EXTRACTS OF THE LEVEL 2 – LEVEL 3 AGREEMENT ON TARGET2-SEcurities

(A) Level 2:
(i) Nationale Bank van België/Banque Nationale de Belgique
(ii) Deutsche Bundesbank
(iii) Eesti Pank
(iv) Central Bank of Ireland
(ix) Bank of Greece
(v) Banco de España
(vi) Banque de France
(vii) Banca d’Italia
(viii) Central Bank of Cyprus
(x) Latvijas Banka
(xi) Lietuvos bankas
(xii) Banque centrale du Luxembourg
(xiii) Central Bank of Malta
(xiv) De Nederlandsche Bank
(xix) Oesterreichische Nationalbank
(xv) Banco de Portugal
(xvi) Banka Slovenije
(xvii) Národná banka Slovenska
(xviii) Suomen Pankki
(xx) the European Central Bank (ECB),

(hereinafter collectively referred to as the ‘Eurosystem CBs’ and individually referred to as a ‘Eurosystem CB’)

and

(B) Level 3:
(i) the Deutsche Bundesbank
(ii) the Banco de España
(iii) the Banque de France
(iv) the Banca d’Italia,

(hereinafter collectively referred to as the ‘4CB’)
The 4CB and the Eurosystem CBs are hereinafter collectively referred to as the ‘Parties’ or individually referred to as a ‘Party’.

PREAMBLE

Whereas:

(1) On 17 July 2008, the Governing Council of the European Central Bank decided to launch the TARGET2-Securities (T2S) project, and to provide the resources required for its completion. On the basis of an offer made by the 4CB, the Governing Council also decided that T2S would be developed and operated by them, which together form Level 3 in the T2S governance structure.

(2) The Governing Council adopted Decision ECB/2009/6 of 19 March 2009 on the establishment of the TARGET2-Securities Programme Board1, as a streamlined management body of the Eurosystem with the task of developing proposals for the Governing Council on key strategic issues and executing tasks of a purely technical nature in relation to T2S. The T2S Programme Board, substituted by the T2S Board in 2012 (Decision of 29 March 2012 on the establishment of the TARGET2-Securities Board and repealing decision ECB/2009/6 (ECB/2012/6))2, which operates as the Market Infrastructure Board in T2S composition as of 16 March 2016, was mandated with the Level 2 functions in relation to T2S during the specification and development phases. Simultaneously, the T2S Programme Board was entrusted with certain implementing tasks by the Eurosystem CBs to be operational and act on behalf of the whole Eurosystem.

(3) On 21 April 2010 the Governing Council adopted Guideline ECB/2010/2 on TARGET2-Securities,3 which lays down the foundations of the T2S Programme, and its governance.

(4) Subject to Guideline ECB/2010/2,4 the T2S Programme Board and the 4CB negotiated a Level 2-Level 3 agreement setting out the additional details of the tasks and responsibilities of the 4CB, the T2S Board, and the Eurosystem CBs. Following the approval by the Governing Council (440th GovC) of the agreement reached on a new budget for the operational phase, the Parties decided to modify this Agreement, mainly with the aim of adjusting it to the new financial arrangements, subject to endorsement by the Governing Council and signature by the Eurosystem CBs and the 4CB.

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3 OJ L 118, 12.5.2010, p. 65.
HAVE AGREED AS FOLLOWS:

**Article 1**  
**Scope of the Agreement**

1. In line with Guideline ECB/2012/13, this Agreement forms part of the legal framework for T2S and provides the details of the tasks and responsibilities of the 4CB, the T2S Board and the Eurosystem CBs. Any reference, in this Agreement, to the T2S Board shall be read as a reference to the Market Infrastructure Board in its T2S composition.

2. The Parties shall collaborate closely and transparently in their contractual relations, as laid down in this Agreement, and shall exercise their rights and perform their obligations under this Agreement in good faith.

