

EUROPEAN CENTRAL BANK

DECISION OF THE EUROPEAN CENTRAL BANK

of 6 October 2009

amending Decision ECB/2007/7 concerning the terms and conditions of TARGET2-ECB

(ECB/2009/22)

(2009/768/EC)

THE EXECUTIVE BOARD OF THE EUROPEAN CENTRAL BANK,

other technical and editorial improvements and clarifications; and (d) to delete provisions relating to migration to TARGET2 which no longer apply,

Having regard to the Treaty establishing the European Community, and in particular to the first and fourth indents of Article 105(2) thereof,

HAS DECIDED AS FOLLOWS:

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 11.6 and Articles 17, 22 and 23 thereof,

Article 1

Article 1(1)(c) of Decision ECB/2007/7 is replaced by the following:

Whereas:

'(c) supply settlement services to entities managing ancillary systems, including entities established outside the EEA, provided that they are subject to oversight by a competent authority, they comply with the oversight requirements for the location of infrastructures offering services in euro, as amended from time to time and published on the ECB website (*), and their access to TARGET2-ECB has been approved by the Governing Council.

(1) The European Central Bank (ECB) participates in TARGET2 in order to process its own payments and the payments of its customers in TARGET2, and to supply through TARGET2 settlement services to clearing and settlement organisations, including entities established outside the European Economic Area (EEA), provided that they are subject to oversight by a competent authority and their access to TARGET2-ECB has been approved by the Governing Council.

(*) The Eurosystem's current policy for the location of infrastructure is set out in the following statements, which are all available on the ECB website at www.ecb.europa.eu: (a) the "Policy statement on euro payment and settlement systems located outside the euro area" of 3 November 1998; (b) "The Eurosystem's policy line with regard to consolidation in central counterparty clearing" of 27 September 2001; (c) "The Eurosystem policy principles on the location and operation of infrastructures settling in euro-denominated payment transactions" of 19 July 2007; and (d) "The Eurosystem policy principles on the location and operation of infrastructures settling euro-denominated payment transactions: specification of "legally and operationally located in the euro area"" of 20 November 2008.'

(2) The Executive Board of the ECB adopted Decision ECB/2007/7 of 24 July 2007 concerning the terms and conditions of TARGET2-ECB ⁽¹⁾.

(3) Amendments should be made to Decision ECB/2007/7: (a) in view of the new release of the Single Shared Platform; (b) to clarify the specific oversight location principles that entities offering services in euro are required to comply with; (c) to reflect a number of

Article 2

The Annex to Decision ECB/2007/7 is amended in accordance with the Annex to this Decision.

⁽¹⁾ OJ L 237, 8.9.2007, p. 71.

*Article 3***Entry into force**

1. Article 1 of this Decision and paragraphs 1(a) and 2 of the Annex to this Decision shall enter into force on 23 October 2009.
2. The other provisions of this Decision shall enter into force on 23 November 2009.

Done at Frankfurt am Main, 6 October 2009.

The President of the ECB
Jean-Claude TRICHET

ANNEX

The Annex to Decision ECB/2007/7 is amended as follows:

(1) Article 1 is amended as follows:

(a) The definition of 'ancillary system' is replaced by the following:

— "ancillary system (AS)" means a system managed by an entity that is subject to supervision and/or oversight by a competent authority and complies with the oversight requirements for the location of infrastructures offering services in euro, as amended from time to time and published on the ECB website (*), in which payments and/or financial instruments are exchanged and/or cleared while the resulting monetary obligations are settled in TARGET2 in accordance with Guideline ECB/2007/2 and a bilateral arrangement between the ancillary system and the relevant CB.

(*) The Eurosystem's current policy for the location of infrastructure is set out in the following statements, which are all available on the ECB website at www.ecb.europa.eu: (a) the "Policy statement on euro payment and settlement systems located outside the euro area" of 3 November 1998; (b) "The Eurosystem's policy line with regard to consolidation in central counterparty clearing" of 27 September 2001; (c) "The Eurosystem policy principles on the location and operation of infrastructures settling in euro-denominated payment transactions" of 19 July 2007; and (d) "The Eurosystem policy principles on the location and operation of infrastructures settling euro-denominated payment transactions: specification of 'legally and operationally located in the euro area'" of 20 November 2008.'

(b) The definition of 'Banking Directive' is deleted.

(c) The definition of 'technical malfunction of TARGET2' is replaced by the following:

— "technical malfunction of TARGET2" means any difficulty, defect or failure in the technical infrastructure and/or the computer systems used by TARGET2-ECB, or any other event that makes it impossible to execute and complete the same-day processing of payments in TARGET2-ECB.'

(2) Article 4 is replaced by the following:

Article 4

Access criteria

Entities managing ancillary systems (including entities established outside the EEA) and acting in that capacity, whose access to TARGET2-ECB has been approved by the Governing Council, shall be the only entities that are eligible for participation in TARGET2-ECB.'

