

# GUIDELINES

## GUIDELINE OF THE EUROPEAN CENTRAL BANK

of 21 April 2010

on TARGET2-Securities

(ECB/2010/2)

(2010/272/EU)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

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

Having regard to the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB') and in particular Articles 3.1 and 12.1 and Articles 17, 18 and 22 thereof,

Whereas:

- (1) On 6 July 2006, the Governing Council of the European Central Bank (ECB) decided to explore, in cooperation with the central securities depositories (CSDs) and other market participants, the possibility of setting up a new Eurosystem service for securities settlement in central bank money, to be called TARGET2-Securities (T2S). As part of the Eurosystem's tasks in accordance with Articles 17, 18 and 22 of the Statute of the ESCB, T2S aims to facilitate post-trading integration by offering core, neutral and borderless pan-European cash and securities settlement in central bank money so that CSDs can provide their customers with harmonised and commoditised delivery-versus-payment settlement services in an integrated technical environment with cross-border capabilities. As the provision of central bank money is a core task of the Eurosystem, T2S has the nature of a public service. The euro area NCBs will provide collateral management services and settlement in central bank money in T2S.
- (2) Article 22 of the Statute of the ESCB mandates the Eurosystem to 'ensure efficient and sound clearing and payment systems within the Union'. Moreover, settlement in central bank money avoids liquidity risks and is therefore essential for sound post-trading of securities, and for the financial market in general.
- (3) On 17 July 2008, the Governing Council decided to launch the T2S project and to provide the resources required until its completion. On the basis of an offer

made by the Deutsche Bundesbank, the Banco de España, the Banque de France and the Banca d'Italia (hereinafter the '4CB'), the Governing Council also decided that T2S would be developed and operated by the 4CB.

- (4) The Governing Council adopted Decision ECB/2009/6 of 19 March 2009 on the establishment of the TARGET2-Securities Programme Board<sup>(1)</sup> as a streamlined management body of the Eurosystem that will develop proposals for the Governing Council on key strategic issues and execute tasks of a purely technical nature. The mandate of the T2S Programme Board, contained in the Annex to Decision ECB/2009/6, represents one of the cornerstones of T2S governance. The T2S Programme Board was simultaneously entrusted with certain implementing tasks by the Eurosystem central banks so that it can be fully operational and act on behalf of the whole Eurosystem.
- (5) This Guideline lays down in particular the basic foundations of the T2S Programme in its specification and development phase. It represents the culmination of the previously mentioned decisions of the Governing Council and further specifies in particular the roles and responsibilities of the T2S Programme Board and of the 4CB as well as their mutual relationship. It will be complemented by additional legal acts and contractual arrangements under the ultimate responsibility of the Governing Council as the T2S Programme is further developed.
- (6) In line with the previously mentioned decisions of the Governing Council, governance of the T2S Programme is based on three levels. On the first level of governance, ultimate decision-making in relation to T2S vests in the Governing Council, which assumes overall responsibility for the T2S Programme and, pursuant to Article 8 of the Statute of the ESCB, is the decision-maker for the whole Eurosystem. On the second level of governance, the T2S Programme Board was established to assist the ECB decision-making bodies in ensuring the successful and timely completion of the T2S Programme. Finally, the third level of governance is composed of the 4CB.

<sup>(1)</sup> OJ L 102, 22.4.2009, p. 12.

- (7) As T2S services are offered to CSDs, it is important to structure the relationship with them throughout the development, migration and subsequent operation of T2S. A CSD Contact Group will be set up for that purpose. National User Groups are a forum for communication and interaction with providers and users of securities settlement services within their national market. The T2S Advisory Group is a forum for communication and interaction between the Eurosystem and external T2S stakeholders.
- (8) T2S is not a commercial venture and it is not intended to compete with CSDs or any other market participant. Thus, while the financial regime of T2S aims at full cost recovery, T2S services are not provided for profit. An internal decision will be taken on the total investment in T2S for the Eurosystem, while the decision on the pricing of T2S services will aim at full cost recovery. Moreover, the Eurosystem should strictly apply the principle of non-discrimination regarding CSDs, and aim to ensure a level playing field among CSDs outsourcing their settlement platform to T2S.
- (9) T2S is a technical device that will not only be available for settlement in euro, it will also be open to non-euro area NCBs and other central banks that may wish to participate by making their currency available for central bank money settlement in T2S, as provided for in this Guideline,

HAS ADOPTED THIS GUIDELINE:

## SECTION I

### GENERAL PROVISIONS

#### Article 1

#### Subject matter and scope

1. T2S shall be based on a single technical platform integrated with central bank real-time gross settlement systems. It shall be a service provided by the Eurosystem to CSDs allowing for the core, neutral and borderless settlement of securities transactions on a delivery-versus-payment basis in central bank money.
2. This Guideline lays down the rules on the governance of the T2S Programme. It also lays down the main features of the T2S Programme, defining the respective roles and responsibilities of the T2S Programme Board and the 4CB, and the relations between them during the specification and development phase. It also specifies the main decisions to be taken in relation to T2S by the Governing Council. Moreover, this Guideline provides for the basic principles of all of the following in relation to T2S: (a) the financial regime, rights and warranties; (b) how the access of CSDs and contractual relations with CSDs will be determined; (c) how currencies other than the euro become eligible for use in T2S; and (d) the development of the T2S Programme.

