DEN EUROPÆISKE CENTRALBANKS AFGØRELSE (EU) 2019/1848

af 29. oktober 2019

om ændring af afgørelse ECB/2007/7 om de nærmere vilkår for TARGET2-ECB (ECB/2019/32)

DIREKTIONEN FOR DEN EUROPÆISKE CENTRALBANK HAR —

under henvisning til traktaten om Den Europæiske Unions funktionsmåde, særlig artikel 127, stk. 2, første og fjerde led,

under henvisning til statutten for Det Europæiske System af Centralbanker og Den Europæiske Centralbank, særlig artikel 11.6, 17, 22 og 23,

ud fra følgende betragtninger:

(1) Den 4. oktober 2019 ændrede ([1]) Styrelsesrådet retningslinje ECB/2012/27 ([2]) for at: a) indføre en ny SSP-funktionalitet, som gør det muligt at behandle meget kritiske og kritiske betalinger i en nødprocedure, og som centralbankerne i Eurosystemet skal overholde, b) præcisere, under hvilke betingelser investeringsselskaber kan deltage i TARGET2, herunder kravet om en juridisk udtalelse vedrørende investeringsselskaber, der er etableret uden for Det Europæiske Økonomiske Samarbejdsområde (EØF), og som anmoder om direkte deltagelse i et TARGET2-delsystem, c) præcisere, at deltagerne i TARGET2-delsystemerne skal overholde kravet om TARGET2-selvcertificering og TARGET2-netværksleverandørernes endpoint-sikkerhedskrav samt informere den relevante bank i Eurosystemet om alle kriseforebyggelses- eller krisestyringsforanstaltninger, som de er underlagt, og d) præcisere og opdatere visse andre aspekter af retningslinje ECB/2012/27.

(2) Ændringer af retningslinje ECB/2012/27, som påvirker de nærmere vilkår for TARGET2-ECB bør afspejles i afgørelse ECB/2007/7 ([3]).

(3) Afgørelse ECB/2007/7 bør derfor ændres i overensstemmelse hermed —

VEDTAGET DENNE AFGØRELSE:

Artikel 1

Ændringer

Bilag I, II og III til afgørelse ECB/2007/7 ændres i overensstemmelse med bilaget til denne afgørelse.

([1]) Retningslinje (EU) 2019/1849 af 4. oktober 2019 om ændring af retningslinje ECB/2012/27 om TARGET2 (Trans-European Automated Real-time Gross settlement Express Transfer system) (ECB/2019/30) (se side 64 i denne EUT).
([2]) Retningslinje ECB/2012/27 af 5. december 2012 om TARGET2 (Trans-European Automated Real-time Gross settlement Express Transfer system) (EUT L 30 af 30.1.2013, s. 1).
([3]) Afgørelse ECB/2007/7 af 24. juli 2007 om de nærmere vilkår for TARGET2-ECB (EUT L 237 af 8.9.2007, s. 71).

Artikel 2

Afsluttende bestemmelser

Denne afgørelse træder i kraft dagen efter dens offentliggørelse i *Den Europæiske Unions Tidende*.

Den finder anvendelse fra den 17. november 2019.

Udfærdiget i Frankfurt am Main, den 29. oktober 2019.

Formand for ECB
*Mario*DRAGHI

BILAG

Bilag I, II og III til afgørelse ECB/2007/7 ændres således:

1. Bilag I ændres således:

a) I artikel 1 udgår definitionen af 'Contingency Module'.

b) I artikel 1 ændres definitionen af 'Information and Control Module (ICM)' som følger:

»—' Information and Control Module (ICM)' means the SSP module that allows PM account holders to obtain online information and gives them the possibility to submit liquidity transfer orders, manage liquidity and, if applicable, initiate backup payment orders or payment orders to the Contingency Solution in a contingency,«

c) I artikel 1 tilføjes følgende definition:

»—' Contingency Solution' means the SSP functionality that processes very critical and critical payments in contingency,«

d) Artikel 9, stk. 8, affattes således:

»8. Participants shall immediately inform the ECB 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 (*) or any other equivalent applicable legislation.

(*) 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).«

e) Artikel 21 affattes således:

»*Article 21*

Business continuity and contingency procedures

1. In the event of an abnormal external event or any other event which affects the operation of the SSP, the business continuity and contingency procedures described in Appendix IV shall apply.

