

**TERMS AND CONDITIONS  
FOR PARTICIPATION IN  
TARGET2-LU**

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## **PREAMBLE**

The existing Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET) has a decentralized structure linking together national real-time gross settlement (RTGS) systems and the ECB Payment Mechanism (EPM).

From 19 November 2007 onwards, TARGET will be replaced by TARGET2, which is characterized by a single technical platform called the Single Shared Platform (SSP). TARGET2 will continue to fulfill the same underlying purposes as TARGET, providing a sound and efficient mechanism, functioning on the basis of the SSP, to settle payments in euro. It caters in particular for large value payments, and can be executed in a timely and secure manner.

The list of the participating and connected CBs can be accessed on the ECB website ([www.ecb.int](http://www.ecb.int)).

This arrangement governs exclusively the relationship between the BCL and its participants in respect of the processing of payments in the Payment Module (PM).

Specific rules apply for Ancillary Systems (AS) using the Ancillary System Interface (ASI). They shall enter into a bilateral agreement with the Banque centrale du Luxembourg (BCL).

If an AS uses the Participant Interface (PI) it will be subject to the provisions of these Terms and Conditions, except the provisions concerning "Liquidity Pooling" in Title V – Articles 23 to 26 – and Annex VII. The use of the PI by an AS is subject to the pricing schedule specified in Annex VI - Section 11 to 15.

The annexes as listed hereafter shall form an integral part of these rules, which determine the legal, organizational and basic technical modalities of TARGET2-LU, the real-time settlement system in Luxembourg.

The rules have to be read in conjunction with the General Terms and Conditions of the BCL.

In case of discrepancy between the General Terms and Conditions of the BCL and such other documents that the BCL may so designate, these Terms and Conditions for participation in TARGET2-LU shall prevail over any other documentation.

**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;
- 'AL agreement' means the multilateral aggregated liquidity agreement entered into by the AL group members and their respective AL NCBs, for the purposes of the AL mode;
- 'AL group' means a group composed of AL group members that use the AL mode;
- 'AL group manager' means an AL group member appointed by the other AL group members to manage available liquidity within the AL group during the business day;
- 'AL group member' means a TARGET2 participant which has entered into an AL agreement;
- 'AL mode' means the aggregation of available liquidity on PM accounts;
- 'AL NCB' means a participating NCB that is party to an AL agreement and acts as the counterparty for the AL group members which participate in its TARGET2 component system;
- 'Ancillary system (AS)' means a system managed by an entity established in the EEA that is subject to supervision and/or oversight by a competent authority and complies with the oversight requirements for the location of infrastructures offering services in euro, as amended from time to time, and published on the ECB website<sup>1</sup>, in which payments

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<sup>1</sup> the Eurosystem's current policy for the location of infrastructure is set out in the following statements, which are all available on the ECB website at [www.ecb.europa.eu](http://www.ecb.europa.eu): (a) the "Policy statement on euro payment and settlement systems located outside the euro area" of 3 November 1998; (b) "The Eurosystem's policy line with regard to consolidation in central counterparty clearing" of 27 September 2001; (c) "The Eurosystem policy principles on the location and operation of infrastructures settling in euro denominated payment transactions" of 19 July 2007; and 23 November 2009

and/or financial instruments are exchanged and/or cleared while the resulting obligations are settled in TARGET2 in accordance with this Guideline and a bilateral arrangement between the ancillary system and the relevant Eurosystem CB;

- ‘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-related payment instructions; it may also be used by a participating NCB for the settlement of cash operations resulting from cash deposits and withdrawals;
- ‘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;
- ‘Bank Identifier Code (BIC)’ means a code as defined by ISO Standard No 9362;
- ‘branch’ means a branch within the meaning of Article 60 of the Law of 5 April 1993 on the financial sector, as amended by the Law of 19 March 2004 transposing the Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions<sup>2</sup>;
- ‘business day’ means any day on which TARGET2 is open for the settlement of payment orders, as set out in Annex V;
- ‘CAI group’ means a group composed of TARGET2 participants that use the CAI mode;
- ‘CAI group manager’ means a CAI group member appointed by the other members of the CAI group to monitor and distribute the available liquidity within the CAI group during the business day;
- ‘CAI mode’ means the provision of consolidated account information in relation to PM accounts via the ICM;
- ‘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;

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(d) “The Eurosystem policy principles on the location and operation of infrastructures settling euro-denominated payment transactions: specification of “legally and operationally located in the euro area” of 20 November 2008.

<sup>2</sup> « Loi du 19 mars 2004 portant transposition dans la loi modifiée du 5 avril 1993 relative au secteur financier de la directive 2001/24/CE du Parlement européen et du Conseil du 4 avril 2001 concernant l’assainissement et la liquidation des établissements de crédit »

- 'close links' means close links within the meaning of Chapter 6 of Annex I to I to Guideline ECB/2000/7 of 31 August 2000 on monetary policy instruments and procedures of the Eurosystem<sup>3</sup>;
- '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 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;
- 'credit institution' means either: a) a credit institution within the meaning of Articles 1, 30 and 32 of the Law of 5 April 1993 on the financial sector, as amended<sup>4</sup>, that is subject to supervision by a competent authority; or b) another credit institution within the meaning of Article 101(2) of the Treaty that is subject to scrutiny of a standard comparable to supervision by a competent authority;
- 'credit instruction' means a payment instruction submitted by an AS and addressed to the BCL 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;
- '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;
- 'debit mandate' means an authorisation by a settlement bank in the form provided by the Eurosystem CBs in the static 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;
- '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;

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<sup>3</sup> OJ L 310, 11.12.2000, p. 1.

<sup>4</sup> « Loi du 5 avril 1993 relative au secteur financier telle qu'elle a été modifiée »  
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- '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 authorisation;
- 'enforcement event' means, with regard to an AL group member:
  - (a) any event of default referred to in Article 34(1);
  - (b) any other event of default referred to in Article 34(2) in relation to which the BCL has decided, taking into account the seriousness of the event of default or event, that a pledge should be enforced in accordance with Article 25b, collateral should be enforced in accordance with Article 25c and a set-off of claims should be triggered in accordance with Article 26; or
  - (c) any decision to suspend or terminate access to intraday credit;
- 'entry disposition' means a payment processing phase during which TARGET2-LU attempts to settle a payment order which has been accepted pursuant to Article 14, by means of specific procedures, as described in Article 20;
- '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 BCL 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 8(1)(a)(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;
- 'group' means:
- (a) a composition of credit institutions included in the consolidated financial statements of a parent company where the parent company is obliged to present consolidated financial statements under International Accounting Standard 27 (IAS 27), adopted pursuant to Commission Regulation (EC) No 2238/2004<sup>5</sup> and consisting of either:
    - (i) a parent company and one or more subsidiaries; or
    - (ii) two or more subsidiaries of a parent company; or
  - (b) a composition of credit institutions as referred to in subparagraphs (a)(i) or (ii), where a parent company does not present consolidated financial statements in accordance with IAS 27, but may be able to satisfy the criteria defined in IAS 27 for inclusion in consolidated financial statements, subject to the verification of the CB of the direct participant or, in the case of an AL group, the managing NCB; or
  - (c) a bilateral or multilateral network of credit institutions that is:
    - (i) organised through a statutory framework determining the affiliation of credit institutions to such a network; or
    - (ii) characterised by self-organised mechanisms of cooperation (promoting, supporting and representing the business interests of its members) and/or economic solidarity going beyond the ordinary cooperation usual between

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<sup>5</sup> Commission Regulation (EC) No 2238/2004 of 29 December 2004 amending Regulation (EC) No 1725/2003 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council, as regards IASs IFRS 1, IASs Nos 1 to 10, 12 to 17, 19 to 24, 27 to 38, 40 and 41 and SIC Nos 1 to 7, 11 to 14, 18 to 27 and 30 to 33 (OJ L 394, 31.12.2004, p. 1).

credit institutions whereby such cooperation and solidarity are permitted by credit institutions' by-laws or articles of incorporation or established by virtue of separate agreements;

and in each case referred to in (c) the ECB's Governing Council has approved an application to be considered as constituting a group.

- 'Home Account' means an account opened outside the PM by a CB for an entity that is eligible to become an indirect participant;
- '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 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;
- 'investment firm' means an investment firm within the meaning of Chapter 2, Section 2(1) of the Law of 5 April 1993 on the financial sector, as amended, excluding the institutions specified in Article 13 of the same Law, as amended by the Law of 13 July 2007 implementing the Directive on markets in financial instruments<sup>6</sup>, provided that the investment firm in question is:
  - (a) authorised and supervised by a recognised competent authority, which has been designated as such under Directive 2004/39/EC; and
  - (b) entitled to carry out the activities referred to Section A, 2, 3, 6 and 7 of Annex II of the Law of 5 April on the financial sector, as amended by the Law of 13 July 2007 implementing the Directive on markets in financial instruments;

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<sup>6</sup> « Loi du 13 juillet 2007 relative aux marchés d'instruments financiers »  
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- 'liquidity transfer order' means a payment order, the main purpose of which is to transfer liquidity between different accounts of the same participant or within a CAI or AL group;
- 'managing NCB' means the AL NCB of the TARGET2 component system in which the AL group manager participates;
- 'marginal lending facility' means a Eurosystem standing facility which counterparties may use to receive overnight credit from a Eurosystem CB at the prespecified 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 BCL;
- 'Participant Interface (PI)' means the technical device allowing direct participants to submit and settle payment orders via the services offered in the PM;
- 'participating NCB' means the national central bank (NCB) of a Member State that has not adopted the euro;
- '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-related 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<sup>7</sup> (now Articles 101 and 103(1));
- 'settlement bank' means a participant whose PM account or sub-account is used to settle AS-related payment instructions;
- '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<sup>8</sup>
- '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 BCL for the purpose of registering applicants for TARGET2-LU 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 BCL;
- 'TARGET2-LU' means the TARGET2 component system of the BCL;
- '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;

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<sup>7</sup> OJ L 332, 31.12.1993, p. 1.

<sup>8</sup> OJ L 166, 11.6.1998, p. 45.