(3) Article 7 is amended as follows:

Paragraph 2 is replaced by the following:

'2. Unless otherwise requested by the participant, its BIC(s) shall be published in the TARGET2 directory.'

The following paragraph 5 is added:

'5. Participants acknowledge that the ECB and other CBs may publish participants' names and BICs.'

(4) Article 10(1) is replaced by the following:

'1. The ECB shall open and operate at least one PM account for each participant. Upon request by a participant acting as a settlement bank, the ECB shall open one or more sub-accounts in TARGET2-ECB to be used for dedicating liquidity.'

(5) The following Article 12(3) is inserted:

'3. The SSP determines the timestamp for the processing of payment orders on the basis of the time when it receives and accepts the payment order.'

(6) Article 13 is replaced by the following:

'Article 13

Priority rules

1. Instructing participants shall designate every payment order as one of the following:

- (a) normal payment order (priority class 2);
- (b) urgent payment order (priority class 1); or
- (c) highly urgent payment order (priority class 0).

If a payment order does not indicate the priority, it shall be treated as a normal payment order.

2. Highly urgent payment orders may only be designated by:

- (a) CBs; and
- (b) participants, in cases of payments to and from CLS International Bank and liquidity transfers in relation to ancillary system settlement using the Ancillary System Interface.

All payment instructions submitted by an ancillary system through the Ancillary System Interface to debit or credit the participants' PM accounts shall be deemed to be highly urgent payment orders.

3. Liquidity transfer orders initiated via the ICM are urgent payment orders.

4. In the case of urgent and normal payment orders, the payer may change the priority via the ICM with immediate effect. It shall not be possible to change the priority of a highly urgent payment order.'

(7) Article 15(4) is replaced by the following:

'4. After receipt of the reservation request the ECB shall check whether the amount of liquidity on the participant's PM account is sufficient for the reservation. If this is not the case, only the liquidity available on the PM account shall be reserved. The rest of the requested liquidity shall be reserved if additional liquidity becomes available.'

(8) The following Article 15a is inserted:

'Article 15a

Standing instructions for liquidity reservation and dedication of liquidity

1. Participants may predefine the default amount of liquidity reserved for highly urgent or urgent payment orders via the ICM. Such standing instruction or a change to such instruction shall take effect from the next business day.

2. Participants may predefine via the ICM the default amount of liquidity set aside for ancillary system settlement. Such standing instruction or a change to such instruction shall take effect from the next business day. Participants shall be deemed to have instructed the ECB to dedicate liquidity on their behalf if the relevant ancillary system so requests.'

(9) Article 19 is replaced by the following:

'Article 19

Settlement and return of queued payment orders

1. Payment orders that are not settled immediately in the entry disposition shall be placed in the queues in accordance with the priority to which they were designated by the relevant participant, as referred to in Article 13.

2. To optimise the settlement of queued payment orders, the ECB may use the optimisation procedures described in Appendix I.

3. Except for highly urgent payment orders, the payer may change the queue position of payment orders in a queue (i.e. reorder them) via the ICM. Payment orders may be moved either to the front or to the end of the respective queue with immediate effect at any time during daytime processing, as referred to in Appendix V.

4. At the request of a payer, the ECB may decide to change the queue position of a highly urgent payment order (except for highly urgent payment orders in the context of settlement procedures 5 and 6) provided that this change would not affect the smooth settlement by ancillary systems in TARGET2 or would not otherwise give rise to systemic risk.

5. Liquidity transfer orders initiated in the ICM shall be immediately returned as non-settled if there is insufficient liquidity. Other payment orders shall be returned as non-settled if they cannot be settled by the cut-off times for the relevant message type, as specified in Appendix V.'

(10) In Article 31, paragraphs 2 and 3 are replaced by the following:

'2. The ECB shall freeze the balance on the sub-account of the participant upon communication by the ancillary system (via a "start-of-cycle" message). Where applicable, the ECB shall thereafter increase or reduce the frozen balance by crediting or debiting cross-system settlement payments to or from the sub-account or crediting liquidity transfers to the sub-account or crediting liquidity transfers to the sub-account. Such freezing shall expire upon communication by the ancillary system (via an "end-of-cycle" message).

3. By confirming the freezing of the balance on the participant's sub-account, the ECB guarantees to the ancillary system payment up to the amount of this particular balance. By confirming, where applicable, the increase or reduction of the frozen balance upon crediting or debiting cross-system settlement payments to or from the sub-account or crediting liquidity transfers to the sub-account, the guarantee is automatically increased or reduced in the amount of the payment. Without prejudice to the abovementioned increase or reduction of the guarantee, the guarantee shall be irrevocable, unconditional and payable on first demand. If the ECB is not the ancillary system's CB, the ECB shall be deemed instructed to issue the abovementioned guarantee to the ancillary system's CB.'

