



EUROPEAN CENTRAL BANK
EUROSYSTEM

**MEMORANDUM OF UNDERSTANDING
ON AN INTRA-ESCB DISPUTE SETTLEMENT PROCEDURE**

The European Central Bank (hereinafter referred to as 'the ECB'),

Българска народна банка (Bulgarian National Bank),

Banque Nationale de Belgique/Nationale Bank van België,

Česká národní banka,

Danmarks Nationalbank,

Deutsche Bundesbank,

Eesti Pank,

Bank of Greece,

Banco de España,

Banque de France,

Central Bank and Financial Services Authority of Ireland,

Banca d'Italia,

Central Bank of Cyprus,

Latvijas Banka,

Lietuvos bankas,

Banque centrale du Luxembourg,

Magyar Nemzeti Bank,

Central Bank of Malta,

De Nederlandsche Bank,

Oesterreichische Nationalbank,

Narodowy Bank Polski,

Banco de Portugal,

Banca Națională a României,

Banka Slovenije,

Národná banka Slovenska,

Suomen Pankki,

Sveriges Riksbank, and

Bank of England

(hereinafter collectively referred to as 'NCBs')

Whereas the parties to this Memorandum of Understanding are the ECB and the NCBs which compose the European System of Central Banks (ESCB) and as such have legal relationships which require that any ESCB-related disputes which might arise between them should be settled, wherever possible, by agreement, and in particular that parties to any such dispute should in this respect take all reasonable steps to resolve their disputes amicably before having recourse to the Court of Justice of the European Communities (hereinafter referred to as the 'ECJ') or to any national court of justice;

Whereas the parties to this Memorandum of Understanding have identified a need for an arrangement to assist in solving any disputes which might arise between them, in particular in view of the sensitivity of the public and the financial markets regarding any possible court proceedings between the parties;

Whereas the provisions of this arrangement draw upon specialist knowledge, expertise and experience, grant privacy and confidentiality and at the same time ensure consistency, procedural flexibility and rapidity, as well as professional independence;

Whereas the provisions of this arrangement are in particular without prejudice to the jurisdiction of the ECJ to review or interpret the acts or omissions of the ECB as set out in Articles 230 and 234 (b) of the Treaty establishing the European Community (hereinafter referred to as the "Treaty") and in Article 35.1 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the 'Statute') and to render decisions in disputes concerning the fulfilment by an NCB of obligations under the Treaty and the Statute in accordance with Article 237 (d) of the Treaty and Article 35.6 of the Statute;

HAVE AGREED UPON THIS MEMORANDUM OF UNDERSTANDING:

1. Nature and purpose of this Memorandum of Understanding

- 1.1 The procedure set out in this arrangement shall be adopted as a preliminary aid to assist in the resolution of intra-ESCB disputes.
- 1.2 The following intra-ESCB disputes may be referred to an Independent Panel established in accordance with this Memorandum of Understanding:
 - a) disputes between two or more NCBs;
 - b) disputes between the ECB and one or more NCBs arising in the context of:

- agreements to which both the ECB and the NCBs are party, in particular in the context of the CCBM agreements, the TARGET Agreement, the TARGET 2 Agreement without prejudice to TARGET II Guideline, and the ERM II agreements;
- the operation of the TARGET and TARGET2 where the ECB is in the position of a user of the system;
- the conduct by the ESCB of foreign exchange operations, the holding and management by the ESCB of the official foreign reserves of the Member States, and the management of foreign reserve assets transferred to the ECB

2. Establishment of an Independent Panel

- 2.1 The provisions of this arrangement shall be invoked by the serving of written notice by one party to this arrangement on one or more other parties: (i) stating that an intra-ESCB dispute has arisen that is to be subject to the procedures set out in this arrangement; (ii) identifying the nature of and other parties to the dispute; and (iii) nominating the panellist appointed by the party serving the notice in accordance with 2.3 and 2.5 below. A copy of the notice shall be sent to the President of the ECB.
- 2.2 Within two weeks of receipt of a notice under 2.1 above, the recipients shall serve a counter-notice nominating the panellists under 2.3 and 2.5 below, with a copy sent to the President of the ECB. If the other recipients neither serve such a counter-notice nor notify the President of the ECB that they consider that the matter should be brought to the ECJ or to a national court, the President of the ECB shall within one further week make the appointments on their behalf.
- 2.3 Every Independent Panel shall consist of one member appointed by the President or by the Governor of each party to the dispute and one member (or two members, if this is necessary to achieve an Independent Panel with an odd number of members) appointed jointly by the other members appointed under this provision. This last member shall act as chairperson of the Independent Panel (or, if there are two members appointed under this provision, shall choose for themselves which member is to act as chairperson).
- 2.4. A list maintained by the President of the ECB shall contain the names and professional résumés of persons eligible for appointment to an Independent Panel. Such a list of legal experts is to be

established and subsequently supplied from time to time to the President of the ECB, as a rule, by each NCB and the ECB, and each NCB and the ECB shall provide a reasonably limited number of such names. All such persons shall have expressed their willingness in writing to be so included and to be empanelled from time to time in accordance with the terms of this arrangement. They shall be chosen from among legal experts who are in the employ of, or, as an exception, who regularly provide legal advice to, the appointing entity, and who are familiar with ESCB-related legal documentation. Only nationals of the Member States of the European Union may be included in the list.

