

**NATIONAL BANK OF BELGIUM**

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**TERMS AND CONDITIONS OF TARGET-BE**

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**21 November 2022**

## PART I

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### GENERAL TERMS AND CONDITIONS

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#### ***Introduction***

The present Terms and Conditions, together with their Appendices, shall constitute an agreement between the National Bank of Belgium (hereafter “the NBB”) and its participants. These Terms and Conditions constitute the implementation of the Guideline ECB/2022/8 on a new-generation Trans-European Automated Real-time Gross Settlement Express Transfer system (TARGET) (the “TARGET Guideline”).

#### ***Article 1***

##### ***Subject matter and scope***

1. The Terms and Conditions set out in this Part I shall govern the relationship between the National Bank of Belgium (hereafter the “NBB”) and its participants in TARGET-BE in respect of the opening and operation of TARGET accounts.

The Terms and Conditions set out in the following Parts II, III, IV, V, VI and VII apply as far as participants opt for and are granted one or more accounts described in such Parts.

The Terms and Conditions set out in Parts I to VII of these Terms and Conditions are referred to collectively as the ‘Harmonised Conditions’ or the ‘Conditions’.

2. For the purpose of these Conditions, ‘participant’ means a) an entity that holds at least one Main Cash Account (MCA) and may additionally hold one or more Dedicated Cash Accounts (DCAs) in TARGET or b) an Ancillary System, as defined in Appendix VIII.

#### ***Article 2***

##### ***Appendices***

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

Appendix I: Technical specifications for the processing of cash transfer orders

Appendix II: TARGET compensation scheme

Appendix III: Terms of reference for capacity and country opinions

Appendix IV: Business continuity and contingency procedures

Appendix V: TARGET operating schedule

Appendix VI: Fee schedule

Appendix VII: Requirements regarding information security management and business continuity management

Appendix VIII: Definitions

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

### **Article 3**

#### **General description of TARGET and TARGET-BE**

1. TARGET is legally structured as a multiplicity of payment systems composed of all TARGET component systems, each of which is designated as a 'system' under the relevant national law implementing Directive 98/26/EC. TARGET-BE is designated as a "system" under Article 2, §1, a), 1° of the Belgian law of 28 April 1999 implementing Directive 98/26/EC of 19 May 1998 on settlement finality in payment and securities settlement systems.
2. TARGET comprises payment systems in euro that settle in central bank money and provide central liquidity management services, real-time gross settlement for payments and services for AS settlement and enable cash payments in relation to securities settlement and the settlement of instant payments.
3. TARGET provides:
  - (a) MCAs for the settlement of central bank operations;
  - (b) RTGS DCAs for large value real-time gross settlement of payments and sub-accounts if required for AS settlement;
  - (c) T2S DCAs for cash payments in relation to securities settlement;
  - (d) TIPS DCAs for the settlement of instant payments; and
  - (e) the following accounts for AS settlement: (i) RTGS AS technical accounts; (ii) AS guarantee fund accounts; and (iii) TIPS AS technical accounts.

Each account in TARGET-BE shall be identified by means of a unique account number made up of the elements described in Appendix I, paragraph 2.

### **Article 4**

#### **Access criteria**

1. The following types of entities are eligible to become participants in TARGET-BE upon request:
  - (a) credit institutions established in the Union or the EEA, including when they act through a branch established 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;
- (c) NCBs of Member States and the ECB;

provided that the entities referred to in points (a) and (b) are not subject to restrictive measures adopted by the Council of the European Union or Member States pursuant to Article 65(1)(b), Article 75 or Article 215 of the Treaty, the implementation of which, in the view of the NBB after informing the ECB, is incompatible with the smooth functioning of TARGET.

2. The NBB may, at its discretion, also admit the following entities as 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)
  - (i) investment firms established in the Union or the EEA, including when they act through a branch established in the Union or the EEA; and
  - (ii) investment firms established outside the EEA, provided that they act through a branch established in the Union or the EEA;
- (d) entities managing AS, and acting in that capacity; and
- (e) credit institutions or any of the entities of the types listed in points (a) to (d), 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.

## **Article 5**

### ***Application procedure***

1. In order to become a participant in TARGET-BE an eligible entity as described in Article 4(1) or an entity that may be admitted by the NBB under Article 4(2) shall fulfil the following requirements:
  - (a) install, manage, operate, monitor and ensure the security of the necessary IT infrastructure to connect to TARGET-BE and be able to submit cash transfer orders to it. In doing so, applicant participants may involve third parties but retain sole liability;
  - (b) have passed the tests required by the NBB;
  - (c) if it is an applicant for an a RTGS DCA, a T2S DCA or a TIPS DCA it shall also hold or open an MCA with the NBB;

