



EUROPEAN CENTRAL BANK

**TERMS AND CONDITIONS
GOVERNING THE USE OF THE EPM**

Article 1

Objective of the EPM

The European Central Bank payment mechanism (EPM) shall perform the following functions:

- (a) processing the ECB's own payments;
- (b) processing customer payments as defined in Article 2 on their behalf and in the name of the ECB;
and
- (c) supplying settlement services to cross-border clearing and settlement organisations.

Article 2

Access to the EPM

2.1 Types of customers

The ECB may open accounts and offer payment and settlement facilities for itself and for the following types of customer (each of which is hereinafter referred to as a "customer"):

- central banks,
- European and international organisations, and
- cross-border clearing and settlement organisations.

The ECB shall only hold accounts for credit institutions: (1) that are European or international organisations; or (2) that operate a cross-border clearing and settlement system for settlement services related to the operation of such a system.

2.2 Account opening

- (a) Potential customers shall apply in writing to the Directorate General - Payment Systems of the ECB to open an account, whereby the ECB retains the right to reject such application at any point in time.
- (b) The specific conditions applying to each customer shall be laid down in an agreement between the customer and the ECB (the “Customer Agreement”).
- (c) After due execution of the Customer Agreement by the parties, the ECB shall open one or several accounts for the customer (the “account(s)”). The customer shall be entitled to commence operations on the date and under the conditions specified in the Customer Agreement.
- (d) The ECB may set additional access criteria such as, *inter alia*, adequate financial strength, expected minimum number of transactions, the payment of an entry fee and legal, technical and operational aspects. Should a potential customer not fulfil any such additional access criteria or any other criteria contained in these terms and conditions governing the use of the EPM, the ECB may refuse the application.

2.3 Legal aspects/documentation

Before being accepted as a customer, applicants shall provide the ECB with satisfactory legal opinions, as requested by the ECB, confirming, *inter alia*, that the two following conditions:

- 1) the irrevocability of payment orders sent to the EPM as well as the finality of settlement of the corresponding payments; and
- 2) the validity of payments carried out before any judgement declaring the customer bankrupt or insolvent;

are met under the laws of the jurisdiction(s) where the applicant is incorporated or established. The legal opinions shall be based on the ECB’s harmonised terms of reference for legal opinions, which distinguish between capacity and country opinions. Capacity opinions are participant specific, addressing a participant’s capacity to enter into and carry out its obligations under these terms and conditions governing the use of the EPM. Country opinions are country specific and shall be obtained for the jurisdiction(s) of foreign participants irrespective of country of incorporation. At the same time, the applicant shall deliver to the ECB any other documents which the ECB may reasonably require, such as, without limitation, the applicant’s business description, annual report, certificate of incorporation, by-laws, authorised signatures and details of the shareholder structure.

2.4 Termination of access to the EPM

The ECB may at any time terminate access to the EPM by giving a customer at least 15 EPM business days’ written notice thereof in writing. The ECB may terminate access without prior notification and with immediate effect where:

- (i) the customer enters into insolvency or liquidation proceedings, or such proceedings are impending;
or
- (ii) a customer applies for composition with its creditors, whether in or out of court, or for the deferment of its debts; or
- (iii) an event occurs which is of such a nature as to compromise the confidence of the ECB in such customer; or
- (iv) the customer is in material or repeated breach of these terms and conditions governing the use of the EPM as supplemented by the Customer Agreement; or
- (v) one or more criteria for access to the EPM, or the legal requirements arising under Article 2.3, are no longer fulfilled.

Any customer may terminate access to the EPM by giving at least 15 EPM business days' written notice to the Directorate General - Payment Systems of the ECB. From the date of termination the ECB may not accept any instruction or give effect to any transaction that would result in any credit being allocated to an account in the name of such customer. Furthermore, the ECB may not process any payment orders that would result in any debit of an account in the name of such customer.

Article 3

EPM operations

3.1 Domestic and cross-border payments

- (a) The customer may make and receive payments through the EPM to/from the ECB, other customers or between its own accounts. Such payments shall hereinafter be referred to as "domestic payments".
- (b) The customer may make and receive payments through the TARGET interlinking mechanism to/from an EU national central bank (NCB), a participant in an EU national real-time gross settlement (RTGS) system or the customers of such a participant. Such payments shall hereinafter be referred to as "cross-border payments", also when such payments are addressed to a receiving party located in Germany.

