.7.2006, p. 12.

103 OJ L 211, 11.8.2007, p. 8.

law: under contract law, as a common fund managed by management companies; under trust law, as a unit trust; under company law, as an investment company; or under any other similar mechanism.

The actual reporting population consists of the IFs that are resident in the euro area Member States. In relation to information on the holders of bearer shares, the actual reporting population also includes MFIs and those of the OFIs (other financial intermediaries except insurance corporations and pension funds; S.123 under the ESA 95) that are not IFs.

The actual reporting population must report data on its assets and liabilities on a fund-by-fund basis (or on a group basis, provided the NCB gives prior approval). Annexes to Regulation ECB/2007/8 specify the statistical reporting requirements and the definitions and minimum reporting standards to be applied by the actual reporting population.

Guideline ECB/2007/9 of 1 August 2007 on monetary, financial institutions and markets statistics (recast)¹⁰⁴ establishes the NCBs' obligations to report monetary, financial institutions and markets statistics to the ECB which are not covered by Regulation ECB/2008/32 (e.g. OFIs, payment systems), but also provides technical details for MFI balance sheet, IF and other reporting. The Guideline specifies the reporting requirements, reporting frequency and other relevant matters (e.g. the revision policy) for 14 datasets (e-money, securitisation, securities, etc.). Data must be reported electronically, in accordance with the standards laid down in Annex IV. Amongst other things, NCBs must compile and report two separate aggregated balance sheets, both on a gross basis, in accordance with Regulation ECB/2008/32: one covering the MFI sub-sector 'central bank' and the other covering the sub-sector 'other MFIs'.

Every month, the NCBs and the ECB must monitor the consistency between their respective end-month aggregated balance sheet for statistical purposes, as reported under Regulation ECB/2008/32, and their accounting items as reported for the Eurosystem's weekly financial statement under Guideline ECB/2010/20 (legal framework for accounting and financial reporting).

Annex VI sets out the variables which are collected to establish and maintain the list of MFIs for statistical purposes required pursuant to Regulation ECB/2008/32, while Annex VII sets out the variables for establishing and maintaining the list of investment funds for statistical purposes pursuant to Regulation ECB/2007/8.

(ii) MFI interest rate statistics.

The rationale underlying **Regulation ECB/2001/18 of 20 December 2001 concerning statistics on interest rates applied by monetary financial institutions to deposits and**

¹⁰⁴ OJ L 341, 27.12.2007, p. 1.

loans vis-à-vis households and non-financial corporations¹⁰⁵ is that the ECB needs a comprehensive, detailed and harmonised statistical picture of the level of interest rates applied by MFIs and their changes over time. This information shows the effect of changes in the official interest rates, which is needed to analyse monetary developments in the euro area Member States. Such information is also necessary so that the ESCB can contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.

The actual reporting population for each euro area Member State consists of a selection of resident credit institutions and other institutions that form part of the potential reporting population. Annex I to the Regulation sets out the procedure under which the NCBs select the members of the actual reporting population. The NCBs may choose between two approaches: a census or a sample.

If an NCB chooses to undertake a census, it must ask each resident credit institution or other institution in the potential reporting population to report MFI interest rate statistics. The variables that need to be collected are the interest rates, the amounts of new business and the interest rates on outstanding amounts.

In the case of a sample, only a selection of the credit institutions and other institutions in the potential reporting population are asked to report. The sampling variables are the same as for a census. The sample must be set up in such a way that it is representative of the potential reporting population, to maximise the accuracy of the information. There is a minimum national sample size. Furthermore, NCBs that choose the sampling approach must ensure that the sample remains representative over time, by means of regular reviews of the representativity sample. Finally, there are requirements to take account of financial innovation (new instrument categories) and to ensure consistency (the census and sample approaches may only be combined in very limited circumstances and NCBs may not use two or more different samples).

