NEW SERVICES OFFERED WITHIN THE REMIT OF TARGET2 – HOW DO THEY CORRESPOND WITH TFEU AND CENTRAL BANK TASKS?*

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ABSTRACT

When Eurosystem founded TARGET2, its initial purpose was execution of payments. In that sense TARGET2 did not substantially differ from any other Real-Time Gross-Settlement system (RTGS) operated by a central bank. Hence, the service initially offered in TARGET 2 represented (and still represents) a typical central bank task. However, the number of services offered within the remit of TARGET2 increased over time. With the establishment of TARGET2-Securities (T2S) began the Eurosystem's involvment in enhancing securities settlement. The legal basis for provision of T2S service stated in relevant legal acts remained the same as for the first service (RTGS). The said legal basis is to be found in the TFEU and in the Statute of the ESCB and of the ECB as "promoting the smooth operation of payment systems". However, the 2015. ruling of CJEU in Case T-496/11 United Kingdom v ECB interpreted the said legal basis narrowly, and it contested the ECB's competence to make regulations for legal entities engaged in securities clearing. This paper aims to explore if the said ruling could have further repercussions i.e. could it be understood as denying the ECB any competence over securities, including their settlement, which might make Eurosystem's competence to establish and operate T2S open for discussion. Finally, this paper briefly explains the TIPS service which is also offered within the remit of TARGET2 and whose purpose is execution of payments. Albeit TIPS differs from T2S in that it is clearly a payment service and, as such, can easily be connected with the Eurosystem's role in promoting smooth operation of payment systems, one must note that the same service is also offered on a commercial basis by private entities. This paper explores how does provision of instant payments correspond with central bank tasks.

Keywords: *payment system, TARGET2, T2S, TIPS, securities settlement, instant payments*

* Views expressed herein are personal to the author and not necessarily attributable to the Croatian National Bank

1. INTRODUCTION

Central banks, in their function of monetary authority, play a prominent role in economic life of any country. Their tasks and objectives, as stipulated in relevant national legislation, may vary, although the prevailing central bank tasks include controlling money supply by raising or reducing interest rates, overseeing exchange rate policy and (very often) supervising the banking sector. That being said, the tasks and objectives of central banks across the EU are fully harmonised by the virtue of the Treaty on the functioning of the European Union[1] (hereinafter, "the TFEU") and its Protocol 4 on the Statute of the European System of Central Banks (ESCB) and of the ECB (hereinafter, "the Statute")[2].

The TFEU reaffirms the principles of conferral, subsidiarity[3] and proportionality[4], as proclaimed in Article 5 of the Treaty on European Union (hereinafter, "the TEU"). Based on the TEU, the competences of the European Union depend on the will of the Member States i.e. the Union has competences only if Member States decide to bestow them to the Union in accordance with the Treaties.[5] If not, the competences remain with the Member States. The competences conferred to the EU are further divided into three main categories: exclusive[6], shared[7] and supporting competences[8].

This paper focuses on the services offered within the system called TARGET2, which is operated by the Eurosystem and serves (among other things) for the

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1 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on European Union - Protocols - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 - Tables of equivalences, C 326 , 26.10.2012., p. 1 – 390, [eur-lex.europa.eu] Accessed 02.05.2019

2 Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank, OJ L C 202/230, 07.06.2016

3 Article 5(3) of the TEU states: "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."

4 Article 5(4) of the TEU states: "Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties."

5 Article 5(2) of the TEU states: "Under the principle of conferral, the Union is allowed to act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States."

6 Article 2(1) and Article 3 of the TFEU (Lisbon)

7 Article 2(2) and Article 4 of the TFEU (Lisbon)

8 Article 2(5) and Article 6 of the TFEU (Lisbon)

processing of monetary policy operations and execution of large-value payments in euro. The establishment of the said payment system is closely linked to the monetary policy for euro area countries (which is, in accordance with Article 3 of the TFEU, one of the exclusive competences of the Union). Namely, having a single currency and a single monetary policy is necessarily connected with having a common Real-Time Gross-Settlement (RTGS) payment system.[9]

TARGET2 is undoubtedly such common RTGS system. However, the services offered in TARGET2 evolved over time. First extension of TARGET2 services was provision of a new T2S service. T2S service goes beyond execution of payments, since it involves enhancing securities settlement as well. Second extension was provision of instant payments through the new TIPS service.

