

DECISIÓN (UE) 2019/1848 DEL BANCO CENTRAL EUROPEO**de 29 de octubre de 2019****por la que se modifica la Decisión BCE/2007/7 relativa a las condiciones de TARGET2-ECB (BCE/2019/32)**

EL COMITÉ EJECUTIVO DEL BANCO CENTRAL EUROPEO,

Visto el Tratado de Funcionamiento de la Unión Europea, en particular el artículo 127, apartado 2, guiones primero y cuarto,

Vistos los Estatutos del Sistema Europeo de Bancos Centrales y del Banco Central Europeo, en particular los artículos 11.6, 17, 22 y 23,

Considerando lo siguiente:

- (1) El 4 de octubre de 2019 el Consejo de Gobierno modificó ⁽¹⁾ la Orientación BCE/2012/27 ⁽²⁾ a fin de: a) crear una nueva funcionalidad de la plataforma compartida única que permite procesar órdenes de pago muy críticas y críticas en situaciones de contingencia y a la cual deben adherirse los bancos centrales del Eurosistema; b) aclarar con qué condiciones pueden participar en TARGET2 las empresas de servicios de inversión, incluido el requisito de un dictamen jurídico para las empresas de esta clase que estén establecidas fuera del Espacio Económico Europeo (EEE) y que soliciten participar directamente en un sistema integrante de TARGET2; c) aclarar que los participantes en los sistemas integrantes de TARGET2 deben cumplir el requisito de autocertificación de TARGET2 y los requisitos de seguridad de punto final de los proveedores del servicio de red de TARGET2, e informar al banco central pertinente del Eurosistema de cualesquiera medidas de prevención o gestión de crisis a las que estén sujetos, y d) aclarar y actualizar algunos otros aspectos de la Orientación BCE/2012/27.
- (2) Las modificaciones de la Orientación BCE/2012/27 que afecten a las condiciones de TARGET2-ECB deben reflejarse en la Decisión BCE/2007/7 ⁽³⁾.
- (3) Debe modificarse en consecuencia la Decisión BCE/2007/7.

HA ADOPTADO LA PRESENTE DECISIÓN:

Artículo 1

Modificaciones

Los anexos I, II y III de la Decisión BCE/2007/7 se modifican con arreglo al anexo de la presente Decisión.

⁽¹⁾ Orientación (UE) 2019/1849, de 4 de octubre de 2019, por la que se modifica la Orientación BCE/2012/27 sobre el sistema automatizado transeuropeo de transferencia urgente para la liquidación bruta en tiempo real (TARGET2) (BCE/2019/30) (véase la página 64 del presente Diario Oficial).

⁽²⁾ Orientación BCE/2012/27, de 5 de diciembre de 2012, sobre el sistema automatizado transeuropeo de transferencia urgente para la liquidación bruta en tiempo real (TARGET2) (DO L 30 de 30.1.2013, p. 1).

⁽³⁾ Decisión BCE/2007/7, de 24 de julio de 2007, relativa a las condiciones de TARGET2-ECB (DO L 237 de 8.9.2007, p. 71).

*Artículo 2***Disposiciones finales**

La presente Decisión entrará en vigor el día siguiente al de su publicación en el *Diario Oficial de la Unión Europea*.

Será de aplicación a partir del 17 de noviembre de 2019.

Hecho en Fráncfort del Meno, el 29 de octubre de 2019.

El presidente del BCE
Mario DRAGHI

ANEXO

Los anexos I, II y III de la Decisión BCE/2007/7 se modifican como sigue:

1) El anexo I se modifica como sigue:

a) en el artículo 1, se suprime la definición de «Contingency Module»;

b) en el artículo 1, la definición de «Information and Control Module (ICM)» se sustituye por la siguiente:

«—“ 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) en el artículo 1, se añade la definición siguiente:

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

d) en el artículo 9, el apartado 8 se sustituye por el siguiente:

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 (DO L 173 de 12.6.2014, p. 190).»;

e) el artículo 21 se sustituye por el siguiente:

«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) el artículo 22 se modifica como sigue:

i) el apartado 3 se sustituye por el siguiente:

«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 añade el apartado 4 siguiente:

«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) en el artículo 23, apartado 1, la letra c) se sustituye por la siguiente:

«(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) en el artículo 32, apartado 2, la letra c) se sustituye por la siguiente:

«(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) el apéndice I se modifica como sigue:

i) en el apartado 2, punto 1, la quinta línea del cuadro se sustituye por la siguiente:

«MT 202COV	Mandatory	Cover payment»
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ii) el apartado 8, punto 7, se sustituye por el siguiente:

«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) en el apéndice III, bajo el título «Terms of reference for country opinions for non-EEA participants in TARGET2», el apartado 3.2, titulado «General insolvency issues», se sustituye por el siguiente:

«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 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) en el apéndice IV, el apartado 6 se modifica como sigue:

i) las letras a) y b) se sustituyen por las siguientes:

«(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) las letras d) y e) se sustituyen por las siguientes:

- «(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 correo electrónico, 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) en el apéndice IV, las letras a) y b) del apartado 7 se sustituyen por las siguientes:

- «(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) en el apéndice VI, las líneas tercera y cuarta del cuadro del apartado 5 se sustituyen por las siguientes:

«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. El anexo II se modifica como sigue:

a) el artículo 1 se modifica como sigue:

i) la definición de «Information and Control Module (ICM)» se sustituye por la siguiente:/

«—“ 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 añade la definición siguiente:

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

b) en el artículo 10, el apartado 9 se sustituye por el siguiente:

«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) en el artículo 18, el apartado 3 se sustituye por el siguiente:

«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) en el artículo 27, apartado 2, la letra c) se sustituye por la siguiente:

«(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) en el apéndice III, bajo el título «Terms of reference for country opinions for non-EEA T2S DCA holders in TARGET2», el apartado 3.2, titulado «General insolvency issues», se sustituye por el siguiente:

«3.2. General insolvency and crisis management issues

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').

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) en el apéndice VI, las líneas tercera y cuarta del cuadro se sustituyen por las siguientes:

«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. El anexo III se modifica como sigue:

- a) en el artículo 14, el apartado 8 se sustituye por el siguiente:

«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) el artículo 21 se modifica como sigue:

- i) el apartado 5 se sustituye por el siguiente:

«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 añade el apartado 6 siguiente:

«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) en el artículo 26, el apartado 4 se sustituye por el siguiente:

«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) en el artículo 29, apartado 3, la letra c) se sustituye por la siguiente:

«(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) en el apéndice II, bajo el título «Terms of reference for country opinions for non-EEA TIPS DCA holders in TARGET2», el apartado 3.2, titulado «General insolvency issues», se sustituye por el siguiente:

«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]».