## Article 2

### Definitions

For the purposes of this Guideline:

- ‘central securities depository’ (CSD) means an entity that: (a) enables securities transactions to be processed and settled by book entry; (b) provides custodial services, e.g. the administration of corporate actions and redemptions; and (c) plays an active role in ensuring the integrity of issues of securities,
- ‘delivery versus payment’ means a mechanism that links a securities transfer and a funds transfer in such a way as to ensure that delivery of securities occurs only if payment of funds occurs,
- ‘euro area NCB’ means the national central bank (NCB) of a Member State whose currency is the euro,
- ‘Eurosystem central bank’ means either a euro area NCB or the ECB, as the case may be,
- ‘Framework Agreement’ means the contractual framework to be entered into by a CSD and the Eurosystem for the development and operational phase,
- ‘general functional specifications’ (GFS) means a general description of the functional solution to be developed to satisfy the T2S user requirements. It will include elements such as the functional architecture (domains, modules and interactions), the conceptual models, the data model or the data flow process,
- ‘Level 2-Level 3 agreement’ means the supply and operation agreement that is negotiated between the T2S Programme Board and the 4CB, endorsed by the Governing Council and subsequently signed by the Eurosystem central banks and the 4CB. It contains the additional details of the tasks and responsibilities of the 4CB, the T2S Programme Board and the Eurosystem central banks,
- ‘Member State’ means a country that is a member of the Union,
- ‘non-euro area NCB’ means the NCB of a Member State whose currency is not the euro,
- ‘operational phase’ means the time period starting once the first CSD has migrated to T2S,
- ‘other central bank’ means the central bank of a country that is outside the Union,
- ‘payment schedule’ means a schedule indicating the payment sequence for instalments of reimbursement to the 4CB,
- ‘service level agreement’ means both the agreement defining the level of services to be provided by the 4CB to the Eurosystem, and the agreement defining the level of services to be provided by the Eurosystem to the CSDs, in relation to T2S,

- 'specification and development phase' means the time period beginning with the approval of the URD by the Governing Council and ending with the start of the operational phase,
- 'T2S business application' means the software developed and operated by the 4CB on behalf of the Eurosystem in view of enabling the Eurosystem to provide T2S services on the T2S platform,
- 'T2S Change and Release Management Procedure' means a set of rules and procedures that is applied whenever a change to T2S services is initiated,
- 'T2S financial envelope' means the upper boundary for the total cost of T2S to be reimbursed. The financial envelope determines: (a) for the participating NCBs the maximum amount to be paid for T2S; and (b) for the 4CB the amount they get back from the participating NCBs on delivery, based on the agreed payment schedule,
- 'T2S platform' means, for the purposes of this Guideline and notwithstanding the use of the term T2S platform in other T2S related documentation, the hardware and all software components (i.e. all software used excluding the T2S business application) required to run and operate the T2S business application,
- 'T2S Programme' means the set of related activities and deliverables needed to develop T2S until the full migration of all CSDs which have signed the Framework Agreement with the Eurosystem,
- 'T2S Programme Board' means the Eurosystem management body established pursuant to Decision ECB/2009/6, which has the task of developing proposals for the Governing Council on key strategic issues and executing tasks of a purely technical nature in relation to T2S,
- 'T2S project account' means the T2S account used to collect and distribute instalments, reimbursement and fees. The project account can have sub-accounts to separate different kinds of cash flows. It does not have a budgetary character,
- 'T2S services' means the services to be provided by the Eurosystem to CSDs on the basis of the Framework Agreement,
- 'T2S users' means legal entities which, for the purposes of T2S, have entered into a contractual relationship with CSDs that have signed the Framework Agreement with the Eurosystem. It also includes payment banks which have a contractual relationship with central banks and provide liquidity on a T2S dedicated cash account through a real-time gross settlement system account to a financial institution, settling in T2S,
- 'User detailed functional specifications (UDFS)' means a detailed description of the functions managing the T2S external data flows (from application to application). It will include the necessary information for the users to adjust or to develop their internal information system in view of connecting it to T2S,
- 'User Handbook' means the document describing the way in which T2S users can make use of a number of T2S software functions that are available in a user to application (screen-based) mode,
- 'User requirements document' (URD) means the document setting out the user requirements for T2S as published by the ECB on 3 July 2008 and as subsequently amended through the T2S Change and Release Management Procedure.

## SECTION II

### GOVERNANCE OF THE T2S PROGRAMME

#### *Article 3*

#### **Governance levels**

The governance of the T2S Programme shall be based on three levels as described in this Section of the Guideline. Level 1 shall consist of the Governing Council, Level 2 shall consist of the T2S Programme Board and Level 3 shall consist of the 4CB.

#### *Article 4*

#### **The Governing Council**

1. The Governing Council shall be responsible for the direction, overall management and control of the T2S Programme. It shall also be responsible for ultimate decision-making in relation to the T2S Programme and shall decide on the allocation of tasks not specifically attributed to Levels 2 and 3.

2. In particular, the Governing Council shall have the following competences:

- (a) responsibility for the governance of the T2S Programme through all of the following activities:
  - (i) deciding on any issue regarding T2S governance; assuming responsibility for the overall T2S Programme and therefore being the final decision-maker if any dispute arises;
  - (ii) taking, on an ad hoc basis, decisions on tasks assigned to the T2S Programme Board or to the 4CB;
  - (iii) allocating the performance of subsequent or additional specific tasks relating to the T2S Programme to the T2S Programme Board and/or to the 4CB, while determining which decisions relating thereto it reserves to itself;
  - (iv) adopting any decision regarding the organisation of the T2S Programme Board;

