



OESTERREICHISCHE NATIONALBANK  
EUROSYSTEM

TERMS AND CONDITIONS  
OF THE OESTERREICHISCHE NATIONALBANK  
GOVERNING MONETARY POLICY OPERATIONS  
AND PROCEDURES



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# Contents

Preamble	4
I. General provisions	5
II. Scope of application	6
III. Counterparties	7
IV. Terms and conditions for monetary policy operations	14
V. Special provisions for collateralized loans	51
VI. Special provisions for repurchase agreements	53
VII. Special provisions for foreign exchange swaps	56
VIII. Other open market operations	58
IX. Standing facilities	60
X. Communication and data protection	63
XI. Events of default	66
XII. Procedures	74
XIII. Miscellaneous	81
Annex 1: Operational criteria	83
Annex 2: Conditions for the provision of collateral by third-party creditors	84

## Preamble

These Terms and Conditions regulate how the Oesterreichische Nationalbank (OeNB) as an integral part of the European System of Central Banks (ESCB) and the Eurosystem conducts its monetary policy operations with counterparties headquartered or established in Austria.

As used herein, the term Eurosystem refers to the European Central Bank (ECB) and the national central banks (NCBs) of the member states which have adopted the single currency.

To qualify for access to monetary policy transactions with the OeNB, counterparties are required to sign these Terms and Conditions and obligated to comply with the rules specified here. Counterparties shall provide their signature on the attached template.

## I. General provisions

### Article 1

#### Legal framework

(1) The legal relations of the OeNB are governed by the Treaty on the Functioning of the European Union (TFEU), the Statute of the ESCB/ECB and the Federal Act on the Oesterreichische Nationalbank (Nationalbank Act).

(2) These Terms and Conditions serve to implement the provisions of the *Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (General Documentation Guideline) (ECB/2014/60)*<sup>1</sup>. These Terms and Conditions therefore principally refer to this Guideline as amended. Should these Terms and Conditions conflict with the General Documentation, the provisions of the General Documentation shall prevail.

### Article 2

#### Business day

Under these Terms and Conditions, every day except Saturday and Sunday and except January 1, Good Friday, Easter Monday, May 1, December 25 and December 26 shall be a business day.

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

## II. Scope of application

### Article 3

The monetary policy operations between the OeNB and its counterparties shall be governed exclusively by these Terms and Conditions.

### Article 4

(1) The Terms and Conditions shall not entitle counterparties to transact particular operations with the OeNB. Much rather, the OeNB reserves the right to select a limited number of counterparties to participate in certain operations, to restrict the scope of these operations, or not to execute certain operations at all.

(2) Fine-tuning operations of the OeNB are restricted to a range of counterparties selected on the basis of substantive eligibility criteria which are uniform throughout the Euro-system.

(3) When quick or standard tenders are not opened to the entire pool of counterparties eligible for fine-tuning operations, specific counterparties will be selected for a given transaction in line with the criteria specified in Annex V to the *General Documentation Guideline*<sup>1</sup>.

### Article 5

The Terms and Conditions shall continue to apply beyond the termination of a business relationship or of specific deals thereunder until the outstanding operations have been settled.

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

### III. Counterparties

#### Article 6

#### General eligibility criteria

(1) For a credit institution to be eligible as a counterparty to the monetary policy operations of the OeNB, it must be financially sound within the meaning of Article 55a of the *General Documentation Guideline*<sup>1</sup> and fulfill one of the following conditions laid down in Part Three of aforementioned Guideline. The credit institution shall be one of the following:

- subject to at least one form of harmonized Union/EEA supervision by competent authorities in accordance with Directive 2013/36/EU and Regulation (EU) No 575/2013;
- a publicly-owned credit institution, within the meaning of Article 123 (2) of the TFEU, subject to supervision of a standard comparable to supervision by competent authorities under Directive 2013/36/EU and Regulation (EU) No 575/2013;
- a credit institution subject to non-harmonized supervision by competent authorities of a standard comparable to harmonized Union/EEA supervision by competent authorities under Directive 2013/36/EU and Regulation (EU) No 575/2013, e.g. branches established in euro area countries of institutions incorporated outside the EEA. Such standard shall be considered comparable if the relevant Basel III standards adopted by the Basel Committee on Banking Supervision are considered to have been implemented in the supervisory regime of a given jurisdiction.

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

- (2) Moreover, such a credit institution must:
- be headquartered in Austria or have been established in Austria by an institution headquartered abroad; and
  - fulfill the operational criteria specified in Annex 1 below for a given operation.
- (3) A wind-down entity<sup>1a</sup> shall not be eligible to access Eurosystem monetary policy operations.

## **Article 7**

### **Minimum reserves**

To be eligible as a counterparty, credit institutions must be subject to the Eurosystem's minimum reserve system pursuant to 19.1 of the Statute of the ESCB and of the ECB, and must not have been granted an exemption from their obligations under this system pursuant to Regulation (EC) No 2531/98 as amended and Regulation (EU) 2021/378 (ECB/2021/1) as amended. The rules governing reserve holdings and excess reserves have been laid down in Article 54 of the *General Documentation Guideline*<sup>1</sup>.

Moreover, reference is made to the guidance notes on minimum reserve requirements provided in Annex I to the *General Documentation Guideline*<sup>1</sup>.

<sup>1a</sup> See Article 2 item 99a of Guideline ECB/2014/60 as amended.

<sup>1</sup> Guideline ECB/2014/60 as amended.



## **Article 8**

### **Prohibition of assignment**

Counterparties are prohibited from assigning, restricting or transferring in any other way the powers and duties arising from monetary policy operations.

## **Article 9**

### **Extract from the company register**

At the OeNB's request, counterparties must submit a current extract from the company register.

## **Article 10**

### **List of signing officers**

(1) Counterparties shall supply the signatures of their signing officers in a manner

- that enables the OeNB to adequately verify the authenticity of the signatures (OeNB sample signature sheet, list of signing officers);
- that clearly specifies the nature and scope of the signing officers' powers.

(2) The authenticity of the sample signatures must be verified through a court or notary certification unless the signatures have been submitted to the OeNB before or unless the signing officers designated in the company register sign the sample signature sheet at the OeNB in the presence of the competent official.

## **Article 11**

### **Duration of signing authority**

The OeNB shall accept authorized signatures of the counterparty's designated signing officers until notified in writing of a revocation or alteration, even if the designated signing officers are registered in a public record and alterations are publicly notified. This is without prejudice to the right of the OeNB to take into account changes noted in public registers and published.

## **Article 12**

### **Fines and limited suspension measures**

(1) Fines:

As detailed in the following provisions, the OeNB imposes fines for each infringement of the rules governing tender procedures, the use of underlying assets<sup>2</sup>, end-of-day procedures and access conditions for the marginal lending facility by a counterparty.

- a) Tender procedures and use of underlying assets:
- For infringements of the rules related to tender operations and the use of underlying assets, separate fines shall be imposed for the first and second infringements that occur within a 12-month period. The minimum financial penalty is EUR 500.
  - For infringements of rules related to tender operations the financial penalties shall be computed at the marginal

<sup>2</sup> *The following sanctions shall also apply if a counterparty is using assets that it may not or may no longer use because close links have been established between the counterparty and the issuer/guarantor or because the counterparty has become identical with the issuer/guarantor (see Article 19).*

lending rate plus 2.5 percentage points, on the basis of the amount of collateral or cash which the counterparty could not settle, multiplied by the coefficient  $\frac{X}{360}$ , where X equals the number of days (7 at the most) during which the counterparty was unable to collateralize or supply the allotted amount during the maturity of an operation.

- For infringements of rules related to the use of underlying assets, the fines shall be calculated at the marginal lending rate plus 2.5 percentage points. This rate shall be applied to the amount of assets that the counterparty may not or may no longer use, multiplied by the coefficient  $\frac{X}{360}$ , where X equals the number of days (7 at the most) during which the counterparty was in breach of the rules related to the use of underlying assets. The rules governing the use of underlying assets shall also be deemed to have been infringed when the assets provided as collateral become ineligible while a transaction is outstanding and when the counterparty fails to substitute eligible assets by the beginning of the eighth consecutive calendar day at the latest.
  - Where a counterparty rectifies a failure to comply with an obligation referred to in Article 12(1)(a) and notifies the OeNB before the counterparty has been notified of the non-compliance by the OeNB, the ECB or an external auditor, the applicable financial penalty shall be reduced by 50%. In any event, the minimum financial penalty of EUR 500 shall be imposed.
- b) End-of-day procedures, access conditions for the marginal lending facility:

The first time the rules for end-of-day procedures or for access to the marginal lending facility are infringed, a fine of 5 percentage points will be imposed. The fine shall be increased by a further 2.5 percentage points for each additional infringement within a 12-month period, calculated on the basis of the amount of unauthorized access to the marginal lending facility. The minimum financial penalty is EUR 500.

(2) Limited suspension:

If a third infringement of the same type concerning the rules governing tender operations or the rules for underlying assets occurs within a 12-month period, the OeNB shall, in a limited manner, suspend counterparties from subsequent monetary policy operations as specified in subparagraphs (a) and (b) below in addition to imposing a fine as outlined in paragraph (1) above.

a) Tender operations:

- If the amount of non-delivered collateral or cash is up to 40% of the total collateral or cash to be delivered, a suspension of one month shall be imposed.
- If the amount of non-delivered collateral or cash is between 40% and 80% of the total collateral or cash to be delivered, a suspension of two months shall be imposed.
- If the amount of non-delivered collateral or cash is between 80% and 100% of the total collateral or cash to be delivered, a suspension of three months shall be imposed.

b) Use of underlying assets:

The counterparty shall be suspended from the subsequent open market operation.

(3) Without prejudice to paragraph (4) below, the indicated sanctions (fines and limited suspension measures) shall also apply to any successive infringement within a 12-month period.

(4) In exceptional cases, a counterparty may be suspended for a period of three months in respect of all future Euro-system monetary policy operations for any failure to comply with any of the obligations laid down in Article 12 (1).

In such a case, regard shall be had to the seriousness of the case and, in particular, to the amounts involved and to the frequency and duration of noncompliance.

(5) Establishments located in other member states:

In addition, the OeNB may decide, in a limited manner, to suspend from its monetary policy operations establishments of the counterparty concerned located in other member states.

(6) Exclusion in the event of default:

In the event of default as defined in Article 52, counterparties may be suspended, limited or excluded from monetary policy operations.

(7) In addition, reference is made to the provisions laid down in Part Five and Annex VII of the *General Documentation Guideline*<sup>1</sup>.

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

## IV. Terms and conditions for monetary policy operations

### General provisions

#### Article 13

##### Types of operations

(1) The OeNB conducts monetary policy operations in the form of open market operations (Part 2, Title I *General Documentation Guideline*<sup>1</sup>) and through standing facilities (Part 2, Title II *General Documentation Guideline*<sup>1</sup>).

(2) Within the category of open market transactions, the OeNB executes reverse transactions as collateralized loans, i.e. conducts credit operations against assets pledged or assigned as collateral for a loan. It shall be up to the OeNB to decide which form of collateralization to use. The OeNB may decide to execute open market transactions also in the form of repurchase agreements. In addition to collateralized loans, the OeNB conducts foreign exchange swaps and outright transactions, collects fixed-term deposits and carries out operations relating to the issuance of ECB debt certificates.

