

FSB Continuity of Access to FMIs for Firms in Resolution

Streamlined information collection to support resolution planning

14 August 2020



DISCLAIMER

The answers to the questionnaire reflect the TARGET2 operators' current thinking on resolution related matters, based on the TARGET2 legal framework, as these stood at the time the answers were given.

Under no circumstances should the present answers be construed as industry standards or applicable professional minimum standards in cases of distressed participants or participants in resolution.

In concrete cases, operators of TARGET2 components maintain discretion of taking any measure within the TARGET2 legal framework to safeguard the overall stability, soundness and safety of TARGET2.

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Executive summary

In May 2019, the FSB held a workshop with industry on continuity of access to FMIs for firms in resolution¹ to discuss possible actions that could be taken to assist authorities and firms in implementing the FSB Guidance on Continuity of Access to Financial Market Infrastructures (FMIs) for a Firm in Resolution of 2017 ('Guidance').²

The Guidance sets out arrangements and safeguards to facilitate continuity of access to FMIs for a firm in resolution. Authorities and firms face similar information needs as they develop their resolution plans and engage with FMIs on arrangements and safeguards to address continuity of access in resolution issues.

As one of several outcomes of the workshop, to reduce the burden of duplicative information gathering efforts, it was suggested that the process of collecting certain baseline information relevant to continuity of access in resolution could be streamlined through the use of a common template or questionnaire for gathering the relevant information. This could reduce the "many to one" nature of inquiries from banks and authorities to FMIs, streamline the provision of this information from FMIs to firms and authorities, and streamline the information gathering process for firms who are members of multiple FMIs.

In the second half of 2019, the FSB's Cross-border Crisis Management Working Group for banks (bankCBCM), in consultation with FMIs and banks, developed a draft questionnaire and consulted relevant FMI oversight authorities with the assistance of CPMI-IOSCO Secretariats. The FSB then finalised the attached questionnaire.³

All FMIs are encouraged to complete the questionnaire and to publish their responses, or to make them available in other ways to FMI service users and resolution authorities to inform their resolution planning. As the relevant authorities of firms and those of FMIs play a significant part in facilitating the continuity of access to FMIs of a firm in resolution,⁴ it is important that relevant authorities, including those of FMIs, be informed and involved in the process as needed.

This questionnaire is a living document. The experience will be evaluated after the first iteration, in the course of 2021. FMIs and banks, as well as other stakeholders, will then have the opportunity to provide feedback and suggestions on the questionnaire itself and the process.

¹ FSB (2019) *Industry workshop on continuity of access to FMIs for firms in resolution - Informal Summary of the Workshop*, May.

² FSB (2017) *Guidance on Continuity of Access to Financial Market Infrastructures (FMIs) for a Firm in Resolution*, July.

³ This questionnaire focuses on FMI participants that are banks subject to resolution planning, but relevant authorities could also use it as a basis for resolution planning interaction with other FMI participants.

⁴ See Section 3 of the Guidance, Co-operation among authorities and communication between authorities, firms and providers of critical FMI services".

Process and tentative timeline

The FSB encourages FMIs to consider the below indicative timeline for providing a standardised set of responses. Along the way, the FSB will offer to hold information sessions where industry will be welcome to ask questions about content and process.

Timing	Action
August 2020	Publication of the questionnaire
September 2020	Q&A session(s) through webinars
October/November 2020	FMIs liaise with their overseers/supervisors on publication process
November/December 2020	Finalisation of questionnaire responses and submission to authorities and FMI participants; publication of the responses or 'presumptive path' summaries
2021	Evaluation of the experience so far and possible adjustment of the process/questionnaire Update of questionnaire responses as appropriate Taking forward the further recommendations from the workshop

Questionnaire for FMIs

1. Overview

A key objective of effective resolution is to maintain financial stability and the continuity of a bank's critical functions. This requires a firm in resolution to maintain continued access to critical clearing, payment, settlement, custody and other services provided by financial market infrastructures (FMIs).⁵ Access to FMIs is essential for banks⁶ to be able to continue performing their critical functions⁷ under all circumstances, including in cases where banks need to be resolved. Potential loss of access to any of the FMI's services is thus considered a key impediment to resolution. Three levels of access are to be kept in mind: 1) membership/participation (maintaining a valid contract with the FMI); 2) ability to send new transactions; and 3) ability to use ancillary services.

The Financial Stability Board's (FSB) *Guidance on Continuity of Access to Financial Market Infrastructures (FMIs) for a Firm in Resolution of 2017* ('Guidance')⁸ sets out arrangements and safeguards to facilitate continuity of access to FMIs for a firm in resolution. These apply at the level of the providers of FMI services (FMIs), at the level of FMI participants (firms, banks, participants, members, or service users) and at the level of the relevant resolution authorities (RAs) and supervisory authorities.

The FSB made a commitment to consider what further actions could be taken to assist authorities and firms in implementing the Guidance. Authorities and firms face similar information needs as they develop their resolution plans and engage with FMIs on arrangements and safeguards to address continuity of access in resolution issues.

The use of a common questionnaire for collecting certain baseline information relevant to continuity of access in resolution should help reduce the burden of information gathering and unnecessary duplication. FMIs will be encouraged to publish their responses to the questionnaire, taking into account any confidentiality concerns, to ensure that all participants/members and RAs have access to the same baseline information. (See Section 3 below, "Publication of the responses to the questionnaire").

The questionnaire should help authorities and firms to understand, and to the extent possible anticipate, the potential action that FMIs could take in a resolution or in the lead-up to resolution, and how FMIs can support resolution actions where necessary and possible.

The information collected should serve as a basis for and supplement to an appropriate level of direct engagement between firms and/or resolution authorities and FMIs regarding actions

⁵ FMIs include payment systems, securities settlement systems, central securities depositories, and central counterparties. While questions in this questionnaire could also apply to FMI intermediaries, at this stage the latter are not in scope. Development of a questionnaire aiming more specifically at FMI intermediaries is under consideration.

⁶ Some participants of FMIs may not be banks. While this questionnaire focuses on bank participants, relevant authorities could use it as a basis for interaction with FMIs on non-banks.

⁷ Activities performed by a firm for third parties, the sudden discontinuation of which may lead to financial instability or impact the real economy. Examples of critical functions may include, but are not limited to, deposit-taking, lending, payment and settlement services, capital market activities and wholesale funding.

⁸ See FSB *Guidance on Continuity of Access to Financial Market Infrastructures (FMIs) for a Firm in Resolution*, 2017 (July).

in recovery and resolution of firms, or any other resolution planning requirements for firms in any jurisdiction.

The questionnaire is not exhaustive. Authorities and firms may require additional FMI-specific information for purposes of resolution planning.

As stated in the FSB Guidance, whether or not an FMI service user (or its parent or affiliate) is in resolution, the FMI should “retain the ability, as specified in its rules or contractual arrangements, to terminate, suspend or restrict participation or continued provision of critical FMI services where the firm fails to meet payment, delivery or other obligations or where the safe and orderly operations of the provider of critical FMI services could be compromised.” Nothing in this questionnaire should be read as seeking to modify the Guidance. An FMI’s responses to this questionnaire should be considered indicative and not as a firm commitment to how the FMI may or may not use any discretion under its rules or contractual framework.

2. Structure of the questionnaire and instructions for completion

The questionnaire is composed of five parts covering:

1. general information on the FMI and its legal structure;
2. information on the rulebook / contractual provisions regarding termination;
3. the phase prior to resolution, during signs of distress at the FMI participant;
4. the resolution phase; and
5. arrangements and operational processes to facilitate continued access in resolution.

When responding to the questionnaire, please:

- i. reference relevant regulatory or rulebook/contractual provisions whenever possible;
- ii. clearly distinguish in each answer whether the response relates to direct or indirect participants or both;
- iii. clarify in each answer whether your answer applies to all types of services that your FMI provides (please consider separate questionnaire responses in case services are very different);
- iv. consider, to the extent relevant, all roles that banks may fulfil in the FMI’s ecosystem (intermediary, nostro agent, liquidity provider etc.);
- v. provide precise cross-references to answers provided in preceding parts of the questionnaire and/or in hyperlinked public documentation if this is useful to avoid the risk of competing published texts; and
- vi. provide any additional clarifications and explanations when answering the questions.

There may be questions or answers that could be more specifically targeted to different types of FMIs (e.g. CSDs, CCPs); supplemental explanations can be provided in these cases as well.

3. Publication of the responses to the questionnaire

For greater transparency and to optimise the efficiency of the information flow from an FMI to its participants, FSB member authorities prefer for the responses to this questionnaire to be made publicly available. FMIs are encouraged to discuss the process for publication with their supervisors and overseers as part of their regular engagement.

