Decision (EU) 2019/1848 of the European Central Bank of 29 October 2019 amending Decision ECB/2007/7 concerning the terms and conditions of TARGET2-ECB (ECB/2019/32)

DECISION (EU) 2019/1848 OF THE EUROPEAN CENTRAL BANK

of 29 October 2019

amending Decision ECB/2007/7 concerning the terms and conditions of TARGET2-ECB (ECB/2019/32)

THE EXECUTIVE BOARD OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first and fourth indents of Article 127(2) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 11.6 and Articles 17, 22 and 23 thereof,

Whereas:

(1) On 4 October 2019, the Governing Council amended[(1)] Guideline ECB/2012/27[(2)], in order to: (a) introduce a new SSP functionality, enabling the processing of very critical and critical payments in a contingency, to which Eurosystem central banks must adhere; (b) clarify the conditions under which investment firms may participate in TARGET2, including the requirement for a legal opinion regarding investment firms established outside the European Economic Area (EEA) and applying for direct participation in a TARGET2 component system; (c) clarify that participants in TARGET2 component systems must adhere to the TARGET2 self-certification requirement and to the endpoint security requirements of TARGET2 network service providers, and inform the relevant Eurosystem central bank of any crisis prevention or management measures to which they are subject; and (d) clarify and update certain other aspects of Guideline ECB/2012/27.

(2) Amendments made to Guideline ECB/2012/27 which affect the terms and conditions of TARGET2-ECB should be reflected in Decision ECB/2007/7[(3)].

(3) Therefore, Decision ECB/2007/7 should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Amendments

Annexes I, II and III to Decision ECB/2007/7 are amended in accordance with the Annex to this Decision.

Changes to legislation: *There are currently no known outstanding effects for the Decision (EU) 2019/1848 of the European Central Bank. (See end of Document for details)*

Article 2

Final provisions

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 17 November 2019.

Done at Frankfurt am Main, 29 October 2019.

The President of the ECB

Mario DRAGHI

***Changes to legislation:** There are currently no known outstanding effects for the Decision (EU) 2019/1848 of the European Central Bank. (See end of Document for details)*

ANNEX

Annexes I, II and III to Decision ECB/2007/7 are amended as follows:

1. Annex I is amended as follows:

(a) in Article 1, the definition of Contingency Module is deleted;

(b) in Article 1, the definition of 'Information and Control Module (ICM)' is replaced by the following:

— "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) in Article 1, the following definition is added:

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

(d) Article 9(8) is replaced by the following:

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[(4)] or any other equivalent applicable legislation.;

(e) Article 21 is replaced by the following:

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) Article 22 is amended as follows:

(i) paragraph 3 is replaced by the following:

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) the following paragraph 4 is added:

Changes to legislation: *There are currently no known outstanding effects for the Decision (EU) 2019/1848 of the European Central Bank. (See end of Document for details)*

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 Article 23(1), point (c) is replaced by the following:

(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 Article 32(2), point (c) is replaced by the following:

(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) Appendix I is amended as follows:

(i) the fifth line of the table in paragraph 2(1) is replaced by the following:

MT 202COV	Mandatory	Cover payment;

(ii) paragraph 8(7) is replaced by the following:

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 Appendix III, under the heading 'Terms of reference for country opinions for non-EEA participants in TARGET2', paragraph 3.2 entitled 'General insolvency issues' is replaced by the following:

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").

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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 Appendix IV, paragraph 6 is amended as follows:

(i) points (a) and (b) are replaced by the following:

(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) points (d) and (e) are replaced by the following:

(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.