BESLUIT (EU) 2019/1848 VAN DE EUROPESE CENTRALE BANK

van 29 oktober 2019

tot wijziging van Besluit ECB/2007/7 betreffende de voorwaarden van TARGET2-ECB (ECB/2019/32)

DE DIRECTIE VAN DE EUROPESE CENTRALE BANK,

Gezien het Verdrag betreffende de werking van de Europese Unie, en met name artikel 127, lid 2, het eerste en vierde streepje,

Gezien de statuten van het Europees Stelsel van centrale banken en van de Europese Centrale Bank, en met name artikel 11.6 en de artikelen 17, 22 en 23,

Overwegende hetgeen volgt:

(1) Op 4 oktober 2019 wijzigde ([1]) de Raad van bestuur Richtsnoer ECB/2012/27 ([2]) om: a) een nieuwe SSP-functionaliteit te introduceren die de verwerking van zeer kritieke en kritieke betalingen in noodsituaties mogelijk maakt en die door de centrale banken van het Eurosysteem moet worden benut; b) de voorwaarden te verduidelijken waaronder beleggingsondernemingen mogen deelnemen aan TARGET2, met inbegrip van het vereiste van een juridisch advies ten aanzien van beleggingsondernemingen die buiten de Europese Economische Ruimte (EER) zijn gevestigd en die een aanvraag indienen voor directe deelname aan een TARGET2-deelsysteem; c) te verduidelijken dat deelnemers aan TARGET2-deelsystemen voldoen aan het vereiste van TARGET2 zelfcertificatie en aan de eindpuntbeveiligingsvereisten van de TARGET2-netwerkdienstverleners, alsook de betrokken centrale bank van het Eurosysteem informeren over crisispreventiemaatregelen of crisisbeheersingsmaatregelen waaraan zij onderworpen zijn, en d) bepaalde andere aspecten van Richtsnoer ECB/2012/27 te verduidelijken en te actualiseren.

(2) Wijzigingen in Richtsnoer ECB/2012/27 die van invloed zijn op de voorwaarden van TARGET2-ECB moeten tot uiting komen in Besluit ECB/2007/7 ([3]).

(3) Besluit ECB/2007/7 moet derhalve dienovereenkomstig gewijzigd worden,

HEEFT HET VOLGENDE BESLUIT VASTGESTELD:

Artikel 1

Wijzigingen

Bijlagen I, II en II bij Besluit ECB/2007/7 worden overeenkomstig de bijlage bij dit besluit gewijzigd.

([1]) Richtsnoer EU 2019/1849. van 4 oktober 2019 tot wijziging van Richtsnoer ECB/2012/27 betreffende een geautomatiseerd trans-Europees real-time brutovereveningssysteem (TARGET2) (ECB/2019/30),(zie bladzijde 64 van dit Publicatieblad).
([2]) Richtsnoer ECB/2012/27 van 5 december 2012 betreffende een geautomatiseerd trans-Europees realtime-brutovereveningssysteem (TARGET2) (PB L 30 van 30.1.2013, blz. 1).
([3]) Besluit ECB/2007/7 van 24 juli 2007 betreffende de voorwaarden van TARGET2-ECB (PB L 237 van 8.9.2007, blz. 71).

Artikel 2

Slotbepalingen

Dit besluit treedt in werking op de dag na die van de bekendmaking ervan in het *Publicatieblad van de Europese Unie*.

Dit besluit is van toepassing met ingang van 17 november 2019.

Gedaan te Frankfurt am Main, 29 oktober 2019.

De president van de ECB
Mario DRAGHI

BIJLAGE

De bijlagen I, II en III bij Besluit ECB/2007/7 worden als volgt gewijzigd:

1. Bijlage I wordt als volgt gewijzigd:

a) in artikel 1 wordt de definitie van "Contingency Module" geschrapt;

b) in artikel 1 wordt de definitie van "Information and Contingency Module (ICM)" vervangen door:

"—" 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) aan artikel 1 wordt de volgende definitie toegevoegd:

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

d) artikel 9, lid 8, wordt vervangen door:

'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 wordt vervangen door:

"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 wordt als volgt gewijzigd:

i) lid 3 wordt vervangen door:

"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) het volgende lid 4 wordt toegevoegd:

"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) in artikel 23, lid 1, wordt punt c) vervangen door:

"(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) in artikel 32, lid 2, wordt punt c) vervangen door:

"(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) aanhangsel I wordt als volgt gewijzigd:

i) in aanhangsel V wordt de vijfde regel van de tabel in punt 2(1) vervangen door:

"MT 202COV	Mandatory	Cover payment"

ii) punt 8(7) wordt vervangen door:

"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) in aanhangsel IIII, onder "Terms of reference for country opinions for non-EEA participants in TARGET2", wordt afdeling 3.2 "General insolvency issues" vervangen door:

"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) in aanhangsel IV wordt punt 6 als volgt gewijzigd:

i) de punten a) en b) worden vervangen door:

"(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 means of 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) de punten d) en e) worden vervangen door:

"(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) in aanhangsel IV worden in punt 7 de punten a) en b) vervangen door:

"(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) in aanhangsel VI worden de derde en vierde rij van de tabel in punt 5 vervangen door:

"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. Bijlage II wordt als volgt gewijzigd:

a) artikel 1 wordt als volgt gewijzigd:

i) de definitie van "Information and Control Module (ICM)" wordt vervangen door:

"—" 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) de volgende definitie wordt toegevoegd:

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

b) artikel 10, lid 9, wordt vervangen door:

"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, lid 3, wordt vervangen door:

"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) in artikel 27, lid 2, wordt punt c) vervangen door:

"(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) in aanhangsel III, onder "Terms of reference for country opinions for non-EEA T2S DCA holders in TARGET2", wordt afdeling 3.2 "General insolvency issues" vervangen door:

"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) in aanhangsel VI worden de derde en vierde rij van de tabel vervangen door:

"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 eurocent	per transaction"

3. Bijlage III wordt als volgt gewijzigd:

a) artikel 14, lid 8, wordt vervangen door:

"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 wordt als volgt gewijzigd:

i) lid 5 wordt vervangen door:

"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) het volgende lid 6 wordt toegevoegd:

"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, lid 4, wordt vervangen door:

"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) in artikel 29, lid 3, wordt punt c) vervangen door:

"(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) in aanhangsel II, onder "Terms of reference for country opinions for non-EEA TIPS DCA holders in TARGET2," wordt afdeling 3.2 "General insolvency issues" vervangen door:

"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].".