3.2 Currency unit

The EPM shall only process payment orders denominated in euro.

3.3 Authorised operations

The EPM shall process payment orders initiated by the customer acting for its own account or for the account of its account holders or participants. Customers, other than cross-border clearing and settlement organisations, shall not use their account(s) for the purposes of supplying settlement services to an underlying clearing and payment arrangement.

Article 4

Operational features of the EPM

4.1 Days of operation

The EPM days of operation (hereinafter referred to as “EPM business days”) shall be the TARGET operating days. Therefore, subject to any modifications in TARGET operating days, the EPM shall close only on Saturdays, Sundays, New Year’s Day, Good Friday (according to the calendar applicable at the seat of the ECB), Easter Monday (according to the calendar applicable at the seat of the ECB), 1 May (Labour Day), Christmas Day and 26 December. On days on which the RTGS system of any given Member State is either closed or not operational, it shall, however, not be possible for customers to send or receive cross-border payments to/from participants in the RTGS system concerned.

4.2 Hours of operation

The hours of operation of the EPM shall be the TARGET operating hours. Therefore, subject to any modifications in TARGET operating hours, the EPM shall process payment orders from 07:00 to 18:00 ECB time (C.E.T.), for interbank payments, and to 17:00. ECB time (C.E.T.) for customer payments.

4.3 Submitting payment orders for execution in the EPM

Customers shall submit their payment orders to the ECB, for further processing in the EPM, via the S.W.I.F.T. FIN network after completing the key exchange and authentication procedures agreed with the ECB. Where the customer S.W.I.F.T. communications facility are inoperable, the customer may submit duly authenticated payment orders to the EPM after prior notification and as agreed with the ECB. The ECB may accept other authenticated means for customers that are not S.W.I.F.T. capable.

4.4 Availability of funds

- (a) The EPM shall only process payment orders from customers to the extent that sufficient funds or, where applicable under Article 5, overdraft facilities on the account(s), are available and any existing limits respected.

- (b) Payments which cannot be processed because of a lack of sufficient funds or overdraft facilities, or failure to comply with applicable limits, shall automatically be put in a waiting queue unless the provision of the queuing facility has been excluded in the customer agreement. Any payments not executed at the end of the EPM business day shall be rejected.

4.5 Payment types

The EPM shall process TARGET-compliant payment types as further specified in the Customer Business Specifications attached in Appendix 1.

4.6 Value dates

Payment orders may be submitted for processing on the same day or future value days, as specified in the Customer Business Specifications. The EPM shall operate on a real-time gross settlement basis. The amount of each payment order shall be debited from the relevant account of the sending customer with the current business value date and credited to the relevant account of the receiving customer or to the relevant account of the TARGET participant with the same value date.

4.7 Irrevocability

A payment order sent by a customer to the EPM shall become irrevocable at the time of debit of the corresponding amount from the relevant account of the sending customer.

4.8 Finality

For information purposes it is noted that the treatment of payment orders made under EPM in case of insolvency of a will be as follows. The opening of proceedings limiting the capacity of a customer to dispose of its assets shall not affect the validity of a final payment. The ECB may execute payment orders that have been entered into the system before such opening of proceedings on the same day (third sentence of § 116; §96(2) of the German Insolvency Code; sixth sentence of § 46a(1) of the German Banking Act; Article 102(4) of the German Introductory Law to the Insolvency Code). The ECB may execute payment orders that have been entered into the system after such opening of proceedings on the same day provided that the ECB has no knowledge of such opening of proceedings and provided that such lack of knowledge is not attributable to its own negligence; the ECB would have to prove the absence of negligence (§ 82 of the German Insolvency Code, 3rd sentence of Article 3(1) of Settlement Finality Directive 98/26/EC Article 102(4) of the German Introductory Law to the Insolvency Code).

4.9 General provisions relating to the accounts

- (a) The ECB shall reserve the right to reverse any erroneous credit to or debit from any account.
- (b) In the event of a customer holding several accounts, and in the absence of correct instructions, the ECB shall reserve the right to credit the result of operations, which are for the benefit of the customer to any of the accounts opened in the customer's name.
- (c) The ECB may debit, without prior notification, any of the accounts of a customer for any amount that such customer owes to the ECB, irrespective of the cause of this debt.

