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DECISION (EU) 2023/2870 OF THE EUROPEAN CENTRAL BANK

of 7 December 2023

amending Decision (EU) 2019/166 on the Market Infrastructure Board (ECB/2019/3) *(ECB/2023/37)*

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 12.3 thereof,

Having regard to Guideline ECB/2012/13 of the European Central Bank of 18 July 2012 on TARGET2-Securities ([1]),

Whereas:

(1) In the light of experience gained since the inception of the Market Infrastructure Board (MIB), it is necessary to introduce some amendments to its Rules of Procedure. These amendments aim in particular at striking a balance between ensuring the representativeness in the MIB of the overall TARGET services user community and preserving some degree of continuity.

(2) Amendment is also necessary in order to implement the recommendation made by the T2S external examiner to introduce fixed agenda items for the MIB meetings.

(3) Further amendments are necessary, inter alia, to reflect the current working practice of the MIB, including the conferral of a wider role on the Deputy Chairperson, the adaptation of the expected working capacity of MIB members for MIB matters, and the introduction of a reference to the Governance Handbook maintained by the MIB.

(4) Therefore, Decision (EU) 2019/166 of the European Central Bank (ECB/2019/3) ([2]) should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Amendments

Annexes I, II and IV to Decision (EU) 2019/166 (ECB/2019/3) are amended in accordance with the Annex to this Decision.

Article 2

Entry into force

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

Done at Frankfurt am Main, 7 December 2023.

The President of the ECB
Christine LAGARDE

([1]) OJ L 215, 11.8.2012, p. 19.

([2]) Decision (EU) 2019/166 of the European Central Bank of 25 January 2019 on the Market Infrastructure Board and repealing Decision ECB/2012/6 on the establishment of the TARGET2-Securities Board (ECB/2019/3) (OJ L 32, 4.2.2019, p. 14).

ANNEX

Annexes I, II and IV to Decision (EU) 2019/166 (ECB/2019/3) are amended as follows:

1) Annex I is replaced by the following:

'*ANNEX I*

MARKET INFRASTRUCTURE BOARD

MANDATE

INTRODUCTION

The Eurosystem offers market infrastructures, platforms, applications and related services in the fields of cash settlement, securities settlement and collateral management, comprising TARGET services which include T2, T2S and TIPS services as well as, in the future, the ECMS ("Eurosystem infrastructure services").

The Market Infrastructure Board (MIB) is the governance body that supports the Governing Council (the "Governing Council") of the European Central Bank (ECB) in ensuring that Eurosystem infrastructure services are maintained and further developed and that projects concerning Eurosystem infrastructure services ("Eurosystem infrastructure projects" or "projects") are managed, in line with the Treaty objectives of the European System of Central Banks (ESCB), business needs, technological advances, the legal framework applicable to Eurosystem infrastructure services and projects, as well as regulatory and oversight requirements, taking fully into consideration the mandates of the ESCB committees established under Article 9 of the Rules of Procedure of the European Central Bank ([1]). The MIB reports to the ECB decision-making bodies.

This Decision establishes no presumption to the effect that every new market infrastructure project falling within the scope of this Decision's definition of a Eurosystem infrastructure project is automatically to be entrusted to the MIB. Only those projects explicitly entrusted by the Governing Council to the MIB are to be managed by the MIB.

1. Role of the Market Infrastructure Board

The Governing Council hereby entrusts the MIB with the performance of the tasks defined in this mandate.

Without prejudice to its ultimate decision-making power, the Governing Council has entrusted the MIB with the performance of clearly defined tasks, related both to the operation of Eurosystem infrastructure services and to Eurosystem infrastructure projects. The Governing Council, without prejudice to the NCBs' competence under the Statute of the European System of Central Banks and of the European Central Bank, may assign to the MIB further clearly defined tasks, in addition to those stipulated under paragraph 2, which are otherwise within the remit of the Governing Council. In the light of the Governing Council's ultimate competence in relation to Eurosystem infrastructure issues, any of the tasks entrusted to the MIB can still be taken over and performed by the Governing Council.

