

DECISIONE (UE) 2019/1848 DELLA BANCA CENTRALE EUROPEA**del 29 ottobre 2019****che modifica la Decisione BCE/2007/7 relativa ai termini e alle condizioni di TARGET2-BCE (BCE/2019/32)**

Il Comitato esecutivo della Banca centrale europea

visto il Trattato sul funzionamento dell'Unione europea, in particolare il primo e quarto trattino dell'articolo 127, paragrafo 2,

visto lo Statuto del Sistema europeo di banche centrali e della Banca centrale europea, in particolare l'articolo 11.6 e gli articoli 17, 22 e 23,

considerando quanto segue:

- (1) In data 4 ottobre 2019, il Consiglio direttivo ha modificato ⁽¹⁾ l'indirizzo BCE/2012/27 ⁽²⁾, al fine di: a) introdurre una nuova funzionalità della SSP che rende possibile l'elaborazione di pagamenti critici e molto critici in situazioni di contingency alla quale le banche centrali dell'Eurosistema devono aderire; b) chiarire le condizioni alle quali le imprese di investimento possono partecipare a TARGET2, compreso il requisito relativo a un parere legale in merito alle imprese d'investimento non insediate nello Spazio economico europeo (SEE) e che richiedono di partecipare direttamente a un sistema componente di TARGET2; c) chiarire che i partecipanti ai sistemi componenti di TARGET2 devono aderire al requisito di autocertificazione per TARGET2 e ai requisiti di sicurezza del punto terminale (endpoint security) dei fornitori dei servizi di rete TARGET 2 e informare la pertinente banca centrale dell'Eurosistema di eventuali misure di prevenzione o di gestione delle crisi cui sono soggetti; e d) chiarire e aggiornare taluni altri aspetti dell'indirizzo BCE/2012/27.
- (2) Le modifiche all'indirizzo BCE/2012/27, che incidono sui termini e le condizioni di TARGET2-BCE dovrebbero essere rispecchiati nella Decisione BCE/2007/7 della Banca centrale europea ⁽³⁾.
- (3) Pertanto, è opportuno modificare la decisione BCE/2007/7 di conseguenza,

HA ADOTTATO LA PRESENTE DECISIONE:

*Articolo 1***Modifiche**

Gli allegati I, II e III della decisione BCE/2007/7 sono modificati in conformità all'allegato alla presente decisione.

⁽¹⁾ Indirizzo (UE) 2019/1849, del 4 ottobre 2019, che modifica l'Indirizzo BCE/2012/27 relativo ad un sistema di trasferimento espresso transeuropeo automatizzato di regolamento lordo in tempo reale (TARGET2) (BCE/2019/30) (cfr. pag. 64 della presente Gazzetta ufficiale).

⁽²⁾ Indirizzo BCE/2012/27 della Banca centrale europea, del 5 dicembre 2012, relativo ad un sistema di trasferimento espresso transeuropeo automatizzato di regolamento lordo in tempo reale (TARGET2) (GU L 30 del 30.1.2013, pag. 1).

⁽³⁾ Decisione ECB/2007/7, del 24 luglio 2007, relativa ai termini e alle condizioni di TARGET2-BCE (GU L 237 dell'8.9.2007, pag. 71).

*Articolo 2***Disposizioni finali**

La presente decisione entra in vigore il giorno successivo alla pubblicazione nella *Gazzetta ufficiale dell'Unione europea*.

Si applica a decorrere dal 17 novembre 2019.

Fatto a Francoforte sul Meno, il 29 ottobre 2019.

Il Presidente della BCE
Mario DRAGHI

ALLEGATO

Gli allegati I, II e III della decisione BCE/2007/7 sono modificati come segue:

1. L'allegato I è modificato come segue:

- a) all'articolo 1, la definizione di Contingency Module (modulo di contingency) è soppressa;
- b) all'articolo 1, la definizione di 'Information and Control Module (ICM)' (modulo di informazione e controllo) è sostituita dalla seguente:

“—“ 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) all'articolo 1 è inserita la seguente definizione:

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

- d) l'articolo 9, paragrafo 8, è sostituito dal seguente:

«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) l'articolo 21 è sostituito dal seguente:

«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) l'articolo 22 è modificato come segue:

- i) il paragrafo 3 è sostituito dal seguente:

«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) è aggiunto il seguente paragrafo 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) all'articolo 23, paragrafo 1, la lettera c) è sostituita dalla seguente:

«(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) all'articolo 32, paragrafo 2, la lettera c) è sostituita dalla seguente:

«(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) l'appendice I è modificata come segue:

(i) la quinta riga della tavola nel punto 2, paragrafo 1, è sostituita dalla seguente:

«MT 202COV	Mandatory	Cover payment»;
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(ii) il sottoparagrafo 7 del paragrafo 8 è sostituito dal seguente:

«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) nell'appendice III, alla rubrica 'Terms of reference for country opinions for non-EEA participants in TARGET2' (Fac-simile per i country opinion dei partecipanti a TARGET2 non rientranti nel SEE), il paragrafo 3.2 intitolato 'General insolvency issues' è sostituito dal seguente:

«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) nell'appendice IV il paragrafo 6 è modificato come segue:

i) le lettere a) e b) sono sostituite dalle seguenti:

«(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) le lettere d) ed e) sono sostituite dalle seguenti:

«(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) nell'appendice IV, nel paragrafo 7, le lettere a) e b) sono sostituite dalle seguenti:

«(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) nell'appendice VI, la terza e la quarta riga della tavola nel punto 5 sono sostituite dalle seguenti:

«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. l'allegato II è modificato come segue:

(a) l'articolo 1 è modificato come segue:

i) la definizione di 'Information and Control Module (ICM)' è sostituita dalla seguente:

‘—“ 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) è aggiunta la seguente definizione:

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

(b) l'articolo 10, paragrafo 9, è sostituito dal seguente:

«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) l'articolo 18, paragrafo 3, è sostituito dal seguente:

«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) all'articolo 27, paragrafo 2, la lettera c) è sostituita dalla seguente:

«(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) nell'appendice III, alla rubrica 'Terms of reference for country opinions for non-EEA T2S DCA holders in TARGET2' (Facsimile per i country opinion dei partecipanti a TARGET2 non rientranti nel SEE), il paragrafo 3.2 intitolato 'General insolvency issues' è sostituito dal seguente:

«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) nell'appendice VI, la terza e la quarta riga della tavola sono sostituite dalle seguenti:

«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. l'allegato III è modificato come segue:

(a) L'articolo 14, paragrafo 8, è sostituito dal seguente:

«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) l'articolo 21 è modificato come segue:

(i) il paragrafo 5 è sostituito dal seguente:

«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) è aggiunto il seguente paragrafo 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) l'articolo 26, paragrafo 4, è sostituito dal seguente:

«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) all'articolo 29, paragrafo 3, la lettera c) è sostituita dalla seguente:

«(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) nell'appendice II, alla rubrica 'Terms of reference for country opinions for non-EEA TIPS DCA holders in TARGET2' (Facsimile per i country opinion dei titolari di conti T2S DCA non rientranti nel SEE), il paragrafo 3.2 intitolato 'General insolvency issues' è sostituito dal seguente:

«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].».
