

Feedback to consultation paper

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Principal Nr.	Principle	Explanation by the Eurosystem	Responsible Clearstream	Statement by Clearstream	Comment by Clearstream	Confidential
1	The Eurosystem shall take on the responsibility of delivering T2S by assuming full ownership, and by undertaking the development and operation of the platform.	<i>In line with the July 2006 Governing Council decision, the proposed platform will be fully owned and operated by the Eurosystem. T2S will be governed by a structure defined by the Governing Council. This structure allows for the involvement of the market.</i>	Karla Amend	I agree	<p>The Eurosystem as technical outsourcing service provider shall take on the responsibility of delivering T2S by assuming full ownership, and by undertaking the development and operation of the platform. The Specifications for Development, and System Operation, will be subject to Service Level Requirements agreed between the Eurosystem and the CSD which is outsourcing its settlement functions. It will be ensured that the Eurosystem will fulfil all legal, regulatory and supervision requirements for outsourcing service providers (for banks) in the respective national legal environments. The continued evolution of the platform will be ensured and will be subject to mutual agreement with CSD members.</p> <p>As Eurosystem, to our knowledge, is not a legal entity by itself, it should be clarified which are the contracting parties in charge of building, developing and operating T2S vs. the CSDs.</p> <p>Nevertheless the preferred option will be:</p> <p>For the Implementation Phase it is proposed to set-up a Public Private Partnership (PPP) procured by a Joint Venture Stock Company in which the Eurosystem and the respective CSD participating in the T2S System are represented.</p> <p>For the future Operating Phase after implementation of the T2S System in the market, the Joint Venture Stock Company will be migrated from a Project Company to an Operating Company subject to a "Code of Conduct" and stringent Service Level Requirements. The ECB will take over the sole responsibility for operating and maintaining the system.</p>	No
2	T2S shall be based on the TARGET2 platform, and will hence provide the same levels of availability, resilience, recovery time and security as TARGET2.	<i>In order to exploit fully synergies with existing Eurosystem procedures and solutions, T2S will be developed and run on the same technical platform as TARGET2. Four NCBs (Deutsche Bundesbank, Banco de España, Banque de France and Banca d'Italia) are ready to develop and operate T2S on TARGET2 via the Single Shared Platform. Use will be made of the valuable experience and knowledge that is available in the market.</i>	Karla Amend	I completely disagree	<p>The use of T2 as a basis for T2S is a design decision that should only be taken once the requirements for T2S have been identified and agreed. Otherwise the functionality of T2S will be constrained by the technical limits of T2 that have yet to be identified or understood. Therefore until alignment on the requirements has been reached we cannot agree that such a solution would, or would not, be appropriate. For example it should be foreseen that T2S will need to have greater accessibility and availability than T2 (we would expect 24/7 to be required) and hence it is possible that these requirements would not fit with the structure of T2.</p> <p>There was no RFP process regarding developing and operating and therefore we would like to better understand why the T2 platform has been identified as most efficient platform for T2S.</p>	No

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3	T2S shall not involve the setting up and operation of a CSD, but instead will serve only as a technical platform for providing settlement services to central securities depositories (CSDs).	<i>T2S is purely an IT settlement service operated by the Eurosystem and used by CSDs for the benefit of their customers. It therefore neither constitutes a CSD in itself, nor is it planned that T2S will become one in the future. This excludes the possibility of T2S engaging in any asset-servicing businesses (such as the management of corporate actions). The scope of T2S is restricted to settlement, including the functionalities required to support settlement activities relating to the asset-servicing business. Activities that extend beyond the provision of settlement services lie outside the scope of T2S.</i>	Karla Amend	I do not agree entirely	We take note that the scope of T2S is limited to providing an IT platform for core settlement processing and the Eurosystem should be fully coherent with this approach. One question is whether the ECB feels comfortable that effecting all transfers on the centralised platform will not put in question which laws governs the ownership aspects of securities holdings and transfers. If the answer is the law of the place of the establishment of the CSD, which legal basis is used for this conclusion. The legal framework of settlement must be defined. CSD will provide the settlement services whereas the Eurosystem provides IT processing of the CSD services. Nevertheless the preferred option will be: For the Implementation Phase it is proposed to set-up a Public Private Partnership (PPP) procured by a Joint Venture Stock Company in which the Eurosystem and the respective CSD participating in the T2S System are represented, the latter in relation to the transaction volume of the markets they represent. Initially, the Joint Venture Stock Company, which is advised and	No