(3) Within the category of standing facilities, counterparties can access the marginal lending facility to obtain overnight liquidity and the deposit facility to make overnight deposits. The OeNB provides liquidity under the marginal lending facility as collateralized loans, but may decide to execute such transactions also in the form of repurchase agreements.

(4) In the process of settling open market operations, the OeNB nets out due claims and liabilities vis-à-vis a given

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

counterparty arising from one and the same type of open market operations.

## **Article 14**

### **Currency, interest rate convention**

(1) All payments relating to Eurosystem monetary policy operations must be in euro as a rule. Without prejudice to this requirement, the Eurosystem may opt to conduct monetary policy operations in other currencies, too.

(2) With regard to interest payments, the amount of interest will be calculated in accordance with the market conventions prevailing for the underlying currency.

## **Article 15**

### **Collateralization**

(1) Pursuant to Article 18 of the Statute of the ESCB/ECB, all liquidity-providing operations must be based on adequate collateral. During the life of an operation, the value of the underlying assets must not fall below the outstanding loan amount as adjusted according to the risk control measures specified in Article 25.

(2) The debt instruments supplied as collateral must be readily realizable, free and clear of encumbrances as well as of senior claims of third parties. Collateral may also be submitted by third parties, provided they have close administrative or organizational links with the counterparty, fulfill the criteria outlined in Articles 6 and 7 of these Terms and Conditions and provided they have committed to comply with the criteria specified in Annex 2 to these Terms and Conditions by signing the template provided by the OeNB for this purpose. The only

operational criterion to be fulfilled is acceptance of these Terms and Conditions.

## **Article 16**

### **Delivery of underlying assets to the OeNB**

Unless the underlying assets that the counterparties must submit for monetary policy operations are held in safe custody by the OeNB, they shall be transferred to the OeNB in a timely manner. This implies that underlying assets either need to have been predeposited with the OeNB or need to be transferred on a delivery-versus-payment basis.

## **Article 17**

### **Cross-border use of eligible assets**

(1) The Correspondent Central Banking Model (CCBM) specified in Part Four, Title IX as well as in Annex VI of the *General Documentation Guideline*<sup>1</sup> ensures that all counterparties will be able to use all assets eligible as collateral for Eurosystem monetary policy operations, regardless of where in the euro area the assets are deposited or held, and regardless of where in the euro area the debtors reside.<sup>3</sup>

(2) The law of the member state whose central bank acts as the correspondent central bank (CCB) within the CCBM mentioned in paragraph (1) shall apply to transactions involving the cross-border use of collateral unless overruled by private international law provisions. Under certain conditions, the

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

<sup>3</sup> *Details on the correspondent central banking model and the applicable procedures are set out in the brochure entitled “Correspondent central banking model (CCBM) procedure for Eurosystem counterparties,” which is published on the ECB’s website.*



law of the Member State whose national central bank acts as the home central bank (HCB) may apply. The CCB is the national central bank of the country in whose national security settlement system (SSS) the assets were issued or deposited or, in the case of non-marketable assets, whose law governs the underlying agreement.

(3) If the OeNB accepts credit claims as collateral when acting as an HCB within the CCBM framework mentioned in paragraph (1), the respective CCB's Additional Terms and Conditions govern the delivery, legal validity and realization of such credit claims. These Additional Terms and Conditions are available on the website of the OeNB at [www.oenb.at](http://www.oenb.at).

(4) As a CCB within the CCBM framework mentioned in paragraph (1), the OeNB may accept eligible assets on the respective HCB's behalf as collateral for monetary policy operations of other Eurosystem NCBs. If the OeNB accepts credit claims as collateral on behalf of the HCB, the OeNB's Additional Terms and Conditions (see [www.oenb.at](http://www.oenb.at)) are applicable to the delivery, legal validity and realization of such credit claims in addition to the Terms and Conditions of the HCB.

(5) In addition to the CCBM, counterparties may use eligible links between securities settlement systems (SSSs) for the cross-border transfer of marketable assets with their local SSS. Counterparties may also use these eligible links between SSSs in combination with the CCBM (CCBM with links). Furthermore, the CCBM (including the CCBM with links) is used as a basis for the cross-border use of triparty collateral management services.

(6) Part Four, Title IX as well as Annexes VI and VIa of the *General Documentation Guideline*<sup>1</sup> apply.

(7) If the debtor, guarantor or third-party creditor is established in a country other than that in which the refinancing central bank is located and whose law governs the credit claim agreement or the collateralization, special provisions of the NCB located in the country of the debtor, guarantor or third-party creditor may apply. These special provisions are available on the website of the respective NCB (“assisting NCB”).

## **Article 18**

### **Eligible assets**

Article 18.1 of the Statute of the ESCB requires all ESCB credit operations (i.e. liquidity-providing monetary policy and intraday credit operations) to be based on adequate collateral. The Eurosystem accepts a broad range of assets for its operations and has established a uniform framework for eligible assets. Moreover, the Eurosystem has introduced a single list of marketable assets eligible for Eurosystem credit operations. This list is updated on every day on which TARGET is operational and is published on the ECB’s website ([www.ecb.europa.eu](http://www.ecb.europa.eu)).<sup>4</sup>

Counterparties shall not be entitled to the inclusion of specific assets in the list even if the instruments meet the eligibility criteria. Furthermore, the OeNB may reject or demand the withdrawal of eligible assets if their maturities or

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

<sup>4</sup> *In the case of non-marketable assets, the ECB publishes neither a list of eligible assets nor a list of eligible debtors/guarantors.*

expected cash flows (e.g. coupon payments) are in the near future.

The following marketable and non-marketable assets are eligible to collateralize Eurosystem monetary policy operations:

- marketable assets:  
ECB debt certificates; debt certificates issued by the NCBs of the Eurosystem; asset-backed securities; other marketable assets
- non-marketable assets:  
credit claims (as defined in Article 2 (13) of the *General Documentation Guideline*<sup>1</sup>) of the counterparty or of the third-party creditor on the credit borrower; non-marketable retail mortgage-backed debt instruments (RMBDs); non-marketable debt instruments backed by eligible credit claims (DECCs) and fixed-term deposits from eligible counterparties

## **Article 18a**

### **Additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral**

In addition to the provisions of the *General Documentation Guideline*<sup>1</sup> and the present Terms and Conditions, the content of Guideline ECB/2014/31 as amended (Guideline of the ECB of 9 July 2014 on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral and amending Guideline ECB/2007/9) applies to the OeNB's monetary policy operations.

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

## Eligibility criteria for assets

### Article 19

#### General eligibility criteria

(1) With the aims of protecting the Eurosystem from incurring losses in its monetary policy operations, ensuring the equal treatment of counterparties and enhancing operational efficiency, underlying assets have to fulfill certain criteria in order to be eligible for Eurosystem monetary policy operations. The distinction between marketable and non-marketable assets principally has no bearing on the quality of the assets and their eligibility for the various types of Eurosystem monetary policy operations.<sup>5</sup>

(2) The assets must be denominated in euro. The temporary derogations provided for in Article 7 of Guideline ECB/2014/31 as amended shall apply.

(3) The counterparty is liable to the OeNB for the accuracy and correctness of all information provided about the underlying assets.

(4) The special eligibility criteria for marketable assets are specified in Article 20, and the special eligibility criteria for non-marketable assets are defined in Article 21 of these Terms and Conditions.

(5) Irrespective of the fact that an asset is eligible, and according to Part 4 Title VIII (in particular Articles 138-139)

<sup>5</sup> *Marketable assets can be used for all monetary policy operations which are based on underlying assets, i.e. reverse and outright open market transactions and the marginal lending facility. Non-marketable assets can be used as underlying assets for reverse open market transactions and the marginal lending facility. They are not used in Eurosystem outright transactions. All marketable and non-marketable assets can also be used as underlying assets for intraday credit.*

of the *General Documentation Guideline*<sup>1</sup>, a counterparty shall not submit or use as collateral assets issued, owed or guaranteed by itself or by any other entity with which it has close links.

(6) The counterparty is obligated to assess and verify the financial soundness of the debtor (the party whose asset is pledged or assigned as collateral to the OeNB; third-party debtor) and shall on request inform the OeNB at any time about the current and prospective financial position and financial performance of the debtor. The OeNB is not obligated to inform a counterparty about insolvency proceedings initiated against the debtor of an asset assigned as collateral or pledged to the OeNB.

(7) The OeNB is empowered to check compliance with the eligibility criteria on the basis of the prudential reports submitted by the counterparty or the third-party creditor.

(8) The counterparty is liable for the legal validity of the assets assigned or pledged to the OeNB as collateral.

(8a) In order to be eligible, debt instruments shall have a coupon structure until final redemption in accordance with the *General Documentation Guideline*<sup>1</sup>. The counterparty shall remain liable for the timely payment of any amount of negative cash flows related to eligible assets submitted or used by it as collateral. In addition, reference is made to the provisions laid down in Article 144a of the *General Documentation Guideline*<sup>1</sup>.

(9) The OeNB may decide not to accept instruments offered as collateral, or may at any time demand that collateral be exchanged if it considers assets to be inadequate or no longer

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

adequate, or may limit the use of assets submitted as collateral or apply additional haircuts to ensure adequate risk protection.

(10) The OeNB will accept the collateral assignment or pledge of assets only if and when the title and method of conveyance meet the legal conditions which render the collateral assignment or pledge valid in Austrian law.

(11) The OeNB shall provide counterparties with advice regarding collateral eligibility only on assets already accepted by the Eurosystem as eligible collateral. It will not provide any pre-issuance advice.

## **Article 20**

### **Eligibility criteria for marketable assets**

The eligibility criteria for marketable assets are listed in Part Four, Title II, Chapter 1 of the General Documentation Guideline<sup>1</sup>. In particular, the following criteria apply:

(1) Debt certificates:

Debt certificates issued by the ECB and all debt certificates issued by Eurosystem NCBs in their respective member state prior to the adoption of the euro shall be eligible; these are not subject to the criteria set out in Part Four, Title II of the *General Documentation Guideline*<sup>1</sup>.

(2) Other marketable assets:

The following criteria apply to other marketable assets: They must be assets having:

- a) a fixed, unconditional principal amount; and
- b) a coupon in accordance with the *General Documentation Guideline*<sup>1</sup>.

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

c) Furthermore, inflation-indexed bonds are also eligible. These features must be maintained until the redemption of the obligation. Debt instruments may not afford rights to the principal and/or the interest that are subordinated to the rights of holders of other debt instruments of the same issuer.

Requirement (a) shall not apply to asset-backed securities. Concerning the eligibility of Unsecured Bank Bonds (UBBS) reference is made to Article 81a of the *General Documentation Guideline*<sup>1</sup>.

(3) Asset-backed securities:

Asset-backed securities are subject to the eligibility criteria specified in Part Four, Title II, Chapter 1, Section 2 as well as in Annex VIII (reporting framework) of the *General Documentation Guideline*<sup>1</sup>:

In particular, the following criteria must be met:

The cash flow generating assets backing asset-backed securities must be legally acquired in accordance with the laws of a member state from the originator or an intermediary by the special purpose vehicle in a manner which the Eurosystem considers to be a “true sale” that is enforceable against any third party. They must be beyond the reach of the originator or the intermediary and the originator’s or intermediary’s creditors, also in the event that the originator or the intermediary should become insolvent.

