CSD DCP Workshops

Session III
Contractual Arrangements

12th September 2013

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Four workshops on DCP related topics are planned:

WS I: Testing, Migration & Authorization Procedures 26/08/2013	**WS II:** Services Available to DCP 05/09/2013
WS III: Contractual Arrangements 12/09/2013	**WS IV:** Follow-up Testing, Migration & Authorization Procedures 23/09/2013

CSD DCP Workshops
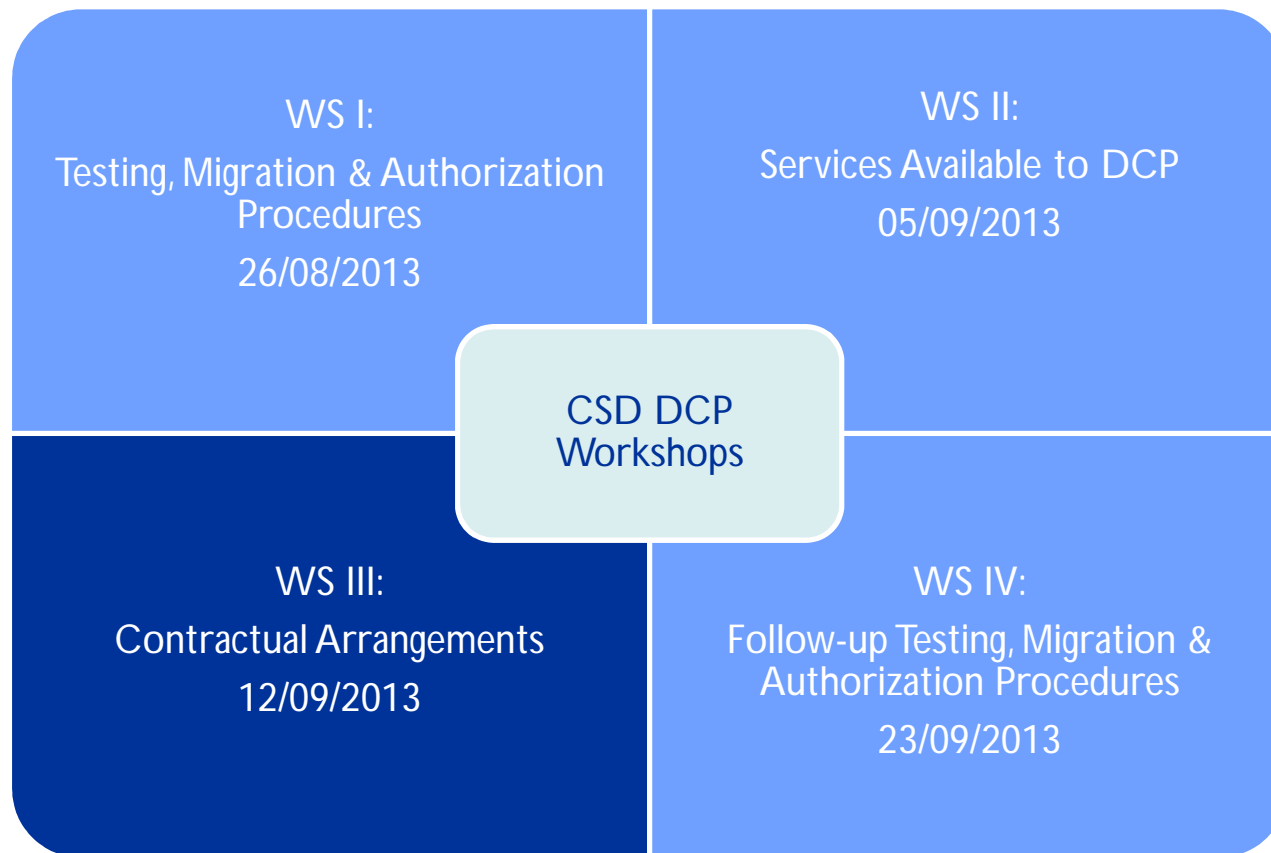
Objectives of today's Workshop

Situation

§ In connection with the informal DCP forum participating potential DCPs asked for workshops on DCP-related topics to increase transparency in areas of User Testing & Migration, offered DCP services and contractual arrangements

§ Four workshops have been set-up

§ End of May CSDs provided answers to a questionnaire sent by the DCP forum which already addressed several questions related contractual arrangements and declaration procedures

