

BANQUE CENTRALE EUROPÉENNE

DÉCISION DE LA BANQUE CENTRALE EUROPÉENNE

du 6 octobre 2009

modifiant la décision BCE/2007/7 relative aux modalités de TARGET2-BCE

(BCE/2009/22)

(2009/768/CE)

LE DIRECTOIRE DE LA BANQUE CENTRALE EUROPÉENNE,

DÉCIDE:

Article premier

vu le traité instituant la Communauté européenne, et notamment son article 105, paragraphe 2, premier et quatrième tirets,

L'article 1^{er}, paragraphe 1, point c), de la décision BCE/2007/7 est remplacé par le texte suivant:

vu les statuts du Système européen de banques centrales et de la Banque centrale européenne, et notamment leurs articles 11.6, 17, 22 et 23,

«c) fournir des services de règlement à des entités gérant des systèmes exogènes, y compris des entités établies hors de l'EEE, à condition que ces entités soient soumises à la surveillance d'une autorité compétente, qu'elles respectent les exigences de surveillance relatives à la localisation des infrastructures offrant des services en euros, telles que modifiées périodiquement et publiées sur le site internet de la BCE (*), et que leur accès à TARGET2-BCE ait été approuvé par le conseil des gouverneurs.

considérant ce qui suit:

- (1) La Banque centrale européenne (BCE) participe à TARGET2 aux fins de procéder au traitement de ses propres paiements ainsi que de ceux de ses clients dans TARGET2 et de fournir, par le biais de TARGET2, des services de règlement à des organismes de compensation et de règlement, y compris des entités établies hors de l'Espace économique européen (EEE), à condition que ces organismes soient soumis à la surveillance d'une autorité compétente et que leur accès à TARGET2-BCE ait été approuvé par le conseil des gouverneurs.
- (2) Le directoire de la BCE a adopté la décision BCE/2007/7 du 24 juillet 2007 relative aux modalités de TARGET2-BCE ⁽¹⁾.
- (3) Il convient de modifier la décision BCE/2007/7: a) en raison de la mise en service d'une nouvelle version de la plate-forme partagée unique; b) afin de clarifier les principes de surveillance spécifiques relatifs à la localisation qui doivent être respectés par les entités offrant des services en euros; c) afin de refléter un certain nombre d'autres améliorations et précisions d'ordre technique et rédactionnel; et d) afin de supprimer les dispositions relatives à la migration vers TARGET2, qui ne sont plus applicables,

(*) La politique actuelle de l'Eurosystème en ce qui concerne la localisation des infrastructures est énoncée dans les déclarations suivantes, qui sont toutes disponibles sur le site internet de la BCE à l'adresse suivante (<http://www.ecb.europa.eu>): a) la déclaration du 3 novembre 1998 sur les systèmes de paiement et de règlement en euros situés en dehors de la zone euro (*Policy statement on euro payment and settlement systems located outside the euro area*); b) la déclaration du 27 septembre 2001 sur la position de l'Eurosystème en ce qui concerne le processus de consolidation de la compensation avec contrepartie centrale (*The Eurosystem's policy line with regard to consolidation in central counterparty clearing*); c) la déclaration du 19 juillet 2007 sur les principes de l'Eurosystème pour la localisation et l'exploitation des infrastructures de règlement des transactions de paiement libellées en euros (*The Eurosystem policy principles on the location and operation of infrastructures settling in euro-denominated payment transactions*); et d) la déclaration du 20 novembre 2008 sur les principes de l'Eurosystème pour la localisation et l'exploitation des infrastructures de règlement des transactions de paiement libellées en euros, définissant les critères de localisation juridique et de l'exploitation dans la zone euro (*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"*).»

Article 2

L'annexe de la décision BCE/2007/7 est modifiée conformément à l'annexe de la présente décision.

⁽¹⁾ JO L 237 du 8.9.2007, p. 71.

*Article 3***Entrée en vigueur**

1. L'article 1^{er} de la présente décision, ainsi que le paragraphe 1, point a), et le paragraphe 2 de l'annexe de la présente décision entrent en vigueur le 23 octobre 2009.
2. Les autres dispositions de la présente décision entrent en vigueur le 23 novembre 2009.

Fait à Francfort-sur-le-Main, le 6 octobre 2009.

Le président de la BCE
Jean-Claude TRICHET

ANNEXE

L'annexe de la décision BCE/2007/7 est modifiée comme suit:

1) L'article 1^{er} est modifié comme suit:

a) La définition du terme «système exogène» est remplacée par le texte suivant:

«— “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) La définition du terme «directive bancaire» est supprimée.

c) La définition de «dysfonctionnement technique de TARGET2» est remplacée par le texte suivant:

«— “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) L'article 4 est remplacé par le texte suivant:

Article 4

Access 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) L'article 7 est modifié comme suit:

Le paragraphe 2 est remplacé par le texte suivant:

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

Le paragraphe 5 suivant est ajouté:

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

4) À l'article 10, le paragraphe 1 est remplacé par le texte suivant:

«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) À l'article 12, le paragraphe 3 suivant est ajouté:

«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) L'article 13 est remplacé par le texte suivant:

«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) À l'article 15, le paragraphe 4 est remplacé par le texte suivant:

«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) L'article 15a suivant est inséré:

«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) L'article 19 est remplacé par le texte suivant:

«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) À l'article 31, les paragraphes 2 et 3 sont remplacés par le texte suivant:

«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.»

L'appendice I est modifié comme suit:

1) Le paragraphe 2 est modifié comme suit:

a) Le tableau figurant au point 1 est remplacé par le tableau suivant:

«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) Le point 5 suivant est ajouté:

«(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) Le paragraphe 8 est modifié comme suit:

Le point 4(b) est remplacé par le texte suivant:

«(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.»

Le point 5 est remplacé par le texte suivant:

«(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.»

L'appendice II est modifié comme suit:

Au paragraphe 2, le point (a) est remplacé par le texte suivant:

«(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.»

L'appendice III est modifié comme suit:

Dans les termes de référence pour les avis relatifs au droit national en ce qui concerne les participants à TARGET2 qui ne sont pas établis dans l'EEE, le paragraphe 3.6.a est remplacé par le texte suivant:

«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].»

L'appendice IV est modifié comme suit:

Au paragraphe 1, le point (b) est remplacé par le texte suivant:

«(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.»

L'appendice V est remplacé par le texte suivant:

«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.»