DECISÃO DO BANCO CENTRAL EUROPEU

de 24 de Julho de 2007

relativa aos termos e condições do TARGET2-BCE

(BCE/2007/7)

(2007/601/CE)

A COMISSÃO EXECUTIVA DO BANCO CENTRAL EUROPEU,

Tendo em conta o Tratado que institui a Comunidade Europeia, nomeadamente o quarto travessão do n.º 2 do artigo 105.º,

Tendo em conta os Estatutos do Sistema Europeu de Bancos Centrais e do Banco Central Europeu, nomeadamente os artigos 11.º-6, 17.º, 22.º e 23.º,

Considerando o seguinte:

(1) Uma política monetária única implica a necessidade da criação de um sistema de pagamentos que permita a realização segura e em tempo útil das operações de política monetária entre os bancos centrais nacionais (BCN) e as instituições de crédito e que fomente a unicidade do mercado monetário na área do euro.

(2) O actual sistema de transferências automáticas trans-europeias de liquidações pelos valores brutos em tempo real (TARGET) será substituído pelo TARGET2, caracterizado por assentar numa plataforma técnica única, designada *Single Shared Plataform/SSP* (plataforma única compartilhada/PUP). O TARGET2 continuará a prosseguir os mesmos objectivos subjacentes ao TARGET, disponibilizando um mecanismo fiável e eficiente, funcionando com base na SSP, para a liquidação de pagamentos em euros.

(3) O Conselho do BCE adoptou a Orientação BCE/2007/2, de 26 de Abril de 2007, relativa a um sistema de transferências automáticas transeuropeias de liquidações pelos valores brutos em tempo real (TARGET2) ([1]).

(4) O Banco Central Europeu (BCE) participará no TARGET2 para nele processar os seus próprios pagamentos e os pagamentos dos seus clientes e para prestar, através do TARGET2, serviços a organizações de compensação e liquidação, incluindo entidades estabelecidas fora do Espaço Económico Europeu (EEE), desde que as mesmas estejam sujeitas à superintendência de uma autoridade competente e que o respectivo acesso ao TARGET2-ECB tenha sido aprovado pelo Conselho do BCE.

(5) O BCE só pode aceitar como clientes bancos centrais e organizações europeias e internacionais.

(6) O BCE só pode conceder crédito intradiário nos termos da presente decisão a clientes que sejam organizações europeias e internacionais.

(7) O Conselho do BCE decidiu que as regras dos sistemas componentes do TARGET2 deverão ser objecto de uma harmonização tão extensa quanto possível e tornadas públicas,

DECIDIU O SEGUINTE:

Artigo 1.º

Âmbito de aplicação

1. O TARGET2-ECB pode apenas:

a) processar os pagamentos do próprio BCE;

b) processar pagamentos de clientes do BCE; e

c) prestar serviços a organizações de compensação e liquidação, incluindo entidades estabelecidas fora do EEE, desde que as mesmas estejam sujeitas à superintendência de uma autoridade competente e que o respectivo acesso ao TARGET2-ECB tenha sido aprovado pelo Conselho do BCE.

2. O BCE só pode aceitar como clientes bancos centrais e organizações europeias e internacionais.

Artigo 2.º

Crédito intradiário

1. O BCE só pode conceder crédito intradiário a clientes que sejam organizações europeias e internacionais mediante descobertos na(s) conta(s) desses clientes. Esses descobertos não poderão nunca exceder, em qualquer momento do dia, os montantes estabelecidos no acordo com o cliente para cada uma das contas. O crédito intradiário a conceder pelo BCE fica limitado ao dia em questão, sem possibilidade de conversão em crédito *overnight*.

2. Todas as concessões de crédito intradiário pelo BCE serão efectuadas nos termos das disposições sobre crédito intradiário contidas no anexo III da Orientação ECB/2007/2.

Artigo 3.º

Termos e condições do TARGET2-ECB

Os termos e condições do TARGET2-ECB constam do anexo da presente directiva.

([1]) Ver a página 1 do presente Jornal Oficial.

Artigo 4.º

Entrada em vigor

1. A presente decisão entra em vigor em 19 de Maio de 2008.

2. A Decisão BCE/1999/NP3, de 16 de Março de 1999, relativa ao Mecanismo de Pagamentos do Banco Central Europeu e a Decisão BCE/1999/NP2, de 28 de Janeiro de 2003, que altera a Decisão BCE/1999/NP3 relativa ao Mecanismo de Pagamentos do Banco Central Europeu são revogadas com efeitos a partir da data de entrada em vigor da presente decisão, devendo entender-se todas as remissões para as Decisões BCE/1999/NP3 e BCE/1999/NP2 como remissões para a presente decisão.

Feito em Frankfurt am Main, em 24 de Julho de 2007.

O Presidente do BCE

Jean-Claude TRICHET

ANNEX

TERMS AND CONDITIONS OF TARGET2-ECB

TITLE I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of these Terms and Conditions (hereinafter the 'Conditions'), the following definitions apply:

— 'addressable BIC holder' means an entity which: (a) holds a Bank Identifier Code (BIC); (b) is not recognised as an indirect participant; and (c) is a correspondent or customer of a direct participant or a branch of a direct or indirect participant, and is able to submit payment orders to and receive payments from a TARGET2 component system via the direct participant,

— 'ancillary system (AS)' means a system managed by an entity that is subject to supervision and/or oversight by a competent authority, 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,

— 'ancillary system central bank (ASCB)' means the Eurosystem CB with which the relevant AS has a bilateral arrangement for the settlement of AS payment instructions in the PM,

— 'Ancillary System Interface (ASI)' means the technical device allowing an AS to use a range of special, predefined services for the submission and settlement of AS payment instructions,

— 'available liquidity' (or 'liquidity') means a credit balance on a TARGET2 participant's PM account and, if applicable, any intraday credit line granted by the relevant CB in relation to such account,

— 'Banking Directive' means Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) ([1]);

— 'Bank Identifier Code (BIC)' means a code as defined by ISO Standard No 9362,

— 'branch' means a branch within the meaning of § 24a of the Gesetz über das Kreditwesen (KWG, German Law on banking),

— 'business day' means any day on which TARGET2 is open for the settlement of payment orders, as set out in Appendix V,

— 'capacity opinion' means a participant-specific opinion that contains an assessment of a participant's legal capacity to enter into and carry out its obligations under these Conditions,

— 'central banks (CBs)' means the Eurosystem CBs and the connected CBs,

— 'connected CB' means a national central bank (NCB), other than a Eurosystem CB, which is connected to TARGET2 pursuant to a specific agreement,

— 'Contingency Module' means the SSP module enabling the processing of critical and very critical payments in contingency situations,

— 'credit institution' means a credit institution within the meaning of § 1(1) of the KWG,

— 'credit instruction' means a payment instruction submitted by an AS and addressed to the ASCB to debit one of the accounts kept and/or managed by the AS in the PM, and to credit a settlement bank's PM account or sub-account by the amount specified therein,

— 'credit transfer order' means an instruction by a payer to make funds available to a payee by means of a book entry on a PM account,

([1]) OJ L 177, 30.6.2006, p. 1.

— 'debit instruction' means a payment instruction addressed to the SCB and submitted by an AS to debit a settlement bank's PM account or sub-account by the amount specified therein, on the basis of a debit mandate, and to credit either one of the AS's accounts in the PM or another settlement bank's PM account or sub-account,

— 'direct debit authorisation' means a general instruction by a payer to its CB entitling and obliging that CB to debit the payer's account upon a direct debit instruction from a payee,

— 'direct debit instruction' means an instruction from a payee submitted to its CB pursuant to which the CB of the payer debits the payer's account by the amount specified in the instruction, on the basis of a direct debit authorization,

— 'debit mandate' means an authorisation by a settlement bank in the form provided by the Eurosystem CBs in the static data forms addressed to both its AS and its SCB, entitling the AS to submit debit instructions, and instructing the SCB to debit the settlement bank's PM account or sub-account as a result of debit instructions,

— 'entry disposition' means a payment processing phase during which TARGET2-ECB attempts to settle a payment order which has been accepted pursuant to Article 12, by means of specific procedures, as described in Article 18,

— 'Eurosystem CB' means the ECB or the NCB of a Member State that has adopted the euro,

— 'event of default' means any impending or existing event, the occurrence of which may threaten the performance by a participant of its obligations under these Conditions or any other rules applying to the relationship between that participant and the ECB or any other CB, including:

  (a) where the participant no longer meets the access criteria laid down in Article 4 or the requirements laid down in Article 6(1)(i);

  (b) the opening of insolvency proceedings in relation to the participant;

  (c) the submission of an application relating to the proceedings referred to in subparagraph (b);

  (d) the issue by the participant of a written declaration of its inability to pay all or any part of its debts or to meet its obligations arising in relation to intraday credit;

  (e) the entry of the participant into a voluntary general agreement or arrangement with its creditors;

  (f) where the participant is, or is deemed by its CB to be, insolvent or unable to pay its debts;

  (g) where the participant's credit balance on its PM account or all or a substantial part of the participant's assets are subject to a freezing order, attachment, seizure or any other procedure that is intended to protect the public interest or the rights of the participant's creditors;

  (h) where participation of the participant in another TARGET2 component system and/or in an ancillary system has been suspended or terminated;

  (i) where any material representation or pre-contractual statement made by the participant or which is implied to have been made by the participant under the applicable law is incorrect or untrue; or

  (j) the assignment of all or a substantial part of the participant's assets;

— 'Information and Control Module (ICM)' means the SSP module that allows participants to obtain on-line information and gives them the possibility to submit liquidity transfer orders, manage liquidity and initiate backup payment orders in contingency situations,

— 'ICM broadcast message' means information made simultaneously available to all or a selected group of TARGET2 participants via the ICM,

— 'indirect participant' means a credit institution established in the European Economic Area (EEA), which has entered into an agreement with a direct participant to submit payment orders and receive payments via such direct participant's PM account, and which has been recognised by a TARGET2 component system as an indirect participant,

— 'insolvency proceedings' means insolvency proceedings within the meaning of Article 2(j) of the Settlement Finality Directive,

— 'instructing participant' means a TARGET2 participant that has initiated a payment order,

— 'intraday credit' means credit extended for a period of less than one business day,

— 'liquidity transfer order' means a payment order, the main purpose of which is to transfer liquidity between different accounts of the same participant,

— 'marginal lending facility' means a Eurosystem standing facility which counterparties may use to receive overnight credit from a Eurosystem CB at the pre-specified marginal lending rate,

— 'marginal lending rate' means the interest rate applicable to the marginal lending facility,

