

GUIDELINES

EUROPEAN CENTRAL BANK

GUIDELINE OF THE EUROPEAN CENTRAL BANK

of 17 September 2009

amending Guideline ECB/2007/2 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2)**(ECB/2009/21)**

(2009/734/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,

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

Whereas:

(1) The Governing Council of the European Central Bank (ECB) adopted Guideline ECB/2007/2 of 26 April 2007 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2)⁽¹⁾ governing TARGET2 which is characterised by a single technical platform called the Single Shared Platform (SSP).

(2) Amendments should be made to Guideline ECB/2007/2: (a) in view of the new release of the SSP; (b) to clarify the specific oversight location principles that entities offering services in euro are required to comply with; (c) to introduce a derogation in relation to bilateral arrangements with ancillary systems which open Payments Module accounts and cannot be subject to pledge or set-off of claims; (d) to reflect a number of other technical and editorial improvements and clarifications; and (e) to delete provisions relating to migration to TARGET2 which no longer apply,

Article 1

Guideline ECB/2007/2 is amended as follows:

1. in Article 2, the definition of 'ancillary system' is replaced by the following:

— "ancillary system (AS)" means a system managed by an entity established in the EEA that is subject to supervision and/or oversight by a competent authority and complies with the oversight requirements for the location of infrastructures offering services in euro, as amended from time to time and published on the ECB website^(*), in which payments and/or financial instruments are exchanged and/or cleared while the resulting monetary obligations are settled in TARGET2 in accordance with this Guideline and a bilateral arrangement between the ancillary system and the relevant Eurosystem CB,

^(*) The Eurosystem's current policy for the location of infrastructure is set out in the following statements, which are all available on the ECB 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; and (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.;

⁽¹⁾ OJ L 237, 8.9.2007, p. 1.

2. in Article 8, the following paragraph 4 is added:

‘4. By derogation from paragraph 3, bilateral arrangements with ancillary systems that use the PI, but only settle payments for the benefit of their customers, shall be in conformity with:

(a) Annex II, with the exception of Title V, Article 36 and Appendices VI and VII; and

(b) Article 18 of Annex IV.’;

3. Article 13 is deleted;

4. Article 15 is replaced by the following:

‘Article 15

Miscellaneous and transitional provisions

1. Accounts opened outside the PM by a participating NCB for credit institutions and ancillary systems shall be governed by the rules of such participating NCB, subject to the provisions of this Guideline which relate to Home Accounts and other decisions of the Governing Council. Accounts opened outside the PM by a participating NCB for entities other than credit institutions and ancillary systems shall be governed by the rules of such participating NCB.

2. During its transition period, each Eurosystem CB may continue to settle payments and other transactions on its Home Accounts, including the following:

(a) payments between credit institutions;

(b) payments between credit institutions and ancillary systems; and

(c) payments in relation to Eurosystem open market operations.

3. On expiry of the transition period, the following shall cease:

(a) registration as an addressable BIC holder by a Eurosystem CB, in the case of entities referred to in Article 4(1)(a) and (b) of Annex II;

(b) indirect participation with a Eurosystem CB; and

(c) settlement on Home Accounts of all payments mentioned in paragraph 2(a) to (c).’;

5. Annexes II, III and IV to Guideline ECB/2007/2 are amended in accordance with the Annex to this Guideline.

Article 2

Entry into force

1. This Guideline shall enter into force on 22 September 2009.

2. Article 1(1) and paragraphs 1(1)(a), 1(2) and 2 of the Annex to this Guideline shall apply from 23 October 2009.

3. The other provisions of this Guideline shall apply from 23 November 2009.

Article 3

Addressees and implementing measures

1. This Guideline applies to all Eurosystem central banks.

2. The national central banks of the Member States that have adopted the euro shall by 9 October 2009 send to the ECB the measures by which they intend to comply with this Guideline.

Done at Frankfurt am Main, 17 September 2009.