- (d) provide a capacity opinion in the form specified in Appendix III, unless the information and representations to be provided in such capacity opinion have already been obtained by the NBB in another context;
  - (e) for the entities referred to in Article 4(1), point (b) and in Article 4(2), point (c)(ii), provide a country opinion in the form specified in Appendix III, unless the information and representations to be provided in such country opinion have already been obtained by the NBB in another context;
  - (f) if it is an applicant for a TIPS DCA, has adhered to the SCT Inst scheme by signing the SEPA Instant Credit Transfer Adherence Agreement;
  - (g) if it is an applicant for a TIPS AS technical account, has provided evidence that the disclosure letter showing their intent to be an SCT Inst compliant Clearing and Settlement Mechanism (CSM) has been provided to the European Payments Council (EPC).
2. Applicants shall apply to the NBB, as a minimum enclosing the following documents/information:
- (a) completed reference data collection forms as provided by the NBB;
  - (b) the capacity opinion, if required by the NBB, and the country opinion, if required by the NBB;
  - (c) if it is an applicant for a TIPS DCA, evidence of their adherence to the SCT Inst scheme;
  - (d) if the applicant is applying to use the TIPS AS settlement procedure, evidence that they have provided the EPC with the disclosure letter showing their intent to be an SCT Inst compliant CSM;
  - (e) if the applicant designates a paying agent, the evidence that the paying agent has agreed to act in that role.
3. Applicants which are already TARGET participants and apply for a new account as described in: (i) Part III (RTGS-DCA); (ii) Part IV (T2S DCA); (iii) Part V (TIPS DCA); (iv) Part VI (RTGS AS technical account); and/or (v) Part VII (TIPS AS technical account), shall comply with the provisions of paragraphs 1 and 2 to the extent relevant for the new account applied for.
4. The NBB may also request any additional information it deems necessary to decide on an application to open a TARGET account.
5. The NBB shall reject the application to participate if:
- (a) the applicant is not an eligible entity as described in Article 4(1) or an entity that may be admitted by the NBB under Article 4(2);
  - (b) one or more of the participation requirements referred to in paragraph 1 are not met; and/or

- (c) according to the NBB's assessment, such participation would endanger the overall stability, soundness and safety of TARGET-BE or of any other TARGET component system or would jeopardise the NBB's performance of its tasks as described in the Belgian Law of 22 February 1998 establishing the organic statute of the National Bank of Belgium and the Statute of the European System of Central Banks and of the European Central Bank or poses risks on the grounds of prudence.
6. The NBB shall communicate its decision on the application to become a participant in TARGET-BE to the applicant participant within one month of the NBB's receipt of the application. Where the NBB requests additional information pursuant to paragraph 4, the decision shall be communicated within one month of the NBB's receipt of this information from the applicant. Any rejection decision shall contain reasons for the rejection.

### **Article 6**

#### **Participants**

1. Participants which are not AS shall hold at least one MCA with the NBB and may also hold one or more RTGS DCAs, T2S DCAs and/or TIPS DCAs with the NBB.
2. AS which use the RTGS AS settlement procedures or the TIPS AS settlement procedure shall be subject to the terms and conditions set out in this Part as well as in Part VI or Part VII, respectively. They may hold one or more MCAs, T2S DCAs and, exceptionally and if approved by the NBB, one or more RTGS DCAs except in relation to the clearing of instant payments pursuant to the SCT Inst scheme. If an AS holds an RTGS DCA or a T2S DCA it shall also hold at least one MCA with the NBB. In the event that an AS holds one or more MCAs or RTGS DCAs or T2S DCAs, the respective Parts of these Conditions shall also apply.

### **Article 7**

#### ***Access to a participant's account by entities other than the participant***

1. To the extent technically possible, a participant may give access to its TARGET accounts to one or more entities it designates, for the purposes of submitting cash transfer orders and performing other actions.
2. Cash transfer orders submitted or funds received by the entities designated by a participant as referred to in paragraph 1 shall be deemed to have been submitted or received by that participant itself.
3. The participant shall be bound by such cash transfer orders and any other action taken by the entity or entities referred to in paragraph 1, regardless of the content of, or any non-compliance with, the contractual or other arrangements between that participant and such entity.

## **Article 8**

### **Billing**

1. The NBB shall identify billable items according to Appendix VI and shall allocate each of them to the participant from which that billable item originates.
2. Any fee payable in relation to a cash transfer order submitted by or cash transfer received by an AS, irrespective of whether it uses the RTGS AS settlement procedures or an RTGS DCA, shall be exclusively charged to that AS.
3. Billable items generated by actions taken by the designated entities referred in Article 7, as well as by central banks acting on behalf of a participant, shall be allocated to the participant.
4. The NBB shall issue separate invoices to the participant for the relevant services described in: (i) Part III (RTGS-DCA); (ii) Part IV (T2S DCA); (iii) Part V (TIPS DCA); (iv) Part VI (RTGS AS settlement procedures); and (v) Part VII (TIPS AS settlement procedure).
5. The NBB shall settle each invoice by means of a direct debit of an MCA held by the participant, unless the participant has designated another participant in TARGET (which may be in TARGET-BE or another component system) as a paying agent and instructed the NBB to debit the MCA of that paying agent. Such an instruction shall not release the participant from its obligation to pay each invoice.
6. Where a paying agent has been designated, the participant will provide the NBB with evidence that the paying agent has agreed to act in that role.
7. For the purposes of this Article, each AS shall be treated separately, even if two or more of them are operated by the same legal entity, and irrespective of whether or not the AS has been designated under Directive 98/26/EC. In the case of an AS that has not been designated under Directive 98/26/EC, it shall be identified as an AS by reference to the following criteria: (a) it is a formal arrangement, based on a contractual or legislative instrument, e.g. an agreement among the participants and the system operator; (b) it has multiple membership; (c) it has common rules and standardised arrangements; and (d) is for the purpose of clearing, netting and/or settlement of payments and/or securities between the participants.

