

3 February 2016

**DRAFT**

## Outcome

# 17<sup>TH</sup> MEETING OF THE T2S HARMONISATION STEERING GROUP

DATE	26 - 27.01.2016
VENUE	European Central Bank, Main Building, Sonnemannstr. 20, Frankfurt am Main, Germany

### 1. Chairman's introduction and updates from members

#### Outcome:

The chairman of the HSG (Joel Merere) welcomed the members of the Group and praised the work of the two members having left the Group. He expressed his gratitude, on behalf of all T2S HSG members, for the excellent legacy the leadership the outgoing chairman Yvon Lucas leaves behind. He also thanked the notable and very constructive participation and contribution of Paul Bodart to the Group, during his HSG and the T2S Board membership. In addition, he reported that Johannes Luef is the new member of the T2S Board replacing Paul Bodart.

**T2S Board and finalisation of the migration waves.** The chairman reported on the key focus of the T2S Board, i.e. the revised migration plan of the T2S markets.

**The ECB Team (Nacho Terol) reported on the vision 2020 pre-project phase.** The Eurosystem is currently focusing on the potential for synergies between the platforms of T2S and TARGET2, the possibility for a Eurosystem Collateral Management Service (ECMS) and the potential provision of settlement services for instant payments.

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**The European Working Group on Portfolio Transfer (EWGPT) is finalising its proposal to the T2S community.** Pierre Colladon, the chairman of EWGPT, a European Banking Federation substructure, provided an update of the group's work. This is now concentrated on two key objectives. First, to ensure involvement of the relevant national markets/EBF stakeholders. Second, on fine-tuning the details of the final proposal to the T2S community regarding the exchange of information in portfolio transfer transactions. The EWGPT is inclined to propose a (voluntary) best market practice rather than a (mandatory) standard to the AG. The proposal may only be applicable in the cross-CSD settlement and not in the domestic (intra-CSD) one. Pending the finalisation of the proposal by the EWGPT, some HSG members raised two possible issues which need to be further analysed. First, if it is a voluntary "best market practice" it might be a challenge to integrate it with the rest of the mandatory T2S standards. Second, an agreed procedure only for cross-border activity may result in the maintenance of legacy national market practices. Regarding the planned timing for presenting the proposal, the EWGPT would aim at finalise it within Q1 2016, including the consultation with the ECB Team.

**ECSDA's survey on registration procedures.** ECSDA chairman, Matthias Papenfuss, reported on the on-going ECSDA survey on registration procedures. ECSDA is planning to have an outcome ready by the end of Q1. The results of the outcome could be a good contribution to the work of the upcoming European Post Trade Forum (EPTF).

**Migration of T2S markets.** The Association for Financial Markets in Europe (AFME) representative, Stephen Burton, informed the Group of a paper published recently by the association regarding the experience of the Italian market migration to T2S. This note could be useful for market participants planning their interactions with future T2S migration waves. Regarding the last phase of the Spanish financial market reform testing has just been completed (second half of January 2016). The Spanish securities market regulators are in the process of assessing the testing results and deciding on the implementation of the reforms.

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**Action points:**

- EWGPT chairman to share with the ECB Team the final draft of the portfolio transfers proposal, prior to delivery to the HSG;
  - ECB team to monitor the implementation date regarding the introduction of the T+2 settlement cycle rule in the Spanish equities market;
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## 2. EU public authorities initiatives

### Outcome:

**CSDR level II expected to be adopted by Summer 2016.** The Commission services reported that the relevant EU regulatory authorities (ESMA and EBA) have already delivered most of the proposals regarding the Level II provisions. The proposals for the technical standards concerning the Settlement Discipline requirements are expected to be delivered by ESMA very soon. The completion of the adoption process of the Level II legislation is expected by Summer 2016, subject to the “objection” process of the European Parliament and the Council. CSDs will have to apply for their authorisation under CSDR within six months, starting from the date the full CSDR package is adopted. The authorisation process itself could also take up to six months.