Objective

§ Provide overview T2S governance bodies and DCP involvement

§ Outline contractual relationships between DCPs and CSDs

  § References to T2S Framework Agreement

  § Responsibilities of involved T2S Actors

§ DCP Declaration Procedure

  § Overview of necessary activities of customer's (non-) binding commitment to become a DCP

  § Discuss template form and procedure on non-binding declaration to become a DCP ('DCP-interest')

§ Clarification on contractual arrangements and pre-requisites

DCPs are very interested in receiving further information on specific topics regarding the migration on T2S

The table below provides the number of interested DCP Forum members for each of the CSDs currently signed up for T2S. The level of interest is indicated by High/Medium/Low by each potential DCP.

The majority of members are interested in the following topics:

		DCP Interest List As of: 20/08/2013				
ID#	Wave	CSD Name	total	H	M	L
1	1	CSD: Bank of Greece Securities Settlement System (BOGS)	5	0	3	2
2	1	CSD: Depozitarul Central S.A. (Romania)	5	0	2	3
3	1	CSD: Malta Stock Exchange	5	0	1	4
4	1	CSD: Monte Titoli S.p.A. (Italy)	10	9	1	0
5	1	CSD: SIX SIS (Ltd.) (Switzerland)	9	5	1	3
6	2	CSD: Euroclear ESES (BE)	10	9	1	0
7	2	CSD: Euroclear ESES (FR)	12	10	2	0
8	2	CSD: Euroclear ESES (NL)	10	9	1	0
9	2	CSD: Interbolsa (Portugal)	8	5	3	0
10	2	CSD: National Bank of Belgium Securities Settlement System (NBB-SSS)	7	5	1	1
11	3	CSD: Clearstream Banking AG (Germany)	11	9	2	0
12	3	CSD: Központi Elszámolóház és Értéktár Zrt. . KELER (Hungary)	5	0	3	2
13	3	CSD: LuxCSD S. A. (Luxembourg)	7	1	3	3
14	3	CSD: Oesterreichische Kontrollbank Aktiengesellschaft (Austria)	9	3	5	1
15	3	CSD: VP LUX S.á.r.l. (Luxembourg)	5	0	1	4
16	3	CSD: VP Securities A/S (Denmark)	7	0	4	3
17	4	CSD: AS Eesti Väärtpaberikeskus (Estonia)	5	1	0	4
18	4	CSD: Centrálny depozitár cenných papierov SR, a. s. (Slovakia)	5	0	2	3
19	4	CSD: Euroclear Finland Oy	8	2	5	1
20	4	CSD: Iberclear . BME Group (Spain)	9	8	1	0
21	4	CSD: KDD - Centralna klirinško depotna družba, d.d. (Slovenia)	5	0	1	4
22	4	CSD: Lietuvos centrinis vertybinių popierių depozitoriumas (Lithuania)	5	1	0	4
23	TBC	CSD: BNY Mellon CSD (Belgium)	5	0	1	4
			167	77	44	46

[Source: DCP Forum as of 20 Aug 2013]

	DCP-CSD Workshops As of: 20/08/2013	
	Workshop Title	total
a.	Services available and service levels	13
b.	Authorization procedures	13
c.	Testing & Migration procedures	12
d.	Contractual arrangements	12

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SETTLING WITHOUT BORDERS

slide 9, 13, 15, 16

DCP Authorization by CSDs/NCBs

[2.1.2] Are there specific legal requirements to be fulfilled by a CSD participant to become a DCP (as compared to ICPs)? If so, please could you provide details of these? Are there specific liability clauses for the DCP business? If so, please could you provide details of these? What legal documentation will be required to be signed between DCPs and their respective CSDs and under which law is this to be regulated (in particular with regard to a potential back-to-back liability)?	§ A DCP will sign a contract with its respective CSD. The contract will be specific per CSD and will be subject to the CSD's country specific law. Publications of legal documents have to be arranged on bilateral relations.