For the Governing Council of the ECB

The President of the ECB

Jean-Claude TRICHET

ANNEX

1. Annex II to Guideline ECB/2007/2 is amended as follows:

(1) Article 1 is amended as follows:

(a) the definition of 'ancillary system' is replaced by the following:

— "ancillary system (AS)" means a system managed by an entity established in the European Economic Area (EEA) that is subject to supervision and/or oversight by a competent authority and complies with the oversight requirements for the location of infrastructures offering services in euro, as amended from time to time and published on the ECB website (*), in which payments and/or financial instruments are exchanged and/or cleared while the resulting monetary obligations are settled in TARGET2 in accordance with Guideline ECB/2007/2 and a bilateral arrangement between the ancillary system and the relevant CB,

(*) The Eurosystem's current policy for the location of infrastructure is set out in the following statements, which are all available on the ECB 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; and (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.;

(b) the definition of 'technical malfunction of TARGET2' is replaced by the following:

— "technical malfunction of TARGET2" means any difficulty, defect or failure in the technical infrastructure and/or the computer systems used by TARGET2-[insert CB/country reference], or any other event that makes it impossible to execute and complete the same-day processing of payments in TARGET2-[insert CB/country reference].;

(2) Article 4(2)(d) is replaced by the following:

'(d) entities managing ancillary systems and acting in that capacity; and';

(3) Article 9 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. Unless otherwise requested by the participant, its BIC(s) shall be published in the TARGET2 directory.;

(b) the following paragraph 5 is added:

'5. Participants acknowledge that the [insert name of CB] and other CBs may publish participants' names and BICs. In addition, names and BICs of indirect participants registered by participants may be published and participants shall ensure that indirect participants have agreed to such publication.;

(4) Article 12(1) is replaced by the following:

'1. The [insert name of CB] shall open and operate at least one PM account for each participant. Upon request by a participant acting as a settlement bank, the [insert name of CB] shall open one or more sub-accounts in TARGET2-[insert CB/country reference] to be used for dedicating liquidity.;

(5) the following Article 14(3) is inserted:

'3. The SSP determines the timestamp for the processing of payment orders on the basis of the time when it receives and accepts the payment order.;

(6) Article 15 is replaced by the following:

'Article 15

Priority rules

1. Instructing participants shall designate every payment order as one of the following:

- (a) normal payment order (priority class 2);
- (b) urgent payment order (priority class 1); or
- (c) highly urgent payment order (priority class 0).

If a payment order does not indicate the priority, it shall be treated as a normal payment order.

2. Highly urgent payment orders may only be designated by:

- (a) CBs; and
- (b) participants, in cases of payments to and from CLS International Bank and liquidity transfers in relation to ancillary system settlement using the Ancillary System Interface.

All payment instructions submitted by an ancillary system through the Ancillary System Interface to debit or credit the participants' PM accounts shall be deemed to be highly urgent payment orders.

3. Liquidity transfer orders initiated via the ICM are urgent payment orders.

4. In the case of urgent and normal payment orders, the payer may change the priority via the ICM with immediate effect. It shall not be possible to change the priority of a highly urgent payment order.;

(7) Article 17(5) is replaced by the following:

'5. After receipt of the reservation request the [insert name of CB] shall check whether the amount of liquidity on the participant's PM account is sufficient for the reservation. If this is not the case, only the liquidity available on the PM account shall be reserved. The rest of the requested liquidity shall be reserved if additional liquidity becomes available.;

(8) the following Article 17a is inserted:

'Article 17a

Standing instructions for liquidity reservation and dedication of liquidity

1. Participants may predefine the default amount of liquidity reserved for highly urgent or urgent payment orders via the ICM. Such standing instruction or a change to such instruction shall take effect from the next business day.

2. Participants may predefine via the ICM the default amount of liquidity set aside for ancillary system settlement. Such standing instruction or a change to such instruction shall take effect from the next business day. Participants shall be deemed to have instructed the [insert name of CB] to dedicate liquidity on their behalf if the relevant ancillary system so requests.;

(9) Article 21 is replaced by the following:

'Article 21

Settlement and return of queued payment orders

1. Payment orders that are not settled immediately in the entry disposition shall be placed in the queues in accordance with the priority to which they were designated by the relevant participant, as referred to in Article 15.

2. To optimise the settlement of queued payment orders, the [insert name of CB] may use the optimisation procedures described in Appendix I.