**Work on post trade within CMU action plan to commence shortly.** The composition of the EPTF will be announced soon by the Commission. The EPTF will meet frequently, starting probably in February 2016, in order to complete its work within one year. An advisory report to the Commission services is planned for 2017. The scope of the work will focus on the Giovannini as well as any other barriers that exist for cross-border post trade services.

### **Challenges with the Revision of the Shareholder Rights Directive.**

The legislative proposal is currently in the triilogue process. There are some issues restricting its progress (e.g. country-to-country reporting requirements). These however do not seem connected to the cross-border shareholders transparency exchange of information. The Commission is working further on solving the apparent deadlock. It is too early to make any estimation of the adoption date for this Directive.

### Action points:

- HSG to prepare for the next AG meeting (17-18 February 2016) a short note complemented by a tentative list of harmonisation topics which could be used as input to the EPTF work programme;

### 3. T2S Harmonisation Activities

#### 3.1 CSDR DRAFT TECHNICAL STANDARDS AND PRIORITY 2 ACTIVITIES

##### Outcome:

**CSDR level II may affect directly the status of two T2S priority 2 harmonisation activities.** The HSG members discussed the impact of the CSDR Level II regulation on the harmonisation activities “freedom of issuance” and “market access”. The regulatory proposal published by ESMA<sup>1</sup> provides a EU harmonised framework regarding the procedures and timelines for the so called “receiving” CSDs and their authorities to assess requests by issuers, market participants and other market infrastructures to access their services.

The HSG agreed that once the CSDR level II provisions will be adopted by the EU legislators, the definition statuses of these two T2S harmonisation activities could be changed to Green (completion status). Should the HSG/AG members wish to provide evidence for new barriers relevant for these two activities, these should not be covered under any other existing T2S harmonisation activities (e.g. conflict of laws, fiscal issues, corporate actions etc.)

##### Action points:

- HSG members to provide the ECB Team with drafting comments on sections 4.3 (freedom of issuance) and 4.6 (market access) of the sixth Report by **Wed 3 February 2016 cob**

#### 3.2 WITHHOLDING TAX PROCEDURES

##### Outcome:

The ECB team reported on the 2<sup>nd</sup> meeting of the “Informal Expert Group on removing barriers to the free movement of capital in the context of CMU”, which took place on 26 January 2016. During that meeting, the ECB team presented the work of the AG on the topic, i.e. the dedicated T2S harmonisation activity on withholding tax procedures, including the 2014 and

<sup>1</sup> Published on 28 Sept 2015, <https://www.esma.europa.eu/regulation/post-trading/settlement>

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2016 surveys with the T2S NUGs. Although the issue concerns only procedural and not fiscal policy aspects, some member states may refrain from expressing immediate support. This is despite the fact that the European Council<sup>2</sup> supports, at high political level, further work on the matter.

The Commission services are planning to:

- collect information on best practices in Member States, notably through this expert group;
- organise a conference in Q3 2016 in which representatives of tax administrations and market participants will be invited;
- potentially develop a Code of Conduct by 2017, whereby Member States would commit at least to some basic principles, such as a short deadline for refunds of all claims for withholding tax, simplified proofs of residence, simplified documentation and allowing financial institutions to make claims on behalf of their clients and operate systems of relief from withholding taxes.

The HSG members agreed that this initiative is a unique political opportunity for seeing some progress on the matter. The HSG members were invited to contribute to their NUGs response to the T2S survey in order to support the Commission on its follow up actions therein.

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**Action points:**

- HSG members to support and contribute to their NUGs in providing concrete responses to the ECB Team by 10 February 2015;
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### 3.3 SETTLEMENT FINALITY I – SFI

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**Outcome:**

The HSG took note of the on-going work of the various T2S governance forums working towards the signature and entry into force of the collective agreement on SFI. The HSG discussed the timing of the launch of the monitoring process as per the AG methodology.