Annex III to Regulation ECB/2001/18 sets out minimum standards for transmission, accuracy, conceptual compliance and revisions. The Manual on MFI interest rate statistics¹⁰⁶ complements Regulation ECB/2001/18.

In relation to both Regulation ECB/2008/32 (on the balance sheet of MFIs) and Regulation ECB/2001/18 (on MFI interest rate statistics), **Decision ECB/2010/10 of 19 August 2010 on non-compliance with statistical reporting requirements**¹⁰⁷ lays down a harmonised approach to the calculation of sanctions for infringements of the reporting requirements, to the infringement procedure and to any preceding phase.

105 OJ L 10, 12.1.2002, p. 24.

106 Manual on MFI interest rate statistics, October 2003. Available on the ECB's website at www.ecb.europa.eu.

107 OJ L 226, 28.8.2010, p. 48.

7.2 EURO AREA ACCOUNTS

Euro area accounts present a complete and consistent set of quarterly data for all resident institutional sectors. They provide comprehensive information not only on the economic activities of households, non-financial corporations, financial corporations and the government, but also on the interactions between these sectors and the rest of the world. In addition, the euro area accounts link financial and non-financial statistics, thereby allowing for an integrated analysis of non-financial economic activities (such as gross fixed capital formation) and financial transactions (such as the issuance of debt). The euro area accounts also contain consistent financial balance sheets.

(i) Financial accounts

To perform its tasks effectively, the ECB requires comprehensive and reliable quarterly financial accounts covering euro area institutional sectors and the rest of the world. **Guideline ECB/2002/7 of 21 November 2002 on the statistical reporting requirements of the European Central Bank in the field of quarterly financial accounts**¹⁰⁸ lays down the requirements for this information and sets out reporting requirements and deadlines, data transmission standards and derogations.

(ii) Non-financial accounts

The analysis of cyclical movements in the EU economy and the conduct of monetary policy within the euro area require macroeconomic statistics on the economic behaviour and relationship between individual institutional sectors that are impossible to identify in data compiled at the level of the economy as a whole. There is therefore a need to produce quarterly accounts by institutional sector, for the Union as a whole and for the euro area. Production of these accounts is part of the overall aim of compiling a system of annual and quarterly accounts for the Union and for the euro area. The system includes the main macroeconomic aggregates and the financial and non-financial accounts by institutional sector.

Regulation (EC) No 1161/2005 of the European Parliament and of the Council of 6 July 2005 on the compilation of quarterly non-financial accounts by institutional sector¹⁰⁹ provides a common framework for the contributions of the Member States to the compilation of quarterly European non-financial accounts by institutional sector.

The ECB issued ECB Opinion CON/2004/4 of 4 February 2004 on the compilation of quarterly non-financial accounts by institutional sector¹¹⁰. The Memorandum of Understanding on Economic and Financial Statistics between the ECB's Directorate General Statistics and

108 OJ L 334, 11.12.2002, p. 24.

109 OJ L 191, 22.7.2005, p. 22.

110 OJ C 42, 18.2.2004, p. 23.

the Statistical Office of the European Communities (Eurostat), adopted on 10 March 2003, provides that the ECB's DG Statistics and Eurostat jointly develop the area of non-financial accounts by institutional sector within the framework of national accounts statistics. The development and publication of non-financial accounts by institutional sector for the euro area at quarterly and annual frequency is a shared responsibility.

(iii) Government finance statistics

Government finance statistics (GFS) are an important element in supporting the implementation of the Stability and Growth Pact. GFS form an important part of the integrated system of sectoral non-financial and financial accounts for the euro area. NCBs have to report to the ECB on an annual basis and must comply with the principles and definitions of the ESA 95. On the basis of the data reported by the NCBs, the ECB compiles GFS statistics which includes euro area and EU aggregates. The ECB is required to disseminate the database to the NCBs on a monthly basis.

