

AFGØRELSER

DEN EUROPÆISKE CENTRALBANKS AFGØRELSE

af 11. december 2012

om ændring af afgørelse ECB/2007/7 om de nærmere vilkår for TARGET2-ECB

(ECB/2012/31)

(2013/31/EU)

DIREKTIONEN FOR DEN EUROPÆISKE CENTRALBANK HAR —

national lovgivning, der er relevante for Europa-Parlamentets og Rådets direktiv 98/26/EF af 19. maj 1998 om endelig afregning i betalingssystemer og værdipapirafviklingssystemer⁽⁴⁾, —

under henvisning til traktaten om Den Europæiske Unions funktionsmåde, særlig artikel 127, stk. 2,

VEDTAGET DENNE AFGØRELSE:

under henvisning til statuten for Det Europæiske System af Centralbanker og Den Europæiske Centralbank, særlig artikel 11.6, 17, 22 og 23,

Artikel 1

Ændringer af afgørelse ECB/2007/7

under henvisning til retningslinje ECB/2012/27 af 5. december 2012 om TARGET2 (Trans-European Automated Real-time Gross settlement Express Transfer system)⁽¹⁾, særlig artikel 8, stk. 2, og

Afgørelse ECB/2007/7 ændres som følger:

1. I artikel 1, stk. 1, litra c), affattes den første fodnote således:

ud fra følgende betragtninger:

(1) Retningslinje ECB/2007/2 af 26. april 2007 om TARGET2 (Trans-European Automated Real-time Gross settlement Express Transfer system)⁽²⁾ er for nylig blevet omarbejdet for at indarbejde regler, der tidligere kun var Eurosystem-interne, og for at tilføje de nødvendige definitioner samt bestemmelser om sanktioner, der ikke finder anvendelse på banker uden for Unionen, om udveksling af oplysninger om suspendering eller ophør af adgangen til de pengepolitiske operationer og om konsekvenserne af sådanne suspenderinger eller ophør.

(2) Det er derfor nødvendigt at ændre afgørelse ECB/2007/7 af 24. juli 2007 om de nærmere vilkår for TARGET2-ECB⁽³⁾, for at a) indarbejde visse elementer fra retningslinje Guideline ECB/2012/27 i de nærmere vilkår for TARGET2-ECB, og b) ajourføre de henvisninger til

»(1) Eurosystemets nuværende politik for placering af infrastrukturer fremgår af følgende dokumenter, som alle findes på ECB's websted www.ecb.europa.eu: a) Policy statement on euro payment and settlement systems located outside the euro area af 3. november 1998, b) The Eurosystem's policy line with regard to consolidation in central counterparty clearing af 27. september 2001, c) The Eurosystem policy principles on the location and operation of infrastructures settling in euro-denominated payment transactions af 19. juli 2007, 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« af 20. november 2008 og e) The Eurosystem oversight policy framework af juli 2011.«

2. Bilaget til afgørelse ECB/2007/7 ændres i overensstemmelse med bilaget til denne afgørelse.

⁽¹⁾ Endnu ikke offentliggjort i *Den Europæiske Unions Tidende*.

⁽²⁾ EUT L 237 af 8.9.2007, s. 1.

⁽³⁾ EUT L 237 af 8.9.2007, s. 71.

⁽⁴⁾ EFT L 166 af 11.6.1998, s. 45.

*Artikel 2***Ikrafttrædelse**

Denne afgørelse træder i kraft den 1. januar 2013.

Udfærdiget i Frankfurt am Main, den 11. december 2012.

Mario DRAGHI
Formand for ECB

BILAG

Bilaget til afgørelse ECB/2007/7 ændres således:

1. Artikel 1 ændres således:

(a) Definitionen af »Eurosystem CBs« erstattes af følgende:

»— »Eurosystem CB« means the ECB or a euro area NCB,«

(b) Der tilføjes følgende definition:

»— »euro area NCB« means the national central bank (NCB) of a Member State whose currency is the euro,«

2. I artikel 20, stk. 1, affattes således:

»1. For the purposes of the first sentence of Article 3(1) of the Settlement Finality Directive and the third sentence of § 116, § 96(2), § 82 and § 340(3) of the German Insolvency Code (*Insolvenzordnung*) and the last sentence of § 46(2) of the KWG, payment orders are deemed entered into TARGET2-ECB at the moment that the relevant participant's PM account is debited.«

3. I artikel 25, stk. 5, affattes således:

»5. Notwithstanding Sections 675(u), 675(v), 675(x), 675y, 675z, 676a, 676c of the German Civil Code (*Bürgerliches Gesetzbuch*), paragraphs 1 to 4 shall apply to the extent that the ECB's liability can be excluded.«