Where FMIs identify any answers that cannot be made public for reasons of confidentiality, they are nevertheless encouraged to share them (i) with direct and indirect participants upon request; and/or (ii) with authorities.

Where FMIs choose not to publish their responses due to confidentiality concerns, FSB encourages publication by FMIs of the set of responses that is not subject to such concerns, or, at a minimum, non-binding 'presumptive path' summaries of their presumptive reaction to a FMI participant (i) experiencing distress (which may result in the member being suspended or placed into default by the FMI), or (ii) entering into resolution (to understand the differences in treatment of a firm in resolution).

FMIs will be encouraged to review and update their questionnaire responses annually as well as upon material changes to their rulebooks or contractual agreements.

4. Definitions for the purposes of the questionnaire

A Financial Market Infrastructure (“**FMI**”) is, as defined by the Key Attributes⁹, “a multilateral system among participating financial institutions, including the operator of the system, used for the purposes of recording, clearing, or settling payments, securities, derivatives, or other financial transactions”. As used in this questionnaire, an FMI includes payment systems, central securities depositories (CSD), securities settlement systems (SSS), and central counterparties (CCP). It does not extend to trade repositories or to trading platforms.

The “**bridge institution**” tool aims to set up a bank that can be disposed (thus preserving the critical functions of the failing bank) and to separate it from the rest. It can be applied to maintain the bank’s critical functions, while searching for a third party purchaser. The tool allows for the transfer of i) instruments of ownership issued by one or more institutions under resolution or ii) all or any assets, rights or liabilities of one or more institutions under resolution to a bridge institution. A temporary bridge institution (also known as a bridge bank) is created and critical functions will be maintained until a sale to a private purchaser can be concluded. Any residual part of the bank that has not been sold is then subject to ordinary insolvency proceedings.

⁹ See FSB *Key Attributes of Effective Resolution Regimes*, 2014 (October)

“Critical functions” are activities performed by a firm for third parties where failure would lead to the disruption of services that are vital for the functioning of the real economy and for financial stability due to the size or market share of the financial institution or group, its external and internal interconnectedness, and complexity and cross-border activities.

“Critical FMI services” are clearing, payment, securities settlement and custody activities, functions or services, the discontinuation of which could lead to the collapse of (or present a serious impediment to the performance of) one or more of the firm’s critical functions. They include related activities, functions or services whose on-going performance is necessary to enable the continuation of the clearing, payment, securities settlement or custody activities, functions or services. Critical FMI services are identified in the course of the resolution planning for a firm and may be provided to a firm either by an FMI, or through an FMI intermediary.

“Critical services” or **“critical shared services”**. This is an activity, function or service performed by either an internal unit, a separate legal entity within the group or an external provider, performed for one or more business units or legal entities of the group, the failure of which would lead to the collapse of (or present a serious impediment to the performance of) critical functions.

An **“FMI intermediary”** is an entity that provides clearing, payment, securities settlement and/or custody services to other firms in order to facilitate those firms’ direct or indirect access to an FMI.

The terms **“FMI service user,” “client,” “firm,” “bank,” “participant,” or “member”** are used interchangeably in this document to mean a legal entity that is an institution or a group that has access to critical FMI services.

A **“group”** means a parent undertaking and its subsidiaries.

An **“institution”** refers to a ‘credit institution’ or an ‘investment firm’.

A **“provider of critical FMI services”** is an FMI or FMI intermediary that provides critical FMI services.

“Resolution” refers to the exercise of resolution powers or tools by any resolution authority in relation to a firm (including in relation to a parent company and/or any of its affiliates) pursuant to the resolution regime in the firm’s jurisdiction.

Part I: Legal entity and general contract/service information:

1. Please provide the following details:

a) Full Legal Name

TARGET2-LU

b) Legal Entity Identification Number (LEI)

N.A.

c) Jurisdiction of incorporation and registered number in the relevant corporate registry

Guideline of the European Central Bank of 5 December 2012 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2) (recast) (ECB/2012/27) (2013/47/EU)

Law of 23 December 1998 concerning the monetary status and the Central bank of Luxembourg

Terms and Conditions for Participation in TARGET2-LU, 2021 version

d) Supervisory, resolution or other relevant regulatory authority responsible for overseeing the activities of your organisation in (i) the relevant jurisdiction(s) of incorporation, and (ii) if different from the jurisdiction of incorporation, the relevant jurisdiction(s) of operation. Where an FMI is overseen by more than one regulatory authority, please also indicate which is the principal/ home regulator of the FMI and the relevant function(s) regulated by the respective authorities.

According to Article 3 of the Decision of the European Central Bank of 13 August 2014 on the identification of TARGET2 as a systemically important payment system pursuant to Regulation (EU) No 795/2014 on oversight requirements for systemically important payment systems (ECB/2014/35), the ECB is the competent authority for the oversight of TARGET2.

[https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1599643157703&uri=CELEX:32014D0035\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1599643157703&uri=CELEX:32014D0035(01))

In accordance with Article 2 paragraph 5 (2) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD)¹ and Article 1 of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (BRRD)², Central Banks which operate TARGET2 components do not fall within the scope of prudential supervision and resolution regime in the EU.

e) The ownership arrangement of the legal entity (e.g. is it majority owned by its users?)

According to Article 1.2 of Guideline (EU) 2013/47 of the ECB on a Trans-European Automated Real-time Gross Settlement Express Transfer System (TARGET2) (TARGET2 Guideline)³, TARGET2 is legally structured as a multiplicity of RTGS

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0036>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0059>

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012O0027>

systems. Article 3.1 of the Guideline provides that each Eurosystem Central Bank shall operate its own TARGET2 component system.

TARGET2-LU is operated by Banque centrale du Luxembourg whose capital belongs to the Luxembourg State in accordance with Article 4. (1) of its Organic Law.

2. Please provide the following information:

- a) Hyperlink to the published FMI disclosure template under the Disclosure Framework for Financial Market Infrastructures.¹⁰

<https://www.ecb.europa.eu/pub/pdf/other/t2disclosurereport201805.en.pdf>

- b) a list or description of services provided, including a summary of the key ongoing access requirements that you require of members for each service (including operational, financial, and capital requirements).

TARGET2 provides its participants with payment services in an RTGS mode with bookings taking place on so-called Payment Module (PM) accounts as well as with specific services for the settlement of securities-related transactions stemming from TARGET2-Securities (T2S) and of Instant Payments in TARGET Instant Payment Settlement (TIPS) by means of dedicated cash accounts (DCAs) for T2S and for TIPS. While DCAs opened in the books of central banks are legally part of TARGET2, the corresponding services are technically provided from the T2S and TIPS platforms of the Eurosystem.

The access criteria and requirements for TARGET2 are defined in Harmonised Conditions for the Opening and Operation of a PM Account, a T2S DCA and a TIPS DCA in TARGET2 (i.e. Annexes II, IIA and IIB to the TARGET2 Guideline), which govern the opening and operation of PM accounts and DCAs in TARGET2 respectively.⁴ The criteria are identical for PM account and DCA holders, as both are deemed (direct) participants in TARGET2.

Direct participation is allowed for (a) credit institutions established in the Union or the European Economic Area (EEA), including their branches in the Union or the EEA; (b) credit institutions established outside the EEA, provided that they act through a branch established in the Union or the EEA; and (c) national central banks of Member States and the ECB.

In addition, Central Banks may, on a discretionary basis, allow the following entities to be direct participants: (a) treasury departments of central or regional governments of Member States; (b) public sector bodies of Member States authorised to hold accounts for customers; (c) investment firms established in the Union or the EEA, including when they act through a branch established in the Union or the EEA and investment firms established outside the EEA, provided that they act through a branch established in the Union or 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 above under (a) to (d) if these are established in a country with which the

⁴ The relationship between the participant and the respective TARGET2 component system is governed by the measures of the respective Central Bank implementing these Harmonised Conditions. Throughout this document, any reference to the Annexes to the TARGET2 Guideline should be understood as reference to the respective conditions/agreements of the Central Banks implementing the Harmonised Conditions.

European Union has entered into a monetary agreement allowing the entities to access payment systems in the European Union.

The responsibilities of PM account, T2S DCA and TIPS DCA holders and the application procedure are defined in the relevant parts of Annexes II, IIA and IIB to the TARGET2 Guideline. There are no specific financial or capital requirements for participation in TARGET2 further than those which are set out in the relevant EU or third country legislation governing the incorporation of the participant.

