



EUROPEAN CENTRAL BANK

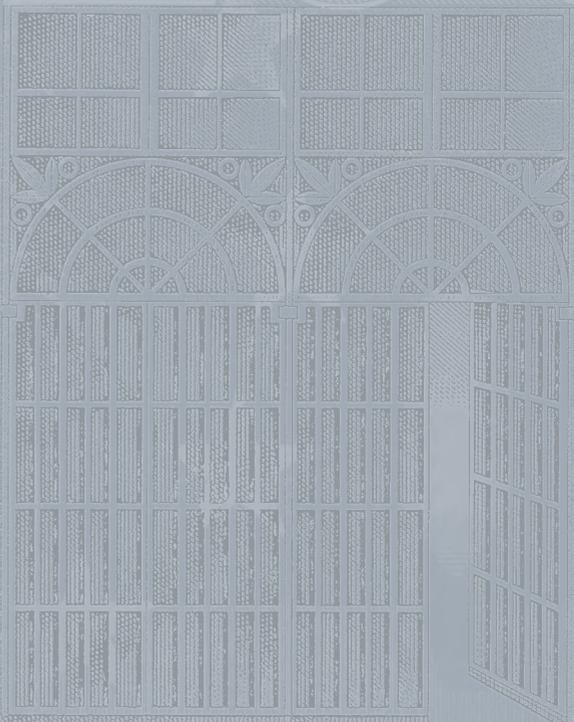
EUROSYSTEM

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

AUGUST 2009

CB EZB EKT EKP

2000



**ECB LEGAL ACTS
AND INSTRUMENTS
2009 UPDATE**

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ISSN 1831-1873 (print)

ISSN 1831-1881 (online)

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FOREWORD

This booklet updates the fourth booklet in the series of legal booklets produced by the Legal Services of the European Central Bank (ECB). It contains new information to take into account the legal acts and instruments adopted between 1 January and 31 December 2008. Some of the most notable developments that it covers are listed below:

- Legal acts and instruments related to Slovakia joining the euro area;
- A number of financial turmoil related changes to Guideline ECB/2000/7 (General Documentation);
- An important ECB Recommendation (ECB/2008/9) to amend the Council Regulation on the collection of statistical information by the ECB;
- The Decision postponing the start of the rotation system in the Governing Council (ECB/2008/29);
- A new Decision (ECB/2008/17) on joint Eurosystem procurement;
- A Guideline (ECB/2008/8) implementing the Currency Information System 2; and
- A new Regulation (ECB/2008/30) on statistics on assets and liabilities of financial vehicle corporations engaged in securitisation transactions.

The summaries in this booklet are intended to provide a handy 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. We are sure that this new updated booklet will continue to provide an essential overview of the most important legal acts and instruments in the legal framework of the Eurosystem and the European System of Central Banks (ESCB) to new staff joining the ECB or any of the national central banks (NCBs) within the ESCB.

Frankfurt am Main, July 2009

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I INTRODUCTION

This fourth 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 the 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 the 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);
- Banknotes and coins, means of payments and currency matters;
- Foreign reserves, foreign exchange and 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 and follows the approach in the Legal Framework section of the ECB's website in that it includes all main public legal acts and instruments adopted by the ECB prior to 1 January 2009, 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. in relation to Greece's adoption of the euro) or non-public ECB legal acts. The booklet gives full publication references but, for details regarding any particular legal act, reference is made to the version published in the *Official Journal of the European Union* (OJ).

1 The other booklets in the series are: (1) Institutional provisions (2004); (2) Guide to consultation of the ECB by national authorities (2005); and (3) European legislation on financial markets (2007).

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

2 ECB INSTITUTIONAL PROVISIONS

2.1 ECB'S CAPITAL

Each national central bank (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 Commission of the European Communities provides the statistical data.

Pursuant to Article 49.3 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. Hence the ECB adopted four Decisions in this area in December 2006, to prepare for two events on 1 January 2007: Bulgaria and Romania joining the ESCB and Slovenia adopting the euro.

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 7 % of their share of the capital until they adopt the euro.

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 capital³ 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.

Decision ECB/2008/24 of 12 December 2006 laying down the measures necessary for the paying-up of the European Central Bank's capital by the participating national central banks⁴ sets out the total amount of the ECB's capital with effect from 1 January 2009: EUR 5 760 652 402,58. It also sets out the resulting sum that each NCB in the Eurosystem (not the ESCB) has to pay. Since, prior to Decision ECB/2008/24, all the NCBs in the Eurosystem except Slovakia had already paid their shares, the Decision provides for a balancing procedure: Member States whose share had increased transferred an additional amount to the ECB and those whose share had decreased received an amount back from the ECB.

3 OJ L 21, 24.1.2009, p. 66.

4 OJ L 21, 24.1.2009, p. 69.

The final Decision in this area is **Decision ECB/2008/28 of 15 December 2008 laying down the measures necessary for the paying-up of the European Central Bank’s capital by the non-participating national central banks**⁵. This provides for each non-participating NCB to pay up 7 % of its subscription to the ECB’s capital, taking into account the capital key weightings described in Article 2 of Decision ECB/2008/23.

Decision ECB/2008/25 of 12 December 2008 laying down the terms and conditions for transfers of the European Central Bank’s capital shares between the national central banks and for the adjustment of the paid-up capital⁶ is the measure which sets out exactly what sum each NCB in the Eurosystem had to transfer for its subscribed capital, as well as the amount each NCB in the ESCB has to transfer in terms of its paid-up capital. Payments are made via the TARGET2 payment system. For example, the Deutsche Bundesbank was entitled to a refund of EUR 91 237 212,76 while Narodowy Bank Polski had to transfer EUR 1 186 694,47.

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 assets⁷ adjusts the claims that the ECB credits to NCBs of participating Member States (Member States in the euro area) pursuant to Article 30.3 of the Statute of the ESCB (see also page 34).

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/2006/16 of 10 November 2006 on the legal framework for accounting and financial reporting in the European System of Central Banks⁸ amends and recasts the previous Guideline in this area⁹. Like the previous Guideline, Guideline ECB/2006/16 provides for the harmonisation of the NCBs’ published annual financial statements in respect of the

5 OJ L 21, 23.1.2009, p. 81.

6 OJ L 21, 24.1.2009, p. 71.

7 OJ L 21, 24.1.2009, p. 77.

8 OJ L 348, 11.12.2006, p. 1, Guideline as last amended by Guideline ECB/2008/21 (OJ L 36, 5.2.2009, p. 46) which revised the disclosure policy for securities transactions with a view to enhancing the transparency of the financial statements.

9 Guideline ECB/2002/10 of 5 December 2002 on the legal framework for accounting and financial reporting in the European System of Central Banks (OJ L 58, 3.3.2003, p. 1).

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. As distinct from the previous Guideline, Guideline ECB/2006/16 provides that the ESCB will use the ‘economic approach’ to record foreign exchange transactions, financial instruments denominated in foreign currency and related accruals.