The cash-flow generating assets must entail full recourse against the obligors.

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

Reporting on asset-backed securities must comply with the provisions laid down in Annex VIII to the *General Documentation Guideline*<sup>1</sup>.

The OeNB reserves the right to request from any relevant third party (such as the issuer, the originator or the arranger) any clarification and/or legal confirmation that it considers necessary to assess the eligibility of asset-backed securities. Tranches or subtranches of ABSs are considered to be eligible assets only if they are not subordinated to other tranches of the same issue during their maturity.

The cash flow generating assets that result from lease agreements or from Personal Contract Purchase (PCP) Agreements used to back ABSs must not comprise any objects with residual value.

The OeNB may decide not to accept ABSs for use as collateral in Eurosystem credit operations on the basis of its assessment of the information provided. In its assessment, the OeNB shall take into account whether the information submitted is deemed sufficiently clear, consistent and comprehensive to demonstrate fulfilment of each of the eligibility criteria applicable to ABSs.

(4) Covered bonds:

Covered bonds are subject to eligibility criteria laid down in Part Four, Title II, Chapter 1 as well as Annex IXb of the *General Documentation Guideline*<sup>1</sup>.

(5) Place of issue:

The assets must as a rule – unless the Governing Council of the ECB decides otherwise in certain situations – be issued

<sup>1</sup> *Guideline ECB/2014/60 as amended.*



in the EEA with a central bank, or with an eligible SSS. An SSS is considered eligible if it is operated by a central securities depository (CSD) that the Eurosystem has assessed as compliant with the eligibility criteria for use in Eurosystem credit operations laid down in Annex VIa of the *General Documentation Guideline*<sup>1</sup> and is published on the Eurosystem list of eligible SSSs on the ECB's website ([www.ecb.europa.eu](http://www.ecb.europa.eu)).

(6) Settlement procedure:

In order to be eligible, debt instruments shall be transferable in book-entry form and shall be held and settled in member states whose currency is the euro through an account with an NCB (national central bank of a member state whose currency is the euro) or with an eligible SSS, so that the perfection and realization of collateral is subject to the law of a member state whose currency is the euro. If the CSD where the asset is issued and the CSD where the asset is held are not identical, the SSSs operated by these two CSDs must be connected by an eligible link in accordance with Article 150 of the *General Documentation Guideline*<sup>1</sup>.

(7) Acceptable markets:

The debt instruments must be admitted to trading on a regulated market as defined in Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, or to trading on certain non-regulated markets as specified by the ECB. The ECB publishes

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

the list of accepted nonregulated markets on its website at [www.ecb.europa.eu](http://www.ecb.europa.eu) and updates it at least once a year.

(8) Type of issuer or guarantor:

In order to be eligible, debt instruments shall be issued or guaranteed by central banks of member states, public sector entities, agencies, credit institutions, financial corporations other than credit institutions, nonfinancial corporations, multilateral development banks or international organizations. These requirements shall not apply to guarantors of debt instruments where the guarantee is not used to establish compliance with the credit quality requirements for marketable assets. Debt instruments issued or guaranteed by investment funds shall be ineligible.

(9) Place of establishment of the issuer/guarantor:

The issuer must be established in the EEA or in one of the non-EEA G-10 countries. In the latter case, the debt instruments can only be considered eligible if the Eurosystem ascertains that its rights would be protected in an appropriate manner, as determined by the Eurosystem, under the laws of the respective non-EEA G-10 country. For this purpose, a legal opinion in a form and with substance acceptable to the Eurosystem will have to be submitted before the assets can be considered eligible. In the case of asset-backed securities, the issuer must be established in the EEA.

The guarantor must be established in the EEA, unless the guarantee is not used to establish the compliance of the debt instrument with the credit quality requirements.

Multilateral development banks or international organizations are eligible issuers/guarantors irrespective of their place of establishment. In case a marketable debt instrument is

issued by a nonfinancial corporation (as defined in the European System of Accounts 2010 – ESA 2010) that is not rated by an external credit rating institution (ECAI), the issuer/guarantor must be established in the euro area.

For debt instruments issued or guaranteed by agencies, the issuer or guarantor shall be established in a member state whose currency is the euro.

For marketable assets with more than one issuer, the requirements laid down in paragraphs (8) and (9) shall apply to each issuer.

(10) Credit quality requirements:

Collateral assets must meet the credit quality requirements defined by the ECAF rules specified in Part Four, Title II, Chapter 2 of the *General Documentation Guideline*<sup>1</sup>.

(11) The assets must be enforceable exclusively under the law of a euro area country.

## **Article 21**

### **Eligibility criteria for non-marketable assets**

The eligibility criteria for non-marketable assets are listed in Part Four, Title III, Chapter 1 of the *General Documentation Guideline*<sup>1</sup>.

To be eligible, a credit claim must fulfill the following eligibility criteria, which must be applicable until the obligation has been fully redeemed:

(1) The credit claim in question must be a debt obligation of a debtor to a Eurosystem counterparty based on a written agreement bearing the parties' signatures. The requirement of

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

a handwritten signature can be abandoned if this approach is common business practice and is recognized by the OeNB. Credit claims that have a “reducing balance” (i.e. where the principal and interest are paid off according to a schedule agreed in advance) shall also be eligible. Undrawn credit lines (i.e. undrawn facilities of revolving credit claims), current account overdrafts (*Überziehungskredite* as well as *Kontokorrentkredite*) and letters of credit shall not be eligible. The share of a syndicate member institution in a syndicated loan is considered an eligible type of credit claim. Only the part of a syndicated loan which constitutes a direct obligation of the counterparty vis-à-vis a debtor may be mobilized as collateral.

Credit claims may not afford rights to the principal and/or the interest that are subordinated to: (a) the rights of holders of other unsecured debt obligations of the debtor, including other shares or sub-shares in the same syndicated loan; and (b) the rights of holders of debt instruments of the same issuer.

(2) The credit claim must have

- a) until final redemption, a fixed, unconditional principal amount;
- b) until final redemption, a coupon in accordance with the *General Documentation Guideline*<sup>1</sup>;
- c) a current coupon that does not lead to a negative cash flow or to a reduction of principal payment. If in the current accrual period the coupon structure leads to a negative coupon-related cash flow, the credit claim is ineligible as of the moment of the coupon reset. It may become eligible again at the start of a new accrual period when the

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

coupon-related cash flow applied to the debtor turns non-negative, provided it meets all other relevant requirements.

- d) must be denominated in euro or in one of the former currencies of the member states whose currency is the euro and
- e) an underlying contractual basis containing an irrevocable and unconditional (viz. remaining in force even in the case of a default or an insolvency of the counterparty) set-off waiver by the debtor.

### (3) Type of debtor or guarantor

Eligible debtors or guarantors are nonfinancial corporations (as defined in ESA 2010), public sector entities (excluding public financial corporations) and multilateral development banks or international organizations. This requirement shall not apply to guarantors of credit claims where the guarantee is not used to establish compliance with the credit quality requirements for non-marketable assets.

### (4) Place of establishment of the debtor or guarantor

The debtor or guarantor must be established in the euro area, unless a guarantee is not used to establish compliance with the credit quality requirements for non-marketable assets. This requirement does not apply to multilateral development banks or international organizations.

### (5) Credit standards

The quality of credit claims is assessed through the underlying creditworthiness of the debtor/guarantor. Credit claims must meet the credit standards specified in the Eurosystem credit assessment framework (ECAAF) rules for non-marketable

assets, as set out in Part Four, Title III, Chapter 2 of the *General Documentation Guideline*<sup>1</sup>.

(6) Minimum size

For domestic use, credit claims shall, at the time of their initial submission as collateral by the counterparty, meet a minimum size threshold of EUR 25,000. For cross-border use, a minimum size threshold of EUR 500,000 shall apply.

(7) Governing laws

The credit claim agreement and the agreement between the counterparty and the OeNB (“mobilization agreement”) must both be governed by the law of a member state belonging to the euro area. Furthermore, the total number of different governing laws that are applicable to (1) the counterparty, (2) the creditor, (3) the debtor, (4) the guarantor (if relevant and only if the guarantee is used to establish compliance with the credit quality requirements for non-marketable assets), (5) the credit claim agreement and (6) the mobilization agreement must not exceed two.

(8) Credit claims taken in by the OeNB must have a minimum residual maturity of 10 days.

(9) With effect from the sixth business day prior to their maturity at the latest, credit claims shall no longer be included in the calculation of the value of the underlying assets according to Article 15 (1) second sentence of these Terms and Conditions; counterparties shall therefore deduct such credit claims in their status reports of the amounts receivable. This non-inclusion shall be without prejudice to the validity of the collateral assignment or pledge.

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

(10) To verify the existence of credit claims mobilized as collateral, the counterparty will allow for external auditors (auditors/certified public accountants, cooperative auditors or auditors of a cooperative auditing federation) to carry out annual process audits including random checks in respect of the quality and accuracy of the written quarterly confirmation of counterparties. The audit must be performed based on the criteria defined in the “KFS/PG 14 Bericht Credit Claims” and, based on the counterparty’s choice, shall be performed in the course of the annual audit or any other audit. Upon receipt, nevertheless at the latest by 31 December of each calendar year, the counterparty must notify the OeNB about the audit result contained in the onsite inspection report drawn up by the external auditor by electronically transmitting an unchanged version of that report to the OeNB.

## **Article 22**

### **Handling of non-marketable assets**

(1) The requirements set out in the paragraphs below apply to the handling of non-marketable assets.

(2) Counterparties shall provide electronically via the interfaces implemented by the OeNB any instructions for collateral transactions (delivery, adjustment, information and removal) in the form of status reports, which they must update at least at weekly intervals. The OeNB will issue an electronic notification confirming the receipt of such status reports. Instructions for collateral transactions shall enter into force at the earliest on the business day following the day on which the instructions were submitted, provided they are received before

13:00. If the reports are received after 13:00, the changes will not enter into force until the second-next business day.

(3) The following provisions apply to status reports:

- a) the initial listing of credit claims shall be considered an offer for collateral assignment or pledge;
- b) the repeated listing of credit claims acknowledged previously by the OeNB only serves to indicate the balance of outstanding claims and any changes in residual maturity; the repeated listing shall be without prejudice to the acceptance date of the collateral assignment or pledge;
- c) the omission of credit claims reported earlier from a new status report shall be deemed a counterparty's request for reassignment or return of pledged assets, provided the underlying debt has not been repaid in the meantime;

(4) By means of the status report, the counterparty guarantees that the listed credit claims actually exist. The OeNB is entitled to review the procedures the counterparty uses to submit information on the existence of credit claims and to demand that these procedures be adjusted;

(4a) If the process audit reveals that the respective procedures or systems for the submission of information on credit claims are no longer adequate, the OeNB may take appropriate measures which it considers necessary, including the partial or total discontinuation of the use of credit claims by the counterparty, until the verification of an adequate procedure.