- '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-LU, or any other event that makes it impossible to execute and complete the same-day processing of payments in TARGET2-LU. '

## **Article 2**

### **Annexes**

1. The following Annexes form an integral part of these Conditions:
  - Annex I: Technical specifications for the processing of payment orders
  - Annex II: TARGET2 compensation scheme
  - Annex III: Terms of reference for capacity and country opinions
  - Annex IV: Business continuity and contingency procedures
  - Annex V: Operating schedule
  - Annex VI: Fee schedule and invoicing
  - Annex VII: Aggregated liquidity agreement
  - Annex VIII: Provisions of intraday credit
2. In the event of any conflict or inconsistency between the content of any annex and the content of any other provision in these Conditions, the latter shall prevail.

## **Article 3**

### **General description of TARGET2-LU 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-LU:
  - (a) payment orders directly resulting from or made in connection with Eurosystem monetary policy operations;

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- (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 BCL is the provider of services under these Conditions. Acts and omissions of the SSP-providing CBs shall be considered as acts and omissions of the BCL, for which it shall assume liability in accordance with Article 31 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 BCL.
  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-LU is designated as a 'system' under Article 34-2 of the Law of 5 April 1993 on the financial sector, as amended by the Law of 12 January 2001 implementing the Settlement Finality Directive<sup>9</sup>.
  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-LU and the BCL. The rules on the processing of payment orders (Title IV) refer to all payment orders submitted or payments received by any TARGET2 participant.

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<sup>9</sup> « Loi du 12 janvier 2001 portant transposition de la directive 98/26/CE concernant le caractère définitif de règlement dans les systèmes de paiement et de règlement des opérations sur titres dans la loi modifiée du 5 avril 1993 relative au secteur financier et complétant la loi du 23 décembre 1998 portant création d'une commission de surveillance du secteur financier »

## TITLE II PARTICIPATION

### Article 4

#### Access criteria

1. The following types of entities are eligible for direct participation in TARGET2-LU:
  - (a) credit institutions established in the EEA, including when they act through a branch established in the EEA;
  - (b) credit institutions established outside the EEA, provided that they act through a branch established in the EEA; and
  - (c) NCBs of EU Member States and the ECB.
  
2. The BCL may, at its discretion, also admit the following entities as direct participants:
  - (a) treasury departments of central or regional governments of Member States active in the money markets;
  - (b) public sector bodies of Member States authorised to hold accounts for customers;
  - (c) investment firms established in the EEA;
  - (d) entities managing ancillary systems and acting in that capacity; and
  - (e) credit institutions or any of the entities of the types listed under subparagraphs (a) to (d), in both cases where these are established in a country with which the European Community has entered into a monetary agreement allowing access by any of such entities to payment systems in the European Community, subject to the conditions set out in the monetary agreement and provided that the relevant legal regime applying in the country is equivalent to the relevant Community legislation.
  
3. Electronic money institutions, within the meaning of Article 12-10 of the Law of 5 April 1993 on the financial sector, as amended by the Law of 14 May 2002 transposing the Directive 2000/28/EC amending Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions and Directive 2000/46/EC on the taking up, pursuit of and prudential supervision of the business of electronic money institutions<sup>10</sup>, are not entitled to participate in TARGET2-LU.

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<sup>10</sup> « Loi du 14 mai 2002 portant transposition dans la loi modifiée du 5 avril 1993 relative au secteur financier de la directive 2000/28/CE modifiant la directive 2000/12/CE concernant l'accès à l'activité  
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## **Article 5**

### **Direct participants**

1. Direct participants in TARGET2-LU shall comply with the requirements set out in Article 8(1) and (2). They shall have at least one PM account with the BCL.
2. Direct participants may designate addressable BIC holders, regardless of their place of establishment.
3. Direct participants may designate entities as indirect participants, provided that the conditions laid down in Article 6 are met.
4. Multi-addressee access through branches may be provided as follows:
  - (a) A credit institution within the meaning of Article 4(1)(a) or (b), which has been admitted as a direct participant, may grant access to its PM account to one or more of its branches established in the EEA in order to submit payment orders and/or receive payments directly, provided that the BCL has been informed accordingly.
  - (b) Where a branch of a credit institution has been admitted as a direct participant, the other branches of the same legal entity and/or its head office, in both cases provided that they are established in the EEA, may access the branch's PM account, provided that it has informed the BCL.

## **Article 6**

### **Indirect participants**

1. Credit institutions established in the EEA may each enter into a contract with one direct participant that is either a credit institution within the meaning of Article 4(1)(a) or (b), or a CB, in order to submit payment orders and/or receive payments, and to settle them via the PM account of that direct participant. TARGET2-LU shall recognise indirect participants by registering such indirect participation in the TARGET2 directory, the latter as described in Article 9.
2. Where a direct participant, which is a credit institution within the meaning of Article 4(1)(a) or (b), and an indirect participant belong to the same group, the direct participant may expressly authorise the indirect participant to use the direct participant's PM account

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*des établissements de crédit et son exercice et de la directive 2000/46/CE concernant l'accès à l'activité des établissements de monnaie électronique et son exercice ainsi que la surveillance prudentielle de ces établissements »*

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directly to submit payment orders and/or receive payments by way of group-related multi-addressee access.

## **Article 7**

### **Direct participant's responsibility**

1. For the avoidance of doubt, payment orders submitted or payments received by indirect participants pursuant to Article 6, and by branches under Article 5(4), are deemed to have been submitted or received by the direct participant itself.
2. The direct participant shall be bound by such payment orders, regardless of the content of, or any non-compliance with, the contractual or other arrangements between that participant and any of the entities referred to in paragraph 1.

## **Article 8**

### **Application procedure**

1. To join TARGET2-LU, applicant participants shall:
  - (a) fulfil the following technical requirements:
    - (i) install, manage, operate, monitor and ensure the security of the necessary IT infrastructure to connect to TARGET2-LU 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 Annex I;
    - (ii) have passed the tests required by the BCL; and
  - (b) fulfil the following legal requirements:
    - (i) provide a capacity opinion in the form specified in Annex III, unless the information and representations to be provided in such capacity opinion have already been obtained by the BCL in another context; and
    - (ii) for the entities referred to in Article 4(1)(b), provide a country opinion in the form specified in Annex III, unless the information and representations to be provided in such country opinion have already been obtained by the BCL in another context.

2. Applicants shall apply in writing to the BCL, as a minimum enclosing the following documents/information:
  - (i) completed static data collection forms as provided by the BCL;
  - (ii) the capacity opinion, if required by the BCL, and
  - (iii) the country opinion, if required by the BCL.
3. The BCL may also request any additional information it deems necessary to decide on the application to participate.
4. The BCL 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 BCL's assessment, such participation would endanger the overall stability, soundness and safety of TARGET2-LU or of any other TARGET2 component system, or would jeopardise the BCL's performance of its tasks as described in its Organic Law of 23 December 1998, as amended by the Law of 13 July 2007 on markets in financial instruments and the Statute of the European System of Central Banks and of the European Central Bank.
5. The BCL shall communicate its decision on the application to participate to the applicant within one month of the BCL's receipt of the application to participate. Where the BCL requests additional information pursuant to paragraph 3, the decision shall be communicated within one month of the BCL's receipt of this information from the applicant. Any rejection decision shall contain reasons for the rejection.
6. The same application procedure applies to ancillary systems, except that instead of being required to meet the access criteria in Article 4 the ancillary system shall be required to meet the access criteria in the definition of 'ancillary system' set out in Article 1.

## **Article 9**

### **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

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(c) addressable BIC holders of TARGET2.

It shall be updated weekly.

2. Unless otherwise requested by the participant, its BIC(s) 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.
5. Participants acknowledge that the CBL and other CBs may publish participants' names and BICs. In addition, names and BICs of indirect participants registered by participants may be published and participants shall ensure that indirect participants have agreed to such publication.

**TITLE III**  
**OBLIGATIONS OF THE PARTIES**

**Article 10**

**Obligations of the BCL and the participants**

1. The BCL shall offer the services described in Title IV. Save where otherwise provided in these Conditions or required by law, the BCL shall use all reasonable means within its power to perform its obligations under these Conditions, without guaranteeing a result.
2. The BCL shall provide intraday credit as determined in Annex VIII.
3. Participants shall pay to the BCL the fees laid down in Annex VI.
4. Participants shall ensure that they are connected to TARGET2-LU on business days, in accordance with the operating schedule in Annex V.
5. The participant represents and warrants to the BCL 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 11**

**Cooperation and information exchange**

1. In performing their obligations and exercising their rights under these Conditions, the BCL and participants shall cooperate closely to ensure the stability, soundness and safety of TARGET2-LU. 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 BCL 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 BCL 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 BCL. Participants are

responsible for verifying the accuracy of information relating to them that is entered into TARGET2-LU by the BCL.

6. The BCL 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 BCL about any change in their legal capacity and relevant legislative changes affecting issues covered by the country opinion relating to them.
8. Participants shall inform the BCL of:
  - (a) any new indirect participant, addressable BIC holder or entity with multi-addressee access which they register; and
  - (b) any changes to the entities listed in paragraph (a).
9. Participants shall immediately inform the BCL if an event of default occurs in relation to them.

**TITLE IV**  
**MANAGEMENT OF PM ACCOUNTS AND PROCESSING OF PAYMENT ORDERS**

**Article 12**

**Opening and management of PM accounts**

1. The BCL shall open and operate at least one PM account for each participant. Upon request by a participant acting as a settlement bank, the BCL shall open one or more sub-accounts in TARGET2-LU to be used for dedicating liquidity.
2. At the beginning and end of a business day, there shall be a zero balance on the PM accounts. Participants are deemed to have instructed the BCL to transfer any balance at the end of a business day to the account designated by the participant.
3. At the beginning of the next business day such balance shall be retransferred to the participant's PM account.
4. PM accounts and their sub-accounts shall be interest free, unless they are used to hold minimum reserves. In such a case, the calculation and payment of the remuneration of holdings of minimum reserves shall be governed by Council Regulation (EC) No 2531/98 of 23 November 1998 concerning the application of minimum reserves by the European Central Bank<sup>11</sup> and Regulation ECB/2003/9 of 12 September 2003 on the application of minimum reserves<sup>12</sup>.
5. In addition to the settlement of payment orders in the Payments Module, a PM account may be used to settle payment orders to and from Home Accounts, according to the rules laid down by the BCL.
6. Participants shall use the ICM to obtain information on their liquidity position. The BCL shall provide a daily statement of accounts to any participant that has opted for such service, which shall be done via the SSP.