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;
- 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;
- reporting formats (the Guideline sets out the format to be used by NCBs).

Finally, there are 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.

There are specific rules detailing how the ECB’s annual accounts are to be drawn up. These are contained in **Decision ECB/2006/17 of 10 November 2006 on the annual accounts of the European Central Bank**¹⁰. The rules apply to the balance sheet, off-balance sheet

¹⁰ OJ L 348, 11.12.2006, p. 38. Decision as last amended by Decision ECB/2008/22 (OJ L 36, 5.2.2009, p. 22) which revised the disclosure policy for securities transactions with a view to enhancing the transparency of financial statements.

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/2006/16 (e.g. on the cost of transactions) are incorporated by reference into this Decision, and the basic accounting assumptions referred to in Guideline ECB/2006/16 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.

The Decision provides that when it is interpreted, account should be taken of the preparatory work, the accounting principles harmonised by Community 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.

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 Bank¹¹ was originally a non-public decision, but was published as part of a package in the *Official Journal* in 2000¹². It 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 publishes a recommendation¹³. The Council of the European Union then follows this up with a decision¹⁴.

Decision ECB/2007/5 of 3 July 2007 laying down the Rules on Procurement¹⁵ 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

11 OJ L 55, 24.2.2001, p. 75.

12 Decision ECB/2000/12 of 10 November 2000 on the publication of certain legal acts and instruments of the European Central Bank (OJ L 55, 24.2.2001, p. 68).

13 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/2006/29 of 21 December 2006 to the Council of the European Union on the external auditors of the Oesterreichische Nationalbank (OJ C 5, 10.1.2007, p. 1).

14 e.g. Council Decision 2008/571/EC of 8 July 2008 amending Decision 98/481/EC approving the external auditors of the European Central Bank (OJ L 183, 11.7.2008, p. 34); and Council Decision 2007/145/EC of 27 February 2007 amending Decision 1999/70/EC concerning the external auditors of the national central banks as regards the external auditors of the Oesterreichische Nationalbank (OJ L 64, 2.3.07, p. 35).

15 OJ L 184, 14.7.2007, p. 34.

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.

By **Decision ECB/2008/17 of 17 November 2008 laying down the framework for joint Eurosystem procurement**¹⁶, the ECB has 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 formalises 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 national central banks 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/2001/16 of 6 December 2001 on the allocation of monetary income of the national central banks of participating Member States from the financial year 2002¹⁷ has been amended several times. This Decision is closely linked to Decision ECB/2001/15 of 6 December 2001 on the issue of euro banknotes¹⁸. The allocation of euro banknotes among Eurosystem members gives rise to intra-Eurosystem balances. The remuneration of these intra-Eurosystem balances on euro banknotes in circulation has a direct effect on the income of each Eurosystem member. The Decision sets out a special formula for

¹⁶ OJ L 319, 29.11.2008, p. 76.

¹⁷ OJ L 337, 20.12.2001, p. 55. Decision as last amended by Decision ECB/2007/15 (OJ L 333, 19.12.2007, p. 86).

¹⁸ OJ L 337, 20.12.2001, p. 52. Decision as last amended by Decision ECB/2008/26 (OJ L 21, 24.1.2009, p. 75).

calculating monetary income in 2002, because it was anticipated that banknotes denominated in national currency units might still account for a considerable proportion of the total value of Eurosystem banknotes in circulation. From 2003 the amount of each NCB's monetary income is determined by measuring the actual income that derives from the earmarkable assets recorded in its books.

There were some minor amendments to Decision ECB/2001/16 in 2003 and 2007¹⁹, whereas the 2006 amendments were more extensive²⁰. Decision ECB/2006/7 adapted the regime for the allocation of monetary income to take account of enlargement of the euro area. The recitals stress the importance of new Eurosystem NCBs being treated in the same way financially as existing Eurosystem NCBs, for reasons of fairness, consistency and equal treatment. Decision ECB/2006/7 achieves this by laying down an adjustment procedure to be applied each time a Member State adopts the euro.

Income accrues to the ECB on the remuneration of its intra-Eurosystem claims on NCBs relating to its share of euro banknotes in circulation. **Decision ECB/2005/11 of 17 November 2005 on the distribution of the income of the European Central Bank on euro banknotes in circulation to the national central banks of the participating Member States**²¹ provides the following. The Governing Council must decide not to distribute part or all of the ECB's income on euro banknotes in circulation to the NCBs, 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, if, 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. Furthermore, Decision ECB/2005/11 gives the Governing Council the power to decide to transfer part or all of the ECB's income on euro banknotes in circulation to a provision for foreign exchange rate, interest rate and gold price risks.

2.4 RULES OF PROCEDURE

Article 10.2 of the Statute of the ESCB provides that, as from the date on which the number of members of the ECB Governing Council exceeds 21, each member of the Executive Board will have one vote and the number of governors with a voting right will be 15, with the voting rights of governors being rotated. Upon the adoption of the euro by Slovakia on 1 January 2009, the number of members of the Governing Council exceeds 21. Under Article 10.2, the Governing Council may decide to postpone the start of the rotation

19 See Decision ECB/2003/22 of 18 December 2003 amending Article 1(f) of Decision ECB/2001/16 of 6 December 2001 on the allocation of monetary income of the national central banks of participating Member States from the financial year 2002 (OJ L 9, 15.1.2004, p. 39) and Decision ECB/2007/15.

20 Decision ECB/2006/7 of 19 May 2006 amending Decision ECB/2001/16 on the allocation of monetary income of the national central banks of participating Member States from the financial year 2002 (OJ L 148, 2.6.2006, p. 56).

21 OJ L 311, 26.11.2005, p. 41.

system until the date on which the number of governors exceeds 18. **Decision ECB/2008/29 of 18 December 2008 to postpone the start of the rotation system in the Governing Council of the European Central Bank**²² continues the current voting regime and only introduces the rotation system when the number of governors in the ECB Governing Council exceeds 18.

²² OJ L 3, 7.1.2009, p. 4.

3 MONETARY POLICY AND OPERATIONS

3.1 MONETARY POLICY INSTRUMENTS

Guideline ECB/2000/7 on monetary policy instruments and procedures of the Eurosystem²³ is better known as the ‘General Documentation’. It has very few enacting terms; the bulk of the Guideline consists of an annex, which sets out the Eurosystem’s legal framework for monetary policy instruments and procedures. One of its main aims, 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. The General Documentation 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, which is known as ‘National Documentation’.

Guideline ECB/2000/7 has been amended on a number of occasions however, the entire annex is not replaced with each amendment. The latest complete version is contained in the brochure published on the ECB’s website²⁴. 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 facilities, 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 monetary policy stance. There are four categories of open market operations in the Eurosystem: main refinancing operations; longer-term refinancing operations; fine-tuning operations; and structural operations. This chapter sets out the features of the different types of open market instrument (e.g. reverse transactions, the Eurosystem’s main open market instrument).

