

# EUROPEAN CENTRAL BANK

## GUIDELINE OF THE EUROPEAN CENTRAL BANK

of 21 January 2005

**amending Guideline ECB/2001/3 on a trans-European automated real-time gross settlement express transfer system (Target)**

**(ECB/2005/1)**

(2005/88/EC)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

HAS ADOPTED THIS GUIDELINE:

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

### *Article 1*

Guideline ECB/2001/3 is amended as follows:

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Articles 3.1, 12.1, 14.3, 17, 18 and 22 thereof,

1. Article 1 is amended as follows:

Whereas:

(a) the following definitions are inserted, having regard to alphabetical order:

(1) On 24 October 2002 the Governing Council of the European Central Bank (ECB) took note of a number of different options permitting central banks to connect to Target other than via interlinking. Further, it was decided that following the accession to the EU of the 10 new Member States on 1 May 2004, the central banks of such Member States would be given the same rights and obligations regarding connection to Target as other central banks pursuant to one of these options. This has necessitated the amendment of Guideline ECB/2001/3 on a trans-European automated real-time gross settlement express transfer system (Target) <sup>(1)</sup>.

“connected NCB” shall mean an NCB real-time gross settlement (RTGS) system of which is connected to TARGET via a service-providing NCB,

“non-participating Member States” shall mean the Member States which have not adopted the single currency in accordance with the Treaty,

“service-providing NCB” shall mean an NCB: (i) the RTGS system of which is connected to Target via interlinking; and (ii) which provides services to a connected NCB for the processing of cross-border payments within TARGET, thereby establishing a bilateral link;’;

(2) A further minor amendment of Guideline ECB/2001/3 is required to reflect current practice regarding access of participants to Target.

(b) the definition of ‘EEA’ is replaced by the following:

(3) In accordance with Article 12.1 and Article 14.3 of the Statute, ECB guidelines form an integral part of Community law,

“EEA” shall mean the European Economic Area as defined in the Agreement on the European Economic Area concluded on 2 May 1992 between the European Community and its Member States and the Member States of the European Free Trade Association, as amended;’;

<sup>(1)</sup> OJ L 140, 24.5.2001, p. 72. Guideline as last amended by Guideline ECB/2004/4 (OJ L 205, 9.6.2004, p. 1).

- (c) the definition of 'finality' or 'final' is replaced by the following:

“finality” or “final” shall mean that the settlement of a payment order cannot be revoked, reversed or made void by the connected NCB, by the sending NCB/ECB, by the sending participant or by any third party, or even in the event of insolvency proceedings against a participant, except in cases of imperfections in the underlying transaction(s) or payment order(s) arising from criminal offences or fraudulent acts (whereby fraudulent acts shall also include preferences and transactions at under-value during suspect periods in the case of insolvency) provided that such has been decided on a case-by-case basis by a court of competent jurisdiction or another competent dispute resolution body, or arising from error;”

- (d) the definition of 'inter-NCB accounts' is replaced by the following:

“inter-NCB accounts” shall mean the accounts that, without prejudice to Article 4a of this Guideline, each NCB and the ECB shall open for each other on their respective books for the operation of cross-border Target payments; each such inter-NCB account is held for the benefit of the ECB or the NCB in whose name the account is opened;”

- (e) the definition of 'malfunctioning of a national RTGS system' or 'malfunctioning of Target' or 'malfunctioning' is replaced by the following:

“malfunctioning of a national RTGS system” or “malfunctioning of Target” or “malfunctioning” shall mean technical difficulties, defects or failures in the technical infrastructure and/or the computer systems of any national RTGS system or the ECB payment mechanism or the computerised network connections for interlinking or a bilateral link, or any other event related to any national RTGS system or the ECB payment mechanism, interlinking or any bilateral link, that makes it impossible to execute and complete the same day processing of payment orders within Target; the definition shall also cover cases where a malfunctioning occurs simultaneously in more than one national RTGS system (due to, for instance, a breakdown related to the network service provider);”

- (f) the definition of 'standing facilities' is replaced by the following:

“standing facilities” shall mean the marginal lending facility and the deposit facility provided by the Eurosystem.’