- (b) dealing with requests from members of the T2S Advisory Group presented in accordance with the rules of the T2S Advisory Group;
- (c) deciding on the basic financial regime for T2S, namely:
  - (i) the pricing policy for T2S services;
  - (ii) the cost methodology for T2S;
  - (iii) the financial arrangements pursuant to Article 12;
- (d) deciding on the CSD access criteria;
- (e) validating and accepting the T2S Programme Plan; monitoring progress of the T2S Programme and deciding on measures to reduce any delay in implementing T2S;
- (f) deciding on the basic operational aspects of T2S, namely:
  - (i) the T2S operational framework, including the incident and crisis management strategy;
  - (ii) the T2S information security framework;
  - (iii) the T2S Change and Release Management Procedure;
  - (iv) the strategy for testing T2S;
  - (v) the T2S migration strategy;
  - (vi) the T2S risk management framework;
- (g) endorsing the basic contractual framework, namely:
  - (i) the agreements between Levels 2 and 3;
  - (ii) the service level agreements negotiated between the T2S Programme Board and the CSDs and Eurosystem central banks as well as with the 4CB;
  - (iii) the contracts with the CSDs that are negotiated by the T2S Programme Board jointly with the Eurosystem central banks and, on the other hand, the CSDs;
  - (iv) the contracts with non-euro area NCBs, other central banks or other competent monetary authorities, including respective service level agreements;
- (h) responsibility for taking appropriate measures to ensure enforcement of oversight rules and principles;
- (i) deciding on the date of the start of the migration of CSDs to T2S.

#### Article 5

##### The T2S Programme Board

1. The composition and mandate of the T2S Programme Board are laid down in Decision ECB/2009/6. The T2S Programme Board shall be in charge of the tasks assigned to Level 2 within the general framework defined by the Governing Council.

2. The mandate of the T2S Programme Board also includes:
- (a) discussing and approving the GFS, the UDFS and the User Handbooks;
  - (b) implementing the T2S operational framework, including the incident and crisis management strategy, within the parameters set by the Governing Council;
  - (c) negotiating the currency participation agreements referred to in Article 18(1) and (2);
  - (d) providing information to relevant competent regulatory and oversight authorities;
  - (e) negotiating the Level 2-Level 3 agreement with the 4CB, for endorsement by the Governing Council.

#### Article 6

##### The 4CB

1. The 4CB shall develop and operate T2S and shall provide information on their internal organisation and allocation of work to the T2S Programme Board.

The 4CB shall, in particular, perform all of the following tasks:

- (a) preparing, on the basis of the URD and the guidance of the T2S Programme Board, the GFS, the UDFS and the User Handbooks in accordance with the T2S Programme Plan;
- (b) developing and building T2S on behalf of the Eurosystem, and providing the technical components of T2S in accordance with the T2S Programme Plan and with the URD, the GFS and the UDFS and other specifications and service levels;
- (c) making T2S available to the T2S Programme Board in conformity with the approved timing, specifications and service levels;
- (d) submitting the following to the T2S Programme Board for the purposes of the T2S financial arrangements pursuant to Article 12:
  - (i) an estimate, in a form that can be assessed and/or audited by the relevant European System of Central Banks (ESCB) or Eurosystem committee and/or external auditors of the costs they will incur in developing and operating T2S;
  - (ii) a financial offer, including the type, payment schedule as well as the time period covered;
- (e) obtaining all licences necessary to build and operate T2S and to enable the Eurosystem to be in a position to provide T2S services to the CSDs;

- (f) implementing changes to T2S in accordance with the T2S Change and Release Management Procedure;
- (g) providing answers in their field of competence to requests formulated by the Governing Council or the T2S Programme Board;
- (h) providing training, technical and operational support for tests and for migration, under the coordination of the T2S Programme Board;
- (i) negotiating the Level 2-Level 3 agreement with the T2S Programme Board.

2. The 4CB shall be jointly and severally liable vis-à-vis the Eurosystem for the performance of their tasks. The liability shall cover fraud, wilful misconduct and gross negligence. The liability regime shall be further specified in the Level 2-Level 3 agreement.

3. Outsourcing or subcontracting the above tasks by the 4CB to external providers shall be without prejudice to the 4CB's liability towards the Eurosystem and other stakeholders and shall be transparent to the T2S Programme Board.

#### Article 7

##### Relations with external stakeholders

1. The T2S Advisory Group is a forum for communication and interaction between the Eurosystem and external T2S stakeholders. The T2S Advisory Group shall report to the T2S Programme Board and may, in exceptional cases, bring matters to the attention of the Governing Council.

The T2S Advisory Group shall be chaired by the Chairperson of the T2S Programme Board. The composition and mandate of the T2S Advisory Group are laid down in the Annex to this Guideline.

The Advisory Group shall perform its function according to the Rules of Procedure which are approved by the Governing Council.

2. The CSD Contact Group is a forum for communication and interaction with the CSDs. It shall facilitate the preparation and negotiation of the Framework Agreement between the Eurosystem, on the one hand, and the CSDs which are willing to participate in T2S, on the other hand. The CSD Contact Group shall be chaired by the Chairperson of the T2S Programme Board. The composition and mandate of the CSD Contact Group are laid down in the Annex.

3. The National User Groups are a forum for communication and interaction with providers and users of securities settlement services within their national market, in order to support the development and implementation of T2S and to assess the impact of T2S on the national markets. The National User

Groups shall be chaired by the respective NCBs. The composition and mandate of the National User Groups are laid down in the Annex.

#### Article 8

##### Good governance

1. In order to avoid conflicts of interest between the Eurosystem's T2S service-providing and its regulatory functions, the Eurosystem central banks shall ensure that:

(a) members of the T2S Programme Board do not participate in any oversight activity of their central bank in relation with T2S, as specified in the Rules of Procedure of the T2S Programme Board, as approved by the Governing Council. They shall not be members of the Payment and Settlement Systems Committee (PSSC), the Information Technology Committee (ITC) or the Eurosystem IT Steering Committee (EISC);

(b) there shall be separation between T2S oversight and the operational activities of T2S.