3. Except for highly urgent payment orders, the payer may change the queue position of payment orders in a queue (i.e. reorder them) via the ICM. Payment orders may be moved either to the front or to the end of the respective queue with immediate effect at any time during daytime processing, as referred to in Appendix V.

4. At the request of a payer, the [insert name of CB] or, in the case of an AL group, the CB of the AL group manager may decide to change the queue position of a highly urgent payment order (except for highly urgent payment orders in the context of settlement procedures 5 and 6) provided that this change would not affect the smooth settlement by ancillary systems in TARGET2 or would not otherwise give rise to systemic risk.

5. Liquidity transfer orders initiated in the ICM shall be immediately returned as non-settled if there is insufficient liquidity. Other payment orders shall be returned as non-settled if they cannot be settled by the cut-off times for the relevant message type, as specified in Appendix V.;

(10) Article 24(7) is replaced by the following:

'7. The procedure for obtaining authorisation to use the AL mode, set out in Article 25(4) and (5), shall apply *mutatis mutandis* to the procedure for obtaining authorisation to use the CAI mode. The CAI group manager shall not address an executed CAI mode agreement to the managing NCB.;

(11) in Article 37, paragraphs 2 and 3 are replaced by the following:

'2. The [insert name of CB] shall freeze the balance on the sub-account of the participant upon communication by the ancillary system (via a "start-of-cycle" message). Where applicable, the [insert name of CB] shall thereafter increase or reduce the frozen balance by crediting or debiting cross-system settlement payments to or from the sub-account or crediting liquidity transfers to the sub-account. Such freezing shall expire upon communication by the ancillary system (via an "end-of-cycle" message).

3. By confirming the freezing of the balance on the participant's sub-account, the [insert name of CB] guarantees to the ancillary system payment up to the amount of this particular balance. By confirming, where applicable, the increase or reduction of the frozen balance upon crediting or debiting cross-system settlement payments to or from the sub-account or crediting liquidity transfers to the sub-account, the guarantee is automatically increased or reduced in the amount of the payment. Without prejudice to the abovementioned increase or reduction of the guarantee, the guarantee shall be irrevocable, unconditional and payable on first demand. If the [insert name of CB] is not the ancillary system's CB, the [insert name of CB] shall be deemed instructed to issue the abovementioned guarantee to the ancillary system's CB.;

(12) Appendix I is amended as follows:

(a) paragraph 2 is amended as follows:

(i) the table in subparagraph 1 is replaced by the following:

Message Type	Type of use	Description
MT 103	Mandatory	Customer payment
MT 103+	Mandatory	Customer payment (Straight Through Processing)
MT 202	Mandatory	Bank-to-bank payment
MT 202COV	Mandatory	Cover payments
MT 204	Optional	Direct debit payment
MT 011	Optional	Delivery notification
MT 012	Optional	Sender notification
MT 019	Mandatory	Abort notification
MT 900	Optional	Confirmation of debit
MT 910	Optional	Confirmation of credit
MT 940/950	Optional	(Customer) statement message'

(ii) the following subparagraph 5 is added:

'(5) MT 202COV messages shall be used for making cover payments, i.e. payments made by correspondent banks to settle (cover) credit transfer messages which are submitted to a customer's bank by other, more direct means. Customer details contained in MT 202COV shall not be displayed in the ICM.');

(b) paragraph 8 is amended as follows:

(i) subparagraph 4(b) is replaced by the following:

'(b) user-to-application mode (U2A)

U2A permits direct communication between a participant and the ICM. The information is displayed in a browser running on a PC system (SWIFT Alliance WebStation or another interface, as may be required by SWIFT). For U2A access the IT infrastructure has to be able to support cookies and JavaScript. Further details are described in the ICM User Handbook.');

(ii) subparagraph 5 is replaced by the following:

'(5) Each participant shall have at least one SWIFT Alliance WebStation, or another interface, as may be required by SWIFT, to have access to the ICM via U2A.');

(13) Appendix II is amended as follows:

paragraph 2 is replaced by the following:

2. Conditions for compensation offers

(a) A payer may submit a claim for an administration fee and interest compensation if, due to a technical malfunction of TARGET2 a payment order was not settled on the business day on which it was accepted.