This paper aims to explore if the provision of such services is in line with the Eurosystem's competences proclaimed in the TFEU and the Statute, as well as to explore and explain the link between execution of instant payments (which can be perceived as commercial service) and traditional central bank tasks. The nature of the topic dictates the use of a chronological and descriptive method. The main research issue is exploring can TFEU still provide an adequate legal basis for the newly introduced services i.e. how does TFEU correspond to the quickly changing needs of financial markets.

2. REASONS FOR ESTABLISHING TARGET2: THE LINK BETWEEN CONDUCTING MONETARY POLICY AND OPERATING AN RTGS SYSTEM

The Eurosystem as a whole conducts the monetary policy for the euro[10].The Eurosystem is not a single legal person but, as its name indicates, a system composed of the European Central Bank (ECB) and central banks of those EU Member States whose currency is the euro[11].

It bears noting that the Statute[12] states that defining and implementing the monetary policy of the Union is an ESCB task. The ESCB is also a system, broader

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9 The explanation of reasons why central banks operate RTGS systems can be found in Dent A.; Dison W., *The Bank of England's Real-Time Gross Settlement infrastructure,* Bank of England Quarterly Bulletin Q3, 2012, p. 235-236, [https://www.bankofengland.co.uk/-/media/boe/files/quarterly-bulletin/2012/the-boes-real-time-gross-settlement-infrastructure.pdf] Accessed 05.05.2019

10 This conclusion is based on Article 127(2) in conjunction with Article 139(2)(c) of the TFEU

11 Article 1 of the Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank

12 Article 3.1. of the Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank

than the Eurosystem, since it also includes central banks of Member States whose currency is not the euro. However, it follows from the TFEU[13] that the objectives and tasks of the ESCB[14] are not to be applied to Member States with derogation, which, consequently, makes defining and implementing the monetary policy of the Union a Eurosystem task.

The reason for this somewhat unusual legal drafting technique is perhaps to be found in the assumption made throughout the TFEU that not having the euro as a legal tender is a temporary situation for Member States and that Member States with derogation will eventually adopt the euro.

The task of defining and implementing the monetary policy is closely linked to another central bank task: promoting the smooth operation of payment systems[15]. It has been stated that " since the beginning of Stage Three of the Economic and Monetary Union, all monetary policy operations are processed through the TARGET system".[16] This goes to prove how important is the link between the RTGS payment system and conduct of monetary policy in the euro area.

The initially established payment system was named TARGET, which is an acronym of Trans-European Automated Real-time Gross settlement Express Transfer system[17], and it started operating in January 1999[18]. The first TARGET had a decentralised structure, legally as well as technically, and was construed of 16 national payment systems and the ECB's payment mechanism (EPM).[19] Serving the needs of the ECB's monetary policy was identified as one of the main objectives of TARGET[20]. However, this heterogeneous system proved to be extremely complicated when it came to introducing functional changes.

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13 Article 139(2)(c) of the TFEU

14 To be precise, Article 127(1) to (3) and (5) of the TFEU

15 Article 3(1) fourth indent of the Statute

16 Issing O., *New Technologies in Payments – A Challenge to Monetary Policy,* Lecture to be delivered at the Center for Financial Studies Frankfurt am Main, 28 June 2000, [http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.43.2483&rep=rep1&type=pdf] Accessed 03.05.2019

17 The meaning of the acronym is explained in the title of the Guideline of the European Central Bank of 5 December 2012 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2) (recast) (ECB/2012/27) (OJ L 30, 30.01.2013.)

18 It bears noting that the euro was first introduced on 1 January 1999. However, at this point in time there were no euro banknotes and euro coins – the euro was introduced only in its "cashless" form. At the same time, banknotes and coins of "old" European currencies have been used as a legal tender. This duality lasted till 1 January 2002. when euro banknotes and coins were first put to use

19 ECB, *Overview of TARGET* (update July 2005), p. 4, [https://www.ecb.europa.eu/paym/pdf/target/current/targetoverview.pdf] Accessed 03.05.2019

20 ECB, *Overview of TARGET* (update July 2005), p. 5, [https://www.ecb.europa.eu/paym/pdf/target/current/targetoverview.pdf] Accessed 03.05.2019

To simplify the structure of the system and to allow the alterations to be made in a relatively uncomplicated manner, the Eurosystem designed a new, less heterogeneous system, named TARGET2. TARGET2 started replacing TARGET in 2007, bringing one important novelty into European payments landscape: the new system was based on an integrated central technical infrastructure, named Single Shared Platform (SSP)[21]. Even though TARGET2 to this day remains legally structured as a multiplicity of payment systems[22], technically it has the structure of a single system and no technical differences exist in the setup of various TARGET2 component systems. The new system, TARGET 2 became fully operational in 2008.