2. Article 2 is replaced by the following:

‘Article 2

### Description of Target

1. The trans-European automated real-time gross settlement express transfer system is a real-time gross settlement system for the euro. Target is composed of the national RTGS systems, the ECB payment mechanism and interlinking. RTGS systems may connect to Target via interlinking or through a bilateral link.

2. The RTGS systems of non-participating Member States may connect to Target in so far as such RTGS systems comply with the minimum common features set out in Article 3 and are able to process the euro alongside their respective national currency. Any connection to Target of an RTGS system of a non-participating Member State is subject to an agreement whereby the national central banks concerned agree to adhere to the rules and procedures for Target referred to in this Guideline (with specifications and modifications, where appropriate, as referred to in such an agreement).’

3. Article 3 is amended as follows:

- (a) the following point (a)(1)(v) is added:

‘(v) central banks established in the EU, the RTGS systems of which are not connected to TARGET;’

- (b) paragraph (b) is replaced by the following:

‘(b) Currency unit

All cross-border payments shall be in euro;’

- (c) paragraph (c)(3) is replaced by the following:

‘3. Any cross-border payments effected within TARGET shall be subject to a common price established by the Governing Council of the ECB and specified in Annex III;’

- (d) paragraph (f)(3) is replaced by the following:

‘3. Intraday credit shall be based on adequate collateral. Eligible collateral shall be the same assets and instruments and be subject to the same valuation and risk control rules as those prescribed for eligible collateral for monetary policy operations. Except for treasury departments and public sector bodies referred to respectively in Article 3(a)(1)(i) and (ii), an NCB shall not accept as underlying assets debt instruments issued or guaranteed by the participant, or by any other entity with which the counterparty has close links, as defined in Article 1(26) of Directive 2000/12/EC and as applied for monetary policy operations.’

Each of the national central banks of the non-participating Member States the RTGS systems of which are connected to Target pursuant to Article 2(2) is allowed to establish and maintain a list of eligible assets which can be used by institutions participating in their relevant national RTGS system connected to Target to collateralise euro credits granted by such national central banks, provided that the assets on such list meet the same quality standards and are subject to the same valuation and risk control rules as those prescribed for eligible collateral for monetary policy operations. The national central bank in question shall submit such list of eligible assets for prior approval by the ECB.'

4. Article 4 is amended as follows:

(a) the title is replaced by the following:

**'Arrangements for cross-border payments effected via interlinking';**

(b) the introductory paragraph is replaced by the following:

'The provisions of this Article shall apply to the arrangements for cross-border payments effected or to be effected via interlinking.';

(c) paragraph (b)(3) is replaced by the following:

'3. All inter-NCB accounts shall be maintained in euro.'

5. The following Article 4a is inserted:

*'Article 4a*

**Arrangements for cross-border payments effected through a service-providing NCB**

The provisions of this Article shall apply to the arrangements for cross-border payments effected or to be effected through a bilateral link.

(a) Description of the connection

When effecting a cross-border payment through a bilateral link:

— the service-providing NCB shall be regarded as the receiving or sending NCB, as the case may be, as regards the obligations and liabilities relating to the processing of the cross-border payment via interlinking vis-à-vis either the sending or receiving NCB/ECB,

— the connected NCB shall be regarded as the receiving NCB or the sending NCB, as the case may be, as regards the obligations and liabilities relating to the

crediting/debiting of the receiving/sending participant's RTGS account.

(b) Opening and operation of an account for the connected NCB.

1. The service-providing NCB shall open an account in euro on its books for the connected NCB.

2. The service-providing NCB shall grant an unlimited and uncollateralised credit facility to the connected NCB.

3. To effect cross-border payments initiated by a participant in the connected NCB's RTGS system, the service-providing NCB shall debit the connected NCB's account and credit an RTGS account of the service-providing NCB's participant or credit the receiving NCB/ECB's inter-NCB account held with the service-providing NCB. To effect cross-border payments to a participant in the connected NCB's RTGS system, the service-providing NCB shall debit the sending NCB/ECB's inter-NCB account or debit an RTGS account of the service-providing NCB's participant and credit the connected NCB's account.

(c) Obligations and liabilities of the service-providing NCB and the connected NCB

1. Verification

(a) Both the connected NCB and the service-providing NCB shall be responsible for the accuracy and syntax of the data which they provide to each other, and they shall agree standards to be applied to such data.