## **Article 9**

### **Billing Groups**

1. Upon the request of the participant the NBB shall create a billing group to allow its members to benefit from the degressive pricing applicable to RTGS DCAs. The billing group may only include RTGS DCA holders belonging to the same banking group, from one or more TARGET component systems.
2. Upon the request of an RTGS DCA holder the NBB shall add that RTGS DCA holder to or delete it from a billing group which may be in TARGET-BE or in any other TARGET component

system. The RTGS DCA holder shall inform all other members of the billing group of such a request prior to making it.

3. RTGS DCA holders included in a billing group shall be invoiced individually as set out in Article 8.

#### **Article 10**

##### ***Obligations of the NBB and the participant***

1. The NBB shall offer the services described in Parts II, III, IV, V, VI and VII of these Conditions where a participant has opted for and been granted an account as referred to therein. Save where otherwise provided in these Conditions or required by law, the NBB shall use all reasonable means within its power to perform its obligations under these Conditions, without guaranteeing a result.
2. The NBB is the provider of services pursuant to these Conditions. Acts and omissions of the Level 3 NCBs shall be considered as acts and omissions of the NBB, for which it shall assume liability in accordance with Article 22. Participation pursuant to these Conditions shall not create a contractual relationship between participants and the Level 3 NCBs when any of the latter acts in its capacity as a Level 3 NCB. Instructions, messages or information which a participant receives from, or sends to, TARGET in relation to the services provided under these Conditions shall be deemed to be received from, or sent to, the NBB.
3. The participant shall pay to the NBB fees in accordance with Article 8.
4. The participant shall ensure that it is technically connected to TARGET-BE in accordance with TARGET operating schedule set out in Appendix V. This obligation may be fulfilled through a designated entity referred to in Article 7.
5. The participant shall represent and warrant to the NBB 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.
6. The participant shall pay any applicable stamp duties or other documentary taxes or duties, if applicable, as well as any other costs the participant incurs in opening, maintaining or closing its TARGET account.

#### **Article 11**

##### ***Cooperation and information exchange***

1. In performing their obligations and exercising their rights under these Conditions, the NBB and participants shall cooperate closely to ensure the stability, soundness and safety of TARGET-BE. 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 NBB 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 operational status of each service shall be available on a TARGET Information System (TIS) on a dedicated webpage on the ECB's website.
4. The NBB may communicate system relevant messages to participants by means of a broadcast message or, if this means is not available, by any other appropriate means of communication.
5. Participants shall update in a timely manner existing reference data collection forms and submit new reference data collection forms to the NBB. Participants shall verify the accuracy of information relating to them that is entered into TARGET-BE by the NBB.
6. The participant hereby authorises the NBB to communicate to the Level 3 NCBs any information relating to participants which the Level 3 NCBs may need, in accordance with the agreements between the Level 3 NCBs and the Eurosystem CBs governing the provision of the services to be provided by the Level 3 NCBs.
7. Participants shall inform the NBB without undue delay about any change in their legal capacity and relevant legislative changes affecting issues covered by the country opinion as set out in the terms of reference given in Appendix III.
8. The NBB may at any time request an update or renewal of the country or capacity opinions referred to in Article 5(1), points (d) and (e).
9. Participants shall immediately inform the NBB 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 Directive 2014/59/EU of the European Parliament and of the Council<sup>1</sup> or any other equivalent applicable legislation.

## **Article 12**

### **Remuneration of Accounts**

1. MCAs, DCAs and sub-accounts shall either be remunerated at zero per cent or at the deposit facility rate, whichever is lower, unless they are used to hold any of the following:
  - (a) minimum reserves;
  - (b) excess reserves;

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<sup>1</sup>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 and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

- (c) government deposits as defined in Article 2, point (5) of Guideline (EU) 2019/671 (ECB/2019/7)<sup>2</sup>.

In the case of minimum reserves, the calculation and payment of remuneration of holdings shall be governed by Council Regulation (EC) No 2531/98<sup>3</sup> and Regulation (EU) 2021/378 of the European Central Bank (ECB/2021/1).

In the case of excess reserves, the calculation and payment of remuneration of holdings shall be governed by Decision (EU) No 2019/1743 (ECB/2019/31)<sup>4</sup>.