Initially, TARGET2 provided standard services as any other payment system operating in central bank money. Through this system large value interbank payments were executed. The system enabled payments in euro to be executed between banks from different parts of the euro area. It also enabled Eurosystem to conduct an efficient monetary policy.

Moreover, taking into account the abovementioned aim of the whole European Union ultimately becoming a monetary union, central banks from non-euro area are permitted to join TARGET2 upon signing the so called TARGET2 Agreement. Based on the said Agreement non-euro area central banks accept to be bound by the TARGET2 Guideline, which is an exception from Article 139(2) (e) of the TFEU. It follows from the said provision of the TFEU that legal acts of the ECB are not to be applied in Member States with derogation. Nonetheless, an exception can be made if a central bank of such Member State voluntarily accepts to be bound by the provisions of a specific ECB legal act or legal instrument[23].

For the purpose of facilitating the smooth transition to euro in due course, Croatian National Bank joined TARGET2 on 1 February 2016 and is today one of the so called connected central banks[24] (term used to denote the central banks outside of the euro area participating in TARGET2). Croatian component system

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21 Recital 3 of the Guideline of the European central bank of 5 December 2012 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2) (OJ L 30, 30.1.2013, p. 1)

22 Article 1(2) of the Guideline of the European central bank of 5 December 2012 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2) (OJ L 30, 30.1.2013, p. 1)

23 For details on the difference between ECB legal acts and legal instruments please see: *Legal instruments of the European Central Bank,* ECB Monthly Bulletin. November 1999. Frankfurt am Main: European Central Bank, [https://www.cvce.eu/obj/legal_instruments_of_the_european_central_bank-en-9922a45b-3a5f-44bc-9155-0c4063538aa6.html] Accessed 03.05.2019

24 Article 2 (19) of the TARGET2 Guideline defines a 'connected NCB' as "an NCB, other than a euro area NCB, which is connected to TARGET2 pursuant to a specific agreement."

of TARGET2 is named TARGET2-HR and is mainly used by its participants (Croatian banks) for the execution of large value inter-bank payments in euro. The other two TARGET2 services (which are to be described in more detail below) are not used by the participants in the Croatian component of TARGET2.

As previously mentioned, TARGET2 evolved over time and began offering services, which are not exclusively linked to the execution of large-value interbank payments.

3. ESTABLISHMENT OF TARGET2-SECURITIES: SECOND SERVICE OFFERED WITHIN THE REMIT OF TARGET2

The scope of services offered by the Eurosystem within the TARGET2 framework was first extended to the TARGET2-Securities or T2S service. Even the name of the service suggests that its extent goes beyond mere execution of payments, since it makes a link between execution of payments (implied by the use of the term 'TARGET2') and transfer of securities (implied by the use of the term 'securities').

By establishing TARGET2, Eurosystem achieved full harmonisation of large-value payments. However, securities infrastructures remained highly fragmented[25]. This comes as no surprise, since transfer of securities is from both technical and legal point of view much more complex than the transfer of funds (i.e. execution of payments). As a consequence of this complexity, different Member States had different approaches in regulating the securities settlement and various technical solutions were applied[26].

As a way of introduction, few remarks about the chronology are appropriate. At its meeting held in July 2006 (prior to the go-live of TARGET2), the Governing Council of the ECB decided to bring together different European central securities depositories[27] (CSDs) and to examine if such fragmentation could be

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25 Lucas Y., *Target2-Securities: A major contribution to European financial integration?,* Journal of Securities Law, Regulation & Compliance, *Vol.* 1 No. 4, 2008, [http://eds.a.ebscohost.com/eds/pdfviewer/pdfviewer?vid=1&sid=50b10e98-490d-4e3b-9fdb-815cba3f58fa%40sessionmgr4006] Accessed 06.05.2019

