



ANNEXE 11

MASTER FOREIGN EXCHANGE SWAP AGREEMENT

for use in Monetary Policy Operations

Between:

and

Banque centrale du Luxembourg, _____

boulevard Royal 2 _____

L-2983 Luxembourg _____

(hereafter “the Central Bank”)

(hereafter the “Counterparty”)

1. Nature of the Agreement

(a) In the context of monetary policy operations the parties hereto may enter into transactions in which one party hereto (“Party A”) agrees to exchange an amount of euro (the “Euro Amount”) with the other party (“Party B”) against an amount agreed in another currency (the “Foreign Currency”), with a simultaneous agreement to reverse the transaction at a specified future date. The two amounts in Foreign Currency shall, respectively, be determined by application of the Spot Rate and the Forward Rate to the Euro Amount.

(b) Each such transaction shall be referred to herein as a “Transaction” and the parties shall be governed by the terms of this Agreement and the General Terms and Conditions of the Central Bank.

(c) Each party acknowledges that all Transactions hereunder, constitute a single business and contractual relationship and are made in consideration of each other and that it has entered into each Transaction hereunder in consideration of and reliance upon such acknowledgement. Accordingly, each party agrees (i) to perform all of its obligations in respect of each Transaction hereunder and that, subject to any express intent to the contrary contained herein, a failure to perform any such obligation shall constitute a failure by it to perform in respect of all Transactions, and (ii) that payments and transfers made by either party in respect of any Transaction shall be deemed to have been made in consideration of payments and transfers in respect of all other Transactions hereunder.

2. Definitions

(a) “*Default Notice*” means a written notice served by the Central Bank on the Counterparty under clause 5 stating that an event shall be treated as an Event of Default for the purposes of this Agreement, which notice becomes effective immediately in accordance with clause 5 unless the Central Bank has provided for a period of up to a maximum of three

days on which the Central Bank is open during which the Counterparty may rectify the Event of Default to the satisfaction of the Central Bank in which latter case, if such rectification does not occur, the Event of Default shall be deemed to occur upon the expiration of such period.

(b) “*Default Rate*” means the legal interest rate applicable in Luxembourg.

(c) “*Foreign Currency*” means any lawful currency other than the euro.

(d) “*Forward Rate*” means, in relation to a specific Transaction, the rate applied to convert the Euro Amount into such amount in the Foreign Currency as Party A shall be obliged to transfer to Party B at the Retransfer Date against payment of the Euro Amount and which rate shall be set out in the Confirmations.

(e) “*Indemnifiable Tax*” means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under or enforced this Agreement).

(f) “*Retransfer Date*” means, with respect to any Transaction, the date (and where appropriate the time on that date) when Party B is to retransfer the Euro Amount to Party A.

(g) “*Retransfer Foreign Currency Amount*” means such amount of Foreign Currency as is required to purchase the Euro Amount as at the Retransfer Date.

(h) “*Spot Rate*” means, in relation to a specific Transaction, the rate applied to convert the Euro Amount into such amount in the Foreign Currency relevant for that Transaction as Party B shall be obliged to transfer to Party A at the Transfer Date (the “*Transfer Amount*”) against payment of the Euro Amount and which rate shall be set out in the Confirmations.

(i) “*Tax*” means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

(j) “*Transfer Date*” means, with respect to any Transaction, the date (and where appropriate the time on that date) when the transfer of the Euro Amount by Party A to Party B

is to become effective, which for the avoidance of doubt shall be the date (and where appropriate the time on that date) when the parties have agreed settlement of a transfer of the Euro Amount shall occur.

3. Initiation, Confirmation and Payment Arrangements

(a) A Transaction may be entered into solely at the initiation of the Central Bank and through such formalities as may be specified from time to time according to the relevant provisions of the General Terms and Conditions of the Central Bank (notably Part Two, Title I, Chapter 3 and Part Two, Title III of Guideline ECB/2014/60), which formalities shall include the delivery by both parties of a written confirmation (including by electronic means) of the Transaction (“Confirmations”) in the form and manner specified hereafter (clause 6).

The Confirmations relating to a Transaction shall, together with this Agreement, constitute evidence of the terms agreed between Party A and Party B for that Transaction, unless objection is made promptly with respect to a Confirmation after receipt thereof.

In the event of any conflict between the terms of the Confirmations and this Agreement, the Confirmations shall prevail in respect of that Transaction only.

Confirmations constitute a supplement to and forms part of this Agreement and shall be construed as one with this Agreement and shall form part of a single contractual arrangement.