Article 5

Intraday credit/collateral

5.1 Intraday credit

The ECB may provide intraday credit to customers that are European or international organisations through overdrafts in the account(s). This intraday credit shall be free of interest. Overdrafts shall not exceed at any time during the day the amount defined in the Customer Agreement for each of the accounts.

Intraday credit granted to a customer shall remain limited to the day in question with no possibility of an extension to overnight credit. Should the customer for any reason be unable to reimburse the amount of intraday credit on time, it shall be subject to penalties set in accordance with the following. If the customer has a debit balance on any of its accounts at the close of business of the EPM for the first time within any 12-month period, the ECB shall promptly impose a penalty on the customer calculated at 5 percentage points above the Eurosystem marginal lending rate on the amount of such debit balance. Where the customer is repeatedly in such a debit position, the penalty interest rate applied to the customer shall increase by a further 2.5 percentage points each time such a debit position occurs within the 12-month period referred to above. Access for a customer to intraday credit may be suspended or terminated in case of any event which entails systemic risk or which could otherwise endanger the smooth operation of the EPM and TARGET as further specified in Article 2.4.

5.2 Collateral

Intraday credit shall be based on eligible collateral. Eligible collateral shall mean assets and instruments as listed in the list of eligible assets as maintained by the ECB (www.ecb.int) and subject to valuation and risk control rules, all of which may be specified by the Governing Council of the ECB from time to time.

Article 6

Additional services

In addition to the EPM services expressly referred to in these terms and conditions governing the use of the EPM, the ECB may at the request of a customer agree to supply additional services to such customer (e.g. servicing customer critical payments, even if this implies recourse to manual contingency, providing hot-line information and assistance, arranging alternative means of payment submission, etc.). Additional services may only be provided after agreement has been reached in writing between the ECB and the customer, including on any relevant amendments to Appendix 2 with respect to pricing.

Article 7

Pricing

7.1 Each outgoing EPM domestic or cross-border payment shall be subject to a transaction fee payable in an amount and in a manner determined from time to time for payments through TARGET and as further specified in Appendix 2. In addition, the ECB may levy such periodical, administrative and other fees it may determine from time to time in order to cover its costs, disbursements and out-of-pocket expenses of the ECB with respect to the EPM, including, without limitation, where the service level of the customer requires additional resources.

7.2 The ECB shall charge customer fees on a quarterly basis.

Article 8

Customer duties and liabilities

8.1 The customer shall comply with these terms and conditions governing the use of the EPM, supplemented by the Customer Agreement, as amended from time to time, as well as with any other instructions, requirements or specifications related to the operation of the EPM which may be indicated to the customer by the ECB from time to time. The customer shall contribute to the proper processing of its payment orders and immediately inform the ECB of any anomalies noted.

8.2 The customer shall be responsible for ensuring that the system used for its EPM interface allows the sending, receipt and acknowledgement of payments and messages in the EPM and that it complies with the security requirements defined by the ECB. The customer shall be responsible for its payment orders until the time of their acceptance in the EPM.

8.3 Where a customer is in breach of any of its obligations under these terms and conditions governing the use of the EPM, supplemented by the Customer Agreement and/or liable for disrupting the smooth functioning of EPM settlement operations, such customer shall indemnify the ECB against any loss, cost, liability, expense or claim (including all fees and expenses paid or incurred in disputing or defending any of the foregoing) which the ECB may incur or which may be made against the ECB.

Article 9

Duties and liabilities of the ECB

9.1 The ECB shall not be liable for any damage arising from *force majeure*, acts of terrorism, upheavals, rebellions, incidents of war or natural disasters or any other event occurring outside the ECB's reasonable control (andere von der EZB nicht zu vertretende Ereignisse for example, strikes, lock-outs, traffic distortions, including the unavailability of an RTGS system participating in or connected to TARGET other than the EPM).

9.2 The ECB shall not be liable for any damage arising from transmission errors, mistakes or misunderstandings arising in the course of telecommunications, provided that if and to the extent to which the damage is caused as a result of the ECB's wilful or negligent misconduct (Verschulden), it shall be liable in accordance with the provisions set forth below.

9.3

(a) The ECB's liability shall be determined in accordance with the provisions of Article 9.4 to 9.6 unless the provisions of the Payment Transfer Act (*Überweisungsgesetz*) govern its liability. Where the Payment Transfer Act applies, Article 9.4 to 9.6 shall also apply: (i) to any damages arising from the ECB's conduct other than any delay or failure to process payment orders; or (ii) if under the Payment Transfer Act the ECB's liability has been excluded or limited on the basis of the following cases of exclusion.