26 Kokkola T. et al, *The Payment System, Payments, securities and derivatives, and the role of the Eurosystem, ECB*, Frankfurt a/m, p. 265, [https://www.ecb.europa.eu/pub/pdf/other/paymentsystem201009en.pdf] Accessed 05.05.2019

27 Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014.) defines a CSD as a "legal person that operates a securities settlement system referred to in point (3) of Section A of the Annex and provides at least one other core service listed in Section A of the Annex"

avoided by establishing the previously mentioned T2S service[28]. The fundamental principles of the new T2S service were published in April 2007[29] for public consultation. The public consultation resulted in the endorsement of the proposed service by the relevant stakeholders, so in July 2008 the T2S project was officially launched[30]. The development and operation of T2S was assigned to four central banks of the Eurosystem—Banque de France, Bundesbank, Banca d'Italia, and Banco de Espana, while the project was coordinated by the ECB. Nevertheless, creating and operating the T2S platform remained a Eurosystem project, jointly owned by all the central banks of the Eurosystem. The role of four abovementioned central banks (often referred to as 4CBs[31]) is limited to the task of developing and maintaining the T2S platform.

One might ask why did the Eurosystem embark on this exceptionally ambitious project, whose link to central bank tasks was not as self-evident as was the case with the setting-up of TARGET2? As stated in the documents published by the ECB[32], the purpose of the T2S service was to enhance the securities settlement which takes place across different Member States. To this end, the Governing Council of the ECB[33] adopted on 18 July 2012 Guideline on TARGET2-Securities[34].

The main goal of the T2S project has been identified as the establishment of a securities settlement platform that will connect CSDs from all over Europe. Furthermore, the main benefits of the project have been recognised in "the promotion

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Section A of the Annex lists the following core services of central securities depositories: "1. Initial recording of securities in a book-entry system ('notary service'); 2. Providing and maintaining securities accounts at the top tier level ('central maintenance service') and 3. Operating a securities settlement system ('settlement service')."

28 Decision of the European Central Bank of 29 March 2012 on the establishment of the TARGET2-Securities Board and repealing Decision ECB/2009/6 (ECB/2012/6) (OJ L 117, 01.05.2012, p. 13) (recital 1) – no longer in force; (hereinafter, "The T2S Board Decision")

29 ECB, *T2S consultation paper: general principles and high-level proposals for the user requirements*, 26 April 2007, [https://www.ecb.europa.eu/paym/cons/html/t2s.en.html] Accessed 03.05.2019

30 Decision of the European Central Bank, *op. cit.,* note 28, Recital 2

31 Which is also in line with Article 1 of Annex IIa to TARGET2 Guideline

32 ECB, *What is TARGET2-Securities (T2S)?*, [https://www.ecb.europa.eu/paym/target/t2s/html/index.en.html] Accessed 03.05.2019

33 In accordance with Article 9(2) of the Statute of the ESCB and of the ECB, Governing Council is one of the two decision making bodies of the ECB, comprised of (Article 10(1) of the Statute of the ESCB and of the ECB) the members of the Executive Board of the ECB and the governors of the national central banks of the Member States whose currency is the euro

34 Guideline of the European Central Bank of 18 July 2012 on Target2-Securities (ECB/2012/13), OJ L 215, 11.8.2012, p. 19

of financial integration and overcoming the fragmentation of the securities settlement infrastructure through the provision of central bank services".[35]

Taking into account that the crucial part of T2S is enhancing securities settlement, and that the execution of payments *via* TARGET2 is more or less ancillary, the question is if promotion of smooth operation of payment systems from the TFEU and the Statute can be an adequate legal basis.

The ECB legal acts relevant for the establishment of T2S[36] identify following provisions as a legal basis for the provision of said service: the first indent of Article 127(2) of the TFEU and Articles 3.1, 12.1, 17, 18 and 22 of the Statute

Tridimas (2009, p. 258) [37] emphasized the importance of Article 22 of the Statute as a legal basis for the provision of the T2S service, further stating that the "said provision grants the ECB power to carry out one of the tasks assigned to it under Article 105(2) of the TFEU i.e. to promote the smooth operation of payment systems".[38] Tridimas concludes Article 22 of the Statute is "sufficiently wide to enable the ECB to adopt the instruments necessary for the introduction and running of T2S".[39]

We find the line of reasoning explained above extremely important, since it relies on a more extensive interpretation of Article 22 i.e. that the phrase "smooth operation of payment systems" could include also the establishment of the platform for securities settlement (T2S service). Needless to say, part of that particular service is related to a payment system (so called "cash leg" of securities transactions), but the other part of it (securities settlement) is conducted outside of payment system. Still, as noted above, the ECB *inter alia* also found the legal basis for T2S in Article 22.

