

Tallinn, 21 November 2011

Amendments to Eesti Pank Governor's Decree No 4 of 9 May 2008 "Approval of TARGET2-Eesti rules"

This Decree is established on the basis of Clause 2 (2) 4) and Clause 14 5) of Eesti Pank Act and Subsection 87 (2) of the Credit Institutions Act.

§ 1. Appendix 1 "Harmonised conditions for participation in TARGET2-Eesti" to Eesti Pank Governor's Decree No 4 of 9 May 2008 "Approval of TARGET2-Eesti rules" (RTL 2008, 38, 548; 2009, 62, 905; 86, 1253; RT I, 19.11.2010, 2; 22.12.2010, 6; 26.04.2011, 5) (hereinafter the Decree) is amended as follows:

- 1) In Article 1, the definitions of the terms *payee* and *payer* are replaced as follows:
 - **payee** – except where used in Article 39, means a TARGET2 participant whose PM account will be credited as a result of a payment order being settled;
 - **payer** – except where used in Article 39, means a TARGET2 participant whose PM account will be debited as a result of a payment order being settled".
- 2) Article 8(4)(c) is replaced by the following:

“(c) in Eesti Pank's assessment, such participation would endanger the overall stability, soundness and safety of TARGET2-Eesti or of any other TARGET2 component system, or would jeopardise Eesti Pank's performance of its tasks as described in Eesti Pank Act and the Statute of the European System of Central Banks and of the European Central Bank, or poses risks on the grounds of prudence.”
- 3) Article 34(2)(e) is replaced by the following:

„(e) any other participant-related event occurs which, in Eesti Pank's assessment, would threaten the overall stability, soundness and safety of TARGET2-Eesti or of any other TARGET2 component system, or which would jeopardise Eesti Pank's performance of its tasks as described in Eesti Pank Act and the Statute of the European System of Central Banks and of the European Central Bank, or poses risks on the grounds of prudence; and/or“
- 4) Article 39 is amended as follows:
 - (i) the title "Data protection, prevention of money laundering and related issues" is replaced by the following: "Data protection, prevention of money laundering, administrative or restrictive measures and related issues";
 - (ii) Paragraph 3 is added as follows:

„(3) Participants, when acting as the payment service provider of a payer or payee, must comply with all requirements resulting from administrative or restrictive measures

imposed pursuant to Articles 75 or 215 of the Treaty on the Functioning of the European Union, 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 Eesti Pank is a payment service provider of a participant that is a payer:
 - (i) the participant must make the required notification or obtain consent on behalf of the central bank that is primarily required to make notification or obtain consent, and must provide Eesti Pank with evidence of having made a notification or having received consent;
 - (ii) the participant must not enter any credit transfer order into TARGET2 until it has obtained confirmation from Eesti Pank 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 Eesti Pank is a payment service provider of a participant that is a payee, the participant must 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 Eesti Pank 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* have the meanings ascribed to them in the applicable administrative or restrictive measures.“

§ 2. In Annex 2 “Additions and amendments to the harmonised conditions of participation in TARGET2-Eesti to allow Internet access”, Article 4(16) is worded as follows:

“(16) Paragraphs 1 and 3 of Article 32:

- (1) Unless otherwise provided in these HC, all payment and payment processing-related messages in relation to TARGET2, such as confirmations of debits or credits, or statement messages between Eesti Pank and participants, are made available to the participant in the ICM.
- (3) If a participant’s connection to the network service provider fails, the participant will use the alternative means of transmission of messages laid down in Appendix IV of HC. In such cases, is the message recorded or printed out by Eesti Pank is treated as evidence.

§ 3. Annex 3 “Provision of intraday credit” is amended as follows:

- 1) In Article 2, point (h) of the definition of *event of default* is replaced by the following:
 - “(h) where participation of the entity in another TARGET2 component system and/or in an ancillary system has been suspended or terminated;“.
- 2) Article 6 is amended and worded as follows:
 - “Article 6 – “Suspension, limitation or termination of intraday credit”
 - (1) Eesti Pank suspends or terminates access to intraday credit if one of the following events of default occurs:
 - 1) the account of the entity with Eesti Pank is suspended or closed;

- 2) the entity concerned ceases to meet any of the requirements laid down in this Annex for the provision of intraday credit;
 - 3) a decision is made by the Financial Supervision Authority or other competent authority to implement in relation to the entity a procedure for the winding-up of the entity or the appointment of a liquidator or analogous officer over the entity or any other analogous procedure;
 - 4) the entity becomes subject to the freezing of funds and/or other measures imposed by the European Union restricting the entity's ability to use its funds.
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- (2) Eesti Pank may suspend or terminate access to intraday credit if an NCB suspends or terminates the participant's participation in TARGET2 pursuant to Article 34(2)(b) to (e) of Annex 1, or one or more events of default (other than those referred to in Article 34(2)(a)) occur.
 - (3) If the Eurosystem decides to suspend, limit or exclude counterparties' access to monetary policy instruments on the grounds of prudence or otherwise in accordance with Section 2.4 of Annex I to Guideline ECB/2000/7, Eesti Pank will implement that decision in respect of access to intraday credit pursuant to provisions in the contractual or regulatory arrangements applied by Eesti Pank.
 - (4) Eesti Pank may decide to suspend, limit or terminate a participant's access to intraday credit if the participant is deemed to pose risks on the grounds of prudence. In such cases, Eesti Pank will immediately notify the ECB and other participating NCBs and connected CBs thereof in writing. Where appropriate, the Governing Council shall decide upon uniform implementation of the measures taken in all TARGET2 component systems.
 - (5) Where Eesti Pank decides to suspend, limit or terminate a Eurosystem monetary policy counterparty's access to intraday credit, such decision will not take effect until the ECB has approved it.
 - (6) By way of derogation from Paragraph 5, Eesti Pank is allowed, under urgent circumstances, immediately terminate a Eurosystem monetary policy counterparty's access to intraday credit. In such cases, Eesti Pank must notify the ECB thereof immediately and in writing. ECB is entitled to reject such decision by Eesti Pank. If the ECB has not informed Eesti Pank of the rejection within ten days since receiving the notification from Eesti Pank, the ECB is considered to have approved Eesti Pank's decision."

Andres Lipstok
Governor