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<sup>11</sup> OJ L 318, 27.11.1998, p. 1.

<sup>12</sup> OJ L 250, 2.10.2003, p. 10.

## **Article 13**

### **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 14**

### **Acceptance and rejection of payment orders**

1. Payment orders submitted by participants are deemed accepted by the BCL, when the following conditions are fulfilled:
  - (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-LU and passes the double-entry check described in Annex 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 BCL shall immediately reject any payment order that does not fulfil the conditions laid down in paragraph 1. The BCL shall inform the participant of any rejection of a payment order, as specified in Annex I.
3. The SSP determines the timestamp for the processing of payment orders on the basis of the time when it receives and accepts the payment order.

## **Article 15**

### **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

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(c) highly urgent payment order (priority class 0).

If a payment order does not indicate the priority, it shall be treated as a normal payment order.

2. Highly urgent payment orders may only be designated by:

(a) CBs; and

(b) participants, in cases of payments to and from CLS International Bank and liquidity transfers in relation to ancillary system settlement using the Ancillary System Interface.

All payment instructions submitted by an ancillary system through the Ancillary System Interface to debit or credit the participants' PM accounts shall be deemed to be highly urgent payment orders.

3. Liquidity transfer orders initiated via the ICM are urgent payment orders.

4. **In the case of urgent and normal payment orders, the payer may change the priority via the ICM with immediate effect. It shall not be possible to change the priority of a highly urgent payment order.**

## Article 16

### 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. Limits may only be set by or in relation to an AL group in its entirety. Limits shall not be set in relation to either a single PM account of an AL group member or by AL group members in relation to each other.

3. By setting a bilateral limit, a participant instructs the BCL 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.

4. 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 BCL 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.

5. 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.
6. 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 17**

### **Liquidity reservation facilities**

1. Participants may reserve liquidity for highly urgent or urgent payment orders via the ICM.
2. The AL group manager may only reserve liquidity for the AL group in its entirety. Liquidity shall not be reserved for single accounts within an AL group.
3. By requesting to reserve a certain amount of liquidity for highly urgent payment orders, a participant instructs the BCL 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.
4. By requesting to reserve a certain amount of liquidity for urgent payment orders, a participant instructs the BCL 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.
5. After receipt of the reservation request the BCL shall check whether the amount of liquidity on the participant's PM account is sufficient for the reservation. If this is not the case, only the liquidity available on the PM account shall be reserved. The rest of the requested liquidity shall be reserved if additional liquidity becomes available.
6. 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 17a*

**Standing instructions for liquidity reservation and dedication of liquidity**

1. Participants may predefine the default amount of liquidity reserved for highly urgent or urgent payment orders via the ICM. Such standing instruction or a change to such instruction shall take effect from the next business day.
2. Participants may predefine via the ICM the default amount of liquidity set aside for ancillary system settlement. Such standing instruction or a change to such instruction shall take effect from the next business day. Participants shall be deemed to have instructed the [insert name of CB] to dedicate liquidity on their behalf if the relevant ancillary system so requests.

**Article 18**

**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 Annex I.

**Article 19**

**Payment orders submitted in advance**

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

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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 Annex V. They shall be placed in front of payment orders of the same priority.
3. Articles 15(3), 22(2) and 29(1)(a) shall apply mutatis mutandis to warehoused payment orders.

## **Article 20**

### **Settlement of payment orders in the entry disposition**

1. Unless instructing participants have indicated the settlement time in the manner described in Article 18, 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 16 and 17.
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.

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

## **Article 21**

### **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 15.
2. To optimise the settlement of queued payment orders, the BCL may use the optimisation procedures described in Appendix I.
3. Except for highly urgent payment orders, the payer may change the queue position of payment orders in a queue (i.e. reorder them) via the ICM. Payment orders may be moved either to the front or to the end of the respective queue with immediate effect at any time during daytime processing, as referred to in Appendix V.
4. At the request of a payer, the BCL or, in the case of an AL group, the CB of the AL group manager may decide to change the queue position of a highly urgent payment order (except for highly urgent payment orders in the context of settlement procedures 5 and 6) provided that this change would not affect the smooth settlement by ancillary systems in TARGET2 or would not otherwise give rise to systemic risk.
5. Liquidity transfer orders initiated in the ICM shall be immediately returned as non-settled if there is insufficient liquidity. Other payment orders shall be returned as non-settled if they cannot be settled by the cut-off times for the relevant message type, as specified in Appendix V.

## **Article 22**

### **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 Article 61.24(1) of the Law of 5 April 1993, as amended by the Law of 12 January

2001 implementing the Settlement Finality Directive<sup>13</sup> and the Law of 19 March 2004<sup>14</sup> payment orders are deemed entered into TARGET2-LU at the moment that the relevant participant's PM account is debited.

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

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<sup>13</sup> « Loi du 12 janvier 2001 portant transposition de la directive 98/26/CE concernant le caractère définitive du règlement dans les systèmes de paiement et de règlement des opérations sur titres dans la loi modifiée du 5 avril 1993 relative au secteur financier et complétant la loi du 23 décembre 1998 portant création d'une commission de surveillance du secteur financier »

<sup>14</sup> « Loi du 19 mars 2004 transposition dans la loi modifiée du 5 avril 1993 relative au secteur financier de la directive 2001/24/CE du Parlement européen et du Conseil du 4 avril 2001 concernant l'assainissement et la liquidation des établissements de crédit »

**TITLE V**  
**LIQUIDITY POOLING**

**Article 23**

**Liquidity pooling modes**

The BCL shall offer a consolidated account information (CAI) mode and an aggregated liquidity (AL) mode.

**Article 24**

**Consolidated account information mode**

1. The following may use the CAI mode:
  - (a) a credit institution and/or its branches (whether or not such entities participate in the same TARGET2 component system), provided that the entities concerned have several PM accounts identified by different BICs; or
  - (b) two or more credit institutions which belong to the same group and/or their branches, each having one or more PM accounts identified by different BICs.
2. (a) Under the CAI mode, each member of the CAI group and their respective CBs are provided with the list of PM accounts of the group members and the following additional information consolidated at the level of the CAI group:
  - (i) intraday credit lines (if applicable);
  - (ii) balances, including balances on sub-accounts;
  - (iii) turnover;
  - (iv) settled payments; and
  - (v) queued payment orders.
  - (b) The CAI group manager and its respective CB shall have access to information on each of the above items in relation to any PM account of the CAI group.
  - (c) Information referred to in this paragraph is provided via the ICM.
3. The CAI group manager shall be entitled to initiate liquidity transfers via the ICM between the PM accounts, including their sub-accounts, forming part of the same CAI group.

4. A CAI group may also include PM accounts which are included in an AL group. In such a case, all the PM accounts of the AL group shall form part of the CAI group.
5. Where two or more PM accounts form part of an AL group and, at the same time, of a CAI group (comprising additional PM accounts), the rules applicable to the AL group shall prevail as to the relationship within the AL group.
6. A CAI group, which includes PM accounts of an AL group, may appoint a CAI group manager that is different from the AL group manager.
7. The procedure for obtaining authorisation to use the AL mode, set out in Article 25(4) and (5), shall apply *mutatis mutandis* to the procedure for obtaining authorisation to use the CAI mode. The CAI group manager shall not address an executed CAI mode agreement to the managing NCB.

## **Article 25**

### **Aggregated liquidity mode**

1. The following may use the AL mode:
  - (a) a credit institution and/or its branches (whether or not such entities participate in the same TARGET2 component system), provided that the entities concerned are established in the euro area and have several PM accounts identified by different BICs;
  - (b) branches established in the euro area (whether or not such branches participate in the same TARGET2 component system) of a credit institution established outside the euro area, provided that such branches have several PM accounts identified by different BICs; or
  - (c) two or more credit institutions referred to in subparagraph (a) and/or branches referred to in subparagraph (b) which belong to the same group.

In each case referred to in subparagraphs (a) to (c) it is also be a requirement that the entities concerned have established intraday credit arrangements with the respective participating NCB.

2. Under the AL mode, for the purpose of checking whether a payment order is sufficiently covered, available liquidity on all the AL group members' PM accounts is aggregated. Notwithstanding the above, the bilateral PM account relationship between the AL group member and its AL NCB shall continue to be governed by the arrangements of the relevant TARGET2 component system, subject to the modifications set out in the AL

agreement. Intraday credit extended to any AL group member on its PM account may be covered by the available liquidity on the other PM accounts held by such AL group member or PM accounts held by any other AL group members with the same or any other AL NCB.

3. In order to use the AL mode, one or more TARGET2 participants meeting the criteria in paragraph 1 shall enter into an AL agreement with the BCL and, if applicable, other CB(s) of the TARGET2 component systems in which other AL group members participate. A TARGET2 participant may only enter into one AL agreement in relation to a particular PM account. The AL agreement shall be in conformity with the relevant template in Annex VII.
4. Each AL group shall designate an AL group manager. In the event that the AL group consists of only one participant, this participant shall act as the AL group manager. The AL group manager shall address to the managing NCB a written request to use the AL mode (containing static data collection forms as provided by the BCL), together with the executed AL agreement on the basis of the template provided by the managing NCB. The remaining AL group members shall address their written requests (containing static data collection forms as provided by the BCL) to their respective AL NCBs. The managing NCB may request any additional information or document that it deems appropriate in order to decide on the request. In addition, the managing NCB, in agreement with the other AL NCBs, may require the insertion of any additional provision in the AL agreement that it deems appropriate in order to ensure the proper and timely discharge of any existing and/or future obligation of all AL group members towards any AL NCB.
5. The managing NCB shall verify whether the applicants fulfil the requirements to form an AL group and whether the AL agreement has been properly executed. To this end, the managing NCB may liaise with the other AL NCBs. The managing NCB's decision shall be addressed, in writing, to the AL group manager within one month of receipt of the request referred to in paragraph 4 by the managing NCB, or, if the managing NCB requests additional information, within one month of receipt of such information by the managing NCB. Any rejection decision shall contain reasons for the rejection.
6. AL group members shall automatically have access to the CAI mode.
7. The provision of information and all interactive control measures within an AL group shall be accessed via the ICM.