Appendix I is amended as follows:

(1) Paragraph 2 is amended as follows:

(a) The table in subparagraph 1 is replaced by the following:

Message Type	Type of use	Description
MT 103	Mandatory	Customer payment
MT 103+	Mandatory	Customer payment (Straight Through Processing)
MT 202	Mandatory	Bank-to-bank payment
MT 202COV	Mandatory	Cover payments
MT 204	Optional	Direct debit payment
MT 011	Optional	Delivery notification
MT 012	Optional	Sender notification
MT 019	Mandatory	Abort notification
MT 900	Optional	Confirmation of debit
MT 910	Optional	Confirmation of credit
MT 940/950	Optional	(Customer) statement message'

(b) The following subparagraph 5 is added:

'(5) MT 202COV messages shall be used for making cover payments, i.e. payments made by correspondent banks to settle (cover) credit transfer messages which are submitted to a customer's bank by other, more direct means. Customer details contained in MT 202COV shall not be displayed in the ICM.'

(2) Paragraph 8 is amended as follows:

Subparagraph 4(b) is replaced by the following:

'(b) *User-to-application mode (U2A)*

U2A permits direct communication between a participant and the ICM. The information is displayed in a browser running on a PC system (SWIFT Alliance WebStation or another interface, as may be required by SWIFT). For U2A access the IT infrastructure has to be able to support cookies and JavaScript. Further details are described in the ICM User Handbook.'

Subparagraph 5 is replaced by the following:

'(5) Each participant shall have at least one SWIFT Alliance WebStation, or another interface, as may be required by SWIFT, to have access to the ICM via U2A.'

Appendix II is amended as follows:

Paragraph 2(a) is replaced by the following:

'(a) A payer may submit a claim for an administration fee and interest compensation if, due to a technical malfunction of TARGET2, a payment order was not settled on the business day on which it was accepted.'

Appendix III is amended as follows:

In the terms of reference for country opinions for non-EEA participants in TARGET2, paragraph 3.6.a is replaced by the following:

'3.6.a *Assignment of rights or deposit of assets for collateral purposes, pledge and/or repo*

Assignments for collateral purposes will be valid and enforceable under the laws of [jurisdiction]. Specifically, the creation and enforcement of a pledge or repo under the Rules will be valid and enforceable under the laws of [jurisdiction].'

Appendix IV is amended as follows:

Paragraph 1(b) is replaced by the following:

'(b) All references to specific times in this Appendix are to the local time at the seat of the ECB, i.e. Central European Time (CET) (*).

(*). CET takes into account the change to Central European Summer Time.'

Appendix V is replaced by the following:

'Appendix V

OPERATING SCHEDULE

1. TARGET2 is open on all days, except Saturdays, Sundays, New Year's Day, Good Friday and Easter Monday (according to the calendar applicable at the seat of the ECB), 1 May, Christmas Day and 26 December.
2. The reference time for the system is the local time at the seat of the ECB, i.e. CET.
3. The current business day is opened during the evening of the previous business day and operates to the following schedule:

Time	Description
6.45-7.00	Business window to prepare daytime operations (*)
7.00-18.00	Daytime processing
17.00	Cut-off time for customer payments (i.e. payments where the originator and/or the beneficiary of a payment is not a direct or indirect participant as identified in the system by the use of an MT 103 or MT 103 + message)
18.00	Cut-off time for interbank payments (i.e. payments other than customer payments)
18.00-18.45 (**)	End-of-day processing
18.15 (**)	General cut-off time for the use of standing facilities
(Shortly after) 18.30 (***)	Data for the update of accounting systems are available to CBs
18.45-19.30 (***)	Start-of-day processing (new business day)
19.00 (***)-19.30 (**)	Provision of liquidity on the PM account
19.30 (***)	"Start-of-procedure" message and settlement of the standing orders to transfer liquidity from the PM accounts to the sub-account(s)/mirror account (ancillary system-related settlement)
19.30 (***)-22.00	Execution of additional liquidity transfers via the ICM before the ancillary system sends the "start-of-cycle" message; settlement period of night-time ancillary system operations (only for ancillary system settlement procedure 6)
22.00-1.00	Technical maintenance period
1.00-6.45	Settlement procedure of night-time ancillary system operations (only for ancillary system settlement procedure 6)

(*) Daytime operations means daytime processing and end-of-day processing.

(**) Ends 15 minutes later on the last day of the Eurosystem reserve maintenance period.

(***) Starts 15 minutes later on the last day of the Eurosystem reserve maintenance period.

4. The ICM is available for liquidity transfers from 19.30 ⁽¹⁾ until 18.00 the next day, except during the technical maintenance period from 22.00 until 1.00.
5. The operating hours may be changed in the event that business continuity measures are adopted in accordance with paragraph 5 of Appendix IV.

⁽¹⁾ Starts 15 minutes later on the last day of the Eurosystem reserve maintenance period.'