— 'multi-addressee access' means the facility by which branches or credit institutions established in the EEA can access the relevant TARGET2 component system by submitting payment orders and/or receiving payments directly to and from the TARGET2 component system; this facility authorises these entities to submit their payment orders through the direct participant's PM account without that participant's involvement,

— 'network service provider' means the undertaking appointed by the ECB's Governing Council to provide computerised network connections for the purpose of submitting payment messages in TARGET2,

— 'non-settled payment order' means a payment order that is not settled on the same business day as that on which it is accepted,

— 'participant' (or 'direct participant') means an entity that holds at least one PM account with the ECB,

— 'Participant Interface (PI)' means the technical device allowing direct participants to submit and settle payment orders via the services offered in the PM,

— 'payee' means a TARGET2 participant whose PM account will be credited as a result of a payment order being settled,

— 'payer' means a TARGET2 participant whose PM account will be debited as a result of a payment order being settled,

— 'payment instruction' or 'AS payment instruction' means a credit instruction or a debit instruction,

— 'payment order' means a credit transfer order, a liquidity transfer order or a direct debit instruction,

— 'Payments Module (PM)' means an SSP module in which payments of TARGET2 participants are settled on PM accounts,

— 'PM account' means an account held by a TARGET2 participant in the PM with a CB which is necessary for such TARGET2 participant to:

  (a) submit payment orders or receive payments via TARGET2; and

  (b) settle such payments with such CB;

— 'public sector body' means an entity within the 'public sector', the latter term as defined in Article 3 of Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty ([1]) (now Articles 101 and 103(1)),

— 'settlement bank' means a participant whose PM account or sub-account is used to settle AS payment instructions,

— 'settlement central bank (SCB)' means a Eurosystem CB holding a settlement bank's PM account,

— 'Settlement Finality Directive' means Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems ([2]);

— 'Single Shared Platform (SSP)' means the single technical platform infrastructure provided by the SSP-providing CBs,

— 'SSP-providing CBs' means the Deutsche Bundesbank, the Banque de France and the Banca d'Italia in their capacity as the CBs building and operating the SSP for the Eurosystem's benefit,

— 'static data collection form' means a form developed by the ECB for the purpose of registering applicants for TARGET2-ECB services and registering any changes in relation to the provision of such services,

— 'suspension' means the temporary freezing of the rights and obligations of a participant for a period of time to be determined by the ECB,

([1]) OJ L 332, 31.12.1993, p. 1.
([2]) OJ L 166, 11.6.1998, p. 45.

— 'TARGET2-ECB' means the TARGET2 component system of the ECB,

— 'TARGET2' means the entirety resulting from all TARGET2 component systems of the CBs,

— 'TARGET2 component system' means any of the CBs' real-time gross settlement (RTGS) systems that form part of TARGET2,

— 'TARGET2 CUG' means a subset of the network service provider's customers grouped for the purpose of their use of the relevant services and products of the network service provider when accessing the PM,

— 'TARGET2 participant' means any participant in any TARGET2 component system,

— '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 or, during the migration period, payments from national RTGS systems that have not yet migrated to TARGET2 and vice versa.

Article 2

Appendices

1. The following Appendices form an integral part of these Conditions:

Appendix I: Technical specifications for the processing of payment orders

Appendix II: TARGET2 compensation scheme

Appendix III: Terms of reference for capacity and country opinions

Appendix IV: Business continuity and contingency procedures

Appendix V: Operating schedule

Appendix VI: Fee schedule and invoicing

2. In the event of any conflict or inconsistency between the content of any appendix and the content of any other provision in these Conditions, the latter shall prevail.

Article 3

General description of TARGET2-ECB and TARGET2

1. TARGET2 provides real-time gross settlement for payments in euro, with settlement in central bank money.

2. The following payment orders are processed in TARGET2-ECB:

(a) payment orders directly resulting from or made in connection with Eurosystem monetary policy operations;

(b) settlement of the euro leg of foreign exchange operations involving the Eurosystem;

(c) settlement of euro transfers resulting from transactions in cross-border large-value netting systems;

(d) settlement of euro transfers resulting from transactions in euro retail payment systems of systemic importance; and

(e) any other payment orders in euro addressed to TARGET2 participants.

3. TARGET2 is established and functions on the basis of the SSP. The Eurosystem specifies the SSP's technical configuration and features. The SSP services are provided by the SSP-providing CBs for the benefit of the Eurosystem CBs, pursuant to separate agreements.

4. The ECB is the provider of services under these Conditions. Acts and omissions of the SSP-providing CBs shall be considered acts and omissions of the ECB, for which it shall assume liability in accordance with Article 25 below. Participation pursuant to these Conditions shall not create a contractual relationship between participants and the SSP-providing CBs when the latter act in that capacity. Instructions, messages or information which a participant receives from, or sends to, the SSP in relation to the services provided under these Conditions are deemed to be received from, or sent to, the ECB.

5. TARGET2 is legally structured as a multiplicity of payment systems composed of all the TARGET2 component systems, which are designated as 'systems' under the national laws implementing the Settlement Finality Directive. TARGET2-ECB is designated as a 'system' under § 1(16) of the KWG.

6. Participation in TARGET2 takes effect via participation in a TARGET2 component system. These Conditions describe the mutual rights and obligations of participants in TARGET2-ECB and the ECB. The rules on the processing of payment orders (Title IV) refer to all payment orders submitted or payments received by any TARGET2 participant.

7. No intraday credit is provided to participants in TARGET2-ECB.

TITLE II

PARTICIPATION

Article 4

Access criteria

Organisations providing clearing or settlement services (including entities established outside the EEA) that are subject to oversight by a competent authority and 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.

Article 5

Direct participants

Direct participants in TARGET2-ECB shall comply with the requirements set out in Article 6(1) and (2). They shall have at least one PM account with the ECB.

Article 6

Application procedure

1. To join TARGET2-ECB, applicant participants shall fulfil the following technical and legal requirements:

(a) install, manage, operate and monitor and ensure the security of the necessary IT infrastructure to connect to TARGET2-ECB and submit payment orders to it. In doing so, applicant participants may involve third parties, but retain sole liability. In particular, applicant participants shall enter into an agreement with the network service provider to obtain the necessary connection and admissions, in accordance with the technical specifications in Appendix I; and

(b) have passed the tests required by the ECB;

(c) provide a capacity opinion in the form specified in Appendix III, unless the information and representations to be provided in such capacity opinion have already been obtained by the ECB in another context; and

(d) for entities established outside the EEA, provide a country opinion in the form specified in Appendix III, unless the information and representations to be provided in such country opinion have already been obtained by the ECB in another context.

2. Applicants shall apply in writing to the ECB, as a minimum enclosing the following documents/information:

(a) completed static data collection forms as provided by the ECB,

(b) the capacity opinion, if required by the ECB, and

(c) the country opinion, if required by the ECB.

3. The ECB may also request any additional information it deems necessary to decide on the application to participate.

4. The ECB shall reject the application to participate if:

(a) access criteria referred to in Article 4 are not met;

(b) one or more of the participation criteria referred to in paragraph 1 are not met; and/or

(c) in the ECB's assessment, such participation would endanger the overall stability, soundness and safety of TARGET2-ECB or of any other TARGET2 component system, or would jeopardise the ECB's performance of its tasks as described in the Statute of the European System of Central Banks and of the European Central Bank.

5. The ECB shall communicate its decision on the application to participate to the applicant within one month of the ECB's receipt of the application to participate. Where the ECB requests additional information pursuant to paragraph 3, the decision shall be communicated within one month of the ECB's receipt of this information from the applicant. Any rejection decision shall contain reasons for the rejection.

Article 7

TARGET2 directory

1. The TARGET2 directory is the database of BICs used for the routing of payment orders addressed to:

(a) TARGET2 participants and their branches with multi-addressee access;

(b) indirect participants of TARGET2, including those with multi-addressee access; and

(c) addressable BIC holders of TARGET2.

It shall be updated weekly.

2. Unless otherwise requested by the participant, BICs shall be published in the TARGET2 directory.

3. Participants may only distribute the TARGET2 directory to their branches and entities with multi-addressee access.

4. Entities specified in paragraph 1(b) and (c) shall only use their BIC in relation to one direct participant.

TITLE III

OBLIGATIONS OF THE PARTIES

Article 8

Obligations of the ECB and the participants

1. The ECB shall offer the services described in Title IV. Save where otherwise provided in these Conditions or required by law, the ECB shall use all reasonable means within its power to perform its obligations under these Conditions, without guaranteeing a result.

2. Participants shall pay to the ECB the fees laid down in Appendix VI.

3. Participants shall ensure that they are connected to TARGET2-ECB on business days, in accordance with the operating schedule in Appendix V.

4. The participant represents and warrants to the ECB that the performance of its obligations under these Conditions does not breach any law, regulation or by-law applicable to it or any agreement by which it is bound.

Article 9

Cooperation and information exchange

1. In performing their obligations and exercising their rights under these Conditions, the ECB and participants shall cooperate closely to ensure the stability, soundness and safety of TARGET2-ECB. They shall provide each other with any information or documents relevant for the performance of their respective obligations and the exercise of their respective rights under these Conditions, without prejudice to any banking secrecy obligations.

2. The ECB shall establish and maintain a system support desk to assist participants in relation to difficulties arising in connection with system operations.

3. Up-to-date information on the SSP's operational status shall be available on the TARGET2 Information System (T2IS). The T2IS may be used to obtain information on any event affecting the normal operation of TARGET2.

4. The ECB may either communicate messages to participants by means of an ICM broadcast or by any other means of communication.

5. Participants are responsible for the timely update of existing static data collection forms and the submission of new static data collection forms to the ECB. Participants are responsible for verifying the accuracy of information relating to them that is entered into TARGET2-ECB by the ECB.

6. The ECB shall be deemed to be authorised to communicate to the SSP-providing CBs any information relating to participants which the SSP-providing CBs may need in their role as service administrators, in accordance with the contract entered into with the network service provider.

7. Participants shall inform the ECB about any change in their legal capacity and relevant legislative changes affecting issues covered by the country opinion relating to them.

8. Participants shall immediately inform the ECB if an event of default occurs in relation to them.

TITLE IV

MANAGEMENT OF PM ACCOUNTS AND PROCESSING OF PAYMENT ORDERS

Article 10

Opening and management of PM accounts

1. The ECB shall open and operate at least one PM account and, if applicable, sub-accounts, for each participant.

2. No debit balance shall be allowed on PM accounts.

3. PM accounts and their sub-accounts shall be interest free.

4. Participants shall use the ICM to obtain information on their liquidity position. The ECB shall provide a daily statement of accounts to any participant that has opted for such service.