## **Article 25a**

### **Pledge/enforcement**

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1. The BCL's current and future claims arising from the legal relationship between an AL group member and the BCL and which are secured by the pledge under Article 36(1) and (2) of these Conditions shall include the BCL's claims against such AL group member arising under the AL agreement to which both are party.
2. Without prejudice to the AL agreement, such pledge shall not prevent the participant from using the cash deposited in its PM account(s) during the business day.

#### **Article 25b**

#### **Enforcement of the pledge**

Upon the occurrence of an enforcement event, the BCL shall have an unrestricted right to realise the pledge without any prior notice in the most favourable manner provided for by Article 11 of the Law of 5 August 2005 on the financial collateral arrangements<sup>15</sup>.

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<sup>15</sup> « *Loi du 5 août 2005 sur les contrats de garantie financière* »  
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## **Article 25c**

### **Enforcement of collateral**

Upon occurrence of the enforcement event, the BCL shall have the right to realise collateral under Article 36.

## **Article 26**

### **Set-off of claims under Article 36(4) and (5)**

On the occurrence of an enforcement event, any claim of the BCL against such AL group member shall be automatically and immediately accelerated and shall subject to Article 36(4) and (5) of these Conditions.

**TITLE VI**  
**SECURITY REQUIREMENTS AND CONTINGENCY ISSUES**

**Article 27**

**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 Annex IV shall apply.

**Article 28**

**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 BCL 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 BCL 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 BCL may impose additional security requirements on all participants and/or on participants that are considered critical by the BCL.

**TITLE VII**  
**THE INFORMATION AND CONTROL MODULE**

**Article 29**

**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 Annex I.

**TITLE VIII**  
**COMPENSATION, LIABILITY REGIME AND EVIDENCE**

**Article 30**

**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 BCL shall offer to compensate the direct participants concerned in accordance with the special procedure laid down in Annex II.

**Article 31**

**Liability regime**

1. In performing their obligations pursuant to these Conditions, the BCL and the participants shall be bound by a general duty of reasonable care in relation to each other.
2. The BCL 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-LU. In cases of ordinary negligence, the BCL's liability is limited to the participant's direct loss, i.e. the amount of the transaction in question or the loss of interest thereon, excluding any consequential loss.
3. The BCL is not liable for any loss that results from any malfunction or failure in the technical infrastructure (including but not limited to the BCL's computer infrastructure, programmes, data, applications or networks), if such malfunction or failure arises in spite of the BCL 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 Annex IV).
4. The BCL is not 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 BCL's reasonable control (force majeure).

5. Notwithstanding the Law of 29 April 1999 implementing Directive 97/5/EC on cross-border transfers<sup>16</sup>, paragraphs 1 to 4 shall apply to the extent that the BCL's liability can be excluded.
6. The BCL 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 BCL may commission third parties in its own name, particularly telecommunications or other network providers or other entities, if this is necessary to meet the BCL's obligations or is standard market practice. The BCL's obligation shall be limited to the due selection and commissioning of any such third parties and the BCL's liability shall be limited accordingly. For the purposes of this paragraph, the SSP-providing CBs shall not be considered as third parties.

## **Article 32**

### **Evidence**

1. Unless otherwise provided in these Conditions, all payment and payment processing-related messages in relation to TARGET2-LU, such as confirmations of debits or credits, or statement messages, between the BCL and participants shall be made through the network service provider.
2. Electronic or written records of the messages retained by the BCL or by the network service provider shall be accepted as a means of evidence of the payments processed through the BCL. 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 Annex IV. In such cases, the saved or printed version of the message produced by the BCL shall have the same evidential value as the original message, regardless of its form.
4. The BCL 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.

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<sup>16</sup> « Loi du 29 avril 1999 portant transposition de la directive 97/5/CE concernant les virements transfrontaliers dans la loi modifiée du 5 avril 1993 relative au secteur financier »

5. The BCL'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 IX**  
**TERMINATION OF PARTICIPATION AND CLOSURE OF ACCOUNTS**

**Article 33**

**Duration and ordinary termination of participation**

1. Without prejudice to Article 34, participation in TARGET2-LU is for an indefinite period of time.
2. A participant may terminate its participation in TARGET2-LU at any time giving 14 business days' notice thereof, unless it agrees a shorter notice period with the BCL.
3. The BCL may terminate a participant's participation in TARGET2-LU 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 38 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 35.

**Article 34**

**Suspension and extraordinary termination of participation**

1. A participant's participation in TARGET2-LU 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 BCL may terminate without prior notice or suspend the participant's participation in TARGET2-LU 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 BCL;
  - (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 BCL's assessment, would threaten the overall stability, soundness and safety of TARGET2-LU or of any other TARGET2 component system, or which would jeopardise the BCL's performance of its tasks as described in its Organic Law of 23 December 1998, as amended by the Law of 13 July 2007 on markets in financial instruments and the Statute of the European System of Central Banks and of the European Central Bank.
3. In exercising its discretion under paragraph 2, the BCL 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 BCL suspends or terminates a participant's participation in TARGET2-LU under paragraph 1 or 2, the BCL 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 BCL is informed by another CB of a suspension or termination of a participant in another TARGET2 component system, the BCL 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 is deemed informed of the termination/suspension of a participant's participation in TARGET2-LU 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-LU after receipt of the ICM broadcast message.
  5. Upon termination of a participant's participation, TARGET2-LU 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-LU, 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 35**

### **Closure of PM accounts**

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

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2. On termination of participation, pursuant to either Article 33 or 34, the BCL 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 36.

**TITLE X**  
**FINAL PROVISIONS**

**Article 36**

**The BCL's rights of pledge and set-off**

1. The BCL has a preferred 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. The BCL shall have the right referred to in paragraph 1 even if its claims are only contingent or not yet due.
3. The participant, acting in its capacity as a PM account holder, hereby acknowledges the creation of a pledge in favour of BCL, with whom that account has been opened; this acknowledgement constitutes the provision of pledged assets to the BCL referred to under the Law of 5 August 2005. Any amounts paid into the PM account whose balance is pledged shall, by the mere fact of being paid in, be irrevocably pledged, without any limitation whatsoever, as collateral security for the full performance of the secured obligations. The PM account holder hereby accepts the creation of such pledge in favour of the BCL as requested by Article 5(3) of the Law of 5 August 2005 for dispossession and enforceability purposes.
4. On the occurrence of
  - (a) an event of default referred to in Article 34(1); or
  - (b) any other event of default referred to in Article 34(2) that has led to the termination or suspension of the participant's participation in TARGET2-LU,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 BCL shall automatically be set off against each other, and the party owing the higher amount shall pay to the other the difference.
5. The BCL shall promptly give the participant notice of any set-off pursuant to paragraph 4 after such set-off has taken place.

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

## **Article 37**

### **Security rights in relation to funds on sub-accounts**

1. The BCL 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 BCL in relation to such settlement.
2. The BCL shall freeze the balance on the sub-account of the participant upon communication by the ancillary system (via a "start-of-cycle" message). Where applicable, the BCL shall thereafter increase or reduce the frozen balance by crediting or debiting cross-system settlement payments to or from the sub-account or crediting liquidity transfers to the sub-account. 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 BCL guarantees to the ancillary system payment up to the amount of this particular balance. By confirming, where applicable, the increase or reduction of the frozen balance upon crediting or debiting cross-system settlement payments to or from the sub-account or crediting liquidity transfers to the sub-account, the guarantee is automatically increased or reduced in the amount of the payment. Without prejudice to the abovementioned increase or reduction of the guarantee, the guarantee shall be irrevocable, unconditional and payable on first demand. If the BCL is not the ancillary system's CB, the BCL 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

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discharge of the guarantee obligation by the BCL 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 BCL any payment made by the latter under such guarantee.

## **Article 38**

### **Confidentiality**

1. The BCL 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 or such disclosure is permitted or required under the laws of the Grand-Duchy Luxembourg.
2. By derogation from Article 38.1, the participant agrees that the BCL may disclose payment, technical or organisational information regarding the participant or the participant's customers obtained in the course of the operation of TARGET2-LU to other CBs or third parties that are involved in the operation of TARGET2-LU, 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 BCL is not liable for the financial and commercial consequences of such disclosure.
3. By derogation from Article 38.1 and provided this does not make it possible, whether directly or indirectly, to identify the participant or the participant's customers, the BCL 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-LU 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 BCL 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 BCL shall be authorised, in order to settle payment orders, to process and transfer the necessary data to the network service provider.

## Article 39

### Data protection, prevention of money laundering and related issues

1. Participants are 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 are deemed to have authorised the BCL 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-LU.

## Article 40

### 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 BCL shall be submitted to the head of the **Banking Operations Department** of the **BCL, 2, boulevard Royal, L-2983 Luxembourg** or to the its SWIFT address: BCLXLULL. 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 BCL.
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 only.
4. Participants shall be bound by all forms and documents of the BCL that the participants have filled in and/or signed, including but not limited to static data collection forms, as

referred to in Article 8(2)(a), and information provided under Article 11(5), which were submitted in compliance with paragraphs 1 and 2 and which the BCL reasonably believes to have received from the participants, their employees or agents.

## **Article 41**

### **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-LU. 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 BCL.
4. The services to be provided by SWIFT shall not form part of the services to be performed by the BCL in respect of TARGET2.
5. The BCL is not 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 42**

### **Amendment procedure**

The BCL may at any time unilaterally amend these Conditions, including its annexes. Amendments to these Conditions, including its annexes, shall be announced in accordance with the provisions of the General Terms and Conditions of the BCL to each participant individually. Amendments are 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 BCL is entitled immediately to terminate that participant's participation in TARGET2-LU and close any of its PM accounts.

