



EUROPEAN CENTRAL BANK

DECISION OF THE EUROPEAN CENTRAL BANK

of 17 October 2003

**ON THE ALLOCATION OF RISKS IN RELATION TO LOSSES ARISING IN EUROSISTEM
CREDIT OPERATIONS**

(ECB/2003/NP13)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank and in particular to Articles 32.4 and 32.7 thereof;

Whereas:

- (1) In accordance with Article 32.4 of the Statute, the Governing Council of the European Central Bank (ECB) may decide that national central banks of Member States that have adopted the euro in accordance with the Treaty establishing the European Community (hereinafter the 'NCBs') will be indemnified in exceptional circumstances for specific losses arising from Eurosystem monetary policy operations.
- (2) Through Decision ECB/1998/NP29 of 22 December 1998 on the allocation of risks in relation to losses arising in ESCB credit operations, the Governing Council established principles on the basis of which it may decide on the compensation of specific losses arising, in particular in relation to the use of eligible assets in the exceptional event of default of a counterparty in Eurosystem liquidity-providing operations.
- (3) Further developments in the definition and implementation of the single monetary policy need to be appropriately reflected.
- (4) Any indemnification will be in a form that the Governing Council deems appropriate and may be offset against the NCBs' monetary income.
- (5) The general principles established in this Decision are without prejudice to the specific provisions on risk allocation stated in any other ECB legal act or any agreement.
- (6) In exceptional circumstances to be decided upon by the Governing Council, the ECB may enter into monetary policy operations undertaken for the Eurosystem.

- (7) The table annexed to Decision ECB/1998/NP29 relates to the legal aspects of the collateralisation of assets at the date of such Decision and needs to be reassessed in view of changes to the substantive law in the Member States, in particular as a result of the implementation of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems¹.
- (8) Further need of reassessment may arise upon the implementation of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements².
- (9) The ECB has adopted a general policy which favours transparency and official publication of ECB legal instruments, with the exception of those parts that should remain confidential, which means that any exception to the principle of transparency needs to be applied restrictively and that the need for confidentiality needs to be justified. In the present case, the Governing Council considers that the contents of this Decision relate to internal confidential matters, the publication of which might be detrimental to the effective performance of the tasks of the Eurosystem and of the ECB and the public interest underlying them, and that they should not therefore be disclosed in a published Decision,

HAS ADOPTED THIS DECISION:

Article 1

Allocation of losses relating to eligible assets

1. Subject to paragraph 2 below:
 - (a) if losses arising from monetary policy operations undertaken for the Eurosystem arise in relation to assets listed on the 'tier one' list established and maintained by the ECB in accordance with Guideline ECB/2000/7 of 31 August 2000 on monetary policy instruments and procedures of the Eurosystem³, such losses shall be borne by all NCBs except where they arise as a result of the wilful or negligent act or omission of an NCB, in which case the losses shall be borne by the NCB in question;
 - (b) if losses arising from monetary policy operations undertaken for the Eurosystem arise in relation to assets listed on the 'tier two' list established and maintained by an NCB in accordance with Guideline ECB/2000/7 such losses shall be borne by that NCB, except where they arise as a result of the wilful or negligent act or omission of the NCB using the assets as collateral, in which case the losses shall be borne by the NCB in question.

¹ OJ L 166, 11.6.1998, p. 45.

² OJ L 168, 27.6.2002, p. 43.

³ OJ L 310, 11.12.2000, p. 1, as amended.

2. If and to the extent that any losses would not have occurred but for the NCB accepting the assets as collateral using a method of taking collateral that is designated in the table annexed to this Decision, the losses shall be borne by the NCB adopting that method.

Article 2

Allocation of risks relating to foreign exchange swap operations

Losses incurred by any NCB in relation to the failure of a counterparty to comply with its obligations under a foreign exchange swap operation entered into for the purposes of Eurosystem monetary policy shall be borne by that NCB.

Article 3

Assessment of losses

1. Any NCB claiming that it has suffered losses that should be borne by all NCBs or another NCB shall make a reasoned submission to the Governing Council requesting it to exercise its discretion to award compensation in accordance with this Decision.
2. In any transaction involving assets used as collateral, 'losses' shall mean the difference between the amount intended to be collateralised and the amount actually realised.
3. When confronted with the default of a counterparty, the NCBs shall take appropriate action to realise assets or otherwise mitigate their losses, both before and after any settlement of losses.
4. The NCBs shall provide each other with all reasonable assistance to recover losses.
5. Any subsequent recovery received at any time by any NCB shall be duly accounted for.

Article 4

Settlement of losses

Losses shall be accounted for in accordance with the arrangements for the accounting of monetary income.

Article 5

Final provisions

1. Decision ECB/1998/NP29 is hereby repealed.
2. This Decision shall enter into force on 1 November 2003.

Done at Frankfurt am Main on 17 October 2003.

The President of the ECB

[signed]

Willem F. DUISENBERG

ECB-PUBLIC

Member State	Method of collateralisation
France	Pledge.
Ireland	Pledge.
Portugal	Pledge.

ECB-PUBLIC