(b) Payments under this Agreement shall be made on the due date and for value on that date in the place of the account specified in the relevant Confirmations or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency.

(c) Each obligation of the Central Bank to pay any amount due under clause 3(b) above is subject to no Event of Default nor any of the facts set out in clause 5(i), (ii) (aa) to (hh) or (iii) with respect to the Counterparty having occurred which is continuing.

(d) Any obligation to make payments in a particular currency will not be discharged or satisfied by any tender in any other currency.

(e) Unless otherwise agreed all payments under this Agreement shall be made gross and without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is required to deduct or withhold any sum from any payment under this Agreement, then that party (“X”) shall:

- (i) promptly notify the other party (“Y”) of such requirement;
 - (ii) promptly, upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y, pay the relevant authorities the full amount required to be deducted or withheld (including any amount required to be deducted or withheld from additional amounts paid by X to Y under this clause);
 - (iii) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such deduction or withholding;
 - (iv) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required.
- (f) A payment after payment procedure will be applied. On the settlement date, the Counterparty is required to pay an amount in the agreed currency (“the Currency Amount”) to the Central Bank. On receipt, the Central Bank will proceed to the payment of the corresponding amount in the relevant currency (“the Corresponding Amount”) as soon as possible thereafter. On the maturity date, the Counterparty is required to pay back the Corresponding Amount to the accounts of the Central Bank. On receipt, the Central Bank will transfer the Currency Amount to the Counterparty.
- g) A party that defaults in the payment of any amount due under this Agreement shall pay interest on such amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate.

4. Netting

If on any date amounts would otherwise be payable under this Agreement in the same currency by each party to the other, then the sums due from one party shall be set off against the sums due to the other and only the net balance shall be payable by the party required to pay the larger amount to the other party and the payment of the net balance shall satisfy and discharge the obligations to make payments of all such amounts.

5. Events of Default

(a) If any or any combination of the events set out respectively in (i), (ii) or (iii) below, or any event as provided for in the Central Bank's General Terms and Conditions (specifically Clauses 1.13 and 1.14), occur in relation to the Counterparty, an Event of Default shall be considered to have occurred and the provisions in sub-clauses (b) and (c) below shall apply:

- (i) a decision is made by a competent judicial or the authority to implement in relation to the Counterparty a procedure for winding-up of or the appointment of a liquidator or analogous officer over the Counterparty or any other analogous procedure; or
- (ii) (aa) a decision is made by a competent judicial or other authority to implement in relation to the Counterparty a reorganisation measure or other analogous procedure intended to safeguard or restore the financial situation of the Counterparty and to avoid the making of a decision of the kind referred to in (i) above; or

(bb) a declaration 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 this Agreement, or a voluntary general agreement or arrangement entered into by it with its creditors, or the Counterparty is, or is deemed to be, insolvent or is deemed to be unable to meet its debts; or

(cc) procedural steps preliminary to a decision being taken under (i) (aa) or (i) (bb) above; or

(dd) the failure by the Counterparty to make, when due, any payment under this Agreement or under any Transaction hereunder; or

(ee) the Counterparty's authorisation to conduct activities under either 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 (recast)¹ as implemented or 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/EEC² as implemented, is suspended or revoked; or

¹ OJ L 177, 30.6.2006, p. 1

² OJ L 145, 30.4.2004, p. 1.

(ff) the Counterparty is suspended or expelled from membership of any payment system or arrangement through which payments under this Agreement are made; or,

(gg) measures such as those which are referred to in Articles 29-37 of the 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 (recast) are taken against the Counterparty; or

(hh) an event of default occurs in relation to the Counterparty in any agreement with the European Central Bank, the National Central Bank or any other central bank of the European System of Central Banks arising out of any agreement;

(ii) the Counterparty becomes subject to the freezing of funds and/or other measures imposed by the Community restricting the Counterparty's ability to use its funds; or

(jj) the Counterparty becomes subject to the freezing of funds and/or other measures imposed by a Member State under Article 60(2) of the Treaty restricting the Counterparty's ability to use its funds; or

(kk) all or a substantial part of the Counterparty's assets are subject 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; or

(ll) all or a substantial part of the Counterparty's assets are assigned to another entity; or any other impending or existing event the occurrence of which may threaten the performance by the Counterparty of its obligations under the arrangement it entered into for the purpose of effecting monetary policy operations or any other rules applying to the relationship between the Counterparty and any of the central banks of the Eurosystem; or

(mm) and the Central Bank serves a Default Notice on the Counterparty; or

(iii) the Counterparty fails to perform any other of its obligations hereunder and (if capable of remedy) does not remedy such failure within 10 days after notice is given by the Central Bank requiring it to do so, and the Central Bank subsequently serves a Default Notice on the Counterparty.