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## **Article 43**

### **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 BCL's written consent.
2. These Conditions do not create any rights in favour of or obligations in relation to any entity other than the BCL and participants in TARGET2-LU.

## **Article 44**

### **Governing law, jurisdiction and place of performance**

1. The bilateral relationship between the BCL and participants in TARGET2-LU shall be governed by the laws of the Grand-Duchy Luxembourg.
2. Without prejudice to the competence of the Court of Justice of the European Communities, any dispute arising from a matter relating to the relationship referred to in paragraph 1 falls under the exclusive competence of the competent courts of the Grand-Duchy Luxembourg.
3. The place of performance concerning the legal relationship between the BCL and the participants shall be Luxembourg.

## **Article 45**

### **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 46**

### **Entry into force and binding nature**

1. These Conditions become effective from 19 November 2007.

## **TECHNICAL SPECIFICATIONS FOR THE PROCESSING OF PAYMENT ORDERS**

In addition to the Terms and Conditions, the following rules shall apply to the processing of payment orders:

### **1. Technical requirements for participation in TARGET2-LU 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-LU.
- (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 202COV	Mandatory	Cover Payments
MT 204	Optional	Direct debit payment
MT 011	Optional	Delivery notification
MT 012	Optional	Sender notification
MT 019	Mandatory	Abort notification
MT 900	Optional	Confirmation of debit
MT 910	Optional	Confirmation of credit
MT 940/950	Optional	(Customer) statement message

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

- (2) When they register with TARGET2-LU, 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-LU in accordance with the UDFS requirements. Participants may agree among each other on specific rules regarding the field contents. However, in TARGET2-LU there shall be no specific checks as to whether participants comply with any such rules.
- (5) MT 202COV messages shall be used for making cover payments, i.e. payments made by correspondent banks to settle (cover) credit transfer messages which are submitted to a customer's bank by other, more direct means. Customer details contained in MT 202COV shall not be displayed in the ICM.

### 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:

<b>Details</b>	<b>Part of the SWIFT message</b>	<b>Field</b>
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 is 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 be automatically 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 BCL 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 BCL 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 BCL and other CBs involved shall settle all payments simultaneously on the PM accounts of the TARGET2 participants concerned.

- (b) Under Algorithm 2 ('partial') the BCL 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 BCL 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 BCL 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 BCL at its discretion.

- (c) Under Algorithm 3 ('multiple') the BCL 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 BCL 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 BCL 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 BCL shall follow the same procedure as for Algorithm 1, subject to the modification that the BCL 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 or another interface, as may be required by SWIFT). For U2A access the IT infrastructure has to be able to support cookies and JavaScript. Further details are described in the ICM User Handbook.

(5) Each participant shall have at least one SWIFT Alliance WebStation, or another interface, as may be required by SWIFT, to have access to the ICM via U2A.

(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 BCL 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 BCL's website and the ECB's website in English.

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## 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 Annex.
- (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 BCL 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 a payment order was not settled on the business day on which it was accepted.
- (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 BCL in English (see [www.bcl.lu](http://www.bcl.lu)). 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 BCL. Any additional information and evidence requested by the BCL shall be supplied within two weeks of such request being made.
- (c) The BCL shall review the claims and forward them to the ECB. 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 BCL 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 BCL (see [www.bcl.lu](http://www.bcl.lu)). If such letter has not been received by the BCL within four weeks, the participants concerned are deemed to have rejected the compensation offer.
- (e) The BCL shall make compensation payments on receipt of a participant's letter of acceptance of compensation. No interest shall be payable on any compensation payment.

## TERMS OF REFERENCE FOR CAPACITY AND COUNTRY OPINIONS

### Terms of reference for capacity opinions for participants in TARGET2

[Insert name of CB]

[address]

#### Participation in the [name of the system]

[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 the [name of the TARGET2 component system] (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:

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- (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 [insert reference to the arrangements implementing the Terms and Conditions for participation in TARGET2-BCL-LU] for the System 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 [insert reference to the Member State of the System] by which they are expressed to be governed, and the choice of the laws of [insert reference to the Member State of the System] to govern the System

Documents is recognised by the laws of [insert reference to the Member State of the System];

- (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 of 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 [insert name of CB] 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 European Central Bank and 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

[Insert name of CB]

[address]

[name of the system]

[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 [insert reference to the Member State of the System] 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 [insert reference to the arrangements implementing the Terms and Conditions for participation in TARGET2-LU] for the System 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 [insert name of CB].

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 [insert reference to the Member State of the System], by which they are expressed to be governed, and the choice of the laws of [insert reference to the Member State of the System] to govern the System Documents is recognised by the laws of [insert reference to the Member State of the System];
- (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 ([add section of the Rules]) is valid, binding and enforceable under the laws of [jurisdiction].

#### 3.3.b Authority of the [insert name of CB] 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 [insert name of CB] 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 [list of sections] 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 ([insert other relevant clauses of the Rules or the System Documents]) are valid and enforceable under the laws of [jurisdiction].]

#### 3.3.d Suspension and termination

Where applicable to the Participant, the provisions contained in [list of sections] 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 Penalty regime

Where applicable to the Participant, the provisions contained in [list of sections] of the Rules in respect of penalties imposed on a Participant which is unable to reimburse intraday credit or overnight credit, where applicable, on time are valid and enforceable under the laws of [jurisdiction].

#### 3.3.f 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 [insert name of CB].

#### 3.3.g Choice of governing law and jurisdiction

The provisions contained in [list of sections] 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 [list of sections] 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 [list of sections] 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 and/or repo*

Assignments for collateral purposes will be valid and enforceable under the laws of [jurisdiction]. Specifically, the creation and enforcement of a pledge or repo under the [insert reference to the relevant arrangement with the CB] will be valid and enforceable under the laws of [jurisdiction].

#### 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 [insert reference to CB] 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 [insert name of CB] as [assignees, pledgees or repo purchasers as applicable] will still be free to enforce and collect the Participant's rights or assets through the action of the [insert name of CB] 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 [insert name of CB] 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 European Central Bank and the national central banks of the European System of Central Banks [and [the national central bank/relevant regulatory authorities] of [jurisdiction]].

Yours faithfully,

[signature]

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## **BUSINESS CONTINUITY AND CONTINGENCY PROCEDURES**

### **1. General provisions**

- (a) This Annex sets out the arrangements between the BCL 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 are to the local time at the seat of the ECB, i.e. Central European Time (CET<sup>17</sup>).

### **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 BCL 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 BCL shall have full discretion regarding whether and which measures are adopted to settle payment orders.

### **3. Incident communication**

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<sup>17</sup> CET takes into account the change to Central European Summer Time.

- (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 BCL 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 BCL 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, subject to the modifications contained in this Annex.
- (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 BCL shall immediately communicate the delay of closing time to participants.
- (d) Upon recovery of the SSP, the following steps shall take place:
  - (i) The BCL 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 BCL 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 BCL 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 BCL.
- (c) The following payments shall be considered as 'very critical' and the BCL 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 BCL 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.

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- (e) Participants shall submit payment orders for contingency processing in writing according to the provisions General Terms and Conditions of the BCL. Information to payees shall also be provided in writing according to the provisions of the General Terms and Conditions of the BCL. Information concerning account balances and debit and credit entries may be obtained via the BCL.
- (f) Payment orders that have already been submitted to TARGET2-LU, but are queued, may also undergo contingency processing. In such cases the BCL 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 BCL.

## **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 BCL shall, if the participant so requests, open this functionality via the ICM. If the participant so requests, the BCL 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 BCL.
- (d) In the event that a failure affects an ancillary system, that ancillary system shall be responsible for resolving its failure. If the ancillary system so requests, the BCL may act on its behalf. The BCL 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 BCL creates and/or processes XML instructions/files on behalf of the ancillary system; and/or
  - (iii) the BCL 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 agreement between the BCL 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 BCL is entitled to start or continue processing payment orders and/or operate TARGET2-LU on the basis of the last available data, as determined by the BCL. If so requested by the BCL, participants and ancillary systems shall resubmit their FileAct/Interact messages or take any other action deemed appropriate by the BCL.
- (b) In the event of a failure of the BCL, some or all of its technical functions in relation to TARGET2-LU may be performed by other Eurosystem CBs.
- (c) The BCL 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 BCL. Any costs incurred by the participants as a result of such testing or other arrangements shall be borne solely by the participants.

## OPERATING SCHEDULE

1. TARGET2 is open on all days, except Saturdays, Sundays, New Year's Day, Good Friday and Easter Monday (according to the calendar applicable at the seat of the ECB), 1 May, Christmas Day and 26 December.
2. The reference time for the system is the local time at the seat of the ECB, i.e. CET.
3. The current business day is opened during the evening of the previous business day and operates to the following schedule:

Time	Description
6.45 - 7.00	Business window to prepare daytime operations *
7.00 - 18.00	Daytime processing
17.00	Cut-off time for customer payments (i.e. payments where the originator and/or the beneficiary of a payment is not a direct or indirect participant as identified in the system by the use of an MT 103 or MT 103+ message)
18.00	Cut-off time for interbank payments (i.e. payments other than customer payments)
18.00 – 18.45 **	End-of-day processing
18.15 **	General cut-off time for the use of standing facilities
(Shortly after) 18.30 ***	Data for the update of accounting systems are available to CBs
18.45 - 19.30 ***	Start-of-day processing (new business day)
19.00 *** - 19.30 **	Provision of liquidity on the PM account
19.30 ***	'Start-of-procedure' message and settlement of the standing orders to transfer liquidity from the PM

	accounts to the sub-account(s)/mirror account (ancillary system-related settlement)
19.30 *** - 22.00	Execution of additional liquidity transfers via the ICM before the ancillary system sends the 'start-of-cycle' message; settlement period of night-time ancillary system operations (only for ancillary system settlement procedure 6)
22.00 - 1.00	Technical maintenance period
1.00 - 6.45	Settlement procedure of night-time ancillary system operations (only for ancillary system settlement procedure 6)

\* Daytime operations means daytime processing and end-of-day processing.

\*\* Ends 15 minutes later on the last day of the Eurosystem reserve maintenance period.