Chapter 4 sets out the two types of standing facility that are available to counterparties: the marginal lending facility (by which counterparties can obtain overnight liquidity from NCBs) and 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: tender procedures; procedures for bilateral operations; and 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.

²³ OJ L 310, 11.12.2000, p. 1.

²⁴ See: <http://www.ecb.europa.eu/pub/pdf/other/gendoc2008en.pdf>.

The rules set out in this chapter are very detailed, covering, e.g. the Eurosystem's credit assessment framework. Chapter 7 presents the Eurosystem's minimum reserve system, which sets out, for example, how the level of minimum reserves that a credit institution must hold is calculated.

The rest of the Guideline consists of annexes, 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.

The Eurosystem's monetary policy instruments were amended in connection with the turmoil in the financial markets in 2008. **Guideline ECB/2008/13 of 23 October 2008 amending Guideline ECB/2000/7 on monetary policy instruments and procedures of the Eurosystem**²⁵ introduced the following amendments: (i) changes to the risk control framework and to the rules on collateral eligibility for Eurosystem credit operations; (ii) acceptance of non-euro denominated collateral in certain circumstances; (iii) provisions on the treatment of entities subject to the freezing of funds and/or other measures imposed by the European Community or by a Member State under Article 60(2) of the Treaty; and (iv) harmonisation with the provisions of Regulation ECB/2003/9 of 12 September 2003 on the application of minimum reserves²⁶.

In addition, certain temporary changes to the rules relating to the eligibility of collateral admissible for Eurosystem credit operations were adopted by the ECB in October and November 2008. **Regulation ECB/2008/11 of 23 October 2008 on temporary changes to the rules relating to eligibility of collateral**²⁷ together with **Guideline ECB/2008/18 of 21 November on temporary changes to the rules relating to eligibility of collateral**²⁸

25 OJ L 36, 5.2.2009, p. 31.

26 OJ L 250, 2.10.2003, p. 10.

27 OJ L 282, 25.10.2008, p.17.

28 OJ L 314, 25.11.2008, p.17.

widen the eligibility of debt instruments and other assets which can be used as collateral in Eurosystem credit operations. The changes enhance the provision of liquidity to counterparties and provide for the acceptance, on a temporary basis, of certain assets which were previously ineligible. Among the assets accepted as eligible collateral are marketable debt instruments denominated in US dollars, pounds sterling and Japanese yen, provided such instruments are issued and held/settled in the euro area and the issuer is established in the EEA. The Regulation and Guideline also clarify that syndicated loans are only eligible if they comply with the General Documentation as set out in Annex I to Guideline ECB/2000/7. In addition to the above provisions, debt instruments issued by credit institutions and traded on certain non-regulated markets were made eligible. The list of acceptable non-regulated markets is published by the ECB. All newly eligible assets, except for fixed-term deposits, are subject to additional valuation haircuts, and the other risk control measures in the General Documentation continue to apply. The temporary extension of eligible collateral applies until 31 December 2009, after which the assets granted temporary eligibility will cease to be eligible.

3.2 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 reserves²⁹ 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 (hereinafter 'participating Member States'), and branches of credit institutions that are located in participating Member States. The terms 'credit institution' and 'branch' are both as defined in the Capital Requirements Directive³⁰. 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**³¹ amends 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 Community 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.

²⁹ OJ L 250, 2.10.2003, p. 10.

³⁰ 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).

³¹ OJ L 282, 25.10.2008, p. 14.

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 participating NCBs each determine procedures for notifying an individual institution’s minimum reserves: either the NCB or the institution calculates the level required for a particular maintenance period and notifies the other party of the amount at least three NCB business days before the start of the maintenance period.

Institutions must hold their minimum reserves on one or more reserve (or other) accounts with the NCB in each participating Member State in which it is established, in relation to its reserve base in the corresponding Member State. Institutions may apply for permission to hold all their 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-participating 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 them³².

Regulation ECB/2008/10 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.

32 e.g. Decision ECB/2008/14 of 28 October 2008 on transitional provisions for the application of minimum reserves by the European Central Bank following the introduction of the euro in Slovakia (OJ L 319, 29.11.2008, p. 73).

3.3 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 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 Bank*³³ 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 application of the minimum reserve regime and establishes the possible sanctions in cases on non-compliance.

*Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions*³⁴ 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 Communities.

Regulation ECB/1999/4 of 23 September 1999 on the powers of the European Central Bank to impose sanctions³⁵ 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.

33 OJ L 318, 27.11.1998 p. 1. Regulation as amended by Regulation (EC) No 134/2002 (OJ L 24, 26.1.2002, p. 1).

34 OJ L 318, 27.11.1998, p. 4.

35 OJ L 264, 12.10.99, p. 21. Regulation as amended by Regulation ECB/2001/4 (OJ L 137, 19.5.2001, p. 24). 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).

There are three possible options for an institution when it is notified of the alleged breach of its minimum reserve obligations³⁶. It 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 such cases 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 Board³⁷. However, at this point the sanction is not yet final, as the credit institution still has the right to request a review of the Executive Board's decision by the ECB's Governing Council.

Any request for a review by the Governing Council³⁸ 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 (b) and (c) 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 Justice³⁹, in accordance with the Treaty establishing the European Community. Pursuant to Article 229 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.

3.4 FINANCIAL ASSISTANCE

There is a Community medium-term assistance facility which enables loans to be granted to one or more Member States which are experiencing, or are seriously threatened with,

³⁶ See Article 11(4) of Regulation ECB/1999/4.

³⁷ See Article 11(5) of Regulation ECB/1999/4.

³⁸ See Article 3(6) of Regulation (EC) No 2532/98 and Article 7(2) of Regulation (EC) No 2531/98.

³⁹ See Article 3(7) and Article 5 of Regulation (EC) No 2532/98.

difficulties in their balance of current payments or capital movements⁴⁰. 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**⁴¹ sets out those detailed arrangements, (e.g. what types of accounts the ECB must open in its books).

⁴⁰ 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).

⁴¹ OJ L 297, 15.11.2003, p. 35.

4 PAYMENT AND SETTLEMENT SYSTEMS

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 replaces it from November 2007. This new system 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 will, like TARGET, be 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)**⁴² reflects the Governing Council's decision to harmonise the rules of the TARGET2 component systems to the greatest extent possible; there are only derogations where there are national legal constraints.

The ECB and the NCBs of participating Member States will each operate their own TARGET2 component system, but the rules of such systems 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 the relevant 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 Directive⁴³ 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

⁴² OJ L 237, 8.9.2007, p. 1.

⁴³ 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).

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

The NCBs of other Member States may also connect to TARGET2 via a specific agreement which complies with the Harmonised Conditions, subject to any mutually agreed 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 NCBs of participating Member States 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 are building and operating the SSP for the Eurosystem's benefit.

