

Appendix III

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TERMS OF REFERENCE FOR CAPACITY AND COUNTRY OPINIONS

Terms of reference for capacity opinions for participants in TARGET*Addressee:*

National Bank of Belgium (the "NBB")

Boulevard de Berlaimont, 14

1000 Brussels

Belgium

Participation in TARGET-BE

[date]

Dear Sir or Madam,

We have been asked to provide this Opinion as [in-house or external] legal advisers to [specify name of Participant or branch of Participant] in respect of issues arising under the laws of [jurisdiction in which the Participant is established; hereinafter the 'jurisdiction'] in connection with the participation of [specify name of Participant] (hereinafter the 'Participant') in TARGET-BE (hereinafter the 'System').

This Opinion is confined to the laws of [jurisdiction] as they exist as on the date of this Opinion. We have made no investigation of the laws of any other jurisdiction as a basis for this Opinion, and do not express or imply any opinion in this regard. Each of the statements and opinions presented below applies with equal accuracy and validity under the laws of Belgium, whether or not the Participant acts through its head office or one or more branches established inside or outside of Belgium in submitting Cash transfer orders and receiving Cash transfers.

I. DOCUMENTS EXAMINED

For the purposes of this Opinion, we have examined:

- (1) a certified copy of the [specify relevant constitutional documents] of the Participant such as is/are in effect on the date hereof;
- (2) [if applicable] an extract from the [specify relevant company register] and [if applicable] [register of credit institutions or analogous register];
- (3) [to the extent applicable] a copy of the Participant's licence or other proof of authorisation to provide banking, investment, funds transfer or other financial services in line with the access criteria for participation in TARGET in Belgium;

- (4) [if applicable] a copy of a resolution adopted by the board of directors or the relevant governing body of the Participant on [insert date], [insert year], evidencing the Participant's agreement to adhere to the System Documents, as defined below; and
- (5) [specify all powers of attorney and other documents constituting or evidencing the requisite power of the person or persons signing the relevant System Documents (as defined below) on behalf of the Participant];

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

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

- (1) the Terms and Conditions of TARGET-BE for the System dated [insert date] (hereinafter the 'Rules'); and
- (2) [...].

The Rules and the [...] shall be referred to hereinafter as the 'System Documents' (and collectively with the Participant Documents as the 'Documents').

II. ASSUMPTIONS

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

- (1) the System Documents with which we have been provided are originals or true copies;
- (2) the terms of the System Documents and the rights and obligations created by them are valid and legally binding under the laws of Belgium by which they are expressed to be governed, and the choice of the laws of Belgium to govern the System Documents is recognised by the laws of Belgium;
- (3) the Participant Documents are within the capacity and power of and have been validly authorised, adopted or executed and, where necessary, delivered by the relevant parties; and
- (4) the Participant Documents are binding on the parties to which they are addressed, and there has been no breach of any of their terms.

III. OPINIONS REGARDING THE PARTICIPANT

A. The Participant is a corporation duly established and registered or otherwise duly incorporated or organised under the laws of [jurisdiction].

B. The Participant has all the requisite corporate powers to execute and perform the rights and obligations under the System Documents to which it is party.

C. The adoption or execution and the performance by the Participant of the rights and obligations under the System Documents to which the Participant is party do not in any way breach any provision of the laws or regulations of Belgium applicable to the Participant or the Participant Documents.

D. No additional authorisations, approvals, consents, filings, registrations, notarisations or other certifications of or with any court or governmental, judicial or public authority that is competent in

Belgium are required by the Participant in connection with the adoption, validity or enforceability of any of the System Documents or the execution or performance of the rights and obligations thereunder.

E. The Participant has taken all necessary corporate action and other steps necessary under the laws of Belgium to ensure that its obligations under the System Documents are legal, valid and binding.

This Opinion is stated as of its date and is addressed solely to the NBB and the [Participant]. No other persons may rely on this Opinion, and the contents of this Opinion may not be disclosed to persons other than its intended recipients and their legal counsel without our prior written consent, with the exception of the European Central Bank and the national central banks of the European System of Central Banks and National Bank of Belgium.