4	The respective CSD users' securities accounts shall remain legally attributed to each CSD.	<i>Although from a technical viewpoint the Securities Account Database will lie within the T2S technical environment, each CSD will continue legally to maintain the securities accounts of its users and, where relevant, those of the clients of these users as well. As a consequence, CSDs will retain legal responsibility for opening, maintaining and closing accounts attributed to them. Procedures between CSDs and NCBs will be further defined in case of emergency.</i>	Karla Amend	I do not agree entirely	While we agree on the principle as described, in the explanation the conclusion should be drawn that, as legal obligations remain with the CSD, it is necessary that decision taking on the set-up and future development of T2 requires the buy-in of the outsourcing CSDs. CSDs will have to continue to perform regulatory requirements based on the respective national legislation and therefore T2S must technically provide a solution supporting those requirements. (e.g. notary function, end-investor account, etc.).	No
5	The T2S service level shall allow CSDs to offer their participants, at a minimum, their current level of functionality and coverage of assets.	<i>To enable CSDs to have T2S perform their entire settlement processing, the centralised platform should cover the full functionality needed for such a service. If this is not achieved, CSDs will be forced to maintain duplicate settlement infrastructures, with a cost impact both through duplication and reduced economies of scale. The objective of T2S is to provide a level of functionality that frees CSDs from maintaining securities balances on a separate platform. A security will be included in T2S as long as it has a designated International Securities Identification Number (ISIN), and as long as it complies with the other principles presented here.</i>	Karla Amend	I do not agree entirely	Additionally, current levels of performance and efficient use of liquidity also need to be maintained at a minimum for all ent-to-end services and end-to-end processes. <i>Technical performance considerations may require the maintenance of positions within the CSD.</i>	No
6	Securities account balances shall only be changed in T2S.	<i>For accounts maintained in T2S, T2S will handle all changes that have a legal effect on securities account balances that relate either to settlement or non-settlement activities of CSDs. Examples of this include balance changes generated via primary and secondary market transactions, corporate actions, lending and collateral management activities.</i>	Karla Amend	I do not agree entirely	CSDs will define the outsourcing. For example securities settlement account balances might only be changed in T2S, while all (register) account keeping with regard to notary functions is performed by the Issuer CSD on its platform. Additional information about the level of granularity of accounts is requested, concerning which level might be mandatory or optional per market and how these would fit together for the purpose of cross-border transactions.	No

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7	T2S shall require participating CSDs to be designated under the Settlement Finality Directive (SFD) in their respective jurisdiction.	<p>When assessing settlement finality, a distinction must be made between finality of transfer orders and finality of transfers:</p> <ul style="list-style-type: none"> • The finality of transfer orders, whereby transfer orders that are entered into a securities settlement system are protected from insolvency or unwinding risks. • The finality of transfer, whereby entitlement to securities is legally transferred to the receiving entity. For T2S, a similar approach is conceived as for TARGET2. There will continue to be domestic systems designated under the SFD, linked by a common technical infrastructure for the processing of transfer orders. Transfer orders processed in T2S will acquire adequate protection, relying on the rules of the individual CSDs that are designated under the SFD. Proprietary aspects and finality of transfers will be determined in accordance with the laws where the CSD that has opened the securities account is established. The location of the IT facilities is not relevant in this respect. 	Karla Amend	I agree	<p>CSDs are committed to the directive, but the implementation of the directive may cause more technical requirements (like extra real-time interfaces). <i>In the case of a DvP transaction, settlement finality also depends upon finality of cash settlement and therefore T2S must ensure, together with TARGET 2 Cash, the simultaneous execution of transfer orders on both the cash and securities elements of a transaction. Under no circumstances can one or both sides of the transaction be unwound once T2S has confirmed execution of the transfer order and simultaneously updated the status of the respective instructions.</i></p>	No