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. The final annex to the Guideline, Annex IV, 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.

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

Migration from the national RTGS systems to the SSP is taking place in stages, and Guideline ECB/2007/2 contains a set of transitional provisions covering the overlap period. The old Guideline⁴⁴ will continue to apply to such systems until the relevant NCB has migrated to the SSP.

⁴⁴ Guideline ECB/2005/16 of 30 December 2005 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET) (OJ L 18, 23.1.2006, p. 1). Guideline as amended by Guideline ECB/2006/11 (OJ L 221, 12.8.2006, p. 17).

5 BANKNOTES AND COINS, MEANS OF PAYMENT AND CURRENCY MATTERS

5.1 EURO BANKNOTES ISSUANCE

Under Article 16 of the Statute of the ESCB, the Governing Council has the exclusive right to authorise the issue of banknotes within the Community, and the ECB and the NCBs may issue such notes. **Decision ECB/2003/4 of 20 March 2003 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes**⁴⁵ 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.

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 banknotes⁴⁶ complements Decision ECB/2003/4. It provides for the enforcement of measures to counter non-compliant reproductions: if NCBs of participating Member States 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,

⁴⁵ OJ L 78, 25.3.2003, p. 16.

⁴⁶ OJ L 78, 25.3.2003, p. 20.

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 banknotes⁴⁷ 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.

Decision ECB/2008/3 of 15 May 2008 on security accreditation procedures for manufacturers of euro secure items for euro banknotes⁴⁸ lays down a full accreditation procedure and a temporary accreditation procedure to enable manufacturers to participate in tenders for the supply of euro secure items. The accreditation criteria are laid down in the Decision.

Decision ECB/2001/15 of 6 December 2001 on the issue of euro banknotes⁴⁹ sets out the obligations of NCBs in their capacity as issuers of euro banknotes, e.g. they are responsible for putting euro banknotes into circulation (and withdrawing them from circulation), and the Eurosystem NCBs’ obligations in relation to the physical handling in relation to banknotes.

⁴⁷ OJ L 320, 21.10.2004, p. 21. Guideline as last amended by Decision ECB/2008/3 of 15 May 2008 on security accreditation procedures for manufacturers of euro secure items for euro banknotes (OJ L 140, 30.5.2008, p. 26).

⁴⁸ OJ L 140, 30.5.2008, p. 26.

⁴⁹ OJ L 337, 20.12.2001, p. 52. Decision as last amended by Decision ECB/2008/26 (OJ L 21, 24.1.2009, p. 75).

The obligations of NCBs cover all euro banknotes, including those issued by the ECB. The total value of euro banknotes in circulation is allocated by reference to a banknote allocation key. This key is based on the paid-up capital key, but includes the ECB. It was last updated at the end of 2008 to take account of the entry of Národná banka Slovenska to the Eurosystem.

5.3 COIN ISSUANCE

Under Article 106(2) of the Treaty, 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 participating Member State for the subsequent year, i.e. the 1999 Decision covers the volume of issuance for 2000, and so on. The most recent one is **Decision ECB/2008/20 of 11 December 2008 on the approval of the volume of coin issuance in 2009**⁵⁰, which includes Slovakia.

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**⁵¹ 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.

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 1999⁵² provides for the establishment and running of a Counterfeit Analysis Centre (CAC) and counterfeit currency database (CCD⁵³) 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

50 OJ L 352, 31.12.2008, p. 58.

51 OJ L 346, 23.12.2008, p. 89.

52 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). Guideline as last amended by Guideline ECB/2003/5 (OJ L 78, 25.3.2003, p. 20). Unofficial consolidated text produced by the Office for Publications of the European Communities (OPOCE), 26.3.2003.

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

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 NCBs of participating Member States. The CAC is required to cooperate with participating 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 of **Decision ECB/2001/11 of 8 November 2001 on certain conditions regarding access to the Counterfeit Monitoring System (CMS)**⁵⁴ refer to *Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting*⁵⁵ (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 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.

5.6 CASH CHANGEOVER

Article 52 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

⁵⁴ OJ L 337, 20.12.2001, p. 49.

⁵⁵ 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.

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 initially⁵⁶. 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 euro⁵⁷.

As the recitals to Guideline ECB/2006/10 explain, *Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro*⁵⁸ 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 participating Member States' banknotes can take place regardless of the chosen national changeover regime.

Article 2 of Guideline ECB/2006/10 lays down that all participating NCBs must, at least in one location in the national territory, by themselves or through their appointed agent, ensure that banknotes of a new participating 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 under Article 123(4) of 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 participating Member States, then that Member State (X) may not exchange the banknotes of the other participating 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 NCBs of participating Member States are allowed to set a limit (between EUR 500 and 2 500) to the number and/or total value of banknotes of a new participating Member State that they are prepared to accept from any given party.

Badly mutilated banknotes of a new participating Member State do not qualify for exchange under the Guideline.

56 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). Guideline as amended by Guideline ECB/2001/10 (OJ L 304, 21.11.2001, p. 28). Consolidated version available (OJ C 325, 21.11.2001, p. 14).

57 OJ L 215, 5.8.2006, p. 44.

58 OJ L 139, 11.5.1998, p. 1. Regulation as last amended by Regulation (EC) No 836/2007 (OJ L 186, 18.7.2007, p. 3).

In all circumstances, the exchange arrangements start when the new participating Member State adopts the euro. Pursuant to Article 4(1)(b), the default end to the arrangements is when all banknotes have been exchanged which were presented for exchange before the expiry of a period of two months after the new participating Member State's cash changeover date. However, pursuant to Article 4(2), if the new participating Member State has a dual circulation period (period between the cash changeover date in a Member State and the last date on which its national currency can be used as legal tender in parallel with the euro) that is longer than two months, the arrangements last until the end of the longest of the dual circulation periods of all the new participating Member States that have the same euro adoption date. In any event the duration of the arrangements under the Guideline are the same for all new participating Member States that have the same euro adoption date, and this duration is equivalent to the longest duration resulting from the application of Article 4(1) and (2) of the Guideline.

As was the case for previous adoptions of the euro, when Slovenia adopted the euro arrangements had to be put in place to ensure that banknotes denominated in euro are available by the time the euro becomes legal tender. **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**⁵⁹ 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.

'Frontloading' means the physical delivery of unissued euro banknotes and coins by a future Eurosystem NCB to eligible counterparties⁶⁰ in the territory of a future participating Member State during the period in which frontloading/sub-frontloading takes place (the latter must begin no sooner than four months prior to the cash changeover date and end at 00.00 local time on the cash changeover date). The Guideline provides the legal framework for borrowing by the future Eurosystem NCB of euro banknotes from the Eurosystem. The relevant future Eurosystem NCB must enter into arrangements with whichever of the Eurosystem NCBs are lending it banknotes and coins. No collateral need be given, but the contractual arrangements must respect the conditions set out in the Guideline (e.g. transports of banknotes and coins must respect the rules on security and insurance that normally apply to bulk transfers of euro banknotes and coins between NCBs). The future Eurosystem NCB then reimburses the borrowed banknotes by means of the future banknote production requirements allocated to them.