(5) Following the processing (verification) of the status report, the counterparty will be notified electronically (or, in exceptional cases, in writing) that

- a) any credit claims in respect of which a new application has been made and which appear in the OeNB's notification of



receipt have been accepted as collateral assignment or pledge;

- b) any credit claims that have been listed again continue to serve as collateral. Any changes with respect to the balance of outstanding claims or the residual maturity shall be deemed to have been noted;
- c) any credit claims newly dropped from a status report, including any loan collateral (assets provided to the counterparty by third-party debtors) transferred according to paragraph (6), shall be deemed to have been reassigned or retransferred with effect from the business day after the next business day, provided that collateral coverage continues to be adequate according to Article 15 (1). With reference to credit claims that no longer appear in the status report because they have since been fully repaid, the counterparty shall be released from its trusteeship obligations under paragraphs (6) and (10) with effect from the next business day, provided that collateral coverage continues to be adequate. The same shall apply to partial redemptions according to subparagraph (b). The OeNB is entitled to examine the quality and legality of the written confirmations according to paragraph (13) at any time.

(6) The counterparty shall hold in trust loan collateral for the OeNB and is obligated to transfer such collateral to the OeNB if the latter wishes to collect the underlying credit claims; as long as the collateral has not been transferred to the OeNB, the latter is under no obligation to co-administer the loan collateral.

(6a) When transferring credit claims, the counterparty at the same time surrenders, in accordance with the applicable

insurance regulations, any entitlement to loan insurance taken out for claims assigned as collateral or pledged.

(7) The counterparty is obligated to identify in its books, immediately upon receipt of the OeNB's notification, every single credit claim it has assigned as collateral or pledged, or to arrange for the third-party creditor to record the relevant collateral transactions in its books. The records must clearly indicate which claims have been assigned or pledged to the OeNB at what time. The notice of assignment must always be in the OeNB's name irrespective of whether the collateral has been mobilized on a national or a cross-border basis. Moreover, these entries must be taken into account in any analysis of the counterparties' accounts, in particular regarding receivables. The OeNB may at all times undertake any checks deemed adequate, with a view to verifying in particular that the accounting practice of the counterparty is sound and that all collateral assignments and pledges have been duly recorded. The OeNB may inform at its discretion third-party debtors as well as counterparties and third-party creditors about collateral assignments or pledges made.

(7a) *Schuldscheine* (promissory notes) whose underlying claims – stemming from the respective *Schuldscheindarlehen* (promissory note loan) – are used as non-marketable assets have to be kept safe separately in addition to a supplementary sheet containing the notice of assignment.

In case the underlying claim is a syndicated loan, the counterparty is obliged to keep safe the original document certifying the transfer of the loan or parts thereof. It is sufficient for the counterparty to keep safe a copy of the *Schuld-*

*schein* that has been authenticated by the lead manager of the syndicate.

In case the counterparty is unable to receive the original documents, they may also keep safe copies of said documents in physical or electronic form. The counterparty immediately has to inform the OeNB about the repository of the documents, and if the OeNB needs to realize the claim, has to support the OeNB in retrieving them promptly.

(8) removed

(9) As long as the OeNB itself does not wish to realize or collect the claims assigned as collateral or pledged, the counterparty shall continue to collect the interest and redemption payments as they fall due.

(10) Any payments made to the counterparty with respect to the claims assigned as collateral or pledged shall be held in trust for the OeNB until further notice. Furthermore, counterparties shall ensure timely provision of adequate collateral in line with Article 15 (1) or sufficient collateral coverage in line with Articles 26 and 27. In case this is not possible on the same value date, counterparties shall pay the equivalent of the collateral deficiency into an account named by the OeNB.

(11) The OeNB has the right to take any measures and conclude any arrangements with the third-party debtor that it considers necessary to collect the claim.

(12) The counterparty is obligated to fully assist the OeNB in realizing the claims assigned as collateral or pledged, to intervene in support of the OeNB in case of litigation upon the latter's request, and to supply any evidence that the OeNB may need to assert its rights against the third-party debtor.

(13) At least once every quarter, the counterparty must provide assurance in writing that the credit claims fulfill the Eurosystem's eligibility criteria (see Articles 19 and 21). There must be no restrictions related to banking secrecy and confidentiality. Furthermore, this assurance shall contain the confirmation that the credit claims are fully transferable, that they can be used as collateral for the Eurosystem without restriction, and that none of the credit claims put forward as collateral are being used, or will be used, as collateral for third parties. The credit claim agreement, other contractual arrangements between the counterparty and the debtor or, where a guarantee in respect of such credit claim exists, the guarantee, must not contain any restrictions regarding the use or realization of the credit claim used as collateral, including any form, time or other requirement with regard to the realization. The counterparty shall immediately, or during the following business day at the latest, inform the OeNB of any event that materially affects the contractual relation between the counterparty and the OeNB. This applies in particular to any scheduled or early partial or full repayments, changes in maturity, downgradings, any deterioration of creditworthiness of the third-party debtor or any important changes in the terms and conditions of the credit claim. Changes subject to reporting requirements shall be communicated in the status reports. The OeNB will verify the quality and accuracy of the binding assurance.

(14) The counterparty expressly waives the right to lodge a plea against the OeNB or to sue it for damages, particularly in cases in which the OeNB grants the third-party debtor deferment of payment, brings a writ of execution or forgoes

bringing a writ of execution, or if the claims have become unrealizable due to an oversight on the part of the OeNB. This waiver shall also apply in the event that the OeNB has not asserted its rights, for whatever reason, to claims assigned as collateral or pledged in insolvency proceedings on the assets of the third-party debtor. Moreover, the counterparty may not sue the OeNB for damages in connection with loan collateral held in trust for the OeNB pursuant to paragraph (6).

## Asset valuation and risk control

### Article 23

#### Credit standards/credit assessment

(1) To be eligible, assets must meet certain minimum credit standards in addition to the general requirements specified in Articles 18 through 22. The relevant provisions in Part Four of the *General Documentation Guideline*<sup>1</sup> apply.

(2) The ECAF defines the procedures, rules and techniques which ensure that the Eurosystem requirement of high credit standards for all eligible assets is met. Within the general framework, in the establishment of high credit standards, the Eurosystem differentiates between marketable and non-marketable assets (see Part Four, Title II or Title III of the *General Documentation Guideline*<sup>1</sup>) in order to take account of the different legal nature of these assets and for operational efficiency reasons.

(3) In the assessment of the credit standard of eligible assets, the Eurosystem takes into account credit assessment

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

information from credit assessment systems belonging to one of three sources:

- a) external credit assessment institutions (ECAIs),
- b) NCBs' in-house credit assessment systems (ICASs),
- c) counterparties' internal ratings-based (IRB) systems.

Additionally, in the assessment of the credit standard, the Eurosystem takes into account institutional criteria and features guaranteeing similar protection for the instrument holder, such as guarantees.

(4) The OeNB offers an in-house credit assessment system for debtors/guarantors from the nonfinancial corporation sector pursuant to paragraph (3) subparagraph (b). Counterparties who wish to use this in-house credit assessment system as their main rating source pursuant to paragraph (7) subparagraph (a) are provided with a list of eligible debtors/guarantors from the nonfinancial corporation sector over the Internet. The provisions of paragraph (7) subparagraph (f) (ii) and (iii) shall apply to determine the eligibility of public-sector debtors/guarantors not covered by the OeNB's in-house credit assessment system.

(5) In order to ensure the consistency, accuracy and comparability of the three sets of credit assessment sources in paragraph (3), the Eurosystem has devised eligibility criteria for each of the three sources (see paragraph (8) or Part Four, Title V of the *General Documentation Guideline*<sup>1</sup>) and will regularly monitor their credit assessment performance against the credit quality threshold (see paragraph (9) or Article 126 and Annex IX of the *above-mentioned Guideline*).

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

(6) The provisions of the ECAF are laid down in Article 59 of the *General Documentation Guideline*<sup>1</sup>. A harmonized rating scale is published on the ECB's website ([www.ecb.europa.eu](http://www.ecb.europa.eu))<sup>7</sup>. The ECAF framework follows the definition of a default event laid down in Directive 2013/36/EU and Regulation (EU) No 575/2013.<sup>8</sup>

(7) The detailed requirements of the ECAF for credit claims are laid down in Part Four, Title III, Chapter 1, Section 1 of the *General Documentation Guideline*<sup>1</sup>. The following shall apply in particular:

- a) In order to establish the requirement for high credit standards for the debtors or guarantors of credit claims, the counterparty shall select one main credit assessment source from among those that are available and accepted by the Eurosystem. The counterparty shall select one system from an available credit assessment source, except in the case of ECAs, where all accepted ECAI systems may be used.
- b) The counterparty shall keep the selected source for a minimum period of one year. A counterparty that wishes to change credit assessment sources after the minimum

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

<sup>7</sup> *The Eurosystem maps the credit assessment categories used by accepted external credit assessment institutions (ECAIs) with a harmonized rating scale, which is subject to a regular review.*

<sup>8</sup> *See the Directive 2013/36/EU of the European Parliament and the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, as amended, as well as Regulation (EU) No 575/2013 of the European Parliament and the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms, as amended.*

- period of one year shall submit a reasoned request to the OeNB.
- c) The OeNB may allow the counterparty to use more than one system or source upon submission of a reasoned request. The use of more than one credit assessment source or system should be supported by the existence of an adequate business case.
  - d) The counterparty has to inform the OeNB promptly of any credit event, including a delay of payments by the submitted debtors, that is known to the counterparty, and if necessary, withdraw or replace the assets. The counterparty is responsible for ensuring that it uses the most recent credit assessment updates available from its selected credit assessment system or source for the debtors<sup>9</sup> or guarantors of submitted assets.
  - e) Nonfinancial corporate debtors or guarantors are eligible if the source selected by the counterparty provides a credit assessment equal to or exceeding the credit quality threshold pursuant to paragraph (6).
  - f) The following rules apply to public sector debtors or guarantors in a sequential order:
    - (i) A credit assessment from the system or source selected by the counterparty exists and is used to establish whether the public sector debtor or guarantor meets the credit quality threshold.

<sup>9</sup> *In the case of marketable assets issued by nonfinancial corporations but not rated by an accepted ECAI, this requirement shall apply to the credit assessment of issuers.*



- (ii) In the absence of a credit assessment under (i), an ECAI credit assessment of the debtor or guarantor shall be used.
- (iii) If no credit assessment is available under either (i) or (ii), the same procedure as for marketable assets shall apply: – The debtor or guarantor is allocated to one of three classes in accordance with the CRD as explained in the table below. Article 87 of the *General Documentation Guideline*<sup>1</sup> contains detailed provisions on this matter.

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

## For marketable assets: implicit credit assessments for euro area regional government, local authority and public sector entity issuers, debtors or guarantors without an ECAI credit assessment

	Allocation of issuers or guarantors under Regulation (EU) No 575/2013 (CRR*)	ECAF derivation of the implicit credit quality assessment of the issuer or guarantor belonging to the corresponding class
<b>Class 1</b>	Regional governments, local authorities and CRR public sector entities (CRR PSEs) that are treated by the competent authorities in the same manner as the central government for capital requirements purposes pursuant to Articles 115(2) and 116(4) of Regulation (EU) No 575/2013	Allocated the ECAI credit quality assessment of the central government in whose jurisdiction the entity is established
<b>Class 2</b>	Other regional governments, local authorities and CRR PSEs	Allocated a credit quality assessment one credit quality step** below the ECAI credit quality assessment of the central government in whose jurisdiction the entity is established
<b>Class 3</b>	Public sector entities as defined in point (75) of Article 2 that are not CRR PSEs	Treated like private sector issuers or debtors

\* *Regulation (EU) No 575/2013, also referred to as the CRR for the purposes of this table.*

\*\* *Information on the credit quality steps is published on the ECB's website.*

- An implicit credit assessment for debtors or guarantors belonging to classes 1 and 2 is derived from the ECAI credit assessment of the central government of the country where the debtor or guarantor is

established. This implicit assessment has to meet the Eurosystem credit quality threshold.

