ODLUKA (EU) 2019/1848EUROPSKE SREDIŠNJE BANKE
od 29. listopada 2019.
o izmjeni Odluke ESB/2007/7 o uvjetima sustava TARGET2-ECB (ESB/2019/32)

IZVRŠNI ODBOR EUROPSKE SREDIŠNJE BANKE,

uzimajući u obzir Ugovor o funkcioniranju Europske unije, a posebno prvu i četvrtu alineju njegova članka 127. stavka 2.,

uzimajući u obzir Statut Europskoga sustava središnjih banaka i Europske središnje banke, a posebno njegov članak 11. stavak 6. i članke 17., 22. i 23.,

budući da:

(1) Upravno vijeće je 4. listopada 2019. izmijenilo ([1]) Smjernicu ESB/2012/27 ([2]), kako bi se: (a) uvela nova funkcionalnost SSP-a koja omogućava obradu vrlo kritičnih i kritičnih plaćanja u izvanrednim situacijama, koju sve središnje banke Eurosustava moraju poštovati; (b) pojasnili uvjeti pod kojim investicijska društva mogu sudjelovati u sustavu TARGET2, uključujući uvjete za davanje pravnog mišljenja u pogledu investicijskih društava osnovanih izvan Europskog gospodarskog prostora (EGP) koja podnose zahtjev za izravno sudjelovanje u komponenti sustava TARGET2; (c) pojasnilo da sudionici u komponenti sustava TARGET2 moraju poštovati zahtjev za samocertifikaciju sustava TARGET2 i zahtjeve pružatelja mrežnih usluga sustava TARGET2 vezane uz sigurnost krajnje točke i obavijestiti odgovarajuću središnju banku Eurosustava o svakoj mjeri za sprečavanje krize ili mjeri za upravljanje krizom koju moraju poštovati; i (d) pojasnili i ažurirali određeni drugi aspekti Smjernice ESB/2012/27.

(2) Izmjene izvršene u Smjernici ESB/2012/27 koje utječu na uvjete sustava TARGET2-ECB trebaju se odraziti u Odluci ESB/2007/7 ([3]).

(3) Odluku ESB/2007/7 trebalo bi stoga na odgovarajući način izmijeniti,

DONIO JE OVU ODLUKU:

Članak 1.

Izmjene

Prilozi I., II. i III. Odluci ESB/2007/7 mijenjaju se u skladu s Prilogom ovoj Odluci.

([1]) Smjernica (EU) 2019/1849 od 4. listopada 2019. o izmjeni Smjernice ESB/2012/27 o Transeuropskom automatiziranom sustavu ekspresnih novčanih transakcija u realnom vremenu na bruto načelu (sustav TARGET2) (ESB/2019/30) (vidjeti stranicu 64. ovog Službenog lista).
([2]) Smjernica ESB/2012/27 od 5. prosinca 2012. o Transeuropskom automatiziranom sustavu ekspresnih novčanih transakcija u realnom vremenu na bruto načelu (sustav TARGET2) (SL L 30, 30.1.2013., str. 1.).
([3]) Odluka ESB/2007/7 od 24. srpnja 2007. o uvjetima sustava TARGET2-ECB (SL L 237, 8.9.2007., str. 71.)

Članak 2.

Završne odredbe

Ova Odluka stupa na snagu dan nakon njezine objave u *Službenom listu* Europske unije.

Primjenjuje se od 17. studenoga 2019.

Sastavljeno u Frankfurtu na Majni 29. listopada 2019.

Predsjednik ESB-a
Mario DRAGHI

PRILOG

Prilozi I., II. I III. Odluci ESB/2007/7 mijenjaju se kako slijedi:

1. Prilog I. mijenja se kako slijedi:

(a) u članku 1. definicija modula za izvanredne mjere briše se;

(b) u članku 1., definicija „informacijski i kontrolni modul" (ICM) zamjenjuje se sljedećim:

„—, 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) u članku 1., dodaje se sljedeća definicija:

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

(d) članak 9. stavak 8. zamjenjuje se sljedećim:

'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) članak 21. zamjenjuje se sljedećim:

„*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) članak 22. mijenja se kako slijedi:

i. stavak 3. zamjenjuje se sljedećim:

„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. dodaje se sljedeći stavak 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) u članku 23. stavku 1., točka (c) zamjenjuje se sljedećim:

"(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) u članku 32. stavku 2., točka (c) zamjenjuje se sljedećim:

„(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) Dodatak I. mijenja se kako slijedi:

i. peti redak tablice iz stavka 2 podstavka 1. zamjenjuje se sljedećim::

„MT 202COV	Mandatory	Cover payment";

ii. stavak 8 podstavak 7. zamjenjuje se sljedećim:

„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) u Dodatku III., pod naslovom „Referentni okvir za mišljenja o državi za sudionike izvan EGP-a u sustavu TARGET2", stavak 3.2. pod naslovom „Opća pitanja o insolventnosti" zamjenjuje se sljedećim:

„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) u Dodatku IV., stavak 6. mijenja se kako slijedi:

i. točke (a) i (b) zamjenjuju se sljedećim:

„(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. točke (d) i (e) zamjenjuju se sljedećim:

„(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) u Dodatku IV., stavku 7., točke (a) i (b) zamjenjuju se sljedećim:

„(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) u Dodatku VI., treći i četvrti redak tablice iz točke 5. zamjenjuju se sljedećim:

„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. Prilog II. mijenja se kako slijedi:

(a) članak 1. mijenja se kako slijedi:

i. definicija „informacijski i kontrolni modul" (ICM) zamjenjuje se sljedećim:

„—, 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. dodaje se sljedeći definicija:

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

(b) članak 10. stavak 9. zamjenjuje se sljedećim:

„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) članak 18. stavak 3. zamjenjuje se sljedećim:

„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) u članku 27. stavku 2., točka (c) zamjenjuje se sljedećim:

„(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) u Dodatku III, pod naslovom „Referentni okvir za mišljenja o državi za imatelje DCA za T2S izvan EGP-a u sustavu TARGET2", stavak 3.2. pod naslovom „Opća pitanja o insolventnosti" zamjenjuje se sljedećim:

„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) u Dodatku VI., treći i četvrti redak tablice zamjenjuju se sljedećim::

„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. Prilog III. mijenja se kako slijedi:

(a) članak 14. stavak 8. zamjenjuje se sljedećim:

„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) članak 21. mijenja se kako slijedi:

(i) stavak 5. zamjenjuje se sljedećim:

„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) dodaje se sljedeći stavak 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) članak 26. stavak 4. zamjenjuje se sljedećim:

„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) u članku 29. stavku 3., točka (c) zamjenjuje se sljedećim:

„(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) u Dodatku II., pod naslovom „Referentni okvir za mišljenja o državi za imatelje DCA za TIPS izvan EGP-a u sustavu TARGET2", stavak 3.2. pod naslovom „Opća pitanja o insolventnosti" zamjenjuje se sljedećim:

„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].".