



TARGET2-SECURITIES

MEMORANDUM OF UNDERSTANDING

BETWEEN

[EUROSYSTEM]

AND

[CSDs]

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MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MoU") is entered into on [*insert date*] between

[Eurosystem]

and

[CSDs].

PREAMBLE

- A)** At its meeting of 6 July 2006, the Governing Council of the European Central Bank (ECB) decided to explore, in cooperation with central securities depositories (CSDs) and other market participants, the possibility of setting up a new service for securities settlement, called TARGET2-Securities (T2S). As part of its statutory tasks in accordance with Articles 17, 18 and 22 of the Statute of the ESCB and the ECB, the Eurosystem envisages T2S to be a service, based on a single shared platform (the "Platform") allowing for core, neutral and borderless pan-European cash and securities settlement, that is offered to CSDs in order to enable them to provide harmonised and commoditised delivery-versus-payment settlement services in central bank money in an integrated technical environment to their customers.
- B)** The Governing Council, after actively soliciting the views of CSDs and market participants, concluded on 8 March 2007 that the T2S project is feasible, and subsequently launched the preparation, in cooperation with CSDs and market participants, of the user requirements.
- C)** On 23 May 2008, the Governing Council has issued a proposal to all European CSDs to join the T2S initiative. CSDs were invited to inform the ECB by 4 July 2008 whether they were willing to (i) support the continuation and finalisation of the T2S project, and (ii) start with the preparation of a contractual arrangement for the specification and development phase. Subject to certain conditions stated in their replies to the Governing Council's 23 May 2008 letter, all euro area CSDs expressed their support for the continuation of the T2S project.

- D)** On 17 July 2008, the Governing Council decided to launch the T2S project and to provide the resources required until its completion. Based on an offer by Deutsche Bundesbank, the Banco de España, the Banque de France and the Banca d'Italia, the Governing Council also decided that T2S would be developed and operated by these four central banks.
- E)** Also on 17 July 2008, the Governing Council approved the user requirements for T2S (URD) which include, *inter alia*, the "General Principles of T2S".
- F)** The CSDs are regulated entities authorised in each jurisdiction under specific laws and regulations to act, *inter alia*, as operator of securities settlement systems. To use and offer the T2S services (in particular the processing allowing for integrated securities settlement in central bank money) to their customers, the CSDs would outsource certain IT development and operations services to the Eurosystem, while maintaining full control over the business and contractual relationship with their customers. As regards the outsourced functions, the CSDs will require appropriate reporting as well as control rights. The CSDs will retain full control over their business parameters, including the ability to monitor the processing of their business operations on the Platform.
- G)** With letter to the ECB dated 13 October 2008, the European Central Securities Depositories Association (ECSDA) proposed a series of core principles for the governance of the relationship between the ECSDA members and the operator of T2S as regards T2S.
- H)** The Eurosystem and the CSDs wish to further define the scope and framework of their respective contributions to the T2S project, including the process for agreeing on a long-term contractual framework as regards the development of T2S and its use by the CSDs.

Now, therefore, the parties agree as follows:

1. Scope and Purpose

The purpose of this MoU is to formalise certain mutual contributions of the Eurosystem and the CSDs to the T2S project and to define certain parameters concerning the scope and negotiations of the future contractual arrangement between the Eurosystem and individual CSDs in relation to the T2S services. Nothing in this MoU creates an obligation to enter into the Agreement.

The parties' intention is to negotiate a mutually satisfactory contractual arrangement that will cover the development and the operation phases of T2S

(the "**Agreement**"). It is the understanding of the parties that the Agreement would be concluded with each CSD individually. The Agreement will only be concluded once the prospective parties to it are satisfied with its terms and all necessary corporate and regulatory approvals have been obtained by the CSD concerned.

2. Effective Date and End Date

This MoU enters into effect on the date hereof and shall automatically end if the last CSD ceases to be a party to this MoU pursuant to Clauses 5.2 to 5.4.

3. Negotiation of the Agreement

3.1 Guiding Principles

3.1.1 The parties will negotiate the Agreement in good faith and actively. It is the common understanding of the parties that the main substantive terms of the Agreement shall be uniform with regard to all CSDs enabling fair and non-discriminatory access of CSDs to T2S.

3.1.2 The parties acknowledge the need for effective governance arrangements to facilitate appropriate communications and decision making.