- 2.5 Members of an Independent Panel shall be appointed from among those named on the list referred to in the preceding paragraph. No individual may be appointed as a member of an Independent Panel if he/she is currently in the employ of, or has been in the employ of, or provides regular legal assistance to, any party to the dispute. Neither having been temporarily seconded to the ECB Legal Services, nor having provided regular legal advice to the ECB as a member of an ESCB Committee or sub-group thereof, shall be in itself an obstacle to appointment to an Independent Panel by the ECB.

3. Conduct of panellists

- 3.1 The aim of an Independent Panel appointed under this arrangement shall be to contribute to the fair and legal resolution of any dispute, within the shortest time commensurate with the nature of the dispute and the wishes of the parties to the dispute and consistently with the terms of the relevant agreement or act forming the subject of the dispute. As a rule, any procedure should be completed within a maximum time frame of six months as from its initiation.
- 3.2 Each person proposed for appointment as a member of an Independent Panel shall, before accepting any such appointment, confirm in writing that he or she has no conflict of interest and that his or her impartiality and independence are not likely to be compromised by any matters arising from the dispute. They shall commit themselves neither to seek nor take instructions from any body, and the NCB and ECB undertake reciprocally not to influence in any manner their activity as members of an Independent Panel. Members of an Independent Panel shall not act as representatives of the institution that employs them, nor consider any criteria that are not based on their professional expertise and personal judgement.

3.3 No member of the Independent Panel shall be liable for anything done or omitted to be done in the discharge or purported discharge of his or her functions unless the act or omission is shown to have occurred in bad faith.

3.4 Appointed panellists shall confirm in writing their acceptance of all relevant obligations to ensure the maintenance of confidentiality. The parties to the dispute shall take all reasonable bona fide steps to ensure that appointed panellists receive all documents and information necessary for the Independent Panel concerned to discharge its function, and the parties to this arrangement hereby waive any rights of confidentiality in that regard which they may have in relation to each other.

4. Proceedings of the Independent Panel

4.1 Immediately upon appointment, and before any further steps are taken, the chairperson of the Independent Panel shall agree with all parties to the dispute on how the costs, fees and other expenses that the Independent Panel may incur in the course of its duties are to be met. Should such an agreement fail to be settled within a short time frame, the President of the ECB shall decide.

4.2 Every Independent Panel shall, in each case, adopt the most appropriate procedure to achieve a just, speedy and efficient contribution to resolving the dispute, and shall abide by common principles of civil procedure, namely, the principles of impartiality, contradiction, equality and the right to be heard. To that end it shall give each party a reasonable opportunity to present its case and to call on appropriate technical support, and deal with the case of its opponent including, if any party to the dispute so requests or the Independent Panel so decides, the opportunity for an oral hearing for the presentation of evidence and lines of argument.

4.3 Within the framework of the procedural rules, the parties to the dispute may agree on any specific procedure (including an adjournment of the procedure for the purpose of conducting bilateral negotiations). The Independent Panel may, where necessary, determine specific procedures, including in particular all matters related to all kinds of evidence, including the calling of witnesses and the assistance of technical experts. All hearings of the Independent Panel, unless otherwise agreed by the parties to the dispute, shall take place in a convenient location within the European Union to be fixed by the Independent Panel. The Independent Panel may use video and/or teleconferencing facilities for its hearings, as it sees fit, except for the taking of evidence.