Contingency

[3.6.1] Is a specific "mini-agreement" to be established for DCPs to regulate contingency arrangements? Will this be uniform across all CSDs? From our point of view, the backup contingency should only focus on areas or criteria not specifically covered by the VAN selected by the ES. Within this context, a backup link should be as limited as possible in terms of scope and freedom of choice should be given to the DCP (e.g. (1) ICP through the CSD, (2) using another VAN or (3) using the backup of the connection through its single VAN provider).	§ Incident, business contingency and crisis management procedures are currently being defined by the Operations Manager Group in the Manual of Operational Procedures. A switch from DCP to ICP connectivity mode could be considered as potential contingency measure.

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• extract only

Agenda

1. Introduction – T2S Governance Bodies and Relationships

2. DCP Declaration Procedures

3. Contractual agreements between DCPs and CSDs

4. Appendix

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As from 1 July 2012, a new governance structure has come in place following the signing of the contractual agreements between the Eurosystem and the CSDs

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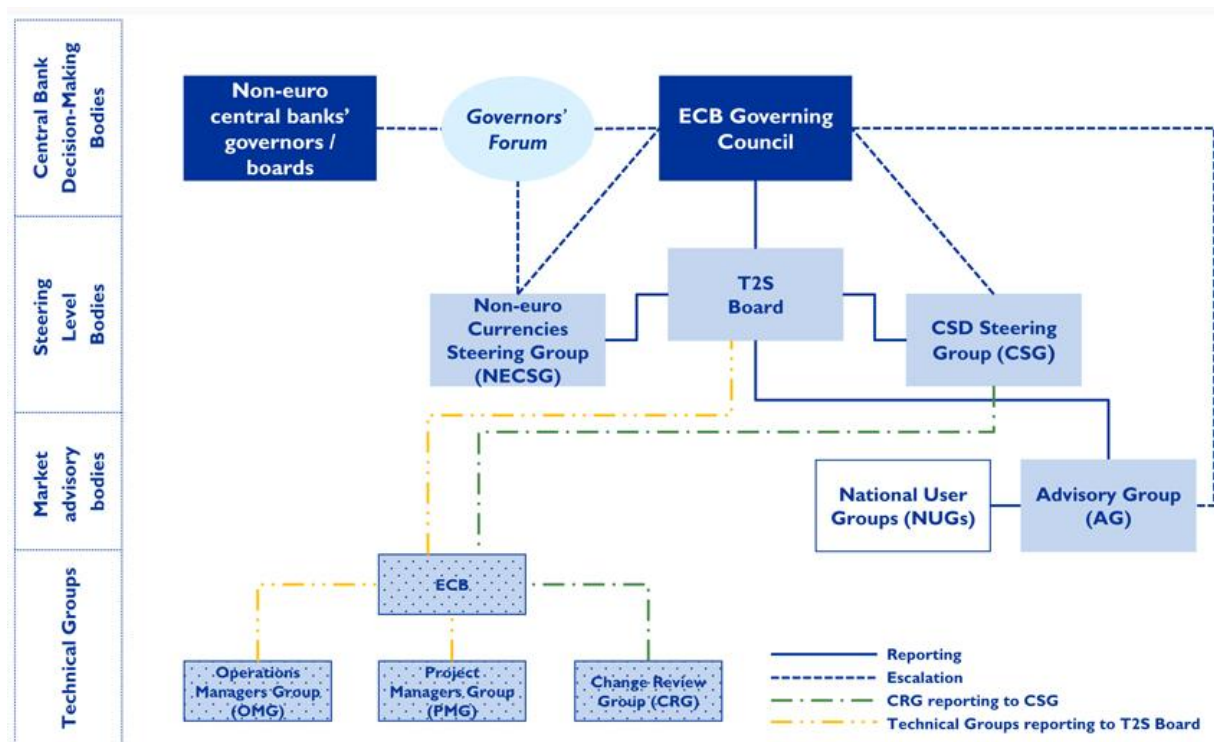
User involvement in T2S governance bodies:

– **Advisory Group**: users will be full members

– **CSD Steering Group**: users will be observers

– **Change Review Group**: users will be observers

– **Operations Managers Group**: DCPs will be observers for specific items

– **Technical Subgroups on User Testing and Migration**: users will be observers delegated by CSG members

T2S Framework Agreement

§ The Framework Agreement is a bilateral contract between the Eurosystem and each individual CSD

§ Schedules of the T2S Framework Agreement which are of relevance for DCPs:

  § **Core FA** lays out the relationship between Eurosystem, CSDs, NCBs, Network Service Providers and DCPs as well as obligations of Eurosystem related to testing; the schedule provides responsibilities and obligations towards DCPs during crisis management