3.1.3 The Eurosystem takes note of the importance for the CSDs of the principles set out in the ECSDA letter of 13 October 2008, and the CSDs take note of the importance for the Eurosystem of the "General Principles of T2S" set out in the URD. The parties will closely work together in identifying the appropriate contractual provisions to reflect the respective principles as satisfactory as possible.

3.2 Negotiation of the Agreement

The parties will discuss and agree the most effective process for negotiating the Agreement, on the understanding that such process will (i) appropriately involve, and consider the mutual expectations at, the relevant business, legal and technical levels, (ii) provide for sufficient time for management consideration and corporate approvals at each step, and (iii) establish effective communication channels allowing for mutual access to the relevant decision making levels, where relevant.

The Task Force on T2S Contractual Issues (TCI) will have the task to facilitate the drafting of the Agreement. The TCI may escalate any unresolved items, for guidance, to a higher level forum to be agreed between the parties.

3.3 Timeline

The parties will endeavour to finalise drafting the Agreement in time for the start of the development phase of T2S, which is envisaged for the beginning of 2010.

3.4 Regulatory Compliance

The parties are aware that the services to be provided by the Eurosystem under the Agreement are critical to and for the business of the CSDs. It is the parties' intention that the Agreement shall facilitate the CSD's compliance at all times with applicable regulatory requirements, including, where relevant and without limitation, the requirements relating to the outsourcing of material activities.

4. Tasks and Responsibilities of the Parties

4.1 Tasks and Responsibilities of the Eurosystem

4.1.1 The Eurosystem shall continue to develop and subsequently make available T2S consistent with the URD.

4.1.2 The Eurosystem shall develop and maintain a programme master plan as a road map up to the start of the operational phase. The programme master plan shall be regularly updated.

4.1.3 The Eurosystem will specify the party that will conclude the Agreement with each of the CSDs on behalf of the Eurosystem.

4.1.4 The Eurosystem will elaborate proposals for contractual provisions, at an appropriate level of detail, on aspects that will have to be addressed in the Agreement, including on the following aspects:

- (a) appropriate governance procedures, including a change management process and a technology and migration planning process;
- (b) project plan with defined milestones;
- (c) clear definition of each party's role and responsibilities;
- (d) clear separation of regulatory and service provision roles;
- (e) confidentiality and data protection;
- (f) services provided by the Eurosystem to CSDs, principles for service levels and key performance indicators (including a process for subsequently defining the final service levels and key performance indicators), and mechanisms for agreeing on improvements;

- (g) reporting procedures;
- (h) intellectual property rights;
- (i) remedies and liability;
- (j) pricing (including a process for subsequently defining the final price structure);
- (k) business continuity and disaster recovery principles (including a process for subsequently defining the final business continuity and disaster recovery schemes);
- (l) record keeping and audit rights;
- (m) termination rights and related consequences; and
- (n) applicable law and dispute resolution.

4.1.5 The Eurosystem will facilitate CSDs in meeting legal or regulatory requirements that may apply to a CSD in connection with this MoU and T2S in general, as agreed between the Eurosystem and the CSD.

4.1.6 To the extent permitted by applicable law, the Eurosystem will provide any information reasonably required for a CSD that may be relevant to fulfil such CSD's tasks and responsibilities under this MoU.

4.2 Tasks and Responsibilities of CSDs

4.2.1 Each CSD herewith confirms its intention to use T2S once in operation, provided that the final draft of the Agreement provides for mutually satisfactory solutions regarding the conditions set out in its respective response to the Governing Council's 23 May 2008 letter and the core principles proposed in the ECSDA letter of 13 October 2008 and subject to successful testing and migration processes.

4.2.2 Each CSD shall, at a level of detail to be mutually agreed between that CSD and the Eurosystem, carry out an assessment of the impact of T2S on such CSD's current systems and processes based on the URD and other documentation on T2S made available by the Eurosystem, and inform the Eurosystem on findings that may have an impact on the T2S project, including the relevant timelines.

Further, each CSD shall provide the Eurosystem by 30 September 2009 with a general description of the envisaged adaptation process by which its community would join T2S. This description will be based on the URD and does not create any assumption or obligation to enter into the Agreement.