\*\*\* Starts 15 minutes later on the last day of the Eurosystem reserve maintenance period.

4. The ICM is available for liquidity transfers from 19.30<sup>18</sup> 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 Annex IV

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<sup>18</sup> Starts 15 minutes later on the last day of the Eurosystem reserve maintenance period.;

## FEE SCHEDULE AND INVOICING

### Fees for direct participants

1. The monthly fee for the processing of payment orders in TARGET2-LU 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. The monthly fee for multi-addressee access shall be EUR 80 for each 8-digit BIC address other than the BIC of the direct participant's account.
3. 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.
4. The fee for each registration by a direct participant of an indirect participant in the TARGET2 directory shall be EUR 20.
5. The fee for each registration in the TARGET2 directory of an addressable BIC holder, including branches of direct and indirect participants shall be EUR 5.

### Fees for liquidity pooling

6. For the CAI mode, the monthly fee shall be EUR 100 for each account included in the group.
7. For the AL mode, the monthly fee shall be EUR 200 for each account included in the AL group. If the AL group uses the CAI mode, accounts not included in the AL mode shall pay the CAI monthly fee of EUR 100 per account.
8. For both the AL mode and the CAI mode, the degressive transaction fee structure set out in the table in paragraph 1(b) shall apply to all payments by the participants in the group, as if these payments were sent from one participant's account.
9. The monthly fee of EUR 1 250 referred to in paragraph 1(b) shall be paid by the relevant group manager, and the monthly fee of EUR 100 referred to in paragraph 1(a) shall be paid by all other members of the group. If an AL group is part of a CAI group, and the AL group manager is the same as the CAI group manager, the monthly fee of EUR 1 250 shall only be paid once. If the AL group is a part of a CAI group and the CAI group manager is different from the AL group manager, then the CAI group manager shall pay an additional monthly fee of EUR 1 250. In such cases the invoice for the total fees for all the accounts in the CAI group (including the AL group accounts) shall be sent to the CAI group manager.

### **Invoicing**

10. In the case of direct participants, the following invoicing rules apply. The direct participant (the AL group or CAI group manager in the event that the AL or CAI modes are used) 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 BCL and shall be debited from that participant's PM account.

### **Fee and invoicing for ASs**

11. For AS using ASI, the fee shall be described in a separate agreement.
12. An AS using the PI, irrespective of the number of any accounts it may hold with the BCL 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 is charged to the 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):

<b>Band</b>	<b>From (EUR million/day)</b>	<b>To (EUR million/day)</b>	<b>Annual fee</b>	<b>Monthly fee</b>
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 4167

The gross value of the AS's euro cash settlement transactions shall be calculated by the BCL 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 TARGET2 participants in paragraph 1 of this Annex. 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.

12. Any fee payable in relation to a payment instruction submitted or payment received by an AS via either the PI shall be exclusively charged to this AS.

13. The AS shall receive an invoice from the BCL for the previous month based on the fees referred to in subparagraph 1, 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 BCL or shall be debited from an account specified by the AS.

14. 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.

**Effective date**

15. This fee schedule shall apply as soon as all Central Banks have been migrated to the SSP, meaning from after the end of the migration phase. During the migration phase, the fees as laid down in the *Conditions Générales des Opérations* of the BCL shall apply.

**AGGREGATED LIQUIDITY AGREEMENT – VARIANT A**

**Template for use of the AL mode by more than one credit institution**

Between, on the one hand:

[participant], holder of PM account(s) No [.....], with [insert name of CB]  
represented by [.....], acting as  
[.....],

[participant], holder of PM account(s) No [.....], with [insert name of CB]  
represented by [.....], acting as  
[.....],

[participant], holder of PM account(s) No [.....], with [insert name of CB]  
represented by [.....], acting as  
[.....],

(hereinafter the 'AL group members')

and on the other hand,

[insert name of AL NCB]

[insert name of AL NCB]

[insert name of AL NCB]

(hereinafter the 'AL NCBs')

(AL group members and AL NCBs hereinafter collectively referred to as the 'Parties')

Whereas:

- (1) TARGET2 is legally structured as a multiplicity of payment systems, each of which is designated as a system under the relevant national legislation implementing 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<sup>19</sup>.
- (2) Participants in one or more TARGET2 component systems may, under certain conditions laid down in the respective conditions for participation in TARGET2 component systems, set up an AL group, whereby the liquidity on the PM accounts of the AL group members is aggregated.
- (3) Aggregation of liquidity enables the AL group members to settle payment orders for an amount exceeding the available liquidity on their respective PM accounts, provided that the total value of all such payment orders never exceeds the aggregate amount of the available liquidity on all such PM accounts. The resulting debit position on one or more of these PM accounts constitutes intraday credit, the provision of which is governed by the respective national arrangements, subject to the modifications described in this agreement; in particular, such debit position is collateralised with the available liquidity on the PM accounts of other AL group members.
- (4) The effect of this mechanism is in no way to merge the various PM accounts, which, subject to the limitations described in this agreement, continue to be exclusively held by their respective holders.
- (5) Such a mechanism aims to avoid the fragmentation of liquidity in the different TARGET2 component systems and simplify the liquidity management within a group of credit institutions.
- (6) This mechanism improves the overall efficiency of settlement of payments in TARGET2.
- (7) [Participant], [participant] and [participant] are respectively connected to TARGET2-[insert CB/country reference], TARGET2-[insert CB/country reference], and TARGET2-[insert

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<sup>19</sup> OJ L 166, 11.6.1998, p. 45.

CB/country reference] and are bound by the [insert reference to the arrangement(s) implementing Annex II of Guideline ECB/2007/2] of [insert relevant dates],

Now, therefore, the Parties agree the following:

## **Article 1**

### **Effectiveness of this agreement**

This agreement and any amendment made hereto shall only be effective when the managing NCB, after having obtained any information or documents that it deems appropriate, confirms in writing that this agreement or amendments thereto comply with the requirements laid down in the respective conditions for participation in the TARGET2 component systems.

## **Article 2**

### **Mutual interest of AL group members and of AL NCBs**

1. The AL group members expressly declare and acknowledge that their entry into this agreement serves their mutual economic, social and financial interests since the payment orders of all AL group members may be settled in their respective TARGET2 component systems, up to an amount corresponding to the available liquidity on all the AL group members' PM accounts, thereby leveraging the liquidity available in other TARGET2 component systems.
2. The AL NCBs have a mutual interest in providing intraday credit to the AL group members, as this promotes the overall efficiency of settling payments in TARGET2. The intraday credit is collateralised in accordance with Article 18 of the Statute of the European System of Central Banks and of the European Central Bank since the debit balance resulting from the execution of a payment order is covered by the available liquidity on the PM accounts held by the other AL group members with their respective AL NCBs, which are collateralised for the discharge of the obligations owed by any of the AL group members to the AL NCBs.

## **Article 3**

### **AL group members' rights and obligations**

1. AL group members shall be jointly and severally liable towards all AL NCBs in relation to all claims resulting from the settlement in their respective TARGET2 component system of

the payment order of any AL group member. AL group members shall not be entitled to rely on any internal group arrangements on the division of liabilities to avoid any liability to the AL NCBs in relation to the aggregation of all abovementioned liabilities.

2. The total value of all payment orders settled by the AL group members on their PM accounts may never exceed the aggregate amount of all available liquidity on all such PM accounts.
3. AL group members shall be authorised to use the CAI mode, as described in the [insert the reference to the arrangement(s) implementing Annex II of Guideline ECB/2007/2].
4. The AL group members shall ensure that there is an internal agreement between them containing inter alia:
  - (a) the rules of internal organisation of the AL group;
  - (b) the conditions under which the AL group manager has a duty to report to the AL group members;
  - (c) the costs of the AL mode (including their allocation between AL group members);  
and
  - (d) the fees to be paid as remuneration between the AL group members for the services under the AL agreement and the rules for calculating the financial consideration.

With the exception of subparagraph (d), the AL group members may decide whether or not to disclose this internal agreement or parts of it to the AL NCBs. The AL group members shall disclose information referred to in subparagraph (d) to the AL NCBs.

## **Article 4**

### **AL NCBs' rights and obligations**

1. When an AL group member submits a payment order to its respective TARGET2 component system for an amount exceeding the available liquidity on that AL group member's PM account, its respective AL NCB shall extend intraday credit that is collateralised with the available liquidity on other PM accounts held by the AL group member with its respective AL NCB or on the PM accounts held by the other AL group members with their respective AL NCBs. Such intraday credit shall be governed by the rules applicable to the provision of intraday credit by such AL NCB.

2. Payment orders submitted by any of the AL group members which have the effect of exceeding the available liquidity on all PM accounts of the AL group members shall be queued until sufficient liquidity is available.
3. Except on the opening of insolvency proceedings against one or more AL group members, an AL NCB may claim from each of the AL group members the full discharge of all obligations resulting from the settlement of payment orders of any AL group member in the latter's TARGET2 component system.

## **Article 5**

### **Designation and role of the AL group manager**

1. The AL group members hereby designate as AL group manager [indicate the participant designated as AL group manager], which shall be the contact point for all administrative matters relating to the AL group.
2. All AL group members shall provide their respective AL NCB, as well as the AL group manager, with any information which may affect the validity, enforceability and implementation of this agreement, including, without limitation, any modification or ending of the links between the AL group members needed to comply with the definition of a group laid down in the [insert reference to the relevant provisions in the arrangement(s) implementing Annex II of Guideline ECB/2007/2], the occurrence of any events of default within the meaning of the [insert reference to the arrangement(s) implementing Annex II of Guideline ECB/2007/2] or any event which may affect the validity and/or enforceability of the [insert reference to the pledge, close-out netting provisions or any other relevant provisions of the arrangement(s) implementing Annex II of Guideline ECB/2007/2].
3. The AL group manager shall immediately convey to the managing NCB any information described in paragraph 2 relating to itself or to any other AL group member.
4. The AL group manager shall be responsible in respect of intraday monitoring of the liquidity available within the AL group.
5. The AL group manager shall have power of attorney over the PM accounts of the AL group members and, in particular, shall act as agent of the AL group members in respect of the following operations:
  - (a) any ICM operations in respect of the AL group members' PM accounts, including, but not limited to, any change in priority of a payment order, revocation, change of settlement time, liquidity transfers (including from and to sub-accounts), reordering

of queued transactions, reservation of liquidity in respect of the AL group, setting and changes of limits in respect of the AL group and liquidity transfers;

- (b) all end-of-day liquidity transactions between the PM accounts of the AL group members ensuring that all balances of the AL group members' PM accounts are levelled out, so that none of these accounts have a debit balance at the end of the day or, where applicable, a debit balance not secured by eligible collateral (hereinafter such procedure is referred to as 'levelling out');
- (c) general instructions according to which automatic levelling out shall be performed, i.e. defining the sequence of AL group members' PM accounts with available liquidity to be debited within the levelling out;
- (d) in the absence of any explicit instructions by the AL group manager, as set out in subparagraphs (b) and (c), automatic levelling out shall be performed starting with the PM account with the highest credit balance towards the PM account with the highest debit balance.