If a credit assessment from the system or source selected by the counterparty or from an ECAI exists for public sector debtors or guarantors but is below the credit quality threshold, the debtor or guarantor is ineligible.

g) A guarantee shall meet the following requirements:

- (i) A guarantee is deemed acceptable if the guarantor has unconditionally and irrevocably guaranteed the obligations of the debtor in relation to the payment of principal, interest and any other amounts due under the credit claims to the holders thereof until they are discharged in full. In this regard, a guarantee deemed acceptable does not need to be specific to the credit claim but might apply to the debtor only, provided that it also covers the credit claim in question.
- (ii) The guarantee shall be payable on first demand (independently from the underlying credit claim). Guarantees given by public entities entitled to levy taxes should either be payable on first demand or otherwise provide for prompt and punctual payment following default. The obligations of the guarantor under the guarantee shall rank at least equally and ratably (*pari passu*) with all other unsecured obligations of the guarantor.
- (iii) The guarantee shall be governed by the law of an EU member state and be legally valid, binding and enforceable against the guarantor.
- (iv) If the guarantor is not a public sector entity with the right to levy taxes, a legal confirmation concerning the

legal validity, binding effect and enforceability of the guarantee shall be submitted to the OeNB in a form and substance acceptable to the Eurosystem before the marketable assets or credit claim supported by the guarantee can be considered eligible. The legal confirmation shall be prepared by persons who are independent of the counterparty, the issuer/debtor and the guarantor, and legally qualified to issue such confirmation, e.g. lawyers practicing in a law firm, or university professors. The legal confirmation shall also state that the guarantee is not a personal one and is only enforceable by the holders of the marketable assets or the creditor of the credit claim. If the guarantor is established in a jurisdiction other than the one of the law governing the guarantee, the legal confirmation shall also confirm that the guarantee is valid and enforceable under the law of the jurisdiction in which the guarantor is established. For marketable assets, the legal confirmation shall be submitted by the counterparty for review to the NCB that is reporting the relevant asset supported by a guarantee for inclusion in the list of eligible assets. For credit claims, the legal confirmation shall be submitted by the counterparty seeking to mobilize the credit claim for review to the NCB in the jurisdiction of the law governing the credit claim. The requirement of enforceability is subject to any insolvency or bankruptcy laws, general principles of equity and other similar laws and principles applicable to the guarantor and generally affecting creditors' rights against the guarantor.

(8) The detailed quality requirements of the ECAF for ratings provided for asset-backed securities are laid down in Part Four, Title II, Chapter 2 of the *General Documentation Guideline*<sup>1</sup>.

(9) The eligibility criteria for each of the three sources pursuant to paragraph (3) are governed by Part Four, Title V of the *General Documentation Guideline*<sup>1</sup>. The following provisions shall in particular apply to counterparties' internal ratings-based (IRB) systems:

- a) A counterparty intending to use an IRB system to assess the credit quality of the debtors, issuers or guarantors of eligible debt instruments has to obtain the permission of the OeNB. For that purpose, it shall file a request, together with the documentation specified, as indicated above, in the *General Documentation Guideline*<sup>1</sup> (together with a German translation of the listed documents if required).
- b) Counterparties using an IRB system as described above are also subject to the Eurosystem performance monitoring process (see paragraph (9) or Article 126 and Annex IX of the *General Documentation Guideline*<sup>1</sup>). In addition to the information requirements for this process, the counterparty is under an obligation to communicate the information specified in Part Four, Title 5 of the *General Documentation Guideline*<sup>1</sup> on an annual basis (or as and when required by the OeNB) unless such information is transmitted directly by the relevant supervisory authority to the OeNB.

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

c) As part of the regular monitoring on IRB systems, the OeNB performs annual on-site and off-site inspections on the statistical information provided by counterparties for the purpose of the annual performance monitoring process. The purpose of such controls is to verify that static pools are correct, accurate and complete.

(10) The ECAF performance monitoring process consists of an annual ex post comparison of the observed default rate for the set of all eligible debtors (the static pool) and the credit quality threshold of the Eurosystem given by the benchmark PD. It aims to ensure that the results from credit assessments are comparable across systems and sources. The monitoring process takes place one year after the date on which the static pool was defined.

- a) The first element of the process is the annual compilation by the credit assessment system provider of a static pool of eligible debtors. This is a pool consisting of all corporate and public debtors receiving a credit assessment from the system that satisfies the provisions specified in Article 23 (6) of these Terms and Conditions.
- b) All debtors fulfilling this condition at the beginning of period  $t$  constitute the static pool for  $t$ . At the end of the foreseen 12-month period, the realized default rate for the static pool of debtors at time  $t$  is computed. Further information requirements and requirements for rating providers are specified in Annex IX to the *General Documentation Guideline*<sup>1</sup>.

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

- c) The realized default rate of the static pool of a credit assessment system recorded over a one-year horizon serves as input to the ECAF performance monitoring process, which comprises an annual rule and a multi-period assessment. In case of a significant deviation between the observed default rate of the static pool and the credit quality threshold over an annual and/or a multi-annual period, the counterparty, together with the OeNB, consults the rating system provider to analyze the reasons for that deviation.
- d) This procedure may result in a correction of the credit quality threshold applicable to the system in question. The Eurosystem may decide to suspend or exclude the credit assessment system in cases where no improvement in performance is observed over a number of years. In addition, in the event of an infringement of the rules governing the ECAF, the credit assessment system will be excluded from the ECAF.

## **Article 24**

### **Valuation principles for underlying assets**

#### (1) Marketable assets

- For each eligible marketable asset, the Eurosystem defines the most representative price to be used for the calculation of the market value.
- The value of a marketable asset is calculated on the basis of the most representative price on the business day preceding the valuation date. In the absence of a representative price for a particular asset, the Eurosystem shall define a theoretical price.

- The market or theoretical value of a marketable asset is calculated including accrued interest.
- (2) Non-marketable assets  
Non-marketable assets shall be assigned a value by the Eurosystem corresponding to the outstanding amount of such non-marketable assets.

## **Article 25**

### **Risk control measures for underlying assets**

(1) The OeNB applies specific risk control measures according to the types of underlying assets offered by the counterparty. Haircuts differ according to the residual maturity, liquidity features, coupon structure and type of interest payment of the debt instruments. Additional haircuts apply for the use of assets that are subject to close links between the issuer and the counterparty as defined in Article 19 (5). The levels of valuation haircuts shall be determined by the ECB.

(2) Part Four, Title VI of the *General Documentation Guideline*<sup>1</sup> as well as *Guideline ECB/2015/35 as amended* contain more details.

## **Article 26**

### **Pooling system**

(1) As a rule, the OeNB requires counterparties to make a pool of underlying assets available by assigning as collateral or pledging debt instruments to the OeNB to cover any current or future claims arising from the OeNB's refinancing operations with said counterparties. Up to the required value of

<sup>1</sup> *Guideline ECB/2014/60 as amended.*



collateral coverage, as established on the basis of credit quality and the valuation principles specified in Articles 23 and 24 as well as the risk control measures specified in Article 25, the counterparty shall have no control over the debt instruments which form its pool of collateral during the life of the operations with the exception of paragraph (2) below.

(2) In pooling systems, a counterparty may assign assets to the pool or withdraw assets from the pool, provided sufficient collateral coverage of all monetary policy operations is ensured taking into account the valuation rules pursuant to Articles 23 and 24 and the risk control measures pursuant to Article 25.

(3) In pooling systems, assets are subject to daily revaluation.

(4) In pooling systems, a counterparty shall supply additional assets or cash if the value of the pool as a whole drops below the total value of the outstanding refinancing operations as adjusted for risk control measures (variation margin). Collateral deficiencies may arise as the pool of underlying assets shrinks (e.g. if a third-party debtor redeems its debt, or if the OeNB retroactively rejects an asset in line with Article 19 (9) etc.) or may be triggered by revaluations.

## **Article 27**

### **Earmarking system**

(1) Repurchase agreements require the use of an earmarking system instead of the pooling system, in which each credit operation is linked to specific identifiable assets. If, after valuation, the underlying assets do not match the requirements calculated on that day, symmetric margin calls shall be performed. In order to reduce the frequency of margin calls, trigger points may be applied. This implies that if the market

value of the underlying assets, adjusted for risk control measures, falls below the trigger point, counterparties shall supply additional collateral. Similarly, if the market value exceeds the trigger point, the OeNB will return excess assets upon the counterparty's express demand.

(2) In earmarking systems, assets are subject to daily revaluation.

(3) During the life of an operation, collateral deficiencies may arise as the pool of underlying assets shrinks (e.g. if a third-party debtor redeems its debt, or if the OeNB retroactively rejects an asset in line with Article 19 (9) etc.) or may be triggered by revaluations, taking into account the required risk control measures and the lower trigger point. In such case, counterparties shall be required to restore sufficient collateral coverage by substituting or adding collateral on the same day.

## **Article 28**

### **Substitution**

(1) Counterparties may substitute underlying assets provided they maintain adequate collateral cover.

(2) In pooling systems, counterparties may substitute on a daily basis any or all assets used to secure outstanding transactions.

(3) In earmarking systems, the daily substitution of any or all assets securing outstanding transactions shall be subject to the OeNB's approval.

## V. Special provisions for collateralized loans

### **Article 29**

#### **Purpose of the contract**

The OeNB shall provide liquidity to counterparties through collateralized loans, i.e. against either the pledge or collateral assignment of debt securities. Counterparties who take out a collateralized loan shall repay the amount of credit extended inclusive of interest accrued at a predefined date at which they regain control of the underlying assets securing the loan.

### **Article 30**

#### **Realization of collateral**

If, in the event of a default, the OeNB collects collateral to assert its claims in line with Article 53 (4), the OeNB shall have the right, without consulting the counterparty or involving the courts, to sell any or all of the assets assigned as collateral or pledged, or to buy the assets and to credit any amounts exceeding the credit receivables including penalty interest, if any, to the counterparty's settlement account. The counterparty may not hold the OeNB liable for damages should it consider the realization of collateral unsatisfactory. However, the OeNB shall not be obligated to realize assets pledged or assigned as collateral; if the OeNB does not opt for immediate realization, its claim shall not cease to be enforceable.

### **Article 31**

#### **Procedures**

The OeNB regularly conducts collateralized loans in the form of standard tenders

- as main refinancing operations (MROs) with a weekly frequency and normally a maturity of one week;
- as longer-term refinancing operations (LTROs) with a monthly frequency and normally a maturity of three months; and
- possibly structural operations.