Article 11

Types of payment orders

The following are classified as payment orders for the purposes of TARGET2:

(a) credit transfer orders;

(b) direct debit instructions carried out under a direct debit authorisation; and

(c) liquidity transfer orders.

Article 12

Acceptance and rejection of payment orders

1. Payment orders submitted by participants are deemed accepted by the ECB if:

(a) the payment message complies with the rules established by the network service provider;

(b) the payment message complies with the formatting rules and conditions of TARGET2-ECB and passes the double-entry check described in Appendix I; and

(c) in cases where a payer or a payee has been suspended, the suspended participant's CB's explicit consent has been obtained.

2. The ECB shall immediately reject any payment order that does not fulfil the conditions laid down in paragraph 1. The ECB shall inform the participant of any rejection of a payment order, as specified in Appendix I.

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 favour of ancillary systems.

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. 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.

Article 14

Liquidity limits

1. A participant may limit the use of available liquidity for payment orders in relation to other TARGET2 participants, except any of the CBs, by setting bilateral or multilateral limits. Such limits may only be set in relation to normal payment orders.

2. By setting a bilateral limit, a participant instructs the ECB that an accepted payment order shall not be settled if the sum of its outgoing normal payment orders to another TARGET2 participant's PM account minus the sum of all incoming urgent and normal payments from such TARGET2 participant's PM account would exceed this bilateral limit.

3. A participant may set a multilateral limit for any relationship that is not subject to a bilateral limit. A multilateral limit may only be set if the participant has set at least one bilateral limit. If a participant sets a multilateral limit, it instructs the ECB that an accepted payment order shall not be settled if the sum of its outgoing normal payment orders to all TARGET2 participants' PM accounts in relation to which no bilateral limit has been set, minus the sum of all incoming urgent and normal payments from such PM accounts would exceed this multilateral limit.

4. The minimum amount of any of the limits shall be EUR 1 million. A bilateral or a multilateral limit with an amount of zero shall be treated as if no limit has been set. Limits between zero and EUR 1 million are not possible.

5. Limits may be changed in real time with immediate effect or with effect from the next business day via the ICM. If a limit is changed to zero, it shall not be possible to change it again on the same business day. The setting of a new bilateral or multilateral limit shall only be effective from the next business day.

Article 15

Liquidity reservation facilities

1. Participants may reserve liquidity for highly urgent or urgent payment orders via the ICM.

2. By requesting to reserve a certain amount of liquidity for highly urgent payment orders, a participant instructs the ECB only to settle urgent and normal payment orders if there is available liquidity after the amount reserved for highly urgent payment orders has been deducted.

3. By requesting to reserve a certain amount of liquidity for urgent payment orders, a participant instructs the ECB only to settle normal payment orders if there is available liquidity after the amount reserved for urgent and highly urgent payment orders has been deducted.

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 reservation shall not be reserved automatically at any later point in time, even if the amount of liquidity available on the participant's PM account reaches the level of the initial reservation request.

5. The level of the liquidity reservation may be changed. Participants may make a request via the ICM to reserve new amounts with immediate effect or with effect from the next business day.

Article 16

Predetermined settlement times

1. Instructing participants may predetermine the settlement time of the payment orders within a business day by using the Earliest Debit Time Indicator or the Latest Debit Time Indicator.

2. When the Earliest Debit Time Indicator is used, the accepted payment order is stored and only entered into the entry disposition at the indicated time.

3. When the Latest Debit Time Indicator is used, the accepted payment order shall be returned as non-settled if it cannot be settled by the indicated debit time. 15 minutes prior to the defined debit time, the instructing participant shall be sent an automatic notification via the ICM. Instructing participant may also use the Latest Debit Time Indicator solely as a warning indicator. In such cases, the payment order concerned shall not be returned.

4. Instructing participants can change the Earliest Debit Time Indicator and the Latest Debit Time Indicator via the ICM.

5. Further technical details are contained in Appendix I.

Article 17

Payment orders submitted in advance

1. Payment orders may be submitted up to five business days before the specified settlement date (warehoused payment orders).

2. Warehoused payment orders shall be accepted and entered into the entry disposition on the date specified by the instructing participant at the start of daytime processing, as referred to in Appendix V. They shall be placed in front of payment orders of the same priority.

3. Articles 13(3), 20(2) and 23(1)(a) shall apply mutatis mutandis to warehoused payment orders.

Article 18

Settlement of payment orders in the entry disposition

1. Unless instructing participants have indicated the settlement time in the manner described in Article 16, accepted payment orders shall be settled immediately or at the latest by the end of the business day on which they were accepted, provided that sufficient funds are available on the payer's PM account and taking into account any liquidity limits and liquidity reservations as referred to in Articles 14 and 15.

2. Funding may be provided by:

(a) the available liquidity on the PM account; or

(b) incoming payments from other TARGET2 participants, subject to the applicable optimisation procedures.

3. For highly urgent payment orders the 'first in, first out' (FIFO) principle shall apply. This means that highly urgent payment orders shall be settled in chronological order. Urgent and normal payment orders shall not be settled for as long as highly urgent payment orders are queued.

4. For urgent payment orders the FIFO principle shall also apply. Normal payment orders shall not be settled if urgent and highly urgent payment orders are queued.

5. By derogation from paragraphs 3 and 4, payment orders with a lower priority (or of the same priority but accepted later) may be settled before payment orders with a higher priority (or of the same priority which were accepted earlier), if the payment orders with a lower priority would net out with payments to be received and result on balance in a liquidity increase for the payer.

6. Normal payment orders shall be settled in accordance with the FIFO by-passing principle. This means that they may be settled immediately (independently of other queued normal payments accepted at an earlier time) and may therefore breach the FIFO principle, provided that sufficient funds are available.

7. Further details on the settlement of payment orders in the entry disposition are contained in Appendix I.

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. 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. 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.

Article 20

Entry of payment orders into the system and their irrevocability

1. For the purposes of the first sentence of Article 3(1) of the Settlement Finality Directive and the third sentence of § 116, § 96(2), § 82 and § 340(3) of the Insolvenzordnung (German Insolvency Code) and the sixth sentence of § 46a(1) of the KWG, payment orders are deemed entered into TARGET2-ECB at the moment that the relevant participant's PM account is debited.

2. Payment orders may be revoked until they are entered into TARGET2-ECB in accordance with paragraph 1. Payment orders that are included in an algorithm, as referred to in Appendix I, may not be revoked during the period that the algorithm is running.

TITLE V

SECURITY REQUIREMENTS AND CONTINGENCY ISSUES

Article 21

Business continuity and contingency procedures

In the event of an abnormal external event or any other event which affects the operation of the SSP, the business continuity and contingency procedures described in Appendix IV shall apply.

Article 22

Security requirements

1. Participants shall implement adequate security controls to protect their systems from unauthorised access and use. Participants shall be exclusively responsible for the adequate protection of the confidentiality, integrity and availability of their systems.

2. Participants shall inform the ECB of any security-related incidents in their technical infrastructure and, where appropriate, security-related incidents that occur in the technical infrastructure of the third party providers. The ECB may request further information about the incident and, if necessary, request that the participant take appropriate measures to prevent a recurrence of such an event.

3. The ECB may impose additional security requirements on all participants and/or on participants that are considered critical by the ECB.

TITLE VI

THE INFORMATION AND CONTROL MODULE

Article 23

Use of the ICM

1. The ICM:

(a) allows participants to access information relating to their accounts and to manage liquidity;

(b) may be used to initiate liquidity transfer orders; and

(c) allows participants to initiate backup lump sum and backup contingency payments in the event of a failure of the participant's payment infrastructure.

2. Further technical details relating to the ICM are contained in Appendix I.

TITLE VII

COMPENSATION, LIABILITY REGIME AND EVIDENCE

Article 24

Compensation scheme

If a payment order cannot be settled on the same business day on which it was accepted due to a technical malfunction of TARGET2, the ECB shall offer to compensate the direct participants concerned in accordance with the special procedure laid down in Appendix II.

Article 25

Liability regime

1. In performing their obligations pursuant to these Conditions, the ECB and the participants shall be bound by a general duty of reasonable care in relation to each other.

2. The ECB shall be liable to its participants in cases of fraud (including but not limited to wilful misconduct) or gross negligence, for any loss arising out of the operation of TARGET2-ECB. In cases of ordinary negligence, the ECB's liability shall be limited to the participant's direct loss, i.e. the amount of the transaction in question and/or the loss of interest thereon, excluding any consequential loss.

3. The ECB is not liable for any loss that results from any malfunction or failure in the technical infrastructure (including but not limited to the ECB's computer infrastructure, programmes, data, applications or networks), if such malfunction or failure arises in spite of the ECB having adopted those measures that are reasonably necessary to protect such infrastructure against malfunction or failure, and to resolve the consequences of such malfunction or failure (the latter including but not limited to initiating and completing the business continuity and contingency procedures referred to in Appendix IV).

4. The ECB shall not be liable:

(a) to the extent that the loss is caused by the participant; or

(b) if the loss arises out of external events beyond the ECB's reasonable control (force majeure).

5. Notwithstanding § § 676a, 676b, 676c, 676e and 676g of the Bürgerliches Gesetzbuch (German Civil Code), paragraphs 1 to 4 shall apply to the extent that the ECB's liability can be excluded.

6. The ECB and the participants shall take all reasonable and practicable steps to mitigate any damage or loss referred to in this Article.

7. In performing some or all of its obligations under these Conditions, the ECB may commission third parties in its own name, particularly telecommunications or other network providers or other entities, if this is necessary to meet the ECB's obligations or is standard market practice. The ECB's obligation shall be limited to the due selection and commissioning of any such third parties and the ECB's liability shall be limited accordingly. For the purposes of this paragraph, the SSP-providing CBs shall not be considered as third parties.

Article 26

Evidence

1. Unless otherwise provided in these Conditions, all payment and payment processing-related messages in relation to TARGET2, such as confirmations of debits or credits, or statement messages, between the ECB and participants shall be made through the network service provider.

2. Electronic or written records of the messages retained by the ECB or by the network service provider shall be accepted as a means of evidence of the payments processed through the ECB. The saved or printed version of the original message of the network service provider shall be accepted as a means of evidence, regardless of the form of the original message.

3. If a participant's connection to the network service provider fails, the participant shall use the alternative means of transmission of messages laid down in Appendix IV. In such cases, the saved or printed version of the message produced by the ECB shall have the same evidential value as the original message, regardless of its form.

4. The ECB shall keep complete records of payment orders submitted and payments received by participants for a period of 10 years from the time at which such payment orders are submitted and payments are received.

5. The ECB's own books and records (whether kept on paper, microfilm, microfiche, by electronic or magnetic recording, in any other mechanically reproducible form or otherwise) shall be accepted as a means of evidence of any obligations of the participants and of any facts and events that the parties rely on.