(b) A payee may submit a claim for an administration fee if due to a technical malfunction of TARGET2 it did not receive a payment that it was expecting to receive on a particular business day. The payee may also submit a claim for interest compensation if one or more of the following conditions are met:

(i) in the case of participants that have access to the marginal lending facility: due to a technical malfunction of TARGET2, a payee had recourse to the marginal lending facility; and/or

(ii) in the case of all participants: it was technically impossible to have recourse to the money market or such refinancing was impossible on other, objectively reasonable grounds.;

(14) Appendix III is amended as follows:

in the terms of reference for country opinions for non-EEA participants in TARGET2, paragraph 3.6.a is replaced by the following:

3.6.a. Assignment of rights or deposit of assets for collateral purposes, pledge and/or repo

Assignments for collateral purposes will be valid and enforceable under the laws of [jurisdiction]. Specifically, the creation and enforcement of a pledge or repo under the [insert reference to the relevant arrangement with the CB] will be valid and enforceable under the laws of [jurisdiction].;

(15) Appendix IV is amended as follows:

paragraph 1(b) is replaced by the following:

'(b) All references to specific times in this Appendix are to the local time at the seat of the ECB, i.e. Central European Time (CET (*)).

(*) CET takes into account the change to Central European Summer Time.;

(16) Appendix V is replaced by the following:

‘Appendix V

OPERATING SCHEDULE

1. TARGET2 is open on all days, except Saturdays, Sundays, New Year’s Day, Good Friday and Easter Monday (according to the calendar applicable at the seat of the ECB), 1 May, Christmas Day and 26 December.
2. The reference time for the system is the local time at the seat of the ECB, i.e. CET.
3. The current business day is opened during the evening of the previous business day and operates to the following schedule:

Time	Description
6.45-7.00	Business window to prepare daytime operations (*)
7.00-18.00	Daytime processing
17.00	Cut-off time for customer payments (i.e. payments where the originator and/or the beneficiary of a payment is not a direct or indirect participant as identified in the system by the use of an MT 103 or MT 103+ message)
18.00	Cut-off time for interbank payments (i.e. payments other than customer payments)
18.00-18.45 (**)	End-of-day processing
18.15 (**)	General cut-off time for the use of standing facilities
(Shortly after) 18.30 (***)	Data for the update of accounting systems are available to CBs
18.45-19.30 (***)	Start-of-day processing (new business day)
19.00 (***)-19.30 (**)	Provision of liquidity on the PM account
19.30 (***)	“Start-of-procedure” message and settlement of the standing orders to transfer liquidity from the PM accounts to the sub-account(s)/mirror account (ancillary system-related settlement)
19.30 (***)-22.00	Execution of additional liquidity transfers via the ICM before the ancillary system sends the “start-of-cycle” message; settlement period of night-time ancillary system operations (only for ancillary system settlement procedure 6)
22.00-1.00	Technical maintenance period
1.00-6.45	Settlement procedure of night-time ancillary system operations (only for ancillary system settlement procedure 6)

(*) Daytime operations means daytime processing and end-of-day processing.

(**) Ends 15 minutes later on the last day of the Eurosystem reserve maintenance period.

(***) Starts 15 minutes later on the last day of the Eurosystem reserve maintenance period.

4. The ICM is available for liquidity transfers from 19.30 ⁽¹⁾ until 18.00 the next day, except during the technical maintenance period from 22.00 until 1.00.
5. The operating hours may be changed in the event that business continuity measures are adopted in accordance with paragraph 5 of Appendix IV.

