

DÉCISIONS

DÉCISION (UE) 2016/821 DE LA BANQUE CENTRALE EUROPÉENNE

du 26 avril 2016

modifiant la décision BCE/2007/7 relative aux modalités de TARGET2-BCE (BCE/2016/9)

LE DIRECTOIRE DE LA BANQUE CENTRALE EUROPÉENNE,

vu le traité sur le fonctionnement de l'Union européenne, et notamment son article 127, paragraphe 2, premier et quatrième tirets,

vu les statuts du Système européen de banques centrales et de la Banque centrale européenne, et notamment leur article 3.1 et leurs articles 17, 18 et 22,

considérant ce qui suit:

- (1) L'orientation (UE) 2016/579 de la Banque centrale européenne (BCE/2016/6) ⁽¹⁾ a modifié l'orientation BCE/2012/27 ⁽²⁾ afin de préciser le dispositif par lequel les banques centrales nationales (BCN) fournissent des services d'autoconstitution de garanties et de règlement en monnaie banque centrale. Ces précisions font suite aux modifications introduites par l'orientation (UE) 2015/930 de la Banque centrale européenne (BCE/2015/15) ⁽³⁾ qui modifiait l'orientation BCE/2012/27 afin de mettre en place les comptes espèces dédiés (*Dedicated Cash Accounts* — DCA) et les services d'autoconstitution de garantie pour le fonctionnement de TARGET2-Titres (*TARGET2-Securities* — T2S).
- (2) L'orientation (UE) 2016/579 (BCE/2016/6) a également apporté des modifications à l'orientation BCE/2012/27 sur un certain nombre de problèmes de fond, notamment sur le traitement des participants à TARGET2 faisant l'objet d'une procédure de résolution dans la perspective de leur participation à TARGET2.
- (3) Afin de refléter les modifications susmentionnées de l'orientation BCE/2012/27, il convient de modifier en conséquence la décision BCE/2007/7 ⁽⁴⁾ qui porte sur les modalités de TARGET2-BCE,

A ADOPTÉ LA PRÉSENTE DÉCISION:

Article premier

Modifications

Les annexes I et II de la décision BCE/2007/7 sont modifiées conformément à l'annexe de la présente décision.

⁽¹⁾ Orientation (UE) 2016/579 de la Banque centrale européenne du 16 mars 2016 modifiant l'orientation BCE/2012/27 relative au système de transferts express automatisés transeuropéens à règlement brut en temps réel (TARGET2) (BCE/2016/6) (JO L 99 du 15.4.2016, p. 21).

⁽²⁾ Orientation BCE/2012/27 de la Banque centrale européenne du 5 décembre 2012 relative au système de transferts express automatisés transeuropéens à règlement brut en temps réel (TARGET2) (JO L 30 du 30.1.2013, p. 1).

⁽³⁾ Orientation (UE) 2015/930 de la Banque centrale européenne du 2 avril 2015 modifiant l'orientation BCE/2012/27 relative au système de transferts express automatisés transeuropéens à règlement brut en temps réel (TARGET2) (BCE/2015/15) (JO L 155 du 19.6.2015, p. 38).

⁽⁴⁾ Décision BCE/2007/7 de la Banque centrale européenne du 24 juillet 2007 relative aux modalités de TARGET2-BCE (JO L 237 du 8.9.2007, p. 71).

*Article 2***Entrée en vigueur**

La présente décision entre en vigueur le 16 mai 2016.

Fait à Francfort-sur-le-Main, le 26 avril 2016.

Le président de la BCE
Mario DRAGHI

ANNEXE

1. L'annexe I de la décision BCE/2007/7 est modifiée comme suit:

a) À l'article 1^{er}, la définition suivante est remplacée:

«— "direct debit authorisation" means a general instruction by a payer to its CB entitling and obliging that CB to debit the payer's account upon receipt of a valid direct debit instruction from a payee.».

b) L'article 28 est modifié comme suit:

i) la phrase suivante est ajoutée à la fin du paragraphe 1:

«For the purposes of this paragraph, the taking of resolution action within the meaning of Directive 2014/59/EU of the European Parliament and of the Council (*) against a PM account holder shall not automatically qualify as the opening of insolvency proceedings.