TITLE VIII

TERMINATION OF PARTICIPATION AND CLOSURE OF ACCOUNTS

Article 27

Duration and ordinary termination of participation

1. Without prejudice to Article 28, participation in TARGET2-ECB is for an indefinite period of time.

2. A participant may terminate its participation in TARGET2-ECB at any time giving 14 business days' notice thereof, unless it agrees a shorter notice period with the ECB.

3. The ECB may terminate a participant's participation in TARGET2-ECB at any time giving three months' notice thereof, unless it agrees a different notice period with that participant.

4. On termination of participation, the confidentiality duties laid down in Article 32 remain in force for a period of five years starting on the date of termination.

5. On termination of participation, the PM accounts of the participant concerned shall be closed in accordance with Article 29.

Article 28

Suspension and extraordinary termination of participation

1. A participant's participation in TARGET2-ECB shall be immediately terminated without prior notice or suspended if one of the following events of default occurs:

(a) the opening of insolvency proceedings; and/or

(b) the participant no longer meets the access criteria laid down in Article 4.

2. The ECB may terminate without prior notice or suspend the participant's participation in TARGET2-ECB if:

(a) one or more events of default (other than those referred to in paragraph 1) occur;

(b) the participant is in material breach of these Conditions;

(c) the participant fails to carry out any material obligation to the ECB;

(d) the participant is excluded from, or otherwise ceases to be a member of, a TARGET2 CUG; and/or

(e) any other participant-related event occurs which, in the ECB's assessment, would threaten the overall stability, soundness and safety of TARGET2-ECB or of any other TARGET2 component system, or which would jeopardise the ECB's performance of its tasks as described in the Statute of the European System of Central Banks and of the European Central Bank.

3. In exercising its discretion under paragraph 2, the ECB shall take into account, inter alia, the seriousness of the event of default or events mentioned in subparagraphs (a) to (c).

4. (a) In the event that the ECB suspends or terminates a participant's participation in TARGET2-ECB under paragraph 1 or 2, the ECB shall immediately inform that participant, other CBs and the other participants of such suspension or termination by means of an ICM broadcast message.

(b) In the event that the ECB is informed by another CB of a suspension or termination of a participant in another TARGET2 component system, the ECB shall immediately inform its participants of such suspension or termination by means of an ICM broadcast message.

(c) Once such an ICM broadcast message has been received by the participants, the latter shall be deemed informed of the termination/suspension of a participant's participation in TARGET2-ECB or another TARGET2 component system. The participants shall bear any losses arising from the submission of a payment order to participants whose participation has been suspended or terminated if such payment order was entered into TARGET2-ECB after receipt of the ICM broadcast message.

5. Upon termination of a participant's participation, TARGET2-ECB shall not accept any new payment orders from such participant. Payment orders in the queue, warehoused payment orders or new payment orders in favour of such participant shall be returned.

6. If a participant is suspended from TARGET2-ECB, all its incoming payments and outgoing payment orders shall be stored and only entered into the entry disposition after they have been explicitly accepted by the suspended participant's CB.

Article 29

Closure of PM accounts

1. Participants may close their PM accounts at any time provided they give the ECB 14 business days' notice thereof.

2. On termination of participation, pursuant to either Article 27 or 28, the ECB shall close the PM accounts of the participant concerned, after having:

(a) settled or returned any queued payment orders; and

(b) made use of its rights of pledge and set-off under Article 30.

TITLE IX

FINAL PROVISIONS

Article 30

The ECB's rights of pledge and set-off

1. The ECB shall have a pledge over the participant's existing and future credit balances on its PM accounts, thereby collateralising any current and future claims arising out of the legal relationship between the parties.

2. On the occurrence of:

(a) an event of default referred to in Article 28(1); or

(b) any other event of default or event referred to in Article 28(2) that has led to the termination or suspension of the participant's participation in TARGET2-ECB

notwithstanding the commencement of any insolvency proceedings in respect of a participant and notwithstanding any assignment, judicial or other attachment or other disposition of or in respect of the participant's rights, all obligations of the participant shall be automatically and immediately accelerated, without prior notice and without the need for any prior approval of any authority, so as to be immediately due. In addition, the mutual obligations of the participant and the ECB shall automatically be set off against each other, and the party owing the higher amount shall pay to the other the difference.

3. The ECB shall promptly give the participant notice of any set-off pursuant to paragraph 2 after such set-off has taken place.

4. The ECB may without prior notice debit any participant's PM account by any amount which the participant owes the ECB resulting from the legal relationship between the participant and the ECB.

Article 31

Security rights in relation to funds on sub-accounts

1. The ECB shall have a pledge over the balance on a participant's sub-account opened for the settlement of AS-related payment instructions under the arrangements between the relevant ancillary system and its CB. Such balance shall collateralise the participant's obligation referred to in paragraph 7 towards the ECB in relation to such settlement.

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). 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. 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.

4. In the absence of any insolvency proceedings in relation to the participant, the AS-related payment instructions for the squaring of the participant's settlement obligation shall be settled without drawing on the guarantee and without recourse to the security right over the balance on the participant's sub-account.

5. In the event of the participant's insolvency, the AS-related payment instruction for the squaring of the participant's settlement obligation shall be a first demand for payment under the guarantee; the debiting of the instructed amount from the participant's sub-account (and crediting of the AS's technical account) shall therefore equally involve the discharge of the guarantee obligation by the ECB and a realisation of its collateral right over the balance on the participant's sub-account.

6. The guarantee shall expire upon communication by the ancillary system that the settlement has been completed (via an 'end-of-cycle' message).

7. The participant shall be obliged to reimburse to the ECB any payment made by the latter under such guarantee.

Article 32

Confidentiality

1. The ECB shall keep confidential all sensitive or secret information, including when such information relates to payment, technical or organisational information belonging to the participant or the participant's customers, unless the participant or its customer has given its written consent to disclose.

2. By derogation from paragraph 1, the participant agrees that the ECB may disclose payment, technical or organisational information regarding the participant or the participant's customers obtained in the course of the operation of TARGET2-ECB to other CBs or third parties that are involved in the operation of TARGET2-ECB, to the extent that this is necessary for the efficient functioning of TARGET2, or to supervisory and oversight authorities of Member States and the Community, to the extent that this is necessary for the performance of their public tasks, and provided in all such cases that the disclosure is not in conflict with the applicable law. The ECB shall not be liable for the financial and commercial consequences of such disclosure.

3. By derogation from paragraph 1 and provided this does not make it possible, whether directly or indirectly, to identify the participant or the participant's customers, the ECB may use, disclose or publish payment information regarding the participant or the participant's customers for statistical, historical, scientific or other purposes in the exercise of its public functions or of functions of other public entities to whom the information is disclosed.

4. Information relating to the operation of TARGET2-ECB to which participants have had access, may only be used for the purposes laid down in these Conditions. Participants shall keep such information confidential, unless the ECB has explicitly given its written consent to disclose. Participants shall ensure that any third parties to whom they outsource, delegate or subcontract tasks which have or may have an impact on the performance of their obligations under these Conditions are bound by the confidentiality requirements in this Article.

5. The ECB shall be authorised, in order to settle payment orders, to process and transfer the necessary data to the network service provider.

Article 33

Data protection, prevention of money laundering and related issues

1. Participants shall be deemed to be aware of, and shall comply with, all obligations on them relating to legislation on data protection, prevention of money laundering and the financing of terrorism, in particular in terms of implementing appropriate measures concerning any payments debited or credited on their PM accounts. Participants shall also acquaint themselves with the network service provider's data retrieval policy prior to entering into the contractual relationship with the network service provider.

2. Participants shall be deemed to have authorised the ECB to obtain any information relating to them from any financial or supervisory authority or trade body, whether national or foreign, if such information is necessary for the participant's participation in TARGET2-ECB.

Article 34

Notices

1. Except where otherwise provided for in these Conditions, all notices required or permitted pursuant to these Conditions shall be sent by registered post, facsimile or otherwise in writing or by an authenticated message through the network service provider. Notices to the ECB shall be submitted to Director General of the ECB's Directorate General Payment Systems and Market Infrastructure, Kaiserstrasse 29, D-60311 Frankfurt am Main, Germany or to the SWIFT address of the ECB: ECBFDEFF. Notices to the participant shall be sent to it at the address, fax number or its SWIFT address as the participant may from time to time notify to the ECB.

2. To prove that a notice has been sent, it shall be sufficient to prove that the notice was delivered to the relevant address or that the envelope containing such notice was properly addressed and posted.

3. All notices shall be given in English.

4. Participants shall be bound by all forms and documents of the ECB that the participants have filled in and/or signed, including but not limited to static data collection forms, as referred to in Article 6(2)(a), and information provided under Article 9(5), which were submitted in compliance with paragraphs 1 and 2 and which the ECB reasonably believes to have received from the participants, their employees or agents.

Article 35

Contractual relationship with network service provider

1. For the purposes of these Conditions, the network service provider is SWIFT. Each participant shall enter into a separate agreement with SWIFT regarding the services to be provided by SWIFT in relation to the participant's use of TARGET2-ECB. The legal relationship between a participant and SWIFT shall be exclusively governed by SWIFT's terms and conditions.

2. Each participant shall also participate in a TARGET2 CUG, as specified by the SSP-providing CBs acting as the SWIFT service administrator for the SSP. Admission and exclusion of a participant to or from a TARGET2 CUG shall take effect once communicated to SWIFT by the SWIFT service administrator.

3. Participants shall comply with the TARGET2 SWIFT Service Profile, as made available by the ECB.

4. The services to be provided by SWIFT shall not form part of the services to be performed by the ECB in respect of TARGET2.

5. The ECB shall not be liable for any acts, errors or omissions of SWIFT (including its directors, staff and subcontractors) as provider of SWIFT services, or for any acts, errors or omissions of network providers selected by participants to gain access to the SWIFT network.

Article 36

Amendment procedure

The ECB may at any time unilaterally amend these Conditions, including its Appendices. Amendments to these Conditions, including its Appendices, shall be announced by means of communication in writing to the participants. Amendments shall be deemed to have been accepted unless the participant expressly objects within 14 days of being informed of such amendments. In the event that a participant objects to the amendment, the ECB is entitled immediately to terminate that participant's participation in TARGET2-ECB and close any of its PM accounts.

Article 37

Third party rights

1. Any rights, interests, obligations, responsibilities and claims arising from or relating to these Conditions shall not be transferred, pledged or assigned by participants to any third party without the ECB's written consent.

2. These Conditions do not create any rights in favour of or obligations in relation to any entity other than the ECB and participants in TARGET2-ECB.