In the case of government deposits, the remuneration of holdings shall be governed by the provisions relating to those government deposits as set out in Article 4 of Guideline (EU) 2019/671 (ECB/2019/7).

2. Overnight balances held on a TIPS AS technical account or on an RTGS AS technical account for AS settlement procedure D, and guarantee funds, including those held on an AS guarantee fund account, shall be remunerated at the deposit facility rate.

### **Article 13**

#### **Management of Accounts**

1. Participants shall monitor and manage the liquidity on their accounts in line with the TARGET operating schedule as set out in Appendix V and perform transaction-level reconciliation at least once a day. This obligation may be fulfilled through a designated entity referred to in Article 7.
2. The participant shall make use of the tools provided by the NBB for the purpose of account reconciliation, in particular the daily statement of account which is made available to each participant. This obligation may be fulfilled through a designated entity referred to in Article 7.
3. Participants shall immediately inform the NBB in the event that a mismatch occurs in relation to any of their accounts.

### **Article 14**

#### **Minimum reserves**

1. Upon request of a participant subject to a minimum reserve requirement, the NBB shall mark one or more MCAs or DCAs belonging to that participant in TARGET-BE as held for the purpose of fulfilling minimum reserve requirements.

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<sup>2</sup>Guideline (EU) 2019/671 of the European Central Bank of 9 April 2019 on domestic asset and liability management operations by the national central banks (ECB/2019/7) (OJ L 113, 29.04.2019, p. 11).

<sup>3</sup>Council Regulation (EC) No 2531/98 of 23 November 1998 concerning the application of minimum reserves by the European Central Bank (OJ L 318, 27.11.1998, p. 1).

<sup>4</sup>Decision (EU) 2019/1743 of the European Central Bank of 15 October 2019 on the remuneration of holdings of excess reserves and of certain deposits (ECB/2019/31) (OJ L 267, 21.10.2019, p. 12).

2. For the purpose of fulfilment of minimum reserve requirements, where applicable to the participant, the sum of the end-of-day balances of all accounts held by that participant with the NBB and marked for that purpose, shall be taken into account.

#### **Article 15**

##### ***Floor and ceiling amounts***

1. The participant may set floor and ceiling amounts on its MCA or DCAs.
2. The participant may choose to receive a notification if the floor or ceiling amount is breached. In addition, for MCAs or RTGS DCAs the participant may opt for the breach to trigger a rule-based liquidity transfer order.
3. The settlement of a liquidity transfer order shall not trigger a check of whether the floor or ceiling amount has been breached.

#### **Article 16**

##### ***Account monitoring group***

1. An MCA holder may create one or more account monitoring groups for the purpose of monitoring liquidity on several MCAs or DCAs and will become the leader party for any account monitoring group that it creates.
2. A participant may add any of its MCAs or DCAs opened within TARGET-BE or any other TARGET component system to one or more account monitoring groups and thereby become a member of that account monitoring group. A member of an account monitoring group may initiate the removal of its account from that account monitoring group at any time. A participant shall inform the leader party of an account monitoring group prior to adding an account to or removing an account from that account monitoring group.
3. Only the leader party for an account monitoring group shall be able to view the balances of all accounts included in that account monitoring group.
4. The leader party may delete the account monitoring group and shall inform the other members of the account monitoring group prior to such deletion.

#### **Article 17**

##### ***Acceptance and rejection of cash transfer orders***

1. Cash transfer orders submitted by participants shall be deemed accepted by the NBB if:
  - (a) The transfer message complies with the technical requirements of TARGET described in Appendix I;
  - (b) the message complies with the formatting rules and conditions described in Appendix I;
  - (c) the message passes the double-entry check described in Appendix I;

- (d) in cases where a payer has been suspended with regard to debiting its account(s) or a payee has been suspended with regard to crediting its account(s), the suspended participant's CB's explicit consent has been obtained;
  - (e) in cases where the cash transfer order is made as part of an RTGS AS settlement procedure, the participant's account is included in the settlement bank account group requested by that AS as set out in Part VI, Article 1(7); and
  - (f) in the case of cross-system settlement as part of RTGS AS settlement procedures, the AS concerned is part of a cross-system settlement arrangement as set out in Article 9 of Part VI.
2. The NBB shall immediately reject any cash transfer order that does not fulfil the conditions laid down in paragraph 1. The NBB shall inform the participant of any rejection of a cash transfer order, as specified in Appendix I.