2. Responsibilities and tasks of the Market Infrastructure Board

2.1. *Preparation of proposals for decision by the Governing Council on Eurosystem infrastructure services and projects*

Without prejudice to the Executive Board's responsibility for preparing the meetings of the Governing Council and for the current business of the ECB, the MIB prepares proposals for the Governing Council to decide upon in the following matters, to the extent that the Governing Council has entrusted the MIB with a specific project/infrastructure, and taking fully into consideration the mandates of the ESCB committees established under Article 9 of the Rules of Procedure of the European Central Bank:

(a) the overall strategy, including the definition of scope of services and service descriptions;

([1]) Decision ECB/2004/2 of the European Central Bank of 19 February 2004 adopting the Rules of Procedure of the European Central Bank (OJ L 80, 18.3.2004, p. 33).

(b) project governance issues;

(c) financial matters, including:

i) the elaboration of the main features of the financial regime (in particular, budget, amount, time period cover, financing) in accordance with the rules of the Committee on Controlling;

ii) regular analysis of the financial risks to which the Eurosystem is exposed;

iii) the management rules for accounts held in the books of the ECB and managed by the MIB on behalf of the Eurosystem;

iv) cost methodology;

v) pricing policy; and

vi) liability regime analysis;

(d) the overall planning;

(e) the legal framework with the national central banks (NCBs) that provide market infrastructure services to or that execute Eurosystem infrastructure projects with the Eurosystem (the “providing NCBs”);

(f) the legal framework with customers, as well as any contractual arrangement or conditions to be signed between the Eurosystem and external stakeholders;

(g) the risk management framework;

(h) service level agreements with relevant parties;

(i) authorisation and prioritisation of change requests and testing/migration strategies;

(j) network connectivity strategies;

(k) crisis management strategies;

(l) cyber resilience and information security strategy and frameworks;

(m) liability and other claims; and

(n) the compliance of participants in Eurosystem infrastructure services with the applicable eligibility criteria.

2.2. *Management activities in respect of Eurosystem infrastructure services and projects*

2.2.1. Management and steering

The MIB carries out the overall management of Eurosystem infrastructure services and projects, to the extent that the Governing Council has entrusted the MIB with a specific project/infrastructure, and taking fully into consideration the mandates of the ESCB committees established under Article 9 of the Rules of Procedure of the European Central Bank.

In this context, the MIB:

(a) ensures that Eurosystem infrastructure services and projects meet market needs;

(b) implements and/or manages the overall strategies, including the definition of the scope of service(s) and/or service descriptions;

(c) implements and/or manages the governance arrangements;

(d) implements and/or manages the financial arrangements and strategies;

(e) manages the relevant change and release management activities;

(f) manages, within the parameters set by the Governing Council, the development, operation and maintenance of analytical and simulation tools;

(g) manages, in consultation with the Eurosystem's Market Infrastructure and Payments Committee and other relevant ESCB committees where applicable and subject to a decision of the Governing Council, feasibility studies;

(h) coordinates change management processes and prioritises authorised changes relating to new releases, establishes test scenarios for Eurosystem acceptance tests, coordinates tests which involve various types of stakeholders, and coordinates user testing processes;

(i) manages the detailed planning of Eurosystem infrastructure services and projects on the basis of the overall programme plans, as approved by the Governing Council;

(j) implements and/or manages the relevant risk management frameworks, within the parameters set by the Governing Council;

(k) implements and/or manages the relevant migration strategies, within the parameters set by the Governing Council;

(l) implements and/or manages the relevant operational frameworks, including the incident and crisis management strategy, within the parameters set by the Governing Council;

(m) ensures the proper functioning and quality of Eurosystem infrastructure services;

(n) implements and/or manages the network connectivity strategies;

(o) implements and/or manages the crisis management strategies;

(p) implements and/or manages cyber resilience and information security strategy and frameworks; and

(q) ensures compliance with regulatory and oversight requirements.

2.2.2. Financial regime

The MIB approves and/or initiates:

(a) the payment of instalments to the providing NCBs, in accordance with an agreed payment schedule approved by the Governing Council, once the relevant deliverables have been accepted by the MIB;

(b) the reimbursement of costs related to additional support from the providing NCBs to the Eurosystem central banks, in accordance with the relevant Level 2-Level 3 agreement and any other related agreements;

(c) the payment of instalments to the ECB, on the basis of the costs incurred by the latter in relation to Eurosystem infrastructure services and projects; and

(d) the collection of fees from customers, where applicable, and the reimbursement of these fees to Eurosystem central banks. To the extent required, the ECB provides appropriate support to the MIB.