Guideline ECB/2009/20 of 31 July 2007 on government finance statistics (recast)¹¹¹ replaced the previous Guideline in this area, to reflect previous amendments and introduce further ones. It provides for comprehensive (i.e. covering all transactions including those in which general government acts as an agent for EU institutions) and reliable GFS for the purposes of economic and monetary analysis, and for procedures for exchanging GFS within the ESCB. It makes arrangements to reflect the fact that part of the information necessary to meet the ESCB's statistical requirements in the field of GFS is compiled by competent national authorities other than NCBs laying down that certain tasks under the Guideline require cooperation between the ESCB and the competent national authorities. Furthermore, since the statistical sources at EU level do not fully satisfy the needs of the ESCB in respect of coverage and timeliness of government debt and deficit-debt adjustment statistics and statistics on transactions between the Member States and the EU budget, the Guideline establishes a framework for further compilation by the competent national authorities. Finally, the Guideline contains a procedure for technical amendments to the annexes to the Guideline, provided that such amendments neither change the underlying conceptual framework nor affect the reporting burden.

7.3 EXTERNAL STATISTICS

Guideline ECB/2004/15 of 16 July 2004 on the statistical reporting requirements of the European Central Bank in the field of balance of payments and international investment position statistics, and the international reserves template¹¹² sets out statistical reporting requirements, data submission deadlines, as well as data transmission standards and

¹¹¹ OJ L 228, 19.2009, p. 25.

¹¹² OJ L 354, 30.11.2004, p. 34.

derogations. Balance of payments statistics must be reported at two frequencies: monthly and quarterly. The statistics reported on a monthly basis show the main items affecting monetary conditions and exchange markets, and those reported on a quarterly basis provide more detailed information to permit further analysis of external transactions.

‘Balance of payments’ refers to the statistical statement that reports cross-border transactions. ‘International investment position’ means the balance sheet that reports the stock of cross-border financial assets and liabilities at a reference date. It contributes in particular to assessing Member States’ external vulnerability and to monitoring developments in holdings of liquid assets abroad. The ECB’s definitions of euro area monetary aggregates are based on a harmonised definition of the money-issuing and money-holding sectors. The former sector consists of MFIs resident in the euro area, while the latter sector includes all non-MFIs resident in the euro area other than the central government. The money-holding sector thus consists of: households; non-financial corporations; financial institutions other than MFIs; State and local governments; and social security funds¹¹³. The ‘international reserves template’ is a statistical statement that reports stocks of reserve assets, other foreign currency assets and reserve-related liabilities of the Eurosystem at a reference date.

Furthermore, the NCBs and the ECB monitor the quality of the data. Also, where some of the required statistics are compiled by national authorities other than NCBs, the NCBs must endeavour to establish appropriate modalities for cooperation, where these do not already exist.

The Guideline is consistent with the IMF Balance of Payments Manual¹¹⁴. The ECB has also published methodological guidance with additional references to methodologies and sources used in the euro area balance of payments and international investment position statistics¹¹⁵.

Recommendation ECB/2004/16 of 16 July 2004 on the statistical reporting requirements of the European Central Bank in the field of balance of payments and international investment position statistics, and the international reserves template¹¹⁶ is somewhat similar to Guideline ECB/2004/15 and is addressed to the Irish Central Statistics Office and the *Ufficio Italiano dei Cambi*. The ECB recommendation is needed because these are the bodies in Italy and Ireland that collect and compile the required statistics and they are not appropriate addressees of a Guideline.

7.4 HARMONISED INDICES OF CONSUMER PRICES (HICP)

Price stability, the ECB’s primary objective, is defined in terms of the Harmonised Index of Consumer Prices (HICP) for the euro area. The responsibility for the publication of a wide

113 See ‘Sectoral Money Holding: Determinants and Recent Developments’, ECB Monthly Bulletin, August 2006.

114 5th edition, October 1993. Available on the IMF’s website at www.imf.org.