2. The T2S Programme Board shall be subject to reporting obligations, controlling and audit, as defined in this Guideline. Audits relating to the development, operation and cost of T2S shall be initiated and conducted on the basis of the principles and arrangements set out in the Governing Council's ESCB audit policy in force at the time when the relevant audit takes place.

#### Article 9

##### Cooperation and information

1. The 4CB and the T2S Programme Board shall cooperate with each other, exchange information and provide technical and other support to each other during the development of the T2S Programme.

2. The 4CB, the other Eurosystem central banks and the T2S Programme Board shall inform each other immediately of any issues that could materially affect the development or building of T2S, and shall endeavour to mitigate any related risk.

3. The T2S Programme Board shall report on a quarterly basis to the Governing Council on the development of the T2S Programme. Draft reports shall be sent to the PSSC and to the EISC for comments before submission via the Executive Board to the Governing Council.

4. The T2S Programme Board shall share the agendas, the summaries and the relevant documentation of its meetings with the members of the PSSC, to allow such members to provide input in case of need.

5. The T2S Programme Board may consult, and may be consulted by, any competent ESCB committees as necessary.

6. The 4CB shall provide regular reports on the T2S Programme to the T2S Programme Board.

7. The content and detailed procedure for the reporting obligations of the T2S Programme Board and of the 4CB is detailed in the Level 2-Level 3 agreement.

### SECTION III

#### FINANCIAL REGIME

##### Article 10

#### Pricing policy

1. The pricing policy for T2S shall be guided by the basic principles of being not for profit, of full cost recovery and of non-discrimination towards CSDs.

2. Within 6 months following the adoption of this Guideline, the T2S Programme Board shall submit to the Governing Council a proposal on the pricing policy for T2S services, including the general procedures and a report on T2S's compliance with the objective of operating on a not-for-profit basis and achieving full cost recovery, including an assessment of any resulting financial risk that the Eurosystem may be exposed to. The pricing policy will be discussed with CSDs and users prior to being submitted to the Governing Council.

##### Article 11

#### Cost and accounting methodology

1. T2S shall be subject to the Eurosystem common cost methodology and the Guideline ECB/2006/16 of 10 November 2006 on the legal framework for accounting and financial reporting in the European System of Central Banks <sup>(1)</sup> unless the Governing Council decides otherwise.

2. The T2S Programme Board shall, at a very early stage, involve the relevant ESCB/Eurosystem committees in the assessment of the correct implementation of:

- (a) the Eurosystem common cost methodology in the context of T2S cost estimates and the calculation of annual T2S costs; and
- (b) Guideline ECB/2006/16 by the ECB and the 4CB in the context of T2S cost and asset recognition.

##### Article 12

#### Financial arrangements

1. The T2S Programme Board shall submit a proposal on the T2S financial envelope to the Governing Council, which shall include the T2S costs, i.e. the 4CB and ECB costs for developing, maintaining and operating T2S.

2. The proposal shall also include:

- (a) type of offer;
- (b) payment schedule;
- (c) time period covered;

(d) cost sharing mechanism;

(e) the cost of capital.

3. The Governing Council shall decide on the financial arrangements.

##### Article 13

#### Payments

1. There shall be a T2S project account held at the ECB on behalf of the Eurosystem. The T2S project account shall not have a budgetary character but shall be used to collect and distribute all T2S-cost-related pre-payments, instalments and reimbursements as well as T2S usage fees.

2. The T2S Programme Board shall manage the T2S project account on behalf of the Eurosystem. Subject to validation and acceptance of the 4CB deliverables, the T2S Programme Board shall approve the payment of each instalment to the 4CB in accordance with the payment schedule approved by the Governing Council and set out in the Level 2-Level 3 agreement.

##### Article 14

#### The Eurosystem's rights to T2S

1. The T2S business application shall be fully owned by the Eurosystem.

2. To this end, the 4CB shall grant the Eurosystem licenses regarding the intellectual property rights required to enable the Eurosystem to provide the full range of T2S services to CSDs under the applicable rules and common service levels and on an equal basis. The 4CB shall indemnify the Eurosystem for any infringement claims raised by third parties in relation to such intellectual property rights.

3. The details regarding the Eurosystem's rights to T2S shall be agreed between the 4CB and the T2S Programme Board in the Level 2-Level 3 agreement. The rights of the authorities that have signed a currency participation agreement as defined in Article 18 will be laid down in such agreement.

### SECTION IV

#### CENTRAL SECURITIES DEPOSITORIES

##### Article 15

#### CSD access criteria

1. CSDs shall be eligible for access to T2S services provided that they:

- (a) have been notified to the European Commission pursuant to Article 10 of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems <sup>(2)</sup> or, in the case of a CSD from a non-European Economic Area (EEA) jurisdiction, they operate under a legal and regulatory framework that is equivalent to that in force in the Union;

<sup>(1)</sup> OJ L 348, 11.12.2006, p. 1.

<sup>(2)</sup> OJ L 166, 11.6.1998, p. 45.

(b) have been positively assessed by the competent authorities against the CESR/ESCB Recommendations for Securities Settlement System;

(c) make each security/ISIN for which they are an issuer CSD (or technical issuer CSD) available to other CSDs in T2S upon request;

(d) commit to offer to other CSDs in T2S basic custody service on a non-discriminatory basis;

(e) commit towards other CSDs in T2S to carry out their central bank money settlement in T2S if the currency is available in T2S.

2. The rules in relation to the access criteria for CSDs shall be implemented in the contractual agreements between the Eurosystem central banks and the CSDs.