The Guideline provides a legal framework within which the borrowed euro banknotes can be frontloaded and further sub-frontloaded and also requires the contractual arrangements

⁵⁹ OJ L 207, 28.7.2006, p. 39.

⁶⁰ 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.

between the Eurosystem NCB and the future Eurosystem NCB concerning borrowing to ensure compliance by the future Eurosystem NCB with this framework.

This legal framework provides that eligible counterparties that are to be frontloaded must provide their future Eurosystem NCB with eligible collateral. All eligible assets for Eurosystem monetary policy operations are considered to be eligible collateral for the purposes of frontloading, and under certain conditions other types of collateral are also eligible. Eligible counterparties must report the final amount of sub-frontloaded euro banknotes and coins to their NCB, and must also provide information on the identity of all professional third parties that are sub-frontloaded.

‘Sub-frontloading’ means the delivery of frontloaded banknotes and coins by an eligible counterparty to professional third parties⁶¹ in the territory of a future participating 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. For example, the eligible counterparty must ensure that the sub-frontloaded euro banknotes and coins remain on the premises of the sub-frontloaded professional third parties, and the professional third party must grant the NCB the right to audit and inspect its premises to verify the presence of sub-frontloaded banknotes and coins.

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. Both eligible counterparties and professional third parties are subject to penalties in the event that they breach any of the obligations relating to frontloading and sub-frontloading.

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**⁶². These amendments allow 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 their stocks by swapping the bulk transfer with a surplus of euro banknotes of an

61 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.

62 OJ L 176, 4.7.2008, p. 16.

equivalent amount. The new Guideline introduces a simplified sub-frontloading procedure for retailers, by minimising the requirements to be met by sub-frontloaded entities where the retailer is a micro-enterprise, where the value of sub-frontloaded banknotes and coins does not exceed EUR 10 000, and where the sub-frontloading period does not start more than five calendar days before the cash changeover date. The amending Guideline also allows new 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.

6 FOREIGN RESERVES, FOREIGN EXCHANGE AND EUROSYSTEM 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. In practice the ECB only holds and manages its own foreign reserves with the NCBs acting as its agents. The NCBs then manage their own foreign reserves according to national requirements.

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 participating NCBs is equivalent to EUR 50 000 million. Under Article 49.3 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 increased⁶³.

The contribution of each participating NCB is fixed in proportion to its share in the capital of the ECB subscribed by the NCBs of participating Member States, 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 participating 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 Bank*⁶⁴ 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.

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

⁶³ Article 49.3 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 participating 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.

⁶⁴ OJ L 115, 16.5.2000, p. 2.

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 claims⁶⁵ provides that all participating 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 participating NCBs with a corresponding claim denominated in euro.

Guideline ECB/2000/15 applied to the first group of participating NCBs. Since then, the Governing Council has decided the composition of the foreign reserves to be transferred by NCBs adopting the euro on a case-by-case basis. Thus, a similar legal act was adopted when Greece adopted the euro⁶⁶. The latest legal act on this topic was adopted when Slovakia adopted the euro, namely **Decision ECB/2008/33 of 31 December 2008 on the paying-up of capital, transfer of foreign reserve assets and contributions by Národná banka Slovenska to the European Central Bank's reserves and provisions**⁶⁷. First of all, Article 2 sets out the amount that Národná banka Slovenska had to pay up to the capital of the ECB on the day it adopted the euro. Národná banka Slovenska had already paid up 7 % of its share pursuant to Article 1 of **Decision ECB/2006/26 of 18 December 2006 laying down the measures necessary for the paying-up of the European Central Bank's capital by the non-participating national central banks**⁶⁸. Secondly, Article 3 of the Decision sets out the amount of foreign reserve assets (denominated in US dollars or gold) that Národná banka Slovenska had to transfer to the ECB. Article 4 of the Decision provides that the ECB must credit Národná banka Slovenska with a claim denominated in euro, equivalent to the aggregate euro amount of its contribution of foreign reserve assets⁶⁹. This claim is remunerated at the end of each financial year. Finally, Article 5 of the Decision obliges Národná banka Slovenska to contribute to the ECB's reserves, to those provisions equivalent to reserves, and to the amount still to be appropriated to the reserves and provisions corresponding to the balance of the profit and loss account as at 31 December 2008 (pursuant to Article 49.2 of the Statute of the ESCB).

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

65 OJ L 336, 30.12.2000, p. 114.

66 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). Corrected by corrigendum (OJ L 315, 1.12.2001, p. 74).

67 OJ L 21, 24.1.2009, p. 83.

68 OJ L 24, 31.1.2007, p. 15.

69 The Agreement of 31 December 2008 between Národná banka Slovenska and the European Central Bank regarding the claim credited to Národná banka Slovenska by the European Central Bank under Article 30.3 of the Statute of the European System of Central Banks and of the European Central Bank (OJ C 18, 24.1.2009, p. 3) was a separate agreement concluded in case the claim that the ECB was required to credit to Národná banka Slovenska on the final date on which the ECB received foreign reserve assets pursuant to Article 3 of Decision ECB/2008/33 differed from the level of the claim referred to in Article 4 of that Decision. The mechanism for settling such a discrepancy was set out in this Agreement.

the national central banks' claims equivalent to the transferred foreign reserve assets⁷⁰ provides that if the NCB of a participating Member State'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 have 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)**⁷¹ provides that each NCB of a participating Member State is entitled to participate in the operational management of the foreign reserve assets that have been transferred to the ECB. NCBs of participating Member States may, however, also abstain from such management, or may pool their operational management activities with one or more other NCBs of participating Member States. 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 NCBs of participating Member States carry out operations involving the ECB's foreign reserve assets, 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. One of the consequences of the agency status is that when those NCBs want to agree such operations with counterparties, they must disclose the ECB's status as principal to all parties, even before actually concluding the transaction. 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; its annexes contain standard forms for some specific transactions. The recast Guideline clarifies the rules on the use of master agreements and other contractual documentation used by the ECB with its counterparties and intermediaries in the context of its foreign reserve management framework. In particular, the new Guideline clarifies when to use certain master agreements for collateralised transactions and over-the-counter derivatives operations.

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 Community, conducting foreign exchange operations consistent with Article 111 of the Treaty and holding and managing the official reserves of the Member States.

70 OJ L 21, 24.1.2009, p. 77.

71 OJ L 192, 19.7.2008, p. 63..

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 assets⁷² sets out the minimum standards 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.

The 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. In the case of both categories, the standards do not apply when such members 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; decision-making 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.

