DIV-Market Integration ECB-PUBLIC



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T2S Harmonisation Steering Group Secretary

3 November 2015

OUTCOME

16TH MEETING - T2S HARMONISATION STEERING GROUP

Hosted by Iberclear

22 - 23 October 2015

1. Chairman's introduction and updates from members

Background Documentation:

14/09/2015, Outcome of the 15th HSG meeting 02/07/2015, Outcome of the AG meeting

Outcome

The chairman of the HSG, Yvon Lucas, thanked Jesus Benito and Iberclear for hosting the 16th HSG meeting. It was announced that Helmut Wacket will replace Wiebe Ruttenberg, as member of the group. In addition, Yvon announced his leaving the chairmanship of the HSG. The new chairman is proposed to be Joel Merere. Both changes will have to be formally endorsed by the AG on 16-17 November 2015. The coming chairman, as well as all members, thanked deeply Yvon for leading the HSG during the last four years. It is widely acknowledged and recognised that the HSG deliverables have contributed substantially and concretely to the market integration efforts in T2S as well as in the wider European environment.

The group had a short discussion on the participation rules as per its mandate. The members were reminded that they participate in the HSG on a personal basis. The mandate explicitly states that members cannot assign alternates. However and in order to allow for some flexibility, the group agreed that if, on an exceptional basis, alternates participate in the meetings, this should be done on an observer status basis.

In addition, the members discussed how to treat cases of long-standing absences. Although no conclusion was reached, one approach discussed, was to reconsider the membership status.

Action points

 On the basis of an AG chairman's proposal, the AG to approve new chairman and ECB member of the HSG

2. EU public authorities initiatives

Background Documentation:

30/09/2015, Action Plan on building a Capital Markets Union

Outcome

CSDR Level II

The Commission services updated the group on the latest developments regarding the Level II provisions of the CSD Regulation. ESMA provided the Commission with the first batch of the technical standards (TS) on the prudential requirements for CSDs in early October. The first set of the TS are expected to be adopted at the beginning of 2016.

On settlement discipline regime (SDR), ESMA is expected to provide the TS proposal at the beginning of December 2015. The relevant provisions are expected to be adopted by the Commission by Q2 2016.

In parallel, the Commission is working on the delegated acts (draft regulation) on penalties on fails. EBA is also drafting TS on banking services to be delivered to the Commission by start 2016. **By mid-2016, a full CSDR package is expected to be in place**.

CSDs will have to apply for CSD authorisation within one year after all prudential standards will have been adopted by the Commission. Some HSG members noted that some national regulators may push for applications to be submitted much earlier than the end of the transition period.

One HSG member commented that the draft buy-in reporting requirement may impact cross-CSD settlement in T2S. CSDs should have access to both receiving and delivering party information. The ECB team will look into the matter based on a concrete proposal.

Capital Market Union (CMU) Action Plan

The issues raised during the consultation on post-trade and market infrastructures are part of the priority areas in the medium term. A general work-stream is explicitly foreseen to undertake review of the work regarding the removal of the remaining Giovannini barriers. The work will not be restricted to a backward looking review but will also include any forward looking barriers. The review is expected to be completed by 2017.

Issues related to the ownership rights on securities and withholding tax procedures will be part of this review. On the first issue, the focus will most probably be around conflict of laws. On the second issue, the T-BAG report will be the starting point. HSG members asked for some clarifications on the definition of "Best Practices for Member States" on withholding tax procedures. The Action Plan wording does not provide certainty on legal action but does not exclude it either.

The Commission will make use of public consultations in this area. In addition a strong relationship with all relevant stakeholders within the network of the 28 member states is envisaged. The Commission is currently reviewing the different options for the establishment of the appropriate institutional framework. Further developments are to be expected by early 2016

Shareholders' Rights Directive

The so called "trialogue" on the new proposed revised directive between Council, Parliament and the Commission is ongoing. The adoption of the revised directive is foreseen for 2016.