2.2.3. Relations with the providing NCBs

The MIB:

(a) ensures the involvement of the providing NCBs in all relevant matters;

(b) conducts the negotiations of any amendments to the relevant Level 2-Level 3 agreement and any other related agreements between the providing NCBs and the Eurosystem central banks and submits such amendments for endorsement by the Governing Council;

(c) establishes and maintains regular contacts with the providing NCBs in order to obtain all of the information needed for the performance of its tasks in line with such agreements;

(d) validates proposals from the providing NCBs and approves deliverables pertaining to the technical and functional design (developed by the providing NCBs); and

(e) assists the Governing Council in managing the relationships with the providers of network connectivity services, where the latter form part of Eurosystem infrastructure services.

2.2.4. Relations with Eurosystem governance bodies and external stakeholders

The MIB:

(a) manages, as appropriate, relations with ESCB committees, with regulatory and oversight authorities, as well as with other relevant public authorities in relation to Eurosystem infrastructure services and projects;

(b) interacts with customers and ESCB central banks to facilitate their migration to Eurosystem infrastructure services, and discusses, coordinates and aims to find possible solutions to settle disputes within the applicable legal framework and within its mandate, to be endorsed by the responsible bodies;

(c) negotiates draft participation agreements or amendments thereto (jointly with Eurosystem central banks, where applicable) with participants in Eurosystem infrastructure services and projects and non-euro area NCBs which have signed participation agreements;

(d) coordinates with the other Eurosystem infrastructure services and project governance bodies;

(e) where relevant, appoints the chairpersons of the technical groups after consultation with the pertinent governance bodies, and ultimately receives reports from technical groups;

(f) interacts with providers of network connectivity services that form part of Eurosystem infrastructure services;

(g) defines the technical communication policy in relation to Eurosystem infrastructure services and projects; and

(h) ensures transparency through the timely and consistent publication of relevant technical documentation in relation to Eurosystem infrastructure services and projects subject to the confidentiality obligations set out in the Code of Conduct.';

2) Annex II is replaced by the following:

'*ANNEX II*

MARKET INFRASTRUCTURE BOARD

RULES OF PROCEDURE

CHAPTER 1

Appointment and Membership

INTRODUCTION

The Eurosystem offers market infrastructures, platforms, applications and related services in the fields of cash settlement, securities settlement and collateral management, comprising TARGET services which include T2, T2S and TIPS services as well as, in the future, the ECMS (the "Eurosystem infrastructure services").

The Market Infrastructure Board (MIB) is the governance body that supports the Governing Council (the "Governing Council") of the European Central Bank (ECB) in ensuring that Eurosystem infrastructure services are maintained and further developed and that projects concerning existing or new Eurosystem infrastructure services ("Eurosystem infrastructure projects" or "projects") are managed, in line with the Treaty objectives of the European System of Central

Banks (ESCB), business needs, technological advances, the legal framework applicable to Eurosystem infrastructure services and projects, as well as regulatory and oversight requirements, taking fully into consideration the mandates of the ESCB committees established under Article 9 of the Rules of Procedure of the European Central Bank. The MIB reports to the ECB decision-making bodies.

This Decision establishes no presumption to the effect that every new market infrastructure project falling within the scope of this Decision's definition of a Eurosystem infrastructure project is automatically to be entrusted to the MIB. Only those projects explicitly entrusted by the Governing Council to the MIB are to be managed by the MIB.

1. **Designation and appointment**

MIB members are appointed by the Governing Council on the basis of a proposal from the ECB's Executive Board (the "Executive Board").

Applications are presented to the Executive Board by the Governor or President, as applicable, of the relevant national central bank (NCB). In its proposal to the Governing Council, the Executive Board shall give preference to candidates who report directly to the highest governance body in their central bank. The Executive Board ensures in its proposal that the principles set out in section 2 of this Annex II are complied with.

Applications for non-central bank members of the MIB are collected by the Executive Board pursuant to the procedure for selection of such members set out in Annex IV to this Decision.

2. **Membership and term of office – Participation of observers**

Once appointed, MIB members shall act independently and in the best interest of the Eurosystem. They shall not be subject to instructions from any public or private body. MIB members shall report collectively and exclusively to the ECB decision-making bodies when they act in their capacity as MIB members. The central bank members of the MIB may seek, where appropriate, at their own initiative and discretion, the views of other staff members from their central bank, but they shall neither seek nor take instructions from their central bank, or commit to take a specific position during the deliberations and voting of the MIB.