Under Article 23 of the Statute of the ESCB, the ECB and the NCBs may:

- (i) establish relations with central banks and financial institutions in other countries and, where appropriate, with international organisations;
- (ii) acquire and sell spot and forward all types of foreign exchange assets and precious metals (the term 'foreign exchange asset' includes securities and all other assets in the currency of any country or units of account and in whatever form held);
- (iii) hold and manage the assets referred to in Article 23; and

⁷² OJ L 270, 8.10.2002, p. 14.

- (iv) conduct all types of banking transactions in relations with third countries and international organisations, including borrowing and lending operations’.

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 Community’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 Bank⁷³ sets out the modalities of transactions carried out by public authorities of participating 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 participating 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 participating 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. Certain types of foreign exchange transactions are not subject to the prior notification procedure. Any transaction that is above the threshold and which therefore calls for prior notification must be notified to the ECB as far in advance of the transaction as possible and at the latest by 11.30 ECB time on the trade date. The standard format to be used is set out in Annex IV to the Guideline. The ECB must respond at the latest by 13.00 ECB time on the trade date. In exceptional circumstances (relating to policy considerations, adverse market conditions or late notification by Member States), the ECB can authorise changes to the standard timetable and procedures.

The ECB must consider prior notifications with a view to ensuring consistency with the Community’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. Participating Member States’ central

73 OJ L 283, 31.10.2003, p. 81.

governments must provide monthly estimates of all its forthcoming transactions involving foreign exchange working balances, and the reporting must respect the format in Annex II. All other public authorities only need to report on transactions with foreign exchange working balances above the threshold levels, and the format is different (as set out in Annex III). The relevant NCB channels all the information to the ECB.

To ensure that the ECB has an accurate overview of the level of participating Member States' foreign exchange working balances, the Guideline provides for monthly ex post reporting of such balances. Again, central governments must provide their foreign exchange working balances, whereas other public authorities only need to provide balances that are above the threshold level set out in the Guideline.

Finally, all the information and data that is 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 new 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 union⁷⁴; and
- 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 Union⁷⁵ (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.

⁷⁴ OJ C 236, 2.8.1997, p. 5

⁷⁵ OJ C 73, 25.3.2006, p. 21, Agreement as last amended on 14 December 2007, OJ C 319, 29.12.2007, p. 7. The 2007 amendment reflects Malta's and Cyprus's adoption of the euro as a result of which the Central Bank of Malta and the Central Bank of Cyprus no longer take part in the ERM II Agreement.

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, Estonia, Latvia, Lithuania and Slovakia participate in ERM II.

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 shall 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 II⁷⁶. 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.

In case 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 organisations⁷⁷ 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

⁷⁶ The ministers and governors of the central banks of the Member States not participating in ERM II will take part but do not have the right to vote in the procedure.

⁷⁷ OJ L 107, 20.4.2006, p. 54.

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 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.

7 STATISTICS

Apart from providing the legal basis for the collection, compilation and production of Community statistics, Article 285 of the Treaty recognises the role and powers of the ESCB in that field by expressly providing that, when the Council adopts measures for the production of statistics necessary for the performance of the tasks of the EU, it must do so 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 Bank*⁷⁸. Regulation (EC) No 2533/98 defines the reference reporting population (Articles 2 and 3), confidentiality regime (Article 8) and enforcement (Articles 6 and 7) and gives the ECB the regulatory power to adopt regulations for the specification of requirements (Article 5). It is linked to the European System of National and Regional Accounts 1995⁷⁹ (known as the 'ESA 95'). The ECB has proposed making a number of amendments to Regulation (EC) No 2533/98 in order to maintain it as an effective instrument for carrying out the statistical information collection tasks of the ESCB⁸⁰. In particular, these proposals relate to the reference reporting population, the statistical principles, and mirroring the provisions on the exchange of confidential information in the draft regulation on the production of statistics by the European Statistical System (ESS) so that these two regulations, once adopted, would enable the exchange of confidential data between the ESCB and the ESS to improve the production of European statistics by both systems.

The competence to collect statistics is shared, in certain fields, with the Commission. Under the terms of a Memorandum of Understanding of 10 March 2003 between the Directorate General Statistics of the ECB and the Commission's Statistical Office (Eurostat)⁸¹, 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 responsibility for the balance of payments and for quarterly financial and non-financial accounts for institutional sectors.

78 OJ L 318, 27.11.1998, p. 8.

79 Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community, OJ L 310, 30.11.1996, p.1. Regulation as last amended by Regulation (EC) No 1392/2007 (OJ L 324, 10.12.2007, p. 1).

80 Recommendation ECB/2008/9 of 15 September 2008 for a Council Regulation amending Regulation (EC) No 2533/98 concerning the collection of statistical information by the European Central Bank (OJ C 251, 3.10.2008, p. 1).

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

7.1 MONETARY, FINANCIAL INSTITUTIONS AND MARKET STATISTICS

Each month, the ECB compiles and disseminates a wide range of monetary statistics and indicators, including M3. The monetary aggregates and their counterparts are calculated from the balance sheet of the monetary and financial institutions (MFI) sector. MFI balance sheet statistics are the statistical basis for the ECB's monetary pillar. 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)⁸² 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. The previous Regulation ECB/2001/13⁸³ (which is repealed as of 1 July 2010) was recast to simplify it and to improve reporting to reflect financial innovation (including retail structured products, syndicated loans and MFI transactions with central counterparties, as well as loan securitisation and other loan transfers) on the basis of data received from MFIs and from the balance sheets of financial vehicle corporations engaged in securitisation (FVCs). The first reporting under Regulation ECB/2008/32 will be for June 2010 data.

According to Article 2, the reporting population consists of the MFIs resident in the territory of the participating Member States. For statistical purposes, MFIs comprise resident credit institutions, as defined in Community 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. 'Resident' is defined in Regulation (EC) No 2533/98 as 'having a centre of economic interest in the economic territory of a country'; Annex A of Regulation (EC) No 2533/98 defines 'centre of economic interest' and 'economic territory'⁸⁴. Part 1 of Annex II to Regulation ECB/2008/32 further specifies that such MFIs are 'institutions incorporated and located in the territory, including subsidiaries of parent companies located outside that territory, and branches of institutions that have their head office outside that territory'.

The ECB is required to establish and keep up to date a list of MFIs for statistical purposes only. The ECB and the NCBs must grant access to the list for the reporting institutions concerned.

⁸² OJ L 15, 20.1.2009, p. 14.

⁸³ Regulation ECB/2001/13 of 22 November 2001 concerning the consolidated balance sheet of the monetary financial institutions (OJ L 333, 17.12.2001, p. 1).

⁸⁴ Recommendation ECB/2008/9 proposes to amend Regulation (EC) No 2533/98 by deleting Annex A to the Regulation and replacing it with a dynamic reference to Regulation (EC) No 2223/96.