As per the AG methodology, the objective of the HSG is to raise awareness in T2S markets regarding the need for all relevant national stakeholders to be

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<sup>2</sup> The Council's conclusions of 10 November 2015 strongly supported the CMU Action Plan, notably by stressing the need for "pragmatic solutions to long standing tax obstacles such as double taxation linked to current withholding tax arrangements".

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aware and prepare for potentially adapting to the T2S SFI rule prior to their migration to T2S. The HSG members did not conclude on an immediate action and agreed to re-assess the issue once more clarity is available on the T2S markets' plans regarding the entry into force and the implementation of the relevant agreement between CSDs and NCBs.

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**Action points:**

- To be discussed in the 9-10 June 2016 HSG meeting
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#### 4. **CASG reporting**

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**Outcome:**

The chairman of the CASG updated the HSG members on the on-going and planned work of the group. This work is now focused on providing further clarifications on issues related to the functional implementation of the T2S CA standards in T2S operations. The group's key deliverable remains the CASG gap analysis report.

As in previous years, the compliance results of the current CASG report is a key input for the sixth T2S Harmonisation Progress Report. The compliance statuses of the T2S markets are now rather stable, subject to the final approval of the revised T2S migration waves by the ECB decision making bodies.

The HSG agreed to propose a red compliance status for the Portuguese market subject to confirming the latest information received by the ECB Team, i.e. that full compliance with the T2S CA standards can only be achieved after its migration to T2S. The HSG approved for publication the CASG gap analysis report after the necessary changes for the PT market are made.

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**Action points:**

- CASG to publish the gap analysis report immediately after the finalisation of the revised T2S migration waves
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#### 5. **Sixth T2S Harmonisation Progress Report**

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**Outcome:**

The ECB team presented a full draft of the sixth T2S harmonisation report which is based on the tentative migration plan. Subject to further comments to

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be provided to the ECB team by 3 February 2016, the HSG members approved the current version of the report for delivery to the AG [17-18 February 2016 meeting].

The key messages of the report concentrate on the consistency of the harmonisation methodology, the well defined plans of the wave 2 markets and the overall impact of CSDR and CMU on the T2S harmonisation list activities. The T2S CA standards remain the most challenging activity for T2S markets in terms of full compliance record. However, some HSG member noted that this challenge reflects the intrinsic nature of the topic, i.e. the complex regulatory and legal framework within which asset services are processed in national and across markets. Second, and despite the resulting red compliance statuses, all T2S markets have launched considerable reforms in their regulatory and operational frameworks and all have progressed considerably compared with the status quo a few years ago.

On a side question HSG agreed that the existing method (blocking of ISINs for 15 minutes and once in their lifetime) to process certain ISINs in Clearstream is compatible with the requirements of the T2S standard on settlement day.

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**Action points:**

- HSG members to provide the ECB team with concrete drafting comments on the current version of the Report by Wed 3 February 2016
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## 6. Impact Analysis Report

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**OUTCOME:**

The ECB Team presented a draft version of the impact analysis report which covers all red (i.e. non-compliant) T2S markets. The current version includes the known cases of non compliance (CH, DE, FR, NL, BE and RO) as well as the new ones (SK and IT). Following the last minute information received from the Portuguese NUG, Portugal will also be added prior to delivering to the T2S Board (22-23 February 2016).

The HSG members provided detailed comments regarding the assessed impact (severity, volume and risk) of each non-compliance case to the rest of the T2S community. The ECB team will update the report and check with the HSG members in a short written procedure prior to AG distribution.

Regarding the usage and the compliance of the “cum/ex” indicators, some HSG

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members agreed that even the full compliance with the relevant T2S CA standards would not address the issue of the creation of CA entitlements with illegitimate tax status. Although this is an issue primarily for the Corporate Actions Joint Working Group (CAJWG), the HSG members agreed that based on the finding of the HSG survey on withholding tax procedures, the group could re-discuss the issue during its June 2016 meeting.