In addition, the OeNB may use collateralized loans for fine-tuning operations in the form of quick or standard tenders. The maturity of collateralized loans shall be counted from the settlement day. Interest accrued shall fall due for payment at the end of maturity as specified in the tender. Chapter XII of these Terms and Conditions as well as Part Seven, Chapters 2 and 4 of the *General Documentation Guideline*<sup>1</sup> contain more detailed provisions on the procedure.

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

## VI. Special provisions for repurchase agreements

### Article 32

#### Repurchase agreements

When the OeNB and a counterparty conclude a repurchase agreement, either party may be the seller or the buyer. Repurchase agreements are concluded based on a tender procedure. Chapter XII of these Terms and Conditions as well as Part Seven, Chapters 2 and 3 of the *General Documentation Guideline*<sup>1</sup> contain more detailed provisions on procedures.

### Article 33

#### Purpose of the contract

(1) The seller sells and transfers specific debt instruments to the buyer against payment of a purchase price. At the same time, the buyer undertakes to sell and transfer to the seller debt instruments of the same type and designation and with the same face value and of the same amount at a date specified in advance against payment of the repurchase price.

(2) Articles 19 through 22 of these Terms and Conditions shall apply *mutatis mutandis* to the assets underlying repurchase agreements.

### Article 34

#### Transfer of unrestricted title

The seller shall be obligated to transfer to the buyer the unrestricted title to and the full control of the debt instruments covered by the repurchase agreement upon full payment of the purchase price.

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

## **Article 35**

### **Purchase and transfer**

(1) The debt instruments shall be transferred to the seller's safe custody account with the buyer at the latest on the settlement date agreed for the purchase.

(2) The payment shall be made by crediting the purchase price to or debiting it from the counterparty's settlement account with the OeNB.

## **Article 36**

### **Repurchase and retransfer**

The retransfer of the debt instruments under the repurchase agreement and the payment of the repurchase price shall take place on the settlement date agreed for the repurchase.

## **Article 37**

### **Exclusion of settlement risk**

All transfers of debt instruments and payments of purchase prices shall be on a delivery-versus-payment basis.

## **Article 38**

### **Repurchase price**

(1) The repurchase price shall be the total of the purchase price and the price differential corresponding to the interest on the extended liquidity over the maturity of the operation (hereinafter referred to as the "price differential").

(2) The price differential shall be calculated by applying the pricing rate (in percent per annum) agreed for the transaction to the purchase price over the maturity of the operation starting

with (and including) the purchase date and ending with (but excluding) the repurchase date.

## **Article 39** **Acceleration**

In the case of the occurrence of any of the events of default specified in Chapter XI of these Terms and Conditions, the OeNB shall have the right to declare all outstanding transactions to be immediately due and payable. The repurchase price for accelerated transactions shall be calculated as the mean market price, or the last quoted market price of the respective debt instruments on the day before the transactions were declared due. If the price cannot be calculated with this method, the OeNB shall determine the most recently valid market price. If no exact market price for a debt instrument can be established, the OeNB shall determine the value of the debt instrument by approximation. If the respective debt instruments have been sold prior to acceleration, the sales proceeds net of all costs and fees, as calculated by the OeNB, shall replace the repurchase price. In the event of acceleration, the repurchase price of a given transaction shall consist of the purchase price and the price differential, which shall be calculated on the basis of the interest rate for the original repurchase agreement and the actual maturity of the transaction. The party for whom the lower claim results after netting all accelerated transactions, taking into account costs and fees, shall pay the net difference. If non-euro-denominated amounts should be involved in accelerated transactions, these amounts shall be converted into euro at the reference rate applicable on the day the transaction is declared immediately due and payable.

## VII. Special provisions for foreign exchange swaps

### Article 40

#### Foreign exchange swaps

(1) The OeNB may conclude foreign exchange swaps with selected counterparties. Either party to a foreign exchange swap between the OeNB and a counterparty may be the buyer or seller of foreign currency.

(2) The terminology used herein is to be read in line with the definitions provided in Article 2 as well as particularly in Article 185 of the *General Documentation Guideline*<sup>1</sup>.

### Article 41

#### Purpose of the contract

In a foreign exchange swap, the OeNB buys (or sells) euro spot to a counterparty against a foreign currency and at the same time sells (or buys) it back from the counterparty in a forward transaction.

### Article 42

#### Procedures

Foreign exchange swaps may be executed as quick tenders. Chapter XII of these Terms and Conditions as well as Part Seven, Chapter 5 of the *General Documentation Guideline*<sup>1</sup> contain more detailed provisions on procedures.

<sup>1</sup> *Guideline ECB/2014/60 as amended.*



## **Article 43**

### **Acceleration**

(1) In the case of the occurrence of any of the events of default specified in Chapter XI of these Terms and Conditions, the OeNB shall have the right to declare the repurchase date as becoming due immediately. The OeNB shall calculate the respective replacement figures (euro equivalent and repurchase amount) for every outstanding transaction and shall calculate the respective claims of each counterparty on the other.

(2) The foreign currency/euro amount for the forward leg is converted into euro/foreign currency at the exchange rate applicable on the day the transaction is declared immediately due and payable. The net debtor shall pay in spot cash the difference between (a) the amount remaining after all accelerated transactions have been netted inclusive of all costs and fees and (b) the (original) forward transaction. The foreign exchange rate for the day the transaction is declared immediately due and payable shall be the exchange rate published by the ECB. If no ECB exchange rate should be available, the market rate in effect at 12:00 ECB time shall apply. If the OeNB should use the 12:00 rate, no claims may be asserted on the basis of any perceived discrimination.

## VIII. Other open market operations

### Article 44

#### Outright transactions

(1) The OeNB may, in accordance with market practices, buy and sell debt instruments on the open market in the form of standard or quick tenders.

(2) The OeNB may conduct outright transactions directly with one or more counterparties, or through stock exchanges or market agents, without making use of tender procedures. Procedures for bilateral outright transactions are communicated when needed.

(3) Outright transactions are executed in a decentralized manner by the NCBs, unless the ECB's Governing Council decides that the ECB or one or more NCBs, acting as the ECB's operating arm, shall conduct the specific operation.

(4) An outright transaction implies a full transfer of ownership of the debt instrument from the seller to the buyer without a simultaneous agreement on reverse transfer of ownership.

(5) In open market operations executed by means of outright purchases and sales, collection of fixed-term deposits and issuance of ECB debt certificates, counterparties shall transfer a sufficient amount of eligible assets or cash to settle the amount agreed in the transaction.

### Article 45

#### Collection of fixed-term deposits

(1) The OeNB may invite counterparties to place fixed-term deposits with it. The deposits accepted shall be for a fixed term and with a fixed rate of interest. Settlement shall be based on ECB specifications. Interest shall be paid at maturity

when the deposit is returned. The OeNB shall not give collateral in exchange for the deposits.

(2) The collection of fixed-term deposits shall normally be executed through quick tender procedures, unless it is decided by the ECB to conduct the specific operation by means of a standard tender procedure, in the light of specific monetary policy considerations or in order to react to market conditions.

## **Article 46**

### **Issuance of ECB debt certificates**

(1) The OeNB may invite standard tender bids for the subscription of ECB debt certificates subject to the specific issuance conditions of the ECB. The debt certificates shall be issued and held in a book-entry form in a securities depository at the ECB. The ECB debt certificates shall have a maturity of less than 12 months.

(2) The certificates are issued at a discount and shall be redeemed at maturity at the nominal amount.

## IX. Standing facilities

### Article 47

#### Marginal lending facility

(1) Under the marginal lending facility and in accordance with the provisions specified in Part Two, Title II, Chapter 1 of the *General Documentation Guideline*<sup>1</sup>, the OeNB shall extend overnight credits to counterparties on every TARGET business day<sup>2</sup>; the credits shall be advanced against the deposit of underlying eligible assets and shall have a predefined interest rate, as announced in advance by the ECB and the OeNB. The interest rate may be changed with effect not earlier than the following business day.

(2) The overnight credit extended under the marginal lending facility shall be a collateralized loan under these Terms and Conditions, with the provisions of Chapters IV and V of these Terms and Conditions applying *mutatis mutandis*.

(3) The existence of a negative overall balance on TARGET accounts or settlement accounts in the ASTI system (net debit position) at the end of a business day shall be automatically considered as a request by the counterparty for access to the marginal lending facility for an overnight credit of the amount required to cover the net debit position.

(4) Unless paragraph (3) applies, a request for overnight credit extended under the marginal lending facility must always be submitted via the electronic bidding system or be requested by telephone no later than 18:15 (CET).

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

<sup>2</sup> *Except days on which TARGET is not available at the end of the day due to a 'prolonged [TARGET] disruption over several business days' (cf. Article 187a of the General Documentation Guideline).*

On the last business day of a minimum reserve maintenance period, the deadline for requesting shall occur 15 minutes later. Under exceptional circumstances, the Eurosystem may decide to apply later deadlines.

(5) The overnight credit extended under the marginal lending facility plus interest accrued shall be repaid on the next business day. The applicable total shall be debited to the counterparty's settlement account at the opening of (i) the TARGET system or settlement accounts in the ASTI system and (ii) the relevant SSSs at the beginning of that business day.

(6) The ECB may adapt the conditions of the marginal lending facility or suspend it at any time.

## **Article 48**

### **Deposit facility**

(1) In accordance with Part Two, Title II, Chapter 2 of the *General Documentation Guideline*<sup>1</sup>, counterparties may use the deposit facility every TARGET business day<sup>a</sup> to make overnight deposits with the OeNB at a predefined rate of interest (overnight deposit), as announced in advance by the ECB and the OeNB. The interest rate applied to the deposit facility may be positive, set to zero percent or negative. The interest rate may be changed with effect not earlier than the following business day.

(2) Requests for access to the deposit facility shall be sent no later than 18:15 (CET). On the last business day of a minimum

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

<sup>a</sup> *Except days on which TARGET is not available at the end of the day due to a 'prolonged [TARGET] disruption over several business days' (cf. Article 187a of the General Documentation Guideline).*

reserve maintenance period, the deadline for requesting shall occur 15 minutes later. Under exceptional circumstances, the Eurosystem may decide to apply later deadlines.

(3) The maturity of deposits under the deposit facility shall be overnight. Deposits held under the deposit facility shall mature on the next day on which TARGET is operational, at the time at which this system opens. Interest on the deposits is payable on maturity of the deposit. In cases of negative interest rates, the application of the interest rate to the deposit facility shall entail a payment obligation of the deposit holder to the OeNB, including the right of the OeNB to debit the account of the counterparty accordingly.

(4) The ECB may adapt the conditions of the deposit facility or suspend it at any time.

## **X. Communication and data protection**

### **Article 49**

#### **Placement of orders**

(1) Orders must clearly indicate the purpose of the contract and must contain all information required for settlement. Any changes, confirmations or duplications must be clearly marked as such.

(2) The OeNB will accept orders only in the form required for the respective type of transaction.

### **Article 50**

#### **Messages sent by the OeNB**

(1) The counterparties shall examine the accuracy and completeness of notifications about the handling of orders and other messages sent by the OeNB.

(2) Any objections must be raised immediately.

(3) Any objections submitted via telecommunications media shall be confirmed in writing immediately.

(4) If an order is concluded by telephone and divergent opinions result from acoustic misunderstandings, only the message taped by the OeNB shall be enforceable.