(*) 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).»;

ii) le paragraphe 4, point a), est remplacé par le texte suivant:

«(a) In the event that the ECB suspends or terminates a PM account holder's participation in TARGET2-ECB under paragraph 1 or 2, the ECB shall immediately inform, by means of an ICM broadcast message or a T2S broadcast message, that PM account holder, other CBs and PM account holders and DCA 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 and DCA holder that receives the message.»;

iii) le paragraphe 4, point b), est supprimé.

c) À l'article 32, le paragraphe 1 est remplacé par le texte suivant:

«1. The ECB shall keep confidential all sensitive or secret information, including when such information relates to payment, technical or organisational information belonging to the participant, participants from the same group or the participant's customers, unless the participant or its customer has given its written consent to disclose.»

d) À l'appendice II, le paragraphe 3, point a) ii), est remplacé par le texte suivant:

«(ii) interest compensation shall be determined by applying a reference rate to be fixed from day to day. This reference rate shall be the lower of the euro overnight index average (EONIA) rate and the marginal lending rate. The reference rate shall be applied to the amount of the payment order not settled as a result of the technical malfunction of TARGET2 for each day in the period from the date of the actual or, in relation to payment orders referred to in paragraph 2(b)(ii), intended submission of the payment order until the date on which the payment order was or could have been successfully settled. Any interest or charges resulting from the placing of any non-settled payment orders on deposit with the Eurosystem shall be deducted from, or charged to, the amount of any compensation, as the case may be; and».

e) À l'appendice IV, le paragraphe 4 est modifié comme suit:

i) le point b) est remplacé par le texte suivant:

«(b) In the event that the operation of the SSP or the T2S Platform, as referred to in Annex II, is relocated from one region (Region 1) to another region (Region 2), the participants shall endeavour to reconcile their positions up to the point of the failure or the occurrence of the abnormal external events and provide to the ECB all relevant information in this respect.»;

ii) le point c) suivant est ajouté:

«(c) Where a PM to DCA liquidity transfer order is debited on the participant's PM account on the SSP in Region 1, but, after reconciliation, is not shown as debited on the SSP in Region 2, the CB responsible for the participant shall debit the participant's PM account in Region 2 to return the participant's PM account balance to the level it had prior to the relocation.»

f) À l'appendice IV, paragraphe 8, le point c) est remplacé par le texte suivant:

«(c) The ECB may require that the participants participate in regular or ad hoc testing of business continuity and contingency processing measures, training or any other preventative arrangements, as deemed necessary by the ECB. Any costs incurred by the participants as a result of such testing or other arrangements shall be borne solely by the participants.»

g) À l'appendice VI, le texte suivant est ajouté:

«15. An ancillary system using the ASI or the Participant Interface, irrespective of the number of any accounts it may hold with the ASCB and/or the SCB, shall be subject to a fee schedule consisting of the following elements:

(a) A fixed monthly fee of EUR 1 000 to be charged to each ancillary system (Fixed Fee I).

(b) A second monthly fixed fee of between EUR 417 and EUR 8 334, in proportion to the underlying gross value of the ancillary system's euro cash settlement transactions (Fixed Fee II):

Band	From (EUR million/day)	To (EUR million/day)	Annual fee	Monthly fee
1	0	below 1 000	EUR 5 000	EUR 417
2	1 000	below 2 500	EUR 10 000	EUR 833
3	2 500	below 5 000	EUR 20 000	EUR 1 667
4	5 000	below 10 000	EUR 30 000	EUR 2 500
5	10 000	below 50 000	EUR 40 000	EUR 3 333
6	50 000	below 500 000	EUR 50 000	EUR 4 167
7	Above 500 000	—	EUR 100 000	EUR 8 334

The gross value of the ancillary system's euro cash settlement transactions shall be calculated by the ASCB once a year on the basis of such gross value during the previous year and the calculated gross value shall be applied for calculating the fee from 1 January of each calendar year. The gross value shall exclude transactions settled on DCAs.

(c) A transaction fee calculated on the same basis as the schedule established for PM account holders, in line with paragraph 1(b). The ancillary system may choose one of the two options: either to pay a flat EUR 0,80 fee per payment instruction (Option A) or to pay a fee calculated on a degressive basis (Option B), subject to the following modifications:

(i) for Option B, the limits of the bands relating to volume of payment instructions are divided by two, and

(ii) a monthly fixed fee of EUR 150 (under Option A) or EUR 1 875 (under Option B) shall be charged in addition to Fixed Fee I and Fixed Fee II.

- (d) In addition to the fees set out in points (a) to (c), an ancillary system using the ASI or the Participant Interface shall also be subject to the following fees:
- (i) If the ancillary system makes use of the TARGET2 value-added services for T2S, the monthly fee for the use of the value added services shall be EUR 50 for those systems that have chosen option A and EUR 625 for those systems that have chosen option B. This fee shall be charged for each account held by the ancillary system that uses the services;
 - (ii) If the ancillary system holds a Main PM account linked to one or more DCAs, the monthly fee shall be EUR 250 for each linked DCA; and
 - (iii) The ancillary system as Main PM account holder shall be charged the following fees for T2S services connected with the linked DCA(s). These items shall be billed separately:

Tariff items	Price	Explanation
Settlement services		
DCA to DCA liquidity transfer orders	9 euro cent	Per transfer
Intra-balance movement (i.e. blocking, unblocking, reservation of liquidity etc)	6 euro cent	Per transaction
Information services		
A2A reports	0,4 euro cent	Per business item in any A2A report generated
A2A queries	0,7 euro cent	Per queried business item in any A2A query generated
U2A queries	10 euro cent	Per executed search function
U2A queries downloaded	0,7 euro cent	Per queried business item in any U2A query generated and downloaded
Messages bundled into a file	0,4 euro cent	Per message in a file
Transmissions	1,2 euro cent	Per transmission»

2. L'annexe II de la décision BCE/2007/7 est modifiée comme suit:

a) À l'article 1^{er}, les définitions suivantes sont remplacées:

«— "auto-collateralisation" means intraday credit granted by the euro area national central bank (NCB) in central bank money triggered when a DCA holder has insufficient funds to settle securities transactions, whereby such intraday credit is collateralised either with the securities being purchased (collateral on flow), or with securities already held by the DCA holder (collateral on stock). An auto collateralisation transaction consists of two distinct transactions, one for the granting of auto-collateralisation and one for its reimbursement. It may also include a third transaction for any eventual relocation of collateral. For the purposes of Article 16, all three transactions are deemed to have been entered into the system and deemed to be irrevocable at the same time as the transaction for the granting of the auto-collateralisation,»;

«— "Main PM account" means the PM account to which a DCA is linked and to which any remaining balance will be automatically repatriated at the end of the day,».

b) Le paragraphe d'introduction de l'article 16, paragraphe 3, est remplacé comme suit:

«An agreement is to be signed between the Eurosystem CBs and the connected NCBs, on the one hand, and all CSDs participating in T2S, on the other hand, on the exchange of information in the event of the insolvency of a participant, and the liability of each of the signatories to the agreement. Two weeks after the ECB has confirmed to all of the agreement's signatories that procedures for the exchange of the abovementioned information have been established and approved by all parties thereto, the rules provided for in paragraph 2 shall be replaced by the following:»;

c) L'article 24 est modifié comme suit:

i) la phrase suivante est ajoutée à la fin du paragraphe 1:

«For the purposes of this paragraph, the taking of resolution action within the meaning of Directive 2014/59/EU against a DCA holder shall not automatically qualify as the opening of insolvency proceedings.»;

ii) au paragraphe 4, le point a) est remplacé par le texte suivant:

«(a) In the event that the ECB suspends or terminates a DCA holder's participation in TARGET2-ECB under paragraph 1 or 2, the ECB shall immediately inform, by means of an ICM broadcast message or a T2S broadcast message, that DCA holder, other CBs and DCA holders and PM account holders in all of the TARGET2 component systems of such suspension or termination. Such a message shall be deemed to have been issued by the home CB of the DCA holder and PM account holder that receives the message.»;

iii) au paragraphe 4, le point b) est supprimé.

d) À l'appendice II, paragraphe 3, le point a) ii) est remplacé par le texte suivant:

«(ii) interest compensation shall be determined by applying a reference rate to be fixed from day to day. This reference rate shall be the lower of the euro overnight index average (EONIA) rate and the marginal lending rate. The reference rate shall be applied to the amount of the payment order not settled as a result of the technical malfunction of TARGET2 for each day in the period from the date of the actual or, in relation to payment orders referred to in paragraph 2(b)(ii), intended submission of the payment order until the date on which the payment order was or could have been successfully settled. Any interest or charges resulting from the placing of any non-settled payment orders on deposit with the Eurosystem shall be deducted from, or charged to, the amount of any compensation, as the case may be; and».

e) À l'appendice IV, paragraphe 7, le point b) est remplacé par le texte suivant:

«(b) The ECB may require that the DCA holders participate in regular or ad hoc testing of business continuity and contingency processing measures, training or any other preventative arrangements, as deemed necessary by the ECB. Any costs incurred by the DCA holders as a result of such testing or other arrangements shall be borne solely by the DCA holders.»

f) L'appendice VI est remplacé par le texte suivant:

«APPENDIX VI

FEE SCHEDULE

Fees for T2S services

The following fees for T2S services connected with DCAs shall be charged to the Main PM account holders:

Tariff items	Price	Explanation
Settlement services		
DCA to DCA liquidity transfer orders	9 euro cent	Per transfer
Intra-balance movement (i.e. blocking, un-blocking, reservation of liquidity etc)	6 euro cent	Per transaction

Tariff items	Price	Explanation
Information services		
A2A reports	0,4 euro cent	Per business item in any A2A report generated
A2A queries	0,7 euro cent	Per queried business item in any A2A query generated
U2A queries	10 euro cent	Per executed search function
U2A queries downloaded	0,7 euro cent	Per queried business item in any U2A query generated and downloaded
Messages bundled into a file	0,4 euro cent	Per message in a file
Transmissions	1,2 euro cent	Per transmission»