

Accounting Treatment of Repos: EU Regulation vs. National Regime.

1. Accounting treatment as set out by EU regulation

Article 12 of the Directive n°86/635 reformed by the Directive 2001/65/CE defines "sale and repurchase" operations as follows:

"Sale and Repurchase transactions shall mean transactions which involve the transfer by a credit institution or customer (the "transferor") to another credit institution or customer (the "transferee") of Assets for example bills, debts or transferable securities, subject to an agreement that the same assets will subsequently be transferred back to the transferor at a specified price."

Then a distinction is made between "genuine repos" and other repos (non-genuine repos). The definition given in article 12-1 is broad and takes into account those two types of transactions. Their accounting treatment is different.

1.1 Genuine repos (Art.12-2): The transferee undertakes to return the assets on a date specified or to be specified by the transferor.

Transferor: The assets continue to appear in the balance sheet of the transferor. The purchase price received by the transferor is treated as an amount owed to the transferee. Furthermore, the value of the Assets transferred shall be disclosed in a note in the Transferor's accounts. (art.12-4)

Transferee: The transferee shall not be entitled to show the Assets transferred in his Balance Sheet. The purchase price is shown as an amount owed by the transferor. (art. 12-4)

1.2 Non genuine repos (art.12-3): "The transferee is merely entitled to return the Assets at the purchase price or for a different amount agreed in advance on a date specified or to be specified" (sale with an option to repurchase)¹.

Transferor: He shall not be entitled to show in his Balance Sheet the Assets transferred. He shall enter under Off-Balance Sheet item 2 an amount equal to the price agreed in the event of repurchase.

Transferee: The Assets transferred shall be recorded in his Balance Sheet.

2. Accounting treatment given by the member states:

¹ The exact text of the article 12-3 is the following: *"If, however, the transferee is merely entitled to return the assets at the purchase price or for a different amount agreed in advance on a date specified or to be specified, the transaction in question shall be deemed to be a sale with an option to repurchase"*. Although this is not made entirely clear by this sentence, we think the option belongs to the transferor, who will be given the choice with regard to the exercise of the option and the date of repurchase.

It should be pointed out that due to the form of EFMLG repo questionnaire, it is likely that many of the following answers only cover "genuine repos", as defined by the above-mentioned Directive n°86/635. Indeed, the idea of a firm commitment was always assumed.

- Austria: Section 1, 2 and 3 of paragraph 50 of the Austrian Banking Act differentiate between genuine repos and non-genuine repos. **Austria gives them the same treatment as set out in the Directive.**
- Belgium:
Principle: **the securities remain in the Balance sheet of the transferor.**
Funds received by the transferor are recorded as a debt. The difference between the sale and repurchase price is treated as an interest paid on the debt and vice versa with regards to the balance sheet of the transferee (reverse repos). Both parties shall enter on their off balance sheet the collateral received and pledged.
Discrepancy from the Directive: the transferor does not have to disclose in his accounts a note on the value of the assets transferred. [further information required]
- Denmark: The underlying securities of the repo leg are kept in the accounts of the transferor. The underlying securities of the reverse leg are removed from the account of the transferee and exchanged for an equivalent amount of cash.
- England: **applies the same treatment to the repoed securities than the one suggested by the Directive for the genuine repos.** No further information is given with regards to the duty to disclose of the value of the assets transferred in the accounts of the transferor.
- Finland: as a repo transaction does not constitute a transfer of the securities, **they remain in the books of the seller.**
- France: applies the Directive. **Article L.432-19 of the Financial and Monetary Code treats the transactions that meet the conditions of articles L.432-12 to article L.432-19 of the Financial and Monetary Code in accordance with the directive.**
The transactions outside the scope of articles L.432-12 to L.432-19 of the French Financial and Monetary Code are not governed by these dispositions (BSB, open ended repos, fixed rate repos). [further information required]
- Germany: The accounting treatment for repos has not been defined yet. It is predominant view that the securities given will be shown in the transferor balance sheet (paragraph 340 b HGB). But tax authorities have not determined yet where the securities shall be shown in the given Balance Sheet. In case of open-ended repos, it has been decided that the securities have to be recorded in the transferee balance sheet. **Germany applies the Directive except with regards to the duty to disclose the value of the assets in the transferor's account.**
- Greece: **Article 117 of Law 2190/1920 implements article 12 of the Directive 86/635/CE above.**

- Italy: **Some dispositions of the bank of Italy and the European Directive 86/635/CE apply.** [further information required]
- Luxembourg: **applies the Directive.**
- Portugal: **Applies the Directive.**
- Spain: **No answer.** [further information required]
- Sweden: **All repos are accounted for as loan and deposits. The agreed repo rate is used to accruing interest over the life of the transaction.** [further information required]

Please note that accounting repos as loan and deposits (like Sweden and Belgium), the repo rate being treated as accrued interests, does not seem to infringe the Directive 86/635/CE, as long as the securities transferred stay in the transferor's account.