(b) If an Event of Default has occurred the Central Bank shall be deemed to have immediately terminated each Transaction hereunder and, subject to the following provisions, the performance of all payment obligations of the parties including their respective obligations concerning the retransfer of the Euro Amount and of the transfer of the

Retransfer Foreign Currency Amount shall be effected only in accordance with the provisions of (c) below.

- (c) (i) The Replacement Values of the Euro Amount and the Retransfer Foreign Currency Amount shall be established by the Central Bank for each outstanding Transaction on the basis that such replacement values shall be represented by such amounts as would be necessary to preserve for the Central Bank the economic equivalent of any payments by the parties that would have been required on the Retransfer Date if the Transactions hereunder had not been terminated; and
- (ii) on the basis of the sums so established, a calculation shall be made by the Central Bank (as at the Retransfer Date) of what is due from each party to the other under this Agreement and the sums due from one party shall be converted, where necessary, into euro and set off against the sums due to the other and only the net balance shall be payable by the party having the claim thereby valued at the lower amount and such net balance shall be due and payable on the next following day on which all relevant parts of TARGET2 are operational to effect such a payment.
- (d) Following the occurrence of an Event of Default, the Counterparty shall be liable to the Central Bank for the amount of all legal and other professional expenses incurred by the Central Bank in connection with or as a consequence of such Event of Default, together with interest thereon at the Default Rate.
- (e) The Counterparty shall be obliged to notify the Central Bank of the occurrence of any Event of Default or any of the facts set out in (ii) (aa) to (hh) above as soon as it is aware of such occurrence.
- (f) Following the occurrence of an Event of Default the Central Bank shall have, in addition to its rights hereunder, any rights otherwise available to it under any other agreement or applicable law.

6. Notices and Other Communications

- (a) Any notice including confirmations or other communications to be given under this Agreement may be given in writing, by facsimile transmission, certified or registered mail, or electronic messaging system and
- (i) shall be made through SWIFT;

(ii) shall be sent to the party to whom it is to be given at the address or facsimile number, or in accordance with the electronic messaging details, according to the provisions of the General Terms and Conditions of the Central Bank.

(b) Any such notice or other communication shall be effective -

- (i) if in writing and delivered in person or by courier, at the time when it is delivered;
- (ii) if sent by facsimile transmission, at the time when the transmission is received by a responsible employee of the recipient in legible form (it being understood that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iii) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), at the time when that mail is delivered or its delivery is attempted;
- (iv) if sent by electronic messaging system, at the time that electronic message is received;

except that any notice or communication which is received, or delivery of which is attempted, after close of business on the date of receipt or attempted delivery or on a day which is not a day on which the Central Bank is open shall be treated as having been given at the opening of the Central Bank on the next following day which is such a day.

(c) Either party may by notice to the other change the address, facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

(d) The parties agree that they each may electronically record all telephone conversations between them which relate to the operation of this Agreement.

7. Entire Agreement; Severability

This Agreement shall supersede any existing agreements between the parties containing general terms and conditions for Transactions. Each provision and agreement herein shall be treated as separate from any other provision or agreement herein and shall be enforceable notwithstanding the unenforceability of any such other provision or agreement.

8. Non-Assignability

The rights and obligations of the parties under this Agreement and under any Transaction shall not be assigned, charged or otherwise dealt with by the Counterparty without the prior written consent of the Central Bank.

9. Governing Law and Jurisdiction

In accordance with clauses 1.3 and 1.5 of the General Terms and Conditions of the Central Bank, this Agreement and each Transaction shall be governed by and construed in accordance with the laws of Luxembourg. For the benefit of the Central Bank, the Counterparty hereby irrevocably submits for all purposes of or in connection with this Agreement and each Transaction to the jurisdiction of the Courts of City of Luxembourg.

Nothing in this paragraph shall limit the right of the Central Bank to take proceedings in the courts of any other country of competent jurisdiction.

For the Counterparty :

Name _____

Name _____

Signature _____

Signature _____

Date _____

Date _____

For the Central Bank :

Name _____

Name _____

Signature _____

Signature _____

Date _____

Date _____