Legal basis for the establishment of T2S was contemplated by Lamandini (2006, p. 5-7)[40] as well. Although Lamandini's line of reasoning is not identical to the one explained by Tridimas, they have some elements in common. Lamandini finds the

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35 Kokkola *et al.*, *op. cit.* note 26, p. 265

36 The T2S Board Decision, *op. cit.* note 28 and Guideline of the European Central Bank of 18 July 2012 on TARGET2-Securities (ECB/2012/13) (OJ L 215, 11.8.2012., p. 19–29)

37 Tridimas T., *Community Agencies, Competition Law, and ECSB Initiatives on Securities Clearing and Settlement,* p. 258, [https://www.researchgate.net/publication/265246431_Community_Agencies_Competition_Law_and_ECSB_Initiatives_on_Securities_Clearing_and_Settlement/download] Accessed 02.05.2019

38 Tridimas, *op. cit.* note 37, p. 258

39 *Ibid.*

40 Lamandini, Marco, *The ECB and Target 2-Securities: questions on the legal basis,* 2006, p. 5-7, [https://scholar.google.hr/scholar?hl=hr&as_sdt=0%2C5&q=T2S+legal+basis&btnG=] Accessed 06.05.2019

legal basis for the establishment of T2S in Article 105(2) of the TFEU[41] and in the Statute (Articles 17, 18, 22 and 23). In his paper Lamandini notes that "the wording of Article 22 does not mention specifically the settlement of securities". He concludes, however, that there is a close link between securities settlement and payments infrastructure and that problems in one of them could "lead to contagion and domino effect".

The above legal reasoning represented by Tridimas, Lamandini and the ECB was put to test (albeit only indirectly, since the court case described below was not directly related to T2S) by the Court of Justice of the European Union (hereinafter, 'the CJEU') in the case *United Kingdom v ECB*[42]. In the said proceeding UK contested the ECB's competence to adopt the Eurosystem Oversight Policy Framework[43] for central counterparties (hereinafter, 'the CCPs'). This judicial proceeding is interesting in the context of T2S, since the CJEU's ruling encloses an opinion on the interpretation of Article 22 of the Statute. The CJEU accepted the UK's plea about ECB not being competent for regulating CCPs. The legal basis for such verdict was the CJEU's interpretation of Article 105(2) of the TFEU (the Eurosystem's role in promoting smooth operation of payment systems) and Article 22 of the Statute.

As already stated above, Article 22 of the Statute provides that "the ECB and national central banks may provide facilities, and the ECB may make regulations, to ensure efficient and sound clearing and payment systems within the Union and with other countries".

In the said case ECB claimed that "the term 'clearing systems' in Article 22 of the Statute must be read in conjunction with the 'payment systems' to which reference is made in the same article and the smooth operation of which constitutes one of the Eurosystem's tasks[44]". Simply put, ECB claimed that, apart from its competences related to clearing of payments, it also has the necessary competence to adopt regulations related to clearing of securities.

However, the CJEU did not accept this line of reasoning, claiming that the ability "granted by Article 22 of the Statute to the ECB to adopt regulations 'to en-

41 Article 105(2) of the TFEU determines the ESCB's task of promoting the smooth operation of payment systems

42 Case T-496/11 United Kingdom v ECB [2015] ECLI:EU:T:2015:133, [http://curia.europa.eu/juris/document/document.jsf?text=&docid=162667&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=2213068] Accessed 02.05.2019

43 Eurosystem Oversight Policy Framework from 2011 is available on [https://www.ecb.europa.eu/pub/pdf/other/eurosystemoversightpolicyframework2011en.pdf] Accessed 03.05.2019

44 Case T-496/11 United Kingdom v ECB [2015] ECLI:EU:T:2015:133, par. 90

sure efficient and sound clearing and payment systems' cannot be understood as a competence in respect of securities clearing systems"[45]. The option from Article 22 of the Statute must be, in the CJEU's opinion, regarded as limited to payment clearing systems only[46].