3. Do your members/ clients access your services directly or through an intermediary?

With respect to its RTGS services, TARGET2 currently distinguishes the following types of participation: (i) direct participation; (ii) indirect participation; (iii) multi-addressee access; and (iv) addressable BIC holders. These types of participation are described further in the TARGET2 Disclosure Report for Financial Market Infrastructures.

<https://www.ecb.europa.eu/pub/pdf/other/t2disclosurereport201805.en.pdf>

Direct participants shall have at least one PM account with TARGET2.

T2S DCA holders may request the respective Central Bank to link its T2S DCA to one or more securities account(s) held on its own behalf or on behalf of its clients, which hold securities accounts in one or more participating Central Securities Depositories.

TIPS DCA holders may access the TIPS Platform directly and/or using (one or more so called) instructing parties – an entity which has been designated as such by a TIPS DCA holder and which is allowed to send payment orders to the TIPS Platform and/or receive payment orders from the TIPS Platform on behalf of that TIPS DCA holder or a reachable party of that TIPS DCA holder. TIPS DCA holders may designate one or more reachable parties which have to meet the criteria laid down in the TARGET2 Guideline. In this respect, TIPS DCA holders and reachable parties must have adhered to the SCT Inst Scheme of the European Payments Council (EPC) and signed the SEPA Instant Credit Transfer Adherence Agreement.

4. Do your members/ clients need a specific software or IT programme to receive your services? If the answer is 'yes', is such software/ IT programme your proprietary product or a specific third party product (please also consider whether specific plug-ins that you require clients to run only run in combination with certain software, e.g. Microsoft products)?

The PM account holders may access TARGET2 via SWIFT (SWIFT-based PM account holder) or via Internet (internet-based PM account holder). They have to register with SWIFT, in the case of SWIFT-based PM account holders, or with an Accredited Certification Authority, for internet-based PM account holders. For the Internet-based PM account holders, the registration with an Accredited Certification Authority should be carried out following the procedures specified in the "User manual internet access for the public key certification service", available on the TARGET2 website.

In order to access T2S and TIPS DCAs, the respective account holders may use SWIFT and SIA/COLT.

5. If your contracts are all governed by one governing law, please specify which governing law this is. If there are different governing laws, please specify the main governing laws applicable and explain whether this is dependent on the location of the services provided or as negotiated with the members/ client, or any other reason.

Although TARGET2 operates on a single technical platform, it is legally structured as a multiplicity of systems, as indicated above. Each individual TARGET2 Central Bank owns its own legal TARGET2 component and operates it under the law of its Member State. The TARGET2 components of individual Central Banks encompass the PM accounts as well as the DCAs for T2S and TIPS opened in their books. Each TARGET2 component system is designated 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 (SFD).⁵

See also the following link:

<https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:31998L0026>

TARGET2-LU, being the TARGET2 component system operated by Banque centrale du Luxembourg is governed by Luxembourg law.

6. Are there any other service providers or FMIs (for example, CSDs, payment systems or other infrastructure) that a member / client would need to have access to in order to receive your services? Please provide the names of those types of service providers and their regulatory status, where applicable.

As mentioned under Question 4, direct participants need to register with SWIFT or, for internet-based access, with an Accredited Certification Authority. T2S and TIPS services are accessible via SWIFT and SIA/COLT.

¹⁰ See CPSS-IOSCO, *Principles for financial market infrastructures: Disclosure framework and Assessment methodology*, 2012 (December).

⁵ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31998L0026>

7. Does your operating framework recognise the continued operations of FMI participants once they enter into resolution (e.g. as under the Bank of England's Resolvability Assessment Framework, or the Single Resolution Board's Expectations for Banks)?

Yes, the TARGET2 Guideline (Articles 34.1 Annex II, 24.1 Annex IIA, 26.1 Annex IIB) states that the taking of crisis prevention measures or crisis management measures within the meaning of the BRRD against a PM account / T2S DCA or TIPS DCA holder shall not automatically qualify as the opening of insolvency proceedings within the meaning of the SFD or the TARGET2 Guideline. The opening of insolvency proceedings shall result in immediate termination or suspension of PM account holder's participation in TARGET2 and continuance in operations would not be possible.

See also Articles 38.12.b and 40.10.b of the BRRD on the continued access of purchasers and of bridge institutions to, inter alia, payment systems.

As regards Luxembourg law, Articles 38.12.b and 40.10.b of the BRRD are implemented respectively in Articles 39 (11), third paragraph, and 40 (10), third paragraph, of the law of 18 December 2015 on the resolution, reorganisation and winding up measures of credit institutions and certain investment firms and on deposit guarantee and investor compensation schemes.

Part II: Rulebook / Contractual provisions regarding termination¹¹

8. Discretionary termination rights.

- a) Rule Book / Participation agreement provisions: which provisions give rise to a right to terminate a service user's access? Are the FMI's termination provisions disclosed publicly? If so, please provide any link(s) to that information.

Articles 33 Annex II, 23 Annex IIA and 25 Annex IIB of the TARGET2 Guideline contain provisions of ordinary termination of participation in TARGET2; Articles 34 Annex II, 24 Annex IIA and 26 Annex IIB of the TARGET2 Guideline define the rules for suspension and extraordinary termination of participation in TARGET2 for PM accounts, T2S DCAs and TIPS DCAs. The TARGET2 Guideline and the arrangements adopted by the Central Banks implementing the Harmonised Conditions (Annexes II, IIA, IIB to the TARGET2 Guideline), including the termination provisions, are disclosed publicly.

- b) Are these provisions based solely on objective criteria, or can the FMI exercise judgement when triggering termination?

According to Articles 34.1 Annex II, 24.1 Annex IIA and 26.1 Annex IIB to the TARGET2 Guideline participation in TARGET2 *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 PM account/T2S DCA or TIPS DCA holder no longer meets the access criteria laid down in the relevant Articles of the TARGET2 Guideline. (i.e Article 4 for PM account and respectively Article 5 for T2S DCA and TIPS DCA account holder).

In the following cases defined in Articles 34.2 Annex II, 24.2 Annex IIA and 26.2 Annex

IIB to the TARGET2 Guideline, the relevant Central Bank *may* terminate without prior notice or suspend the PM account/ T2S DCA or TIPS DCA holder's participation in TARGET2:

- (a) one or more events of default (other than those referred to in paragraph 1) occur;
- (b) the PM account/T2S DCA or TIPS DCA holder is in material breach of these Conditions;
- (c) the PM account/ /T2S DCA or TIPS DCA holder fails to carry out any material obligation to the respective Central Bank;
- (d) the PM account /T2S DCA holder is excluded from, or otherwise ceases to be a member of, a TARGET2/T2C Closed User Group (CUG);
- (e) any other PM account/T2S DCA or TIPS DCA holder-related event occurs which, in the Central Bank's assessment, would threaten the overall stability, soundness and safety of the respective TARGET2 component or of any other TARGET2 component system, or which would jeopardise the CB's performance of its tasks as described in relevant national law and in the Statute of the European System of Central Banks and of the European Central Bank, or poses risks on the grounds of prudence;
- (f) an NCB suspends or terminates the PM account holder's access to intraday credit pursuant to paragraph 12 of Annex III of the TARGET2 Guideline.; and/or
- (g) the TIPS DCA holder no longer has a valid agreement with a TIPS network service provider to obtain the necessary connection to the TIPS platform.

Pursuant to paragraph 12 (v) of Annex III to the TARGET2 Guideline, access to intraday credit shall be suspended or terminated in case the entity's eligibility as a counterparty for Eurosystem monetary policy operations has been suspended or terminated. Such event, in turn, triggers the possibility for the relevant TARGET2 Central Bank to terminate without prior notice or suspend the participants participation in TARGET2 in accordance with article 34, 2 (f) of Annex II to the TARGET2 Guideline.

The decision of the relevant TARGET2 Central Bank would follow an assessment of the particular circumstances of each situation on a case by case basis. According to Article 34.3 Annex II to the TARGET2 Guideline (and the equivalent provisions in Annexes IIA and IIB) in exercising its discretion under paragraph 2, the Central Bank shall take into account, inter alia, the seriousness of the event of default or events mentioned in subparagraphs (a) to (c).

- c) Does the FMI use 'forward looking' indicators that may trigger termination, and if so, which ones?

As mentioned under 8.b) above, the relevant Central Bank *may* terminate without prior notice or suspend the PM account/T2S DCA or TIPS DCA holder's participation in TARGET2 if a PM, T2S DCA or TIPS DCA account holder-related event occurs which, inter alia, poses risks on the grounds of prudence. The decision of the relevant TARGET2 Central Bank would follow an assessment of the particular circumstances of each situation on a case by case basis. The TARGET2 Guideline does not include pre-defined quantitative or qualitative indicators to be used in the assessment.