### **Article 18**

#### ***Entry of cash transfer orders into the system and their irrevocability***

1. For the purposes of the first sentence of Articles 3(1) and 5 of Directive 98/26/EC and Article 3.1 of the Belgian law of 28 April 1999 implementing Directive 98/26/EC of 19 May 1998 on settlement finality in payment and securities settlement systems:
- (a) all cash transfer orders, except as provided for in points b), c) and d) of this paragraph, shall be deemed entered into TARGET-BE and irrevocable at the moment that the relevant participant's TARGET account is debited;
  - (b) instant payment orders shall be deemed entered into TARGET-BE and irrevocable at the moment that the relevant funds on the TIPS DCA of the participant or on its TIPS AS technical account are reserved;
  - (c) in the case of transactions that are settled on T2S DCAs and that are subject to matching of two separate transfer orders:
    - (i) such transfer orders, except as provided for in point (ii) of this subparagraph, shall be deemed entered into TARGET-BE at the moment at which they have been declared compliant with the technical rules of T2S by the T2S Platform and irrevocable at the moment the transaction has been given the status 'matched' on the T2S Platform;
    - (ii) in the case of transactions involving one participating CSD (Central Securities Depository) that has a separate matching component where transfer orders are sent directly to that participating CSD to be matched in its separate matching component, such transfer orders shall be deemed entered into TARGET-BE at the moment at which they have been declared compliant with the technical rules of T2S by that participating CSD and irrevocable from the moment the transaction

has been given the status 'matched' on the T2S Platform. A list of participating CSDs referred to in this point (ii) is available on the ECB's website;

- (d) cash transfer orders in connection with RTGS AS settlement procedures shall be deemed entered in the TARGET component system of the account to be debited at the moment at which they are accepted by that TARGET component system and irrevocable at that moment.
2. The provisions of paragraph 1 shall not affect any rules of AS that stipulate a moment of entry into the AS and/or irrevocability of transfer orders submitted to it at a point in time earlier than the moment of entry of the respective AS transfer orders in the relevant TARGET component system.
3. Cash transfer orders included in an algorithm may not be revoked during the period that the algorithm is running.

#### **Article 19**

##### ***Business continuity and contingency procedures***

1. In the event of an abnormal external event or any other event which affects transactions on the TARGET accounts, the business continuity and contingency procedures described in Appendix IV shall apply.
2. In exceptional circumstances the TARGET operating schedule may be changed, in which case participants will be informed by the NBB.
3. In exceptional circumstances an AS may make a request to the NBB to modify the TARGET operating schedule.
4. The Eurosystem provides a Contingency Solution for use if the events described in paragraph 1 occur. Connection to and use of the Contingency Solution shall be mandatory for participants considered by the NBB to be critical and for participants that settle very critical transactions as set out in Appendix IV. Other participants may, on request, connect to the Contingency Solution.

#### **Article 20**

##### ***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 immediately inform the NBB 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 NBB 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 NBB may impose additional security requirements, in particular with regard to cybersecurity or the prevention of fraud, on all participants and/or on participants that are considered critical by the NBB.
4. Participants shall provide the NBB with:
  - (i) permanent access to their attestation of adherence to their chosen NSP's endpoint security requirements; and
  - (ii) on an annual basis the TARGET self-certification statement as required for the types of accounts that they hold and as published on the NBB's website and on the ECB's website in English.
5. The NBB shall assess the participant's self-certification statement(s) on the participant's level of compliance with each of the requirements set out in the TARGET self-certification requirements. These requirements are listed in Appendix VII.
6. The participant's level of compliance with the requirements of the TARGET self-certification shall be categorised as follows, in increasing order of severity: 'full compliance'; 'minor non-compliance'; or, 'major non-compliance'. The following criteria apply: full compliance is reached where participants satisfy 100% of the requirements; minor non-compliance is where a participant satisfies less than 100% but at least 66% of the requirements and major non-compliance where a participant satisfies less than 66% of the requirements. If a participant demonstrates that a specific requirement is not applicable to it, it shall be considered as compliant with the respective requirement for the purposes of the categorisation. A participant which fails to reach 'full compliance' shall submit an action plan demonstrating how it intends to reach full compliance. The NBB shall inform the relevant supervisory authorities of the status of such participant's compliance.
7. If the participant refuses to grant permanent access to its attestation of adherence to its chosen NSPs endpoint security requirements or does not provide the TARGET self-certification, the participant's level of compliance shall be categorised as 'major non-compliance'.
8. The NBB shall re-assess compliance of participants on an annual basis.
9. The NBB may impose the following measures of redress on participants whose level of compliance was assessed as minor or major non-compliance, in increasing order of severity:
  - (a) enhanced monitoring: the participant shall provide the NBB with a monthly report, signed by a senior executive, on its progress in addressing the non-compliance. The participant shall additionally incur a monthly penalty charge for each affected account of EUR 1 000. This measure of redress may be imposed in the event the participant receives a second consecutive assessment of minor non-compliance or an assessment of major non-compliance;

- (b) suspension: participation in TARGET-BE may be suspended in the circumstances described in Article 25(2), points (b) and/or (c). By way of derogation from Article 25, the participant shall be given three months' notice of such suspension. The participant shall incur a monthly penalty charge for each suspended account of EUR 2 000. This measure of redress may be imposed in the event the participant receives a second consecutive assessment of major non-compliance;
  - (c) termination: participation in TARGET-BE may be terminated in the circumstances described in Article 25(2), points (b) and/or (c). By way of derogation from Article 25, the participant shall be given three months' notice. The participant shall incur an additional penalty charge of EUR 1 000 for each terminated account. This measure of redress may be imposed if the participant has not addressed the major non-compliance to the satisfaction of the NBB following three months of suspension.
10. Participants allowing access to their TARGET account by third parties as set out in Article 7 and participants having registered addressable BIC holders as set out in Part III, Article 2, shall address the risk stemming from allowing such access in accordance with the security requirements set out in paragraphs 1 to 9.

