

BANCO CENTRAL EUROPEO

DECISIÓN DEL BANCO CENTRAL EUROPEO

de 6 de octubre de 2009

por la que se modifica la Decisión BCE/2007/7 relativa a las condiciones de TARGET2-ECB

(BCE/2009/22)

(2009/768/CE)

EL COMITÉ EJECUTIVO DEL BANCO CENTRAL EUROPEO,

DECIDE:

Visto el Tratado constitutivo de la Comunidad Europea y, en particular, el artículo 105, apartado 2, guiones primero y cuarto,

Artículo 1

El artículo 1, apartado 1, letra c), de la Decisión BCE/2007/7 se sustituirá por la siguiente:

Vistos los Estatutos del Sistema Europeo de Bancos Centrales y del Banco Central Europeo y, en particular, los artículos 11.6, 17, 22 y 23,

Considerando lo siguiente:

- (1) El Banco Central Europeo (BCE) participa en TARGET2 a fin de procesar sus propios pagos y los pagos de sus clientes en TARGET2 y prestar por medio de TARGET2 servicios de liquidación a las entidades de compensación y liquidación, incluidas las establecidas fuera del Espacio Económico Europeo (EEE), que estén sujetas a la vigilancia de la autoridad competente y cuyo acceso a TARGET2-ECB haya sido aprobado por el Consejo de Gobierno.
- (2) El Comité Ejecutivo del BCE adoptó la Decisión BCE/2007/7, de 24 de julio de 2007, relativa a las condiciones de TARGET2-ECB ⁽¹⁾.
- (3) La Decisión BCE/2007/7 debe modificarse: a) en virtud de la nueva versión de la plataforma compartida única; b) para aclarar los principios de vigilancia específicos relativos a la ubicación que deben cumplir las entidades que ofrecen servicios en euros; c) para reflejar algunas otras mejoras y aclaraciones técnicas y de redacción, y d) para eliminar las disposiciones relativas a la migración a TARGET2 que ya no son aplicables.

- «c) prestar servicios de liquidación a las entidades gestoras de los sistemas vinculados, incluidas las establecidas fuera del EEE, que estén sujetas a la vigilancia de la autoridad competente, que cumplan las exigencias de vigilancia relativas a la ubicación de las infraestructuras que ofrecen servicios en euros según se publican en la dirección del BCE en Internet (*), y cuyo acceso a TARGET2-ECB haya sido aprobado por el Consejo de Gobierno.

(*) La actual política del Eurosistema sobre la ubicación de las infraestructuras se contiene en las siguientes declaraciones, disponibles en la dirección del BCE en Internet www.ecb.europa.eu: a) *Policy statement on euro payment and settlement systems located outside the euro area* de 3 de noviembre de 1998; b) *The Eurosystem's policy line with regard to consolidation in central counterparty clearing* de 27 de septiembre de 2001; c) *The Eurosystem policy principles on the location and operation of infrastructures settling in euro-denominated payment transactions* de 19 de julio de 2007, y 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"* de 20 de noviembre de 2008.».

Artículo 2

El anexo de la Decisión BCE/2007/7 se modificará conforme al anexo de la presente Decisión.

⁽¹⁾ DO L 237 de 8.9.2007, p. 71.

*Artículo 3***Entrada en vigor**

1. El artículo 1 de la presente Decisión y el apartado 1, letra a) y el apartado 2 del anexo de la presente Decisión entrarán en vigor el 23 de octubre de 2009.
2. Las demás disposiciones de la presente Decisión entrarán en vigor el 23 de noviembre de 2009.

Hecho en Fráncfort del Meno, el 6 de octubre de 2009.

El presidente del BCE
Jean-Claude TRICHET

ANEXO

El anexo de la Decisión BCE/2007/7 se modificará como sigue:

1) El artículo 1 se modificará como sigue:

a) la definición de «sistema vinculado» se sustituirá por la siguiente:

«— ‘ancillary system (AS)’ means a system managed by an entity 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) se suprimirá la definición de «Directiva Bancaria»;

c) la definición de «mal funcionamiento técnico de TARGET2» se sustituirá por la siguiente:

«— ‘technical malfunction of TARGET2’ means any difficulty, defect or failure in the technical infrastructure and/or the computer systems used by TARGET2-ECB, or any other event that makes it impossible to execute and complete the same-day processing of payments in TARGET2-ECB.».

2) El artículo 4 se sustituirá por el siguiente:

Article 4

Acces criteria

Entities managing ancillary systems (including entities established outside the EEA) and acting in that capacity, whose access to TARGET2-ECB has been approved by the Governing Council, shall be the only entities that are eligible for participation in TARGET2-ECB.».

3) El artículo 7 se modificará como sigue:

El apartado 2 se sustituirá por el siguiente:

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

Se añadirá el apartado 5 siguiente:

«5. Participants acknowledge that the ECB and other CBs may publish participants’ names and BICs.».

4) El artículo 10, apartado 1, se sustituirá por el siguiente:

«1. The ECB shall open and operate at least one PM account for each participant. Upon request by a participant acting as a settlement bank, the ECB shall open one or more sub-accounts in TARGET2-ECB to be used for dedicating liquidity.».

5) Se insertará el siguiente apartado 3 del artículo 12:

«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) El artículo 13 se sustituirá por el siguiente:

«Article 13

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) El artículo 15, apartado 4, se sustituirá por el siguiente:

«4. After receipt of the reservation request the ECB 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) Se insertará el siguiente artículo 15 bis:

«Article 15a

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 ECB to dedicate liquidity on their behalf if the relevant ancillary system so requests.».

9) El artículo 19 se sustituirá por el siguiente:

«Article 19

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 13.

2. To optimise the settlement of queued payment orders, the ECB 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 ECB 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) Los apartados 2 y 3 del artículo 31 se sustituirán por los siguientes:

«2. The ECB 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 ECB 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 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 ECB 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 ECB is not the ancillary system's CB, the ECB shall be deemed instructed to issue the abovementioned guarantee to the ancillary system's CB.».

El apéndice I se modificará como sigue:

1) El apartado 2 se modificará como sigue:

a) el cuadro del punto 1 se sustituirá por el siguiente:

«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»

b) se añadirá el punto 5 siguiente:

«(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.»

2) El apartado 8 se modificará como sigue:

El punto 4, letra b), se sustituirá por la siguiente:

«(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.»

El texto del punto 5 se sustituirá por el siguiente:

«(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.»

El apéndice II se modificará como sigue:

El apartado 2, letra a), se sustituirá por la siguiente:

«(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.»

El apéndice III se modificará como sigue:

En los términos de referencia de los dictámenes jurídicos de país de los participantes en TARGET2 no pertenecientes al EEE, el apartado 3.6.a se sustituirá por el siguiente:

«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 Rules will be valid and enforceable under the laws of [jurisdiction].»

El apéndice IV se modificará como sigue:

El apartado 1, letra b), se sustituirá por la siguiente:

«(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.»

Se sustituirá el apéndice V por el siguiente:

«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.»