(b) On receipt of a payment order submitted by the connected NCB, the service-providing NCB shall check without delay all the details contained in the payment order which are necessary for its appropriate processing. If the service-providing NCB detects syntactical errors or other grounds for rejecting a payment order, it shall not process such a payment order and shall handle the data and the payment order in accordance with specific rules to be agreed between the service-providing NCB and the connected NCB.

2. Settlement

(a) To effect a cross-border payment initiated by a participant in the connected NCB's RTGS system, the connected NCB shall debit its participant's account and, in accordance with the terms and conditions agreed between the connected NCB and the service-providing NCB, submit a corresponding payment order to the service-providing NCB.

(b) As soon as the service-providing NCB has checked the validity of the payment order submitted pursuant to Article 4a(c)(1)(b), the service-providing NCB shall without delay:

- (i) debit the connected NCB's account; and
- (ii) send a positive acknowledgement to the connected NCB.

(c) On debiting the connected NCB's account, the service-providing NCB shall without delay credit the RTGS account of the participant in its national RTGS system or process the payment order via interlinking in accordance with Article 4. When the service-providing NCB receives a positive or negative acknowledgement from the receiving NCB/ECB it shall forward such an acknowledgement to the connected NCB.

(d) To effect a cross-border payment, which has been initiated by a participant in the service-providing NCB's RTGS system, to a participant in the connected NCB's RTGS system, the service-providing NCB shall credit the connected NCB's account immediately on receipt of such a payment order. The connected NCB shall thereafter immediately credit the account of the participant in the connected NCB's RTGS system.

(e) To effect a cross-border payment, which has been initiated by a participant in an RTGS system other than the service-providing NCB's RTGS system, to a participant in the connected NCB's RTGS system, the service-providing NCB shall, on receipt of a payment order from the sending NCB/ECB:

- (i) carry out the procedures described in Article 4(d)(1) and 4(d)(2)(a);
- (ii) thereafter credit the connected NCB's account and notify the connected NCB thereof; and
- (iii) thereafter send a positive acknowledgement to the sending NCB/ECB.

On receipt of notification pursuant to point (ii), the connected NCB shall immediately credit the account of a participant in its RTGS system.

(f) The service-providing NCB shall take all necessary measures, as agreed with the connected NCB, in order to ensure that all information and data necessary to credit the account of the participant in the connected NCB's RTGS system in any circumstances are made available to the connected NCB.

(g) The hours of operation of the connected NCB's RTGS system shall comply with the specifications laid down in Annex IV.

### 3. Finality

The finality of cross-border payments processed through a bilateral link shall be determined in accordance with the rules laid down in Articles 4(c)(2) and 4(d)(2).

### 4. Transfer of responsibility for the execution of a payment order

For cross-border payments initiated by a participant in the connected NCB's RTGS system, responsibility for the execution of a payment order shall pass from the connected NCB to the service-providing NCB at the moment the connected NCB's account with the service-providing NCB is debited, and thereafter it shall pass to the receiving NCB/ECB in accordance with Article 4(e). For cross-border payments to a participant in the connected NCB's RTGS system, responsibility for the execution of a payment order shall pass from the sending NCB to the service-providing NCB on receipt by the sending NCB/ECB of a positive acknowledgement as described in Article 4a(c)(2)(e)(iii).

#### (d) Regime for errors

The regime specified in Article 4(f) shall apply to connected NCBs.

#### (e) Relation to the network service provider

The connected NCB shall be connected or have an entry point to the network service provider. It shall be the connected NCB's responsibility to claim compensation from the network service provider if the connected NCB suffers loss as a result of a breach of such rules and the connected NCB shall submit any claim directly to the network service provider.

#### (f) Information to participants

All NCBs shall inform participants in their RTGS systems that a positive acknowledgement issued by a service-providing NCB in relation to cross-border payments to participants in a connected NCB's RTGS system certifies the crediting of the connected NCB's account with the service-providing NCB but does not certify the crediting of a receiving participant's account with the connected NCB. To the extent necessary, the NCBs shall amend their national RTGS rules accordingly.'