Article 38

Governing law, jurisdiction and place of performance

1. The bilateral relationship between the ECB and participants in TARGET2-ECB shall be governed by the law of the Federal Republic of Germany.

2. Any dispute arising from a matter relating to the relationship referred to in paragraph 1 falls under the exclusive competence of the courts of Frankfurt am Main, without prejudice to the competence of the Court of Justice of the European Communities.

3. The place of performance concerning the legal relationship between the ECB and the participants shall be Frankfurt am Main, Federal Republic of Germany.

Article 39

Severability

If any provision in these Conditions is or becomes invalid, this shall not prejudice the applicability of all the other provisions of these Conditions.

Article 40

Entry into force and binding nature

1. These Conditions become effective from 19 May 2008, unless the ECB communicates another date of entry into force to the participants.

2. By participating in TARGET2-ECB, participants automatically agree to these Conditions between themselves and in relation to the ECB.

Appendix I

TECHNICAL SPECIFICATIONS FOR THE PROCESSING OF PAYMENT ORDERS

In addition to the terms and conditions of TARGET2-ECB, the following rules shall apply to the processing of payment orders:

1. **Technical requirements for participation in TARGET2-ECB regarding infrastructure, network and formats**

(1) TARGET2 uses SWIFT services for the exchange of messages. Each participant therefore needs a connection to SWIFT's Secure IP Network. Each participant's PM account shall be identified by an eight- or 11-digit SWIFT BIC. Furthermore, each participant shall pass a series of tests to prove its technical and operational competence before it may participate in TARGET2-ECB.

(2) For the submission of payment orders and the exchange of payment messages in the PM the SWIFTNet FIN Y-copy service shall be used. A dedicated SWIFT Closed User Group (CUG) shall be set up for this purpose. Payment orders within such TARGET2 CUG shall be directly addressed to the receiving TARGET2 participant by entering its BIC in the header of the SWIFTNet FIN message.

(3) For the information and control services the following SWIFTNet services may be used:

(a) SWIFTNet InterAct;

(b) SWIFTNet FileAct; and/or

(c) SWIFTNet Browse.

(4) The security of the message exchange between participants shall rely exclusively on SWIFT's Public Key Infrastructure (PKI) service. Information on the PKI service is available in the documentation provided by SWIFT.

(5) The 'bilateral relationship management' service provided by SWIFT's Relationship Management Application (RMA) shall only be used with the central destination BIC of the SSP and not for payment messages between TARGET2 participants.

2. **Payment message types**

(1) The following SWIFTNet FIN/SWIFT system message types are processed:

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 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
MT 011, MT 012 and MT 019 are SWIFT system messages.		

(2) When they register with TARGET2-ECB, direct participants shall declare which optional message types they will use, with the exception of MT 011 and MT 012 messages in relation to which direct participants shall decide from time to time whether or not to receive them with reference to specific messages.

(3) Participants shall comply with the SWIFT message structure and field specifications, as defined in the SWIFT documentation and under the restrictions set out for TARGET2, as described in Chapter 9.1.2.2 of the User Detailed Functional Specifications (UDFS), Book 1.

(4) Field contents shall be validated at the level of TARGET2-ECB in accordance with the UDFS requirements. Participants may agree among each other on specific rules regarding the field contents. However, in TARGET2-ECB there shall be no specific checks as to whether participants comply with any such rules.

3. **Double-entry check**

(1) All payment orders shall pass a double-entry check, the aim of which is to reject payment orders that have been submitted more than once by mistake.

(2) The following fields of the SWIFT message types shall be checked:

Details	Part of the SWIFT message	Field
Sender	Basic Header	LT Address
Message Type	Application Header	Message Type
Receiver	Application Header	Destination Address
Transaction Reference Number (TRN)	Text Block	:20
Related Reference	Text Block	:21
Value Date	Text Block	:32
Amount	Text Block	:32

(3) If all the fields described in subparagraph 2 in relation to a newly submitted payment order are identical to those in relation to a payment order that has already been accepted, the newly submitted payment order shall be returned.

4. **Error codes**

If a payment order is rejected, the instructing participant shall receive an abort notification (MT 019) indicating the reason for the rejection by using error codes. The error codes are defined in Chapter 9.4.2 of the UDFS.

5. **Predetermined settlement times**

(1) For payment orders using the Earliest Debit Time Indicator, the codeword '/FROTIME/'shall be used.

(2) For payment orders using the Latest Debit Time Indicator, two options shall be available.

(a) Codeword '/REJTIME/': if the payment order cannot be settled by the indicated debit time, the payment order shall be returned.

(b) Codeword '/TILTIME/': if the payment order cannot be settled by the indicated debit time, the payment order shall not be returned but shall be kept in the relevant queue.

Under both options, if a payment order with a Latest Debit Time Indicator is not settled 15 minutes prior to the time indicated therein, a notification shall automatically be sent via the ICM.

(3) If the codeword '/CLSTIME/' is used, the payment shall be treated in the same way as a payment order referred to in subparagraph 2(b).

6. **Settlement of payment orders in the entry disposition**

(1) Offsetting checks and, if appropriate, extended offsetting checks (both terms as defined in paragraphs 2 and 3) shall be carried out on payment orders entered into the entry disposition to provide quick, liquidity-saving gross settlement of payment orders.

(2) An offsetting check shall determine whether the payee's payment orders that are at the front of the highly urgent or, if inapplicable, the urgent queue are available to be offset against the payer's payment order (hereinafter 'offsetting payment orders'). If an offsetting payment order does not provide sufficient funds for the respective payer's payment order in the entry disposition, it shall be determined whether there is sufficient available liquidity on the payer's PM account.

(3) If the offsetting check fails, the ECB may apply an extended offsetting check. An extended offsetting check determines whether offsetting payment orders are available in any of the payee's queues regardless of when they joined the queue. However, if in the queue of the payee there are higher priority payment orders addressed to other TARGET2 participants, the FIFO principle may only be breached if settling such an offsetting payment order would result in a liquidity increase for the payee.

7. **Settlement of payment orders in the queue**

(1) The treatment of payment orders placed in queues depends on the priority class to which it was designated by the instructing participant.

(2) Payment orders in the highly urgent and urgent queues shall be settled by using the offsetting checks described in paragraph 6, starting with the payment order at the front of the queue in cases where there is an increase in liquidity or there is an intervention at queue level (change of queue position, settlement time or priority, or revocation of the payment order).

(3) Payments orders in the normal queue shall be settled on a continuous basis including all highly urgent and urgent payment orders that have not yet been settled. Different optimisation mechanisms (algorithms) are used. If an algorithm is successful, the included payment orders will be settled; if an algorithm fails, the included payment orders will remain in the queue. Three algorithms (1 to 3) shall be applied to offset payment flows. By means of Algorithm 4, settlement procedure 5 (as defined in Chapter 2.8.1 of the UDFS) shall be available for the settlement of payment instructions of ancillary systems. To optimise the settlement of highly urgent ancillary system transactions on participants' sub-accounts, a special algorithm (Algorithm 5) shall be used.

(a) Under Algorithm 1 ('all-or-nothing') the ECB shall, both for each relationship in respect of which a bilateral limit has been set and also for the total sum of relationships for which a multilateral limit has been set:

(i) calculate the overall liquidity position of each TARGET2 participant's PM account by establishing whether the aggregate of all outgoing and incoming payment orders pending in the queue is negative or positive and, if it is negative, check whether it exceeds that participant's available liquidity (the overall liquidity position shall constitute the 'total liquidity position'); and

(ii) check whether limits and reservations set by each TARGET2 participant in relation to each relevant PM account are respected.

If the outcome of these calculations and checks is positive for each relevant PM account, the ECB and other CBs involved shall settle all payments simultaneously on the PM accounts of the TARGET2 participants concerned.

(b) Under Algorithm 2 ('partial') the ECB shall:

(i) calculate and check the liquidity positions, limits and reservations of each relevant PM account as under Algorithm 1; and

(ii) if the total liquidity position of one or more relevant PM accounts is negative, extract single payment orders until the total liquidity position of each relevant PM account is positive.

Thereafter, the ECB and the other CBs involved shall, provided there are sufficient funds, settle all remaining payments (except the extracted payment orders) simultaneously on the PM accounts of the TARGET2 participants concerned.

When extracting payment orders, the ECB shall start from the TARGET2 participant's PM account with the highest negative total liquidity position and from the payment order at the end of the queue with the lowest priority. The selection process shall only run for a short time, to be determined by the ECB at its discretion.

(c) Under Algorithm 3 ('multiple') the ECB shall:

(i) compare pairs of TARGET2 participants' PM accounts to determine whether queued payment orders can be settled within the available liquidity of the two TARGET2 participants' PM accounts concerned and within the limits set by them (by starting from the pair of PM accounts with the smallest difference between the payment orders addressed to each other), and the CB(s) involved shall book those payments simultaneously on the two TARGET2 participants' PM accounts; and

(ii) if, in relation to a pair of PM accounts as described under point (i), liquidity is insufficient to fund the bilateral position, extract single payment orders until there is sufficient liquidity. In this case the CB(s) involved shall settle the remaining payments, except the extracted ones, simultaneously on the two TARGET2 participants' PM accounts.

After performing the checks specified under subparagraphs (i) to (ii), the ECB shall check the multilateral settlement positions (between a participant's PM account and other TARGET2 participants' PM accounts in relation to which a multilateral limit has been set). For this purpose, the procedure described under subparagraphs (i) to (ii) shall apply mutatis mutandis.

(d) Under Algorithm 4 ('partial plus ancillary system settlement') the ECB shall follow the same procedure as for Algorithm 2, but without extracting payment orders in relation to the settlement of an ancillary system (which settles on a simultaneous multilateral basis).

(e) Under Algorithm 5 ('ancillary system settlement via sub-accounts') the ECB shall follow the same procedure as for Algorithm 1, subject to the modification that the ECB shall start Algorithm 5 via the Ancillary System Interface and shall only check whether sufficient funds are available on participants' sub-accounts. Moreover, no limits and reservations shall be taken into account. Algorithm 5 shall also run during night-time settlement.

(4) Payment orders entered into the entry disposition after the start of any of algorithms 1 to 4 may nevertheless be settled immediately in the entry disposition if the positions and limits of the TARGET2 participants' PM accounts concerned are compatible with both the settlement of these payment orders and the settlement of payment orders in the current optimisation procedure. However, two algorithms shall not run simultaneously.

(5) During daytime processing the algorithms shall run sequentially. As long as there is no pending simultaneous multilateral settlement of an ancillary system, the sequence shall be as follows:

(a) algorithm 1,

(b) if algorithm 1 fails, then algorithm 2,

(c) if algorithm 2 fails, then algorithm 3, or if algorithm 2 succeeds, repeat algorithm 1.