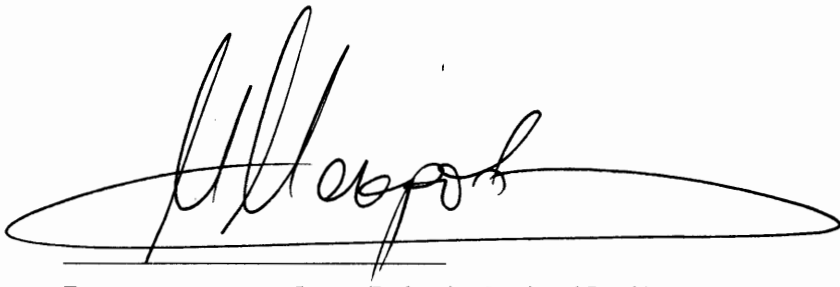
- 4.4 The proceedings of the Independent Panel shall be confidential to the parties concerned. However, the parties to a dispute may agree to open the files of the dispute, or the recommendation for its settlement, to ESCB members, in which case the latter shall be bound by the same confidentiality obligation.
- 4.5 The proceedings of the Independent Panel may be in whatever language is agreed between the parties to the dispute and the Independent Panel; failing such agreement, the language shall be English. The Independent Panel may make whatever arrangements it deems fit for secretarial (including linguistic) support. The ECB shall stand ready to provide secretarial support as requested.
- 4.6 The Independent Panel shall give the ECB the opportunity to submit observations within a reasonable time where the interests of the ESCB as a whole are affected by the dispute and provided that: (i) the ECB is not itself party to the dispute, and (ii) no conflict of interests arises. ECB observations shall be without prejudice to the contents of a reasoned opinion that the ECB may wish to issue under Article 237 (d) of the Treaty and Article 35.6 of the Statute.
- 4.7 At the end of the procedure, the Independent Panel shall deliver a recommendation, in writing and within one month as from the last procedural step, and shall state the reasoning upon which it is based. The recommendation shall be in the language chosen by the Independent Panel and shall also be rendered in English. Any recommendation may be made by a majority of panellists. A copy shall be presented to the President of the ECB.
- 4.8 The recommendation of the Independent Panel shall not be binding upon the parties. The Independent Panel shall not place any restrictions on the ability of any of the parties to adduce the opinion in evidence in any court of law. The Independent Panel may, in the body of its recommendation or as an annex to it, give its recommendation as to the most equitable allocation of costs.

5. Entry into force

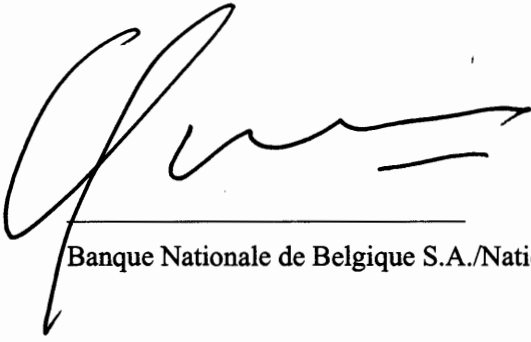
- 5.1 This Memorandum of Understanding will enter into force on 1 May 2007 and will replace the Memorandum of Understanding on an intra-ESCB dispute settlement procedure of 18 March 2004.
- 5.2 References made to the Memorandum of Understanding of 18 March 2004 shall be read as references to this Memorandum of Understanding.
- 5.3 This Memorandum of Understanding is executed in 1 original copy, in Frankfurt am Main, on 26 April 2007. The ECB, which is required to retain the original, will send a certified copy of the Memorandum of Understanding to each of the parties.



The European Central Bank



Българска народна банка (Bulgarian National Bank)

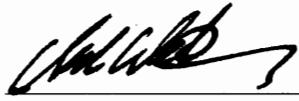
A handwritten signature in black ink, consisting of a large, stylized initial 'P' followed by several loops and a horizontal line at the end. A horizontal line is drawn below the signature, extending from the left side of the 'P' towards the right.

Banque Nationale de Belgique S.A./Nationale Bank van België N.V.



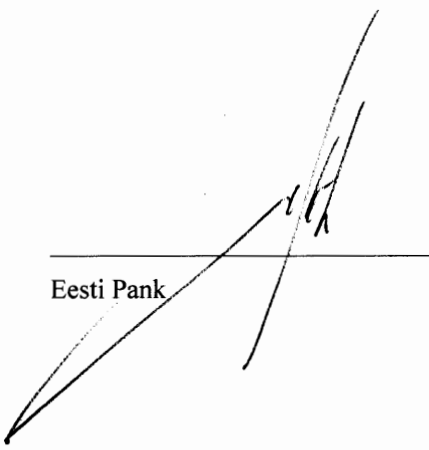
Česká národní banka

Nielsen
Danmarks Nationalbank

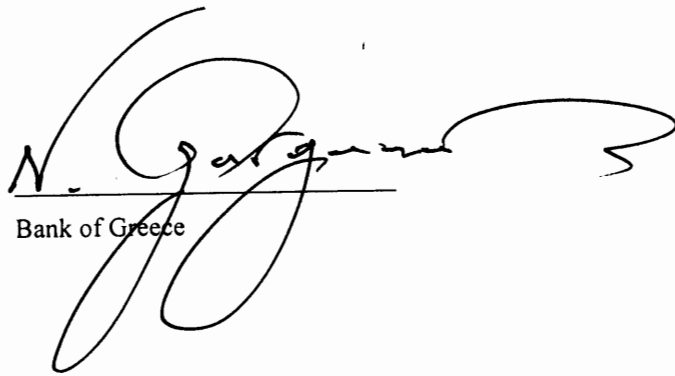
A stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

Deutsche Bundesbank

A handwritten signature in black ink that reads "Frank H. Viel" in a cursive script.