The annexes to Regulation ECB/2001/13 cover: reporting requirements, definitions and classification principles; reporting on loan securitisations and other loan transfers; simplified reporting for small credit institutions; consolidation principles and definitions; rules for minimum reserve requirements; and minimum standards to be applied by the reporting institutions.

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 %.

The Regulation is aligned with Regulation ECB/2003/9 of 12 September 2003 on the application of minimum reserves⁸⁵ and the statistical information reported by credit institutions must be used by credit institutions to calculate their reserve base in accordance with Regulation ECB/2003/9. In particular, 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 transactions⁸⁶ introduces a new statistics regime for holdings of securitised assets and the issuance of securities based on these assets by financial vehicle corporations engaged in securitisation transactions (FVCs). The collection of these statistics helps close a major gap in ESCB statistics and contributes to increasing transparency in a market segment that has become very complex and is widely considered as opaque.

The close links between the securitisation activities of FVCs and MFIs require there to be 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 concerning the balance sheet of the monetary financial institutions sector (recast)⁸⁷. This integrated reporting approach in relation to FVCs and MFIs, and in respect of derogations, aims to minimise the reporting burden for reporting agents and avoid overlaps. Guideline ECB/2008/31 amending Guideline ECB/2007/9 on monetary, financial institutions and markets statistics (recast)⁸⁸ also reflects this approach, taking account of the exchange of cross-border information on loans originated and serviced by euro area MFIs.

Both the Regulation and Guideline ECB/2008/31 provide some flexibility on data collection methods in order to minimise the reporting burden. Under Article 5 of the Regulation, NCBs may obtain the data required from other statistical, public or supervisory sources as long as the data meets certain quality standards.

85 OJ L 250, 2.10.2003, p. 10.

86 OJ L 15, 20.1.2009, p. 1.

87 OJ L 15, 20.1.2009, p. 14.

88 OJ L 53, 26.2.2009, p. 76.

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 residents⁸⁹. 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.

In some of the participating Member States, POGIs no longer belong to the central government subsector of the ESA 95 (S.1311) and they may receive deposits on their own account, i.e. they are not limited to receiving deposits solely on behalf of their national treasuries. Such POGIs are 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, as recital 5 to Regulation ECB/2006/8 makes clear, the statistical reporting requirements are therefore similar to those laid down in Regulation ECB/2001/13.

The ECB's Executive Board is granted the power to establish and maintain a list of POGIs subject to the Regulation, to which the ECB and the NCBs have to provide appropriate access for the POGI concerned. As with Regulation ECB/2001/13, although the list is for information purposes only, if the latest accessible version of the list is incorrect then the ECB must not impose sanctions on an institution which has breached its reporting requirements in reliance on the incorrect information. The NCBs may grant derogations from the reporting requirements to POGIs if the required information is already collected from other available sources. Annexes to Regulation ECB/2006/8 specify reporting details and minimum standards.

Regulation ECB/2007/8 of 27 July 2007 concerning statistics on the assets and liabilities of investment funds⁹⁰ is similar in structure to Regulation ECB/2001/13 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 investment funds: they are collective investment undertakings (CIUs) that invest in financial and non-financial assets (as defined in Annex II) to the extent that those CIUs' objective is investing capital raised from the public and are constituted in one of four ways under Community or national 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).

89 OJ L 184, 6.7.2006, p. 12.

90 OJ L 211, 11.8.2007, p. 8.

The actual reporting population consists of the IFs that are resident in the participating 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 NCBs may grant derogations to the smallest IFs (in terms of total assets), provided that the IFs contribute to the quarterly aggregated balance sheet account for at least 95 % of the total of IFs' assets (in terms of stocks) in the participating Member State of the NCB in question. The NCBs may grant derogations to IFs that are subject to national accounting rules which allow the valuation of their assets less frequently than quarterly; however, it is the Governing Council that determines which categories of IF may be granted such derogations.

The Executive Board must establish and maintain a list of IFs subject to the Regulation, which the NCBs and the ECB must make accessible to the IFs concerned. As with Regulation ECB/2001/13 and Regulation ECB/2006/8, although the list is for information purposes only, if the latest accessible version of the list is incorrect then the ECB will not impose sanctions on an institution which has breached its reporting requirements in reliance on the incorrect information.

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 reporting and adjustment details and minimum reporting standards.

Guideline ECB/2007/9 of 1 August 2007 on monetary, financial institutions and markets statistics (recast)⁹¹ establishes the NCBs' obligations to report monetary, financial institutions and markets statistics to the ECB which are not covered by Regulation ECB/2001/13 (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/2001/13: one covering the MFI sub-sector 'central bank' and the other covering the sub-sector 'other MFIs'. NCBs must derive the required statistical information by means of the bridging tables set out in Annex I: these tables provide a detailed link between the accounting balance sheet items and the items to be reported for statistical purposes. They provide guidance for both the monthly and the quarterly statistical requirements and are accompanied by auxiliary tables that enable further reconciliation between the accounting and the statistical balance sheets.

91 OJ L 341, 27.12.2007, p. 1.

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/2001/13, and their accounting items as reported for the Eurosystem's weekly financial statement under Guideline ECB/2006/16 (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/2001/13. Annex VII sets out the variables for establishing and maintaining the list of investment funds for statistical purposes pursuant to Regulation ECB/2007/8.

Guideline ECB/2008/31 of 19 December 2008 amending Guideline ECB/2007/9 on monetary, financial institutions and markets statistics (recast)⁹² updates Guideline ECB/2007/9 to take account of the requirements of Regulation ECB/2008/30 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions⁹³. The amendments concern reporting requirements for MFIs in relation to the outstanding amounts of loans serviced in a securitisation. According to Regulation ECB/2008/30, financial vehicles corporations engaged in securitisation transactions (FVCs) may, under certain conditions, be exempt from some or all reporting requirements set out in that Regulation, and NCBs may instead obtain the required data from other statistical, public or supervisory data sources. The Guideline sets out procedures and standards which NCBs have to satisfy in compiling that data, in particular, where FVCs are exempt from reporting requirements and the data is obtained from other sources.

(ii) MFI interest rate statistics

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 corporations⁹⁴. The rationale underlying Regulation ECB/2001/18 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 participating 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.

92 OJ L 53, 26.2.2009, p. 76.

93 OJ L 15, 20.1.2009, p. 1.

94 OJ L 10, 12.1.2002, p. 24. Regulation as amended by Regulation ECB/2004/21 (OJ L 371, 18.12.2004, p. 42).

Unofficial consolidated version produced by OPOCE, 1.1.2005.

The actual reporting population for each participating 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).

Like Annex IV to Regulation ECB/2001/13, Annex III to Regulation ECB/2001/18 sets out minimum standards for transmission, accuracy, conceptual compliance and revisions. The Manual on MFI interest rate statistics⁹⁵ complements Regulation ECB/2001/18.

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.