3. The ECB shall maintain a list on its website identifying the CSDs admitted to settle in T2S.

#### Article 16

##### Contractual relations with CSDs

1. The contracts between the Eurosystem central banks and CSDs, including the service level agreements, shall be fully harmonised.

2. The T2S Programme Board, jointly with the Eurosystem central banks, shall negotiate the contracts with CSDs.

3. The contracts with CSDs shall be approved by the Governing Council and subsequently signed by the Eurosystem central bank of the country where the seat of the CSD is located, or by the ECB for CSDs located outside the euro area, in either case acting in the name and on behalf of all Eurosystem central banks. In relation to Ireland, the contract will be signed by the Eurosystem central bank of the Member State that has notified the securities settlement system to the European Commission in accordance with Article 10 of Directive 98/26/EC.

#### Article 17

##### Compliance with regulatory requirements

1. The T2S Programme Board shall aim to support ongoing compliance by CSDs with relevant legal, regulatory and oversight requirements.

2. The T2S Programme Board shall consider whether the ECB should issue recommendations in order to foster legislative adaptations to ensure equal access rights to the T2S services by CSDs, and make proposals relating thereto to the Governing Council.

#### SECTION V

##### CURRENCIES OTHER THAN THE EURO

#### Article 18

##### Eligibility conditions for inclusion in T2S

1. An EEA currency other than the euro shall be eligible for use in T2S provided that the non-euro area NCB, other central bank or other authority responsible for such currency enters into a currency participation agreement with the Eurosystem and that the Governing Council has approved the eligibility of such currency.

2. A currency other than an EEA currency shall be eligible for use in T2S provided that the Governing Council has approved the eligibility of such currency, if:

(a) the legal, regulatory and oversight framework applicable to settlement in that currency provides substantially the same or a higher degree of legal certainty as that in force in the Union;

(b) the inclusion of such currency in T2S would have a positive impact on the contribution of T2S to the Union securities settlement market;

(c) the other central bank or other authority responsible for such currency enters into a mutually satisfactory currency participation agreement with the Eurosystem.

3. In accordance with the mandate of the T2S Programme Board, non-euro area NCBs may be represented on the T2S Programme Board.

#### SECTION VI

##### T2S PROGRAMME DEVELOPMENT

#### Article 19

##### T2S Programme Plan

1. Upon the adoption of this Guideline, the T2S Programme Board shall make proposals to the Governing Council for a T2S Programme Plan, based on the URD, consisting of a structured list of deliverables and activities in relation to the T2S Programme, together with their interdependencies and intended start and end dates.

2. On the basis of proposals made by the T2S Programme Board, the Governing Council shall assess, validate and accept the T2S Programme Plan.

3. The T2S Programme Board shall establish a detailed programme schedule on the basis of the T2S Programme Plan identifying the milestones of the T2S Programme. The schedule shall be published and communicated to T2S stakeholders.

4. If there is a serious risk that a milestone of the T2S Programme will not be achieved, the T2S Programme Board shall promptly inform the Governing Council thereof, and propose measures to reduce any delay in implementing the T2S Programme.

## SECTION VII

## FINAL PROVISIONS

*Article 20***Level 2-Level 3 agreement**

1. Subject to this Guideline, a Level 2-Level 3 agreement shall provide for the additional details of the tasks and responsibilities of the 4CB, the T2S Programme Board and the Eurosystem central banks.
2. The draft Level 2-Level 3 agreement shall be submitted for endorsement by the Governing Council and then signed by the Eurosystem and the 4CB.

*Article 21***Dispute resolution**

1. If a dispute in relation to a matter regulated by this Guideline cannot be settled by agreement between the affected parties, any affected party may submit the matter to the Governing Council for a decision.

2. The Level 2-Level 3 agreement shall provide that the T2S Programme Board or the 4CB may bring any dispute arising out of the Level 2-Level 3 agreement to the Governing Council.

*Article 22***Entry into force**

This Guideline shall enter into force on 1 May 2010.

*Article 23***Addressees and implementing measures**

This Guideline applies to all Eurosystem central banks.

Done at Frankfurt am Main, 21 April 2010.

*For the Governing Council of the ECB*

*The President of the ECB*

Jean-Claude TRICHET



## ANNEX

**T2S ADVISORY GROUP****Mandate and composition****1. Mandate and competences**

The TARGET2-Securities (T2S) Advisory Group (AG) has the following mandate:

- (a) supporting the Eurosystem's review of the General Specifications (GS) and the User Detailed Functional Specifications (UDFS) to ensure their full compliance with the User Requirements Document (URD);
- (b) supporting the Eurosystem's review of any requests to change the URD;
- (c) providing advice as to the further definition of the legal underpinning for the GS and the UDFS;
- (d) supporting the Eurosystem in further defining the pricing framework;
- (e) continuing the work on harmonisation in the field of securities settlement related to T2S;
- (f) supporting implementation efforts in the market;
- (g) advising on, and supporting the implementation of, agreements and policies that contribute to an effective and cost efficient post-trading T2S environment between T2S and CSDs, and thus to encourage commitment by central securities depositories (CSDs) and market users to shift balances and settlement activity to T2S;
- (h) advising on migration issues and phasing.

**2. Composition**

- 2.1. The AG is composed of the Chairperson, the Secretary, full members and observers.
- 2.2. Whenever deemed appropriate, the Chairperson may at their discretion invite additional experts to meetings of the AG on an ad hoc basis and inform the AG thereof.