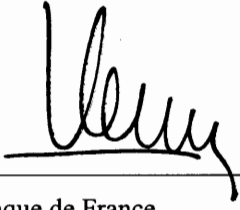


Eesti Pank


Bank of Greece

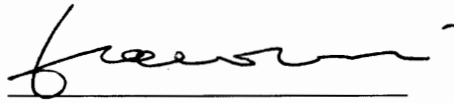
Mlle.

Banco de España


A handwritten signature in black ink, consisting of several stylized, overlapping loops and curves, positioned above a horizontal line.

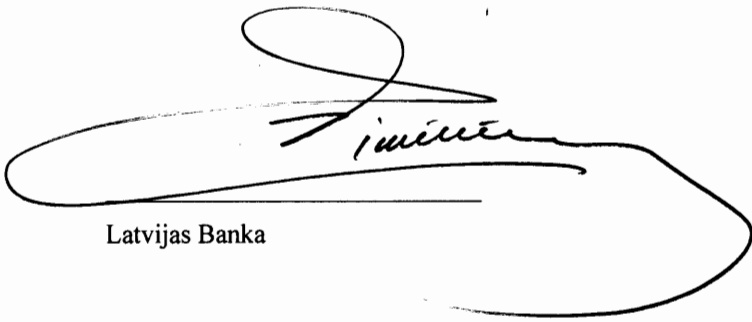
Banque de France


Central Bank and Financial Services Authority of Ireland

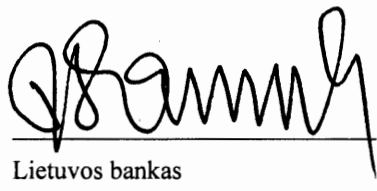
A handwritten signature in black ink, appearing to be 'Francesco', written over a horizontal line.


Banca d'Italia


Central Bank of Cyprus

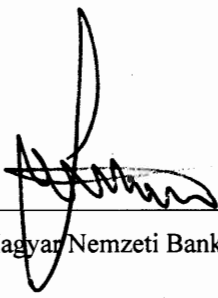
A large, stylized handwritten signature in black ink, featuring a prominent loop at the top and a long horizontal stroke at the bottom.

Latvijas Banka


Lietuvos bankas



Banque centrale du Luxembourg



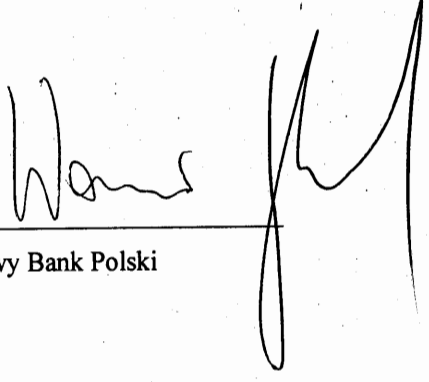
Magyar Nemzeti Bank


Central Bank of Malta

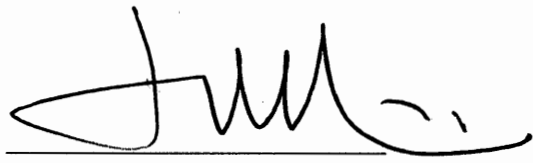
A handwritten signature in black ink, consisting of a large initial 'O' followed by a cursive 'M' and a long, sweeping horizontal stroke that ends in a small upward curve.

De Nederlandsche Bank


Österreichische Nationalbank

A handwritten signature in black ink, consisting of a cursive 'W' followed by a stylized 'M'.

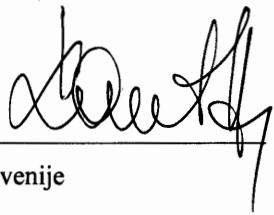
Narodowy Bank Polski

A handwritten signature in black ink, consisting of a large initial 'J' followed by several loops and a final flourish.

Banco de Portugal

Muznicărescu

Banca Națională a României

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

Banka Slovenije

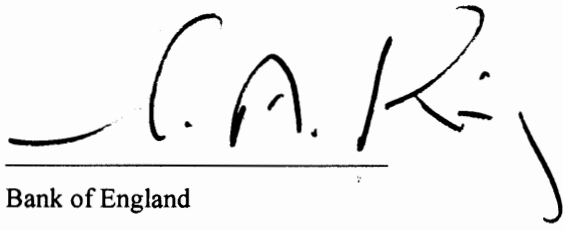


Národná banka Slovenska

A handwritten signature in black ink, appearing to be 'E. M. L.', written in a cursive style.

Suomen Pankki


Sveriges Riksbank


Bank of England