(b) The liability of the ECB pursuant to Article 676a, 676b and 676c(1) of the German Civil Code (*Bürgerliches Gesetzbuch*; BGB) as a credit institution transferring payments shall be excluded where:

- the payment transferor is a credit institution, or
- the payment transfer is to be credited to the account of a credit institution that does not have its registered office within the European Union or the European Economic Area, or
- the payment transfer is greater than EUR 75 000.

(c) Within the context of the statutory rights of recourse (Article 676e of the BGB), the ECB, acting as intermediary credit institution, shall be liable only to the extent to which the credit institution

transferring a payment would not have been able to exclude or limit its liability under the statutory provisions applicable to credit institutions transferring payments.

9.4

- (a) In the event that the ECB intentionally, wilfully or negligently breaches a material contractual obligation (vertragswesentliche Pflicht) which it is bound to observe under these terms and conditions governing the use of the EPM as supplemented by the Customer Agreement and which is of special significance in an individual case (von besonderer Bedeutung im Einzelfall), it shall be liable for any damage caused as a result of such breach.
- (b) If the ECB breaches any of its other obligations it shall be liable only in the event of damage caused intentionally or by gross negligence (Vorsatz oder grobe Fahrlässigkeit).
- (c) In the case of damage caused by ordinary negligence, including ordinary negligence by vicarious agents (Erfüllungsgehilfen), the ECB's liability shall, without prejudice to Article 9.3(a), be restricted to direct damages covering the amount of the transaction concerned and any loss of interest or additional interest costs. The same shall apply in the case of gross negligence on the part of vicarious agents other than employees performing managerial functions.
- (d) The ECB shall be liable pursuant to Article 9.4(a) to (c) to the extent to which the ECB intentionally or by negligence contributed to damage caused intentionally or by negligence by other persons or entities.

9.5

- (a) The ECB may in its own name commission third parties, particularly providers of telecommunication services or other credit institutions, wholly or partially in connection with its obligations arising under these terms and conditions governing the use of the EPM as supplemented by the Customer Agreement, if this is necessary for the discharge of its obligations or in line with banking practice. In this respect, and without prejudice to Article 9.5(b), the ECB's liability shall be restricted to the careful selection and commissioning of the third party. If and insofar as, in respect of the selection or commissioning of the third party, the ECB acts on the instructions of the customer in selecting or commissioning the third party, it shall incur no liability in this respect. Upon request, however, the ECB shall assign to the customer any claims against the third party; the ECB shall be under no obligation to pursue any claims for damages in its own name.
- (b) To the extent to which, in any individual case, the ECB is required to accept responsibility for third parties acting as vicarious agents, it shall be liable in accordance with Article 9.4.

- 9.6 The ECB's liability for consequential damage caused by the failure to carry out instructions for payment transfers shall in any event be limited to a maximum of EUR 12 500 per payment transfer, unless the damage is caused intentionally or by gross negligence, or involves loss of interest or additional interest costs or any special risks assumed by the ECB.
- 9.7 The current TARGET reimbursement scheme, or any possible future similar regime provided for in the TARGET Guideline, shall apply to customers regulated by these terms and conditions governing the use of the EPM as supplemented by the Customer Agreement.

Article 10

ECB's liability for third parties

- 10.1 The ECB shall not be liable for mistakes, errors, fraud, or any other conduct on the part of S.W.I.F.T. as network provider.
- 10.2 The ECB shall not be liable for mistakes, errors, fraud, or any other conduct on the part of a third party (including but not limited to telecommunications and network service providers) which the ECB is entitled to involve, and rely upon, in the execution of the instructions received from a customer, and in the performance of its obligations under these terms and conditions governing the use of the EPM as supplemented by the Customer Agreement, provided that the ECB has selected or instructed the third party with due professional care (*verkehrsübliche Sorgfalt*). The ECB shall be liable for the conduct of third parties acting as vicarious agents, other than employees performing managerial functions, in accordance with Article 9.4.
- 10.3 If the ECB receives an indemnity or other compensation from any third party in respect of damage resulting from mistakes, errors, or fraud, or any other conduct on the part of any such third party, then the proceeds thereof shall be apportioned between the ECB and the customer in proportion to their respective shares of the actual loss suffered. To the same extent, the ECB shall assign claims against third parties to the customer. The ECB shall not be obliged to assert such claims itself.