⁹⁵ Manual on MFI interest rate statistics, Regulation ECB/2001/18, October 2003. Available on the ECB's website at www.ecb.europa.eu.

(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**⁹⁶ lays down the requirements for this information and sets out reporting requirements and deadlines, data transmission standards and derogations.

(ii) Non-financial accounts

*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 sector*⁹⁷. 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 EU 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 EU and for the euro area. The system includes the main macroeconomic aggregates and the financial and non-financial accounts by institutional sector. The compilation follows the ESA 95 principles. The production of specific Community statistics is governed by the rules set out in *Council Regulation (EC) No 322/97 of 17 February 1997 on Community Statistics*⁹⁸.

Regulation (EC) No 1161/2005 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 has issued ECB Opinion CON/2004/4 of 4 February 2004 on the compilation of quarterly non-financial accounts by institutional sector⁹⁹. The Memorandum of Understanding on Economic and Financial Statistics between the ECB's Directorate General Statistics and 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.

⁹⁶ OJ L 334, 11.12.2002, p. 24. Guideline as last amended by Guideline ECB/2008/6 (OJ L 259, 27.9.2008, p. 12). The most recent amendment is of a purely technical nature and aligns the coding standards in Annex II to Guideline ECB/2002/796 with the coding standards of the revised transmission programme under the European System of Accounts 1995 (ESA 95).

⁹⁷ OJ L 191, 22.7.2005, p. 22.

⁹⁸ OJ L 52, 22.2.1997, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

⁹⁹ OJ C 42, 18.2.2004, p. 23.

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

Guideline ECB/2005/5 of 17 February 2005 on the statistical reporting requirements of the European Central Bank and the procedures for exchanging statistical information within the European System of Central Banks in the field of government finance statistics¹⁰⁰. Government finance statistics (GFS) are the key 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 manages a ‘GFS database’ which includes euro area and EU aggregates. The ECB is required to disseminate the database to the NCBs on a monthly basis.

Again, in cases 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. Annex III to Guideline ECB/2005/5 sets out the transmission and coding standards, and again the NCBs and the ECB must monitor and promote the quality of the data reported to the ECB.

The Governing Council must grant derogations to the NCBs that are unable to comply with particular reporting requirements. Annex IV to Guideline ECB/2005/5 lists these derogations, which are periodically reviewed.

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 template¹⁰¹. ‘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. 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

100 OJ L 109, 29.4.2005, p. 81. Guideline as last amended by Guideline ECB/2008/7 (OJ L 276, 17.10.2008, p. 32).

101 OJ L 354, 30.11.2004, p. 34. Guideline as amended by Guideline ECB/2007/3 (OJ L 159, 20.6.2007, p. 48).

corporations; financial institutions other than MFIs; State and local governments; and social security funds¹⁰². 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.

The Guideline sets out reporting requirements and deadlines, data transmission standards and 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.

The NCBs and the ECB must 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 manual¹⁰³. The ECB has also published a document with additional references to methodologies and sources used in the euro area balance of payments and international investment position statistics¹⁰⁴.

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 template¹⁰⁵ is very similar to Guideline ECB/2004/15 and is addressed to the Irish Central Statistics Office and the *Ufficio Italiano dei Cambi*. A 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 HICP

The ECB defines price stability, its primary objective, in terms of the Harmonised Index of Consumer Prices (HICP) for the euro area. It also publishes a wide range of statistics on prices and costs, national accounts, labour markets, external trade and various other general economic statistics. The prime responsibility for this type of statistics lies with the Commission. The ECB works closely with the Commission (Eurostat) to develop harmonised statistical concepts and achieve regularly available, good quality euro area statistics.

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

103 5th edition, October 1993. Available on the IMF’s website at www.imf.org.

104 ‘European Union balance of payments/international investment position statistical methods’, ECB, May 2007.

105 OJ C 292, 30.11.2004, p. 21. Recommendation as amended by Recommendation ECB/2007/4 (OJ C 136, 20.6.2007, p. 6).

ECB adopted Opinions CON/2006/13 concerning the proposal for a Council regulation laying down detailed rules for the implementation of Council Regulation (EC) No 2494/95 as regards the temporal coverage of price collection in the harmonised index of consumer prices¹⁰⁶ and CON/2007/30 on a proposal for a regulation amending Commission Regulation (EC) No 1749/96 on initial implementing measures for Council Regulation (EC) No 2494/95 concerning harmonised indices of consumer prices¹⁰⁷. Both opinions concerned the implementation of *Council Regulation (EC) No 2494/95 as regards the temporal coverage of price collection in the harmonised index of consumer prices*¹⁰⁸ and both stressed 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/2000/12¹⁰⁹.

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 statistical information transmitted to the ECB¹¹⁰. In 1998, acting pursuant to Article 8(9) of that Regulation, the ECB adopted Guideline ECB/1998/NP28, which further details the common rules and minimum standards to protect the confidentiality of the individual statistical information collected by the ECB, assisted by the NCBs. 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, along with specific ECB administrative circulars).

106 OJ C 55, 7.3.2006, p. 63.

107 OJ C 248, 23.10.2007, p. 1.

108 OJ L 257, 27.10.1995, p. 1.

109 Decision ECB/2000/12 of 10 November 2000 on the publication of certain legal acts and instruments of the European Central Bank (OJ L 55, 24.2.2001, p. 68).

110 Article 8(1) provides that 'statistical information shall be confidential when it allows reporting agents ... to be identified'. At the ECB, the yardsticks against which confidentiality is assessed are the 'small counts' scenario (where there are fewer than three reporting entities for one cell) and the 'predominance case' (where one reporter represents at least 85% of the total).

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)*¹¹¹ 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**¹¹² 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 Guidelines ECB/1998/NP28 on protecting the confidentiality of statistical information and ECB/1998/NP1 on the ECB's external auditors.

Decision ECB/2004/3 of 4 March 2004 on public access to European Central Bank documents¹¹³ 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.

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.

111 OJ L 136, 31.5.1999, p. 1.

112 OJ L 230, 30.6.2004, p. 56.

113 OJ L 80, 18.3.2004, p. 42.

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 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 data*¹¹⁴ lays down the data protection principles and rules applicable to all Community institutions and bodies and provides for a 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**¹¹⁵ is to fulfil the obligation under Article 24(8) of that Regulation of each Community institution or body to adopt further implementing rules concerning the DPO.

The implementing rules concern, in particular, the appointment, status, tasks, duties and powers of the DPO.

The Decision also defines the tasks and duties of the controllers of personal data, i.e. the managers (Heads of Division or above) 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, and to the DPO's consultative and advisory role.

¹¹⁴ OJ L 8, 12.1.2001, p. 1.

¹¹⁵ OJ L 116, 4.5.2007, p. 64.

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| ECB/2007/8 | Regulation ECB/2007/8 of 27 July 2007 concerning statistics on the assets and liabilities of investment funds | 41 |
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ISSN 1831-1873



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