115 See e.g. ‘European Union balance of payments/international investment position statistical methods’, ECB, May 2007.

116 OJ C 292, 30.11.2004, p. 21.

range of statistics on prices and costs, national accounts, labour markets, external trade and various other general economic statistics lies primarily with the European Commission. The ECB works closely with the Commission (Eurostat) to develop harmonised statistical concepts and achieve regularly available high quality euro area statistics.

In the past, the ECB has adopted a number of Opinions in the field of the HICP statistics, including Opinion CON/2006/13 on the temporal coverage of price collection in the HICP¹¹⁷, Opinion CON/2007/30 on sampling, replacement and quality adjustment relating to the HICP¹¹⁸ and Opinion CON/2010/67 on a proposal for a Commission regulation laying down detailed rules for the implementation of Council Regulation (EC) No 2494/95 as regards minimum standards for the quality of HICP weightings¹¹⁹. The ECB opinions in the HICP area also stress the need for full comparability of the HICP across Member States.

7.5 CONFIDENTIALITY

Guideline ECB/1998/NP28 of 22 December 1998 concerning the common rules and minimum standards to protect the confidentiality of the individual statistical information collected by the European Central Bank assisted by the national central banks is published as Annex III to **Decision ECB/2000/12 of 10 November 2000 on the publication of certain legal acts and instruments of the European Central Bank**¹²⁰.

The confidentiality of data is of paramount importance for the ECB and the NCBs in their data exchanges and in the dissemination of data to other European and international organisations, websites and publications.

Article 8 of Council Regulation (EC) No 2533/98 lays down the confidentiality regime applicable to the transmission of the statistical information within the ESCB. In addition, Article 8a lays down the conditions under which the transmission of confidential statistical information between the ESCB and the ESS can take place.

Article 8c of Regulation (EC) No 2533/98 contains explicit provisions regarding the protection of confidential information on individuals. Additional instruments ensure compliance by ECB staff with their obligations to protect confidential and sensitive information (e.g. the Conditions of Employment for Staff of the European Central Bank, European Central Bank Staff Rules and the Code of Conduct of the European Central Bank, as well as specific ECB administrative circulars).

117 OJ C 55, 7.3.2006, p. 63.

118 OJ C 248, 23.10.2007, p. 1.

119 OJ C 252, 18.9.2010, p. 1.

120 OJ L 55, 24.2.2001, p. 68.

8 FRAUD PREVENTION, TRANSPARENCY AND DATA PROTECTION

8.1 FRAUD PREVENTION

Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)¹²¹ provides that OLAF initiates and conducts administrative fraud investigations within the institutions, bodies, offices and agencies established by, or on the basis of, the EC and Euratom Treaties. **Decision ECB/2004/11 of 3 June 2004 concerning the terms and conditions for European Anti-Fraud Office investigations of the European Central Bank, in relation to the prevention of fraud, corruption and any other illegal activities detrimental to the European Communities' financial interests and amending the Conditions of Employment for Staff of the European Central Bank**¹²² sets out the duties of ECB employees, members of the ECB's Governing Council, General Council and Executive Board, and any members of NCB staff or governing bodies who attend Governing or General Council meetings. The Decision sets out their duty to cooperate with OLAF and to report any information about illegal activity, together with the duty to assist OLAF in any internal investigation of the ECB.

8.2 TRANSPARENCY

A number of non-public legal acts were collectively published in the *Official Journal* in 2001 by means of Decision ECB/2000/12. The aim was to increase transparency, even where the ECB was not legally required to publish the information. Two examples of non-public legal acts that were published in this manner were the abovementioned Guideline ECB/1998/NP28 on protecting the confidentiality of statistical information and Decision ECB 1998/NP1 of 19 June 1998 on the appointment and on the duration of the mandate of the external auditor of the European Central Bank.