The same criteria as defined in subparagraphs (c) and (d) shall be used if an enforcement event, as defined in [insert reference to the relevant provisions in the arrangement(s) implementing Annex II of Guideline ECB/2007/2], occurs.

6. The AL group members explicitly waive any rights they may have against the AL group manager under [insert, if applicable, a reference to the relevant provision of national law], resulting from the combination of such manager's capacity as a PM account holder and AL group member with its capacity as AL group manager.

## **Article 6**

### **Role of the managing NCB**

1. The managing NCB shall be the contact point for all administrative matters relating to the AL group.
2. All of the AL NCBs shall immediately provide the managing NCB with any information relating to their respective AL group member(s) which may affect the validity, enforceability and implementation of this agreement, including, but not limited to, any modification or ending of the links between the AL group members needed to comply with the definition of a group, the occurrence of any events of default within the meaning of the [insert reference to the arrangement(s) implementing the Harmonised Conditions] or events which may affect the validity and/or enforceability of the [insert reference to the pledge, close-out netting or any other relevant provisions of the arrangement(s) implementing Annex II of Guideline ECB/2007/2].
3. The managing NCB shall have access to all relevant information in respect of all PM accounts of the AL group members, including, but not limited to, information in respect of any credit line, the balance, total turnover, settled payments, queued payments, as well as information on the AL group members' limits and liquidity reservations .

## **Article 7**

### **Duration and termination of this agreement**

1. This agreement shall be of unlimited duration.
2. Each of the AL group members may unilaterally terminate its participation in this agreement, provided it gives 14 business days' written notice to the AL NCB in whose TARGET2 component system it participates and to the managing NCB. The managing NCB shall confirm to that AL group member the date of its termination of participation in the AL agreement and shall communicate such date to all AL NCBs which shall inform their AL group members accordingly. If that AL group member was the AL group manager, the remaining AL group members shall immediately appoint a new AL group manager.
3. This agreement or the participation of any AL group member in this agreement, as the case may be, shall automatically be terminated without prior notice and with immediate effect if one or more of the following events occurs:

- (a) modification or ending of the links between all AL group members needed to comply with the definition of a group, as laid down in the [insert reference to the arrangement(s) implementing Annex II of Guideline ECB/2007/2], or affecting one or more AL group members; and/or
  - (b) any other requirements for using the AL mode, as described in the [insert reference to the arrangement(s) implementing Annex II of Guideline ECB/2007/2] are no longer met by all AL group members, or one or more AL group members.
4. Notwithstanding the occurrence of any of the events described in paragraph 3, a payment order that has already been submitted by any AL group member into the relevant TARGET2 component system shall remain valid and enforceable in respect of all AL group members and the AL NCBs. [Insert if relevant: In addition, the [insert reference to pledge and/or close-out netting or other relevant security arrangement] shall remain valid after the termination of this agreement until all debit positions on the PM accounts whose liquidity was aggregated are fully discharged by the AL group members.]
  5. Without prejudice to paragraph 3, the managing NCB, in agreement with the relevant AL NCB, may at any time terminate without prior notice and with immediate effect the participation of any AL group member in this agreement if such AL group member is in breach of any of the provisions hereof. Such decision shall be addressed in writing to all the AL group members setting out the reasons for the decision. If participation is terminated in this way, the AL group members whose participation in this agreement has not been terminated are entitled to terminate their participation in this agreement provided that they give the managing NCB and the relevant AL NCB five business days' written notice thereof. If the AL group manager's participation is terminated, the remaining AL group members shall immediately appoint a new AL group manager.
  6. The managing NCB, in agreement with the other AL NCBs, may terminate this agreement without prior notice and with immediate effect if the maintenance of it would endanger the overall stability, soundness and safety of TARGET2 or jeopardise the performance by the AL NCBs of their tasks pursuant to the Statute of the European System of Central Banks and of the European Central Bank. Any decision to do so shall be addressed in writing to the AL group members, setting out the reasons for the decision.
  7. This agreement shall remain valid for as long as there are at least two AL group members.

## **Article 8**

### **Amendment procedure**

Any change to this agreement, including the extension of the AL group to other participants, shall only be valid and enforceable if expressly agreed to by all parties in writing.

## **Article 9**

### **Governing law**

This agreement shall be governed, construed and implemented in accordance with the [insert reference to the law governing the PM account of the AL group manager held with the managing NCB]. This shall be without prejudice to:

- (a) the relationship between an AL group member and its respective AL NCB governed by the law of the respective AL NCB, and
- (b) the rights and obligations between the AL NCBs governed by the law of the AL NCB which maintains the PM account of the AL group member whose available liquidity is used as collateral.

## **Article 10**

### **Application of the [insert reference to the arrangement(s) implementing Annex II of Guideline ECB/2007/2]**

1. In relation to each of the AL group members and their respective AL NCBs, the relevant provisions of the [insert reference to the arrangement(s) implementing Annex II of Guideline ECB/2007/2] shall govern any matter not expressly governed by this agreement.
2. [Insert reference to the arrangement(s) implementing Annex II of Guideline ECB/2007/2] and this agreement shall be deemed to form part of the same contractual relationship.

Made, in as many copies as there are parties, the [...date....]

## AGGREGATED LIQUIDITY AGREEMENT – VARIANT B

### Template for use of the AL mode by one credit institution

Between, on the one hand: [name and address of a credit institution] represented by [.....], acting as

[participant], holder of PM account(s) No [.....], with [insert name of CB],

[participant], holder of PM account(s) No [.....], with [insert name of CB],

[participant], holder of PM account(s) No [.....], with [insert name of CB],

(the participants hereinafter mentioned as the 'AL group members')

and on the other hand,

[insert name of AL NCB]

[insert name of AL NCB]

[insert name of AL NCB]

(hereinafter the 'AL NCBs')

(AL group members and AL NCBs hereinafter collectively referred to as the 'Parties')

Whereas:

- (1) TARGET2 is legally structured as a multiplicity of payment systems, each of which is designated as a system under the relevant national legislation implementing 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<sup>20</sup>.
- (2) A credit institution with several PM accounts in one or more TARGET2 component systems may, under certain conditions laid down in the respective conditions for

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<sup>20</sup>

OJ L 166, 11.6.1998, p. 45.

participation in TARGET2 component systems, set up an AL group, whereby the liquidity on such PM accounts of the AL group members is aggregated.

- (3) Aggregation of liquidity enables the AL group members to settle payment orders for an amount exceeding the available liquidity on one PM account, provided that the total value of all such payment orders never exceeds the aggregate amount of the available liquidity on all PM accounts of the AL group members. The resulting debit position on one or more of these PM accounts constitutes intraday credit, the provision of which is governed by the respective national arrangements, subject to the modifications described in this agreement; in particular, such debit position is collateralised with the available liquidity on all PM accounts of the AL group members.
- (4) The effect of this mechanism is in no way to merge the various PM accounts, which, subject to the limitations described in this agreement, continue to be separately held by the AL group members.
- (5) Such a mechanism aims to avoid the fragmentation of liquidity in the different TARGET2 component systems and simplify the liquidity management of the AL group members.
- (6) This mechanism improves the overall efficiency of settlement of payments in TARGET2.
- (7) [Participant], [participant] and [participant] are respectively connected to TARGET2-[insert CB/country reference], TARGET2-[insert CB/country reference], and TARGET2-[insert CB/country reference] and are bound by the [insert reference to the arrangement(s) implementing Annex II of Guideline ECB/2007/2] of [insert relevant dates],

Now, therefore, the Parties agree the following:

## **Article 1**

### **Effectiveness of this agreement**

This agreement and any amendment made hereto shall only be effective when the managing NCB, after having obtained any information or documents that it deems appropriate, confirms in writing that this agreement or amendments thereto comply with the requirements laid down in the respective conditions for participation in TARGET2 component systems.

## **Article 2**

### **Mutual interest of AL NCBs**

The AL NCBs have a mutual interest in providing intraday credit to the AL group members, as this promotes the overall efficiency of settling payments in TARGET2. The intraday credit is collateralised in accordance with Article 18 of the Statute of the European System of Central Banks and of the European Central Bank since the debit balance resulting from the execution of a payment order is covered by the available liquidity on the PM accounts held by the AL group members with their respective AL NCBs, which are collateralised for the discharge of the obligations owed by the AL group members to the AL NCBs.

## **Article 3**

### **AL group members' rights and obligations**

1. AL group members shall be liable towards all AL NCBs in relation to all claims resulting from the settlement in their respective TARGET2 component systems of the payment orders of any AL group member.
2. The total value of all payment orders settled by the AL group members on their PM accounts may never exceed the aggregate amount of the available liquidity on all such PM accounts.
3. The AL group members shall be authorised to use the consolidated account information (CAI) mode, as described in the [insert the reference to the arrangement(s) implementing Annex II of Guideline ECB/2007/2].

## **Article 4**

### **AL NCBs' rights and obligations**

1. When the AL group member submits a payment order to a TARGET2 component system for an amount exceeding the available liquidity on that AL group member's PM account, the relevant AL NCB shall extend intraday credit that is collateralised with the available liquidity on other PM accounts held by the AL group member with its respective AL NCB or on PM accounts held by other AL group members with their respective AL NCBs. Such intraday credit shall be governed by the rules applicable to the provision of intraday credit by such AL NCBs.