**3. Full members**

- 3.1. Full members are entitled to take part in decisions taken by the AG.
- 3.2. Each group eligible for full membership pursuant to paragraph 3.3 is allotted the same number of full members. The number of full members of each other stakeholder group is equal to the number of full members in the central bank stakeholder group.
- 3.3. A representative of any of the following groups is eligible to be a full member of the AG:
  - (a) central banks – the ECB and each national central bank (NCB) of the euro area is to be represented by one full member. Upon adoption of the euro by a Member State, the respective NCB also participates as a full member in the AG as of the date of entry into the euro area. A central bank outside the euro area that has decided to include its currency in T2S is also represented by one full member as of the date of that decision. As a public authority, the European Commission is a full member and is counted as a member of the central bank group;
  - (b) Central Securities Depositories (CSDs) – each group of CSDs, which may constitute of several CSDs, or each CSD, as the case may be, that settles its euro transactions and/or its transactions in its national currency other than the euro and that has met the following criteria is a full member of the AG and may nominate one representative:

- it has declared its support to T2S,
- it is willing to enter into a contractual arrangement with the Eurosystem,
- it has declared its intention to use T2S once it is in operation.

According to paragraphs 3.2 and 3.3(a) the number of CSD representatives is equal to the number of central bank representatives. Thus, larger groups of CSDs and larger CSDs have a higher number of representatives, depending on their settlement volume. The number of additional representatives is determined by the CSDs represented in the AG and the AG Chairperson, in line with the *d'Hondt* methodology for proportional representation;

- (c) users – the Nomination Committee (NC) selects members from the user community on the basis of applications received by the Secretary pursuant to a predefined key:
- at least eleven full members representing major commercial banks active in the securities business in currencies that are eligible for settlement in T2S, irrespective of their place of incorporation,
  - at least two full members representing international investment banks,
  - at least two full members representing banks which are active in the securities settlement industry to serve their local customers,
  - at least one full member representing a central counterparty.

#### 4. **Observers**

- 4.1. Observers are entitled to participate in the meetings of the AG, but may not participate in its decision-making process.
- 4.2. One Representative of each of the following groups/institutions is eligible to be an observer of the AG:
- (a) Committee of European Securities Regulators;
  - (b) European Banking Federation;
  - (c) European Savings Bank Group;
  - (d) European Association of Cooperative Banks;
  - (e) European Securities Services Forum;
  - (f) Federation of European Securities Exchanges;
  - (g) CSDs that support T2S and which are operated by an NCB;
  - (h) chairpersons of AG sub-groups.
- 4.3. The Eurosystem central banks that will build and operate the T2S platform (4CB) may nominate one representative per individual central bank to participate in the AG as observer. These representatives present their view to the AG in a uniform way.

## 5. **Nomination procedures**

- 5.1. The following nomination procedures apply for full members and observers:
- (a) a central bank representative is nominated by the Governor/President of the central bank concerned pursuant to the applicable central bank statute;
  - (b) a CSD representative is nominated by the head of the CSD concerned;
  - (c) a user representative is nominated by the respective organisations on the basis of applications *ad personam*. They are designated by the NC in line with the applicable NC procedures and criteria;
  - (d) an observer is nominated by the head of the group/institution concerned.
- 5.2. Each nominee has to have the appropriate level of seniority and the relevant technical expertise. The nominating entities are responsible for ensuring that a nominee can make sufficient time available in order to be actively involved in the work of the AG.
- 5.3. Any nomination must be confirmed in writing to the Secretary.

## 6. **Participation**

- 6.1. Full members and observers in the AG participate in the AG strictly on a personal basis. Their attendance to the AG meetings is considered as a signal of their commitment to the project.
- 6.2. Full members and observers are entitled to designate an alternate (with an equivalent level of seniority and expertise) who, in exceptional circumstances, attends the AG in case of absence of the former and may express views or, in case of full members, vote on his/her behalf by way of a proxy vote. Full members and observers concerned inform the Secretary thereof sufficiently in advance.
- 6.3. Whenever a full member or observer has left the entity they represent, their membership ceases with immediate effect.
- 6.4. The AG Chairperson will request the responsible nominating organisation or the NC, as the case may be, to designate a substitute member each time a full member or an observer resigns or their membership ceases, in accordance with the applicable nomination procedure set out in Article 5.

## 7. **Chairperson**

- 7.1. The Chairperson must be a senior manager of the ECB and is appointed by the Governing Council. The Chairperson is entitled to designate an alternate to replace them in exceptional circumstances.
- 7.2. The Chairperson is responsible for organising the meetings of the AG and chairs those meetings. In this function, they decide on the agenda of the meetings, taking into account contributions from members of the AG, and decide on the documents to be sent to the AG.
- 7.3. The Chairperson decides whether a subject belongs to the field of competence of the AG (according to paragraph 1.2) and will inform the AG accordingly if they decide that a matter does not fall within the AG's field of competence.
- 7.4. The Chairperson performs all functions as provided for in the Governing Council decision, as well as all other functions subsequently delegated to them by the AG.
- 7.5. The Chairperson nominates the chairpersons and the regular members of the sub-groups that are established under the auspices of the AG.