- d) Do the FMI's provisions envisage that (i) financial stress on the participant's side (as defined in its provisions – please provide the definition of such stress) and/or (ii) a resolution event (recognised in the relevant jurisdiction) qualifies as a material change

that may trigger termination?

Financial stress on the participant's side and/or entering into resolution would not automatically qualify as a material change that may trigger termination.

- e) During stress or resolution of the member, are actions by other FMIs taken into account as possible indicators or triggers for termination?

Actions by other FMIs would be monitored by the TARGET2 operator. However, they would not automatically trigger termination of participation in TARGET2. That would depend only on the assessment of the risks the participant in resolution may cause to TARGET2 and to its participants (contagion risk).

- f) Are there any other relevant provisions regarding termination? If so, please explain why they are necessary for the FMI to enable rights for termination.

See BRRD provisions referred to under Question 7.

9. Suspension or restriction of membership.

- a) Does your framework allow for suspension or restriction of a participant's membership rather than termination? If yes, what exactly does this imply (for instance, limiting the right to enter new transactions in the system)? Please explain any differences to termination.

The TARGET2 Guideline recognises both termination and suspension of participation (see Chapter 3.8 of the Information Guide for TARGET2 Users⁶ as well as Articles 34.5-7 Annex II, 24.5-7 Annex IIA and 26.5-8 Annex IIB of the TARGET2 Guideline, and the Articles referred to under Question 8.b). What is required and/or allowed in a specific case is a matter of national law.

Upon termination of a PM account holder's participation, the account ceases to exist and, therefore, the relevant TARGET2 component system will not accept any new payment orders from such PM account holder. Payment orders in the queue, warehoused payment orders or new payment orders in favour of such PM account holder will be returned. If a PM account holder is suspended from TARGET2 on grounds other than the opening of insolvency proceedings, all of its incoming payments and outgoing payment orders will be stored and only entered into the entry disposition after they have been explicitly accepted by the suspended PM account holder's Central Bank. If a PM account holder is suspended from TARGET2 on the grounds of opening of insolvency proceedings, any outgoing payment orders from that PM account holder will only be processed on the instructions of its representatives, appointed by a competent authority or a court, such as the PM account holder's insolvency administrator, or pursuant to an enforceable decision of a competent authority or a court providing instructions as to how the payments are to be processed. All incoming payments will be stored and only entered into the entry disposition after they have been explicitly accepted by the suspended PM account holder's Central Bank.

⁶https://www.ecb.europa.eu/paym/target/target2/profuse/nov_2020/shared/pdf/Information_Guide_for_TARGET2_users_v14.0.pdf

Upon termination of a T2S DCA holder's participation, the relevant TARGET2 component system will not accept any new payment orders to or from that T2S DCA holder. If a T2S DCA holder is suspended on grounds other than the opening of insolvency proceedings, all of its incoming and outgoing payment orders shall only be presented for settlement after they have been explicitly accepted by the suspended T2S DCA holder's Central Bank. If a T2S DCA holder is suspended on the grounds of opening of insolvency proceedings, any outgoing payment orders from that T2S DCA holder will only be processed on the instructions of its representatives, including those appointed by a competent authority or a court, such as the T2S DCA holder's insolvency administrator, or pursuant to an enforceable decision of a competent authority or a court providing instructions as to how the payments are to be processed. All incoming payments shall be processed after they have been explicitly accepted by the suspended PM account holder's Central Bank.

Upon termination of a TIPS DCA holder's participation, the relevant TARGET2 component system will not accept any new payment orders to or from that TIPS DCA holder. If a TIPS DCA holder is suspended on grounds other than the opening of insolvency proceedings, the suspended TIPS DCA holder's Central Bank will either: (a) reject all of its incoming payment orders; (b) reject all of its outgoing payment orders; or (c) reject both its incoming and outgoing payment orders. If a TIPS DCA holder is suspended on the grounds of opening of insolvency procedures, the suspended TIPS DCA holder's Central Bank will reject all incoming and outgoing payment orders. The Central Bank will process instant payment orders of a TIPS DCA holder whose participation has been suspended or terminated and in relation to which the Central Bank has reserved funds on a TIPS DCA pursuant to Article 18(3)(b) of Annex IIB of the TARGET2 Guideline prior to the suspension or termination.

- b) Is there a specific timeline for a suspension period before it leads to termination of membership, and are there circumstances where suspension may be lifted without a termination of membership?

Subject to applicable national law, participation may be directly terminated without prior suspension. At the same time, suspension does not automatically lead to termination after a specific timeline. If the reason for suspension does no longer exist, suspension may be lifted without a termination of participation.

10. Critical FMI service rules, contractual arrangements, or procedures should reflect any legal restrictions on termination and suspension of access because of an FMI service user entering into resolution (FSB 2017 Guidance, 1.1).

¹¹ If your FMI also has the option to suspend rather than terminate membership, please specify for each answer whether and how it would differ for suspension. Please also note Question 4, which asks about the details of suspension in your FMI's provisions.

- a) In what way do your rules, contractual arrangements and procedures reflect this?

The taking of crisis prevention measures or crisis management measures within the meaning of BRRD against a PM account/T2S DCA or TIPS DCA holder shall not automatically qualify as the opening of insolvency proceedings within the meaning of SFD or the TARGET2 Guideline. This means that there would be no automatic suspension or termination of the account of an entity in resolution. At the same time, the TARGET2 Operator retains its discretion to suspend or terminate an account holder's participation in accordance with Articles 34.2 Annex II, 24.2 Annex IIA, and 26.2 Annex IIB to the TARGET2 Guideline, if an ordinary event of default (other than the opening of insolvency proceedings) listed in the respective provisions has occurred. In exercising its discretion, the Central Bank shall take into account, inter alia, the seriousness of the event of default or events mentioned in subparagraphs (a) to (c) of the respective Articles.

The TARGET2 Guideline does not automatically trigger any termination or other rights, obligations or procedures based on the sole ground of a participant entering into resolution. Participants are only subject to an information duty vis-à-vis their Central Bank if they become subject to crisis prevention measures or crisis management measures within the meaning of the BRRD (Articles 11.9 Annex II, 10.9 Annex IIA and 14.8 Annex IIB to the TARGET2 Guideline).

- b) Do such arrangements include the effect of parent or affiliates entering resolution?

No, they do not.

- c) Do you have any plans to amend or otherwise change, or have you recently changed your rules, contractual arrangements or procedures to address legal restrictions on termination of access in the event that an FMI service user enters resolution? If so, please provide details of the proposed/applied changes.

The BCL does not intend to further amend or otherwise change the contractual arrangements or procedures to address legal restrictions on termination of access in the event that an FMI services user enters resolution.

11. Triggers, procedure and consequences of termination of FMI participation.

- a) Triggers: in which situations would termination be considered? Is participation/membership generally terminated in case of financial stress? Are these criteria clearly outlined in the rulebook or other contractual documentation (please include the relevant references)?

See response to Question 8b). The events in which participation *shall be* and in which it *may be* suspended or terminated are described in Articles 34.1-2 Annex II, 24.1-2 Annex IIA and 26.1-2 Annex IIB to the TARGET Guideline.

- b) Please explain the management and monitoring around the termination process - steps and timelines of the escalation and decision-making, as well as of the implementation of termination. (Please provide concrete examples, if any, of participation/membership terminations and flag, where relevant, any changes made to the termination process since).

The termination process takes place according to rules set out in the contractual

document entitled “Terms and Conditions for Participation in TARGET2-LU”. The involved departments of BCL (such as operations and legal) are in charge of preparing the file for submission to the Executive Board for approval and decision-making.

- c) What are the consequences of termination on the participant/member’s ability to access the FMI’s services? Would the firm be able to complete the processing of any outstanding transactions (e.g. not accepted for clearing or settlement, or in process but not complete) it has in the FMI’s systems, or are these cancelled or liquidated?

Termination is to be distinguished from suspension in the following sense (see also response to Question 9a)):

- Termination: account ceases to exist;
- Suspension: payments can only be continued upon instructions of the public administrator, authority or court in case of insolvency, or after approval by the relevant Central Bank in case of suspension on other grounds.

- d) Would the decision to terminate participation/ membership be notified ex ante (i.e. before it takes effect) to the competent authorities of (i) the direct participant and/or of (ii) the FMI? Would this decision be communicated ex ante to the participant itself? On both aspects, how long in advance of actual termination would such notifications occur?

According to Articles 38.2 Annex II, 27.2 Annex IIA and 29.3 Annex IIB to the TARGET2 Guideline, the Central Bank may disclose payment, technical or organisational information regarding the participant, participants from the same group or the participant's customers obtained in the course of the operation of TARGET2 inter alia to supervisory, resolution and oversight authorities of Member States and the Union, including Central Banks, 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.