Yours faithfully,

[signature]

Terms of reference for country opinions for non-EEA participants in TARGET

Addressee:

National Bank of Belgium (the "NBB")

Boulevard de Berlaimont, 14

1000 Brussels

Belgium

Participation in TARGET-BE

[date]

Dear Sir or Madam,

We have been asked as [external] legal advisers to [specify name of Participant or branch of Participant] (the 'Participant') in respect of issues arising under the laws of [jurisdiction in which the Participant is established; hereinafter the 'jurisdiction'] to provide this Opinion under the laws of [jurisdiction] in connection with the participation of the Participant in a system which is a component of TARGET (hereinafter the 'System'). References herein to the laws of [jurisdiction] include all applicable regulations of [jurisdiction]. We express an opinion herein under the law of [jurisdiction], with particular regard to the Participant established outside Belgium in relation to rights and obligations arising from participation in the System, as presented in the System Documents defined below.

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

I. DOCUMENTS EXAMINED

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

- (1) the Terms and Conditions of TARGET-BE for the System dated [insert date] (hereinafter the 'Rules'); and
- (2) any other document governing the System and/or the relationship between the Participant and other participants in the System, and between the participants in the System and the National Bank of Belgium (NBB).

The Rules and the [.] shall be referred to hereinafter as the 'System Documents'.

II. ASSUMPTIONS

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

- (1) the System Documents are within the capacity and power of and have been validly authorised, adopted or executed and, where necessary, delivered by the relevant parties;
- (2) the terms of the System Documents and the rights and obligations created by them are valid and legally binding under the laws of Belgium, by which they are expressed to be governed, and the choice of the laws of Belgium to govern the System Documents is recognised by the laws of Belgium;
- (3) the participants in the System through which any Cash transfer orders are sent or Cash transfers are received, or through which any rights or obligations under the System Documents are executed or performed, are licensed to provide funds transfer services, in all relevant jurisdictions; and
- (4) the documents submitted to us in copy or as specimens conform to the originals.

III. OPINION

Based on and subject to the foregoing, and subject in each case to the points set out below, we are of the opinion that:

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

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

3.2 General insolvency issues

3.2.a. *Types of insolvency proceedings*

The only types of insolvency proceedings (including composition or rehabilitation) which, for the purpose of this Opinion, shall include all proceedings in respect of the Participant's assets or any branch it may have in [jurisdiction] to which the Participant may become subject in [jurisdiction], are the following: [list proceedings in original language and English translation] (together collectively referred to as 'Insolvency Proceedings').

In addition to Insolvency Proceedings, the Participant, any of its assets, or any branch it may have in [jurisdiction] may become subject in [jurisdiction] to [list any applicable moratorium, receivership, or any other proceedings as a result of which payments to and/or from the Participant may be suspended, or limitations can be imposed in relation to such payments, or similar proceedings in original language and English translation] (hereinafter collectively referred to as 'Proceedings').

3.2.b. *Insolvency treaties*

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

3.3 Enforceability of System Documents

Subject to the points set out below, all provisions of the System Documents will be binding and enforceable in accordance with their terms under the laws of [jurisdiction], in particular in the event of the opening of any Insolvency Proceedings or Proceedings with respect to the Participant.

In particular, we are of the opinion that:

3.3.a. *Processing of Cash transfer orders*

The provisions on processing of Cash transfer orders of the Rules (Articles 17 and 18 of Part I, Articles 4 to 7 and 9 of Part II, Articles 5 to 10 and 14 to 17 of Part III, Articles 4 and 6 to 7 of Part IV, Articles 6 and 10 of Part V) are valid and enforceable. In particular, all Cash transfer orders processed pursuant to such sections will be valid, binding and will be enforceable under the laws of [jurisdiction]. The provision of the Rules which specifies the precise point in time at which Cash transfer orders submitted by the Participant to the System become enforceable and irrevocable (Article 18, Part I) is valid, binding and enforceable under the laws of [jurisdiction].

3.3.b. *Authority of the National Bank of Belgium to perform its functions*

The opening of Insolvency Proceedings or Proceedings in respect of the Participant will not affect the authority and powers of the NBB 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 participation in the System, e.g. TARGET NSP].

3.3.c. *Remedies in the event of default*

[Where applicable to the Participant, the provisions contained in Article 27, Part I of the Rules regarding accelerated performance of claims which have not yet matured, the set-off of claims for using the deposits of the Participant, the enforcement of a pledge, suspension and termination of participation, claims for default interest, and termination of agreements and transactions ([insert other relevant clauses of the Rules or the System Documents]) are valid and enforceable under the laws of [jurisdiction].]