3. The Parties acknowledge that, in line with Guideline ECB/2012/13, which also defines the roles and responsibilities of the T2S Board as a Level 2 body, as further detailed in this Agreement, acting on behalf of the Eurosystem CBs, shall have the rights and obligations of this Agreement that specifically refer to the T2S Board.

4. Save as otherwise explicitly provided in this Agreement:
   (a) each of the 4CB shall owe its obligations under this Agreement jointly and severally to each of the Eurosystem CBs; and
   (b) each of the Eurosystem CBs shall owe its obligations under this Agreement jointly and severally to the 4CB. The internal allocation of the resulting payments shall be in proportion to the Eurosystem CBs paid-up shares in the capital of the ECB.

**Article 2**  
**4CB acting as Eurosystem CBs**

To the extent that one of the 4CB acts as a Eurosystem CB pursuant to this Agreement (Level 2), it shall enjoy the same rights, and be bound by the same obligations under this Agreement as any other Eurosystem CB.

**Article 3**  
**Annexes**

1. The following Annexes form an integral part of this Agreement:
   I. T2S Information Security Framework
   II. T2S Project Milestone Plan
   III. Criteria and procedures of the T2S Board approval
   IV. Service Level Agreement for the testing and operational phases
   V. T2S Change and Release Management Procedure
   VI. The 4CB Offer for TARGET2-Securities
VII. T2S financial envelope for the Operational phase

VIII. Model License agreement

2. In the event of any conflict or inconsistency between any Annex and any of the other provisions of this Agreement, the latter shall prevail.

Article 4
Definitions

For the purposes of this Agreement:
- ‘central securities depository (CSD)’ means an entity that: (a) enables securities transactions to be processed and settled by book entry; (b) provides custodial services (e.g. the administration of corporate actions and redemptions); and (c) plays an active role in ensuring the integrity of issues of securities;
- ‘Currency Participation Agreement’ means the contractual framework to be entered into by non-euro area NCBs, other central banks or monetary authorities and the Eurosystem for the settlement in central bank money in non-euro currencies through T2S;
- ‘Framework Agreement’ means the contractual framework to be entered into by a CSD and the Eurosystem for the development and operational phases.
- ‘non-euro area NCB’ means the national central bank (NCB) of a European Union Member State whose currency is not the euro;
- ‘operational phase’ means the period starting once the first CSD has migrated to T2S;
- ‘payment schedule’ means a schedule indicating the payment sequence for instalments of reimbursement to the 4CB (Annex VI);
- ‘service level agreement (SLA)’ means the agreement defining the level of services to be provided by the 4CB to the Eurosystem for the testing and operational phase, as contained in the service level annex (Annex IV);
- ‘specification and development phase’ means the period beginning with the approval of the first version of the URD by the Governing Council and ending with the start of the operational phase;
- ‘T2S business application’ means the software developed and operated by the 4CB on behalf of the Eurosystem CBs with a view to enabling the Eurosystem to provide T2S Services on the T2S platform;
- ‘T2S Change and Release Management Procedure’ means a set of rules and procedures that is applied whenever a change to T2S Services is initiated;
- ‘T2S Information Security Framework’ means the document describing the set of policies, requirements and implementation measures for ensuring that the T2S Services meet appropriate standards of integrity, confidentiality and availability of information;
- ‘T2S platform’ means the hardware and all software components (i.e. all software used excluding the T2S business application) required to run and operate the T2S business application;
Article 5

4CB deliverables and contributions

Deliverables

1. The 4CB shall prepare the following documents in accordance with the T2S Project Milestone Plan, which shall be submitted to the T2S Board, for validation, acceptance and approval:
   
   (a) General Functional Specifications (GFS): general description of the functional solution to be developed to satisfy the T2S user requirements. It shall include elements such as the
functional architecture (domains/modules and interactions), the conceptual models, the data model and the internal and external data flow processes;

(b) User Detailed Functional Specifications (UDFS): a detailed description of the functions managing the T2S external data flows (from application to application). It shall include the necessary information for the users to adjust or to develop their internal IT systems and processes in view for connecting to T2S;