The MIB has a Chairperson who is a senior manager at the ECB.

The MIB is composed of the Chairperson and 13 other members, as follows:

(a) nine members from Eurosystem NCBs, such that at least 85 % of the euro area NCBs' contributions to the ECB's capital (i.e. 85 % of the Eurosystem capital key) is thereby represented;

(b) two members from non-euro area NCBs participating in Eurosystem infrastructure services (e.g. having signed a Currency Participation Agreement or participating in T2); and

(c) two non-central bank members (without voting rights): one with experience as a senior official in the payments industry, and one with experience as a senior official in the securities industry.

The Chairperson is supported by a Deputy Chairperson from the MIB members who is appointed by the Governing Council. The Deputy Chairperson supports the Chairperson and chairs MIB meetings, in the Chairperson's temporary absence, in accordance with the pre-determined agenda for the MIB meeting in question.

The term of office of MIB members and of the MIB lasts for 36 months and may be renewed. The Governing Council may decide on a shorter term of office of the MIB members, including when members resign or retire before the expiry of their term of office and the new members need to be appointed for the remaining period of the ongoing MIB mandate to replace the resigning or retiring members.

Without prejudice to the limit imposed under paragraph (a) above, and starting from the expiration of the current MIB's mandate and term of office of its members, a rotation of MIB members is desirable. The rotation of members should aim at striking a balance between representativeness of the overall TARGET services user community and preserving some degree of continuity.

The ability and commitment of candidates to devote sufficient time to MIB issues is crucial in the selection of MIB members.

An appropriate balance shall be maintained between members with project management experience, experience in the Eurosystem market infrastructure business and IT experience.

The Chairperson shall invite non-voting observers from relevant ESCB committees for the discussion of Eurosystem infrastructure services or projects within their field of competence. The Chairperson shall also invite one member per NCB that provides market infrastructure services to the Eurosystem, when items relevant to these services are part of the agenda of a MIB meeting.

The MIB members are expected to dedicate at least 25 % of their working capacity to MIB issues.

The MIB members shall not be directly involved in the oversight of Eurosystem infrastructure services or of entities participating in the above (e.g. central securities depositories that outsource settlement operations to T2S), to the extent that such involvement could give rise to actual or potential conflicts with their functions as MIB members. Appropriate measures shall be put in place to identify and avoid any such conflicts. Members shall not be part of the Eurosystem's Internal Auditors Committee (IAC), nor shall they be involved in Level 3 activities on a day-to-day basis.

CHAPTER 2

Working procedures

1. Decision-making

In accordance with principles of good governance, members shall make best efforts to participate in MIB meetings. Participation is strictly on a personal basis; members may not be replaced.

In order for the MIB to validly deliberate, there must be a quorum of seven members with voting rights. If there is no quorum, the Chairperson may convene an extraordinary meeting at which decisions may be taken without regard to the quorum.

To the extent possible, decisions of the MIB are to be taken by way of consensus. Failing that, and at the request of the Chairperson, the MIB may decide by way of simple majority vote. In the case of a tie, the Chairperson shall have the casting vote.

The MIB proceeds to a vote at the request of the Chairperson. The Chairperson shall also initiate a voting procedure upon the request of at least three MIB members with voting rights. A member shall abstain from voting if they have a conflict of interest within the meaning of the Code of Conduct. Absent voting members may delegate their voting right in respect of a specific voting procedure to another member with a voting right but no member with a voting right may exercise more than two votes on any given issue.

Decisions may also be taken by written procedure, unless three or more members with voting rights object. A written procedure shall require no less than two working days' notice, other than in exceptional circumstances, identified as such by the Chairperson.

The non-central bank members are appointed in a personal capacity. They do not have voting rights and they may not delegate their responsibilities to another member or a third party.

2. Conduct of MIB meetings

The MIB decides on the dates of its meetings upon a proposal by the Chairperson. The MIB should meet regularly based on a schedule it prepares in good time before the start of each year. Regular MIB meetings have fixed agenda items, i.e. approval of the agenda, review of the action list, operational risk management of TARGET services, status update of projects, and risks and issues for projects and services. The Chairperson can add additional agenda items.

The Chairperson may convene extraordinary meetings of the MIB whenever it may deem it necessary. The Chairperson will convene an extraordinary meeting if a request for such a meeting is submitted by at least three members.