The HSG members agreed that the proposed Directive strengthens the legal framework for transmitting shareholders' information cross-border including in a CSD link arrangement.

The Red status to remain but developments on the directive should be reflected in the relevant section of the Sixth report. The developments of the dialogue process should be monitored in the context of drafting the report.

Action points

- James to come back to the ECB team on the record keeping requirement and potential impact on cross-CSD settlement in T2S. The XMAP should be invited to be involved in the analysis, if needed, and from a cross-CSD settlement perspective.
- **ECB team** to monitor the on-going work on the revised shareholder rights directive and report back to the HSG in January 2016.

3. T2S Harmonisation Activities

3.1 Omnibus accounts restrictions

Background Documentation:

09/10/2015, Restrictions on Omnibus Accounts segregation, FR and BE markets ECSDA report on "Account segregation practices in European CSDs"

ISSA commissioned report on "Transparency in securities transactions and custody chains"

Outcome

Based on the revised text drafted by the ECB team, the HSG members agreed with the revision of France and Belgium (NBB-SSS), from Green to Yellow. This is consistent with the assessment of other T2S markets regarding their compliance with the T2S standard on the restrictions for the usage of omnibus accounts. The new statuses should be reflected in the interim scoreboard to be presented to the AG during its 16-17 November 2015 meeting.

The ECB team will also make a proposal regarding the standard's explanatory text in particular regarding the regulatory requirements on account segregation on Investment Funds' underlying assets held via a Funds Depositary.

Action points

 ECB team to update the compliance statuses and the standard's explanatory text accordingly

3.2 Legal harmonisation - Conflict of Laws

Background Documentation:

19/10/2015, Conflict of laws in T2S markets, a fact finding exercise

Outcome

The EC team presented the outcome of the survey on conflict of laws. Although no concrete cases of conflict of laws were cited by the T2S National User Groups' members, the HSG agreed that the survey identifies areas where divergences in national laws become evident. These areas pertain mainly to CSD participants' insolvency procedures, the recognition of the so called "renvoi" concept and the definition of clear criteria of what constitutes "location of account".

In addition, it is noted in the draft summary that the lack of concrete cases may be attributable to a lack of legal certainty surrounding cross-border issuance and trades, which discourages their execution rather than the consequence of a genuine lack of legal issues. This is despite the fact that, on the basis of the information hereby provided by the NUG members, it has been difficult to assess the concrete impact of the issues drawn attention to, above, on the actual business decisions of market actors.

The Group agreed that although a securities law initiative could be overambitious in the medium term, and given the lack of concrete cases, further work in the harmonisation of specific aspects of Settlement Finality Directive (SFD) and the Financial Collateral Directive (FCD) would be needed.

The *renvoi* concept refers to the incorporation, in the national conflict of laws rules, not only of the ordinary (internal) law of a foreign country but, also, of that foreign country's conflict of laws rules.

On the basis of the above analysis and subject to further comments [to be] provided by the HSG members by 30 October 2015, it was agreed that the Survey results, together with its summary, should be presented to the AG during its meeting on 16-17 November 2015. The findings could be delivered by the AG to the Commission thereafter.

Finally, the HSG members proposed that the survey should be issued again in the future, once T2S is fully operational and all markets are fully migrated.

Action points

- HSG members to provide comments by 30 October 2015
- HSG to invite the AG to endorse and send the document to the Commission for further consideration in the CMU action plan
- Survey on conflict of laws to be issued again after the migration to T2S is completed

3.3 Portfolio Transfers

The HSG will be invited to discuss on the current status of the standard.

Background Documentation:

June 2015, T2S portfolio transfers, a market practice

Outcome

Pierre Colladon presented the status of the work on the European Banking Federation (EBF) sponsored work of the group on the portfolio transfer exchange of information (EWGPT). It was clarified from the start that the work is on-going and not final for approval yet.

From a technical requirements perspective the short-term proposal for a portfolio transfer exchange of information model is covered by the current T2S messages schema. In case another long-term approach is to be proposed, a change request process would be required in T2S.