Therefore, the CJEU contested the ECB's competence to adopt regulations related to clearing of securities. Such legal interpretation is grounded on the restrictive interpretation of the term 'payment system', which excludes the ECB's competence over securities clearing systems. Albeit the CJEU did not express its opinion on the ECB's competence in relation to securities settlement services (since that specific competence was not tested in the case at hand), it is likely that the same line of reasoning might be applied to T2S respectively. Therefore, CJEU's ruling could be deemed as a serious challenge to the ECB's competence in relation to securities (whether clearing or settlement) and consequently its competences in relation to the T2S.

Notwithstanding the above, the arguments presented by the ECB in this case remain valid and persuasive: there are close links between payment systems and securities clearing and settlement systems[47]. Securities clearing and settlement systems are linked to payment systems, since in the former securities are transferred and in the latter funds (corresponding to the payment for the securities) are transferred. Consequently, the disruption in securities settlement systems could affect the payment systems (i.e. their smooth operation). ECB also claimed that Article 127(2) TFEU must be interpreted as to include securities clearing and settlement systems, since those systems gain importance after the drafting of the TFEU[48].

Undoubtedly, establishment of T2S serves a broader purpose, first and foremost the smooth functioning of capital markets as an important part of the financial markets of the Eurozone. An obstacle in smooth functioning of capital markets is related to achieving cross-border delivery versus payment.

The concept of delivery versus payment or DvP is related to one of the most important concerns related to buying and selling securities i.e. achieving synchronicity in making a payment and delivering security. The idea behind T2S is to enable the exchange to happen simultaneously. For achieving such simultaneousness, payment accounts opened in TARGET2 are used. However, no securities

45 *Ibid.*, par. 99

46 *Ibid.*, par. 100

47 *Ibid.*, par. 47

48 *Ibid.*, par. 47

accounts are opened in T2S, since T2S is not a CSD, but a technical solution (a platform) to which CSDs connect.

The establishment of the T2S platform unquestionably contributes to creation of the capital markets union and thus better financial integration within the Union. Indirectly, it also increases financial stability within the Union and contributes to achieving the common goals of Member States whose currency is the euro.

To conclude, even though the concept of T2S is primarily connected to enhancing securities settlement, it serves a much broader purpose and is, as such, within the Eurosystem's competence.

4. PROVISION OF INSTANT PAYMENTS IN TARGET2: TIPS AS THE SECOND EXTENSION OF SERVICES OFFERED IN TARGET2

The latest service offered within the remit of TARGET2 was TIPS (TARGET instant payments settlement[49]) service, which went-live on 30 November 2018. As the word "instant" in the name of the service suggests, the entire idea of this service is to offer customers execution of payments in euro to payees all over Europe within seconds. In order for payments to be instant, the system needs to be open 24 hours a day, seven days a week, 365 days a year. This differs from the regular TARGET2 setup, which includes having opening hours and business days[50].

TIPS service is a payment service and therefore can be linked to the Eurosystem task of promoting the smooth operation of payment systems. However, this does not make offering instant payments a regular or exclusive central bank task. Prior to establishing TIPS, instant payments in euro have been offered on a commercial basis by the EBA CLEARING's pan-European real-time payment system RT1. In 2019 the Dutch banking started offering their instant payments solution as well. It is believed by some parts of the banking community that instant payments will become "a new normal" i.e. the standard within the payments community.

TIPS is offered within the remit of TARGET2, which is undeniably an advantage for the TIPS in comparison to other payment systems offering instant payments in euro. First, payment transactions are settled in central bank money, which makes them more secure for the participants (since a central bank operating a system

[49] Recital 4 of the Guideline (EU) 2018/1626 of the ECB of 3 August 2018 amending Guideline ECB/2012/27 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2) (ECB/2018/20), OJ L 280, 9.11.2018, p. 40

[50] See Appendix V to Annex II of the TARGET2 Guideline

cannot become insolvent), which may influence potential participants' decision on which system to join. Second, any end-of-day balance on the TIPS account is taken into account for the purpose of minimum reserves, which enables banks (participants in the system) to better use their money. Finally, even though TIPS service currently comprises only instant payments in euro, theoretically it is possible for TIPS service to be extended to other currencies as well.

To conclude, albeit TIPS is a service related to a payment system, which can therefore be linked to the Eurosystem's task of promoting the smooth operation of payment systems in a much simpler way than the T2S service, it goes well beyond of what is usually considered a central bank task. Especially considering that making a link between provision of instant payments service and the monetary policy might be a challenging. Be that as it may, provision of instant payment service within the remit of TARGET2 is a proof of the Eurosystem's determination to play its role of a catalyst in the development of payment system.