  § **Schedule 2** – *Programme Planning and Monitoring* lays out CSD's responsibility to support the readiness of their community (incl. DCPs)

  § **Schedule 3** – *User Testing* à DCPs to be involved in user testing preparation and execution and to conduct certification and authorization

  § **Schedule 5** – *T2S Service Description* à CSDs assign and manage the access rights of their participants (incl. DCPs)

  § **Schedule 6** – *Service Level Agreements* of the T2S Framework Agreement lays out service responsibilities for the Eurosystem and the CSDs related to DCPs

§ The legal relationship between Eurosystem and CSDs on the one hand and between the CSDs and their users needs to be distinguished

§ The contracting CSD is responsible for its business and contractual relations with its customers, including Directly Connected Participants in relation to

  - Services enabled by the Eurosystem's provision of the T2S Services

  - Services provided in the Contracting CSD's capacity as a CSD or as an operator of a Securities Settlement System

§ The contracting CSD has - with the support of the Eurosystem - to provide sufficient information and guidance that all its DCPs receive, accept and understand all information to facilitate their readiness for a smooth functioning in T2S[1]

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1) Each DCP is responsible for its own readiness and has to undertake the according measures for a successful certification and authorization and subsequent business operation on T2S

Directly Connected Participant

§ The contracting CSD will maintain a contractual relationship in relation to T2S with the DCP as an existing customer. The fact that an existing customer will become a DCP will not change the existing relationship between the DCP and the CSD[1].

§ The DCP needs authorisation[2] from the CSD in order to become DCP in T2S.

§ For other types of issues and incident management regarding T2S services, the CSD will be the first point of contact for the DCP.

§ In general no major differences exist between DCP and ICP operational processing.

CSD

§ In the context of technical connectivity, a procedure will be in place for the DCP to contact the T2S Operator in case of problems.

§ DCP shall complete the Eurosystem certification test scenarios[2] that are identical for all markets and will be defined by the Eurosystem.

§ The Eurosystem shall allow the contracting CSD and its DCPs to connect its IT systems to T2S.

§ Eurosystem can interact in particular with the Contracting CSD's DCPs for the purposes of managing the technical connections to T2S.

Eurosystem

§ In order to become a DCP, the participant will have to comply with the T2S message format and use one of the T2S authorised communication channels.

§ The NSP is fully responsible and liable for all connectivity services it offers to its T2S directly connected participants and T2S within this boundary.

§ Hence the DCPs are responsible to technically connect to T2S and to set up the contractual relationship with their preferred Network Service Provider.

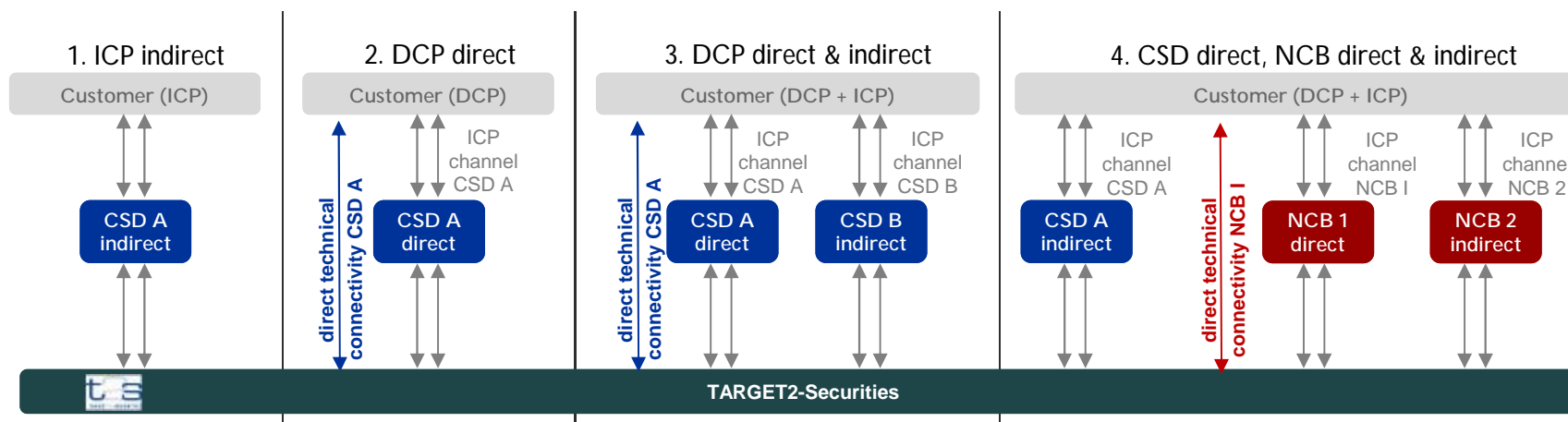**Network Service Provider[3]**

(SWIFT, SIA-Colt)