(c) General Technical Design (GTD): a description of the basic technological components and choices that underpin the design of the T2S business application and infrastructure used to provide the T2S Services;

(d) User Handbooks: a series of documents that describe how T2S users can make use of a number of T2S software functions that are available in a user to application (screen-based) mode. The User Handbooks shall notably include the description of how to interact with the following functions:

1. the T2S business application,
2. the Bug/Trouble Management Information Tool,
3. the billing module for the CSDs as well as for the operational team;

(e) Settlement Algorithm Description: description of the algorithms of the settlement processes that have been implemented in the T2S business application;

(f) Non-functional test cases: description of the non-functional test cases that shall be executed during the 4CB testing and their expected results;

(g) Pre-production Security Assessment: description of the compliance level of T2S with each of the T2S Information Security Requirements in Annex I;

(h) T2S Project Milestone Plan in Annex II;

(i) Training framework, as well as training sessions and material.

2. A customised approval procedure for each 4CB deliverable is defined in Annex III, which sets out the different steps of the validation process, the required time for each step and the validation criteria.

3. In accordance with the T2S Project Milestone Plan, the 4CB shall prepare the following documents, which shall be submitted to the T2S Board for information purposes only:

(a) Infrastructure test report: overview of all tests performed to check compliance of the T2S platform with the technical documentation as well as the results of these tests;

(b) Internal acceptance test report: overview of all tests performed to check compliance of the T2S business application with the technical documentation as well as the results of these tests.

Contributions

4. The 4CB shall contribute to other operational documentation (manuals of procedure, certification and homologation processes), information security documentation, user acceptance testing
documentation, and migration scripts and plans, in accordance with the T2S Project Milestone Plan.

5. The 4CB shall cooperate with the Eurosystem CBs, by giving them, on demand and to a reasonable extent, the support they may need, either of a technical or information nature, to be able to perform their obligations towards the CSDs according to the Framework Agreement and towards the non-euro area NCBs, other central banks or monetary authorities in accordance with the Currency Participation Agreement. If the support requested by the Eurosystem CBs creates additional costs for the 4CB, such costs, upon prior approval by the T2S Board, shall be borne by the Eurosystem CBs and separately reimbursed to the 4CB. In no case will the support provided by the 4CB in accordance with this provision create obligations of the 4CB to the CSDs, nor will it imply any contractual relationship between the CSDs and the 4CB.

6. The principle set out in the previous paragraph shall apply to the “Examination of T2S Services and records retention” provided for in Article 26 of the T2S Framework Agreement, without prejudice to the External examiner’s mandate.

Article 6
Developing and operating T2S

1. The 4CB shall develop the T2S business application on behalf of the Eurosystem, enhance, for the benefit of the Eurosystem, the T2 platform in order to enable it to run T2S, and make both items available to the Eurosystem, in accordance with the provisions laid down in Guideline ECB/2012/13, and this Agreement and following the T2S Project Milestone Plan, as set out in Annex II), and in accordance with the UDFS, the GFS, the GTD and the User Handbook, which are based on the URD (as each of these may be amended from time to time in accordance with the Change and Release Management Procedure (Annex V)). In addition, the 4CB shall comply with the T2S Information Security Requirements, as approved by the Governing Council and amended from time to time (Annex I).

2. The 4CB shall operate T2S in compliance with the SLA (Annex IV) (as amended from time to time).

3. The 4CB shall be responsible for providing all technical tools, procedures and resources necessary for building and operating T2S.

Article 7
Eurosystem acceptance tests and user testing

1. The 4CB shall make T2S available for Eurosystem acceptance tests and for user testing, in accordance with the T2S Project Milestone Plan and with the SLA (Annex IV).

2. At the request of the T2S Board and to a reasonable extent, the 4CB shall provide technical and operational support to the Eurosystem CBs, the non-euro area NCBs, other central banks or monetary authorities in accordance with the Currency Participation Agreement, the CSDs and the T2S users for user testing.
Article 8

Migration to T2S

At the request of the T2S Board, and to a reasonable extent, the 4CB shall provide adequate training, technical and operational support to the Eurosystem CBs, the non-euro area NCBs, other central banks or monetary authorities in accordance with the Currency Participation Agreement, the CSDs and the T2S users for their migration activities, in accordance with the SLA.

