

GUIDELINES

GUIDELINE (EU) 2022/1378 OF THE EUROPEAN CENTRAL BANK

of 28 July 2022

amending Guideline 2008/596/EC 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 (ECB/2008/5) (ECB/2022/28)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular to the third indent of Article 127(2) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular the third indent of Article 3.1 and Articles 12.1 and 30.6 thereof,

Whereas:

- (1) Guideline 2008/596/EC of the European Central Bank (ECB/2008/5) (1) governs the management of the foreign reserves of the European Central Bank (ECB) by the national central banks of Member States whose currency is the euro, as well as the legal documentation for operations involving such assets. As a result of the regular review of that Guideline, several amendments to it are required.
- (2) Firstly, where counterparties do not comply with the applicable laws in relation to the prevention of money laundering and/or terrorist financing, and/or are involved in money laundering and/or terrorist financing, the ECB should have the ability to terminate master netting agreements entered into by it with such counterparties from 1 August 2022 or entered into by the ECB before that date and amended after it. This would reflect the current ECB practice as regards the other master agreements used by the ECB. Secondly, counterparties to transactions involving the ECB's foreign reserve assets should be obliged to observe on a continuing basis any applicable sanctions imposed at European Union and/or United Nations level, or imposed by any other competent authority.
- (3) In addition, several other adjustments of an operational or technical nature need to be made.
- (4) Therefore, Guideline 2008/596/EC (ECB/2008/5) should be amended accordingly,

HAS ADOPTED THIS GUIDELINE:

Article 1

Amendments

Guideline 2008/596/EC (ECB/2008/5) is amended as follows:

1. in Article 1, the second indent is replaced by the following:

“European jurisdictions” means the jurisdictions of all Member States that have adopted the euro in accordance with the Treaty, as well as Denmark, Sweden, Switzerland, and England and Wales.’;

(1) Guideline 2008/596/EC of the European Central Bank 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 (ECB/2008/5) (OJ L 192, 19.7.2008, p. 63).

2. in Article 3, paragraph 2 is replaced by the following:

‘2. Repurchase, reverse repurchase, buy/sell-back and sell/buy-back operations involving the foreign reserve assets of the ECB shall be documented using the following standard agreements in the edition or version indicated, or in any more recent edition or version approved by the ECB:

- (a) the EBF Master Agreement for Financial Transactions (Edition 2004) shall be used for operations with counterparties organised or incorporated under the laws of any of the European jurisdictions and under the laws of Northern Ireland and Scotland;
- (b) the Bond Market Association Master Repurchase Agreement (September 1996 version) shall be used for operations with counterparties organised or incorporated under US federal or state laws; and
- (c) the TBMA/ISMA Global Master Repurchase Agreement (2000 version) shall be used for operations with counterparties organised or incorporated under the laws of any jurisdiction other than those listed in points (a) or (b).’;

3. in Article 3, paragraph 3 is replaced by the following:

‘3. Over-the-counter derivatives operations involving the foreign reserve assets of the ECB shall be documented using the following standard agreements in the edition or version indicated, or in any more recent edition or version approved by the ECB:

- (a) the EBF Master Agreement for Financial Transactions (Edition 2004) shall be used for operations with counterparties organised or incorporated under the laws of any of the European jurisdictions;
- (b) the 1992 International Swaps and Derivatives Association Master Agreement (Multicurrency – cross-border, New York law version) shall be used for operations with counterparties organised or incorporated under US federal or state laws; and
- (c) the 1992 International Swaps and Derivatives Association Master Agreement (Multicurrency – cross-border, English law version) shall be used for operations with counterparties organised or incorporated under the laws of any jurisdiction other than those listed in points (a) or (b).’;

4. in Article 3, paragraph 5 is replaced by the following:

‘5. Deposits involving the ECB’s foreign reserve assets with counterparties which: (i) are eligible for the operations mentioned in paragraphs 2 and/or 3 above; and (ii) are organised or incorporated under the laws of any of the European jurisdictions except Ireland, shall be documented using the EBF Master Agreement for Financial Transactions (Edition 2004, or any more recent edition approved by the ECB). In cases not falling under points (i) and (ii) above, deposits involving the ECB’s foreign reserve assets shall be documented using the master netting agreement as specified in paragraph 7 below.’;