Article 11

Blocking accounts

Where the ECB blocks one or several accounts, it shall refuse all new operations out of, or for the benefit of, such accounts (*casu quo*, rejected immediately or at the latest at the end of the day). Furthermore, the ECB shall also refuse operations that are being processed. Notification of such measures shall be given to the customer.

The ECB may block accounts in any of the following cases:

- (a) breach of any provision of these terms and conditions governing the use of the EPM, as supplemented by the Customer Agreement; or
- (b) one or more criteria for access to the EPM, as set forth above, are no longer fulfilled; or
- (c) a repeated lack of funds credited to one or more of the accounts which hampers the exercise of the right of the ECB to debit such accounts in accordance with Article 4.9(c); or
- (d) the customer enters into insolvency or liquidation proceedings or such proceedings are impending, or the economic or financial situation of the customer changes such that the customer may become insolvent or be unable to execute its payment obligations; or
- (e) in general, any event occurs which is likely to compromise the confidence of the ECB in the customer.

The exercise or not of this right of the ECB shall not imply liability whatsoever on the part of the ECB towards the customer. Any blocking of one or more of the accounts shall be without prejudice to the right of the ECB to terminate the customer's participation in the EPM.

The duration of the blocking shall be determined by the ECB according to the cause of such blocking.

Article 12

Changes in the terms and conditions

These terms and conditions governing the use of the EPM may be amended or supplemented at any time upon notification of the customers. Each customer shall be deemed to have accepted any such amendment and supplement: (1) with immediate effect in the case of any amendment or supplement not adversely affecting them; or (2) 10 EPM business days after the ECB sent notice thereof in the case of any other amendment or supplement. Notwithstanding the foregoing, and in exceptional circumstances, the ECB shall reserve the right to introduce changes with immediate effect.

Article 13

Maintenance of records

The ECB shall not be responsible for maintaining records with respect to instructions received or transactions carried out after the expiry of a period of six years from the time at which such instructions are received or transactions are carried out.

Article 14

Governing law, jurisdiction, evidence

These terms and conditions governing the use of the EPM shall be governed by and construed in accordance with the laws of the Federal Republic of Germany. Each customer shall submit to the non-exclusive jurisdiction of the competent courts of Frankfurt am Main for the purposes of any dispute arising hereunder. The ECB's own books and records (whether kept on paper, microfilm, microfiche, by electronic or magnetic recording, in any other mechanically reproducible form or otherwise) shall be deemed to constitute under the applicable law sufficient evidence (not excluding proof to the contrary) of any obligations on the part of the customer towards the ECB and of any facts and events relied upon by the ECB.

Appendices:

Appendix 1: Customer Business Specifications for the use of the EPM (non-published).

Appendix 2: Pricing.

Appendix 3: Terms of reference for legal opinions (capacity and country opinions).



EUROPEAN CENTRAL BANK

Appendix 2

European Central Bank payment mechanism (EPM) Service Fees

1. Transaction fee

Outgoing payments through the EPM (orders received via the SWIFT customer interface)

Transactions per month	Fee per transaction, euro	
	Domestic	Cross-border
1 – 100	1.75	1.75
101 – 1000	1.00	1.00
1001 – each subsequent transaction	0.80	0.80

Outgoing payments requiring manual input

at the ECB are subject to an additional fee of 10.00 euro per transaction

2. Other

Fees related to special services

charges based on cost recovery

**General terms of reference for legal opinions for foreign participants
in large-value payment systems – Capacity Opinion**

[ECB]
[address]

Participation in the [name of the system]
[location], [date]

Dear Sir or Madam,

We have been asked to provide this Opinion as [in-house or external law firm] legal advisers to [specify name of Participant or branch of Participant] in respect of issues arising under the laws of [jurisdiction of incorporation of the Participant] in connection with the participation of [specify name of Participant] (the “Participant”) in the [name of the system] (the “System”).

