

BESLUT

EUROPEISKA CENTRALBANKENS BESLUT

av den 11 december 2012

om ändring av beslut ECB/2007/7 om villkoren för TARGET2-ECB

(ECB/2012/31)

(2013/31/EU)

EUROPEISKA CENTRALBANKENS DIREKTION HAR ANTAGIT DETTA
BESLUT

med beaktande av fördraget om Europeiska unionens funktions-
sätt, särskilt artikel 127.2,

med beaktande av stadgan för Europeiska centralbankssystemet
och Europeiska centralbanken, särskilt artikel 11.6 samt artik-
larna 17, 22 och 23,

med beaktande av riktlinje ECB/2012/27 av den 5 december
2012 om ett transeuropeiskt automatiserat system för brutto-
avveckling av betalningar i realtid (TARGET2) ⁽¹⁾, särskilt arti-
kel 8.2, och

av följande skäl:

- (1) Riktlinje ECB/2007/2 av den 26 april 2007 om ett transeuropeiskt automatiserat system för bruttoavveckling av betalningar i realtid (TARGET2) ⁽²⁾ har nyligen omarbetats för att införliva regler som tidigare har varit interna för Eurosystemet samt införa nödvändiga definitioner samt bestämmelser om att sanktioner inte ska tillämpas på banker utanför unionen, om informationsutbyte i fråga om avstängning eller uteslutning från tillträde till penningpolitiska transaktioner samt konsekvenserna av en sådan avstängning eller uteslutning.
- (2) Det är därför nödvändigt att ändra beslut ECB/2007/7 av den 24 juli 2007 om villkoren för TARGET2-ECB ⁽³⁾ för att a) integrera vissa delar av riktlinje ECB/2012/27 i

villkoren för TARGET2-ECB, och b) uppdatera vissa hänvisningar till nationell lagstiftning som har betydelse för Europaparlamentets och rådets direktiv 98/26/EG av den 19 maj 1998 om slutgiltig avveckling i system för överföring av betalningar och värdepapper ⁽⁴⁾.

HÄRIGENOM FÖRESKRIVS FÖLJANDE.

Artikel 1

Ändringar av beslut ECB/2007/7

Beslut ECB/2007/7 ska ändras på följande sätt:

1. I artikel 1.1 c ska fotnot 1 ersättas med följande:

”(1) Eurosystemets aktuella principer för lokalisering av infrastruktur framgår av följande dokument som finns på ECB:s hemsida www.ecb.europa.eu: a) *Policy statement on euro payment and settlement systems located outside the euro area* av den 3 november 1998, b) *The Eurosystem’s policy line with regard to consolidation in central counterparty clearing* av den 27 september 2001, c) *The Eurosystem policy principles on the location and operation of infrastructures settling in euro-denominated payment transactions* av den 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”* av den 20 november 2008 samt e) *The Eurosystem oversight policy framework* av juli 2011.”

2. Bilagan till beslut ECB/2007/7 ska ändras i enlighet med bilagan till det här beslutet.

⁽¹⁾ Ännu ej offentliggjord i EUT.

⁽²⁾ EUT L 237, 8.9.2007, s. 1.

⁽³⁾ EUT L 237, 8.9.2007, s. 71.

⁽⁴⁾ EUT L 166, 11.6.1998, s. 45.

*Artikel 2***Ikraftträdande**

Detta beslut träder i kraft den 1 januari 2013.

Utfärdat i Frankfurt am Main den 11 december 2012.

Mario DRAGHI
ECB:s ordförande

BILAGA

Bilagan till beslut ECB/2007/7 ska ändras på följande sätt:

1. Artikel 1 ska ändras på följande sätt:

a) Definitionen av "Eurosystem CBs" ska ersättas med följande:

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

b) Följande definition ska införas:

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

2. I artikel 20 ska punkt 1 ersättas med följande:

"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 ska punkt 5 ersättas med följande:

"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. I artikel 33 ska punkt 3 första meningen ersättas med följande:

"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. Tillägg VI ska ersättas med följande:

"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."