

BESLUITEN

BESLUIT VAN DE EUROPESE CENTRALE BANK

van 11 december 2012

tot wijziging van Besluit ECB/2007/7 betreffende de voorwaarden van TARGET2-ECB

(ECB/2012/31)

(2013/31/EU)

DE RAAD VAN BESTUUR VAN DE EUROPESE CENTRALE BANK,

1998 betreffende het definitieve karakter van de afwikkeling van betalingen en effectentransacties in betalings- en afwikkelingssystemen ⁽⁴⁾,

Gelet op het Verdrag betreffende de werking van de Europese Unie, inzonderheid op artikel 127, lid 2,

HEEFT HET VOLGENDE BESLUIT VASTGESTELD:

Gelet op de statuten van het Europees Stelsel van centrale banken en van de Europese Centrale Bank, inzonderheid op artikel 11.6 en de artikelen 17, 22 en 23,

Artikel 1

Wijzigingen van Besluit ECB/2007/7

Besluit ECB/2007/7 wordt als volgt gewijzigd:

Gelet op Richtsnoer ECB/2012/27 van 5 december 2012 betreffende een geautomatiseerd trans-Europees realtime-brutovereenkomstensysteem („TARGET2”) ⁽¹⁾, inzonderheid op artikel 8, lid 2,

1) In artikel 1, lid 1, onder c), wordt de eerste voetnoot vervangen door:

Overwegende hetgeen volgt:

- (1) Richtsnoer ECB/2007/2 van 26 april 2007 betreffende een geautomatiseerd trans-europees realtime-brutovereenkomstensysteem (TARGET2) ⁽²⁾ werd onlangs herschikt om eertijds aan het Eurosysteem interne regels op te nemen en om de nodige definities toe te voegen, alsook bepalingen inzake de niet-toepasselijkheid van sancties op niet-Uniebanken, het delen van informatie in verband met de opschorting of beëindiging van toegang tot monetaire-beleidstransacties en de gevolgen van een dergelijke opschorting of beëindiging.
- (2) Daarom is het noodzakelijk om Besluit ECB/2007/7 van 24 juli 2007 betreffende de voorwaarden van TARGET2-ECB ⁽³⁾ te wijzigen om: a) bepaalde bestanddelen van Richtsnoer ECB/2012/27 te incorporeren in de voorwaarden van TARGET2-ECB; en b) de verwijzingen naar nationale wetgeving die relevant is voor Richtlijn 98/26/EG van het Europees Parlement en de Raad van 19 mei

„(1) Het huidige beleid van het Eurosysteem ten aanzien van de locatie van infrastructuur wordt uiteengezet in de volgende verklaringen die allemaal beschikbaar zijn op de website van de ECB op www.ecb.europa.eu: a) „Policy statement on euro payment and settlements located outside the euro area” van 3 november 1998; b) „The Eurosystem’s policy line with regard to consolidation in central counterparty clearing” van 27 september 2001; c) „The Eurosystem policy principles on the location and operation of infrastructures settling in euro-denominated payment transactions” van 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” van 20 november 2008, en e) „The Eurosystem oversight policy framework” van juli 2011.”.

2) De bijlage bij Besluit ECB/2007/7 wordt gewijzigd overeenkomstig de bijlage bij dit besluit.

⁽¹⁾ Nog niet bekendgemaakt in het Publicatieblad.

⁽²⁾ PB L 237 van 8.9.2007, blz. 1.

⁽³⁾ PB L 237 van 8.9.2007, blz. 71.

⁽⁴⁾ PB L 166 van 11.6.1998, blz. 45.

*Artikel 2***Inwerkingtreding**

Dit besluit treedt in werking op 1 januari 2013.

Gedaan te Frankfurt am Main, 11 december 2012.

De president van de ECB
Mario DRAGHI

BIJLAGE

De bijlage bij Besluit ECB/2007/7 wordt als volgt gewijzigd:

1) Artikel 1 wordt als volgt gewijzigd:

a) de definitie van „Eurosysteem CB” wordt als volgt vervangen:

„— „Eurosysteem CB” means the ECB or a euro area NCB;”;

b) de volgende definitie wordt ingevoegd:

„— „euro area NCB” means the national central bank (NCB) of a Member State whose currency is the euro.”.

2) In artikel 20 wordt lid 1 vervangen door:

„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 artikel 25 wordt lid 5 vervangen door:

„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 artikel 33 wordt de eerste volzin van lid 3 vervangen door:

„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 Articles 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 wordt als volgt vervangen:

„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.”.