2. Payment orders submitted by the AL group members which have the effect of exceeding the available liquidity on all PM accounts of the AL group members shall be queued until sufficient liquidity is available.
3. Each AL NCB may claim from the AL group members the full discharge of all obligations resulting from the settlement of payment orders of the AL group members in the TARGET2 component systems in which they hold PM accounts.

## **Article 5**

### **Designation and role of the AL group manager**

1. The AL group members hereby designate as AL group manager [indicate the participant designated as AL group manager], which shall be the contact point for all administrative matters relating to the AL group.
2. The AL group members shall provide the relevant AL NCBs with any information which may affect the validity, enforceability and implementation of this agreement, including, without limitation, the occurrence of any events of default within the meaning of the [insert reference to the relevant provisions in the arrangement(s) implementing the Harmonised Conditions] or any event which may affect the validity and/or enforceability of the [insert reference to the pledge, close-out netting provisions or any other relevant provisions of the arrangement(s) implementing Annex II of Guideline ECB/2007/2].
3. The AL group manager shall immediately convey to the managing NCB any information described in paragraph 2.
4. The AL group manager shall be responsible in respect of intraday monitoring of the liquidity available within the AL group.
5. The AL group manager shall have power of attorney over all PM accounts of the AL group members and, in particular, shall conduct the following operations:
  - (a) Any ICM operations in respect of the AL group members' PM accounts, including, but not limited to, any change in priority of a payment order, revocation, change of settlement time, liquidity transfers (including from and to sub-accounts), reordering of queued transactions, reservation of liquidity in respect of the AL group, setting and changes of limits in respect of the AL group and liquidity transfers;
  - (b) all end-of-day liquidity transactions between the PM accounts of the AL group members ensuring that all balances of the AL group members' PM accounts are levelled out, so that none of these accounts have a debit balance at the end of the

day or, where applicable, a debit balance not secured by eligible collateral (hereinafter such procedure is referred to as 'levelling out');

- (c) general instructions according to which an automatic levelling out shall be performed, i.e. defining the sequence of AL group members' PM accounts with available liquidity to be debited within the levelling out;
- (d) in the absence of any explicit instructions by the AL group manager, as set out in subparagraphs (b) and (c), an automatic levelling out shall be performed starting with the PM account with the highest credit balance towards the PM account with the highest debit balance.

The same criteria as defined in subparagraphs (c) and (d) shall be used if an enforcement event, as defined in [insert reference to the relevant provisions in the arrangement(s) implementing Annex II of Guideline ECB/2007/2], occurs.

## **Article 6**

### **Role of the managing NCB**

1. The managing NCB shall be the contact point for all administrative matters relating to the AL group.
2. All of the AL NCBs shall immediately provide the managing NCB with any information relating to the AL group member which may affect the validity, enforceability and implementation of this agreement, including, but not limited to, the occurrence of any events of default within the meaning of the [insert reference to the relevant provisions in the arrangement(s) implementing Annex II of Guideline ECB/2007/2] or events which may affect the validity and/or enforceability of the [insert reference to the pledge, close-out netting or any other relevant provisions of the arrangement(s) implementing Annex II of Guideline ECB/2007/2].
3. The managing NCB shall have access to all relevant information in respect of all PM accounts of the AL group members, including, but not limited to, information in respect of any credit line, the balance, total turnover, settled payments, queued payments, as well as information on the AL group members' limits and liquidity reservations.

## **Article 7**

### **Duration and termination of this agreement**

1. This agreement shall be of unlimited duration.
2. Each of the AL group members may unilaterally terminate its participation in this agreement, provided it gives 14 business days' written notice to the AL NCB in whose TARGET2 component system it participates and to the managing NCB. The managing NCB shall confirm to the AL group member the date of its termination of participation in the AL agreement and shall communicate such date to all AL NCBs which shall inform their AL group members accordingly. If that AL group member was the AL group manager, the remaining AL group members shall immediately appoint a new AL group manager.
3. This agreement shall automatically be terminated without prior notice and with immediate effect if the requirements for using the AL mode, as described in the [insert reference to the arrangement(s) implementing Annex II of Guideline ECB/2007/2] are no longer met.
4. Notwithstanding the occurrence of an event described in paragraph 3, a payment order that has already been submitted by the AL group member into the relevant TARGET2 component system shall remain valid and enforceable in respect of all AL group members and the AL NCBs. [Insert if relevant: In addition, the [insert reference to pledge and/or close-out netting or other relevant security arrangement] shall remain valid after the termination of this agreement until all debit positions on the PM accounts whose liquidity was aggregated are fully discharged by the AL group members.]
5. Without prejudice to paragraph 3, the managing NCB, in agreement with the AL NCBs, may at any time terminate this agreement if any AL group member is in breach of any of the provisions hereof. Such decision shall be addressed in writing to all the AL group members setting out the reasons for the decision.
6. The managing NCB, in agreement with the other AL NCBs, may terminate this agreement if the maintenance of it would endanger the overall stability, soundness and safety of TARGET2 or jeopardise the performance by the AL NCBs of their tasks pursuant to the Statute of the European System of Central Banks and of the European Central Bank. Any decision to terminate this agreement shall be addressed in writing to the AL group members, setting out the reasons for the decision.

### **Article 8 – Amendment procedure**

Any change to this agreement, including the extension of the AL group to other participants, shall only be valid and enforceable if expressly agreed to by all parties in writing.

### **Article 9 – Governing law**

This agreement shall be governed, construed and implemented in accordance with the [insert reference to the law governing the PM account of the AL group manager]. This shall be without prejudice to:

- (a) the relationship between the AL group members and their respective AL NCBs governed by the law of the respective AL NCB, and
- (b) the rights and obligations between the AL NCBs governed by the law of the AL NCB which maintains the PM account in which available liquidity is used as collateral.

### **Article 10 – Application of the [insert reference to the arrangement(s) implementing the Harmonised Conditions]**

1. In relation to each of the PM accounts of the AL group members, the relevant provisions of the [insert reference to the arrangement(s) implementing Annex II of Guideline ECB/2007/2] shall govern any matter not expressly governed by this agreement.
2. The [insert reference to the arrangement(s) implementing Annex II of Guideline ECB/2007/2] and this agreement shall be deemed to form part of the same contractual relationship.

Made, in as many copies as there are parties, the [...*date*....]

## PROVISION OF INTRADAY CREDIT

### Eligible entities

1. The BCL shall provide intraday credit to the entities referred to in paragraph 2 and which have an account with the BCL. However, no intraday credit may be granted to an entity established in a country other than the Grand-Duchy of Luxembourg.
2. Intraday credit may only be granted to the following entities:
  - (a) credit institutions established in the EEA that are eligible counterparties for Eurosystem monetary policy operations and have access to the marginal lending facility, including when those credit institutions act through a branch established in the EEA and including branches established in the EEA of credit institutions that are established outside the EEA;
  - (b) credit institutions established in the EEA that are not eligible counterparties for Eurosystem monetary policy operations and/or do not have access to the marginal lending facility, including when they act through a branch established in the EEA and including branches established in the EEA of credit institutions that are established outside the EEA;
  - (c) treasury departments of central or regional governments of Member States active in the money markets and public sector bodies of Member States authorised to hold accounts for customers;
  - (d) investment firms established in the EEA provided that they have concluded an arrangement with a Eurosystem monetary policy counterparty to ensure that any residual debit position at the end of the relevant day is covered; and
  - (e) entities other than those falling within paragraphs (a) and (b) that manage ancillary systems and act in that capacity, provided that the arrangements for granting intraday credit to such entities have been submitted to the Governing Council in advance and have been approved by the Governing Council.

3. For the entities mentioned in paragraph 2(b) to (e), intraday credit shall be limited to the day in question and no extension to overnight credit shall be possible.

### **Eligible collateral**

4. Intraday credit shall be based on eligible collateral and granted by means of collateralised intraday overdrafts and/or intraday repurchase transactions. Eligible collateral shall consist of the same assets and instruments as eligible assets for Eurosystem monetary policy operations, and shall be subject to the same valuation and risk control rules as those laid down in Annex I to Guideline ECB/2000/7.
5. Debt instruments issued or guaranteed by the entity, or by any other third party with which the entity has close links, may only be accepted as eligible collateral in the situations laid down in Section 6.2 of Annex I to Guideline ECB/2000/7.

### **Credit extension procedure**

7. Access to intraday credit may only be granted on business days.
8. Intraday credit shall be provided free of interest.
9. The failure by an entity referred to in paragraph 2(a) to reimburse the intraday credit at the end of the day shall automatically be considered as a request by such entity for recourse to the marginal lending facility.
10. The failure by an entity referred to in paragraph 2(b), (d) or (e) to reimburse the intraday credit at the end of the day for whatever reason shall render that entity liable to the following penalties:
  - (a) if the entity in question has a debit balance on its account at the end of the day for the first time within any twelve-month period, then this entity shall incur penalty interest calculated at a rate of five percentage points above the marginal lending rate on the amount of such debit balance;
  - (b) if the entity in question has a debit balance on its account at the end of the day for at least the second time within the same twelve-month period, then the penalty interest mentioned in subparagraph (a) shall be increased by 2,5 percentage points for each time additional to the first that a debit position has occurred within this twelve-month period.

11. The Governing Council may decide to waive or reduce the penalties imposed pursuant to paragraph 10, if the end-of-day debit balance of the entity in question is attributable to force majeure and/or technical malfunction of TARGET2, the latter phrase as defined in Article 1 of the Terms and Conditions.

**Suspension or termination of intraday credit**

12. The BCL shall suspend or terminate access to intraday credit if an event of default and/or one of the following events occurs:
  - (a) the account of the entity with the BCL is suspended or closed;
  - (b) the entity concerned ceases to meet any of the requirements laid down in this Annex for the provision of intraday credit.
13. In urgent circumstances the BCL may suspend an Eurosystem monetary policy counterparty's access to intraday credit with immediate effect.