DÉCISION (UE) 2019/1848 DE LA BANQUE CENTRALE EUROPÉENNE

du 29 octobre 2019

modifiant la décision BCE/2007/7 relative aux modalités de TARGET2-BCE (BCE/2019/32)

LE DIRECTOIRE DE LA BANQUE CENTRALE EUROPÉENNE,

vu le traité sur le fonctionnement de l'Union européenne, et notamment son article 127, paragraphe 2, premier et quatrième tirets,

vu les statuts du Système européen de banques centrales et de la Banque centrale européenne, et notamment leur article 11.6 et leurs articles 17, 22 et 23,

considérant ce qui suit:

(1) Le 4 octobre 2019, le Conseil des gouverneurs a modifié ([1]) l'orientation BCE/2012/27 ([2]), afin: a) d'introduire une nouvelle fonctionnalité à la PPU, permettant le traitement de paiements critiques et très critiques dans les situations d'urgence, à laquelle les banques centrales de l'Eurosystème doivent se conformer; b) de préciser les conditions dans lesquelles les entreprises d'investissement peuvent participer à TARGET2, y compris l'exigence d'un avis juridique sur les entreprises d'investissement établies en dehors de l'Espace économique européen (EEE) et demandant à participer directement à un système composant de TARGET2; c) de préciser que les participants aux systèmes composants de TARGET2 doivent respecter l'obligation d'autocertification TARGET2 et les obligations relatives à la sécurité des points d'accès finals des prestataires de service réseau TARGET2; d) de préciser et mettre à jour certains autres éléments de l'orientation BCE/2012/27.

(2) Il convient que la décision BCE/2007/7 soit actualisée pour tenir compte des modifications apportées à l'orientation BCE/2012/27 affectant les termes et conditions de TARGET2-BCE ([3]).

(3) Il convient donc de modifier la décision BCE/2007/7 en conséquence,

A ADOPTÉ LA PRÉSENTE DÉCISION:

Article premier

Modifications

Les annexes I, II et III sont modifiées conformément à l'annexe de la présente décision.

([1]) Orientation (UE) BCE/2019/1849 du 4 octobre 2019 modifiant l'orientation BCE/2012/27 relative au système de transferts express automatisés transeuropéens à règlement brut en temps réel (TARGET2) (BCE/2019/30) (voir page 64 du présent Journal officiel).
([2]) Orientation BCE/2012/27 du 5 décembre 2012 relative au système de transferts express automatisés transeuropéens à règlement brut en temps réel (TARGET2) (JO L 30 du 30.1.2013, p. 1).
([3]) Décision BCE/2007/7 du 24 juillet 2007 relative aux modalités de TARGET2-BCE (JO L 237 du 8.9.2007, p. 71).

Article 2

Dispositions finales

La présente décision entre en vigueur le jour suivant celui de sa publication au *Journal officiel de l'Union européenne*.

Elle est applicable à compter du 17 novembre 2019.

Fait à Francfort-sur-le-Main, le 29 octobre 2019.

Le président de la BCE
Mario DRAGHI

ANNEXE

Les annexes I, II et III de la décision BCE/2007/7 sont modifiées comme suit:

1) l'annexe I est modifiée comme suit:

a) à l'article 1er, la définition de «Contingency Module» est supprimée;

b) à l'article 1er, la définition de «Information and Control Module (ICM)» est remplacée par le texte suivant:

«—" 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) à l'article 1er, la définition suivante est ajoutée:

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

d) l'article 9, paragraphe 8, est remplacé par le texte suivant:

«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 (JO L 173 du 12.6.2014, p. 190).»;

e) l'article 21 est remplacé par le texte suivant:

«*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) l'article 22 est modifié comme suit:

i) le paragraphe 3 est remplacé par le texte suivant:

«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) le paragraphe 4 suivant est ajouté:

«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) à l'article 23, paragraphe 1, le point c) est remplacé par le texte suivant:

«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) à l'article 32, paragraphe 2, le point c) est remplacé par le texte suivant:

«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) l'appendice I est modifié comme suit:

i) la cinquième ligne du tableau au paragraphe 2, point 1, est remplacée par le texte suivant:

« MT 202COV	Mandatory	Cover payment»;

ii) le paragraphe 8, point 7), est remplacé par le texte suivant:

«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) à l'appendice III, sous le titre «Terms of reference for country opinions for non-EEA participants in TARGET2», le paragraphe 3.2 intitulé «General insolvency issues» est remplacé par le texte suivant:

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

3.2.a. *Types of insolvency and crisis managementproceedings*

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').

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].»;

k) à l'appendice IV, le paragraphe 6 est modifié comme suit:

i) les points a) et b) sont remplacés par le texte suivant:

«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) les points d) et e) sont remplacés par le texte suivant:

«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 e-mail, 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) à l'appendice IV, les points a) et b) du paragraphe 7 sont remplacés par le texte suivant:

«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) à l'appendice VI, la troisième et la quatrième ligne du tableau du point 5 sont remplacées par le texte suivant:

«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) L'annexe II est modifiée comme suit:

a) l'article 1er est modifié comme suit:

i) la définition de «Information and Control Module (ICM)» est remplacée par le texte suivant:

«—" 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) la définition suivante est ajoutée:

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

b) l'article 10, paragraphe 9, est remplacé par le texte suivant:

«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) l'article 18, paragraphe 3, est remplacé par le texte suivant:

«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) à l'article 27, paragraphe 2, le point c) est remplacé par le texte suivant:

«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) à l'appendice III, sous le titre «Terms of reference for country opinions for non-EEA T2S DCA holders in TARGET2», le paragraphe 3.2 intitulé «General insolvency issues» est remplacé par le texte suivant:

«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) à l'appendice VI, la troisième et la quatrième ligne du tableau sont remplacées par le texte suivant:

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

3) l'annexe III est modifiée comme suit:

a) l'article 14, paragraphe 8, est remplacé par le texte suivant:

«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) l'article 21 est modifié comme suit:

i) le paragraphe 5 est remplacé par le texte suivant:

«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) le paragraphe 6 suivant est ajouté:

«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) l'article 26, paragraphe 4, est remplacé par le texte suivant:

«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) à l'article 29, paragraphe 3, le point c) est remplacé par le texte suivant:

«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) à l'appendice II, sous le titre «Terms of reference for country opinions for non-EEA TIPS DCA holders in TARGET2», le paragraphe 3.2 intitulé «General insolvency issues» est remplacé par le texte suivant:

«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].».