When simultaneous multilateral settlement ('procedure 5') in relation to an ancillary system is pending, Algorithm 4 shall run.

(6) The algorithms shall run flexibly by setting a pre-defined time lag between the application of different algorithms to ensure a minimum interval between the running of two algorithms. The time sequence shall be automatically controlled. Manual intervention shall be possible.

(7) While included in a running algorithm, a payment order shall not be reordered (change of the position in a queue) or revoked. Requests for reordering or revocation of a payment order shall be queued until the algorithm is complete. If the payment order concerned is settled while the algorithm is running, any request to reorder or revoke shall be rejected. If the payment order is not settled, the participant's requests shall be taken into account immediately.

8. **Use of the ICM**

(1) The ICM may be used for obtaining information and managing liquidity. SWIFT's Secure IP Network (SIPN) shall be the underlying technical communications network for exchanging information and running control measures.

(2) With the exception of warehoused payment orders and static data information, only data in relation to the current business day shall be available via the ICM. The screens shall be offered in English only.

(3) Information shall be provided in 'pull' mode, which means that each participant has to ask to be provided with information.

(4) The following modes shall be available for using the ICM:

(a) *Application-to-application mode (A2A)*

In A2A, information and messages are transferred between the PM and the participant's internal application. The participant therefore has to ensure that an appropriate application is available for the exchange of XML messages (requests and responses) with the ICM via a standardised interface. Further details are contained in the ICM User Handbook and in Book 4 of the UDFS.

(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). For U2A access through the SWIFT Alliance WebStation the IT infrastructure has to be able to support cookies and JavaScript. Further details are described in the ICM User Handbook.

(5) Each participant shall have at least one SWIFT Alliance WebStation to have access to the ICM via U2A.

(6) Access rights to the ICM shall be granted by using SWIFT's 'Role Based Access Control'. The SWIFT 'Non Repudiation of Emission' (NRE) service, which may be used by participants, allows the recipient of an XML message to prove that such message has not been altered.

(7) If a participant has technical problems and is unable to submit any payment order, it may generate preformatted backup lump sum and backup contingency payments by using the ICM. The ECB shall open such functionality upon request of the participant.

(8) Participants may also use the ICM to transfer liquidity:

(a) from their PM account to their account outside the PM;

(b) between the PM account and the participant's sub-accounts; and

(c) from the PM account to the mirror account managed by the ancillary system.

9. **The UDFS and the ICM User Handbook**

Further details and examples explaining the above rules are contained in the UDFS and the ICM User Handbook, as amended from time to time and published on the ECB's website in English.

Appendix II

TARGET2 COMPENSATION SCHEME

1. **General principles**

(a) If there is a technical malfunction of TARGET2, direct participants may submit claims for compensation in accordance with the TARGET2 compensation scheme laid down in this Appendix.

(b) Unless otherwise decided by the ECB's Governing Council, the TARGET2 compensation scheme shall not apply if the technical malfunction of TARGET2 arises out of external events beyond the reasonable control of the CBs concerned or as a result of acts or omissions by third parties.

(c) Compensation under the TARGET2 compensation scheme shall be the only compensation procedure offered in the event of a technical malfunction of TARGET2. Participants may, however, use other legal means to claim for losses. If a participant accepts a compensation offer under the TARGET2 compensation scheme, this shall constitute the participant's irrevocable agreement that it thereby waives all claims in relation to the payment orders concerning which it accepts compensation (including any claims for consequential loss) it may have against any CB, and that the receipt by it of the corresponding compensation payment constitutes full and final settlement of all such claims. The participant shall indemnify the CBs concerned, up to a maximum of the amount received under the TARGET2 compensation scheme, in respect of any further claims which are raised by any other participant or any other third party in relation to the payment order or payment concerned.

(d) The making of a compensation offer shall not constitute an admission of liability by the ECB or any other CB in respect of a technical malfunction of TARGET2.

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:

(i) a payment order was not settled on the business day on which it was accepted; or

(ii) during the migration period a payer can show that it intended to submit a payment order to TARGET2-ECB, but was unable to do so due to the stop-sending status of a national RTGS system that had not yet migrated to TARGET2.

(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.

3. **Calculation of compensation**

(a) With respect to a compensation offer for a payer:

(i) the administration fee shall be EUR 50 for the first non-settled payment order, 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 calculated separately in relation to each payee;

(ii) interest compensation shall be determined by applying a reference rate to be fixed from day to day. This reference rate shall be the lower of the euro overnight index average (EONIA) rate and the marginal lending rate. The reference rate shall be applied to the amount of the payment order not settled as a result of the technical malfunction of TARGET2 for each day in the period from the date of the actual or, in relation to payment orders referred to in paragraph 2(a)(ii), intended submission of the payment order until the date on which the payment order was or could have been successfully settled. Any proceeds made by placing funds resulting from non-settled payment orders on deposit with the Eurosystem shall be deducted from the amount of any compensation; and

(iii) no interest compensation shall be payable if and in so far as funds resulting from non-settled payment orders were placed in the market or used to fulfil minimum reserve requirements.

(b) With respect to a compensation offer for a payee:

(i) the administration fee shall be EUR 50 for the first non-settled payment order, 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 calculated separately in relation to each payer;

(ii) the method set out in subparagraph (a)(ii) for calculating interest compensation shall apply except that interest compensation shall be payable at a rate equal to the difference between the marginal lending rate and the reference rate, and shall be calculated on the amount of any recourse to the marginal lending facility occurring as a result of the technical malfunction of TARGET2.

4. **Procedural rules**

(a) A claim for compensation shall be submitted on the claim form available on the website of the ECB in English (see www.ecb.int). Payers shall submit a separate claim form in respect of each payee and payees shall submit a separate claim form in respect of each payer. Sufficient additional information and documents shall be provided to support the information indicated in the claim form. Only one claim may be submitted in relation to a specific payment or payment order.

(b) Within four weeks of a technical malfunction of TARGET2, participants shall submit their claim form(s) to the ECB. Any additional information and evidence requested by the ECB shall be supplied within two weeks of such request being made.

(c) Unless otherwise decided by the ECB's Governing Council and communicated to the participants, all received claims shall be assessed no later than 14 weeks after the technical malfunction of TARGET2 occurs.

(d) The ECB shall communicate the result of the assessment referred to in subparagraph (c) to the relevant participants. If the assessment entails a compensation offer, the participants concerned shall, within four weeks of the communication of such offer, either accept or reject it, in respect of each payment or payment order comprised within each claim, by signing a standard letter of acceptance (in the form available on the website of the ECB (see www.ecb.int). If such letter has not been received by the ECB within four weeks, the participants concerned shall be deemed to have rejected the compensation offer.

(e) The ECB shall make compensation payments on receipt of a participant's letter of acceptance of compensation. No interest shall be payable on any compensation payment.

Appendix III

TERMS OF REFERENCE FOR CAPACITY AND COUNTRY OPINIONS

Terms of reference for capacity opinions for participants in TARGET2

The European Central Bank
Kaiserstrasse 29
D-60311 Frankfurt am Main
Germany

Participation in TARGET2-ECB

[location], [date]

Dear Sir or Madam,

We have been asked to provide this Opinion as [in-house or external] legal advisers to [specify name of Participant or branch of Participant] in respect of issues arising under the laws of [jurisdiction in which the Participant is established; hereinafter the 'jurisdiction'] in connection with the participation of [specify name of Participant] (hereinafter the 'Participant') in TARGET2-ECB (hereinafter the 'System').

This Opinion is confined to the laws of [jurisdiction] as they exist as on the date of this Opinion. We have made no investigation of the laws of any other jurisdiction as a basis for this Opinion, and do not express or imply any opinion in this regard. Each of the statements and opinions presented below applies with equal accuracy and validity under the laws of [jurisdiction], whether or not the Participant acts through its head office or one or more branches established inside or outside of [jurisdiction] in submitting payment orders and receiving payments.

I. DOCUMENTS EXAMINED

For the purposes of this Opinion, we have examined:

(1) a certified copy of the [specify relevant constitutional document(s)] of the Participant such as is/are in effect on the date hereof;

(2) [if applicable] an extract from the [specify relevant company register] and [if applicable] [register of credit institutions or analogous register];

(3) [to the extent applicable] a copy of the Participant's licence or other proof of authorisation to provide banking, investment, funds transfer or other financial services in [jurisdiction];

(4) [if applicable] a copy of a resolution adopted by the board of directors or the relevant governing body of the Participant on [insert date], [insert year], evidencing the Participant's agreement to adhere to the System Documents, as defined below; and

(5) [specify all powers of attorney and other documents constituting or evidencing the requisite power of the person or persons signing the relevant System Documents (as defined below) on behalf of the Participant];

and all other documents relating to the Participant's constitution, powers, and authorisations necessary or appropriate for the provision of this Opinion (hereinafter the 'Participant Documents').

For the purposes of this Opinion, we have also examined:

(1) the terms and conditions of TARGET2-ECB dated [insert date] (hereinafter the 'Rules'); and

(2) […].

The Rules and the […] shall be referred to hereinafter as the 'System Documents' (and collectively with the Participant Documents as the 'Documents').

II. ASSUMPTIONS

For the purposes of this Opinion we have assumed in relation to the Documents that:

(1) the System Documents with which we have been provided are originals or true copies;

(2) the terms of the System Documents and the rights and obligations created by them are valid and legally binding under the laws of the Federal Republic of Germany by which they are expressed to be governed, and the choice of the laws of the Federal Republic of Germany to govern the System Documents is recognised by the laws of the Federal Republic of Germany;

(3) the Participant Documents are within the capacity and power of and have been validly authorised, adopted or executed and, where necessary, delivered by the relevant parties; and

(4) the Participant Documents are binding on the parties to which they are addressed, and there has been no breach of any of their terms.

III. OPINIONS REGARDING THE PARTICIPANT

A. The Participant is a corporation duly established and registered or otherwise duly incorporated or organised under the laws of [jurisdiction].

B. The Participant has all the requisite corporate powers to execute and perform the rights and obligations under the System Documents to which it is party.

C. The adoption or execution and the performance by the Participant of the rights and obligations under the System Documents to which the Participant is party will not in any way breach any provision of the laws or regulations of [jurisdiction] applicable to the Participant or the Participant Documents.

D. No additional authorisations, approvals, consents, filings, registrations, notarisations or other certifications of or with any court or governmental, judicial or public authority that is competent in [jurisdiction] are required by the Participant in connection with the adoption, validity or enforceability of any of the System Documents or the execution or performance of the rights and obligations thereunder.