Namely, it is stated that a central banks have three roles in relation to the development and smooth operation of payment systems[51]. First, central banks can operate a payment system. As already stated, TARGET2 is constructed as a homogenous set of systems and each central bank operates its own TARGET2 component system.[52] Second, central banks can oversee payment systems (which they very often do). Third, central banks can play the role of a catalyst i.e. central banks can promote innovation and development of payment systems.

It is stated in one of the ECB's publications[53] that, "in its catalyst role, the central bank plays an important role in private sector initiatives as a partner or facilitator, both for the development of payment, clearing and settlement systems (...) and for the establishment of market standards and practices that facilitate the overall efficiency of payment, clearing and settlement arrangements". Furthermore, it is stated that "the catalyst function aims to promote efficiency in payment, clearing and settlement infrastructures from the perspective of the economy as a whole".

It is important to note, however, that the catalyst function of a central bank is not regulated. Catalyst function uses research (analysis of market needs and conditions) for the purpose of achieving mid-term and long-term goals in the financial markets. Such goals are never achieved through regulation and coercion, but through moral suasion[54].

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51 Kokkola, *op.cit.* note 25, p. 157-158

52 Article 2(2) of the Guideline ECB/2012/27, *op. cit.* note 17

53 Kokkola *et al*, *op. cit.,* note 26, p. 156-157

54 *Ibid.*, p. 164-165

Moreover, provision of the TIPS service can also be linked to other two roles of a central bank in promoting the smooth operation of payment systems. In the words of Benoît Cœuré, the Chairman of the Committee on Payments and Market Infrastructures (CPMI) and ECB's Executive Board member: "Fast payments have the potential to generate benefits for various stakeholders and for society in general, provided that risks are properly managed. They can play a key role in upgrading and modernising a jurisdiction's payment system. Central banks can contribute to the development and implementation of fast payments through their traditional roles as catalysts for change, as well as operators and overseers of payment systems[55]."

Taking into account all of the above, it follows that the provision of the instant payments service by the Eurosystem is closely linked to its task of promoting smooth operation of payment systems and its catalyst role.

5. CONCLUSION

Undoubtedly, both T2S and TIPS have some similarities with commercial services. Nevertheless, provision of such services is in line with the Eurosystem's public task of promoting the smooth operation of payment systems. The tasks of the Eurosystem remained unchanged over time, owing to the fact they are defined in the TFEU. The manner of executing the Eurosystem's tasks over time, however, is subject to changes.

It bears noting that promoting smooth operation of payment systems is achieved through three separate central bank roles: central bank's role as a payment system operator, payment system overseer and as a catalyst in promoting change and adapting the existing infrastructures to the rapidly changing needs of the financial markets

The Eurosystem's catalyst function includes foreseeing the future trends in payments and enhancing innovation and modernization.

In the past the Eurosystem acted decisively in order to reduce market fragmentation, which is expected to bring improvements in efficiency and economic growth[56]. TARGET2 served as a platform for conducting many of the said activities. Payment systems and securities settlement systems are interdependent, and

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55 BIS, *Central banks are monitoring and fostering the development of fast payment services - CPMI*, Press Release, 8 November 2016, [https://www.bis.org/press/p161108.htm] Accessed 02.05.2019

56 Mersch Y., *Shaping the future of Europe's financial market infrastructure,* opening remarks at the Information session on the consultative report on RTGS services, Frankfurt am Main, 22 March 2016., available at [https://www.bis.org/review/r160329b.pdf] Accessed 05.05.2019

any disruption in operation of the latter necessarily affects the former. Conversely, integration of securities markets inevitably has positive effects on the smooth operation of payment systems.

To conclude, in analysing the legal framework of TARGET2 and the services offered through it, one must bear in mind that during the last decade the circumstances in the financial markets have changed significantly. On the other hand, TFEU remained the same. However, insisting on a rigid interpretation of the TFEU would result in depriving the Eurosystem of the possibility to further foster market integration within the euro area: both in relation to payments and in relation to transfers of securities. The above goes to prove that, in order for legal acts to stand the test of time, they need to be understood and applied, whenever possible, in accordance with their basic principles and the intent of the legislator.

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