

GUIDELINES

GUIDELINE (EU) 2020/1514 OF THE EUROPEAN CENTRAL BANK

of 8 October 2020

amending Guideline ECB/2008/5 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/2020/49)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular 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) Pursuant to Article 30.1 of the Statute of the European System of Central Banks and of the European Central Bank, the European Central Bank (ECB) is provided by the national central banks (NCBs) of Member States whose currency is the euro (hereinafter the 'euro area NCBs') with foreign reserve assets and has the full right to hold and manage the foreign reserves that are transferred to it.
- (2) Pursuant to Articles 9.2 and 12.1 of the Statute of the ESCB, the ECB may manage certain of its activities through the euro area NCBs and have recourse to the euro area NCBs to carry out certain of its operations. Accordingly, the ECB considers that the euro area NCBs should manage the foreign reserves transferred to it as its agents.
- (3) The involvement of the euro area NCBs in the management of the foreign reserve assets transferred to the ECB and the transactions relating to such management require specific documentation for operations involving the ECB's foreign reserves.
- (4) Several standard agreements relevant for foreign reserve management used by the ECB have been updated and new versions or editions of them are available, such as the International Swaps and Derivatives Association Master Agreement (ISDA, 2002 version) and the ICMA/SIFMA Global Master Repurchase Agreement (GMRA, 2011 version). Therefore, it should be made explicit that subsequent editions or versions of standard agreements may be used, with the ECB's approval.
- (5) It is standard practice for legal documentation relating to operations involving foreign reserve assets to be drafted in English and English should be made the default language of master netting agreements for all counterparties, for all new netting agreements entered into after the date this Guideline takes effect. Agreements not drafted in English in force at that date will continue to be valid and may be replaced at an appropriate time thereafter.
- (6) Therefore, Guideline ECB/2008/5 ⁽¹⁾ should be amended accordingly,

⁽¹⁾ 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 (OJ L 192, 19.7.2008, p. 63).

HAS ADOPTED THIS GUIDELINE:

Article 1

Amendments

Guideline ECB/2008/5 is amended as follows:

(1) Article 3 is amended as follows:

(a) paragraph 2 is replaced by the following:

- ‘2. Repurchase and 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 any subsequent edition or version approved by the ECB:
- (a) the FBE 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).’;

(b) 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 any subsequent edition or version approved by the ECB:
- (a) the FBE 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).’;

(c) 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 FBE Master Agreement for Financial Transactions (Edition 2004 or any subsequent edition thereof). 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.’;

(d) paragraph 7 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 FBE Master Agreement for Financial Transactions (Edition 2004 or any subsequent edition thereof); and (ii) which are organised or incorporated under the laws of any of the European jurisdictions, except Ireland, as follows:
- (a) a master netting agreement governed by English law and drafted in English shall be concluded with all counterparties, with the exception of the counterparties specified in points (b), (c) and (d);

- (b) a master netting agreement governed by French law and drafted in English shall be concluded with counterparties incorporated in France; however, such agreements already in force that are drafted in French shall continue to be valid and may be replaced by an agreement drafted in English at an appropriate later date;
 - (c) a master netting agreement governed by German law and drafted in English shall be concluded with counterparties incorporated in Germany; however, such agreements already in force that are drafted in German shall continue to be valid and may be replaced by an agreement drafted in English at an appropriate later date; and
 - (d) a master netting agreement governed by New York law and drafted in English shall be concluded with counterparties incorporated in the United States.’;
- (2) Annexes IIa, IIb, IIc and IId are deleted.

Article 2

Taking effect

This Guideline shall take effect on the day of its notification to the euro area NCBs.

Article 3

Addressees

This Guideline is addressed to the euro area NCBs.

Done at Frankfurt am Main, 8 October 2020.

For the Governing Council of the ECB
The President of the ECB
Christine LAGARDE
