REGULATION (EC) No 1052/2008 OF THE EUROPEAN CENTRAL BANK

of 22 October 2008

amending Regulation (EC) No 1745/2003 (ECB/2003/9) on the application of minimum reserves

(ECB/2008/10)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the ESCB Statute), and in particular to Article 19.1 thereof,

Having regard to Council Regulation (EC) No 2531/98 of 23 November 1998 concerning the application of minimum reserves by the European Central Bank [1],

Having regard to Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions [2],

Whereas:

(1) Article 19.1 of the ESCB Statute provides that the Governing Council of the European Central Bank (ECB) may establish regulations concerning the calculation and determination of the required minimum reserves.

(2) Article 2 of Regulation (EC) No 2531/98 provides that the ECB may, on a non-discriminatory basis, exempt institutions from the obligation to hold minimum reserves in accordance with criteria established by the ECB.

(3) The ECB considers it necessary to tighten the criteria for granting exemptions from reserve requirements and, in addition, to add a new criterion regarding the possibility to grant an exemption to institutions subject to measures imposed by the Community or a Member State which result in the freezing of funds or the restriction of the use of an institution's funds or are otherwise subject to a decision of the ECB's Governing Council suspending or excluding their access to open market operations or to the Eurosystem's standing facilities.

(4) In the light of past experience, it is also necessary to amend Regulation (EC) No 1745/2003 of the European Central Bank (ECB/2003/9) [3] to refine the definition of the components of the reserve base in respect of which minimum reserves are calculated and the provisions on granting an exemption from the requirements of separate reporting for institutions holding minimum reserves through an intermediary.

(5) Regulation (EC) No 1745/2003 (ECB/2003/9) should also provide for general criteria governing transitional maintenance periods for institutions which become subject to the ECB's reserve requirements on account of the adoption of the euro by the Member State in which they are located,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1745/2003 (ECB/2003/9) is amended as follows:

1. Article 2(2) and (3) are replaced by the following:

'2. Without being obliged to submit any request, an institution shall be exempted from reserve requirements from the start of the maintenance period in which its authorisation is withdrawn or renounced, or in which a decision to submit the institution to winding-up proceedings is taken by a judicial authority or any other competent authority of a participating Member State.

The ECB may exempt the following institutions from reserve requirements on a non-discriminatory basis:

(a) institutions subject to reorganisation measures;

(b) institutions subject to the freezing of funds and/or other measures imposed by the Community or a Member State under Article 60(2) of the Treaty restricting the use of their funds or a decision of the ECB's Governing Council suspending or excluding their access to open market operations or the Eurosystem's standing facilities;

(c) institutions for which the purpose of the ECB's minimum reserve system would not be met by imposing reserve requirements upon them. In reaching a decision on any such exemption, the ECB shall take into account one or more of the following criteria:

(i) the institution is authorised to pursue special-purpose functions only;

[1] OJ L 318, 27.11.1998, p. 1.
[2] OJ L 318, 27.11.1998, p. 4.
[3] OJ L 250, 2.10.2003, p. 10.

(ii) the institution is prohibited from exercising active banking functions in competition with other credit institutions;

(iii) the institution is under a legal obligation to have all its deposits earmarked for purposes relating to regional and/or international development assistance.

3. The ECB shall publish a list of institutions subject to reserve requirements. The ECB shall also publish a list of institutions exempt from its reserve requirements for reasons other than being subject to:

(a) reorganisation measures;

(b) the freezing of funds and/or other measures imposed by the Community or a Member State under Article 60(2) of the Treaty restricting the use of an institution's funds or a decision issued by the ECB's Governing Council suspending or excluding an institution's access to open market operations or the Eurosystem's standing facilities.

Institutions may rely on these lists when deciding whether their liabilities are owed to another institution that is itself subject to reserve requirements. These lists shall not be determinative of whether institutions are subject to reserve requirements in accordance with Article 2.'