- 4.2.3 To the extent permitted by the law applicable to each relevant CSD, a CSD shall inform the Eurosystem, to the extent such information can reasonably be expected in light of the general principle of good faith negotiations (cf. 3.1.1), as soon as a legal or regulatory constraint or a decision regarding its business strategy materialises that affects its intention to use T2S.
- 4.2.4 Each CSD shall actively participate in, and contribute to, the specification phase and the development phase, at a level of detail to be mutually agreed between each relevant CSD and the Eurosystem, including but not limited to:
- (a) supporting the validation of the specifications of T2S, in particular by reviewing and commenting on such specifications;
 - (b) providing information that may be relevant for the Eurosystem to develop T2S or fulfil its tasks and responsibilities under this MoU;
 - (c) nominating an individual who will act as primary point of contact for all matters regarding the T2S programme and the MoU.
- 4.2.5 Each CSD will make reasonable efforts to inform the Eurosystem about any legal or regulatory requirements applicable to it, and changes and additions thereto, which have to be considered to enable inclusion of such requirement in the URD in accordance with the change management procedure.

5. Withdrawal or exclusion of CSD

5.1 Amicable Resolution

The rights set forth in this Clause 5 may only be exercised following completion of an attempt of the Eurosystem and the relevant CSD(s) to resolve the relevant issue in an amicable manner and in good faith.

5.2 Withdrawal of CSD

A CSD may withdraw from this MoU at any time by written notice to the Eurosystem, subject to Clause 5.1. The reason, if any, for the withdrawal shall be specified in the CSD's withdrawal notice. The Eurosystem shall be entitled to communicate the CSD's withdrawal notice to the public.

5.3 Exclusion of CSD

The Eurosystem has the right to exclude a CSD from this MoU by written notice to the affected CSD(s) in case of (i) failure of such CSD(s) to meet its obligations under this MoU in any material respect and absence of remedy to such failure within a reasonable cure period following receipt of a corresponding warning notice, (ii) failure to execute the Agreement between the

Eurosystem and such CSD(s) within three (3) months of the submission of a proposal for an Agreement designated as final by the Eurosystem (cf. Clause 3.3), or (iii) information by such CSD of an event pursuant to Clause 4.2.3.

5.4 Consequences of withdrawal or exclusion of a CSD from the MoU

5.4.1 A CSD shall no longer be a party to this MoU if such CSD withdraws from this MoU pursuant to Clause 5.2, is excluded from this MoU pursuant to Clause 5.3, or has executed an Agreement with the Eurosystem.

5.4.2 Where a CSD withdraws pursuant to Clauses 5.2 or is excluded pursuant to Clause 5.3, this shall not lead to a cancellation of the MoU in its entirety, but only cause such CSD to no longer be a party to this MoU as from the date the relevant removal takes effect. This MoU shall in such case remain in force as between the Eurosystem and the remaining CSDs.

5.4.3 If a CSD withdraws pursuant to Clause 5.2 or is excluded pursuant to Clause 5.3, then such CSD shall no longer have access to the T2S governance, fora and information (other than those generally available to the public).

5.5 No Other Remedies

With the exception of Clause 6, the rights to withdraw and to exclude, as the case may be, set forth in this Clause 5 shall be the sole remedy that a party shall have against any other party under this MoU, including for breach of contract, and no further claim shall be asserted under this MoU. As a matter of exception, in case a party breaches its obligations under Clause 6, the other party shall be entitled to any additional rights or remedies that a party may have under the applicable statutory law.

6. Confidentiality

6.1 Confidential Information

The parties acknowledge and agree that they have received and will receive Confidential Information in connection with this MoU. "**Confidential Information**" means any information, data or material that includes trade and business secrets, know how and information regarding the business, financial situation, products and prospects, processes and methodologies, customers and employees, systems, programs, algorithms, source codes and any other information, data, material or documentation (in each case to the extent marked as confidential or with a similar designation, or which a reasonable person would consider as confidential) related to a party which such party has disclosed (in written form or orally) to other parties in connection with this MoU. Confidential Information does not include any information: (i)

which has been designated by a party as being intended for disclosure to third parties and does not reveal Confidential Information received by another party; (ii) which becomes generally available to the public other than as a result of a breach of the confidentiality obligations hereunder, (iii) which is received from a third party not bound by an obligation of confidentiality with respect to such information (while the receiving party is aware or made aware by the other party of this fact), (iv) which was known to or legally in a party's possession without obligations of confidentiality prior to such information being provided as Confidential Information in accordance with this MoU, or (v) which is developed by either party (or its employees or representatives) independently without use of Confidential Information of the other party.

