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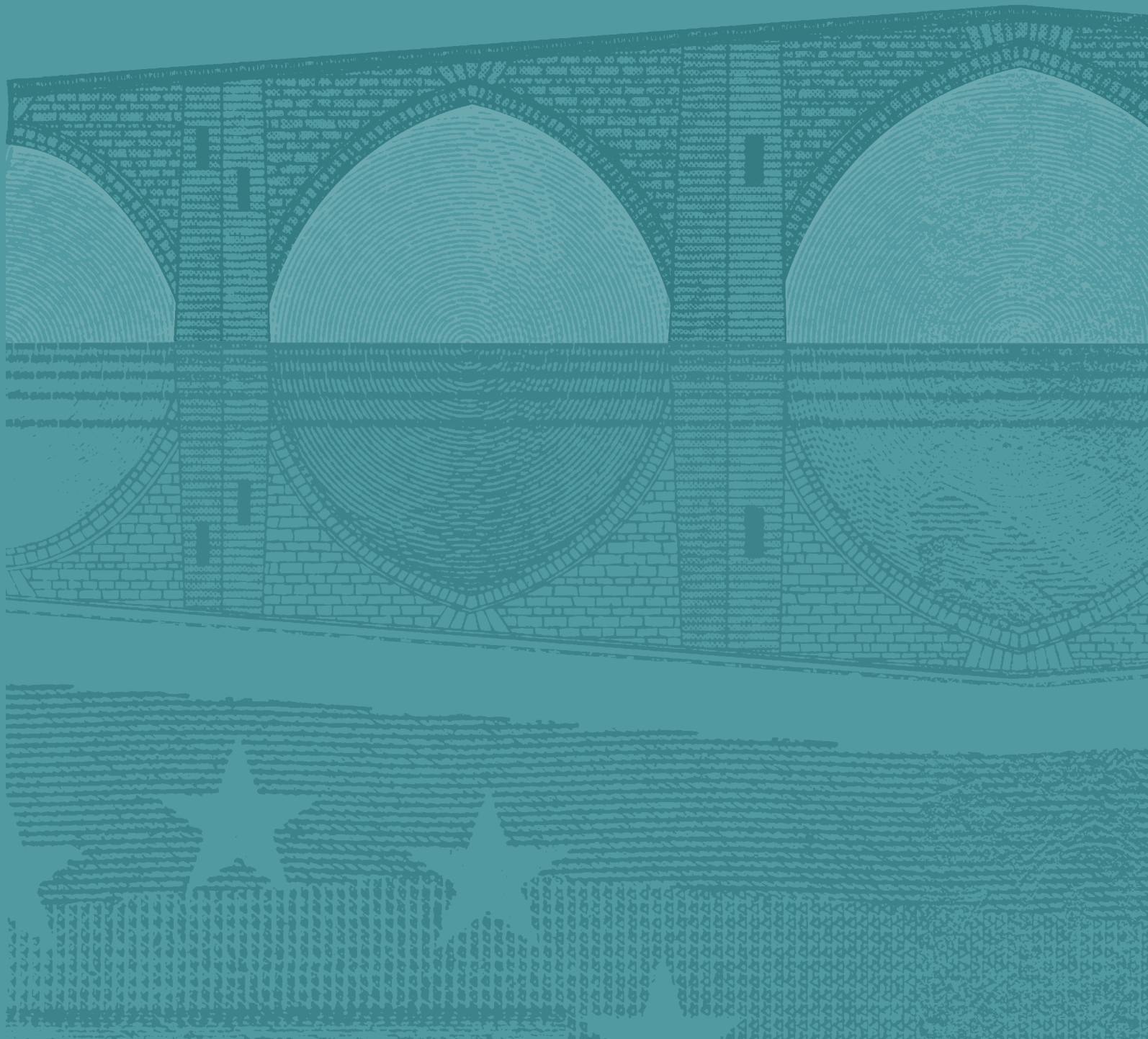
EUROSYSTEM