As far as competent authorities are concerned, LEGCO refers to Articles 17.2 and 19.2 of the TARGET2 Guideline.

- e) What impact would a participant/member’s termination have on their parent/subsidiaries’ direct membership in the FMI?

In the case of subsidiaries, there will always be a separate assessment and no automatic termination of either the subsidiary or the parent. In the case that the two participants are the same legal entity (e.g. branch), always both accounts would be terminated.

- f) Does the FMI have cross-default provisions in its rule set? Could it put a member in default because of an affiliate’s insolvency or of an indirect participant/client’s default or do the rules explicitly prevent or exclude such automatic termination (as long as other obligations are being met)?

There are no cross-default provisions. Events under Articles 34. 1-2 Annex II, 24. 1-2 Annex IIA and 26.1- 2 Annex IIB to the TARGET2 Guideline apply to the respective entity only.

- g) What assistance would the FMI provide with the porting (within the FMI) of the participant's direct and/or indirect positions/outstanding transactions to a parent/subsidiary membership, third party successor or bridge entity?

No porting mechanism is foreseen in the Annexes. Under Article 43.2 of Annex II (and the respective provisions of the other Annexes to the TARGET2 Guideline) rights and obligations from the TARGET2 participation may not be transferred without the approval of the respective Central Bank.

- h) Please discuss any other points related to termination.

12. FMIs should retain the ability, as specified in rules or contractual arrangements, to terminate, suspend or restrict participation or continued provision of services where the firm fails to meet obligations or where safe and orderly FMI operations could be compromised (FSB 2017 Guidance, 1.1).

- a) Under what conditions, if any, could safe and orderly FMI operations be at risk from maintaining participation of a service user in resolution?

As mentioned under Question 7, Articles 34.1 Annex II, 24.1 Annex IIA and 26.1 Annex IIB to the TARGET2 Guideline state that the taking of crisis prevention measures or crisis management measures within the meaning of BRRD against a PM account / T2S DCA or TIPS DCA holder shall not automatically qualify as the opening of insolvency proceedings within the meaning of SFD or the TARGET2 Guideline.

Specific risks shall be assessed on a case by case basis in this sense, Articles 34.2 Annex II, 24.2 Annex IIA and 26.2 Annex IIB foresee among the cases where the Central Bank may terminate or suspend the PM account- or DCA holder's participation, the case where an event relating to such PM account- or DCA holder occurs, which would threaten the overall stability, soundness and safety of the relevant TARGET2 component system or of any other TARGET2 component system.

- b) Which indicators, if any, can a participant use to anticipate that such a scenario may occur?

The cases in which suspension or termination shall or may happen are defined in the TARGET2 Guideline. For a possible suspension or termination on grounds of prudence according to Articles 34.2(e) Annex II, 24.2(e) Annex IIA and 26.2(e) Annex II B, there are no pre-defined indicators apart from those listed in those Articles. This would depend on the assessment of the concrete case at stake, but it can be assumed that such grounds have to be of a seriousness comparable to that of the other items in the list.

13. Are there any further aspects or issues to mention in relation to the provisions for termination or suspension of membership? If possible, please provide concrete examples of specific factors that were considered in the past when assessing whether to exercise judgement to terminate or suspend a participant's access. Please elaborate.

Regarding pledges, on the occurrence of an event of default, referred to in Articles 34.1 Annex II, 24.1 Annex IIA and 26.1 Annex IIB or any other event of default or event referred to in Article 34.2 Annex II, 24.2 Annex IIA and 26.2 Annex IIB of the TARGET2 Guideline that has led to the termination or suspension of the participant's participation, 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 (Articles 36.4 Annex II, 26.4 Annex IIA and 28.6 Annex IIB of the TARGET2 Guideline).

Part III: Prior to resolution, during signs of distress at the participant

The questions in this section assume a situation of stress, in which one of the FMI's (direct) participants/members, or an affiliate company, exhibits signs of distress. Please distinguish in case there are differences between situations of idiosyncratic vs. market stress.

To avoid duplication, respondents may cross-reference other answers when appropriate.

14. What management and monitoring process(es) does the FMI have in place to identify a situation of stress of a (direct) FMI participant or its affiliate?

In TARGET2 the account holding Central Bank has visibility of the individual transactions and payment patterns of the participant concerned.

BCL checks the size of intra-day credit used by participants and the resulting marginal lending. If unusual high amounts of intra-day credit are detected in the late afternoon, the participants are contacted. Furthermore, participants' behavior⁷ is monitored and analysed over time.

15. Which indicators does the FMI consider as part of its management and monitoring in order to determine whether its participants/members face difficulties due to idiosyncratic and/or market stress (outside of entry into resolution)?

There are no predefined stress indicators at overall TARGET2 level.

For TARGET2 participants using intra-day credit the collateral use ratio, the TARGET2 use frequency, and other counterparty qualitative and quantitative data are monitored.

16. What risk mitigation actions could the FMI take under its rules / internal procedures vis-à-vis the participant or member? Which of those potential actions are likely, i.e. to be expected by the firm? How would risk mitigation vary in the event of mild, moderate, and severe stress situations at a participant/member? Could actions be taken even though the participant/member meets its obligations?

According to Articles 11.1 Annex II, 10.1 Annex IIA and 14.1 Annex IIB to the TARGET2 Guideline, in performing their obligations and exercising their rights, the Central Banks and their respective participants shall cooperate closely to ensure the stability, soundness and safety of TARGET2. 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, without prejudice to any banking secrecy obligations.

⁷ Exclusively when participant uses intra-day credit facility.

The respective Central Bank decides on the basis of the concrete case at stake which information from the participant it requires.

At overall TARGET2 level there are no predefined stress related mitigation actions which a participant would be expected to take.

As previously mentioned, in an extreme scenario and subject to the above said on the required seriousness of the events or indications at hand, participation in TARGET2 may be suspended or terminated if an PM account/T2S DCA or TIPS DCA holder-related event occurs which, in the Central Bank's assessment, would threaten the overall stability, soundness and safety of the respective TARGET2-component system or of any other TARGET2 component system, or which would jeopardise the Central Bank's performance of its tasks as described in relevant national law and the Statute of the European System of Central Banks and of the European Central Bank, or poses risks on the grounds of prudence. See Articles 34.2(e) Annex II, 24.2(e) Annex IIA and 26.2(e) Annex IIB of the TARGET2 Guideline. In case of suspension or termination of a PM account holder's or a T2S DCA holder's participation, the relevant Central Bank shall inform, by means of an ICM broadcast message or a T2S broadcast message, that PM account holder or T2S DCA holder, other CBs and PM account holders and T2S DCA holders in all of the TARGET2 component systems of such suspension or termination. In case of suspension or termination of a TIPS DCA holder's participation, the relevant Central Bank shall inform, by means of an ICM broadcast message, the other CBs and PM account holders.

17. What self-reporting requirements are placed on the member/participant in a situation of stress (e.g. additional reporting, increased reporting frequency; evidence of operational and financial capacity)? Please provide any templates or overviews of required data points, where available.

At overall TARGET2 level no self-reporting requirements have been defined. However, please see the reference in the response to Question 16 to the general cooperation requirements laid down in Articles 11 Annex II, 10 Annex IIA and 14 Annex IIB of the TARGET2 Guideline.

18. Please explain the methodology used to calibrate additional membership requirements (including operational, financial and capital requirements) for a member/client in financial stress outside of resolution.

The participation criteria are objectively regulated in the TARGET2 Guideline. The calibration of additional participation requirements in case of certain events is not foreseen. That said, according to the relevant application procedures for the opening and operation of PM accounts, T2S DCAs and TIPS DCAs foreseen under Articles 8.4(c) Annex II, 6.4(c) Annex IIA and 6.4(c) Annex IIB to the TARGET2 Guideline, the relevant Central Bank shall reject the application to participate if, inter alia, in its own assessment such participation would endanger the overall stability, soundness and safety of the relevant TARGET2 component system or of any other TARGET2 component system, or would jeopardise the Central Bank's performance of its tasks as described in the relevant national law and the Statute of the European System of Central Banks and of the European Central Bank, or poses risks on the grounds of prudence.