1) Existing relationship will be extended by additional DCP specific agreements
2) For authorization and certification overview please refer to appendix resp.
   DCP Workshop I – Testing and Migration
3) For a DCP using U2A only (T2S GUI via web) no NSP will be necessary (to be confirmed)

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Financial institutes may become either a DCP on the security side via CSD ('Securities DCP') or on the cash side via NCB ('Cash DCP')[2]

| 1. ICP indirect | 2. DCP direct | 3. DCP direct & indirect | 4. CSD direct, NCB direct & indirect |

- § Being a DCP in one CSD does not mean being a DCP in all CSDs.
- § Being a DCP in one NCB does not mean being a DCP in all NCBs.
- § While at the same time being a DCP in one NCB does not automatically imply becoming a DCP on the securities side for this market (i.e. in the according CSD).
- § Individual contractual arrangements with each CSD/CB fix additional conditions and CSD-specific service offerings.
- § To become a DCP a participant needs to get authorised by the CSD and/or Central Bank in the respective market.

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DCP Declaration Procedure

(1) Non-binding declaration to become a DCP by 31 October[1]

§   According to the T2S Programme Plan, it is expected that the DCPs on the securities side, would declare their interest to the T2S Programme Office by **31 October 2013** no matter which migration wave they intend to join

§   Customers who miss this deadline can only become a DCP after the end of the first T2S migration phase (i.e. in 2017)

§   DCP interested customers to provide a non-binding declaration by 31 October

> It is envisaged to create a common template for the formal DCP interest declaration coming along with further details on the procedure

Proposal see slide #14

(2) Confirmation DCP connectivity mode

§   An additional deadline ("DCP communication mode indication") will be defined by the Eurosystem after consultation within the User Testing Sub Group.

§   It is suggested by the DCP Forum Members to provide a firm commitment some 12 months before the commencement of a particular wave community test period. The following dates can be derived:

proposal by DCP Forum

	DCP Non-binding Commitment	DCP Firm Commitment	Community Test Commences
Wave I	Oct 31 2013	Mar-14	Mar-15
Wave II	Oct 31 2013	Sep-14	Sep-15
Wave III	Oct 31 2013	Feb-15	Feb-16
Wave IV	Oct 31 2013	Oct-15	Oct-16

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Proposal for Process to submit non-binding declaration[1]

- After an agreement on the template has been reached, the following process could be applied to gather the non-binding declarations and to submit it to the ECB

1. Circulate the blank declaration form (sender/receiver tbd)
2. Potential DCPs send filled out form to respective CSDs (each CSD to indicate how they want to receive the form)
3. CSDs forward forms to CSG Chair Office
4. CSG Chair Office consolidates forms
5. CSG Chair Office sends consolidated declarations to ECB in the name of CSDs

PROPOSAL by the CSDs

DCP's non-binding declaration should comprise the following information[1]:

§ Name of institution (legal entity) which intends to become a DCP

§ Name of CSD

§ Provide an indication if migration is planned as of day one of CSD migration or afterwards

- Timing and conditions of DCP Go-Live is up to bilateral agreements between the CSD and the DCP

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To successfully become a DCP several analysis and evaluation activities related to bilateral agreements need to be taken into account

Evaluation and Analysis phase

§ Strategic analysis and evaluation on how to approach T2S
§ Communication and provisioning of non-binding declaration to become a DCP
§ Set-up of bilateral contractual arrangements with CSD related to T2S[1]
§ Provide firm commitment to become a DCP
§ Contractual arrangements with Network Service Providers
§ Evaluate testing and migration strategy to T2S