# FRAMEWORK FOR THE ASSESSMENT OF SECURITIES SETTLEMENT SYSTEMS AND LINKS TO DETERMINE THEIR ELIGIBILITY FOR USE IN EUROSYSTEM CREDIT OPERATIONS

JANUARY 2014

FRAMEWORK FOR THE ASSESSMENT OF SECURITIES SETTLEMENT SYSTEMS JANUARY 2014

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JANUARY 2014



In 2014 all ECB publications feature a motif taken from the €20 banknote.



<sup>1</sup> This version of the document, together with its annexes (questionnaires), does not at this stage reflect aspects related to triparty collateral management services. These will be included in a forthcoming version.

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## I INTRODUCTION

### Legal basis

The Eurosystem makes use of securities settlement systems (SSSs) and links between SSSs operated by central securities depositories (CSDs) and international central securities depositories (ICSDs) in order to settle its credit operations based on adequate collateral. Under Article 18.2 of the Statute of the European System of Central Banks (ESCB) and the European Central Bank (ECB), the ECB shall establish general principles for open market and credit operations carried out by itself or by the national central banks (NCBs), including for the announcement of conditions under which they stand ready to enter into such transactions. This calls for further prudence so that the Eurosystem may mitigate risks, subsequently ensuring the smooth conduct of monetary policy and contributing to the task of maintaining financial stability.

### Standards and assessment

The Eurosystem is aware of the risks that might arise as a result of the possible occurrence of disturbances in the settlement systems used to settle securities transactions. Thus it is necessary to ensure that Eurosystem credit operations are conducted according to procedures that: i) prevent Eurosystem central banks from assuming inappropriate risks in conducting monetary policy operations, and ii) ensure the same level of safety for the operations of all Eurosystem central banks, regardless of the settlement method.

To this end the Eurosystem has been applying standards since 1998 to protect itself against risks that might be incurred in both domestic and cross-border systems used for the settlement of monetary policy and intraday credit operations, and to ensure the safe and effective provision of collateral from counterparties to central banks. The standards cover the transfer, settlement and custody of eligible assets, as well as the legal and technical environment in which SSSs operate, and in particular the following aspects:

- legal soundness,
- settlement in central bank money,
- custody risk,
- regulation and/or control by competent authorities,
- transparency of risks and conditions for participation in a system,
- risk management procedures,
- intraday finality of settlement,
- operating hours and days, and
- operational reliability of technical systems and availability of adequate backup facilities.

A positive assessment against these standards allows SSSs and links between SSSs (as provided by CSDs/ICSDs) to be considered eligible for use in Eurosystem credit operations.

A common framework for the assessment of SSSs and links in respect of their use in Eurosystem credit operations ensures that the same stringent standards are applied to all SSSs and links, and contributes to maintaining a level playing field in the market.

### Changes to the assessment framework

Standards for the use of SSSs in Eurosystem credit operations were first developed and published in 1998. In the absence of any other international standards or regulatory requirements for SSSs at that time, the user assessment framework intended to address not only the concerns of

the Eurosystem in the context of the settlement of its credit operations, but also broader safety and market integration objectives, i.e. the safe and efficient functioning of payment systems, the stability of the financial sector and the smooth operation of the Single Market. However, with the development of international and European regulatory and oversight standards for SSSs and CSDs/ICSDs<sup>2</sup> in the meantime, the Eurosystem has identified opportunities to streamline the user assessment framework by taking into account the outcomes of oversight assessments. This approach prevents duplication between oversight and user assessments and similar standards and requirements, and allows user assessments to be focused on a limited number of concerns and risks that are specific and unique to the user perspective.