Decision ECB/2004/3 of 4 March 2004 on public access to European Central Bank documents¹²³ refers to the importance of openness and the balance to be struck between granting access to documents and the need to protect certain public and private interests by way of exceptions. The Decision defines the conditions and limits on the ECB's granting of public access to ECB documents.

121 OJ L 136, 31.5.1999, p. 1.

122 OJ L 230, 30.6.2004, p. 56.

123 OJ L 80, 18.3.2004, p. 42.

Any EU citizen and any natural or legal person residing or having its registered office in the EU has a right of access to ECB documents, subject to the conditions and limits set out in the Decision.

The Decision sets out the exceptional cases where the ECB must refuse access to a document, for example cases where disclosure would undermine the protection of the public interest as regards the financial, monetary or economic policy of the Union or a Member State, the internal finances of the ECB or the NCBs or where disclosure would compromise the integrity of euro banknotes. The Decision also sets out the procedure relating to applications for access to documents.

8.3 DATA PROTECTION

Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data¹²⁴ lays down the data protection principles and rules applicable to all Union institutions and bodies and provides for an independent data protection officer (DPO) to be appointed by each such institution and body.

The aim of **Decision ECB/2007/1 of 17 April 2007 adopting implementing rules concerning data protection at the European Central Bank**¹²⁵ is to fulfil the obligation under Article 24(8) of that Regulation of each Union institution or body to adopt further implementing rules concerning the DPO.

The implementing rules concern, in particular, the appointment, independent status, tasks, duties and powers of the DPO and clarify, *inter alia*, its consultative, advisory, investigative and compliance monitoring role.

The Decision also defines the tasks and duties of the controllers of personal data, i.e. the managers who determine the purposes and means of the processing of personal data. There are also data protection coordinators, whose role is to assist the controllers in fulfilling their obligations and to assist the DPO in various ways, including identifying the relevant controllers and promulgating the DPO's advice.

The rights of data subjects, i.e. natural persons whose data are being processed by ECB units, are defined in detail in Articles 11 to 19 of Regulation (EC) No 45/2001. The implementing rules therefore only contain a few extra provisions relating to the exercise by data subjects of such rights.

¹²⁴ OJ L 8, 12.1.2001, p. 1.

¹²⁵ OJ L 116, 4.5.2007, p. 64.

ANNEX – OVERVIEW OF LEGAL ACTS AND INSTRUMENTS

Reference number	Name of legal act	Section
ECB Regulations		
ECB/1999/4	Regulation ECB/1999/4 of 23 September 1999 on the powers of the European Central Bank to impose sanctions	3.4
ECB/2001/18	Regulation ECB/2001/18 of 20 December 2001 concerning statistics on interest rates applied by monetary financial institutions to deposits and loans vis-à-vis households and non-financial corporations	7.1(ii)
ECB/2003/9	Regulation ECB/2003/9 of 12 September 2003 on the application of minimum reserves	3.3
ECB/2006/8	Regulation ECB/2006/8 of 14 June 2006 on statistical reporting requirements in respect of post office giro institutions that receive deposits from non-monetary financial institution euro area residents	7.1(i)
ECB/2007/8	Regulation ECB/2007/8 of 27 July 2007 concerning statistics on the assets and liabilities of investment funds	7.1(i)
ECB/2008/10	Regulation ECB/2008/10 of 22 October 2008 amending Regulation ECB/2003/9 on the application of minimum reserves	3.3
ECB/2008/30	Regulation ECB/2008/30 of 19 December 2008 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions	7.1(i)
ECB/2008/32	Regulation ECB/2008/32 of 19 December 2008 concerning the balance sheet of the monetary financial institutions sector (Recast)	7.1(i)
ECB Guidelines		
ECB/1998/NP28	Guideline ECB/1998/NP28 of 22 December 1998 concerning the common rules and minimum standards to protect the confidentiality of the individual statistical information collected by the European Central Bank assisted by the national central banks	7.5, 8.2
ECB/1999/3	Guideline ECB/1999/3 of 7 July 1998 on certain provisions regarding euro banknotes, as amended on 26 August 1999	5.5
ECB/2000/7	Guideline ECB/2000/7 on monetary policy instruments and procedures of the Eurosystem	3.1

