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COUNCIL REGULATION (EC) No 2531/98
of 23 November 1998
concerning the application of minimum reserves by the European Central Bank

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COUNCIL REGULATION (EC) No 2531/98

of 23 November 1998

concerning the application of minimum reserves by the European Central Bank

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Protocol (No 3) on the Statute of the European System of Central Banks and of the European Central Bank (the 'Statute') and in particular to Article 19.2 thereof,

Having regard to the recommendation of the European Central Bank (the 'ECB') ([1]),

Having regard to the opinion of the European Parliament ([2]),

Having regard to the opinion of the Commission ([3]),

Acting in accordance with the procedure laid down in Article 106(6) of the Treaty establishing the European Community (hereinafter referred to as the 'Treaty') and in Article 42 of the Statute and under the conditions set out in Article 43.1 of the Statute and paragraph 8 of the Protocol (No 11) on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland,

(1) Whereas Article 19.2, in conjunction with Article 43.1 of the Statute, paragraph 8 of Protocol No 11 and paragraph 2 of the Protocol (No 12) on certain provisions relating to Denmark, are not to confer any rights or impose any obligations on a non-participating Member State;

(2) Whereas Article 19.2 of the Statute requires the Council to define, *inter alia*, the basis for minimum reserves and the maximum permissible ratios between those reserves and their basis;

(3) Whereas Article 19.2 of the Statute also requires the Council to define the appropriate sanctions in cases of non-compliance with those requirements; whereas specific sanctions are set out herein; whereas this Regulation refers to Council Regulation (EC) No 2532/98 of 23 November 1998, concerning the powers of the European Central Bank to impose sanctions ([4]) for the principles and procedures relating to the imposition of sanctions and provides for a simplified procedure for the imposition of sanctions in the event of certain kinds of infringements; whereas, in the event of a conflict between the provisions of the Regulation (EC) No 2532/98 and the provisions of this Regulation enabling the ECB to impose sanctions, the provisions of this Regulation should prevail;

(4) Whereas Article 19.1 of the Statute provides that the Governing Council of the ECB may establish regulations concerning the calculation and determination of the required minimum reserves;

(5) Whereas, in order to be effective as an instrument for the performance of money market management and monetary control functions, the system for the imposition of minimum reserves needs to be structured so that the ECB has the ability and flexibility to impose reserve requirements within the context of, and dependent upon, changing economic and financial conditions among participating Member States; whereas in this respect the ECB must have the flexibility to react to new payment technologies such as the development of electronic money; whereas the ECB may impose minimum reserves on liabilities resulting from off-balance-sheet items, in particular those that are either individually or in combination with other on-balance-sheet

([1]) OJ C 246, 6. 8. 1998, p. 6.
([2]) OJ C 328, 26. 10. 1998.
([3]) Opinion delivered on 8 October 1998 (not yet published in the Official Journal).
([4]) See page 4 of this Official Journal.

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or off-balance-sheet items, comparable with liabilities recorded on the balance sheet, in order to limit the possibilities of circumvention;

(6) Whereas the ECB, in establishing detailed regulations for the imposition of minimum reserves, including determining the actual reserve ratios, any remuneration of reserves, any exemptions from minimum reserves or any modifications to such requirements applicable to any specific group or groups of institutions, is bound to act in pursuance of the objectives of the European System of Central Banks (the 'ESCB') as set out in Article 105(1) of the Treaty and as reflected in Article 2 of the Statute; whereas this implies, *inter alia*, the principle of not inducing significant undesirable delocation or disintermediation; whereas the imposition of such minimum reserves may constitute an element of the definition and implementation of the monetary policy of the Community, being one of the basic tasks of the ESCB as specified in the first indent of Article 105(2) of the Treaty and as reflected in the first indent of Article 3.1 of the Statute;

(7) Whereas the sanctions provided in the event of non-compliance with the obligations set out in this Regulation are without prejudice to the possibility of the ESCB establishing appropriate enforcement provisions in its relations with counterparties, including the partial or total exclusion of an institution from monetary policy operations in the case of serious infringements of the minimum reserve requirements;

(8) Whereas the ESCB and the ECB have been entrusted with the task of preparing the monetary policy instruments to allow for their full operation in the third stage of Economic and Monetary Union (hereinafter referred to as 'Stage Three'); whereas an essential element of preparation is the adoption, ahead of Stage Three, of ECB regulations requiring institutions to hold minimum reserves as from 1 January 1999; whereas it is desirable to inform market participants during 1998 of the detailed provisions which the ECB may deem necessary to adopt for the implementation of the minimum reserves system; whereas it is therefore necessary to provide the ECB from the date of entry into force of this Regulation with a regulatory power;

(9) Whereas the provisions of this Regulation can only be effectively applied in their entirety if participating Member States adopt the necessary measures with a view to ensuring that their authorities have the powers to assist and collaborate fully with the ECB in carrying out the collection and verification of information as required by this Regulation, in accordance with Article 5 of the Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation:

1. 'participating Member State' shall mean a Member State which has adopted the single currency in accordance with the Treaty;
2. 'national central bank' shall mean the central bank of a participating Member State;
3. 'institution' shall mean any entity in a participating Member State which, under the terms of Article 19.1 of the Statute, the ECB may require to hold minimum reserves;
4. 'reserve ratio' shall mean such percentage of the basis for minimum reserves as the ECB may specify in accordance with Article 19.1 of the Statute;
5. 'sanctions' shall mean fines, periodic penalty payments, penalty interest and non-interest-bearing deposits.