From a harmonisation perspective, the draft proposal would require some further work since its current requirements seem to contradict the T2S standard regarding the usage of T2S messages for passing on tax information.

Finally, from a business process perspective, some HSG members noted that the current proposal may not have reached a wide enough audience of stakeholders despite the fact that the draft note has been with the EBF relevant governance arrangements during the summer.

Another concern raised from a business prospect perspective was about the requirement for historical prices to be included in the relevant message fields. Such new standardised requirements, if they were to be adopted, may imply complexities and liabilities for

intermediaries. In the same token, the issue of compatibility between ISO 20022 T2S messages and the ISO 15022 messages that most actors outside T2S are using, was raised.

Others noted that a short term solution/standard should probably be simpler and not exhaustive, following a pragmatic approach based on current T2S and market participants' functionalities. SMPG was not in favour of a sophisticated proposal either.

The majority of HSG members were in favour of further exploring a rather simple version of the short term proposal which avoids change requests in T2S and also addresses the above mentioned concerns. In addition, any EWGPT proposal to be presented to the HSG and the AG should not contradict already agreed AG standards, especially on message interaction with T2S. Any final proposal should also have the support of the wider EBF governance before it is submitted to the T2S governance.

Action points

 EWGPT chairman will provide further update on this work during the HSG meeting in January 2016

3.4 Settlement Finality I

Outcome

The ECB team reported that the Collective Agreement on SFI is in the process of being checked with national regulators. Once signed, the agreement will, most probably, enter into force once the relevant tools and procedures are available in T2S in order to ensure that T2S platform can facilitate the management of DCAs during a CSD participant's insolvency procedure. Any Change Request(s) will most probably take time before implementation.

Regarding any further work on the potential harmonisation of national insolvency procedures, the HSG members agreed that this should be further discussed in January 2016, following any decision in the November T2S CSG on the matter.

Action points

 The HSG to look into any follow up on this work after the completion of the SFI and insolvency procedures discussion in the CSG in November 2016.

3.5 Registration and impact on T2S

Outcome

The HSG had a discussion on the possibility for further harmonisation work on the registration procedures.

ECSDA will launch a fact finding survey on registration procedures in order to provide further evidence regarding the necessity and feasibility of any further work on the matter. ECSDA will publish the results of this survey in Q1 2016.

Potentially a dedicated subgroup on registration could be formed under the auspices of a future European post trade structure but this need to be assessed in the context of the CMU Action Plan.

Action points

- ECSDA will run a fact finding survey on registration procedures
- HSG members to provide comments on section 4.5 of Sixth Report by 30 October 2015

4. CASG reporting

Background Documentation

15/10/2015, Draft Second 2015 CASG gap analysis

Outcome

The Chairman of the CASG presented the draft CASG gap analysis to the HSG. The final report will be published after the AG in November.

The apparent deterioration in the compliance statuses of three wave 1 T2S markets is still subject to further analysis and actions from the relevant NUGs. It is also the outcome of the harmonisation methodology which does not foresee interim compliance statuses (Green and Yellow) for migrated markets. The HSG members took note that although the interim Red statuses may conceal the considerable efforts made by the relevant market in achieving a high, although not complete, level of compliance, the consistency and credibility of the AG harmonisation methodology should be respected and followed. In fact, the methodological impact on the respective compliance level is well explained in the report as well as the executive summary and HSG members were invited to provide comment in written if further explanations were needed.

Action points

HSG members to provide comments on the CASG gap analysis by 30 October 2015

5. XMAP reporting

5.1 Non-mandatory T2S matching fields

The AG agreed on 2 July 2015 on a new T2S standard regarding the usage of the non-mandatory marching fields. XMAP was asked to consider a later implementation date for retail

investors. The XMAP chairman will present i) the difficulties to implement such a phased implementation and ii) a revised T2S standard proposal which comprises also retail investors.

