DECISÃO (UE) 2019/1848 DO BANCO CENTRAL EUROPEU

de 29 de outubro de 2019

que altera a Decisão BCE/2007/7 relativa aos termos e condições do TARGET2-ECB (BCE/2019/32)

A COMISSÃO EXECUTIVA DO BANCO CENTRAL EUROPEU,

Tendo em conta o Tratado sobre o Funcionamento da União Europeia, nomeadamente o artigo 127.°, n.° 2, primeiro e quarto travessões,

Tendo em conta os Estatutos do Sistema Europeu de Bancos Centrais e do Banco Central Europeu, nomeadamente o artigo 11.°-6 e os artigos 17.°, 22.° e 23.°,

Considerando o seguinte:

(1) Em 4 de outubro de 2019, o Conselho do BCE alterou ([1]) a Orientação BCE/2012/27 ([2]), a fim de: *a)* introduzir uma nova funcionalidade na PUP, que permite o processamento de pagamentos críticos e muito críticos em situações de contingência e à qual devem aderir os bancos centrais do Eurosistema; *b)* esclarecer as condições em que as empresas de investimento podem participar no TARGET2, incluindo o requisito de um parecer jurídico relativamente às empresas de investimento estabelecidas fora do Espaço Económico Europeu (EEE) que solicitem participar diretamente num sistema componente do TARGET2; *c)* esclarecer que os participantes em sistemas componentes do TARGET2 devem aderir ao requisito da autocertificação do TARGET2 e aos requisitos de segurança no ponto terminal aplicáveis aos prestadores de serviços da rede TARGET2 e informar o banco central pertinente do Eurosistema das medidas de prevenção ou de gestão de crises a que estejam sujeitos; e *d)* esclarecer e atualizar alguns outros aspetos da Orientação BCE/2012/27.

(2) As alterações introduzidas na Orientação BCE/2012/27 que afetam os termos e condições do TARGET2-ECB devem ser refletidas na Decisão BCE/2007/7 ([3]).

(3) É necessário, por conseguinte, alterar em conformidade a Decisão BCE/2007/7,

ADOTOU A PRESENTE DECISÃO:

Artigo 1.°

Alterações

Os anexos I, II e III da Decisão BCE/2007/7 são alterados de acordo com o anexo da presente decisão.

([1]) Orientação (UE) 2019/1849, de 4 de outubro de 2019, que altera a Orientação BCE/2012/27 relativa a um sistema de transferências automáticas transeuropeias de liquidação por bruto em tempo real (TARGET2) (BCE/2019/30) (ver página 64 do presente Jornal Oficial).

([2]) Orientação BCE/2012/27, de 5 de dezembro de 2012, relativa a um sistema de transferências automáticas transeuropeias de liquidação por bruto em tempo real (TARGET2) (JO L 30 de 30.1.2013, p. 1).

([3]) Decisão BCE/2007/7, de 24 de julho de 2007, relativa aos termos e condições do TARGET2-[ECB] (JO L 237 de 8.9.2007, p. 71).

Artigo 2.º

Disposições finais

A presente decisão entra em vigor no dia subsequente ao da sua publicação no *Jornal Oficial da União Europeia*.

A presente decisão é aplicável a partir de 17 de novembro de 2019.

Feito em Frankfurt am Main, em 29 de outubro de 2019.

O Presidente do BCE
Mario DRAGHI

ANEXO

Os anexos I, II e III da Decisão BCE/2007/7 são alterados do seguinte modo:

1. O anexo I é alterado do seguinte modo:

a) No artigo 1.°, a definição de «Contingency Module» é suprimida;

b) No artigo 1.°, a definição de «Information and Control Module (ICM)» passa a ter a seguinte redação:

«—" 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) No artigo 1.°, é aditada a seguinte definição:

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

d) O artigo 9.°, n.° 8, passa a ter a seguinte redação:

«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) O artigo 21.° passa a ter a seguinte redação:

«*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) O artigo 22.° passa a ter a seguinte redação:

i) o n.° 3 passa a ter a seguinte redação:

«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) é aditado o n.° 4 seguinte:

«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) No artigo 23.°, n.° 1, a alínea (c) passa a ter a seguinte redação:

«(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) No artigo 32.°, n.° 2, a alínea (c) passa a ter a seguinte redação:

«(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) O apêndice I é alterado do seguinte modo:

i) a quinta linha do quadro constante do n.° 2, ponto (1), passa a ter a seguinte redação:

«MT 202COV	Mandatory	Cover payment»;

ii) o n.° 8, ponto (7) passa a ter a seguinte redação:

«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) No apêndice III, na secção «Terms of reference for country opinions for non-EEA participants in TARGET2», o ponto 3.2. intitulado «General insolvency issues» passa a ter a seguinte redação:

«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) No apêndice IV, o n.° 6 é alterado do seguinte modo:

i) as alíneas (a) e (b) passam a ter a seguinte redação:

«(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) as alíneas (d) e (e) passam a ter a seguinte redacção:

«(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) No apêndice IV, o n.° 7, alíneas (a) e (b), passa a ter a seguinte redação:

«(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) No apêndice VI, as terceira e quarta linhas do quadro constante do n.° 5 passam a ter a seguinte redação:

«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. O anexo II é alterado do seguinte modo:

(a) O artigo 1.° é alterado do seguinte modo:

a definição de 'Information and Control Module (ICM)' passa a ter a seguinte redação:

«—« 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,»;»;

é aditada a seguinte definição:

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

b) O artigo 10.°, n.° 9. passa a ter a seguinte redação:

«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) O artigo 18.°, n.° 3, passa a ter a seguinte redação:

«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) O artigo 27.°, n.° 2, alínea c), passa a ter a seguinte redação:

«(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) No apêndice III, na secção «Terms of reference for country opinions for non-EEA T2S DCA holders in TARGET2», o ponto 3.2.a intitulado «General insolvency issues» passa a ter a seguinte redação:

«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) No apêndice VI, as terceira e quarta linhas do quadro passam a ter a seguinte redação:

«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. O anexo III é alterado do seguinte modo:

a) O artigo 14.°, n.° 8, passa a ter a seguinte redação:

«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) O artigo 21.° é alterado do seguinte modo:

i) o n.° 5 passa a ter a seguinte redação:

«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) é aditado o n.° 6 seguinte:

«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) O artigo 26.°, n.° 4, passa a ter a seguinte redação:

«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) O artigo 29.°, n.° 3, alínea c), passa a ter a seguinte redação:

«(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) No apêndice II, na secção «Terms of reference for country opinions for non-EEA TIPS DCA holders in TARGET2», o ponto 3.2.a intitulado «General insolvency issues» passa a ter a seguinte redação:

«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].»;