6. Article 8 is amended as follows:

(a) Paragraph 1(b) is replaced by the following:

'(b) The Target Compensation Scheme shall apply to all national RTGS systems (regardless of whether such RTGS systems are connected to Target via inter-linking or through a bilateral link) and to the ECB payment mechanism (EPM) and shall be available for all Target participants (including Target participants of national RTGS systems of participating Member States that are not counterparties to the Eurosystem monetary policy operations, and Target participants of national RTGS systems of non-participating Member States) in relation to all Target payments (without distinguishing between domestic payments and cross-border payments). The Target Compensation Scheme shall not apply to customers in the EPM in accordance with the Terms and Conditions governing the use of the EPM, which are available on the ECB's web site (www.ecb.int) and are updated from time to time.'

(b) the following paragraph 1(c)a is inserted:

'(c)a For the purposes of Article 8(1)(c)(ii), a service-providing NCB shall not be regarded as a third party.'

(c) the following paragraph 1(f) is added:

'(f) If a connected NCB cannot process cross-border payments due to a malfunctioning of the service-providing NCB's RTGS system, the service-providing NCB shall be regarded as the malfunctioning NCB in relation to such payments.'

7. Article 9 is replaced by the following:

*'Article 9*

**Force majeure**

There shall be no liability on the part of the NCBs/ECB for non-compliance with this Guideline to the extent that, and

for so long as, there is an inability to perform the obligations in question under the Guideline, or such obligations are subject to suspension or delay, owing to the occurrence of any event arising from any reason or cause beyond reasonable control (including, but not limited to, equipment failure or malfunction, acts of God, natural disasters, strikes or labour disputes); provided that the above shall not prejudice the responsibility to have in place the back-up facilities required by this Guideline, to carry out the error-handling procedures, referred to in Articles 4(f) and 4a(d), as far as possible despite the *force majeure* event, and to use all reasonable efforts to mitigate the effects of any such event while it is taking place.'

8. In Article 10, paragraph 2 is replaced by the following:

'2. In the event of such a dispute between NCBs, or between an NCB and the ECB, the respective rights and obligations to one another in relation to payment orders processed through TARGET and all other matters referred to in this Guideline shall be determined: (i) by the rules and procedures referred to in this Guideline and its Annexes; and (ii) as a supplementary source in disputes concerning cross-border payments, by the laws of the Member State of the seat of the receiving NCB/ECB.'

9. Annex IV is replaced by the Annex to this Guideline.

*Article 2*

This Guideline shall enter into force on 25 January 2005.

It shall apply from 7 March 2005.

*Article 3*

This Guideline is addressed to the national central banks of participating Member States.

Done at Frankfurt am Main, 21 January 2005.

*For the Governing Council of the ECB  
The President of the ECB  
Jean-Claude TRICHET*

## ANNEX

## 'ANNEX IV

**TARGET HOURS OF OPERATION**

TARGET and, therefore, NCBs and national RTGS systems participating in or connected to TARGET applies the following rules with respect to the time of operation.

1. The reference time for TARGET is 'European Central Bank time', defined as the local time at the seat of the ECB.
2. TARGET will have common operating hours from 07:00 to 18:00.
3. Early opening, before 07:00, may take place after prior notification has been sent to the ECB:
  - (i) for domestic reasons (e.g. in order to facilitate settlement of securities transactions, to settle balances of net settlement systems, or to settle other domestic transactions, such as batch transactions channelled by NCBs into RTGS systems during the night); or
  - (ii) for ESCB-related reasons (e.g. on days when exceptional payment volumes are expected, or in order to reduce foreign exchange settlement risk when processing the euro leg of foreign exchange deals involving Asian currencies).
4. A cut-off time for customer payments (both domestic and cross-border<sup>(1)</sup>) of one hour before the normal TARGET closing time will apply; the remaining time will be used only for interbank payments (both domestic and cross-border<sup>(2)</sup>) to transfer liquidity between participants. Customer payments are defined as payment messages in the MT100 format, or equivalent national message format (which would use the MT100 format for cross-border transmission). The implementation of the 17:00 cut-off time for domestic payments is to be decided by each NCB in cooperation with its banking community. In addition, NCBs may continue to process domestic customer payments that were in a queue at 17:00.

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<sup>(1)</sup> The cut-off time for cross-border customer payments sent from a participant in a connected NCB's RTGS system via a service-providing NCB is 16:52:30.

<sup>(2)</sup> The cut-off time for cross-border interbank payments sent from a participant in a connected NCB's RTGS system via a service-providing NCB is 17:52:30.

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