8	T2S shall settle exclusively in central bank money.	<p>As stated above, T2S is a service for enhancing the efficiency of securities settlement across Europe while at the same time keeping NCBs' cash account management within the Eurosystem. Its scope is therefore exclusively limited to central bank money, and does not extend to commercial bank money settlement.</p>	Karla Amend	I agree		No
9	The primary focus of T2S shall be securities settlement in euro.	<p>The primary focus of the Eurosystem is efficiency and security in the euro area environment. As a result, the focus of T2S is to provide settlement services in euro central bank money. For the extension of T2S to other currencies, please refer to Principle 10.</p>	Karla Amend	I agree	No comment	No
10	T2S shall be technically capable of settling currencies other than the euro.	<p>T2S will be technically capable of providing settlement not only in euro central bank money but also in non-euro central bank money. This technical capability does not however mean that this will be available from day one of T2S production, unless explicitly requested so by the relevant non-Eurosystem NCB(s). In any case, the provision for settlement in non-euro currencies requires the willingness of non-Eurosystem NCBs to authorise the technical operation of their cash accounts to the Eurosystem. The initiative should come from the relevant NCB in coordination with its local market community.</p>	Karla Amend	I agree	No comment	No

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11	T2S shall allow users to have direct technical access to its platform.	<i>While CSDs will retain business and legal relationships with their participants, CSDs will offer their participants the option of a technical communication channel to T2S settlement services, either directly to T2S or indirectly via the CSD. This connectivity option refers solely to the way in which users will interface with T2S in order to send and maintain settlement instructions, as well as to access reporting facilities.</i>	Karla Amend	I do not agree entirely	T2S shall allow users to have direct technical access to its platform under the conditions that T2S (1) will perform all relevant validations defined by the CSD, (2) will inform the CSD immediately on all transactions for which the CSD is legally responsible, (3) enables the CSD to step into the process if deemed necessary due to its legal obligations or other procedural reasons, (4) fulfils all legal, regulatory and supervision reporting requirements on behalf of the CSD for which the CSD is responsible, (5) facilitates potential auditing and inspection rights by third parties to which the CSD is obliged. <i>The CSD must have the right to configure the access resp. the user rights.</i>	No
12	CSDs' participation in T2S shall not be mandatory.	<i>CSDs' participation in T2S is a business choice on the part of the CSDs and their local market community. When deciding whether or not to join T2S, CSDs are expected to follow the interests of their users.</i>	Karla Amend	I agree	No comment	No
13	All CSDs settling in euro central bank money shall be eligible to participate in T2S.	<i>All CSDs settling in euro central bank money are invited to join T2S. The principle implies that all CSDs with access to euro central bank money and designated under the SFD will be eligible to participate in T2S.</i>	Karla Amend	I do not agree entirely	The principle has to be adaptd once T2S will settle currencies others than Euro.	No
14	All CSDs connecting to T2S shall have equal access conditions.	<i>The CSDs' access criteria will be public and non-discriminatory. All participating CSDs will have access to all T2S services. A single, transparent and publicly available fee schedule will be applied (see also Principle 19 on compliance with the Code of Conduct). To avoid distorting competition, the Eurosystem will provide its services to connected CSDs on a non-discriminatory pricing basis (in a similar manner as for other existing Eurosystem infrastructures such as TARGET2). Although not a designated system under the SFD itself, T2S will comply with the price transparency principle of the Code of Conduct.</i>	Karla Amend	I do not agree entirely	All CSDs connecting to T2S shall have equal access conditions in general; however national legal obligations of the CSDs as well as business requirements of all CSDs have to be considered when defining the relevant minimum standard for connectivity and access conditions. The described principles of access may need to be constrained in some way in order to handle innovation, and for new-joiners, the fees should be able to reflect and compensate the investments funded by already participating CSDs, both for the initial and subsequent development of T2S, to reduce free-rider advantages and incentives. We expect T2S to allow CSDs to comply all principles of Code Conduct.F32	No
