

DECISIONS

DECISION OF THE EUROPEAN CENTRAL BANK

of 11 December 2012

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

(ECB/2012/31)

(2013/31/EU)

THE EXECUTIVE BOARD OF THE EUROPEAN CENTRAL BANK,

references to national legislation relevant to Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems ⁽⁴⁾,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 127(2) thereof,

HAS ADOPTED THIS DECISION:

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

Amendments to Decision ECB/2007/7

Decision ECB/2007/7 is amended as follows:

Having regard to Guideline ECB/2012/27 of 5 December 2012 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2) ⁽¹⁾, and in particular Article 8(2) thereof,

(1) in Article 1(1)(c), the first footnote is replaced by the following:

Whereas:

- (1) Guideline ECB/2007/2 of 26 April 2007 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2) ⁽²⁾ has been recently recast in order to incorporate rules previously internal to the Eurosystem and to add necessary definitions, as well as provisions with regards to inapplicability of sanctions to non-Union banks, information sharing with regards to suspension or termination of access to monetary policy operations and the consequences of such suspension or termination.
- (2) Therefore, it is necessary to amend Decision ECB/2007/7 of 24 July 2007 concerning the terms and conditions of TARGET2-ECB ⁽³⁾ in order to: (a) incorporate certain elements from Guideline ECB/2012/27 into the terms and conditions of TARGET2-ECB; and (b) update

(1) The Eurosystem's current policy for the location of infrastructure is set out in the following statements, which are all available on the ECB's 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; (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; (e) "The Eurosystem oversight policy framework" of July 2011.;

(2) the Annex to Decision ECB/2007/7 is amended in accordance with the Annex to this Decision.

⁽¹⁾ Not yet published in the Official Journal.

⁽²⁾ OJ L 237, 8.9.2007, p. 1.

⁽³⁾ OJ L 237, 8.9.2007, p. 71.

⁽⁴⁾ OJ L 166, 11.6.1998, p. 45.

*Article 2***Entry into force**

This Decision shall enter into force on 1 January 2013.

Done at Frankfurt am Main, 11 December 2012.

The President of the ECB
Mario DRAGHI

ANNEX

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

(1) Article 1 is amended as follows:

(a) the definition of 'Eurosystem CBs' is replaced by the following:

— "Eurosystem CB" means the ECB or a euro area NCB;

(b) the following definition is inserted:

— "euro area NCB" means the national central bank (NCB) of a Member State whose currency is the euro;

(2) in Article 20, paragraph 1 is replaced by the following:

'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) in Article 25, paragraph 5 is replaced by the following:

'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) in Article 33, the first sentence in paragraph 3 is replaced by the following:

'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) Appendix VI is replaced by the following:

'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.