- 7.6. The Chairperson is the only person to represent the AG externally. The AG will be informed in an appropriate manner prior to any relevant external representations undertaken by the Chairperson on behalf of the AG. Any external communication of the AG will be brought to the attention of the AG sufficiently in advance.
8. **Secretariat**
- 8.1. The Secretary must be a highly experienced ECB staff member and is appointed by the Chairperson. The Chairperson may designate an alternate to replace the Secretary in exceptional circumstances.
- 8.2. The Secretary is provided with operational and secretarial support by the ECB.
- 8.3. The Secretary works under the guidance of the Chairperson. The Secretary's tasks involve, in particular:
- (a) assisting the Chairperson in his/her duties;
  - (b) organising meetings and preparing the summary of the meetings;
  - (c) assisting in the drafting of documents adopted by the AG;
  - (d) acting as coordinator for consultations;
  - (e) organising external communication in relation to the work of the AG and the other groups (such as the publication of AG documents);
  - (f) executing all other functions assigned to him/her by these Rules of Procedure or the AG or the Chairperson, as the case may be.
- 8.4. The Secretary is an *ex officio* member of the NC. He may also participate to the sub-structures of the AG.
- 8.5. The Secretary is not entitled to take part in the decisions of the AG.
9. **Working procedures**
- 9.1. As a rule, the AG meets once every quarter. Additional meetings may be called by the Chairperson, the dates of which will be communicated sufficiently in advance to the AG. In principle, meetings take place at the premises of the ECB.
- 9.2. The working language is English.
- 9.3. Provisional conclusions on the main outcome of an AG meeting are published on the ECB's website within three working days after the meeting. These provisional conclusions are published under the responsibility of the Chairperson, and marked as such, without involvement of the AG. The Secretary also provides an action list after each AG meeting listing the tasks and deadlines that were allocated during that meeting. The summary of an AG meeting is drafted by the Secretary and circulated to the members of the AG within six working days of the meeting. Comments on the draft summary must be received from AG members within three working days. The final summary is published once it has been approved by the AG. It replaces the provisional conclusions of the Chairperson, which will be removed from the website after the summary is published. The summary indicates the topics that were under consideration, as well as the results of the discussions.
- 9.4. The AG works in an open and transparent manner.

The agenda of a meeting and the documents to be discussed (including input from AG sub-structures) will be circulated to the members and published on the ECB's website at least five working days before the meeting. It is at the discretion of the AG to decide whether documents that were sent less than five days in advance of a meeting will be discussed during that meeting. Comments and other submissions received by the Secretary no later than three working days before a meeting will be distributed to the AG and, in principle, will also be published on the ECB's website. Documents of a confidential nature (such as documents received from market participants on the condition of confidentiality or documents deemed confidential by the Chairperson) will not be published.

- 9.5. Decisions of the AG take either the form of advice that is sent directly to the ECB's decision-making bodies, i.e. the Governing Council and the Executive Board, or of resolutions concerning the organisation of the AG work or the work of the sub-groups.
- 9.6. As a rule, any advice to the ECB's decision-making bodies is adopted by way of consensus among the AG's members taking part in the AG's decisions. If a consensus cannot be reached, the Chairperson may decide to assess the degree of support for specific advice by asking all full members of the AG taking part in the AG's decision-making bodies. In case there are several proposals for advice on the same subject, only those proposals that are supported by at least seven full members of the AG (or their alternates) will be notified to the ECB's decision-making bodies. Full members are not allowed to support more than one proposal on the same subject. For issues of extreme importance, seven full members can request that their minority view be immediately submitted to the ECB's decision-making bodies.
- 9.7. The AG may establish sub-structures to support its work related to: (a) the technical implementation of the user requirements; (b) harmonisation for T2S-related matters; (c) legal issues related to T2S; or (d) any other area where the AG deems specific support necessary. The mandates of such sub-structures are defined and adopted by the AG.

The AG may establish sub-groups which encompass all AG stakeholder groups and which are of a longer term nature. In addition, the AG may also establish task forces which do not necessarily encompass all AG stakeholders and/or are of a short term nature. Furthermore, the AG as well as the T2S project team may call for workshops to address particular topics on an ad-hoc basis.

Decisions of the AG concerning the organisation of the work of the sub-structures will be taken by consensus, or by simple majority vote, if no consensus is reached.

- 9.8. The AG must ensure that a wide range of market participants and authorities are given the opportunity to provide input to the AG and that they are informed of its deliberations. The Secretary acts as coordinator for any such consultations and is supported by the ECB T2S Team, and by other ECB staff where necessary.

To this end, in each country, a National User Groups (NUG) will be established as a link between the national market and the AG. NUGs may submit suggestions or resolutions to the AG via the Secretary.

The AG must use appropriate means to consult market participants, authorities, as well as all other stakeholders and interested parties, e.g. through NUGs, public consultations, round-table discussions, dedicated meetings and information sessions, or the publication of feedback statements following consultations.

All consultations must, as a rule, provide for a window of no less than three weeks for comments, unless the Chairperson of the AG decides otherwise.

#### 10. **Reporting lines and relationship with European System of Central Bank (ESCB) Committees**

- 10.1. The Governing Council may provide general guidance to the AG, either on its own initiative or upon request.
- 10.2. The AG submits its advice directly to the ECB's decision-making bodies for their consideration.
- 10.3. The AG may provide guidance directly to a sub-group via the respective Chairperson as work to be undertaken pursuant to the mandate, either on its own initiative or upon their request.
- 10.4. Through the Chairperson, the AG may consult an ESCB Committee or its subgroup(s) on specific technical issues within the field of competence and expertise of that Committee (such as legal issues in relation to T2S). In principle, a minimum period of three weeks for any such consultation will be given, unless special circumstances require a shorter period. The Chairperson also ensures that the AG's work does not overlap with the mandate of an ESCB Committee.

## CSD CONTACT GROUP

### Mandate and composition

#### 1. Scope of the mandate

The CSD Contact group (CCG) shall facilitate the preparation and negotiation of the Framework Agreement, between the Eurosystem, on the one hand, and the CSDs which are willing to participate in T2S, on the other hand. The Framework Agreement shall be a document which will be proposed by the Governing Council to all European CSDs. It shall cover the development and the operational phases of T2S. It will be signed by CSDs individually.