19. Please describe for each of the below risk mitigation actions, in as far as they form part of the FMI's set of potential risk mitigation actions: (i) whether these actions are discretionary or pre-determined, e.g., would the FMI follow a required set of actions, which may be described in its rule book; (ii) in which way, if at all, the FMI could deviate from the predetermined procedure so as to either disregard a mandated risk mitigation action or adopt a non-standard action?
- i. Increasing membership contributions (e.g. default fund/loss sharing contributions), mandating pre-funding, restricting withdrawal of deposits;
 - ii. Increasing initial/variation margin/collateral requirements, restricting collateral types, removing cross-margining facilities; increasing liquidity obligations;
 - iii. Removing credit lines, reliance on parental guarantees or securities borrowing facilities;
 - iv. Enforcing trading controls including position limits, restricting markets;
 - v. Termination or suspension of participation/membership.

Regarding, the removal of credit lines (item iii), suspension, limitation or termination of intraday credit is included in point 12. of Annex III to TARGET2 Guideline. This provision determines when a Central Bank either (i) shall suspend or terminate access to intraday credit (e.g. when the account of the entity with the euro area NCB is suspended) (=automatic) or (ii) may do so (=discretionary).

Regarding participation, apart from the few cases defined in Article 34.1 Annex II and the equivalent Articles 24.1 in Annex IIA and 26.1 in Annex IIB to the TARGET2 Guideline (=automatic events), the termination or suspension of participation (item v)) in cases defined in Article 34.2 Annex II and the equivalent Articles 24.2 in Annex IIA and 26.2 in Annex IIB to is at the discretion of the Central Bank(=discretionary events/grounds). However, such discretion would need to take into account general legal principles such as proportionality (i.e. materiality of the event, impact on the participant etc.). The other risk mitigation actions mentioned above are not relevant for TARGET2.

20. Please answer question 19 also for other risk mitigation actions, if any, that are not mentioned here and would likely be taken.

N/A

21. In a situation of idiosyncratic or market stress, in which one of the FMI's (direct) participants/members, or an affiliate company, exhibits signs of distress, communications and notifications may be necessary. Please distinguish in the below in case there are differences between a situation of idiosyncratic vs. market stress.

- a) What notifications or communications would the FMI undertake to the participant/member, their competent and/or resolution authority, the FMI's competent and/or resolution authority, the stressed firm's settlement agent, and other stakeholders, and when? Would any of these be based on an obligation for the FMI to notify?

As stated under Question 16, according to Articles 11 Annex II, 10 Annex IIA and 14 Annex IIB of the TARGET2 Guideline, in performing their obligations and exercising their rights, the Central Banks and their respective participants shall cooperate closely to ensure the stability, soundness and safety of TARGET2. 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, without prejudice to any banking secrecy obligations.

Moreover, according to Articles 38.2 Annex II, 27.2 Annex IIA and 29.3 Annex IIB to the TARGET2 Guideline, the Central Bank may disclose payment, technical or organisational information regarding the participant, participants from the same group or the participant's customers obtained in the course of the operation of TARGET2 inter alia to supervisory, resolution and oversight authorities of Member States and the Union, including CBs, 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.

In addition to these two general provisions, the TARGET2 Guideline does not include provisions on notifications or communications with participants or with competent and/or resolution authorities in situations of stress prior to resolution of a TARGET2 participant.

- b) Do you have a specific communication plan for this, or does your approach leverage existing crisis communication mechanisms? In both cases, please describe the main features of the approach.

There is no specific communication plan for this at overall TARGET2 level.

- c) Does the FMI need to get consent from the firm or inform the firm prior to a notification or communication?

If such information provision would fall under Articles 38.2 Annex II, 27.2 Annex IIA and 29.3 Annex IIB to the TARGET2 Guideline, it would not require the consent of the firm.

- d) Do the communication/notification protocols require specific factors to be considered, for example legal implication, market impact, etc.?

N.A.

- e) Are your communication protocols standardised across participants or do they take into account the specificities of firms' participation and roles in respect of the FMI?

N.A.

22. Alleviating uncertainty for the FMI.

- a) Which actions could the firm or the relevant authorities take in order to alleviate uncertainty for the FMI, and reduce the risk that the FMI may take risk mitigation actions that may have an adverse financial impact on the firm?

Taking into account the general cooperation and information exchange obligation of Articles 11 Annex II, 10 Annex IIA and 14 Annex IIB to the TARGET2 Guideline, a participant that is under financial stress in a way that it affects, for example, its normal payments behavior in a way that could threaten the smooth operation of TARGET2 and/or adversely affect other participants or the settlement of TARGET2 ancillary systems in which it participates, should inform its home Central Bank.

The firm should ensure that it safeguards its access to Eurosystem monetary policy operations, so as to avoid that its access to intraday credit be suspended or terminated pursuant to paragraph 12 (v) of Annex III to the TARGET2 Guideline, due to the suspension or termination of its eligibility as a counterparty for Eurosystem monetary policy operations. Such event, could in turn, trigger the possibility for the relevant TARGET2 Central Bank to terminate without prior notice or suspend the participants participation in TARGET2 in accordance with article 34, 2 (f) of Annex II to the TARGET2 Guideline.

- b) Which data / quantitative information and what qualitative information might you need to receive from the participant and/or RA in order to allow the participant to maintain access (please consider the three levels of access mentioned in footnote 3)? Please specify by when you would need each piece of information, if appropriate.

N.A.

- c) What other actions could be taken ex-ante to avoid a temporary interruption of services or the risk of some transactions remaining unexecuted?

N.A.

- d) Please discuss any other considerations.

N/A

23. Considering adverse financial impact of FMI risk mitigation actions on direct/indirect participants.

- a) Some actions, designed to protect the FMI, may precipitate the failure of the relevant participant/member or worsen its position at the time of resolution. How does the FMI consider this when deciding to protect itself?

Grounds for termination or suspension under Articles 34.2 Annex II, 24.2 Annex IIA and 26.2 Annex IIB to the TARGET2 Guideline are discretionary. In exercising their discretion, Central Banks would consider whether a termination or suspension would precipitate problems for the stressed participant which would threaten the overall stability, soundness and safety of the respective TARGET2 component system or of any other TARGET2 component system, or whether it would jeopardise the Central Bank's performance of its tasks as described in relevant national law and the Statute of the European System of Central Banks and of the European Central Bank, or would pose risks on the grounds of prudence.

Articles 34.3 Annex II, 24.3 Annex IIA and 26.3 Annex IIB stipulate that, when Central Banks, as operators of TARGET2, exercise their discretion under paragraph 2 of the above Articles in deciding to terminate or suspend participation in a TARGET2

component system, they have to take into account, *inter alia*, the seriousness of the event of default or of the events mentioned in points (a) to (c) of the respective Articles.

- b) Does the FMI take into account the impact on indirect participants of actions taken in response to a direct participant/member facing financial stress?

Yes, this would be part of the case-by-case assessment mentioned under item a) above.

24. Possible differences in treatment of domestic and foreign FMI service users entering into resolution.

- a) Do you differentiate in your treatment of domestic and foreign FMI service users, and if so in what way?

Domestic and foreign participants entering into resolution are treated equally.

- b) Among foreign users, is there a distinction for users from certain jurisdictions? If so, what are those distinctions?

No, there is no such distinction.

25. Safeguards in jurisdictional legal frameworks.

- a) How do you assess whether the resolution framework of the jurisdiction in which a firm resides provides adequate safeguards to the provider of critical FMI services?¹²

Credit institutions and investment firms established outside the EEA are eligible for participation in TARGET2 provided that they act through a branch established in the Union or the EEA. These institutions need to provide a country opinion in the form specified in Appendix III of Annex II, in Appendix III of Annex IIA as well as in Appendix II of Annex IIB of the TARGET2 Guideline, unless the information and representations to be provided in such country opinion have already been obtained by the relevant Central Bank in another context. Such country opinions include specific references to, *inter alia*, general insolvency and crisis management issues, enforceability of system documents, processing or payment orders, remedies in the event of default, suspension or termination.

- b) From which regulatory regimes (e.g. countries) do you accept service users?

In addition to the answer provided under Question 2b), TARGET2 accepts as participants only institutions which are not subject to restrictive measures adopted by the Council of the European Union or Member States pursuant to Articles 65(1)(b), 75 or 215 of the Treaty, the implementation of which, in the view of the relevant Central Bank after informing the ECB, is incompatible with the smooth functioning of TARGET2 (Articles 4 Annex II, 5 Annex IIA, 5 Annex IIB). In accordance with Article 4(2)(e) Annex II, (and respectively in Article 5 (2) (e) Annex IIA and Article 5 (2) (e) Annex IIB), Central banks may, at its discretion, also admit credit institutions or any of the entities of the types listed in Article 4.2 (a) to (d) to Annex II, may be admitted as direct participants by the Central Banks, in both cases where these are established in a country with which the Union has entered into a monetary agreement allowing access by any of such entities to payment systems in the Union 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 Union legislation (also see the respective Articles 5(2)(e) of Annex IIA and 5(2)(e) of Annex IIB of the TARGET2 Guideline on the admittance of those entities by the Central Banks as T2S DCA holders and TIPS DCA holders).

