

CHAPTER 2

ELIGIBLE COUNTERPARTIES

2.1. General eligibility criteria

Counterparties for Eurosystem monetary policy operations must fulfil certain eligibility criteria ⁽⁶⁾. These criteria are defined with a view to giving a broad range of institutions access to Eurosystem monetary policy operations, enhancing equal treatment of institutions across the euro area and ensuring that counterparties fulfil certain operational and prudential requirements:

⁽⁶⁾ For outright transactions, no restrictions are placed a priori on the range of counterparties.

- (a) Only institutions subject to the Eurosystem's minimum reserve system according to Article 19.1 of the Statute of the ESCB are eligible to be counterparties. Institutions which are exempt from their obligations under the Eurosystem's minimum reserve system (see Section 7.2) are not eligible to be counterparties to Eurosystem standing facilities and open market operations.
- (b) Counterparties must be financially sound. They should be subject to at least one form of harmonised Union/EEA supervision by national authorities⁽⁷⁾. In view of their specific institutional nature under Union law, financially sound institutions within the meaning of Article 123(2) of the Treaty that are subject to supervision of a standard comparable to supervision by competent national authorities can be accepted as counterparties. Financially sound institutions that are subject to non-harmonised supervision by competent national authorities of a standard comparable to harmonised Union/EEA supervision can also be accepted as counterparties, e.g. branches established in the euro area of institutions incorporated outside the EEA.
- (c) Counterparties must fulfil any operational criteria specified in the relevant contractual or regulatory arrangements applied by the respective NCB (or the ECB), so as to ensure the efficient conduct of Eurosystem monetary policy operations.

These general eligibility criteria are uniform throughout the euro area. Institutions fulfilling the general eligibility criteria may:

- (a) access the Eurosystem's standing facilities; and
- (b) participate in Eurosystem open market operations that are based on standard tenders.

An institution may access the Eurosystem's standing facilities and open market operations based on standard tenders only through the NCB of the Member State in which it is incorporated. If an institution has establishments (its head office or branches) in more than one Member State, each establishment has access to these operations through the NCB of the Member State in which it is established, notwithstanding the fact that the bids of an institution may only be submitted by one establishment (either the head office or a designated branch) in each Member State.

2.2. Selection of counterparties for quick tenders and bilateral operations

For outright transactions, no restrictions are placed a priori on the range of counterparties.

For foreign exchange swaps executed for monetary policy purposes, counterparties must be able to conduct large-volume foreign exchange operations efficiently under all market conditions. The range of counterparties to foreign exchange swaps corresponds to the counterparties established in the euro area which are selected for Eurosystem foreign exchange intervention operations. The criteria and procedures applied for the selection of counterparties to foreign exchange intervention operations are presented in Appendix 3.

For other operations based on quick tenders and bilateral procedures (fine-tuning reverse transactions and the collection of fixed-term deposits), each NCB selects a set of counterparties from among the institutions established in its Member State which fulfil the general counterparty eligibility criteria. In this respect, activity in the money market is the prime selection criterion. Other criteria which might be taken into account are, for example, the efficiency of the trading desk and the bidding potential.

In quick tenders and bilateral operations, the NCBs deal with the counterparties which are included in their respective set of fine-tuning counterparties. Quick tenders and bilateral operations may also be executed with a broader range of counterparties.

The Governing Council of the ECB can decide that, under exceptional circumstances, fine-tuning bilateral operations may be carried out by the ECB itself. If the ECB were to carry out bilateral operations, the selection of counterparties would in such cases be made by the ECB according to a rotation scheme among those counterparties in the euro area which are eligible for quick tenders and bilateral operations in order to ensure equitable access.

2.3. Sanctions in the event of non-compliance with counterparty obligations

The ECB shall impose sanctions, in accordance with Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions⁽⁸⁾, Regulation (EC) No 2157/1999 of the European Central Bank of 23 September 1999 on the powers of the European Central Bank to impose sanctions (ECB/1999/4)⁽⁹⁾, Council Regulation (EC) No 2531/98 of 23 November 1998 concerning the application of minimum reserves by the European Central Bank⁽¹⁰⁾ and Regulation (EC) No 1745/2003 of the

⁽⁷⁾ Harmonised supervision of credit institutions is based on Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (OJ L 177, 30.6.2006, p. 1).