2. The Eurosystem provides a Contingency Solution if the events described in paragraph 1 occur. Connection to and use of the Contingency Solution shall be mandatory for participants considered by the ECB to be critical. Other participants may, on request, connect to the Contingency Solution.«

f) Artikel 22 affattes således:

i) Stk. 3 affattes således:

»3. The ECB 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 ECB.«

ii) Følgende indsættes som stk. 4:

»4. Participants shall provide the ECB with their TARGET2 self-certification and their attestation of adherence to the TARGET2 network service provider's endpoint security requirements. In the event of non-adherence to the latter, participants shall provide a document describing alternative mitigating measures to the satisfaction of the ECB.«

g) Artikel 23, stk. 1, litra c), affattes således:

»(c) allows participants to initiate backup liquidity redistribution and backup contingency payments or payment orders to the Contingency Solution in the event of a failure of the participant's payment infrastructure.«

h) Artikel 32, stk. 2, litra c), affattes således:

»(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 in all such cases that the disclosure is not in conflict with the applicable law.«

i) Tillæg I ændres således:

i) Den femte linje i tabellen i afsnit 2, stk. 1, affattes således:

»MT 202COV	Mandatory	Cover payment«

ii) Afsnit 8, stk. 7, affattes således:

»If a participant has technical problems and is unable to submit any payment order, it may generate preformatted backup liquidity redistribution and backup contingency payments by using the ICM. The ECB shall open such functionality upon request of the participant«

j) I tillæg III med overskriften 'Terms of reference for capacity opinions for participants in TARGET2', affattes afsnit 3.2 med overskriften 'General insolvency issues' således:

»3.2. **General insolvency and crisis management issues**

Types of insolvency and crisis management 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, including crisis prevention and crisis management measures equivalent to those defined in Directive 2014/59/EU, in original language and English translation] (hereinafter collectively referred to as 'Proceedings').

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].«

k) I tillæg IV ændres afsnit 6 som følger:

i) Litra a) og b) erstattes af følgende:

»(a) If the ECB deems it necessary to do so, it shall initiate the contingency processing of payment orders using the Contingency Solution of the SSP. In such cases, only a minimum service level shall be provided to participants. The ECB shall inform its participants of the start of contingency processing by any available means of communication.

(b) In contingency processing, payment orders shall be submitted by the participants and authorised by the ECB. In addition, the participants may submit files containing payment instructions, which may be uploaded into the Contingency Solution by the ECB.«

ii) Punkt 2, litra d) og e) affattes således:

»(d) Payments required to avoid systemic risk shall be considered as 'critical' and the ECB may decide to initiate contingency processing in relation to them.

(e) Participants shall submit payment orders for contingency processing directly into the Contingency Solution and information to payees shall be provided through encrypted and authenticated email, as well as via authenticated fax Participants shall submit files which contain payment instructions to the ECB for uploading into the Contingency Solution and which authorise the ECB to do so. The ECB may, exceptionally, also manually input payments on behalf of participants. Information concerning account balances and debit and credit entries may be obtained via the ECB.«

l) I bilag IV affattes stk. 7, litra a) og b) således:

»(a) In the event that a participant has a problem that prevents it from settling payments in TARGET2 it shall be its responsibility to resolve the problem. In particular, a participant may use in-house solutions or the ICM functionality, i.e. backup liquidity redistribution and backup contingency payments (e.g. CLS, EURO1).

(b) If a participant decides to use the ICM functionality for making backup liquidity redistribution, the ECB shall, if the participant so requests, open this functionality via the ICM. If the participant so requests, the ECB shall transmit an ICM broadcast message to inform other participants about the participant's use of backup liquidity redistribution. The participant shall be responsible for sending such backup liquidity redistribution exclusively to other participants with which it has bilaterally agreed on the use of such payments and for any further steps in relation to such payments.«

m) I tillæg VI affattes række tre og fire i tabellen i punkt 5 således:

»T2S DCA to T2S DCA liquidity transfer orders	14,1	per transfer
Intra-balance movement (i.e. blocking, unblocking, reservation of liquidity etc.)	9,4	per transaction«