3.3.d. *Suspension and termination*

Where applicable to the Participant, the provisions contained in Articles 24 and 25 of Part I, Article 13 of Part II, Article 14 of Part III, Article 11 of Part IV, Article 10 of Part V, Article 10 of Part VI and Article 11 of Part VII of the Rules (in respect of suspension and termination of the Participant's participation in the System on the opening of Insolvency Proceedings or Proceedings or other events of default, as defined in the System Documents, or if the Participant represents any kind of systemic risk or has serious operational problems) are valid and enforceable under the laws of [jurisdiction].

3.3.e. *Penalty regime*

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

3.3.f. *Assignment of rights and obligations*

The rights and obligations of the Participant cannot be assigned, altered or otherwise transferred by the Participant to third parties without the prior written consent of the NBB.

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

The provisions contained in Articles 30 and 34 of Part I of the Rules, and in particular in respect of the governing law, the resolution of a dispute, competent courts, and service of process are valid and enforceable under the laws of [jurisdiction].

3.4 **Voidable preferences**

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

In particular, and without limitation to the foregoing, we express this opinion in respect of any Cash transfer orders submitted by any participant in the System. In particular, we are of the opinion that the provisions of [list of sections] of the Rules establishing the enforceability and irrevocability of Cash transfer orders will be valid and enforceable and that a Cash transfer orders submitted by any participant and processed pursuant to [list of sections] of the Rules may not be set aside in any Insolvency Proceedings or Proceedings as a preference, voidable transaction or otherwise under the laws of [jurisdiction].

3.5 Attachment

If a creditor of the Participant seeks an attachment order (including any freezing order, order for seizure or any other public or private law procedure that is intended to protect the public interest or the rights of the Participant's creditors) — hereinafter referred to as an 'Attachment' — under the laws of [jurisdiction] from a court or governmental, judicial or public authority that is competent in [jurisdiction], we are of the opinion that [insert the analysis and discussion].

3.6 Collateral [if applicable]

3.6.a. *Assignment of rights or deposit of assets for collateral purposes, pledge and/or repo*

Assignments for collateral purposes will be valid and enforceable under the laws of [jurisdiction]. Specifically, the creation and enforcement of a pledge or repo under the Rules of TARGET-BE will be valid and enforceable under the laws of [jurisdiction].

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

In the event of Insolvency Proceedings or Proceedings in respect of the Participant, the rights or assets assigned for collateral purposes, or pledged by the Participant in favour of the NBB or other participants in the System, will rank in priority of payment above the claims of all other creditors of the Participant and will not be subject to priority or preferential creditors.

3.6.c. *Enforcing title to security*

Even in the event of Insolvency Proceedings or Proceedings in respect of the Participant, other participants in the System and the NBB as [assignees, pledgees or repo purchasers as applicable] will still be free to enforce and collect the Participant's rights or assets through the action of the NBB pursuant to the Rules.

3.6.d. *Form and registration requirements*

There are no form requirements for the assignment for collateral purposes of, or the creation and enforcement of a pledge or repo over the Participant's rights or assets and it is not necessary for the [assignment for collateral purposes, pledge or repo, as applicable], or any particulars of such [assignment, pledge or repo, as applicable,] to be registered or filed with any court or governmental, judicial or public authority that is competent in [jurisdiction].

3.7 Branches [to the extent applicable]

3.7.a. *Opinion applies to action through branches*

Each of the statements and opinions presented above with regard to the Participant applies with equal accuracy and validity under the laws of [jurisdiction] in situations where the Participant acts through its one or more of its branches established outside [jurisdiction].

3.7.b. *Conformity with law*

Neither the execution and performance of the rights and obligations under the System Documents nor the submission, transmission or receipt of Cash transfer orders by a branch of the Participant will in any respect breach the laws of [jurisdiction].

3.7.c. Required authorisations

Neither the execution and performance of the rights and obligations under the System Documents nor the submission, transmission or receipt of Cash transfer orders by a branch of a Participant will require any additional authorisations, approvals, consents, filings, registrations, notarisations or other certifications of or with any court or governmental, judicial or public authority that is competent in [jurisdiction].

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

Yours faithfully,

[signature]