⁽⁸⁾ OJ L 318, 27.11.1998, p. 4.

⁽⁹⁾ OJ L 264, 12.10.1999, p. 21.

⁽¹⁰⁾ OJ L 318, 27.11.1998, p. 1.

European Central Bank of 12 September 2003 on the application of minimum reserves (ECB/2003/9) ⁽¹⁾, on institutions which do not comply with obligations arising from ECB Regulations and Decisions relating to the application of minimum reserves. The relevant sanctions and the procedural rules for their application are specified in the abovementioned Regulations. In addition, in the case of serious infringements of the minimum reserve requirements, the Eurosystem may suspend counterparties' participation in open market operations.

In accordance with the provisions of the contractual or regulatory arrangements applied by the respective NCB (or by the ECB), the Eurosystem can and will impose financial penalties on counterparties, or suspend counterparties' participation in open market operations, if counterparties fail to comply with their obligations under the contractual or regulatory arrangements applied by the NCBs (or by the ECB) as set out below.

This relates to cases of infringement of: (a) tender rules, if a counterparty fails to transfer a sufficient amount of underlying assets or cash ⁽¹²⁾ to settle (at the settlement day), or to collateralise, until the maturity of the operation by means of corresponding margin calls, the amount of liquidity it has been allotted in a liquidity-providing operation, or if it fails to transfer a sufficient amount of cash to settle the amount it has been allotted in a liquidity-absorbing operation; and (b) bilateral transaction rules, if a counterparty fails to transfer a sufficient amount of eligible underlying assets, or if it fails to transfer a sufficient amount of cash to settle the amount agreed in bilateral transactions, or if it fails to collateralise an outstanding bilateral transaction at any time until its maturity by means of corresponding margin calls.

This also applies to cases of non-compliance by a counterparty with: (a) the rules for the use of underlying assets (if a counterparty is using assets which are or have become ineligible, or which may not be used by the counterparty, e.g. owing to close links between, or the identity of, issuer/guarantor and counterparty); and (b) the rules for end-of-day procedures and access conditions for the marginal lending facility (if a counterparty which has a negative balance on the settlement account at the end of the day does not fulfil the access conditions for the marginal lending facility).

In addition, a suspension measure taken vis-à-vis a non-complying counterparty may be applied to branches of the same institution established in other Member States. Where, as an exceptional measure, this is required on account of the seriousness of a case of non-compliance, as evidenced by its frequency or duration, for instance, a counterparty may be suspended from all future monetary policy operations for a certain period of time.

Financial penalties imposed by NCBs in the event of non-compliance in relation to a breach of the rules concerning tender operations, bilateral transactions, underlying assets, end-of-day procedures or the access conditions to the marginal lending facility are calculated at a pre-specified penalty rate (as set out in Appendix 6).

2.4. Possible measures on the grounds of prudence or following an event of default

2.4.1. Measures on the grounds of prudence

The Eurosystem may take the following measures on the grounds of prudence:

- (a) in accordance with the contractual or regulatory arrangements applied by the respective NCB or by the ECB, the Eurosystem may suspend, limit or exclude an individual counterparty's access to monetary policy instruments;
- (b) the Eurosystem may reject, limit the use of or apply supplementary haircuts to assets submitted as collateral in Eurosystem credit operations by specific counterparties.

2.4.2. Measures following the event of default

The Eurosystem may suspend, limit or exclude access to monetary policy operations with regard to counterparties that are in default pursuant to any contractual or regulatory arrangements applied by the NCBs.

2.4.3. Proportionate and non-discriminatory application of discretionary measures

All discretionary measures required to ensure prudent risk management are applied and calibrated by the Eurosystem in a proportionate and non-discriminatory manner. Any discretionary measure taken vis-à-vis an individual counterparty will be duly justified.