E. The Participant has taken all necessary corporate action and other steps necessary under the laws of [jurisdiction] to ensure that its obligations under the System Documents are legal, valid and binding

This Opinion is stated as of its date and is addressed solely to the ECB and the [Participant]. No other persons may rely on this Opinion, and the contents of this Opinion may not be disclosed to persons other than its intended recipients and their legal counsel without our prior written consent, with the exception of the national central banks of the European System of Central Banks [and [the national central bank/relevant regulatory authorities] of [jurisdiction]].

Yours faithfully,

[signature]

Terms of reference for country opinions for non-EEA participants in TARGET2

The European Central Bank
Kaiserstrasse 29
D-60311 Frankfurt am Main
Germany

TARGET2-ECB

[location], [date]

Dear Sir or Madam,

We have been asked as [external] legal advisers to [specify name of Participant or branch of Participant] (the Participant) in respect of issues arising under the laws of [jurisdiction in which the Participant is established; hereinafter the 'jurisdiction'] to provide this Opinion under the laws of [jurisdiction] in connection with the participation of the Participant in a system

which is a component of TARGET2 (hereinafter the 'System'). References herein to the laws of [jurisdiction] include all applicable regulations of [jurisdiction]. We express an opinion herein under the law of [jurisdiction], with particular regard to the Participant established outside the Federal Republic of Germany in relation to rights and obligations arising from participation in the System, as presented in the System Documents defined below.

This Opinion is confined to the laws of [jurisdiction] as they exist on the date of this Opinion. We have made no investigation of the laws of any other jurisdiction as a basis for this Opinion, and do not express or imply any opinion in this regard. We have assumed that there is nothing in the laws of another jurisdiction which affects this Opinion.

1. DOCUMENTS EXAMINED

For the purposes of this Opinion, we have examined the documents listed below and such other documents as we have deemed necessary or appropriate:

(1) the terms and conditions of TARGET2-ECB dated [insert date] (hereinafter the 'Rules'); and

(2) any other document governing the System and/or the relationship between the Participant and other participants in the System, and between the participants in the System and the ECB.

The Rules and the […] shall be referred to hereinafter as the 'System Documents'.

2. ASSUMPTIONS

For the purposes of this Opinion we have assumed in relation to the System Documents that:

(1) the System Documents are within the capacity and power of and have been validly authorised, adopted or executed and, where necessary, delivered by the relevant parties;

(2) the terms of the System Documents and the rights and obligations created by them are valid and legally binding under the laws of the Federal Republic of Germany, by which they are expressed to be governed, and the choice of the laws of the Federal Republic of Germany to govern the System Documents is recognised by the laws of the Federal Republic of Germany;

(3) the participants in the System through which any payment orders are sent or payments are received, or through which any rights or obligations under the System Documents are executed or performed, are licensed to provide funds transfer services, in all relevant jurisdictions; and

(4) the documents submitted to us in copy or as specimens conform to the originals.

3. OPINION

Based on and subject to the foregoing, and subject in each case to the points set out below, we are of the opinion that:

3.1. ***Country-specific legal aspects [to the extent applicable]***

The following characteristics of the legislation of [jurisdiction] are consistent with and in no way set aside the obligations of the Participant arising out of the System Documents: [list of country-specific legal aspects].

3.2. ***General insolvency issues***

3.2.a *Types of insolvency proceedings*

The only types of insolvency proceedings (including composition or rehabilitation) — which, for the purpose of this Opinion, shall include all proceedings in respect of the Participant's assets or any branch it may have in [jurisdiction] — to which the Participant may become subject in [jurisdiction], are the following: [list proceedings in original language and English translation] (together collectively referred to as 'Insolvency Proceedings').

In addition to Insolvency Proceedings, the Participant, any of its assets, or any branch it may have in [jurisdiction] may become subject in [jurisdiction] to [list any applicable moratorium, receivership, or any other proceedings as a result of which payments to and/or from the Participant may be suspended, or limitations can be imposed in relation to such payments, or similar proceedings in original language and English translation] (hereinafter collectively referred to as 'Proceedings').

3.2.b *Insolvency treaties*

[jurisdiction] or certain political subdivisions within [jurisdiction], as specified, is/are party to the following insolvency treaties: [specify, if applicable which have or may have an impact on this Opinion].

3.3. ***Enforceability of System Documents***

Subject to the points set out below, all provisions of the System Documents will be binding and enforceable in accordance with their terms under the laws of [jurisdiction], in particular in the event of the opening of any Insolvency Proceedings or Proceedings with respect to the Participant.

In particular, we are of the opinion that:

3.3.a *Processing of payment orders*

The provisions on processing of payment orders [list of sections] of the Rules are valid and enforceable. In particular, all payment orders processed pursuant to such sections will be valid, binding and will be enforceable under the laws of [jurisdiction]. The provision of the Rules which specifies the precise point in time at which payment orders submitted by the Participant to the System become enforceable and irrevocable (Article 20 of the Rules) is valid, binding and enforceable under the laws of [jurisdiction].

3.3.b *Authority of the ECB to perform its functions*

The opening of Insolvency Proceedings or Proceedings in respect of the Participant will not affect the authority and powers of the ECB arising out of the System Documents. [Specify [to the extent applicable] that: the same opinion is also applicable in respect of any other entity which provides the Participants with services directly and necessarily required for participating in the System (e.g. network service provider)].

3.3.c *Remedies in the event of default*

[Where applicable to the Participant, the provisions contained in Article 30 of the Rules regarding accelerated performance of claims which have not yet matured, the set-off of claims for using the deposits of the Participant, the enforcement of a pledge, suspension and termination of participation, claims for default interest, and termination of agreements and transactions (Articles 27-31 of the Rules) are valid and enforceable under the laws of [jurisdiction].]

3.3.d *Suspension and termination*

Where applicable to the Participant, the provisions contained in Articles 27 and 28 of the Rules (in respect of suspension and termination of the Participant's participation in the System on the opening of Insolvency Proceedings or Proceedings or other events of default, as defined in the System Documents, or if the Participant represents any kind of systemic risk or has serious operational problems) are valid and enforceable under the laws of [jurisdiction].

3.3.e *Assignment of rights and obligations*

The rights and obligations of the Participant cannot be assigned, altered or otherwise transferred by the Participant to third parties without the prior written consent of the ECB.

3.3.f *Choice of governing law and jurisdiction*

The provisions contained in Articles 34 and 38 of the Rules, and in particular in respect of the governing law, the resolution of a dispute, competent courts, and service of process are valid and enforceable under the laws of [jurisdiction].

3.4. ***Voidable preferences***

We are of the opinion that no obligation arising out of the System Documents, the performance thereof, or compliance therewith prior to the opening of any Insolvency Proceedings or Proceedings in respect of the Participant may be set aside in any such proceedings as a preference, voidable transaction or otherwise under the laws of [jurisdiction].

In particular, and without limitation to the foregoing, we express this opinion in respect of any payment orders submitted by any participant in the System. In particular, we are of the opinion that the provisions of Article 20 of the Rules establishing the enforceability and irrevocability of payment orders will be valid and enforceable and that a payment order submitted by any participant and processed pursuant to Title IV of the Rules may not be set aside in any Insolvency Proceedings or Proceedings as a preference, voidable transaction or otherwise under the laws of [jurisdiction].

3.5. ***Attachment***

If a creditor of the Participant seeks an attachment order (including any freezing order, order for seizure or any other public or private law procedure that is intended to protect the public interest or the rights of the Participant's creditors) — hereinafter referred to as an 'Attachment' — under the laws of [jurisdiction] from a court or governmental, judicial or public authority that is competent in [jurisdiction], we are of the opinion that [insert the analysis and discussion].

3.6. ***Collateral [if applicable]***

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

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]. In the event that a guarantee from another legal entity is required for adherence of the Participant in the System, this guarantee will be binding on the guarantor and fully enforceable against it, without any limit with regard to the amount of the guarantee, whatever the Participant's situation.

3.6.b *Priority of assignees', pledgees' or repo purchasers' interest over that of other claimants*

In the event of Insolvency Proceedings or Proceedings in respect of the Participant, the rights or assets assigned for collateral purposes, or pledged by the Participant in favour of the ECB or other participants in the System, will rank in priority of payment above the claims of all other creditors of the Participant and will not be subject to priority or preferential creditors.

3.6.c *Enforcing title to security*

Even in the event of Insolvency Proceedings or Proceedings in respect of the Participant, other participants in the System and the ECB as pledgees will still be free to enforce and collect the Participant's rights or assets through the action of the ECB pursuant to the Rules.

3.6.d *Form and registration requirements*

There are no form requirements for the assignment for collateral purposes of, or the creation and enforcement of a pledge or repo over the Participant's rights or assets and it is not necessary for the assignment for collateral purposes, pledge or repo, as applicable, or any particulars of such assignment, pledge or repo, as applicable, to be registered or filed with any court or governmental, judicial or public authority that is competent in [jurisdiction].

3.7. ***Branches [to the extent applicable]***

3.7.a *Opinion applies to action through branches*

Each of the statements and opinions presented above with regard to the Participant applies with equal accuracy and validity under the laws of [jurisdiction] in situations where the Participant acts through its one or more of its branches established outside [jurisdiction].

3.7.b *Conformity with law*

Neither the execution and performance of the rights and obligations under the System Documents nor the submission, transmission or receipt of payment orders by a branch of the Participant will in any respect breach the laws of [jurisdiction].

3.7.c *Required authorisations*

Neither the execution and performance of the rights and obligations under the System Documents nor the submission, transmission or receipt of payment orders by a branch of a Participant will require any additional authorisations, approvals, consents, filings, registrations, notarisations or other certifications of or with any court or governmental, judicial or public authority that is competent in [jurisdiction].

This Opinion is stated as of its date and is addressed solely to the ECB and the [Participant]. No other persons may rely on this Opinion, and the contents of this Opinion may not be disclosed to persons other than its intended recipients and their legal counsel without our prior written consent, with the exception of the national central banks of the European System of Central Banks [and [the national central bank/relevant regulatory authorities] of [jurisdiction]].

Yours faithfully,

[signature]

Appendix IV

BUSINESS CONTINUITY AND CONTINGENCY PROCEDURE

1. **General provisions**

(a) This Appendix sets out the arrangements between the ECB and participants, or ancillary systems, if one or more components of the SSP or the telecommunications network fail or are affected by an abnormal external event, or if the failure affects any participant or ancillary system.

(b) All references to specific times in this Appendix refer to European Central Bank time, i.e. the local time at the seat of the ECB.

2. **Measures of business continuity and contingency processing**

(a) In the event that an abnormal external event occurs and/or there is a failure of the SSP or the telecommunications network which affects the normal operation of TARGET2, the ECB shall be entitled to adopt business continuity and contingency processing measures.