### **Article 50a**

#### **Messages sent to the OeNB**

(1) The counterparty shall ensure that the OeNB has all the information required to execute monetary policy operations.

(2) The OeNB shall be authorized to obtain any counterparty-related information that may be relevant for the execution of monetary policy operations from the competent supervisory

authorities, in particular the Financial Market Authority, as well as any other bodies and agencies that are statutorily involved in supervision.

(3) Furthermore, the OeNB shall be authorized to pass on information relating to monetary policy matters to the competent supervisory authorities, above all the Financial Market Authority, as well as any bodies and institutions that are statutorily involved in the conduct of supervision.

## **Article 51**

### **Liability**

The OeNB shall not be liable for damage arising from faulty transmission, errors and misunderstandings in telecommunications. In case the fault lies with the OeNB, general liability provisions shall apply.

## **Article 51a**

### **Privacy statement**

(1) For the purpose of carrying out monetary policy operations, the OeNB processes personal data of contact persons acting on behalf of the counterparty.

(2) Due to ESCB requirements, the OeNB stores the contact persons' log data as well as log data concerning monetary policy operations for a period of ten years. Further, due to ESCB requirements for the purpose of traceability of transactions and for settling possible disputes, the OeNB may tape all telephone conversations on dealing lines and stores the data for 92 days.

(3) The lawfulness of the processing of above-mentioned personal data is based on Art. 6 (1) lit. a, c and e of the General



Data Protection Regulation<sup>10</sup>. Further information on the processing of personal data by the OeNB in connection with monetary policy operations and procedures can be publicly obtained from the OeNB's website ([www.oenb.at/en/dataprotection](http://www.oenb.at/en/dataprotection)).

(4) Counterparties inform their relevant employees about this privacy notice concerning the processing of personal data in a timely manner and obtain their consent to this processing.

<sup>10</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

## **XI. Events of default**

### **Article 52**

#### **Events of default**

Default under these Terms and Conditions shall consist of the occurrence of one or several of the following conditions:

(1) If one or more of the following events occurs, the counterparty shall in any event be excluded from monetary policy operations pursuant to Article 53 (1) (b):

(a) a decision is made by a competent judicial or other authority to implement, in relation to the counterparty, a procedure for the winding-up of the counterparty or the appointment of a liquidator or analogous officer over the counterparty, or any other analogous procedure.

For the purposes of this subparagraph (a), the taking of crisis prevention measures or crisis management measures within the meaning of the Austrian Bank Recovery and Resolution Act (BaSAG) against a counterparty shall not qualify as an automatic event of default.

(b) the counterparty becomes subject to freezing of funds and/or other measures, including restrictive measures, imposed by the Union under Article TFEU 75 or Article 215 TFEU or similar relevant provisions of the Treaty restricting the counterparty's ability to use its funds.

(c) the counterparty is no longer subject to the Eurosystem's minimum reserve system as required by Article 7.

(d) the counterparty is no longer subject to harmonized Union/EEA supervision or comparable supervision under Article 6 (1).

(e) the counterparty becomes a wind-down entity as defined in Article 2, point (99a) of the *General Documentation Guideline*<sup>1</sup>.

(2) If one or more of the following events occurs, the OeNB may take one or several measures pursuant to Article 53:

- (a) a decision is made by a competent judicial or other authority to implement, in relation to the counterparty, an intervention measure, other than under paragraph (1) subparagraph (a), restricting its business activities, including a moratorium, or a reorganization measure or other analogous procedure intended to safeguard or restore the financial situation of the counterparty and to avoid a decision of the type referred to in paragraph (1) subparagraph (a), being taken.
- (b) the counterparty no longer fulfills any of the OeNB's operational requirements referred to in Annex 1.
- (c) a declaration is made by the counterparty in writing of its inability to pay all or any part of its debts or to meet its obligations arising in relation to monetary policy transactions or any other transactions with the OeNB or with any other NCB, or the counterparty ceases to pursue its objects under its articles of association or analogous constitutive documents or a declaration is made by the counterparty of its intention to cease to pursue its objects under its articles of association or analogous constitutive documents, or a voluntary general agreement or arrangement is entered into by the counterparty with its creditors, or if the counterparty is, or is deemed to be, insolvent or is deemed to be unable to pay its debts.

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

- (d) procedural steps are taken preliminary to a decision being made under paragraph (1) subparagraph (a), or subparagraph (a) or subparagraph (f) of this paragraph, including a proposal to withdraw the authorization to conduct activities under either: (i) Austrian Banking Act (BWG) and/or Directive 2013/36/EU and Regulation (EU) No 575/2013; or (ii) Directive 2014/65/EU, as implemented in the relevant member state whose currency is the euro.
- e) a temporary administrator or other analogous officer with the powers to restrict the ability of the counterparty to meet its obligations toward the Eurosystem is appointed.
- (f) a receiver, trustee or analogous officer is appointed over all or any material part of the property of the counterparty, to the extent applicable.
- g) an incorrect or untrue representation or other pre-contractual statement is made or implied by the counterparty under applicable provisions of law in relation to
  - (i) monetary policy transactions or any other transactions with the OeNB or with any other NCB, or
  - (ii) compliance with any laws or regulations to which it may be subject, which may threaten the performance by the counterparty of its obligations under the arrangement it entered into for the purpose of effecting Eurosystem monetary policy operations.
- (h) the counterparty's authorization to conduct activities under Directive 2014/65/EU, as implemented in the relevant member state whose currency is the euro, is suspended or revoked.
- (i) the counterparty is suspended from or has its participation terminated in any payment system through which payments

under monetary policy transactions are made or (except for foreign exchange swap transactions) is suspended from or has its participation terminated in any SSS used for the settlement of Eurosystem monetary policy operations.

- (j) measures such as those referred to in Articles 41 (1) and 43 (1) and Article 44 of Directive 2013/36/EU are taken against the counterparty.
- (k) in relation to reverse transactions, the counterparty fails to comply with provisions concerning risk control measures.
- (l) in relation to repurchase transactions, the counterparty fails to pay the purchase price or the repurchase price or fails to deliver purchased or repurchased assets; or in relation to collateralized loans, the counterparty fails to deliver assets or reimburse the credit on the applicable dates for such payments and deliveries.
- (m) in relation to foreign exchange swaps for monetary policy purposes and fixed-term deposits, the counterparty fails to pay the euro amount; or in relation to foreign exchange swaps for monetary policy purposes, the counterparty fails to pay foreign currency amounts on the applicable dates for such payments.
- (n) an event of default, not materially different from those defined in this Article, occurs in relation to the counterparty under an agreement concluded for the purposes of the management of the foreign reserves or own funds of the ECB or any NCBs.
- (o) the counterparty fails to provide relevant information, thus causing severe consequences for the OeNB.
- p) the counterparty fails to perform any other of its obligations under arrangements for reverse transactions and

- foreign exchange swap transactions and, if capable of remedy, does not remedy such failure within a maximum of 30 days in the case of collateralized transactions and a maximum of 10 days for foreign exchange swap transactions after notice is given by the NCB requiring it to do so.
- (q) an event of default occurs in relation to the counterparty, including its branches, under any agreement or transaction with the Eurosystem entered into for the purpose of effecting Eurosystem monetary policy operations.
  - (r) the counterparty becomes subject to the freezing of funds and/or other measures imposed by a member state whose currency is the euro restricting the counterparty's ability to use its funds.
  - (s) all or a substantial part of the counterparty's assets are subjected to a freezing order, attachment, seizure or any other procedure that is intended to protect the public interest or the rights of the counterparty's creditors.
  - (t) all or a substantial part of the counterparty's assets are assigned to another entity or all or a substantial part of the operations or business of the counterparty are sold, dissolved, liquidated or discontinued or any decision to this effect is made.
  - (u) any other impending or existing event which threatens the performance by the counterparty of its obligations under the arrangements it entered into for the purpose of effecting Eurosystem monetary policy operations or under any other contractual and/or statutory rules applying to the relationship between the counterparty and the ECB or any of the NCBs; or the counterparty defaults on, breaches or fails to duly perform any other obligation, agreement or transaction

with the OeNB under the arrangements entered into for the purpose of effecting monetary policy operations or under any other contractual (in particular Article 53a) and/or statutory rules applying to the relationship between the counterparty and the ECB or any of the NCBs.

(3) The OeNB is informed about irregularities and/or infringements in the counterparty's compliance with supervisory regulations by the competent authority.

(4) If the counterparty channels Eurosystem liquidity to another entity that belongs to the same banking group (within the meaning of Directives 2014/59/EU and 2013/34/EU) where the entity receiving such liquidity is (i) a non-eligible wind-down entity or (ii) subject to a discretionary measure on the grounds of prudence, the OeNB may take a measure according to Article 53 (1) (b).

## **Article 53 Measures**

(1) Upon the occurrence of default events defined under Article 52 or on the grounds of prudence, the OeNB may – without prejudice to the provisions of Article 12 – take one or several of the measures cited below. Specifically, the OeNB may:

- a) declare all outstanding monetary policy operations due and payable;
- b) suspend, limit or exclude the counterparty's access to monetary policy operations; limiting access is not possible in the cases referred to in Article 52 (1).
- c) use the debt instruments assigned to the OeNB as collateral or pledged to satisfy its claims;

d) exercise its unconditional preferential right under Article 77 of the Federal Act on the Oesterreichische Nationalbank.

In this context, the following applies:

In the case of transactions which have not been fully settled, the OeNB's obligation to reverse the transaction as contracted shall be canceled.

The OeNB shall be entitled to claim damages for all losses incurred as a result of the counterparty's delay in performance.

In exercising its rights under subparagraphs (a) to (d), the OeNB shall take due consideration of the conditions under which the default occurred.

(2) Upon the occurrence of default events under Article 52 (2) (k), (l) and (m), the counterparty shall be obligated to provide additional collateral or to repay the respective credit amount within 24 hours. If the counterparty fails to meet this obligation, the OeNB shall be entitled to demand immediate partial or total repayment of credits.

(3) Upon the occurrence of default events defined under Article 52 (1), all outstanding monetary policy transactions will automatically be deemed to have been declared due and payable with immediate effect. In addition, the OeNB may take further measures in line with the provisions specified in paragraph (1).

(4) With the exception of the cases in which transactions are automatically declared due and payable with immediate effect in line with paragraph (3), any other measures listed under paragraph (1) may be taken only after the counterparty has been served a formal notice of default.



(5) In addition, reference is made to the provisions laid down in Parts Six and Seven of the *General Documentation Guideline*<sup>1</sup>.

**Article 53a**  
**Combatting money laundering and terrorist financing**

The counterparty is aware of and complies with its legal obligations to combat money laundering and terrorist financing.

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

## XII. Procedures

### Article 54

#### Tender procedures

The OeNB shall execute open market operations in the form of tender procedures. The procedural provisions in Part Two, Title III of the *General Documentation Guideline*<sup>1</sup> shall apply as follows:

(1) A distinction is made between fixed rate tenders and variable rate tenders.

(2) Tender operations are used to extend collateralized loans, conclude repurchase agreements, collect fixed-term deposits, issue ECB debt certificates and conclude foreign exchange swaps.

(3) Standard tender procedures are directed toward all eligible counterparties. Quick tenders are, as a rule, restricted to the selected set of fine-tuning counterparties, but may also be executed with a broader range of counterparties. Fine-tuning operations may also be executed by means of standard tenders.

