



EUROPEAN CENTRAL BANK

EUROSYSTEM

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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”

Context

The Treaty establishing the European Community as well as the Statute of the European System of Central Banks (ESCB) and the European Central Bank (ECB) list among the basic tasks of the Eurosystem: to “*promote the smooth operation of payment systems*” and to “*contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system*” (see Article 105 (2) and (5) of the Treaty and Article 3 (1) and (3) of the Statute). In promoting the smooth operation of payment systems and contributing to the stability of the financial system in the euro area, the Eurosystem needs to be in a position to exercise maximum influence over the payment infrastructures that process its currency, the euro. Exercising this influence is particularly important in times of crises. Therefore, in accordance with “[T]he Eurosystem policy principles on the location and operation of infrastructures settling euro-denominated payment transactions” (ECB, July 2007), the Eurosystem is of the view that the main infrastructures for the euro should be located in the euro area, as is the case also in other major currency areas. This policy positively contributes to the sound implementation of the Eurosystem monetary policy, to financial stability in the euro area and to a level playing field for all euro payment infrastructures of a similar type and nature.

The Eurosystem clarifies what criteria it uses in order to determine whether or not an infrastructure is located in the euro area.

Legal and operational location in the euro area - three criteria

The Eurosystem, in its oversight capacity, uses two legal criteria and one operational criterion to assess whether or not a payment infrastructure can be regarded as “*legally and operationally located in the euro area*”. In order for a payment infrastructure to be regarded by the Eurosystem to be “*legally and operationally located in the euro area*”, all three criteria have to be fulfilled.

i. Governance:

The governance authority of the payment infrastructure is incorporated in the euro area by way of establishment of a legal entity and has full responsibility for all critical functions of the infrastructure, including risk management, access policy and operations.

Fulfilling this criterion ensures that the Eurosystem has regulatory power over and direct access to the decision-making body of the relevant euro payment infrastructure in view of inducing necessary changes in relation to the infrastructure’s compliance with the applicable Eurosystem oversight policies and standards.

ii. Applicable law:

The rules and procedures of the payment infrastructure are construed under the laws of an EU jurisdiction which implies compliance with EU legislation.

Fulfilling this criterion ensures that the relevant EU legislation relating, in particular, to settlement finality is applied.

iii. Operations:

The key technical facilities and, in particular, the information systems that are used to perform the core functions of the infrastructure, as well as the personnel needed to operate them and to control the operations are located in the euro area. Without prejudice to any relevant national regulation, settlement operations or critical functions can only be outsourced to third parties after the approval of the Eurosystem. The governance authority notifies the Eurosystem in advance and provides evidence to the Eurosystem that the settlement operations meet the applicable Eurosystem oversight policies and standards as well as applicable EU laws (e.g. regarding settlement finality). In addition, the governance authority located in the euro area provides evidence to the Eurosystem that it remains fully responsible for the operations.

Fulfilling this criterion ensures that the Eurosystem has, in case of need, i.e. particularly in extreme circumstances, direct access to the operations of the relevant euro payment infrastructure.

The Eurosystem may grant an exception to one or several of these criteria on a case-by-case basis in accordance with “[T]he Eurosystem policy principles on the location and operation of infrastructures settling euro-denominated payment transactions” (ECB, July 2007).

Even if the amounts of euro settled by an offshore infrastructure are limited, the Eurosystem expects to be regularly informed by the relevant central bank about the infrastructures’ activities and risks.