6.2 Use of Confidential Information

The parties agree that all Confidential Information will be used only for the purpose of exercising any rights or complying with any obligations under this MoU and the receiving party or parties will ensure that only such personnel to whom disclosure of the Confidential Information is required for the purpose of exercising any rights or the performance of the receiving party's obligations under this MoU will have access to the Confidential Information and only to the extent necessary to perform these obligations or exercise such rights.

To the extent that Confidential Information disclosed by a CSD consists of statistical or personal data, such data may only be used by the authorised recipients of the Eurosystem to prepare aggregated data for further usage by the Eurosystem, provided that such aggregated data may not identify the content of the individual Confidential Information or any personal data.

The receiving party of each item of Confidential Information shall use all reasonable efforts, taking into account the materiality and proprietary nature of the particular Confidential Information, to protect such Confidential Information from unauthorized use or disclosure (intentional, inadvertent or otherwise) and, in any event, shall exercise at least the same reasonable level of care to avoid any such unauthorized use or disclosure as it uses to protect its own information of a like nature.

No licence, consent, title, right or interest is granted directly or indirectly by this MoU under any patents, invention, discovery, copyright or other intellectual property right now or in the future, held, made, obtained or licensable by either party.

6.3 Permitted Disclosure

Notwithstanding the foregoing, a party may disclose Confidential Information to third parties with the prior written consent of the other party, and each party will be free to disclose Confidential Information without the consent of the other party only:

- (a) As required by a court of competent jurisdiction or a regulatory or administrative body of a competent jurisdiction, or otherwise required by the applicable laws, but only to the extent legally required;
- (b) In any litigation among the parties arising in connection with the T2S programme, to the extent required by the litigation procedure; and
- (c) To their directors, officers, personnel, attorneys, consultants, auditors, subcontractors, insurers and agents (including persons belonging to a holding company of a CSD) on a strict need-to-know basis in connection with their duties, as long as such persons are advised of the confidential nature of such information and their obligation to protect it as confidential and are bound by confidentiality undertakings consistent with those contained in this MoU,

provided that, with respect to (a) and (c) above, such party shall, subject to applicable laws, inform the other party reasonably in advance in order to enable the other party to take precautionary actions.

6.4 Return and Destruction

If this MoU is terminated or expires for any reason, the receiving party of each item of Confidential Information, including but not limited to documents, contracts, records or properties, will return it to the disclosing party thereof and/or, in the disclosing party's discretion, destroy it and provide a corresponding certificate to the disclosing party, except to the extent that retention of any Confidential Information is required by applicable laws or expressly permitted under this MoU. A party may keep one copy for back up, audit and compliance purposes, subject to the obligation to keep this copy confidential and not use the information for any other purpose. The same shall apply where a CSD withdraws or is excluded from this MoU as between such CSD and the Eurosystem. This confidentiality obligation shall remain in force following the termination or expiration of this MoU.

6.5 Prior NDA

The MoU shall replace any prior Non-Disclosure Agreement (NDA) between the Eurosystem and one or more individual CSD(s), provided that with re-

spect to the Confidential Information exchanged under such NDA before the date hereof, such NDA shall continue to apply.

6.6 Limitation on Liability

To the extent permitted by applicable law and notwithstanding clause 5.5, no party shall be liable for lost profits, lost savings, third party claims or other consequential or indirect damages suffered by any other party as a result of a breach of the obligations of this Clause 6 in connection with this MoU.

7. **Miscellaneous**

7.1 Public Communication

The content of this MoU is to become public, while the negotiations leading to the Agreement shall remain private. The Eurosystem shall consult CSDs on the wording of a press communication in respect of the conclusion of the MoU.

7.2 Costs

Each party shall bear its own cost in connection with the performance of its obligations hereunder, unless otherwise agreed in writing.

7.3 Change of MoU

An amendment of this MoU, including this clause, shall be in English and binding only if executed by the parties in writing.

7.4 No Third Party Beneficiaries

The parties agree that there shall be no third party beneficiaries of this MoU save as expressly identified or agreed between the Eurosystem and a CSD.

7.5 Applicable Law

This MoU shall be governed by the law applicable at the seat of the ECB.

7.6 Arbitration

The parties submit to settlement under the Rules of Arbitration of the International Chamber of Commerce. The place of any such arbitration shall be Frankfurt am Main and the arbitral proceedings shall be in the English language.

[place, date]

[place, date]

[signatures]

[signatures]