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(Acts whose publication is not obligatory)

## EUROPEAN CENTRAL BANK

### GUIDELINE OF THE EUROPEAN CENTRAL BANK

of 21 April 2004

amending Guideline ECB/2001/3 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET)

(ECB/2004/4)

(2004/501/EC)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

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

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

Whereas:

- (1) The fourth indent of Article 105(2) of the Treaty and the fourth indent of Article 3.1 of the Statute empower the European Central Bank (ECB) and the national central banks (NCBs) to promote the smooth operation of payment systems.
- (2) In accordance with Article 22 of the Statute, the ECB and the NCBs may provide facilities to ensure efficient and sound clearing and payment systems within the Community and with other countries.
- (3) Guideline ECB/2001/3 of 26 April 2001 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET) <sup>(1)</sup> should be amended to reflect the following: first, the Governing Council's decision of 24 October 2002 that the NCBs of the ten countries acceding to the European Union on 1 May 2004 should

have the right to connect to TARGET without being obliged to do so; second, changes regarding fees payable in connection with the TARGET Compensation Scheme.

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

HAS ADOPTED THIS GUIDELINE:

#### Article 1

#### Amending provisions

Guideline ECB/2001/3 is amended as follows:

1. Article 2 is amended as follows:

the first sentence of paragraph 2 is replaced by the following:

'The RTGS systems of Member States that have not adopted the euro are allowed connection 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 as a foreign currency alongside their respective national currency.;

<sup>(1)</sup> OJ L 140, 24.5.2001, p. 72. Guideline as last amended by Guideline ECB/2003/6 (OJ L 113, 7.5.2003, p. 10).

2. with effect from 1 August 2004, Article 8 is amended as follows:
- (a) paragraph 2 is replaced by the following:
- ‘2. Conditions for compensation
- (a) With respect to a sending TARGET participant, a claim for an administration fee and an interest compensation shall be considered if due to a malfunctioning:
- (i) the same day processing of a payment order was not completed;
- or
- (ii) such TARGET participant can show that it had the intention to enter a payment order into TARGET but was unable to do so due to a stop-sending status of a national RTGS system.
- (b) With respect to a receiving TARGET participant, a claim for an administration fee shall be considered if due to a malfunctioning such TARGET participant did not receive a TARGET payment that it was expecting to receive on the day of malfunctioning. In this event a claim for an interest compensation shall also be considered if:
- (i) such TARGET participant had recourse to the marginal lending facility or, if a TARGET participant does not have access to the marginal lending facility, such TARGET participant was left with a debit balance or had a spill-over from intraday credit into overnight credit on its RTGS account at the close of business of TARGET or had to borrow amounts from the respective NCB;
- and
- (ii) either the NCB of the national RTGS system where the malfunctioning occurred (the ‘malfunctioning NCB’) was the receiving NCB, or the malfunctioning occurred so late in the TARGET operating day that it was technically impossible or impracticable for the receiving TARGET participant to have recourse to the money market.’;
- (b) paragraph 3.1(b) is replaced by the following:
- ‘(b) The administration fee shall be determined at EUR 50 for the first payment order not completed on the processing date, and, in case of multiple adjustments, EUR 25 for each of the next four such payment orders and EUR 12,50 for each further such payment order. The administration fee shall be determined by reference to each receiving TARGET participant.’;
- (c) paragraph 3.2 is replaced by the following:
- ‘3.2 Compensation of receiving TARGET participants
- (a) The compensation offer under the TARGET Compensation Scheme shall consist of an administration fee only or an administration fee and an interest compensation.
- (b) The amount of the administration fee shall be as determined under paragraph 3.1(b) and the administration fee shall be determined by reference to each sending TARGET participant.
- (c) The calculation method for the interest compensation as referred to in paragraph 3.1(c) above shall apply, except that the interest compensation shall be based on the difference between the marginal lending rate and the reference rate, and shall be calculated on the amount of the recourse to the marginal lending facility as a result of the malfunctioning.
- (d) With respect to receiving TARGET participants of (i) national RTGS systems of participating Member States that are not counterparties to the Eurosystem monetary policy operations, and (ii) national RTGS systems of non-participating Member States, to the extent that a debit balance or a spill-over from intraday credit into overnight credit or the need to borrow amounts from the respective NCB can be attributed to the malfunctioning, that part of the applicable penalty rate (as stipulated by the applicable RTGS rules in such cases) which is above the marginal lending rate, shall be waived (and disregarded in future cases of spill-over) and for TARGET

participants of national RTGS systems referred to in (ii) above, it shall be ignored for the purpose of access to intraday credit and/or continued participation in the national RTGS system concerned.;

3. Annex I is replaced by the text in the Annex to this Guideline.

*Article 2*

**Entry into force**

This Guideline shall enter into force on 1 May 2004.

*Article 3*

**Addressees**

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

Done at Frankfurt am Main, 21 April 2004.

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

ANNEX  
NATIONAL RTGS SYSTEMS

Member State	Name of system	Settlement Agent	Location
<b>Belgium</b>	Electronic Large-value Interbank Payment System (ELLIPS)	Banque Nationale de Belgique/Nationale Bank van België	Brussels
<b>Germany</b>	RTGS <sup>plus</sup>	Deutsche Bundesbank	Frankfurt
<b>Greece</b>	Hellenic Real-time Money Transfer Express System (HERMES)	Bank of Greece	Athens
<b>Spain</b>	Servicios de Liquidación del Banco de España (SLBE)	Banco de España	Madrid
<b>France</b>	Transferts Banque de France (TBF)	Banque de France	Paris
<b>Ireland</b>	Irish Real-time Interbank Settlement System (IRIS)	Central Bank and Financial Services Authority of Ireland	Dublin
<b>Italy</b>	Sistema di regolamento lordo (BIREL)	Banca d'Italia	Rome
<b>Luxembourg</b>	Luxembourg Interbank Payment Systems (LIPS-Gross)	Banque centrale du Luxembourg	Luxembourg
<b>Netherlands</b>	TOP	De Nederlandsche Bank	Amsterdam
<b>Austria</b>	Austrian Real-time Interbank Settlement System (ARTIS)	Oesterreichische Nationalbank	Vienna
<b>Portugal</b>	Sistema de Pagamentos de Grandes Transacções (SPGT)	Banco de Portugal	Lisbon
<b>Finland</b>	Bank of Finland (BoF-RTGS)	Suomen Pankki	Helsinki