The implementation of T2S brings another opportunity for streamlining the user assessment framework. In recognition of the fact that T2S will offer several features of relevance from a Eurosystem user perspective that are common to all SSSs participating in T2S (“T2S common features”), these features can be assessed at T2S level instead of at the level of individual SSSs. Furthermore, since any cross-system settlement will be conducted in T2S in the same way as settlement within a single SSS, links between SSSs participating in T2S (T2S internal links) can, in principle, be assessed within the scope of the respective SSSs’ assessments and not on an individual link basis.

While the new streamlined user assessment framework, established in this document, aims to introduce considerable procedural simplifications, it will continue to ensure a high-level of protection for the Eurosystem against losses in the conduct of its credit operations.

## 2 ASSESSMENT PROCEDURES

### Application to obtain eligibility status

Euro area CSDs/ICSDs that operate SSSs and links between SSSs and that intend for their services to be used for Eurosystem credit operations are expected to initiate the assessment process by submitting a request to their local NCB. If the assessment concerns a link, the CSD of the investor SSS is expected to submit the request. Once the CSD’s request has been forwarded by the respective NCB, the Eurosystem initiates the assessment process.

In the case of links involving a euro area CSD (as the investor SSS) with a non-euro area CSD(s)<sup>3</sup> (as the issuer SSS and/or middle SSS), a request from the CSD of the investor SSS should be submitted to the respective local NCB for the assessment of this link and the non-euro area SSS(s).<sup>4</sup> The latter must be individually assessed and deemed eligible as a precondition for the eligibility of its (their) link(s) with the euro area SSS. The Eurosystem initiates assessments of links involving non-euro area EEA SSSs, taking into account the cost-benefit considerations in view of the lower volume of eligible assets generally expected to be mobilised via these links.

2 CPSS-IOSCO Recommendations for SSSs in 2001; ESCB-CESR Recommendations for SSSs in 2009; CPSS-IOSCO Principles for Financial Market Infrastructures in 2012.

3 CSDs in the non-euro area countries within the scope of the document “The implementation of monetary policy in the euro area” ([http://www.ecb.europa.eu/ecb/legal/pdf/l\\_33120111214en000100951.pdf](http://www.ecb.europa.eu/ecb/legal/pdf/l_33120111214en000100951.pdf))

4 With the removal of the repatriation requirement from the correspondent central banking model (CCBM) in the course of 2014, eligible assets will no longer need to be repatriated to the SSS where they were issued, thereby allowing the mobilisation of the respective assets via a combination of link(s) and the CCBM. In turn, this will allow euro-denominated assets issued in a non-euro area EEA SSS to be used for Eurosystem credit operations, provided that such assets meet Eurosystem asset eligibility criteria and that the respective link arrangement with the non-euro area EEA SSS has been positively assessed against the Eurosystem User Standards.

### Assessment

The assessment of SSSs and links between SSSs is conducted in accordance with the two-layer approach described in Section 3. A positive result from the assessment allows the respective SSS or link to be considered eligible for use in Eurosystem credit operations. If an SSS or link does not meet the requirements of the standards, they may still be used, possibly on a limited basis, and only on the condition that adequate measures are adopted against risks until the standards have been implemented in full. The Eurosystem may, on a strictly confidential basis, issue recommendations to the CSDs/ICSDs to enable the SSS or link to achieve full compliance with the user standards.

To ensure the continuous compliance of SSSs and links with the user standards, the Eurosystem conducts assessment reviews regularly and monitors the implementation of its recommendations by CSDs/ICSDs.

The Eurosystem compiles a list of SSSs and links between SSSs eligible for use in Eurosystem credit operations. The list is published on the ECB website.

## 3 TWO-LAYER ASSESSMENT APPROACH

The assessment of SSSs and links between SSSs that are to be used in Eurosystem credit operations is conducted under a two-layer approach. For user standards which overlap with oversight requirements, the Eurosystem, in its user capacity, relies on the oversight assessments of CSDs/ICSDs; this constitutes the first layer of the user assessment. For user standards that reflect specific requirements related to the use of the securities market infrastructure for settlement of Eurosystem credit operations and are therefore not covered by oversight standards a dedicated assessment will be conducted by the Eurosystem; this constitutes the second layer of the user assessment. The approach for assessments in a T2S context is described in Section 4.