Article 9

T2S Change and Release Management Procedure

1. Each Party may propose new T2S features and functionalities, as well as changes to the existing features and functionalities.

2. Such proposals shall be made and dealt with in accordance with the T2S Change and Release Management Procedure in Annex V.

3. The 4CB shall, without undue delay, deliver to the T2S Board an assessment of the technical feasibility of the proposed addition or change as well as a binding cost assessment.

4. Based on the assessment referred to in paragraph 3, the Parties shall agree:
   (a) the financial implications of the additions/changes;
   (b) a timetable for implementing the additions/changes; and
   (c) any necessary amendments to this Agreement with a view to the feasibility and timely provision of other features/functionalities already agreed on in this Agreement.

5. [...]

6. In accordance with the T2S Change and Release Management Procedure in Annex V, the Governing Council shall ultimately decide, following the advice provided by the T2S Board, on such additions/changes, on the basis of the assessment referred to in paragraph 3 and the agreement referred to in paragraph 4.

7. The 4CB shall implement any change agreed pursuant to paragraph 6. The changes shall be reflected in the URD, the GFS, the UDFS and other specifications and service level descriptions.

8. The 4CB shall provide facilities so that compliance tests of new features or functionalities (or changes thereto) may be performed by the Eurosystem CBs in accordance with Article 7, and shall not release such new features and functionalities until the Eurosystem CBs have confirmed that they agree to the release.

[...]

Article 12

Rights concerning T2S and its use

1. The 4CB shall, to the extent legally feasible, grant to the Eurosystem CBs comprehensive licenses as set out below for all rights related to the T2S Business Application.
Article 13

Cooperation and information

1. In the exercise of its rights and the performance of its obligations under this Agreement, and in line with Article 9 of Guideline ECB/2012/13, each Party shall act in good faith, collaborate closely and transparently with the other Parties, and provide technical and other support to the other Parties.

2. Each Party shall take reasonable and practical measures to mitigate any loss or damage that it may cause to any other Party.

3. Without prejudice to any other specific duties of information laid down in this Agreement, and in accordance with Article 9 of Guideline ECB/2012/13, the Parties shall provide each other with all information necessary for the exercise of their rights or performance of their obligations under this Agreement. Such information shall be provided through regular reports, or on an ad hoc basis (on a Party’s own initiative or at the request of another Party). Any matter that has a material impact on the building of, operation of, and migration to T2S shall be reported without delay, to the extent that it is not possible to delay this until the next regular report is prepared.

Article 14

Reporting

1. During the specification, development and migration phases, and in line with Article 9 of Guideline ECB/2012/13, regular reports shall be sent by the Parties to each other, for each regular meeting of the T2S Board. These reports shall contain, in particular, information on the observance of milestones, ongoing work progress, project risks and deviations or slippage in terms of timing, as well as any information which might give rise to a change to any conditional element in the agreed price offer.

2. During the operational phase, the provision of information by the 4CB shall be in accordance with the rules set out in the SLA (Annex IV). Unless otherwise specified in the SLA, regular reports shall be monthly.

Article 15

Subcontracting

1. The 4CB may only outsource, delegate or subcontract to a third party tasks that have or may have a material impact on the performance of their obligations under this Agreement if they have the express, prior written consent of the Eurosystem CBs and if the liabilities of the 4CB under this Agreement remain unchanged. No such consent is needed if the third party is a joint affiliate of one or more 4CB and if the rights and obligations of the Parties remain materially unchanged. Within the meaning of this paragraph, outsourcing, delegation and subcontracting do not include the procurement of services and/or components necessary for the 4CB to build, upgrade and maintain T2S, so no consent of the Eurosystem CBs is needed for this.
2. The 4CB shall give the Eurosystem CBs reasonable prior notice of any planned action referred to in this Article, and they shall provide details of the proposed terms pursuant to which such action would take place.