5. in Article 3, paragraph 6 is replaced by the following:

‘6. A document in English in the format set out in Annex I (hereinafter the “ECB Annex”) shall be annexed to and form an integral part of every standard agreement under which repurchase, reverse repurchase, buy/sell-back, sell/buy-back, securities lending, triparty repo or over-the-counter derivatives operations involving the ECB’s foreign reserve assets are conducted unless such operations are conducted under the EBF Master Agreement for Financial Transactions.’;

6. in Article 3, the introductory wording is replaced by the following:

‘7. A master netting agreement shall be concluded with all counterparties, except counterparties: (i) with which the ECB has signed an EBF Master Agreement for Financial Transactions; and (ii) which are organised or incorporated under the laws of any of the European jurisdictions, except Ireland, as follows:’;

7. in Article 3, the following paragraph 9 is added:

'9. All master agreements entered into by the ECB from 1 August 2022 or entered into by the ECB before that date and amended after it shall contain a representation on a continuing basis by each counterparty that: (a) the counterparty is in compliance in all material respects with all applicable laws (including instructions given by competent authorities) relating to the prevention of money laundering and of terrorist financing; (b) the counterparty is not involved in money laundering and/or terrorist financing; and (c) the counterparty complies with all applicable restrictive measures (commonly referred to as "sanctions") adopted at the level of the European Union and/or the United Nations, or imposed by any other competent authority.';

Article 2

Taking effect

1. This Guideline shall take effect on the day of its notification to the national central banks of the Member States whose currency is the euro.
2. The Eurosystem central banks shall comply with this Guideline from 1 August 2022.

Article 3

Addressees

This Guideline is addressed to all Eurosystem central banks.

Done at Frankfurt am Main, 28 July 2022.

For the Governing Council of the ECB

The President of the ECB

Christine LAGARDE

ANNEX

Annex I to Guideline 2008/596/EC (ECB/2008/5) is replaced by the following:

ECB ANNEX

1. The provisions of this Annex shall be supplemental terms and conditions applying to [name the standard agreement to which this Annex applies] dated [date of agreement] (the "Agreement") between the European Central Bank (the "ECB") and [name of counterparty] (the "Counterparty"). The provisions of this Annex shall be annexed to, incorporated in and form an integral part of the Agreement. If and to the extent that any provisions of the Agreement (other than the provisions of this Annex) or the ECB Master Netting Agreement dated as of [date] (the "Master Netting Agreement") between the ECB and the Counterparty, including any other supplemental terms and conditions, annex or schedule to the Agreement, contain provisions inconsistent with or to the same or similar effect as the provisions of this Annex, the provisions of this Annex shall prevail and apply in place of those provisions.
2. Except as required by law or regulation, the Counterparty agrees that it shall keep confidential, and under no circumstances disclose to a third party, any information or advice furnished by the ECB or any information concerning the ECB obtained by the Counterparty as a result of it being a party to the Agreement, including without limitation information regarding the existence or terms of the Agreement (including this Annex) or the relationship between the Counterparty and the ECB created thereby, nor shall the Counterparty use the name of the ECB in any advertising or promotional material.
3. The Counterparty agrees to notify the ECB in writing as soon as reasonably practicable of: (i) any consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all of its assets to, another entity; (ii) the appointment of any liquidator, receiver, administrator or analogous officer or the commencement of any procedure for the winding-up or reorganisation of the Counterparty or any other analogous procedure; or (iii) a change in the Counterparty's name.
4. There shall be no waiver by the ECB of immunity from suit or the jurisdiction of any court, or any relief against the ECB by way of injunction, order for specific performance or for recovery of any property of the ECB or attachment of its assets (whether before or after judgment), in every case to the fullest extent permitted by applicable law.
5. There shall not apply in relation to the ECB any event of default or other provision of any kind in which reference is made to the bankruptcy, insolvency or other analogous event of the ECB.
6. The Counterparty agrees that it has entered into the Agreement (including this Annex) as principal and not as agent for any other entity and that it shall enter into all transactions as principal.'