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Article 2

Right to exempt institutions

The ECB may, on a non-discriminatory basis, exempt institutions from minimum reserves in accordance with criteria established by the ECB.

Article 3

Basis for minimum reserves

1. The basis for minimum reserves which the ECB may require institutions to hold according to Article 19.1 of the Statute shall include, subject to the provisions specified in paragraphs 2 and 3 of this Article:

(i) liabilities of the institution resulting from the acceptance of funds, together with

(ii) liabilities resulting from off-balance-sheet items, but excluding

(iii) fully or partly liabilities which are owed to any other institution according to modalities which shall be specified by the ECB, and

(iv) liabilities which are owed to the ECB or to a national central bank.

2. For liabilities in the form of negotiable debt instruments, the ECB may specify, as an alternative to the provision in paragraph 1 (iii), that liabilities which are owed by one institution to another shall be fully or partly deducted from the basis for minimum reserves of the institution to which they are owed.

3. The ECB may, on a non-discriminatory basis, allow the deduction of specific types of assets from categories of liabilities forming part of the basis for minimum reserves.

Article 4

Reserve ratios

1. Reserve ratios, which the ECB may specify according to Article 19.1 of the Statute, shall not exceed 10 % of any relevant liabilities forming part of the basis for minimum reserves but may be 0 %.

2. Subject to paragraph 1, the ECB may, on a non-discriminatory basis, specify differing reserve ratios for specific categories of liabilities forming part of the basis for minimum reserves.

Article 5

Regulatory power

For the purpose of Articles 2, 3 and 4, the ECB shall adopt, where appropriate, regulations or decisions.

Article 6

Right to collect and verify information

1. The ECB shall have the right to collect from institutions the information necessary for the application of minimum reserves. Such information shall be confidential.

2. The ECB shall have the right to verify the accuracy and quality of the information which institutions provide to demonstrate compliance with the minimum reserve requirements. The ECB shall notify the institution of its decision to verify data or to effect their compulsory collection.

3. The right to verify data shall include the right to:

(a) require the submission of documents;

(b) examine the books and records of the institutions;

(c) take copies or extracts from such books and records; and

(d) obtain written or oral explanations.

When an institution obstructs the collection and/or verification of information, the participating Member State in which the relevant

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premises are located shall afford the necessary assistance, including ensuring access to the premises of the institution, so that the abovementioned rights can be exercised.

4. The ECB may delegate to the national central banks the execution of the rights to which paragraphs 1 to 3 refer. In accordance with the first indent of Article 34.1 of the Statute, the ECB shall be empowered to specify further in a regulation the conditions under which the right to verify may be exercised.

Article 7

Sanctions in cases of non-compliance

1. Where an institution fails to hold all or part of the minimum reserves imposed in accordance with this Regulation and ECB regulations or decisions associated herewith, the ECB may impose either of the following sanctions:

(a) a payment of up to 5 percentage points above the ESCB's marginal lending rate or twice the ESCB's marginal lending rate, in both cases applied to the amount of the minimum reserves which the relevant institution fails to provide;

(b) the requirement for the relevant institution to establish a non-interest-bearing deposit with the ECB or the national central banks up to 3 times the amount of the minimum reserves which the relevant institution fails to provide. The maturity of the deposit shall not exceed the period during which the institution fails to hold the minimum reserves.

2. Whenever a sanction is imposed in accordance with paragraph 1, the principles and procedures set out in Regulation (EC) No 2532/98 shall apply. However, Article 2(1) and (3) and Article 3(1), (2), (3) and (4) of that Regulation shall not be applicable, and the periods referred to in Article 3(6) ►M1 ——————— ◄ and (8) thereof shall be reduced to fifteen days.

3. Where an institution fails to comply with the obligations deriving from this Regulation or ECB regulations or decisions associated therewith, other than those set out in paragraph 1, sanctions in cases of such failure and the limits and conditions relating to the imposition of such sanctions shall be those set out in Regulation (EC) No 2532/98.

Article 8

Final provisions

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 5 shall apply from the date of entry into force of this Regulation. The remaining Articles shall apply from 1 January 1999.

This Regulation shall be binding in its entirety and directly applicable in all Member States.