3. Any request for consent under paragraph 1 shall be answered within three months. Any refusal to grant consent shall be accompanied by a statement of reasons for the refusal. The 4CB may reiterate their request for consent if there is no response to it within three months. The Eurosystem CBs shall, from that point, have another two months within which to respond to the 4CB. If there is no response within these two months, the Eurosystem CBs shall be deemed to have given their consent.

**Article 16**

**Exclusivity**

1. Throughout the duration of this Agreement, the 4CB shall operate T2S exclusively for the benefit of the Eurosystem CBs. The 4CB shall not provide T2S or similar services to any third party. The 4CB may only provide similar services to other central banks or other public institutions with the express, prior written consent of, and subject to the conditions agreed with, the Eurosystem CBs. […]

2. The 4CB may only grant or transfer a right to a third party in respect of any tangible or intangible asset that is material for the proper performance of the 4CB's obligations under this Agreement, with the express, prior written consent of, and subject to the conditions agreed with, the Eurosystem CBs.

3. Any request by the 4CB for consent under paragraphs 1 and 2 shall be answered within three months and any refusal to grant consent shall be accompanied by a statement of reasons for the refusal. If there is no response within three months, the 4CB may reiterate their request. The Eurosystem CBs shall from that point have another two months within which to respond to the 4CB. If there is no response within these two months, the Eurosystem CBs shall be deemed to have given their consent. The 4CB may claim for any potential loss of opportunity in the event of any such refusal of consent. Any such claim shall be payable, if the Parties so agree.

4. The term ‘right’, used in paragraph 2, includes (but is not limited to) tangible and intangible rights, such as the transfer of ownership rights, usufructs, sale and lease-back, pledges, leasing, renting, sharing, swaps/exchange and licensing.

5. The 4CB may only transfer or assign to a third party their rights and obligations under this Agreement or claims deriving from them with the express, prior written consent of the Eurosystem CBs.

**Article 17**

**Representations and warranties**

1. Each of the 4CB represents and warrants to the Eurosystem CBs that:
   (a) the 4CB have lawfully acquired all rights (including intellectual property and any other related rights) and/or authorisations required in the context of this Agreement in tangible or intangible
assets that are necessary or relevant for the proper operation of T2S and the performance of their obligations under this Agreement;

(b) the 4CB own or have lawfully acquired the necessary intellectual property rights over T2S for granting the required licenses to the Eurosystem CBs, and the 4CB undertake to indemnify the Eurosystem CBs for any infringement claim in this respect; and

(c) executing and performing their obligations under this Agreement does not and shall not violate any law or by-law applicable to the 4CB or any agreement by which they are bound or which affects any of their tangible or intangible assets that are necessary for such execution and performance.

2. Each of the Eurosystem CBs represents and warrants to the 4CB that executing and performing the Eurosystem CBs’ obligations under this Agreement does not and shall not violate any law or by-law applicable to them or any agreement by which they are bound.

[...]

Article 21
Confidentiality and data protection

1. The Parties shall keep confidential all sensitive, secret or confidential information or know-how (whether such information is of a commercial, financial, regulatory, technical or other nature) that is marked as such and belongs to another Party, and shall not disclose such matters to any third party without the express, prior written consent of the other Party concerned.

2. Parties shall restrict access to the information or know-how referred to in paragraph 1 to their relevant technical staff, and such access shall only be for cases of explicit operational need.

3. The 4CB shall establish appropriate measures to prevent access to such confidential information or know-how by persons other than the relevant technical staff.

4. The duty of confidentiality under this article does not apply where disclosure is:

   (a) warranted by the defence of a Party’s legitimate interests in court proceedings, arbitration or similar legal proceedings; or

   (b) required by law.

5. Each Party shall comply with the applicable data protection legislation, in particular the obligations in Articles 21, 22 and 23 of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, and the national laws implementing Articles 16 and 17 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

[...]