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**Action points:**

- The ECB team will update the report and check with the HSG members in a short written procedure prior to distribution to the AG [17-18 February 2016 meeting]
  - James Cunningham to coordinate and present a discussion note for the June 2016 HSG regarding the fiscal status of market claims;
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## 7. XMAP reporting

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**OUTCOME:**

The XMAP chairman provided a high level update of the group's work programme. He focused on the HSG request to XMAP to present a long-term solution to the use of restriction rules and MSAs aiming at harmonising them to the extent they can be replaced by standard T2S validations and static data. This is leading XMAP to consider possible change requests which would not in any case be implemented before the end of T2S migration.

One of these change requests consists a potentially new T2S functionality which would allow an ISIN to be blocked in an automated way at investors' CSD level upon the issuer CSD doing so. The investor CSDs could inverse this blockings, in their books, at any moment.

The general sentiment is that although this change request is valuable, it requires a deeper analysis into several aspects (liabilities, need for harmonisation of reasons for blocking the ISIN...). At this stage in which resources are focused on other priorities (e.g. CRs which need to be implemented before then), there was a majority view not to further conduct this analysis for the time being. The ECB team will nevertheless analyse further whether the CR could also be relevant as a solution to cases of operational incidents reported by CSDs.

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**Action points:**

- ECB team to analyse whether the potential CR for blocking the ISIN could be a solution to cases of operational incidents reported by CSDs.

**8. Client of the CSD participant****OUTCOME:**

As agreed in the previous HSG meeting, the ECB Team presented a draft note to the AG regarding the establishment of a T2S best market practice, and not a T2S standard, for the usage of the optional matching field “client of the CSD participant”.

The T2S market practice would read as follows:

*The optional matching field “client of the CSD participant” should be filled with the following order of priority, depending on the information available to the CSD participant:*

*1<sup>st</sup>) the BIC11 of the client of the CSD participant, if available*

*2<sup>nd</sup>) the LEI of the client of the CSD participant, if available*

*3<sup>rd</sup>) ANY content including “blank”*

*For own operations (i.e. not on behalf of a client), the BIC11 should be used in this field*

Some HSG members suggested adding some further clarifications in the AG note in order to set the practical instructions which a CSD participant could hand to its client.

The HSG members agreed to present the note to the AG for approval on 17/18 February 2016 and subsequent publication in the ECB/AG webpages.

**Action points:**

*ECB team to present the proposal to the AG for endorsement and immediate publication*

**9. Harmonisation and future releases of T2S****OUTCOME:**

The ECB team presented three topics which could be considered in the future

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service provision of T2S:

- **Cross-border Shareholders transparency:** The HSG agreed to revisit the topic after the T2S migration phase is completed (Q4 2017). This timing will also take into account any development in the EPTF and the revision of the Shareholders' Rights Directive.
- **Investment Funds Shares settlement in T2S:** The HSG agreed that regarding Investment Fund shares (i.e. those which do not settle already in CSDs) the relevant industry associations (ALFI, EFAMA) should be in the lead for any potential requests for new services. ALFI is preparing a relevant publication (i.e. fund shares and T2S) in Q1 2016.
- **CSDR level II and "jointly managed cash penalty system":** the HSG agreed that the T2S CSD Steering Group (CSG) should be the relevant governance structure to discuss the issue and potentially raise any requests to the Eurosystem. The HSG should monitor and be informed on any developments (from a T2S harmonisation perspective).

Taking into account the lack for any immediate action required, the HSG members did not see the need for an AG distribution of the note.

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#### ACTION POINTS

- *None*
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## 10. Any other business

### 10.1 2016 MEETINGS

**18<sup>th</sup> HSG meeting:** 9 June 2016 (starting at noon) –10 June 2016 (finish at 04:00 pm), ECB, Frankfurt

**19<sup>th</sup> HSG meeting:** 8 November 2016 (starting at noon) – 9 November 2016 (finish at 04:00 pm), ECB, Frankfurt.

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#### THE HSG IS INVITED TO:

- Take note of the next two meeting planned for 2016

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#### DOCUMENTS:

- *None*
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