

Feedback to consultation paper

Document Title	T2S Consultation Paper: Principles and High Level Proposals
Document Reference	070323_note_ConsultPrincipalsProposals_v0.98.doc
Issued for review	26.04.2007
Deadline for review	21.06.2007
Draft Version	11.06.2007 Version 1.0 ECSDA Version

Principal Nr.	Principle	Explanation by the Eurosystem	Responsible ECSDA	Statement by ECSDA	Comment by ECSDA	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>		I do not agree entirely	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 IT-Systems regarding settlement processing. It will be ensured that the Eurosystem will fulfil all legal, regulatory and supervision requirements for outsourcing service providers in the respective national legal environments. The Eurosystem will be obliged to further evolve the platform subject to the requirements of the CSDs. As Eurosystem 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.	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>		I completely disagree	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. In addition, it should be explored whether it is safe from risk perspective to run two systemically important systems on the same platform.	No
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>		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.	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>		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 the Eurosystem is obliged to comply with decision taking by the CSDs and to set-up and future develop according to the requirements 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.). This solution should be included in the standard functionality of T2S in such a way so that CSDs are not penalised through an adverse cost effect both in terms of additional development costs and in terms of communication, transaction and other related costs.	No

Principal Nr.	Principle	Explanation by the Eurosystem	Responsible ECSDA	Statement by ECSDA	Comment by ECSDA	Confidential
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>		I do not agree entirely	At this stage we are not convinced that CSDs will be able to decommission their settlement infrastructure (see ECSDA decommissioning paper). Additionally, current levels of performance and efficient use of liquidity also need to be maintained at a minimum. T2S should also offer the same level of efficiency and the same level of security as of today	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>		I do not agree entirely	Each CSD will define the outsourcing with regards to the functions it will use T2S for. 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 one of its other platforms. Moreover, 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. Effecting all transfers on the centralised platform should not put in question which laws governs the ownership aspects of securities holdings and transfers.	No
7	T2S shall require participating CSDs to be designated under the Settlement Finality Directive (SFD) in their respective jurisdiction.	<i>When assessing settlement finality, a distinction must be made between finality of transfer orders and finality of transfers: • 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.</i>		I agree	CSDs are committed to the directive, but the implementation of the directive may not cause more technical requirements (like extra real-time interfaces).	No
8	T2S shall settle exclusively in central bank money.	<i>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.</i>		I agree	As stated several times, access to settlement in central bank money should be provided to all CSDs deciding not to join T2S. This access should be provided under no discriminatory conditions of price, technical interface, service level, performance, accessibility, liability and availability. We recommend to add this comment as a separate principle. Additionally, the Eurosystem should recommend to its member NCBs to remove all obstacles and provide facilities for access to CeBM to all CSD participants that do not have banking status. See also Principle 12.	No
9	The primary focus of T2S shall be securities settlement in euro.	<i>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.</i>		I agree	No comment	No

Principal Nr.	Principle	Explanation by the Eurosystem	Responsible ECSDA	Statement by ECSDA	Comment by ECSDA	Confidential
10	T2S shall be technically capable of settling currencies other than the euro.	<i>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.</i>		I agree	No comment	No
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>		I completely disagree	It can not be a principle as direct user access is a business, technical and legal decision by the respective CSD.	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>		I agree	Joining T2S is a business decision by the respective CSDs driven by their shareholders according to internal procedures. See also comment to Principle 8.	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>		I agree	No comment	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>		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 reviewed in order to handle innovation and establish neutrality between early adopter and later joiners.	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>		I do not agree entirely	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

Principal Nr.	Principle	Explanation by the Eurosystem	Responsible ECSDA	Statement by ECSDA	Comment by ECSDA	Confidential
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>		I agree	Principle is in line with general ECSDA standards. Implementation impact on national markets should be analyzed.	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>		I do not agree entirely	T2S settlement rules and procedures shall be common to all participating CSDs; however national legal specialities have to be covered by features of the core functionality according to the requirements of the relevant CSD as long as relevant laws have not been harmonized by the public sector. A crucial factor in the harmonization process is national legislation and local regulation, for the change of which the involvement of the national Capital Market regulator in the early stages of the T2S project is required, as CSDs normally are not under the jurisdiction of the NCBs.	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>		I do not agree entirely	<u>Cost-recovery basis:</u> The contractual IT operations agreements between the Eurosystem and the CSDs will have to be based on fixed prices which may not be changed unilaterally by the Eurosystem. <u>Not-for-profit basis:</u> It has to be examined whether the Eurosystem is entitled to finance IT-business without the intention to create profit out of that business. If it is found that the Eurosystem is actually entitled to do so the Eurosystem will have to offer such financing to every European based provider of IT services which are comparable to T2S.	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>		I do not agree entirely	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. CSDs using T2S have to be charged separately for the securities leg (the CSDs paying for an IT-Service) and the cash leg (the CSDs (their participants) paying for actual cash settlement in Target2 Cash). As IT provider the Eurosystem must allow CSDs to comply with the code of Conduct provisions on unbundling with respect to their participants.	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>		I agree	No comment	No