Reference number	Name of legal act	Section
ECB/2000/15	Guideline ECB/2000/15 of 3 November 1998 as amended by the Guideline of 16 November 2000 on the composition, valuation and modalities for the initial transfer of foreign-reserve assets, and the denomination and remuneration of equivalent claims	6.1
ECB/2002/6	Guideline ECB/2002/6 of 26 September 2002 on minimum standards for the European Central Bank and national central banks when conducting monetary policy operations, foreign exchange operations with the ECB's foreign reserves and managing the ECB's foreign reserve assets	6.1
ECB/2002/7	Guideline ECB/2002/7 of 21 November 2002 on the statistical reporting requirements of the European Central Bank in the field of quarterly financial accounts	7.2(i)
ECB/2003/5	Guideline ECB/2003/5 of 20 March 2003 on the enforcement of measures to counter non-compliant reproductions of euro banknotes and on the exchange and withdrawal of euro banknotes	5.1
ECB/2003/12	Guideline ECB/2003/12 of 23 October 2003 for participating Member States' transactions with their foreign exchange working balances pursuant to Article 31.3 of the Statute of the European System of Central Banks and of the European Central Bank	6.2
ECB/2004/15	Guideline ECB/2004/15 of 16 July 2004 on the statistical reporting requirements of the European Central Bank in the field of balance of payments and international investment position statistics, and the international reserves template	7.3
ECB/2004/18	Guideline ECB/2004/18 of 16 September 2004 on the procurement of euro banknotes	5.2
ECB/2006/4	Guideline ECB/2006/4 of 7 April 2006 on the Eurosystem's provision of reserve management services in euro to central banks and countries located outside the euro area and to international organisations	6.4
ECB/2006/9	Guideline ECB/2006/9 of 14 July 2006 on certain preparations for the euro cash changeover and on frontloading and sub-frontloading of euro banknotes and coins outside the euro area	5.6
ECB/2006/10	Guideline ECB/2006/10 of 24 July 2006 on the exchange of banknotes after the irrevocable fixing of exchange rates in connection with the introduction of the euro	5.6
ECB/2007/2	Guideline ECB/2007/2 of 26 April 2007 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2)	4.1
ECB/2007/9	Guideline ECB/2007/9 1 August 2007 on monetary, financial institutions and markets statistics (recast)	7.1(i)

Reference number	Name of legal act	Section
ECB/2008/4	Guideline ECB/2008/4 of 19 June 2008 amending Guideline ECB/2006/9 on certain preparations for the euro cash changeover and on frontloading and sub-frontloading of euro banknotes and coins outside the euro area	5.6
ECB/2008/5	Guideline ECB/2008/5 of 20 June 2008 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 (recast)	6.1
ECB/2008/8	Guideline ECB/2008/8 of 11 September 2008 on data collection regarding the euro and the operation of the Currency Information System 2	5.4
ECB/2008/18	Guideline ECB/2008/18 of 21 November 2008 on temporary changes to the rules relating to eligibility of collateral	3.1
ECB/2009/1	Guideline ECB/2009/1 of 20 January 2009 amending Guideline ECB/2000/7 on monetary policy instruments and procedures of the Eurosystem	3.1
ECB/2009/10	Guideline ECB/2009/10 of 7 May 2009 amending Guideline ECB/2000/7 on monetary policy instruments and procedures of the Eurosystem	3.1
ECB/2009/20	Guideline ECB/2009/20 of 31 July 2009 on government finance statistics (recast)	7.2 (iii)
ECB/2009/21	Guideline ECB/2009/21 of 17 September 2009 amending Guideline ECB/2007/2 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2)	4.1
ECB/2009/24	Guideline ECB/2009/24 of 10 December 2009 amending Guideline ECB/2008/18 on temporary changes to the rules relating to eligibility of collateral	3.1
ECB/2010/1	Guideline ECB/2010/1 of 4 March 2010 amending Guideline ECB/2000/7 on monetary policy instruments and procedures of the Eurosystem	3.1
ECB/2010/2	Guideline ECB/2010/2 of 21 April 2010 on TARGET2-Securities	4.2
ECB/2010/12	Guideline ECB/2010/12 of 15 September 2010 amending Guideline ECB/2007/2 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2)	4.1
ECB/2010/13	Guideline ECB/2010/13 of 16 September 2010 amending Guideline ECB/2000/7 on monetary policy instruments and procedures of the Eurosystem	3.1
ECB/2010/20	Guideline ECB/2010/20 of 11 November 2010 on the legal framework for accounting and financial reporting in the European System of Central Banks (recast)	2.2