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

I. DOCUMENTS EXAMINED

For the purposes of this Opinion, we have examined:

- a certified copy of the [specify relevant constitutional documents] of the Participant such as is/are in effect on the date hereof;
- [if applicable] an extract from the [specify relevant company, banking institutions, or other register];
- [to the extent applicable] a copy of the Participant’s licence or other proof of authorisation to provide banking or investment services in [jurisdiction];
- [if applicable] a copy of a resolution adopted by the board of directors of the Participant on [insert date], [insert year], evidencing the Participant’s adherence to the System Documents, as defined below;
- [specify all powers of attorney and other documents constituting or evidencing the requisite power of the person or persons signing the relevant System Document (as defined below) on behalf of the Participant];

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

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

- the [Rules] for the System dated [insert date] (the “Rules”);
- [...].

The [Rules] and the [...] shall be referred to herein as the “System Documents” (and collectively with the Participant Documents as the “Documents”).

II. **ASSUMPTIONS**

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

- the System Documents with which we have been provided are originals or true copies thereof; [and]
- the System Documents and the rights and obligations created thereby are valid and legally binding in accordance with the terms thereof under the laws of [jurisdiction], by which they are expressed to be governed, and the choice of the laws of [jurisdiction] to govern the System Documents is recognised by the laws of [jurisdiction];
- the Participant Documents are within the capacity and power of and have been validly authorised, executed and delivered by the parties thereto; and
- the Participant Documents are binding on the parties thereto, and there has been no breach of any of the terms thereof.

III. **OPINIONS REGARDING THE PARTICIPANT**

- A. The Participant is a corporation duly incorporated or otherwise duly organised under the laws of [jurisdiction].
- B. The Participant has all the requisite corporate powers to execute and perform the rights and obligations under the System Documents to which it is party.
- C. The execution and performance by the Participant of the rights and obligations under the System Documents to which the Participant is party will not violate in any respect any provision of the laws or regulations of [jurisdiction] applicable to the Participant or the current constitutional documents of the Participant.
- D. No authorisations, approvals, consents, filings, registrations, notarisations or other certifications of or with any court, governmental, judicial or public authority of or in [jurisdiction] are required by the Participant in connection with the performance, validity or enforceability of any of the Systems Documents to which the Participant is party.
- E. The Participant has taken all necessary corporate action and other steps necessary under the laws of [jurisdiction] to ensure that its obligations under the Service Documents constitute its legal, valid and binding obligations.

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

Yours faithfully,

[signature]

**Terms of reference for legal opinions for foreign participants in the EPM
– Country Opinion**

[ECB]
[address]

[name of the system]
[location], [date]

Dear Sir or Madam,

We have been asked as legal advisers to [specify name of Participant or branch of Participant] (the “Participant”)¹ in respect of issues arising under the laws of [jurisdiction of incorporation of the Participant] to provide the following opinion under the laws of [jurisdiction] in connection with the participation of institutions (the “Participants”) in the [specify name of the national real-time gross settlement system of TARGET] (the “System”). References herein to the laws of [jurisdiction of Participant] include all applicable regulations of [jurisdiction of Participant]. We express an opinion herein under the law of [jurisdiction of Participant], with particular regard to the Participant incorporated or domiciled outside of [jurisdiction of the System] – be the Participant acting in connection with the System:

- (i) through one or more branches located in the jurisdiction of the System; or
- (ii) through one or more branches located in an EEA jurisdiction different from that of the EEA jurisdiction of the System

– in relation to rights and obligations arising from participation in the System, as set forth in the System Documents defined below.

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

1. DOCUMENTS EXAMINED

¹ A Participant is [a supervised credit institution as defined in the First Banking Co-ordination Directive and established in the European Economic Area (EEA)] [a public sector body as defined in Council Regulation (EC) 3603/93 of 13 December 1993] [an investment firm as defined in Council Directive 93/22/EEC of 10 May 1993] [an organisation providing clearing or settlement service and subject to oversight by a competent authority]. Furthermore, the party has adequate financial resources, conducts an expected minimum number of transactions, fulfils the entry fee payment criteria and [other national criteria of a legal, technical and operational nature may be included].

[In the event of authorisation to conduct activities under national legislation implementing the First Banking Co-ordination Directive (Council Directive 77/780/EEC) or the Investment Service Directive (Council Directive 93/22/EEC), the Opinion should confirm that such authorisation is valid and not suspended or revoked.]

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

- the [Rules] for the System dated [insert date] (the “Rules”); and
- any other document governing the System and/or the relationship between Participants, between the Participants and the System Operator, etc.²

The [Rules] and the [...] shall be referred to herein as the “System Documents”.