⁽¹⁾ Starts 15 minutes later on the last day of the Eurosystem reserve maintenance period.;

2. Annex III to Guideline ECB/2007/2 is amended as follows:

paragraph 2(e) is replaced by the following:

'(e) entities other than those falling within subparagraphs (a) and (b) that manage ancillary systems and act in that capacity, provided that the arrangements for granting intraday credit to such entities have been submitted to the Governing Council in advance and have been approved by the Governing Council.;

3. Annex IV to Guideline ECB/2007/2 is amended as follows:

(1) paragraph 11(5) is replaced by the following:

'(5) The settlement banks and ASs shall have access to information via the ICM. The ASs shall be notified on completion or failure of the settlement based on the selected option — single or global notification. If they so request, settlement banks shall be notified of the successful settlement via a SWIFT MT 900 or MT 910 message.;

(2) paragraph 14(7)(c) is replaced by the following:

'(c) SWIFT orders that go via an MT 202 message, which may only be submitted during the running of settlement procedure 6 and only during daytime processing. Such orders shall be settled immediately.;

(3) paragraph 14(9) is replaced by the following:

'(9) Under settlement procedure 6, dedicated liquidity on the sub-accounts shall be frozen as long as the AS processing cycle is running (starting with a "start-of-cycle" message and ending with an "end-of-cycle" message, both to be sent by the AS) and released thereafter. The frozen balance can be changed during the processing cycle as a result of cross-system settlement payments or if a settlement bank transfers liquidity from its PM account. The ASCB shall notify the AS of the reduction or increase of liquidity on the sub-account as a result of cross-system settlement payments. If the AS so requests, the ASCB shall also notify it of the increased liquidity on the sub-account as a result of liquidity transfer by the settlement bank.;

(4) paragraph 14(12) is replaced by the following:

'(12) Cross-system settlement between two interfaced ASs can only be initiated by an AS (or its ASCB on its behalf) whose participant's sub-account is debited. The payment instruction is settled by debiting the amount indicated in the payment instruction from the sub-account of a participant of the AS initiating the payment instruction and crediting the sub-account of a participant of another AS.

The AS initiating the payment instruction and the other AS shall be notified on completion of the settlement. If they so request, settlement banks shall be notified of successful settlement via a SWIFT MT 900 or 910 message.;

(5) paragraph 14(13) is replaced by the following:

'(13) Cross-system settlement from an AS using the interfaced model to an AS using the integrated model can be initiated by the AS using the interfaced model (or its ASCB on its behalf). The payment instruction is settled by debiting the amount indicated in the payment instruction from the sub-account of a participant of the AS using the interfaced model and crediting the mirror account used by the AS using the integrated model. The payment instruction cannot be initiated by the AS using the integrated model whose mirror account will be credited.

The AS initiating the payment instruction and the other AS shall be notified on completion of the settlement. If they so request, settlement banks shall be notified of successful settlement via a SWIFT MT 900 or 910 message.;

(6) paragraph 14(17) is replaced by the following:

'(17) Cross-system settlement between two ASs using the integrated model can only be initiated by an AS (or its ASCB on its behalf) whose mirror account is debited. The payment instruction is settled by debiting the amount indicated in the payment instruction from the mirror account used by the AS initiating the payment instruction and crediting the mirror account used by another AS. The payment instruction cannot be initiated by the AS whose mirror account will be credited.

The AS initiating the payment instruction and the other AS shall be notified on completion of the settlement. If they so request, settlement banks shall be notified of successful settlement via a SWIFT MT 900 or 910 message.;

(7) paragraph 14(18) is replaced by the following:

'(18) Cross-system settlement from an AS using the integrated model to an AS using the interfaced model can be initiated by the AS using the integrated model (or its ASCB on its behalf). The payment instruction is settled by debiting the amount indicated in the payment instruction from the mirror account used by the AS using the integrated model and crediting the sub-account of a participant of another AS. The payment instruction cannot be initiated by the AS using the interfaced model whose participant's sub-account will be credited.

The AS initiating the payment instruction and the other AS shall be notified on completion of the settlement. If they so request, settlement banks shall be notified of successful settlement via a SWIFT MT 900 or 910 message.;

(8) paragraph 15(3) is replaced by the following:

'(3) The settlement period (till) makes it possible to allocate a limited period of time for AS settlement in order not to prevent or delay the settlement of other AS-related or TARGET2 transactions. If any payment instruction is not settled until the "till" time is reached or within the defined settlement period, these payment instructions are either returned or, in the case of settlement procedures 4 and 5, the guarantee fund mechanism may be activated. The settlement period (till) can be specified for settlement procedures 1 to 5.'