(4) All transactions concluded under these Terms and Conditions shall be conducted through the OeNB's automatic bidding system or confirmed in writing.

(5) Allotment under the tender procedure shall, with an eye to risk control measures, be limited to the degree to which the counterparty has fulfilled its collateral or payment requirements.

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

## **Article 55**

### **Fixed rate tender operations**

(1) In a fixed rate tender, the ECB specifies the interest rate/price/swap point level in advance. The participating counterparties bid the amount of money they are willing to transact at the given interest rate/price/swap point.

(2) If the aggregate amount bid exceeds the total amount of liquidity to be allotted, the submitted bids will be satisfied pro rata, according to the ratio of the amount to be allotted to the aggregate amount bid. However, the ECB may decide to allot a minimum amount/ratio to each Eurosystem counterparty.

(3) Counterparties are expected to always be in a position to cover the amounts allotted to them by sufficient eligible assets.

## **Article 56**

### **Variable rate tender operations**

(1) In a variable rate tender, Eurosystem counterparties bid the amounts of money and the interest rates at which they are willing to enter into transactions.

(2) In a variable rate tender, in line with the announcement of the tender operation, the allotment procedure for all satisfied bids follows

- either a single interest rate auction (“Dutch” auction);
- or a multiple rate auction for each individual bid (“American” auction).

(3) In the allotment of liquidity-providing variable rate tenders, bids are listed in diminishing order of offered interest rates. The bids with the highest interest rate are satisfied with

priority. Bids with successively lower interest rates are accepted until the total liquidity to be allotted is exhausted.

In the allotment of liquidity-absorbing variable rate tenders, bids are listed in increasing order of offered interest rates (or diminishing order of offered prices). The bids with the lowest interest rate (highest price) levels are satisfied with priority and bids with successively higher interest rates (lower price bids) are accepted until the total liquidity to be absorbed is exhausted.

(4) In the allotment of liquidity-providing variable rate foreign exchange swap tenders, bids are listed in increasing order of swap point quotations. The bids with the lowest swap point quotations are satisfied with priority and successively higher swap point quotations are accepted until the total amount of the fixed currency to be allotted is exhausted.

In the allotment of liquidity-absorbing variable rate foreign exchange swap tenders, bids are listed in diminishing order of swap point quotations. The bids with the highest swap point quotations are satisfied with priority and successively lower swap point quotations are accepted until the total amount of the fixed currency to be absorbed is exhausted.

In both variable rate tenders and foreign exchange swap tenders, bids at the marginal interest rate are allocated pro rata if necessary. For liquidity-providing tenders, the marginal interest rate is the lowest interest rate level accepted; for liquidity-absorbing tenders, the marginal interest rate is the highest interest rate level accepted. The ECB may decide to allot a minimum amount to each bid satisfied.

(5) Several bids with up to ten different interest rates/prices/swap points may be submitted.

(6) Counterparties are expected to always be in a position to cover the amounts allotted to them by a sufficient amount of eligible assets.

## Article 57 Types of tender procedures – time frame

(1) The Eurosystem distinguishes between standard tenders and quick tenders. Tender operations are structured in six operational steps as shown in table 1 and further described in Article 60. The operational features of standard and quick

Table 1

### Indicative time frame for standard and quick tender procedures

	Standard tender procedures		Quick tender procedures
	MRO	Regular LTRO	
	<i>Times are stated in Central European Time<sup>1</sup></i>		
Tender announcement	T-1 15:40	T-1 15:55	T hh:mm
Deadline for counterparties' submission for bids	T 9:30	T 10:00	+ 00:30
Announcement of tender results	T 11:30	T 12:00	+ 01:35
Settlement of transactions	T+1	T+1	T

Source: Article 25 Guideline ECB/2014/60 as amended.

<sup>1</sup> Central European Time (CET) takes account of the change to Central European Summer Time. T stands for "trade day."

tender procedures are identical, except for the time frame and the range of counterparties.

(2) For standard tenders, a maximum of 24 hours elapses from the announcement of the tender to certification of the allotment results by the OeNB (with the time between the submission deadline and the announcement of the allotment result by the ECB being approximately two hours).

(3) Quick tenders are normally executed within 105 minutes of the announcement of the tender, with certification by the OeNB taking place immediately after the announcement of the allotment result by the ECB.

## **Article 58**

### **Normal trade days**

(1) Main refinancing operations are normally conducted on a Tuesday (normal trade day). Special scheduling can take place due to holidays.

(2) For longer-term refinancing operations, the normal trade day is the last Tuesday of each calendar month (owing to the holiday period, the December operation is normally brought forward by one week, i.e. to the preceding Tuesday).

(3) An unofficial calendar for main and longer-term refinancing operations shall be published at least three months before the beginning of the year in which it is applicable.

## **Article 59**

### **Operational steps**

(1) The tender announcement shall serve to prepare and enable the submission of bids by counterparties. The announcement made to counterparties shall include the items specified

in Article 60 of these Terms and Conditions or in Annex II of the *General Documentation Guideline*<sup>1</sup>.

(2) Counterparties' bids must always be submitted to the competent OeNB office via the electronic bidding system by the deadline established in the announcement. For main refinancing, fine-tuning and structural operations, the minimum bid amount shall be EUR 1,000,000. Bids exceeding this amount shall be expressed as multiples of EUR 100,000. For longer-term refinancing operations, the minimum bid amount shall be EUR 1,000,000. Bids exceeding this amount shall be expressed as multiples of EUR 10,000. The counterparties must not exceed any maximum bid limit imposed and stated in the tender announcement.

(3) Bids shall be revocable up to the tender submission deadline. Bids submitted after the deadline specified in the tender announcement message shall be invalid.

The OeNB shall discard all bids of a counterparty if a bid is incomplete, does not follow the pro forma example or is below any minimum or above any maximum limit.

(4) The ECB will allot the tenders. The OeNB shall provide all counterparties with the respective allotment information stated under Article 60 (4) subparagraph (b) of these Terms and Conditions or in Annex IV to the *General Documentation Guideline*<sup>1</sup>. The tender operation shall be considered concluded with the sending of this message.

(5) The allotted amounts shall be credited on the settlement day stated in the tender.

<sup>1</sup> *Guideline ECB/2014/60 as amended.*

## **Article 60**

### **Outline of operational steps**

Tender procedures are performed in six operational steps, as specified in Part Two, Title III, Chapter 1 as well as in Annex II-IV of the *General Documentation Guideline*<sup>1</sup>.

Step 1: Tender announcement

- a) Announcement by the ECB through public wire services and the websites of the ECB and the OeNB.
- b) Tenders are announced through the OeNB's automatic bidding system and through publication on the OeNB's website or rather directly to individual counterparties (if this seems necessary).

Step 2: Counterparties' preparation and submission of bids

Step 3: Compilation of bids by the Eurosystem

Step 4: Tender allotment and announcement of tender results

- a) ECB allotment decision
- b) Announcement of the allotment results through public wire services and the ECB's website

Step 5: Certification of individual allotment results by the OeNB

Step 6: Settlement of the transactions

## **Article 61**

In the event that foreign currencies have to be converted into euro for monetary policy operations, the reference rates published by the ECB shall apply; if they are not available, the spot exchange rate for the preceding day announced by the ECB shall apply.

<sup>1</sup> *Guideline ECB/2014/60 as amended.*



## XIII. Miscellaneous

### Article 62

(1) These Terms and Conditions entered into force on January 1, 1999.

(2) The OeNB may amend these Terms and Conditions at any time. Any amendments to these Terms and Conditions and a consolidated version of these Terms and Conditions will be published on the OeNB's website. Unless the promulgation provides otherwise, they shall enter into force the day after they are published. The OeNB will inform the counterparties about amendments and their entry into force under Article 7 (2) of the Nationalbank Act by publishing the relevant information on its website.

(3) Upon entry into force of these Terms and Conditions, *the Terms and Conditions for the Oesterreichische Nationalbank's Open Market Transactions* (Geschäftsbestimmungen der Oesterreichischen Nationalbank für Offenmarktgeschäfte) of May 1994, *the Terms and Conditions of the Oesterreichische Nationalbank for Lending Against Securities* (Geschäftsbestimmungen der Oesterreichischen Nationalbank für Darlehen gegen Pfand (Wertpapierlombard)) of February 1996 and *the Terms and Conditions of the Oesterreichische Nationalbank for Bill Discounts* (Geschäftsbestimmungen der Oesterreichischen Nationalbank für den Eskont von Wechseln) of February 1992 shall cease to be effective.

### Article 63

#### Applicable law

Austrian law shall apply exclusively to any legal dispute between the OeNB and counterparties. The place of jurisdiction

is Vienna. Handelsgericht Wien (the Vienna Commercial Court) shall have sole jurisdiction to hear any legal action against the OeNB.

**Article 64**  
**Limitation of action**

All claims on the OeNB shall expire within a year.

## Annex 1

### Operational criteria

The following matrix contains the operational criteria that counterparties must fulfill for the types of operations listed below:

	Acceptance of the Terms and Conditions	MCA account in TARGET OeNB	SWIFT Live BIC	Safe custody account with the OeNB	Authorization to access e-tenders
Main/longer-term refinancing operations and fine-tuning operations	yes	yes	yes	yes	yes
Deposit facility	yes	yes	yes	no	no
Marginal lending facility	yes	yes	yes	yes	yes
ECB debt certificates	yes	yes	yes	no	yes
Outright sales/purchases	yes	yes	yes	no	no

## Annex 2

### **Conditions for the provision of collateral by third-party creditors**

Collateral to secure monetary policy operations between the OeNB and counterparties the OeNB has designated as eligible counterparties may also be provided by a credit institution that is administratively or organizationally linked to the counterparty. Such a credit institution must fulfill all criteria listed in Articles 6 and 7. The only operational criterion to be fulfilled is acceptance of these Terms and Conditions. This is without prejudice to the fact that monetary policy operations as such shall be conducted exclusively with the counterparty. The counterparty shall at all times be in a position to disclose which of the assets they submit are provided by which third party.

The prerequisite for the use of third-party collateral for the benefit of the OeNB's counterparty is that the third-party creditor authorizes the counterparty to dispose of the respective eligible assets on the counterparty's behalf without restriction and moreover that the third party undertakes not to dispose of the assets itself. The third-party creditor shall be obligated to immediately inform the counterparty about any changes (full or partial redemptions, changes in maturity) of any debt instruments assigned to the OeNB as collateral or pledged. The respective contract shall be presented to the OeNB. The following Articles of the *Terms and Conditions of the Oesterreichische Nationalbank for Monetary Policy Operations and Procedures* shall apply mutatis mutandis to third-party creditors:

Articles 9, 10, 11, 12 (1), 19, 20, 21, 22 and 30.

Third-party creditors must confirm to have been informed about these Terms and Conditions and pledge to comply with the obligations arising from the provisions outlined above, using the template provided by the OeNB for this purpose, signed by authorized officials. The OeNB shall reserve the right to exclude a credit institution which does not comply with the above criteria from providing collateral for a counterparty the OeNB has designated as an eligible counterparty.

Likewise, discontinuation of the use of third-party collateral must be reported to the OeNB, using the template provided for this purpose, signed by authorized officials.