In addition, the HSG will discuss whether T2S CSDs could use, in their internal matching systems, certain non-mandatory matching fields, other than those agreed by the T2S community in the UDFS.

5.2 Common Trade Reference (CTR) for bilaterally agreed trades

In June 2015, the HSG mandated the XMAP to explore the possibility of harmonising the procedures for retrieving the CTR for bilaterally agreed trades. The XMAP chairman will present a note on this issue.

5.3 CSDs' restriction rules and T2S functionalities

Background Documentation:

14/10/2015, Client of the CSD participant

09/10/2015, Usage of non-mandatory matching fields,

14/10/2015, Potential definition of a market practice for bilaterally agreed CTR

15/10/2015 Possible change request to reduce MSAs and restriction rules (ppt)

15/10/2015 Restriction rules analysis (ppt)

Outcome

The Chairman of the XMAP presented the CSDs' restriction rules analysis (version 0.4) to the HSG.

MSAs and harmonisation

The XMAP analysed the possibility to reduce the need for restriction rules through T2S community advancement in harmonisation.

The XMAP looked into the MSAs connected to insolvency procedures. The work on CSG TF on insolvency should finalise its work first before any further action is undertaken in this area (see also outcome of the discussion in agenda item 3.4).

On blocking the ISIN during a corporate action on "stock", i.e. settled balances, the XMAP proposed that a CR could be pursued on this topic.

On the issue of how to identify and differentiate DCPs from ICPs in T2S, the XMPA agreed on the usefulness for a CR in adding a relevant flag.

The XMAP will follow the appropriate governance endorsement from all relevant stakeholders' groups (CASG, CSG, CRG) in order to launch the CRs.

The AG will be informed in November that the process has been started on investigating the need for the CRs.

Common Trade Reference (CTR) in over the counter (OTC) trades

There is not really any common practice on the usage of CTR in OTC trades in the T2S markets. Often a matching vendor platform provides the CTR in OTC trades. The HSG agreed that there is no need for further work on the harmonisation of CTR in these trades. In addition, non-harmonisation on CTR does not affect the matching rate in cross-CSD settlement.

Some HSG members made the comment that there is parallel and related work on UTI focusing on OTC derivatives and for good reasons, i.e. priority on trade repositories reconciliation process. The point was made on whether the HSG should start thinking whether the UTI standard, to be agreed, will be used or imposed in the future on securities transactions.

Client of the CSD participant

As a follow up to the July 2015 AG meeting, the XMAP analysed the possibility to differentiate between "retail" and "institutional" investors in terms of different deadlines for compliance with a newly agreed T2S standard on "Client of the CSD participant".

Based on the XMAP analysis, its members agreed to re-propose to the HSG/AG that a single date is used for all investors but with some further fine-tuning applied to the standard in order to capture all types of investors. An approach explored by XMAP was to present two versions of the standard. A version A restricted the optionality of used values for identifying the client of the CSD participant whereas a version B allowed for all national specificities, even if in a ranked way.²

The HSG discussed the pros and cons of the two different versions, or indeed whether a new standard makes sense at all and/or could be subject to the AG monitoring process. Version A was unacceptable to some members, at least in context of the current absence of a universally agreed code (the IBAN including) for identifying the retail investor. Version B was unacceptable to others who noted that a standard allowing, in addition to a "blank", 20+ possible values to what is already an optional matching field would be undermining the credibility of the T2S harmonisation list of standards. In addition, achieving blue status (i.e. no further monitoring required) for all T2S markets would be almost natural and automatic for all T2S NUGs. In view of the fact that any of the solutions was considered an improvement compared to the current situation, but in the absence of the properly harmonised standard, the group agreed that the establishment of "best practices" could be an appropriate way forward.