### **Article 21**

#### **Compensation Scheme**

If a cash transfer order cannot be settled on the same business day on which it was accepted due to a technical malfunction of TARGET, the NBB shall offer to compensate the participant concerned in accordance with the special procedure laid down in Appendix II.

### **Article 22**

#### **Liability regime**

1. In performing their obligations pursuant to these Conditions, the NBB and the participants shall be bound by a general duty of reasonable care in relation to each other.
2. The NBB 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 TARGET-BE. In cases of ordinary negligence, the NBB's liability shall be limited to the participant's direct loss, i.e. the amount of the transaction in question and/or the loss of interest thereon, excluding any consequential loss.
3. The NBB shall not be liable for any loss that results from any malfunction or failure in the technical infrastructure (including but not limited to the NBB's computer infrastructure, programmes, data, applications or networks), if such malfunction or failure arises in spite of the NBB having adopted those measures that are reasonably necessary to protect such infrastructure against malfunction or failure, and to resolve the consequences of such

malfunction or failure (the latter including but not limited to initiating and completing the business continuity and contingency procedures referred to in Appendix IV).

4. The NBB shall not be liable:
  - (a) to the extent that the loss is caused by the participant; or
  - (b) if the loss arises out of external events beyond the NBB's reasonable control (force majeure).
5. Notwithstanding the provisions of Book VII "Payment and credit services" of the Belgian Code of Economic law, paragraphs 1 to 4 shall apply to the extent that the NBB's liability can be excluded.
6. The NBB 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 NBB may commission third parties in its own name, particularly telecommunications or other network providers or other entities, if this is necessary to meet the NBB's obligations or is standard market practice. The NBB's obligation shall be limited to the due selection and commissioning of any such third parties and the NBB's liability shall be limited accordingly. For the purposes of this paragraph, the Level 3 NCBs shall not be considered as third parties.

### ***Article 23***

#### ***Evidence***

1. Unless otherwise provided in these Conditions, all cash transfer orders and related messages, such as confirmations of debits or credits, or statement messages, between the NBB and participants shall be made through the relevant NSP.
2. Electronic or written records of the messages retained by the NBB or by the relevant NSP shall be accepted as a means of evidence of the payments processed through the NBB. The saved or printed version of the original message of the relevant NSP shall be accepted as a means of evidence, regardless of the form of the original message.
3. If a participant's connection to the NSP fails, the participant shall use the alternative means of transmission of messages as agreed with the NBB. In such cases, the saved or printed version of the message produced by the NBB shall have the same evidential value as the original message, regardless of its form.
4. The NBB shall keep complete records of cash transfer orders submitted and payments received by participants for a period of ten (10) years from the time at which such cash transfer orders are submitted and payments are received, provided that such complete records shall cover a minimum of five years for any participant in TARGET that is subject to continuous



vigilance pursuant to restrictive measures adopted by the Council of the European Union or Member States, or longer if required by specific regulations.

5. The NBB's own books and records 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.

#### **Article 24**

##### ***Duration and ordinary termination of participation and closure of accounts***

1. Without prejudice to Article 25, participation in TARGET-BE shall be for an indefinite period of time.
2. A participant may terminate any of the following at any time giving 14 business days' notice thereof, unless it agrees a shorter notice period with the NBB:
  - (a) its entire participation in TARGET-BE;
  - (b) one or more of its DCAs, RTGS AS technical accounts and/or TIPS AS technical accounts;
  - (c) one or more of its MCAs, provided that it continues to comply with Article 5.
3. The NBB may terminate any of the following at any time giving three months' notice thereof, unless it agrees a different notice period with the relevant participant:
  - (a) a participant's entire participation in TARGET-BE;
  - (b) one or more of a participant's DCAs, RTGS AS technical accounts or TIPS AS technical accounts;
  - (c) one or more of a participant's MCAs, provided that the participant continues to hold at least one MCA.
4. On termination of participation, the confidentiality duties laid down in Article 28 shall remain in force for a period of five years starting on the date of termination.
5. On termination of participation, the NBB shall close all TARGET accounts of the participant concerned in accordance with Article 26.

#### **Article 25**

##### ***Suspension and extraordinary termination of participation***

1. A participant's participation in TARGET-BE 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.

For the purposes of this paragraph, the taking of crisis prevention measures or crisis management measures within the meaning of Directive 2014/59/EU of the European Parliament and of the Council<sup>5</sup> against a participant shall not automatically qualify as the opening of insolvency proceedings.

