DECIZIA (UE) 2019/1848 A BĂNCII CENTRALE EUROPENE

din 29 octombrie 2019

de modificare a Deciziei BCE/2007/7 privind termenii și condițiile TARGET2-ECB (BCE/2019/32)

COMITETUL EXECUTIV AL BĂNCII CENTRALE EUROPENE,

având în vedere Tratatul privind funcționarea Uniunii Europene, în special articolul 127 alineatul (2) prima și a patra liniuță,

având în vedere Statutul Sistemului European al Băncilor Centrale și al Băncii Centrale Europene, în special articolul 11.6 și articolele 17, 22 și 23,

întrucât:

(1) La 4 octombrie 2019, Consiliul guvernatorilor a modificat ([1]) Orientarea BCE/2012/27 ([2]), pentru: (a) a implementa o nouă funcționalitate a SSP, care să permită procesarea plăților foarte critice și critice în situații de urgență, la care băncile centrale din Eurosistem trebuie să adere; (b) a clarifica condițiile în care întreprinderile de investiții pot participa la TARGET2, inclusiv cerința furnizării unei opinii juridice privind firmele de investiții stabilite în Spațiul Economic European (SEE) și solicitarea pentru participare directă la un sistem component al TARGET2; (c) a clarifica faptul că participanții la sistemele componente ale TARGET2 trebuie să respecte cerința TARGET2 privind autocertificarea și cerințele de securitate de punct final (end point security) ale furnizorilor de servicii de rețea TARGET2 și să informeze banca centrală din Eurosistem relevantă cu privire la orice măsuri de prevenire sau de gestionare a crizelor la care sunt supuși; și (d) a clarifica și actualiza anumite alte aspecte ale Orientării BCE/2012/27.

(2) Modificările aduse Orientării BCE/2012/27 care afectează termenii și condițiile TARGET2-ECB ar trebui reflectate în Decizia BCE/2007/7 ([3]).

(3) Prin urmare, Decizia BCE/2007/7 ar trebui modificată în mod corespunzător,

ADOPTĂ PREZENTA DECIZIE:

Articolul 1

Modificări

Anexele I, II și III la Decizia BCE/2007/7 se modifică în conformitate cu anexa la prezenta decizie.

([1]) Orientarea (UE) 2019/1849 a Băncii Centrale Europene din 4 octombrie 2019 de modificare a Orientării BCE/2012/27 privind sistemul transeuropean automat de transfer rapid cu decontare pe bază brută în timp real (TARGET2) (BCE/2019/30) (a se vedea pagina 64 din prezentul Jurnal Oficial).

([2]) Orientarea BCE/2012/27 din 5 decembrie 2012 privind sistemul transeuropean automat de transfer rapid cu decontare pe bază brută în timp real (TARGET2) (JO L 30 30.1.2013, p. 1).

([3]) Decizia BCE/2007/7 din 24 iulie 2007 privind termenii și condițiile TARGET2-ECB (JO L 237, 8.9.2007, p. 71).

Articolul 2

Dispoziții finale

Prezenta decizie intră în vigoare în ziua următoare datei publicării sale în *Jurnalul Oficial al Uniunii Europene*.

Se aplică de la 17 noiembrie 2019.

Adoptată la Frankfurt pe Main, 29 octombrie 2019.

Președintele BCE
Mario DRAGHI

ANEXĂ

Anexele I, II și III la Decizia BCE/2007/7 se modifică după cum urmează:

1. Anexa I se modifică după cum urmează:

(a) la articolul 1, se elimină definiția modulului pentru situații de urgență;

(b) la articolul 1, definiția „modulului informații și control" se înlocuiește cu următorul text:

„—' 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) la articolul 1, se adaugă următoarea definiție:

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

(d) articolul 9 alineatul (8) se înlocuiește cu următorul text:

„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, 12.6.2014, p. 190).";

(e) articolul 21 se înlocuiește cu următorul text:

„*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) articolul 22 se modifică după cum urmează:

(i) alineatul (3) se înlocuiește cu următorul text:

„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) se adaugă următorul alineat (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) la articolul 23 alineatul (1), litera (c) se înlocuiește cu următorul text:

„(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) la articolul 32 alineatul (2), litera (c) se înlocuiește cu următorul text:

„(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) apendicele I se modifică după cum urmează:

(i) rândul 5 al tabelului de la punctul 2 subpunctul 1 se înlocuiește cu următorul text:

„MT 202COV	Mandatory	Cover payment";

(ii) la punctul 8, subpunctul 7 se înlocuiește cu următorul text:

„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) în apendicele III, în secțiunea „Termeni de referință pentru opiniile juridice referitoare la țară pentru participanții la TARGET2 din afara SEE", paragraful 3.2 numit „Aspecte generale privind insolvența" se înlocuiește cu următorul text:

„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) în apendicele IV, alineatul (6) se modifică după cum urmează:

(i) literele (a) și (b) se înlocuiesc cu următorul text:

„(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) literele (d) și (e) se înlocuiesc cu următorul text:

„(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) în apendicele IV, alineatul (7) literele (a), (b) și (c) se înlocuiesc cu următorul text:

„(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) în apendicele VI, rândurile trei și patru ale tabelului de la punctul 5 se înlocuiesc cu următorul text:

„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. Anexa II se modifică după cum urmează:

(a) articolul 1 se modifică după cum urmează:

(i) definiția „modulului informații și control" se înlocuiește cu următorul text:

„—' 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) se adaugă următoarea definiție:

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

(b) articolul 10 alineatul (9) se înlocuiește cu următorul text:

„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) articolul 18 alineatul (3) se înlocuiește cu următorul text:

„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) la articolul 27 alineatul (2), litera (c) se înlocuiește cu următorul text:

„(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) în apendicele III, în secțiunea „Termeni de referință pentru opiniile juridice referitoare la țară pentru participanții la TARGET2 din afara SEE", paragraful 3.2 numit „Aspecte generale privind insolvența" se înlocuiește cu următorul text:

„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) în apendicele VI, rândurile trei și patru ale tabelului se înlocuiesc cu următorul text:

„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. Anexa III se modifică după cum urmează:

(a) articolul 14 alineatul (8) se înlocuiește cu următorul text:

„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) articolul 21 se modifică după cum urmează:

(i) alineatul (5) se înlocuiește cu următorul text:

„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) se adaugă următorul alineat (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) articolul 26 alineatul (4) se înlocuiește cu următorul text:

„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) la articolul 29 alineatul (3), litera (c) se înlocuiește cu următorul text:

„(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) în apendicele II, în secțiunea „Termeni de referință pentru opiniile juridice referitoare la țară pentru participanții la TARGET2 din afara SEE", paragraful 3.2 numit „Aspecte generale privind insolvența" se înlocuiește cu următorul text:

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