As regards access criteria, we refer to Questions 2 b) and 25 a).

26. Are there any further aspects or issues to mention in relation to interaction between the FMI and a participant in financial stress? Do you have any examples of past experiences where the FMI has utilised its powers in relation to a member undergoing stress? What actions were undertaken and what were the outcomes? Could this example be indicative of actions that may be taken in a future case?

N.A.

¹² See FSB, *Principles for Cross-border Effectiveness of Resolution Actions* 2015 (November).

Part IV: During and after resolution

To avoid duplication, respondents may cross-reference other answers when appropriate.

27. When the FMI becomes aware of a participant entering a resolution process, which actions would the FMI be likely to take vis-à-vis the participant? Could actions be taken even though the participant/member meets its obligations?

As previously indicated, the taking of crisis prevention measures or crisis management measures within the meaning of BRRD against a PM account/T2S DCA or TIPS DCA holder shall not automatically qualify as the opening of insolvency proceedings within the meaning of SFD or the TARGET2 Guideline. This means that there would be no automatic suspension or termination of the participation of an entity in resolution. At the same time, the TARGET2 Operator retains its discretion to suspend or terminate an account holder's participation in accordance with Articles 34.2 Annex II, 24.2 Annex IIA, and 26.2 Annex IIB of the TARGET2 Guideline, if an ordinary event of default (other than the opening of insolvency proceedings) as defined in the list occurred. In exercising its discretion, the Central Bank shall take into account, inter alia, the seriousness of the event of default or events mentioned in subparagraphs (a) to (c) of the respective Articles.

The TARGET2 Guideline does not automatically trigger any termination or other rights, obligations or procedures vis-à-vis a participant entering into resolution. Participants are only subject to an information duty if they become subject to crisis prevention measures or crisis management measures within the meaning of the BRRD (Articles 11.9 Annex II, 10.9 Annex IIA and 14.8 Annex IIB to the TARGET2 Guideline).

28. Please explain the methodology used to calibrate additional membership requirements (including operational, financial and capital requirements) for a member/client in resolution. To what extent does the FMI take into account the resolution strategy and tools applied to a member to determine their financial and operational requirements? Does the FMI consider anything specific in its methodology in relation to ring-fenced or specifically safeguarded entities?

As indicated under Question 18, the TARGET2 Guideline does not foresee additional membership requirements for a TARGET2 participant in resolution.

29. Please describe for each of the below risk mitigation actions, in as far as they form part of the FMI's set of risk mitigation actions upon a participant entering a resolution process (in addition to actions that would be taken prior to resolution): (i) whether these actions are discretionary or pre-determined, e.g., would the FMI follow a required set of actions, which may be described in its rule book; (ii) in which way, if at all, the FMI could deviate from the predetermined procedure so as to either disregard a mandated risk mitigation action or adopt a non-standard action; (iii) how/when the following risk mitigation actions would be communicated to the participant.

- i. Temporary suspension of certain activities (and if so, which activities);

We refer to Articles 34.2 Annex II, 24.2 Annex IIA and 26.2 Annex IIB to the TARGET2 Guideline on the suspension of the participation in TARGET2. Temporary suspension can be decided on a discretionary basis if an event occurs

in relation to the participant in resolution which, in the Central Bank's assessment, would threaten the overall stability, soundness and safety of the respective TARGET2 component system or of any other TARGET2 component system, or which would jeopardise the Central Bank's performance of its tasks as described in relevant national law and the Statute of the European System of Central Banks and of the European Central Bank, or poses risks on the grounds of prudence.

- ii. Potential requirements to contribute additional margin or amounts to default or guarantee funds, secure additional liquidity commitments (including on an intra-day basis), or to pre-fund part or all of payment and settlement obligations;

There are no such requirements for TARGET2 participants. All payments in TARGET2 are anyway settled on an individual basis only upon the availability of sufficient liquidity.

- iii. Potential changes to operational or information requirements, including those needed because certain services might not be available;

The TARGET2 Guideline does not define such changes to operational or information requirements.

- iv. Potential requirements that may apply in relation to a bridge institution or a third party purchaser to which functions have been transferred.

The TARGET2 Guideline does not define specific requirements in relation to a bridge institution or a third party purchaser. However, any institution or third party purchaser as mentioned above would need to fulfil the requirements as set out in the TARGET2 Guideline, please refer e.g. to Articles 4 and 8 of Annex II (for PM accounts) and the corresponding rules in Annex IIA (for T2S DCAs) and IIB (for TIPS DCAs).

30. Please answer question 29 also for other risk mitigation actions, if any, that are not mentioned here and that would likely be taken.

The TARGET2 Guideline does not define other risk mitigation actions.

31. In what way should a service user prepare for resolution-related risk mitigation measures by the FMI to maximise the likelihood of maintaining access? Does the FMI provide any documented guidance on this to its participants/members, and/or to their RAs?

The firm should ensure that it safeguards its access to Eurosystem monetary policy operations, so as to avoid that its access to intraday credit be suspended or terminated pursuant to paragraph 12 (v) of Annex III to the TARGET2 Guideline, due to the suspension or termination of its eligibility as a counterparty for Eurosystem monetary policy operations. Such event, could in turn, trigger the possibility for the relevant TARGET2 Central Bank to terminate without prior notice or suspend the participants participation in TARGET2 in accordance with article 34, 2 (f) of Annex II to the TARGET2 Guideline.

TARGET2-LU does not provide any documented guidance on this to its participants.

32. What impact would a member/ participant's resolution have on any parent or subsidiary's direct membership at the FMI?

Unless the national law provides that, upon the insolvency of the parent, affiliates also become insolvent, there would be no direct impact.

33. In a situation of idiosyncratic or market stress in which one of the FMI's (direct) participants/members, or an affiliate company, enters resolution, communications and notifications may be necessary. Please distinguish in the below in case there are differences between a situation of idiosyncratic vs. market stress.

- a) What notifications or communications would the FMI undertake to the participant/member, their competent and/or resolution authority, the FMI's competent and/or resolution authority, the firm's settlement agent, and other stakeholders, and when? Would any of these be based on an obligation for the FMI to notify?

N.A.

- b) Do you have a specific communications plan for this or does your approach leverage existing crisis communication mechanisms?

N.A.

- c) Does the FMI need to get consent from the firm or inform the firm prior to a notification or communication?

There is no need for TARGET2-LU to get consent from the firm or inform the firm prior to a notification or communication.

- d) Do the communication/notification protocols require specific factors to be considered, for example legal implication, market impact, etc.?

The communication/notification protocols do not require specific factors to be considered, for example legal implication, market impact, etc.

- e) Are your communication protocols standardised across participants or do they take into account the specificities of firms' participation and roles in respect of the FMI?

N.A.

- f) Would your members / clients be able to leverage any preparations your organisation has undertaken to access the necessary communication infrastructure to deliver the increased extent of communications that may be needed to respond to a resolution and any restructuring of a member/ client (such as increased call volumes to call centres)?

N.A.

- g) What management and monitoring arrangements would apply for these crisis communications and notifications? Would you have a dedicated team or a point of contact for receiving and initiating all communications that relate to a member/ client

entity in resolution or any related restructuring?

N.A.

34. Alleviating uncertainty for the FMI. (As requested in Part II, if the responses to sub-questions a.-f. below have been documented in rulebook/contractual provisions or other documents, please reference.)

- a) What actions (such as communication) could the participant or authorities take in order to alleviate uncertainty for the FMI about the participant's situation, and thereby reduce the risk that the FMI may take risk mitigation actions that may have a further adverse financial impact on the participant?

According to Articles 11.9 Annex II, 10.9 Annex IIA and 14.8 Annex IIB to the TARGET2 Guideline, participants shall immediately inform the account holding Central Bank if an event of default occurs in relation to themselves or if they are subject to crisis prevention measures or crisis management measures within the meaning of BRRD or any other equivalent applicable legislation.

Resolution authorities should inform the respective Central Bank on the exact legal status of the participant, on any changes in this respect in the course of resolution, and of any measure taken that may adversely affect the financial status, liquidity situation etc. of the participant.

- b) Assuming that the authorities and the affected member/ client may not be able to share relevant information before the commencement of the resolution process, would that represent a material issue that could determine how your organisation responds to the fact that a member/ client has been placed in resolution?

The participants shall inform the respective Central Bank immediately once they become subject to resolution (see response under a)). Missing advanced information would normally not determine the reaction of the Central Bank.