Reference number	Name of legal act	Section
ECB/2010/30	Guideline ECB/2010/30 of 13 December 2010 amending Guideline ECB/2000/7 on monetary policy instruments and procedures of the Eurosystem	3.1
ECB Decisions		
ECB 1998/NP1	Decision ECB/1998/NP1 of 19 June 1998 on the appointment and on the duration of the mandate of the external auditor of the European Central Bank	8.2
ECB/2000/12	Decision ECB/2000/12 of 10 November 2000 on the publication of certain legal acts and instruments of the European Central Bank	7.5, 8.2
ECB/2001/11	Decision ECB/2001/11 of 8 November 2001 on certain conditions regarding access to the Counterfeit Monitoring System (CMS)	5.5
ECB/2003/4	Decision ECB/2003/4 of 20 March 2003 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes	5.1
ECB/2003/14	Decision ECB/2003/14 of 7 November 2003 concerning the administration of the borrowing-and-lending operations concluded by the European Community under the medium-term financial assistance facility	3.5
ECB/2004/3	Decision ECB/2004/3 of 4 March 2004 on public access to European Central Bank documents	8.2
ECB/2004/11	Decision ECB/2004/11 of 3 June 2004 concerning the terms and conditions for European Anti-Fraud Office investigations of the European Central Bank, in relation to the prevention of fraud, corruption and any other illegal activities detrimental to the European Communities' financial interests and amending the Conditions of Employment for Staff of the European Central Bank	8.1
ECB/2007/1	Decision ECB/2007/1 of 17 April 2007 adopting implementing rules concerning data protection at the European Central Bank	8.3
ECB/2007/5	Decision ECB/2007/5 of 3 July 2007 laying down the Rules on Procurement	2.2
ECB/2007/7	Decision ECB/2007/7 of 24 July 2007 concerning the terms and conditions of TARGET2-ECB	4.1
ECB/2008/3	Decision ECB/2008/3 of 15 May 2008 on security accreditation procedures for manufacturers of euro secure items for euro banknotes	5.2
ECB/2008/17	Decision ECB/2008/17 of 17 November 2008 laying down the framework for joint Eurosystem procurement	2.2