Testing and Pre-Migration Phase

§ Assess potential DCP migration scenarios
§ Execute internal system tests and T2S Community/ Business Day Tests (incl. Migration Testing)
§ DCP must pass certification of ECB and successful establish connectivity to T2S
§ DCP must pass authorization criteria determined by the CSD

Go-Live Phase/ DCP Migration to T2S

§ CSD to successfully finish community and business day testing phase and ready to migrate to T2S
§ DCP to receive access from CSD to different parts of T2S services
§ Set-up account-structure, define privileges and configuration, grant access rights (done by CSDs)
§ T2S Migration based on agreed migration scenario

1) *Assumption: DCP candidate has already an established relationship with the according CSD (i.e. securities account exists or will be opened at the CSD prior to migration)*

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Aspects to be considered for T2S-related bilateral contractual agreements between DCPs and CSDs

§   The contractual agreement between CSD and DCP is of bilateral nature depending on CSDs service offering and value added services

§   Concrete changes of contractual agreements may be handled individually by each CSD depending on the current practice

  §   Implementation of contractual terms will be subject to market-specific laws and regulatory requirements

  §   Nevertheless for certain topics consistency across the individual agreements is recommended (e.g. timing of a potential re-certification/ re-authorization)

§   Agree on principles which reflect the rights and obligations of the parties related to

  -   Definition of procedures, responsibilities and obligations to manage and resolve operational disturbances (incident and crisis management)

  -   Lay out procedures for payments of claims

  -   Definition of standards and rules of Liability (e.g. additional liabilities of the DCP as it directly acts on the platform and will be to a certain extent liable for its operations on the platform)

§   Agree on procedures and obligations of DCP Acceptance during T2S User Testing

§   Lay down terms, obligations and responsibilities of DCPs during T2S project phase until migration to T2S

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1)   Herein stated aspects of contractual agreements are of bilateral nature, hence one single common contract for all DCPs will not be possible

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Questions collected by the DCP Forum Members (09/09/2013)*

1. Highlights of contractual arrangements for DCPs, common themes across CSDs. Would it be possible to arrange a sort of standard / master agreement to be valid across all CSDs, together with CSD-specific annexes?

2. Choice of legal vehicles as contracting entities in DCP mode: any restrictions by CSDs to the choice of one single vehicle across the T2S region? Any specific requirements by CSDs in case of change of DCP contracting legal entity from current vehicle to a new vehicle post T2S migration?

3. Will existing membership agreements be "novated", possibly with the addition of new clauses for T2S, or will there be entirely new agreements?

4. What specific operational/service level rules for DCPs are envisaged to be added to existing membership agreements?

5. Review of DCP obligations, as envisaged in the FA (e.g. certification and authorization).

*) Email fom Marcello Topa

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Questions collected by the DCP Forum Members (09/09/2013)*

6. Account Operator/Sponsored Access, business sender/technical sender: legal aspects to be clarified (as well as technical aspects).

7. Liability regime for DCPs, liability caps, claims procedures.

8. Legal aspects of suspension or technical disconnection of a DCP.

9. Harmonization of Settlement Finality rules and of operational procedures in case of an insolvency (both for a direct and an indirect participant).

10. Legal value of statements and reports, e.g. the statement of holdings, issued by T2S on behalf of CSDs.

DCP

T2S Actor

Technical Sender
Business Sender

T2S actor directly connects to T2S and also signs the business requests it intends to submit to T2S. T2S actor acts both as a technical and business sender

ICP – Case 1

T2S Actor A → T2S Actor B

Technical Sender
Business Sender

T2S actor A fully relies on another T2S actor B that is acting both as a technical and business sender on behalf of T2S actor A (e.g. ICP CSD relationship)
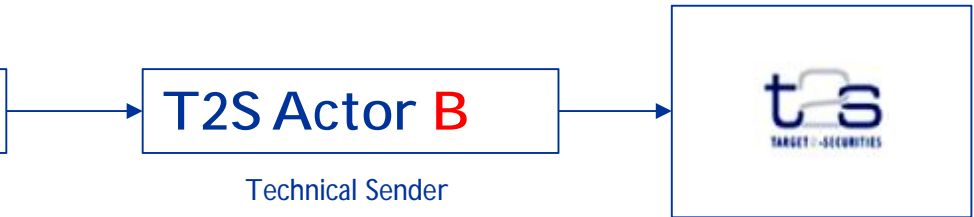
ICP – Case 2

