

DECISIONES

DECISIÓN DEL BANCO CENTRAL EUROPEO

de 11 de diciembre de 2012

por la que se modifica la Decisión BCE/2007/7 relativa a las condiciones de TARGET-2 ECB

(BCE/2012/31)

(2013/31/UE)

EL COMITÉ EJECUTIVO DEL BANCO CENTRAL EUROPEO,

Visto el Tratado de funcionamiento de la Unión Europea, en particular el artículo 127, apartado 2,

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

Vista la Orientación BCE/2012/27, de 5 de diciembre de 2012, sobre el sistema automatizado transeuropeo de transferencia urgente para la liquidación bruta en tiempo real (TARGET2) ⁽¹⁾, en particular el artículo 6, apartado 2,

Considerando lo siguiente:

- (1) La Orientación BCE/2007/2, de 26 de abril de 2007, sobre el sistema automatizado transeuropeo de transferencia urgente para la liquidación bruta en tiempo real (TARGET2) ⁽²⁾, ha sido recientemente refundida para incluir en ella normas que hasta entonces eran internas al Eurosistema y para añadir algunas definiciones necesarias, así como disposiciones relativas a la inaplicabilidad de las sanciones a los bancos de fuera de la Unión, el intercambio de información en lo relativo a la suspensión o terminación del acceso a las operaciones de política monetaria y las consecuencias de la suspensión o terminación.
- (2) En consecuencia, es necesario modificar la Decisión BCE/2007/7, de 24 de julio de 2007, relativa a las condiciones de TARGET2-ECB ⁽³⁾, para: a) incluir en las condiciones de TARGET2-ECB ciertos elementos de la Orien-

tación BCE/2012/27, y b) actualizar las referencias a la legislación nacional relativa a la Directiva 98/26/CE del Parlamento Europeo y del Consejo, de 19 de mayo de 1998, sobre la firmeza de la liquidación en los sistemas de pagos y de liquidación de valores ⁽⁴⁾.

HA ADOPTADO LA PRESENTE DECISIÓN:

Artículo 1

Modificaciones en la Decisión BCE/2007/7

La Decisión BCE/2007/7 se modificará como sigue:

1. En el artículo 1, apartado 1, letra c), se sustituye la primera nota a pie de página por la siguiente:

«(1) La actual política del Eurosistema para la ubicación de las infraestructuras se contiene en las siguientes declaraciones, disponibles en la dirección del BCE en Internet www.ecb.europa.eu: a) "Policy statement on euro payment and settlement systems located outside the euro area", de 3 de noviembre de 1998; b) "The Eurosystem's policy line with regard to consolidation in central counterparty clearing", de 27 de septiembre de 2001; c) "The Eurosystem policy principles on the location and operation of infrastructures settling in euro-denominated payment transactions", de 19 de julio de 2007, d) "The Eurosystem policy principles on the location and operation of infrastructures settling euro-denominated payment transactions: specification of legally and operationally located in the euro area", de 20 de noviembre de 2008, y e) "The Eurosystem oversight policy Framework", de julio de 2011.»

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

⁽¹⁾ No publicada aún en el Diario Oficial.

⁽²⁾ DO L 237 de 8.9.2007, p. 1.

⁽³⁾ DO L 237 de 8.9.2007, p. 71.

⁽⁴⁾ DO L 166 de 11.6.1998, p. 45.

*Artículo 2***Entrada en vigor**

La presente decisión entrará en vigor el 1 de enero de 2013.

Hecho en Fráncfort del Meno, el 11 de diciembre de 2012.

El Presidente del BCE
Mario DRAGHI

ANEXO

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

1. El artículo 1 se modificará como sigue:

a) la definición de «bancos centrales del Eurosistema» se sustituirá por la siguiente:

«— “Eurosystem CB” means the ECB or a euro area NCB.»;

b) se insertará la definición siguiente:

«— “euro area NCB” means the national central bank (NCB) of a Member State whose currency is the euro.».

2. El artículo 20, apartado 1, se sustituye por el siguiente:

«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 German Insolvency Code (*Insolvenzordnung*) and the last sentence of § 46(2) of the KWG, payment orders are deemed entered into TARGET2-ECB at the moment that the relevant participant's PM account is debited.».

3. El artículo 25, apartado 5, se sustituye por el siguiente:

«5. Notwithstanding Sections 675(u), 675(v), 675(x), 675y, 675z, 676a, 676c of the German Civil Code (*Bürgerliches Gesetzbuch*), paragraphs 1 to 4 shall apply to the extent that the ECB's liability can be excluded.».

4. La primera frase del artículo 33, apartado 3, se sustituye por la siguiente:

«Participants, when acting as the payment service provider of a payer or payee, shall comply with all requirements resulting from administrative or restrictive measures imposed pursuant to Articles 75 or 215 of the Treaty on the Functioning of the European Union to which they are subject, including with respect to notification and/or the obtaining of consent from a competent authority in relation to the processing of transactions. In addition:».

5. El apéndice VI se sustituye por el siguiente:

«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 150 per PM account plus a flat fee per transaction (debit entry) of EUR 0,80; or
- (b) EUR 1 875 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 (EUR)
1	1	10 000	0,60
2	10 001	25 000	0,50
3	25 001	50 000	0,40
4	50 001	100 000	0,20
5	Above 100 000	—	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. The following invoicing rules apply to direct participants. 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 10th 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 ancillary system (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 ancillary system's euro cash settlement transactions (Fixed Fee II):

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

The gross value of the ancillary system'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 ancillary systems 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:
 - (i) for Option B, the limits of the bands relating to volume of payment instructions are divided by two, and
 - (ii) a monthly fixed fee of EUR 150 (under Option A) or EUR 1 875 (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 ancillary system, via either the participant interface or the ASI, shall be exclusively charged to this ancillary system. The Governing Council may establish more detailed rules for the determination of billable transactions settled via the ASI.
6. Each ancillary system 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 10th business day of this month to the account specified by the ASCB or shall be debited from an account specified by the ancillary system.
7. For the purposes of this paragraph, each ancillary system 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 ancillary systems that have not been designated under Directive 98/26/EC, in which case the ancillary systems 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) multiple membership; (c) common rules and standardised arrangements; (d) for the clearing, netting or settlement of payments or securities between the participants.».