- c) Which data / quantitative information would the FMI need to receive from the participant and/or RA in order to allow the participant to maintain access (please consider the three levels of access mentioned in footnote 3)? Please specify by when you would need each piece of information, if appropriate, including when you would need to be informed prior to resolution measures.

N.A.

- d) Which qualitative information would the FMI need to receive from the participant and/or RA in order to allow the participant to maintain access to the FMI? Please specify by when you would need each piece of information, if appropriate, including when you would need to be informed prior to resolution measures.

N.A.

- e) What other actions could be taken ex-ante to avoid a temporary interruption of services or the risk of some transactions remaining unexecuted?

N.A.

- f) Please discuss any other considerations.

35. Considering adverse financial impact of FMI risk mitigation actions on direct/indirect participants.

- a) Some actions, designed to protect the FMI, may worsen the position of the participant at the time of resolution and as a result may also affect other participants. How does the FMI consider this when deciding to protect itself?

As grounds for termination under Articles 34.2 Annex II, 24.2 Annex IIA and 26.2 Annex IIB of the TARGET2 Guideline are discretionary, Central Banks, in exercising such discretion, would have to pay due regard as to whether a termination would precipitate problems for the stressed participant. Further, we refer to our previous answer to Question 23a).

- b) Does the FMI take into account the impact on indirect participants of actions taken in response to a direct participant/member entering into resolution?

Yes, this would be part of the case-by case assessment mentioned under item a) above.

36. FMI rules and contractual arrangements should allow a bridge institution to maintain its predecessor's participation (membership) during a resolution process (FSB 2017 Guidance, 1.1). (As requested in Part II, if the responses to the sub-questions below have been documented in rulebook/contractual provisions or other documents, please reference.)

- a) Please explain how the FMI rules, contractual arrangements and/or procedures reflect this.

According to Article 40.10 of BRRD, Member States shall ensure that the bridge institution may continue to exercise the rights of membership and access to payment, clearing and settlement systems, stock exchanges, investor compensation schemes and deposit guarantee schemes of the institution under resolution, provided that it meets the membership and participation criteria for participation in such systems.

The TARGET2 Guideline does not define a dedicated fast-track procedure for granting access to a bridge institution. The decision-making in this respect is in the responsibility of each individual Central Bank which could be expected to take due

account of the urgency of the situation.

- b) What would be the FMI's process to ensure that continuity of access can be maintained for the purchaser of a resolved entity or for a bridge institution?

Standard access rules are applied.

- c) Please share any timelines and any external dependencies for this process.

The timeline would depend on whether or not the bridge institution is the transferee of the existing account and, consequently, whether or not a new contract and a new SWIFT BIC will be required. If the bridge institution is the transferee of the existing account the necessary arrangements could be made possibly even overnight. If it is not, the process would normally take several weeks – both for the contractual arrangement between the Central Bank and the bridge institution and for the registration of a new BIC code with SWIFT.

- d) If the purchaser or bridge institution requires a new access, do you have a “fast-track” procedure to allow access for such a purchaser or bridge institution? How long is setting up access expected to take (with or without a “fast-track” procedure)? What would the FMI require in order to continue providing the service pending completion of the onboarding procedure (e.g. connectivity and BIC/SWIFT codes to remain unchanged)?

The TARGET2 Guideline does not define a fast-track procedure for events in which the bridge institution or the purchaser is not the transferee of the existing account. For the estimated timeline in this scenario see response under c) above.

- e) What type of information is needed in the context of a change-of-control assessment, i.e. to accept a purchaser or bridge institution as a participant/member? Please specify by when you would need each piece of information, if appropriate. How long would you then need to take an informed decision on access for the purchaser or bridge institution?

Articles 8 Annex II, 6 Annex IIA and 6 Annex IIB of the TARGET2 Guideline describe the general application procedure for participation in TARGET2.

- f) Does the FMI explicitly consider, in its rulebooks or internal procedures, the possibility of a RA requiring access for the purchaser or bridge institution even in case they do

not meet the membership or participation criteria (for instance where a credit rating is required)?

The TARGET2 Guideline and operational procedures do not explicitly consider this possibility. However, this is notwithstanding Articles 38.12.b and 40.10.b of the BRRD on the continued access of purchasers and of bridge institutions to, inter alia, payment systems and their implementation in the respective national laws.

- g) Please discuss any other, e.g. practical, considerations around continuity of FMI access of a bridge institution or of a purchaser.

N.A.

37. FMIs should consider the operational, technological, financial and legal implications arising from the transfer of functions or positions to a successor (either a bridge institution or a third-party purchaser). (FSB 2017 Guidance, 1.4)

- a) What preparations are necessary in your circumstances for such a transfer to be successful? What changes would be necessary for such a transfer to be successful? Please consider any preparations and changes by the FMI as well as by FMI members/service providers/others.

The contractual agreements needed in order to ensure the access to the FMI, either by a bridge institution or by a third-party purchaser, have to be transferred to such bridge institution or third-party purchaser.

38. Portability/Transferability of underlying client positions, for example to facilitate a bridge or partial transfer resolution strategy.

- a) For CCPs: Which kind of segregated accounts are offered to (underlying) clients to facilitate the portability/transferability of client positions and securities collateral? Do you envisage that there may be material barriers to the effective and timely transfer of client positions following a decision to transfer the activities of the member in resolution to another member? If so, please explain.

N/A

- b) For ICSDs: Do you offer segregated accounts to (underlying) clients? Do you envisage that there may be material barriers to the effective and timely transfer of client securities and cash to another custodian following a decision to transfer the activities of the participant in resolution to another participant? If so, please explain.

N/A

39. Are there any further aspects or issues to mention in relation to interaction between the FMI and the participant during or after resolution of the participant?

N.A.

Part V: Arrangements and operational processes to facilitate continued access in resolution

40. The FMI should consider establishing management, monitoring and operational rules and procedures that facilitate the ability of FMI management to make prompt decisions in response to a service user's resolution (including a period when the FMI is closed for business). (FSB 2017 Guidance, 1.4)

- a) What is the process that the FMI typically follows to identify, escalate, and come to a final decision on issues related to (i) the financial condition of a member, (ii) the performance or lack of performance by a member of its obligations under the FMI's rulebook, and/or (iii) the continuing membership of a member?

N.A.

- b) What positions, committees, or decision-making bodies in the FMI's organisation have a role in each phase of the identification, escalation, and final decision-making process?

While identification and escalation takes place at the level of the relevant departments of the BCL, the decision-making process takes place at the level of the Executive Board.

- c) What procedures are in place to facilitate prompt decision making at any time? What, if any, are the limitations?

N.A.

- d) What would be the likely range of decisions undertaken after receiving notice of a service user entering into resolution? What market communications or notifications to the regulator would be undertaken?

N.A.

41. In line with the Key Attributes,¹³ FMIs should regularly test the effectiveness of their relevant rules, contractual arrangements and procedures in responding to a resolution scenario of a participant.

- a) How do you test these contingency arrangements? How do you take participants in resolution into account in those contingency arrangements?

In general terms, and as already indicated above, the entering into resolution of a TARGET2 participant does not automatically trigger any contractual termination or other rights, obligations and procedures at the level of the TARGET2 Guideline.

Nevertheless, in T2S the operational implications stemming from the entering into resolution of a T2S DCA holder are managed in line with the T2S legal and operational framework and are tested on a yearly basis to assess the effectiveness of (i) the rules and procedures established in T2S and (ii) the communication and decision-making process.

- b) How do your rules facilitate the transfer of positions of a client of a service user in resolution to another service user of the FMI, as applicable?

N.A.

42. How do you test members' readiness of arrangements for meeting increased information and communication requests (beyond those required in BAU) that will be needed prior to and during resolution? Which disclosures do you require from members in this regard?

N.A.

43. Please describe any simulation exercises the FMI has held with relevance to continuity of access. Please share examples of scenarios covered and whether such scenarios have been inspired by actual crisis events, and clarify the points below:

Up until now there has been no such simulation exercise at overall TARGET2 level.

- a) Key Objectives/ how it correlates to a real life scenario;
- b) Frequency;
- c) Involvement of (large) FMI participants and whether any FMI participants have performed a simulation on their side in parallel;
- d) Involvement of authorities: competent authorities of the FMI, competent authorities of participants, and RAs; and
- e) Lessons Learned.

44. Are there any further aspects or issues to mention in relation to arrangements and operational processes to facilitate continued access in resolution?

N.A.

¹³ See FSB, *Key Attributes of Effective Resolution Regimes for Financial Institutions*, 2014 (October), Appendix II-Annex I, part II, section 2.2, p. 73.