2. ASSUMPTIONS

In providing this Opinion we have assumed in relation to the System Documents that:

- the documents are within the capacity and power of and have been validly authorised and executed [and, where necessary, delivered] by the parties thereto;
- the System Documents and the rights and obligations created thereby are valid and legally binding in accordance with the terms thereof under the laws of [jurisdiction of the System], by which they are expressed to be governed;
- any Participant or branch of a Participant in [jurisdiction] through which any payment messages are sent or received, or through which any rights or obligations under the System Documents are executed or performed, is licensed to provide funds transfer services, in all relevant jurisdictions; [and]
- the documents submitted to us in copy or as specimens conform to the originals.

3. OPINION

Based upon and subject to the foregoing, and subject in each case to the discussion set forth below, we are of the opinion that:

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

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

3.2 General insolvency issues [events of default]

3.2.a. Type of insolvency proceedings

The only insolvency, composition or rehabilitation proceedings – which, for the purpose of this Opinion, shall include all proceedings in respect of the Participant’s assets or any branch it may have in [jurisdiction] – to which the Participant may become subject in [jurisdiction], are the following: [list proceedings in original language and English translation].

In addition to insolvency proceedings, the Participant, any of its assets, or any branch it may have in [jurisdiction] may become subject in [jurisdiction] to [list

² Other documents will include, for instance, any complementary arrangement for guarantee of settlement of the Participants’ operations in the system.

any applicable moratorium, receivership, suspension of payment proceedings or similar proceedings in original language and English translation].

3.2.b. Insolvency treaties

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

3.3 Enforceability of System Documents

Subject to the discussion set forth below, all provisions of the System Documents will be binding and enforceable in accordance with their terms under the laws of [jurisdiction], irrespective of whether the provisions govern domestic [where applicable] or cross-border payment, in particular in the event of proceedings against the Participant.

In particular, we are of the opinion that:

3.3.a. Processing of payment messages

The provisions on processing of payments [list of sections] of the [Rules] are valid and enforceable. In particular, all payment messages processed pursuant to such sections will be valid, binding and final and will be enforceable under the laws of [jurisdiction]. The provision which specifies the precise point in time at which payment orders become irrevocable [add Section] is valid, binding and enforceable under the laws of [jurisdiction]. [To the extent applicable: In the event of a blocking-of-funds procedure before debiting the RTGS account, irrevocability is ensured from the point in time at which blocking takes place.]

3.3.b. Authority of the System Operator to perform its functions

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

3.3.c. Remedies in the event of a default

Where applicable to a Participant, the provisions contained in [...] of the [Rules] regarding accelerated performance of claims which have not yet matured, the set of claims for using the deposits of the Participant, suspension of performance of obligations, claims for default interest, termination of agreements and transactions and the claiming of indemnity for any losses are valid and enforceable under the laws of [jurisdiction].

3.3.d. Exclusion and suspension

Where applicable to a Participant, the provisions contained in [...] of the [Rules] in respect of exclusion or suspension of a Participant upon the occurrence of, inter alia, an insolvency-related event are valid and enforceable under the laws of [jurisdiction] or if the Participant represents any kind of systemic risk or has serious operational problems.

3.3.e. Penalty regime

Where applicable to a Participant, the provisions contained in [...] of the [Rules] in respect of penalties issued upon the occurrence of a Participant being unable to effect timely reimbursement of the intraday credit (extended overnight) are valid and enforceable under the laws of [jurisdiction].

3.3.f. Assignment of rights and obligations

The rights and obligations of the Participant cannot be assigned, altered or otherwise acted upon by the Participant without the prior written consent of the System Operator.

3.3.g. Choice of governing law and jurisdiction

The provisions contained in [...] of the [Rules], and in particular with regard to governing law, the resolution of a dispute, jurisdiction, and service of process are valid and enforceable under the laws of [jurisdiction].

3.4 Voidable preferences

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

In particular, and without limitation to the foregoing, we express this opinion in respect of the following acts and obligations undertaken prior to the institution of such proceedings:

3.4.a. Payment messages

Specify, that the provisions of [...] of the [Rules] establishing the irrevocability of payment messages will be valid and enforceable and that a payment message sent by any Participant and processed pursuant to [...] of the [Rules] may not be set aside in any proceedings as a preference, voidable transaction or otherwise under the insolvency law of [jurisdiction].