2. Article 3(2) is replaced by the following:

'2. The following liabilities shall be excluded from the reserve base:

(a) liabilities which are owed to any other institution not listed as being exempt from the ECB's minimum reserve system according to Article 2(3);

(b) liabilities which are owed to the ECB or to a participating NCB.

In applying this provision, the institution shall provide evidence to the relevant participating NCB of the actual amount of its liabilities owed to any other institution not listed as being exempt from the ECB's minimum reserve system and of its liabilities which are owed to the ECB or to a participating NCB in order to exclude them from the reserve base. If such evidence cannot be presented for debt securities issued with an original maturity of up to and including two years, the institution may apply a standard deduction to the outstanding amount of its debt securities issued with an original maturity of up to and including two years from the reserve base. The amount of such standard deduction shall be published by the ECB in the same manner as the publication of the list referred to in Article 2(3).'

3. Article 4(1) is replaced by the following:

'1. A reserve ratio of 0 % shall apply to the following liability categories (as defined within the ECB's reporting framework for money and banking statistics in Regulation (EC) No 2423/2001 (ECB/2001/13)):

(a) deposits with agreed maturity over two years;

(b) deposits redeemable at notice over two years;

(c) repos;

(d) debt securities issued with an original maturity over two years.'

4. Article 11 is replaced by the following:

'Article 11

Reserve holding on a consolidated basis

Institutions allowed to report statistical data regarding their consolidated reserve base as a group (as defined within the ECB's reporting framework for money and banking statistics in Regulation (EC) No 2423/2001 (ECB/2001/13) shall hold minimum reserves through one of the institutions in the group which is acting as intermediary exclusively for these institutions and in accordance with the provisions in Article 10. On receiving authorisation from the ECB to carry out statistical reporting regarding the consolidated reserve base for the institutions in the group, the institution acting as the intermediary for the group shall automatically be exempted from the provisions in Article 10(6) and only the group as a whole shall be entitled to receive the allowance referred to in Article 5(2).'

5. The following Article 13a is inserted:

'Article 13a

Euro area enlargement

1. The ECB's Governing Council delegates power to the ECB's Executive Board to decide, in cases when a Member State adopts the euro in accordance with the Treaty on the following matters, after taking into consideration the views of the Market Operations Committee of the ESCB, as applicable:

(a) the dates of the transitional maintenance period for the application of minimum reserve requirements to institutions located in that Member State, with the initial date being the date of the adoption of the euro in that Member State;

(b) the manner of calculation of the reserve base for the purposes of determining the level of minimum reserves required to be held by institutions located in the Member State adopting the euro during the transitional maintenance period taking into account the ECB's reporting framework for money and banking statistics as laid down in Regulation (EC) No 2423/2001 (ECB/2001/13); and

(c) the time limit by which the calculation and verification of the minimum reserves is to be carried out by the institutions located in the Member State adopting the euro and their national central bank in respect of the transitional maintenance period.

The Executive Board shall publish a statement on its decision at least two months before the date of the adoption of the euro in that Member State.

2. The Governing Council of the ECB further delegates to the Executive Board of the ECB the power to authorise institutions located in other participating Member States to deduct from their reserve base for the maintenance periods coinciding with and succeeding the transitional maintenance period any liabilities owed to institutions located in the Member State adopting the euro even though at the time the minimum reserves are calculated such institutions do not appear on the list of institutions subject to reserve requirements in Article 2(3). In this event, the decisions issued by the Executive Board of the ECB under this paragraph may further specify the manner in which the deduction of such liabilities shall be carried out.

3. Any decision issued by the Executive Board under paragraphs 1 and 2 shall be promptly notified to the Governing Council of the ECB, and the Executive Board of the ECB shall abide by any decision adopted by the Governing Council of the ECB thereon.'

Article 2

Final provision

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

Done at Frankfurt am Main, 22 October 2008.

For the Governing Council of the ECB
The President of the ECB
Jean-Claude TRICHET