2. Bilag II ændres som følger:

a) Artikel 1 ændres således:

i) Definitionen af 'Information and Control Module (ICM)' erstattes af følgende:

»—' Information and Control Module (ICM)' means the SSP module that allows PM account holders to obtain online information and gives them the possibility to submit liquidity transfer orders, manage liquidity and, if applicable, initiate backup payment orders or payment orders to the Contingency Solution in a contingency,«

ii) Følgende definition tilføjes:

»—' Contingency Solution' means the SSP functionality that processes very critical and critical payments in contingency,«

b) Artikel 10, stk. 9, affattes således:

»9. T2S DCA holders shall immediately inform the ECB 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 or any other equivalent applicable legislation.«

c) Artikel 18, stk. 3, affattes således:

»3. The ECB may impose additional security requirements, in particular with regard to cybersecurity or the prevention of fraud, on all T2S DCA holders and/or on T2S DCA holders that are considered critical by the ECB.«

d) Artikel 27, stk. 2, litra c), affattes således:

»(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 in all such cases that the disclosure is not in conflict with the applicable law.«

e) I tillæg III med overskriften 'Terms of reference for country opinions for non-EEA T2S DCA holders in TARGET2', affattes afsnit 3.2 med overskriften 'General insolvency issues' således:

»3.2. **General insolvency and crisis management issues**

3.2.a. *Types of insolvency and crisis management 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 T2S DCA holder's assets or any branch it may have in [jurisdiction] to which the T2S DCA holder 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 T2S DCA holder, 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 payment orders to and/or from the T2S DCA holder may be suspended, or limitations can be imposed in relation to such payment orders, or similar proceedings, including crisis prevention and crisis management measures equivalent to those defined in Directive 2014/59/EU, 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].«

f) I tillæg VI affattes række tre og fire i tabellen således:

»T2S DCA to T2S DCA liquidity transfer orders	14,1 euro cent	per transfer
Intra-balance movement (i.e. blocking, unblocking, reservation of liquidity etc.)	9,4 euro cent	per transaction«

3. Bilag III ændres således:

a) Artikel 14, stk. 8, affattes således:

»8. TIPS DCA holders shall immediately inform the ECB 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 or any other equivalent applicable legislation.«

b) Artikel 21 ændres således:

i) Stk. 5 affattes således:

»5. The ECB may impose additional security requirements, in particular with regard to cybersecurity or the prevention of fraud, on all TIPS DCA holders.«

ii) Følgende indsættes som stk. 6:

»6. TIPS DCA holders using instructing parties in line with Article 7(2) or (3), or allowing access to their TIPS DCA as set out in Article 8(1), shall be deemed to have addressed the risk stemming from such use or access in accordance with the additional security requirements imposed upon them.«

c) Artikel 26, stk. 4, affattes således:

»4. In the event that the ECB suspends or terminates a TIPS DCA holder's participation in TARGET2-ECB under paragraph 1 or 2, the ECB shall immediately inform, by means of a ICM broadcast message, other CBs and PM account holders in all of the TARGET2 component systems of such suspension or termination. Such message shall be deemed to have been issued by the home CB of the PM account holder that received the message.

Linked PM account holders shall have the responsibility to inform their Linked TIPS DCA holders of the suspension or termination of any TIPS DCA holder's participation in TARGET2-ECB.

In the event that the suspension or termination of a TIPS DCA holder's participation in TARGET2-ECB occurs during the technical maintenance window, the ICM broadcast message shall be sent after the start of daytime processing on the next TARGET2 business day.«

d) Artikel 29, stk. 3, litra c), affattes således:

»(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 in all such cases that the disclosure is not in conflict with the applicable law.«

e) I tillæg II med overskriften 'Terms of reference for country opinions for non-EEA TIPS DCA holders in TARGET2', affattes afsnit 3.2 med overskriften 'General insolvency issues' således:

»3.2. **General insolvency and crisis management issues**

3.2.a. *Types of insolvency and crisis management 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 TIPS DCA holder's assets or any branch it may have in [jurisdiction] to which the TIPS DCA holder 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 TIPS DCA holder, 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 payment orders to and/or from the TIPS DCA holder may be suspended, or limitations can be imposed in relation to such payment orders, or similar proceedings, including crisis prevention and crisis management measures equivalent to those defined in Directive 2014/59/EU, 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].«.