The MIB shall hold its meetings at the ECB's premises or by means of teleconference.

The MIB adopts an agenda for each meeting.

Attendance at MIB meetings is restricted to MIB members and other persons invited by the Chairperson.

3. **Reporting to the ECB decision-making bodies**

The MIB reports to the ECB decision-making bodies on a regular basis. In this respect, it prepares reports to the ECB decision-making bodies as necessary.

4. **Internal flow of information and transparency**

Non-central bank MIB members shall receive, under strict confidentiality conditions, all documentation on Eurosystem infrastructure services and projects submitted to the Governing Council.

Eurosystem NCBs not represented in the MIB shall have automatic access to all MIB documentation, including MIB agendas and minutes, at the same time as MIB members and may provide written comments prior to MIB meetings so that their views can be duly taken into account by the MIB. They may also make a request to the Chairperson to participate in the MIB if they have a particular interest in a topic. The Chairperson will be responsible for informing such Eurosystem NCBs if it is considered that they might have a particular interest and may also bring any point raised by such a Eurosystem NCB before the MIB.

In order to ensure that the Eurosystem's Market Infrastructure and Payments Committee (MIPC) is kept abreast of the MIB's work, there will be a regular reporting item on MIB topics on each MIPC agenda. If deemed appropriate, joint meetings of the MIPC and the MIB may be held.

The interaction between the MIB and other ESCB committees shall take place by means of written consultations.

The MIB's activities are subject to the review of the IAC.

5. **External flow of information, transparency and representation**

The Chairperson regularly informs any relevant stakeholder about all relevant issues concerning Eurosystem infrastructure services and projects under the responsibility of the MIB. The Chairperson ensures transparency through the timely and consistent availability of relevant technical documentation in relation to Eurosystem infrastructure services and projects on the MIB-dedicated section of the ECB's website.

Members must inform the Chairperson in advance of undertaking any relevant and substantial external activities/communication in relation to the MIB's responsibilities and tasks, such as speaking on Eurosystem infrastructure services and projects under the responsibility of the MIB at conferences or meetings with relevant stakeholders, and must provide the MIB with a written summary within five working days following the event. Any substantial external activity/communication must be in the interest of the Eurosystem and must be consistent with any policy decisions of the Governing Council.

6. **Support**

The MIB shall receive organisational support from the ECB, inter alia, for the preparation of the MIB meetings, including the meeting documentation.

As a rule, the ECB sends documents for discussion to members five working days in advance of a meeting. However, short documents may be sent one working day in advance. Documents sent less than two working days in advance are considered "table documents" which cannot lead to a decision by the MIB, unless all members agree otherwise.

Following each MIB meeting, the ECB prepares a draft outcome recording the topics that were under consideration and the results of the discussion, as well as the agreed follow-up. The draft outcome includes positions expressed during the meeting by individual members when so requested. The draft outcome is circulated to the members within five working days of the meeting.

Also following each MIB meeting, the ECB prepares an action list containing the tasks and deadlines that were allocated and agreed during that meeting.

The draft outcome and action list are submitted to the MIB for approval at the subsequent meeting (or, if necessary, earlier by written procedure) and are signed by the Chairperson.

The MIB shall appoint, and receive input from, a Controller, which may be one of its members.

The MIB may create substructures and delegate specific tasks to them, in agreement with the ECB. A substructure may be established differently to the MIB composition, and it would be open to all Eurosystem NCBs and, where relevant, non-euro area NCBs to participate.

7. **Governance Handbook**

The MIB maintains a governance handbook that includes, inter alia, additional rules and procedures, expectations in terms of transparency and control, its organisational mandate, reporting lines, and requirements for representation of groups.

8. **Revision of mandate**

The MIB's mandate may be reviewed every five years in the light of the experience gained.';

3) Annex IV is amended as follows:

paragraph 3 is replaced by the following:

'3. **Selection criteria**

The selection criteria are as follows:

(a) expertise as a senior official in the payments industry or expertise in the securities industry, either as a service provider or as a user of services in this field, as well as expertise relating to the wider Union financial sector;

(b) at least 10 years of experience in interacting with major market players in Union financial markets;

(c) relevant experience, preferably in project management;

(d) the ability to communicate effectively in English; and

(e) the ability to devote sufficient time to MIB matters. '.