Reference number	Name of legal act	Section
ECB/2008/23	Decision ECB/2008/23 of 12 December 2008 on the national central banks' percentage shares in the key for subscription to the European Central Bank's capital	2.1
ECB/2008/27	Decision ECB/2008/27 of 12 December 2008 laying down the measures necessary for the contribution to the European Central Bank's accumulated equity value and for adjusting the national central banks' claims equivalent to the transferred foreign reserve assets	6.1
ECB/2009/2	Decision ECB/2009/2 of 27 January 2009 amending Decision ECB/2007/5 laying down the Rules on Procurement	2.2
ECB/2009/6	Decision ECB/2009/6 of 19 March 2009 on the establishment of the TARGET2-Securities Programme Board	4.2
ECB/2009/16	Decision ECB/2009/16 of 2 July 2009 on the implementation of the covered bond purchase programme	3.2
ECB/2009/17	Decision ECB/2009/17 of 19 June 2009 amending Decision ECB/2003/14 concerning the administration of the borrowing-and-lending operations concluded by the European Community under the medium-term financial assistance facility	3.5
ECB/2010/3	Decision ECB/2010/3 of 6 May 2010 on temporary measures relating to the eligibility of marketable debt instruments issued or guaranteed by the Greek Government	3.2
ECB/2010/4	Decision ECB/2010/4 of 10 May 2010 concerning the management of pooled bilateral loans for the benefit of the Hellenic Republic and amending Decision ECB/2007/7	3.2
ECB/2010/5	Decision ECB/2010/5 of 14 May 2010 establishing a securities markets programme	3.2
ECB/2010/8	Decision ECB/2010/8 of 27 July 2010 amending Decision ECB/2007/5 laying down the Rules on Procurement	2.2
ECB/2010/9	Decision ECB/2010/9 of 29 July 2010 on access to and use of certain TARGET2 data	4.1
ECB/2010/10	Decision ECB/2010/10 of 19 August 2010 on non-compliance with statistical reporting requirements	7.1(ii)
ECB/2010/14	Decision ECB/2010/14 of 16 September 2010 on the authenticity and fitness checking and recirculation of euro banknotes	5.5
ECB/2010/15	Decision ECB/2010/15 of 21 September 2010 concerning the administration of EFSF loans to Member States whose currency is the euro	3.5

Reference number	Name of legal act	Section
ECB/2010/17	Decision ECB/2010/17 of 14 October 2010 concerning the administration of the borrowing and lending operations concluded by the Union under the European financial stabilisation mechanism	3.5
ECB/2010/21	Decision ECB/2010/21 of 11 November 2010 on the annual accounts of the European Central Bank (recast)	2.2
ECB/2010/22	Decision ECB/2010/22 of 25 November 2010 on the quality accreditation procedure for manufacturers of euro banknotes	5.2
ECB/2010/23	Decision ECB/2010/23 of 25 November 2010 on the allocation of monetary income of the national central banks of Member States whose currency is the euro (recast)	2.3
ECB/2010/24	Decision ECB/2010/24 of 25 November 2010 on the interim distribution of the income of the European Central Bank on euro banknotes in circulation and arising from securities purchased under the securities markets programme	2.3
ECB/2010/25	Decision ECB/2010/25 of 29 November 2010 on the approval of the volume of coin issuance in 2011	5.3
ECB/2010/26	Decision ECB/2010/26 of 13 December 2010 on the increase of the European Central Bank's capital	2.1
ECB/2010/27	Decision ECB/2010/27 of 13 December 2010 on the paying-up of the increase of the European Central Bank's capital by the national central banks of Member States whose currency is the euro	2.1
ECB/2010/28	Decision ECB/2010/28 of 13 December 2010 on the paying-up of the European Central Bank's capital by the non-euro area national central banks	2.1
ECB/2010/29	Decision ECB/2010/29 of 13 December 2010 on the issue of euro banknotes (recast)	2.3, 5.1
ECB/2010/31	Decision ECB/2010/31 of 20 December 2010 concerning the opening of accounts for the processing of payments in connection with EFSF loans to Member States whose currency is the euro	3.5
ECB/2010/34	Decision ECB/2010/34 of 31 December 2010 on the paying-up of capital, transfer of assets and contributions by Eesti Pank to the European Central Bank's reserves and provisions	2.1
ECB Recommendations		
ECB/2004/16	Recommendation ECB/2004/16 of 16 July 2004 on the statistical reporting requirements of the European Central Bank in the field of balance of payments and international investment position statistics, and the international reserves template	7.3

Reference number	Name of legal act	Section
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