The HSG agreed the following on a consensus basis:

 The AG should be informed during the AG meeting on 16-17 November 2015, on the difficulties encountered in implementing their July 2015 agreement. The HSG proposal would be that in the absence of an agreed universal identifier for retail investors,

² Some members underlined that both versions introduced an improvement compared to the current situation by which CSD participants first attempted to use BIC, then LEI and then other proprietary value including "blank". Other members noted that even this ranked approach did not varied differently, especially in its version B, from the current usage of 20+ national proprietary values.

discussion for a new standard should be postponed for a later stage. In order to manage future expectations, the AG should also become aware that the HSG and XMAP are not able to lead a pan-European discussion on the matter.

• The ECB Team to formulate a market practice proposal on the basis of version B which although it could be endorsed by the AG, it would not be part of the T2S harmonisation list of standards and rules.³

Non-mandatory matching fields

The HSG members agreed on the XMAP proposal to ask the AG to enlarge the scope of application of the T2S standard "T2S mandatory matching fields" in order to include the so called "non-mandatory matching fields". Once endorsed by the AG, the new T2S standard should read "T2S matching fields". It would in effect exclude the use of any matching fields, which are not part of T2S system specification documents (i.e. UDFS), in the T2S CSDs' legacy matching engines. The revised standard would require a new compliance survey which may result in new red compliance statuses.

Action points

- The HSG to provide comments on the CSDs' Restrictions Rules report by 30 October 2015. Following this, the report will be delivered to the AG for endorsement during its November 2015 meeting and publication, by the AG, thereafter.
- The ECB Team should formulate a best practice proposal for the next HSG on the base of the XMAP proposal on the client of the CSD participant (version B).
- The HSG will propose to the AG in November that the standard agreed in July 2015 should be parked for the time being and until further harmonisation is achieved at European level.
- The HSG will propose a revised standard on T2S matching fields [including mandatory and non-mandatory] to the November AG
- The ECB team to monitor developments on the UTI standard for derivatives and inform the HSG on any relevance for the securities transactions.

6. Sixth T2S Harmonisation Progress Report

Background Documentation:

15/10/2015, Sixth T2S Harmonisation Progress Report_Draft

Outcome

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³ It should be noted that, as communicated by the T2S Board in December 2013, T2S standards are mandatory in nature for T2S stakeholders. In this context, a newly defined "T2S market practice" could be a highly recommended, but nevertheless voluntary, requirement for T2S actors to fulfil.

The HSG had a first discussion on the outline and the key findings of the draft sixth progress report. The members agreed on publishing a harmonisation Status Update instead of fully fledged Seventh Report to be produced before migration wave 3 (to be confirmed by the AG).

The HSG members agreed on the timeline for publication:

- by 6 October 2015: HSG members to provide comments
- AG Meeting on 16-17 November 2015: AG members to discuss and comment
- HSG meeting on 27-28 January 2016: HSG members to endorse full draft version of the report
- AG meeting on 16-17 February 2016: AG to approve the final version for publication
- AG to publish early March 2016 (prior to migration wave 2)

The HSG agreed on the following elements of the draft report:

- The title of the harmonisation activity on "T2S Mandatory matching fields" should be changed to "T2S Matching fields", reflecting the discussion under HSG agenda item 5 on the enlargement of scope of this activity. The standard and the explanatory text of the relevant section of the sixth report will be amended accordingly.
- the overall compliance status of the activity "Interaction with T2S (tax info)" to be Blue;
- the overall compliance status of the harmonisation activity on "restrictions on omnibus accounts" should be turned to Yellow, reflecting the four T2S markets being yellow (FI, SK, FR and BE)
- The overall definition status for the activities on "Conflict of Laws", "Withholding tax procedures" and "Shareholders' Transparency and Registration" should be maintained as Red despite the CMU Action plan and the Shareholders' Rights Directive revision. However, the text in the relevant sections of the report should reflect and indeed express the AG's support on these initiatives.
- Where relevant, the targeted CMU actions and the published deadlines, as per the Action Plan, should be also reflected in the individual harmonisation activities section of the report.
- The report should also include any, publicly, available information on a future post-trade "institutional framework" the Commission may decide to establish in the context of the CMU action plan.
- The statistical methodology used so far for assigning the compliance statuses in the priority 2 harmonisation activity "CA market (CAJWG) standards" should be maintained. Within the same activity, the HSG clarified that a red status should be assigned to the T2S markets that have not participated to the latest EMIG survey as included in the T2S harmonisation report.