4. Første sætning i artikel 33, stk. 3, affattes således:

»Participants, when acting as the payment service provider of a payer or payee, shall comply with all requirements resulting from administrative or restrictive measures imposed pursuant to Article 75 or 215 of the Treaty on the Functioning of the European Union to which they are subject, including with respect to notification and/or the obtaining of consent from a competent authority in relation to the processing of transactions. In addition:«

5. Tillæg VI affattes således:

»Appendix VI

FEE SCHEDULE AND INVOICING

Fees and invoicing for direct participants

1. The monthly fee for the processing of payment orders in TARGET2-ECB for direct participants, depending on which option the direct participant has chosen, shall be either:

- (a) EUR 150 per PM account plus a flat fee per transaction (debit entry) of EUR 0,80; or
- (b) EUR 1 875 per PM account plus a fee per transaction (debit entry) determined as follows, based on the volume of transactions (number of processed items) per month:

Band	From	To	Price (EUR)
1	1	10 000	0,60
2	10 001	25 000	0,50
3	25 001	50 000	0,40
4	50 001	100 000	0,20
5	Above 100 000	—	0,125

Liquidity transfers between a participant's PM account and its sub-accounts shall not be subject to a charge.

2. There shall be an additional monthly fee for direct participants who do not wish the BIC of their account to be published in the TARGET2 directory of EUR 30 per account.
3. The following invoicing rules apply to direct participants. The direct participant shall receive the invoice for the previous month specifying the fees to be paid, no later than on the fifth business day of the following month. Payment shall be made at the latest on the 10th working day of that month to the account specified by the ECB and shall be debited from that participant's PM account.

Fees and invoicing for ancillary systems

4. An ancillary system using the ASI or the Participant Interface, irrespective of the number of any accounts it may hold with the ASCB and/or the SCB, shall be subject to a fee schedule consisting of three elements, as set out below.
 - (a) A fixed monthly fee of EUR 1 000 to be charged to each ancillary system (Fixed Fee I).
 - (b) A second monthly fixed fee of between EUR 417 and EUR 4 167, in proportion to the underlying gross value of the ancillary system's euro cash settlement transactions (Fixed Fee II):

Band	From (EUR million/day)	To (EUR million/day)	Annual fee (EUR)	Monthly fee (EUR)
1	0	below 1 000	5 000	417
2	1 000	below 2 500	10 000	833
3	2 500	below 5 000	20 000	1 667
4	5 000	below 10 000	30 000	2 500
5	10 000	below 50 000	40 000	3 333
6	Above 50 000	—	50 000	4 167

The gross value of the ancillary system's euro cash settlement transactions shall be calculated by the ASCB once a year on the basis of such gross value during the previous year and the calculated gross value shall be applied for calculating the fee as from 1 January of each calendar year.

- (c) A transaction fee calculated on the same basis as the schedule established for direct participants in paragraph 1 of this Appendix. The ancillary systems may choose one of the two options: either to pay a flat EUR 0,80 fee per payment instruction (Option A) or to pay a fee calculated on a degressive basis (Option B), subject to the following modifications:
 - (i) for Option B, the limits of the bands relating to volume of payment instructions are divided by two, and
 - (ii) a monthly fixed fee of EUR 150 (under Option A) or EUR 1 875 (under Option B) shall be charged in addition to Fixed Fee I and Fixed Fee II.
5. Any fee payable in relation to a payment instruction submitted or payment received by an ancillary system, via either the participant interface or the ASI, shall be exclusively charged to this ancillary system. The Governing Council may establish more detailed rules for the determination of billable transactions settled via the ASI.
6. Each ancillary system shall receive an invoice from its respective ASCB for the previous month based on the fees referred to in paragraph 4, no later than the fifth business day of the following month. Payments shall be made no later than the 10th business day of this month to the account specified by the ASCB or shall be debited from an account specified by the ancillary system.
7. For the purposes of this paragraph, each ancillary system that has been designated under Directive 98/26/EC shall be treated separately, even if two or more of them are operated by the same legal entity. The same rule shall apply to the ancillary systems that have not been designated under Directive 98/26/EC, in which case the ancillary systems shall be identified by reference to the following criteria: (a) a formal arrangement, based on a contractual or legislative instrument, e.g. an agreement among the participants and the system operator; (b) multiple membership; (c) common rules and standardised arrangements; (d) for the clearing, netting or settlement of payments or securities between the participants.«