(b) The following main business continuity and contingency processing measures shall be available in TARGET2:

(i) relocating the operation of the SSP to an alternative site;

(ii) changing the SSP's operating hours; and

(iii) initiating contingency processing of very critical and critical payments, as defined in paragraph 6(c) and (d) respectively.

(c) In relation to business continuity and contingency processing measures, the ECB shall have full discretion regarding whether and which measures are adopted to settle payment orders.

3. **Incident communication**

(a) Information about the failure of the SSP and/or an abnormal external event shall be communicated to participants through the domestic communication channels, the ICM and T2IS. In particular, communications to participants shall include the following information:

(i) a description of the event;

(ii) the anticipated delay in processing (if known);

(iii) information on the measures already taken; and

(iv) the advice to participants.

(b) In addition, the ECB may notify participants of any other existing or anticipated event which has the potential to affect the normal operation of TARGET2.

4. **Relocation the operation of the SSP to an alternative site**

(a) In the event that any of the events referred to in paragraph 2(a) occurs, the operation of the SSP may be relocated to an alternative site, either within the same region or in another region.

(b) In the event that the operation of the SSP is relocated to another region, the participants shall use best efforts to reconcile their positions up to the point of the failure or the occurrence of the abnormal external event and provide to the ECB all relevant information in this respect.

5. **Change of operating hours**

(a) The daytime processing of TARGET2 may be extended or the opening time of a new business day may be delayed. During any extended operating time of TARGET2, payment orders shall be processed in accordance with the terms and conditions of TARGET2-ECB, subject to the modifications contained in this Appendix.

(b) Daytime processing may be extended and the closing time thereby delayed if an SSP failure has occurred during the day but has been resolved before 18.00. Such a closing time delay shall in normal circumstances not exceed two hours and shall be announced as early as possible to participants. If such a delay is announced before 16.50, the minimum period of one hour between the cut-off time for customer and interbank payment orders shall remain in place. Once such a delay is announced it may not be withdrawn.

(c) The closing time shall be delayed in cases where an SSP failure has occurred before 18:00 and has not been resolved by 18.00. The ECB shall immediately communicate the delay of closing time to participants.

(d) Upon recovery of the SSP, the following steps shall take place:

(i) The ECB shall seek to settle all queued payments within one hour; this time is reduced to 30 minutes in the event that the SSP failure occurs at 17.30 or later (in cases where the SSP failure was ongoing at 18.00).

(ii) Participants' final balances shall be established within one hour; this time shall be reduced to 30 minutes in the event that the SSP failure occurs at 17.30 or later, in cases where the SSP failure was ongoing at 18.00.

(iii) At the cut-off time for interbank payments, the end-of-day processing, including recourse to the Eurosystem standing facilities shall take place.

(e) Ancillary systems that require liquidity in the early morning need to have established means to cope with cases where the daytime processing cannot be started in time due to an SSP failure on the previous day.

6. **Contingency processing**

(a) If it deems it necessary to do so, the ECB shall initiate the contingency processing of payment orders in the Contingency Module of the SSP. In such cases, only a minimum service level shall be provided to participants. The ECB shall inform its participants of the start of contingency processing by means of any available means of communication.

(b) In contingency processing, payment orders shall be processed manually by the ECB.

(c) The following payments shall be considered as 'very critical' and the ECB shall use best efforts to process them in contingency situations:

(i) CLS Bank International-related payments;

(ii) end-of-day settlement of EURO1; and

(iii) central counterparty margin calls.

(d) The following types of payments shall be considered as 'critical' and the ECB may decide to initiate contingency processing in relation to them:

(i) payments in relation to the real-time settlement of interfaced securities settlement systems; and

(ii) additional payments, if required to avoid systemic risk.

(e) Participants shall submit payment orders for contingency processing and information to payees shall be provided through encrypted and authenticated e-mail, as well as via authenticated fax. Information concerning account balances and debit and credit entries may be obtained via the ECB.

(f) Payment orders that have already been submitted to TARGET2-ECB, but are queued, may also undergo contingency processing. In such cases the ECB shall endeavour to avoid the double processing of payment orders, but the participants shall bear the risk of such double processing if it occurred.

(g) For contingency processing of payment orders, participants shall provide additional collateral. During contingency processing, incoming contingency payments may be used to fund outgoing contingency payments. For the purposes of contingency processing, participants' available liquidity may not be taken into account by the ECB.

7. **Failures linked to participants or ancillary systems**

(a) In the event that a participant has a problem that prevents it from settling payments in TARGET2 it shall be its responsibility to resolve the problem. In particular, a participant may use in-house solutions or the ICM functionality, i.e. backup lump sum payments and backup contingency payments (CLS, EURO1, STEP2 pre-fund).

(b) If a participant decides to use the ICM functionality for making backup lump sum payments, the ECB shall, if the participant so requests, open this functionality via the ICM. If the participant so requests, the ECB shall transmit an ICM broadcast message to inform other participants about the participant's use of backup lump sum payments. The participant shall be responsible for sending such backup lump sum payments exclusively to other participants with which it has bilaterally agreed on the use of such payments and for any further steps in relation to such payments.

(c) If the measures referred to in subparagraph (a) are exhausted or if they are inefficient, the participant may request support from the ECB.

(d) In the event that a failure affects an ancillary system, that ancillary system shall be responsible for resolving the failure. If the ancillary system so requests, the ECB may act on its behalf. The ECB shall have discretion to decide what support it gives to the ancillary system, including during the night-time operations of the ancillary system. The following contingency measures may be taken:

(i) the ancillary system initiates clean payments (i.e. payments that are not linked to the underlying transaction) via the Participant Interface;

(ii) the ECB creates and/or processes XML instructions/files on behalf of the ancillary system; and/or

(iii) the ECB makes clean payments on behalf of the ancillary system.

(e) The detailed contingency measures with respect to ancillary systems shall be contained in the bilateral arrangements between the ECB and the relevant ancillary system.

8. **Other provisions**

(a) In the event that certain data are unavailable because one of the events referred to in paragraph 3(a) has occurred, the ECB is entitled to start or continue processing payment orders and/or operate TARGET2-ECB on the basis of the last available data, as determined by the ECB. If so requested by the ECB, participants and ancillary systems shall resubmit their FileAct/Interact messages or take any other action deemed appropriate by the ECB.

(b) In the event of a failure of the ECB, some or all of its technical functions in relation to TARGET2-ECB may be performed by other Eurosystem CBs.

(c) The ECB may require that the participants participate in regular or ad hoc testing of business continuity and contingency processing measures, training or any other preventive arrangements, as deemed necessary by the ECB. Any costs incurred by the participants as a result of such testing or other arrangements shall be borne solely by the participants.

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 European Central Bank time, i.e. the local time at the seat of the ECB.

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

Appendix VI

FEE SCHEDULE AND INVOICING

Fees and invoicing for direct participants

1. The monthly fee for the processing of payment orders in TARGET2-ECB for direct participants, depending on which option the direct participant has chosen, shall be either:

   (a) EUR 100 per PM account plus a flat fee per transaction (debit entry) of EUR 0,80; or

   (b) EUR 1 250 per PM account plus a fee per transaction (debit entry) determined as follows, based on the volume of transactions (number of processed items) per month:

Band	From	To	Price
1	1	10 000	EUR 0,60
2	10 001	25 000	EUR 0,50
3	25 001	50 000	EUR 0,40
4	50 001	100 000	EUR 0,20
5	Above 100 000	—	EUR 0,125

   Liquidity transfers between a participant's PM account and its sub-accounts shall not be subject to a charge.

2. There shall be an additional monthly fee for direct participants who do not wish the BIC of their account to be published in the TARGET2 directory of EUR 30 per account.

3. In the case of direct participants, the following invoicing rules apply. The direct participant shall receive the invoice for the previous month specifying the fees to be paid, no later than on the fifth business day of the following month. Payment shall be made at the latest on the tenth working day of that month to the account specified by the ECB and shall be debited from that participant's PM account.

Fees and invoicing for ancillary systems

4. An ancillary system using the ASI or the Participant Interface, irrespective of the number of any accounts it may hold with the ASCB and/or the SCB, shall be subject to a fee schedule consisting of three elements, as set out below.

   (a) A fixed monthly fee of EUR 1 000 to be charged to each AS (Fixed Fee I).

   (b) A second monthly fixed fee of between EUR 417 and EUR 4 167, in proportion to the underlying gross value of the AS's euro cash settlement transactions (Fixed Fee II):

Band	From (EUR million/day)	To (EUR million/day)	Annual fee	Monthly fee
1	0	below 1 000	EUR 5 000	EUR 417
2	1 000	below 2 500	EUR 10 000	EUR 833
3	2 500	below 5 000	EUR 20 000	EUR 1 667
4	5 000	below 10 000	EUR 30 000	EUR 2 500
5	10 000	below 50 000	EUR 40 000	EUR 3 333
6	Above 50 000	—	EUR 50 000	EUR 4 167

The gross value of the AS's euro cash settlement transactions shall be calculated by the ASCB once a year on the basis of such gross value during the previous year and the calculated gross value shall be applied for calculating the fee as from 1 January of each calendar year.

(c) A transaction fee calculated on the same basis as the schedule established for direct participants in paragraph 1 of this Appendix. The AS may choose one of the two options: either to pay a flat EUR 0,80 fee per payment instruction (Option A) or to pay a fee calculated on a degressive basis (Option B), subject to the following modifications:

— for Option B, the limits of the bands relating to volume of payment instructions are divided by two, and

— a monthly fixed fee of EUR 100 (under Option A) or EUR 1 250 (under Option B) shall be charged in addition to Fixed Fee I and Fixed Fee II.

5. Any fee payable in relation to a payment instruction submitted or payment received by an AS, via either the Participant Interface or the ASI, shall be exclusively charged to this AS. The Governing Council may establish more detailed rules for the determination of billable transactions settled via the ASI.

6. Each AS shall receive an invoice from its respective ASCB for the previous month based on the fees referred to in paragraph 4, no later than the fifth business day of the following month. Payments shall be made no later than the tenth business day of this month to the account specified by the ASCB or shall be debited from an account specified by the AS.

7. For the purposes of this paragraph, each AS that has been designated under Directive 98/26/EC shall be treated separately, even if two or more of them are operated by the same legal entity. The same rule shall apply to the ASs that have not been designated under Directive 98/26/EC, in which case the ASs shall be identified by reference to the following criteria: (a) a formal arrangement, based on a contractual or legislative instrument (e.g. an agreement among the participants and the system operator); (b) with multiple membership; (c) common rules and standardised arrangements; and (d) for the clearing, netting and/or settlement of payments and/or securities between the participants.