2. The NBB may terminate without prior notice or suspend the participant's participation in TARGET-BE 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 any of these Conditions;
  - (c) the participant fails to carry out any material obligation to the NBB;
  - (d) the participant ceases to have a valid agreement with an NSP to provide the necessary connection to TARGET;
  - (e) any other participant-related event occurs which, in the NBB's assessment, would threaten the overall stability, soundness and safety of TARGET-BE or of any other TARGET component system, or which would jeopardise the NBB's performance of its tasks as described in the Law of 22 February 1998 establishing the organic statute of the National Bank of Belgium and 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 participant's access to intraday credit, including auto-collateralisation, pursuant to Part II, Article 13; and/or
  - (g) the participant is excluded from or otherwise ceases to be a member of one of the NSP Closed Group of Users.
3. In exercising its discretion under paragraph 2, the NBB shall take into account, inter alia, the seriousness of the event of default or events mentioned in points (a) to (c) of paragraph 2.
4. In the event that the NBB suspends or terminates a participant's participation in TARGET-BE under paragraphs 1 or 2, the NBB shall without undue delay inform – by means of a broadcast message or, if that is not available, by any other appropriate means of communication – the respective participant, other CBs and participants in all of the TARGET component systems of such suspension or termination. Such message shall be deemed to have been issued by the home CB of the respective participant.
5. Once a message issued under paragraph 4 has been received by the participants, they shall be deemed informed of the termination/suspension of a participant's participation in TARGET-BE or another TARGET component system. The participants shall bear any losses arising

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<sup>5</sup> 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 and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

from the submission of a cash transfer order to participants whose participation has been suspended or terminated if such cash transfer order was entered into TARGET-BE after receipt of the message.

#### **Article 26**

##### ***Closure of TARGET accounts by the NBB on termination of participation***

On termination of a participant's participation in TARGET-BE pursuant to either Article 24 or 25, the NBB shall close the TARGET accounts of the participant concerned, after having settled or rejected any queued cash transfer orders, and made use of its rights of pledge and set-off under Article 27.

#### **Article 27**

##### ***The NBB's rights of pledge and set-off***

1. The NBB shall have a pledge over the participant's existing and future credit balances on its TARGET accounts, thereby collateralising any current and future claims arising out of the legal relationship between the parties.
2. The NBB 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 TARGET account holder, hereby acknowledges the creation of a pledge in favour of the NBB, with whom that account has been opened; this acknowledgement shall constitute the provision of pledged assets to the NBB referred to under Belgian law. Any amounts paid into the TARGET accounts 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.
4. On the occurrence of:
  - (a) an event of default, referred to in Article 25(1); or
  - (b) any other event of default or event referred to in Article 25(2) 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. In addition, the mutual obligations of the participant and the NBB shall automatically be set off against each other, and the party owing the higher amount shall pay to the other the difference.

5. The NBB shall promptly give the participant notice of any set-off pursuant to paragraph 4 after such set-off has taken place.
6. The NBB may without prior notice debit any participant's TARGET accounts by any amount which the participant owes the NBB resulting from the legal relationship between the participant and the NBB.
7. The provisions of this Article shall not create any right, pledge, charge or claim or set-off in respect of the following TARGET accounts used by AS:
  - (a) TARGET accounts used in accordance with the AS settlement procedures under Part VI or Part VII;
  - (b) TARGET accounts held by AS under Parts II to V, where funds held on such accounts do not belong to the AS but are held on behalf of their customers or are used to settle cash transfer orders on behalf of their customers.

### **Article 28**

#### **Confidentiality**

1. The NBB shall keep confidential all sensitive or secret information, including when such information relates to payment, technical or organisational information belonging to the participant, participants from the same group 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 Belgian law.
2. By derogation from paragraph 1, the participant agrees that information on any action taken under Article 25 shall not be considered as confidential.
3. By derogation from paragraph 1, the participant agrees that the NBB may disclose payment, technical or organisational information regarding the participant, participants from the same banking group or the participant's customers, obtained in the course of the operation of TARGET-BE to:
  - (a) other CBs or third parties that are involved in the operation of TARGET-BE, to the extent that this is necessary for the efficient functioning of TARGET or the monitoring of the participant's or its banking group's exposure;
  - (b) other CBs in order to carry out the analyses necessary for market operations, monetary policy functions, financial stability or financial integration; or
  - (c) 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 that in all such cases the disclosure is not in conflict with applicable law.

4. The NBB shall not be liable for the financial and commercial consequences of disclosure made in accordance with paragraph 3.
5. By derogation from paragraph 1 and provided that this does not make it possible, whether directly or indirectly, to identify the participant or the participant's customers, the NBB 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 which the information is disclosed.
6. Information relating to the operation of TARGET-BE 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 NBB 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.
7. The NBB shall be authorised, in order to settle cash transfer orders, to process and transfer the necessary data to the NSP.