15	All CSDs connecting to T2S shall do so under a harmonised contractual arrangement.	<i>With reference to their contractual relationship with T2S, all CSDs receiving the same service level will be bound by the same contractual arrangement. This means that all CSDs willing to participate in T2S will adhere to the same contract for the platform's core functions.</i>	Karla Amend	I completely disagree	All CSDs connecting to T2S shall do so under a harmonised contractual arrangement; however national legal obligations of the CSDs, business requirements of CSDs and the technical necessities of CSDs (e.g. technical infrastructure and infrastructures of other outsourcing partners of the CSDs) have to be considered when defining the relevant arrangement. The contractual arrangement may also be impacted by differing levels of take up of T2S services, and the handling of innovation.	No

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16	All CSDs connecting to T2S shall have a single calendar of opening days and harmonised opening and closing times for settlement business.	<i>Participating CSDs shall adopt the T2S calendar. This will be the same as the TARGET2 calendar. Settlement (delivery versus payment (DvP) as well as free of payment (FoP)) via T2S shall not be possible outside this calendar. The opening and closing times will cover daytime and night-time settlement. They will be compatible, though perhaps not identical, with TARGET2 operating hours. Further consultation will be conducted on the exact cut-off times within the single T2S operating timetable – different cut-off thresholds might for instance be required for specific operations (DvP notification submission, automatic lending operations, etc.).</i>	Karla Amend	I agree	We agree in principle. Nevertheless the harmonization of kalender times as long as banking holidays are not fully harmonized the T2S Platform has to support individual holidays per CSD and per product group settled for the CSD. Procedures have to be available to bridge different holiday schedules. The system should be available for booking 24/7 as general rule.	No
17	T2S settlement rules and procedures shall be common to all participating CSDs.	<i>To minimise costs and simplify processes, T2S will aim at harmonising all rules and procedures related to the settlement of securities transactions in cases where different existing procedures imply an additional burden for T2S. As an example, a single set of matching rules shall apply in T2S which must be observed by instructing parties. These will be based on the European Central Securities Depositories Association (ECSDA) report on matching rules. This does not exclude, however, that CSDs and local markets might want to maintain additional domestic rules beyond what is defined in T2S, provided that such rules are not in conflict with those of T2S.</i>	Karla Amend	I do not agree entirely	T2S settlement rules and procedures shall be common to all participating CSDs; however national legal specialities have to be considered by T2S as long as relevant laws have not been harmonized by the public sector.	No
18	T2S shall operate on a full cost-recovery and not-for-profit basis.	<i>Due to its status as a public authority, the Eurosystem will price the development and operation of T2S on a full cost recovery and not-for-profit basis. While delivering a very high level of service in terms of quality, security and availability, T2S will also seek to be as cost-efficient as possible.</i>	Karla Amend	I do not agree entirely	Relative to the explanation of this principle given by the Eurosystem: some consideration needs to be given to innovation, and how this is handled. Concerning the definition used for service quality, it should be noted that performance is a key aspect of quality. T2S should also publish the cost drivers to all participating CSD's.	No
19	T2S services shall be unbundled in line with the principles of the European Code of Conduct for Clearing and Settlement.	<i>Compliance with the Code of Conduct with regard to the unbundling of services is a precondition for CSDs using T2S services. This principle implies that each unbundled service will be available at an appropriate price. As stated in the Code of Conduct, this does not preclude that a special price will apply to the joint purchase of several unbundled services.</i>	Karla Amend	I completely disagree	The explanation of this principle by the Eurosystem appears to mix together the commitments of T2S (the subject of the principle), with what appears to be a statement in the explanation that there will be a T2S imposed requirement that CSDs abide by the code of conduct. T2S delivers ITservices to CSDs and shall allow CSDs to unbundle the CSD services in line with the principles of Code of Conduct.	No
20	T2S shall allow the participating CSDs to comply with oversight, regulatory and supervisory requirements.	<i>In order to ensure a safe, orderly and efficient functioning of the market, the set-up of T2S will aim at allowing the participating CSDs to comply with the relevant oversight, regulatory and supervisory requirements and at the same time strive for achieving a high degree of harmonisation in meeting those requirements.</i>	Karla Amend	I agree	No comment	No