#### 2. Composition

The CCG shall be composed of the CSD project sponsors and of the members and alternates of the T2S Programme Board.

The project sponsors are nominated by the managing boards of those CSDs that have signed the MoU with the Eurosystem on 16 July 2009 or have made a unilateral declaration of its acceptance thereafter. Each CSD member may designate an alternate which may replace him/her in case of unavailability. In case neither the project sponsor nor his/her alternate is available, the CSD is not represented. In case T2S Programme Board members and alternates are not available, they cannot be replaced.

The Chairperson of the CCG shall be the Chairperson of the T2S Programme Board. The Chairperson shall in coordination with the CSDs: (1) decide on the frequency, format and agenda of the meetings; (2) invite external experts and/or T2S Team members to the meetings on specific topic. The rapporteur shall be a member of the T2S Team at the ECB. He/she shall: (1) coordinate the organisation of the meetings and the timely transmission of the relevant documents; (2) support the Chairperson in preparations for group's meetings; (3) draft the outcome of the meetings; (4) support the Chairperson in managing the relations with the relevant (sub-) groups.

#### 3. Working procedures, interaction and support

##### *Working procedures*

The CCG shall aim at adopting its resolutions by consensus. In case, a consensus can not be reached for two consecutive meetings, the divergences shall be carefully documented. In such a case, it shall be the responsibility of the T2S Programme Board to make a proposal to the Governing Council. CSDs who disagree with the T2S Programme Board proposal shall have the possibility to express a diverging opinion.

##### *Interaction between T2S Advisory Group (AG) and the CCG*

The Chairperson of the CCG shall, on a regular basis, inform the AG on the progress of the Framework Agreement negotiation process.

Where relevant the CCG (possibly via the Project Managers sub-group (PMSG) and the Task Force on Contractual Issues (TCI)) will receive input from the existing sub-structures of the AG.

##### *CCG support*

The CCG shall be supported by:

- the PMSG, responsible for preparing the business view for the negotiation (including, inter alia, functional, technical and planning items),
- the TCI, which shall provide legal support to the CCG and in that role will 'translate' the business input received from the CCG and the PMSG into the appropriate legal terms.

The CCG will define the mandate of these two task forces and will set their agenda in broad terms.

## NATIONAL USERS GROUP

### Mandate and composition

#### 1. Introduction

The National User Group (NUG) brings together providers and users of securities settlement services within its national market in order to support the development and implementation of TARGET2-Securities (T2S). It creates a forum for involving national market participants in the T2S Advisory Group's (AG) work and establishes the formal link between the AG and the national market. It acts both as a sounding board for the T2S project team, and as a provider of input to the AG in relation to all matters considered by the AG. As such, it may also suggest issues for AG consideration.

The NUGs may be involved in the URD change management process and can play an important role in assessing such requests in the context of the operation of the national market. The NUGs should adopt the T2S principle of seeking to avoid incorporating national specificities in T2S, and should actively promote harmonisation.

#### 2. Mandate

The mandate of NUGs is to:

- assess the impact of the T2S functionality, and in particular any changes in the T2S user requirements, on their national market; when doing so, due consideration should be given to the concept of a 'lean T2S' that aims at avoiding national specificities and at promoting harmonisation,
- bring material concerns of the national market to the attention of the AG,
- raise the awareness of T2S in all segments of the national securities community,
- support the AG members representing the national community.

#### 3. Composition

The NUGs comprise of the Chairperson, the Secretary and members.

The Chairperson of a NUG should preferably be a full member or observer of the AG. This role will typically be performed by a senior official of the relevant national central bank. In the case where the relevant central bank does not provide or designate the Chairperson of the NUG, the Chairperson will be nominated by the AG Chairperson who will look for consensus amongst the main participants in the relevant market. Should the Chairperson not be a member of the AG, an AG member should coordinate between the AG and the NUG Chairperson to ensure a close link between the AG and the NUG.

The Secretary of the NUGs is provided by the relevant national central bank in euro area countries; in other countries the NUG Secretary is appointed by the NUG Chairperson. The Secretary is expected to attend regular briefings organised for NUG secretaries by the T2S team.

The NUG members comprise the relevant AG members and observers (or their nominated senior representative, acceptable to the NUG Chairperson) and additional persons with the knowledge and standing to be broadly representative of all categories of users and providers in the national market. NUG members may thus include central securities depositories, brokers, banks, investment banks, custodians, issuers and/or their agents, central counterparties, exchanges and multilateral trading facilities, the relevant national central bank, regulatory authorities and the relevant banking associations.

#### 4. Working procedures

NUGs only deal with issues relevant to T2S. They are invited to actively seek briefing from the T2S team in relation to live issues, and provide national views in a timely fashion on matters requested by the AG Secretary or raised by the NUG. The T2S team regularly provides information to the NUGs and organises meetings with the NUG secretaries to foster the interaction between the NUG and the T2S team.

The NUGs will endeavour to have regular meetings aligned with the schedule of AG meetings, so that they can offer advice to national AG members. However, no AG member is bound by any such advice. NUGs may also make written submissions to the AG via the Secretary of the AG and invite an AG member to present its view.

The NUG Secretary aims at circulating an agenda and relevant documents for discussion at a NUG meeting at least five business days ahead of the meeting. A summary of NUG meetings will be published on the T2S website – and, if deemed appropriate, on the website of the respective NCB – in English and in any other Union language within three weeks after each meeting.

The members of the NUGs will be published on the T2S website. The NUGs will also publish a NUG-contact e-mail address on the T2S website, so that participants in national markets know whom to contact to express their views.

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