 Any statistics comparing the compliance results between the fifth and the sixth report should be made on the same population basis, i.e. excluding BoNYMellon CSD. A clarification footnote should nevertheless be included in the report.

Action points

- HSG members to provide to the ECB team written comments on the draft report by 6
 November 2015.
- The draft report will be presented to the 16-17 November AG meeting for discussion only; AG endorsement of the report is only foreseen for February 2016.
- HSG to propose to the AG that a harmonisation status update, instead of a full seventh report, will follow after the publication of the sixth report.
- ECB Team to share with the T2S NUGs Experts Group (9 November 2015 meeting)
 both the tentative compliance statuses as well as the detailed monitoring information per T2S market (Annex 4 of the report)

7. Possible harmonisation of insolvency procedures

Background Documentation:

06/10/2015, Insolvency procedures in T2S markets
plus Survey Annex

Outcome

The HSG members agreed to share the 2014 survey results with the Commission services.

Action points

 HSG to share the background document with the Commission services on an informal basis

8. Impact analysis of non-compliance

Background Documentation:

22/10/2015, impact analysis on non-compliance_updates [to be provided]

Outcome

The ECB team updated the HSG members on the statuses of all non-compliant markets. Depending on the formal information to be provided by the Italian market, a revised report should be initiated in order to include Italy. HSG members commented that the analysis should be completed, where possible, with an estimation of the affected volume of transactions.

Action points

The HSG to commend on the updated impact analysis prior to presenting to the AG

9. Any other business

9.1 Harmonisation and future releases of T2S

Outcome

The HSG had a first discussion on when is the right time for HSG/AG to raise any harmonisation issues to the considered for the future T2S releases. Such issues could include, among others, cross-border shareholders information hub, investment funds functionalities, jointly managed penalty system or harmonised CSD restriction rules.

The HSG agreed to invite the ECB team to provide an issues note for the January 2016 meeting. The note should cover the above topics and analyse the maturity for further action.

Action points

ECB team to prepare the future T2S releases harmonisation note for the next HSG

9.2 Block chain and securities issuance

Background Documentation:

14/10/2015, Non-paper on block chain technology and securities issuance Brief summary of the Non-paper on block chain technology and securities issuance

Outcome

The ECB Team provided a non-paper on distributed ledger technology (DLT) and its potential impact on post trade business models.

The HSG members found the paper helpful as a starting point in order to enhance understanding of the issues behind block chain and DLT. The ECB team is encouraged to explore further the impact of DLT on post-trade procedures.

The HSG interest on the issue should focus on what is the impact on harmonisation and standards setting in T2S and possibly beyond if options 2 and 3 materialise.

HSG members agreed to provide written comments on the two draft deliverables to the ECB team by 6 November 2015.

According to information provided to the HSG members, NASDAQ in cooperation with DTCC, is considering to accept DLT issued securities soon. Euronext is also considering trading on crowdfunding instruments.

Other members noted that ESMA issued a call for evidence paper on the matter and that the published responses to this consultation should be taken into account.

Action points

- HSG members to provide comments to the ECB team by 6 November 2015
- ECB Team to update the HSG on any developments on the matter in the next HSG, taking into account the responses to the ESMA's call of evidence.

9.3 TENTATIVE-HSG meeting plan in 2016

17th HSG meeting:

27 January 2016 (starting at noon) – 28 January 2016 (finish at 04:00 pm), ECB, Frankfurt **18th HSG meeting:**

8 June 2016 (starting at noon) – 9 June 2016 (finish at 04:00 pm), ECB, Frankfurt **19**th **HSG meeting:**

8 November 2016 (starting at noon) – 9 November 2016 (finish at 04:00 pm), ECB, Frankfurt