T2S Actor A → T2S Actor B

Business Sender   Technical Sender

T2S actor A keeps full responsibility for signing the business request. T2S actor A acts as business sender, T2S actor B acts as technical sender (e.g. ICP CSD relationship, CSD pure technical router)

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T2S Framework Agreement Schedule 6 SLAs
Responsibilities of T2S Actors

Extract of service responsibilities related to DCPs

Eurosystem's responsibilities *(section 3.1 sched. 6 FWA)*	CSD's responsibilities *(section 3.2 sched. 6 FWA)*
§ Inform the Contracting CSD if technical problems with one of its Directly Connected Parties (DCPs) are detected § Throughout the whole Crisis management process, the Eurosystem will appropriately involve the DCPs, in accordance with the arrangements agreed with the Contracting CSD and Participating CSDs. § Provide a monthly Service Level Report to the Contracting CSD which includes the Service Levels obtained by its DCP § If an incident is reported by a DCP of the Contracting CSD, the Eurosystem will inform the latter without undue delay, and keep the Contracting CSD informed about the resolution path of such incident. § The Eurosystem has to ensure that sufficient efforts are made to fulfil all KPIs[1], and must take remedial action as soon as it detects that a KPI may not be, or is not, fulfilled	§ Provide contact details for technical staff that is capable of resolving technical issues with their DCPs § Proactively report any problem or incident relating to T2S including connectivity problems, provide all information that might be helpful and cooperate where requested by taking all appropriate actions for solving the problem or incident § All DCPs shall receive, accept and understand all information to facilitate their smooth functioning in T2S § Proper operational management of its own organisation as well as their customers including DCPs § Proper operational management of technical links to T2S from CSD and DCPs with the support of the Eurosystem if needed § Restore consistency of sent DCP instructions after crisis[2]

Technical Neutrality
(section 3.4 sched. 6 FWA)

§ The Eurosystem shall make reasonable efforts to ensure that, in normal circumstances, no DCP T2S Actor receives a different Service Level based on historic or forecasted volumes, its name, its country of legal incorporation or of the location of its data centres, or any other factor. Abnormal circumstances might require a temporary deviation from this principle.

§ If a group of DCPs using the same Network Service Provider, *[..]* exceeds its expected peak volume, the Eurosystem will reduce the message throughput from such a group *[..]*, with the aim to meet the Service Level for other Directly Connected T2S Actors (on the condition that the overall volume and workload parameters specified in Chapter 6 of this SLA are not exceeded).

1) Please refer to section 4ff of schedule 6 of the T2S Framework Agreement for Service Levels for production environment, test environment and platform sizing

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2) Detailed procedures for incident priority setting and incident handling will be specified in the Manual of Operational Procedures (MOP). The MOP will provide a reference guide for the operational procedures (in normal and abnormal situations) which the DCPs (including the Contracting CSD) and the Eurosystem should follow to ensure a smooth functioning of T2S.

DCP Certification and Authorisation

DCPs need to pass two steps which are very different to each other with regard to their objectives and comprehensiveness.

DCP Certification	DCP Authorization
§ According to the Framework Agreement, the DCP Certification aims to provide evidence that the adapted IT platforms of a DCP does not harm T2S as the result of inappropriate technical communication or procedures. § As this is a ECB requirement, ECB will define the test cases which need to be successfully executed (test cases will be available 6 months before the community testing stage for wave 1). § The DCP Certification needs to be passed at an early stage of Community Testing. § The DCP Certification is less comprehensive than the DCP Authorization. § The DCP Certification has only to be passed once by a DCP, also when the DCP plans to connect to multiple CSDs.	§ The CSDs are responsible for the authorization and therefore define the test cases that a DCP needs to successfully execute to show its compliance with CSD's processing according to market and legal specific requirements. § The test cases will cover specific business processes including market and CSD specific requirements (e.g. domestic settlement, cross-border scenarios with In-CSD and Out-CSD). CSDs will individually provide the test cases in adequate time. § DCP Authorization needs to be successfully passed by the DCP for each its CSDs prior to the end of the Community Test stage. § The CSDs aim to achieve a high degree of standardization. However, the degree of standardization depends on market and legal specific characteristics.

Note: Specific test cases can be subject to both, DCP Certification and DCP Authorization. If a test case has been already passed in the DCP Certification it serves as a proof for the DCP Authorization.

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