3.5 Attachment

Should a creditor of one or more Participants or the System Operator, if applicable, seek an attachment order (including any order for seizure, sequestration, garnishment, or other judicially enforceable application of a debtor's assets to a debt) – hereinafter referred to as “Attachment” – under the laws of [jurisdiction] from a court, judicial, administrative or other authority of [jurisdiction], we are of the opinion that:

3.6 Collateral [to the extent applicable]

3.6.a. Assignment of rights or deposit assets for collateral purposes; pledge; repo; guarantee

Assignments for collateral purposes will be valid and enforceable under the laws of [jurisdiction]. Specify, in the event that a guarantee from another legal entity is required for adherence of the Participant to the System, that this guarantee will be binding on the guarantor and fully enforceable against it, without any limit with regard to the amount of the guarantee, whatever the situation of the Participant.

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

In the event of proceedings in respect of a Participant, the rights or deposited assets assigned for collateral purposes by such Participant will rank in priority of payment above the claims of all other creditors of the Participant and will not be subject to priority or preferential creditors.

3.6.c. Enforcing security interest

Even in the event of proceedings in respect of a Participant, the other Participants as [assignees, pledgees or repo purchasers as applicable] will still be free to collect the [rights/assets...] of such Participant through the action of the [System Operator] pursuant to the [Rules].

3.6.d. Form requirements - Registration requirements

There are no form requirements for the assignment for collateral purposes of [rights/assets...] and it is not necessary for the [assignment for collateral purposes, pledge or repo, as applicable, or any particulars of such [assignment, pledge or repo, as applicable,]] to be registered or filed with any court, government, judicial or public authority in [jurisdiction].

3.6.e. Voidable preference

The assignment of [rights/assets...] for collateral purposes may not be set aside in any proceedings as a preference, voidable transaction or otherwise under the insolvency law of [jurisdiction].

3.7. Branches and subsidiaries³ [to the extent applicable]

3.7.a Opinion applies to action through branches or subsidiaries

Each of the statements and opinions set forth above with regard to a Participant applies with equal accuracy and validity under the laws of [jurisdiction] (i) whether or not such Participant acts through its head office or one or more branches, either located inside [jurisdiction of incorporation] or [jurisdiction of the System] or outside, or (ii) when a Participant sends and receives payment messages from or at a subsidiary office, in relation to rights and obligations arising from participation in the System, as covered by the System Documents.

Where the activities of the subsidiary under the laws of [jurisdiction] are undertaken on behalf of the head office, the payment message sent or received from or at a subsidiary office will be binding upon the respective Participant to the same extent and have the same legal effects on the respective Participant as if such subsidiary office were an office of the Participant, regardless of any prior, simultaneous or subsequent insolvency, lack of capacity, mandate or authority, illegality or other circumstance affecting the respective subsidiary office or subsidiary to which such subsidiary office belongs or other legal or physical person involved in the origination, transmission or receipt of such payment message.

³ With regard to subsidiary offices, this part of the opinion is given, in particular, in respect of any Participant with one or more subsidiary offices – under the assumptions set forth below and under the assumption that any subsidiary office is licensed to provide funds transfer services in all relevant jurisdictions – if (i) such Participant is incorporated or has its principal place of business in [jurisdiction]; and/or (ii) any eligible subsidiary of such Participant is incorporated or has its principal place of business in [jurisdiction]; and/or (iii) any subsidiary office of such Participant is located in [jurisdiction].

Under the laws of [jurisdiction], payment messages sent from or received at a subsidiary office will not result in any rights against or obligations of the subsidiary to any Participant (other than its parent company) or the System.

3.7.b Conformity with law

Neither the execution and performance of the rights and obligations under the System Documents nor the transmission or receipt of payment messages (i) by a branch of a Participant or (ii) from or at a subsidiary office of a Participant will in any respect violate the laws of [jurisdiction].

3.7.c Required authorisations

Neither the execution and performance of the rights and obligations under the System Documents nor the transmission or receipt of payment messages (i) by a branch of a Participant or (ii) from or at a subsidiary office of a Participant will require any authorisations, approvals, consents, filings, registrations, notarisations or other certifications of or with any court, governmental, judicial or public authority of or in [jurisdiction] (including, without limitation, a banking licence on the part of the Participant sending and receiving payment messages through a subsidiary office).

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

Yours faithfully,

[signature]