#### **Article 29**

##### ***Data protection, prevention of money laundering, administrative or restrictive measures and related issues***

1. Participants shall be deemed to be aware of, shall comply with, and shall be able to demonstrate that compliance to the relevant competent authorities with all obligations on them relating to legislation on data protection. They shall be deemed to be aware of, and shall comply with all obligations on them relating to legislation on prevention of money laundering and the financing of terrorism, proliferation-sensitive nuclear activities and the development of nuclear weapons delivery systems, in particular in terms of implementing appropriate measures concerning any payments debited or credited on their TARGET accounts. Participants shall ensure that they are informed about their chosen NSP's data retrieval policy prior to entering into the contractual relationship with the NSP.
2. Participants authorise the NBB 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 TARGET-BE.
3. Participants, when acting as the payment service provider of a payer or payee, shall comply with all requirements resulting from administrative or restrictive measures imposed pursuant to Article 75 or 215 of the Treaty to which they are subject, including with respect to notification and/or the obtaining of consent from a competent authority in relation to the processing of transactions. In addition:
  - (a) when the NBB is the payment service provider of a participant that is a payer:

- (i) the participant shall make the required notification or obtain consent on behalf of the central bank that is primarily required to make notification or obtain consent, and shall provide the NBB with evidence of having made a notification or having received consent;
  - (ii) the participant shall not enter any cash transfer order for the transfer of funds to an account held by an entity different than the participant, into TARGET until it has obtained confirmation from the NBB that the required notification has been made or the consent has been obtained by or on behalf of the payment service provider of the payee;
- (b) when the NBB is a payment service provider of a participant that is a payee, the participant shall make the required notification or obtain consent on behalf of the central bank that is primarily required to make notification or obtain consent, and shall provide the NBB with evidence of having made a notification or having received consent.

For the purposes of this paragraph, the terms 'payment service provider', 'payer' and 'payee' shall have the meanings ascribed to them in the applicable administrative or restrictive measures.

### **Article 30**

#### **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 or other electronic means if agreed bilaterally, or otherwise in writing. Notices to the NBB shall be submitted to the Head of the Payment and Securities Service of NBB, Boulevard de Berlaimont 14, 1000 Brussels or to the BIC address NBBE BE BB 203 or to the e-mail address of the TARGET-BE helpdesk (target2.helpdesk@nbb.be). Notices to the participant shall be sent to it at the address or to the e-mail address or its BIC address as the participant may from time to time notify to the NBB.
2. To prove that a notice has been sent, it shall be sufficient to prove that the notice was sent either physically or by electronic means to the relevant addressee.
3. All notices shall be given in Dutch, French or English.
4. Participants shall be bound by all forms and documents of the NBB that the participants have filled in and/or signed, including but not limited to reference data collection forms, as referred to in Article 5(2), point (a), and information provided under Article 11(5), which were submitted in compliance with paragraphs 1 and 2 and which the NBB reasonably believes to have been received from the participants, their employees or agents.

**Article 31****Contractual relationship with a NSP**

1. In order to send to or receive from TARGET instructions and messages, participants shall:
  - (a) conclude a contract with an NSP within the framework of the concession contract with that NSP in order to establish a technical connection to TARGET-BE; or
  - (b) connect via another entity which has itself concluded a contract with an NSP within the framework of the concession contract with that NSP.
2. The legal relationship between a participant and the NSP shall be exclusively governed by the terms and conditions of the contract concluded between them.
3. The services to be provided by the NSP shall not form part of the services to be performed by the NBB in respect of TARGET.
4. The NBB shall not be liable for any acts, errors or omissions of the NSP (including its directors, staff and subcontractors), or for any acts, errors or omissions of third parties selected by participants to gain access to the NSP's network.

**Article 32****Amendment procedure**

The NBB may at any time unilaterally amend these Conditions, including the Appendices. Amendments to these Conditions, including the Appendices, shall be announced by letter or by e-mail. Amendments shall be deemed to have been accepted unless the participant expressly objects within 14 days of being informed of such amendments. In the event that a participant objects to the amendment, the NBB is entitled immediately to terminate that participant's participation in TARGET-BE and close any of its TARGET accounts.

**Article 33****Third party rights**

1. Participants shall not transfer, pledge or assign any rights, interests, obligations, responsibilities or claims arising from or relating to these Conditions to any third party without the NBB's written consent.
2. These Conditions do not create any rights in favour of or obligations in relation to any entity other than the NBB and participants in TARGET-BE.

**Article 34*****Governing law, jurisdiction and place of performance***

1. The bilateral relationship between the NBB and participants in TARGET-BE shall be governed by Belgian law.
2. Without prejudice to the competence of the Court of Justice of the European Union, 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 Brussels.
3. The place of performance concerning the legal relationship between the NBB and the participants shall be Brussels.

**Article 35*****Severability***

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

**Article 36*****Entry into force and binding nature***

1. These Conditions become effective from 21 November 2022.
2. By requesting to participate in TARGET-BE, applicant participants automatically agree to these Conditions between themselves and in relation to the NBB.