### 3.1 FIRST LAYER – OVERSIGHT ASSESSMENTS<sup>5</sup>

The first layer of the user assessment framework requires SSSs and links between them to meet the relevant oversight standards applied to them by the competent authorities. User standards deemed to be assessed under the first layer have been identified by the Eurosystem through a mapping of oversight and user requirements. The mapping was based on the oversight standards currently in use, i.e. the CPSS-IOSCO Principles for Financial Market Infrastructures<sup>6</sup> and the ESCB-CESR Recommendations for SSSs.<sup>7</sup> For the user standards on:

- regulation and/or control by competent authorities,
- transparency of risks and conditions for participation in a system,
- risk management procedures, and
- operational reliability of technical systems and availability of adequate backup facilities,

the Eurosystem will exclusively rely on the oversight assessments against the principles/recommendations specified in Annex 1, either against the CPSS-IOSCO Principles for Financial

<sup>5</sup> The oversight framework for SSSs and links under the first layer, as well as the interplay between the first and second layers, will be reconsidered in the light of the new regulatory and supervisory regime introduced by the CSD Regulation, once in place.

<sup>6</sup> *Principles for financial market infrastructures*, Committee on Payment and Settlement Systems and Technical Committee of the International Organisation of Securities Commissions, April 2012.

<sup>7</sup> *Recommendations for Securities Settlement Systems and Recommendations for Central Counterparties in the European Union*, European System of Central Banks and Committee of European Securities Regulators, May 2009.

Market Infrastructures or against the ESCB-CESR Recommendations for SSSs, depending on the framework used by the oversight authority.

Furthermore, the information on an SSS's compliance with oversight requirements on:

- legal soundness,
- settlement in central bank money,
- custody risk, and
- intraday finality of settlement,

partially covers the assessment of an SSS and links between SSSs against specific user requirements. Hence, these shall be complemented by specific user aspects in the second layer. The information on the oversight principles/recommendations used is specified in Annex 1.

The user standard on the operating hours and days is exclusively dealt with in the second layer assessment.<sup>8</sup>

In cases where the oversight principles for SSSs or links that cover the above aspects are rated by the oversight authorities as having been fully observed, the Eurosystem in its user capacity relies on the oversight assessment and does not conduct any additional assessments. In cases where an oversight principle is rated as broadly observed or if an even lower rating of observance is assigned, the relevance of the oversight concern is analysed from the user perspective and, if deemed relevant, an action plan and information regarding its implementation provided by the oversight authorities are assessed in the context of user needs. In exceptional cases where the oversight recommendations do not address pending issues within an adequate time frame, from the user perspective, the Eurosystem may, in its user capacity, issue a recommendation to the SSS. Such recommendations are issued without prejudice to the competence of the relevant oversight authorities and/or to the implementation of any relevant action plan to improve the observance of the oversight standards.

The Eurosystem contacts the relevant oversight authorities or the CSD/ICSD directly to request information on the compliance of an SSS with the relevant oversight principles.

### 3.2 SECOND LAYER – USER ADDENDUM

The second layer of the user assessment framework involves an assessment against the specific user requirements not covered under the first layer. The requirements of the second layer are defined to complement the SSS's or link's oversight assessment against the user standards on legal soundness, settlement in central bank money, custody risk and intraday finality of settlement, as well as to ensure the assessment against the user standard on operating hours and days is conducted. These requirements are formulated below and questions aimed at verifying the compliance of SSSs, direct and relayed links with these requirements are included in annexes 2, 3 and 4 respectively.

#### STANDARD 1: LEGAL SOUNDNESS

**All SSSs and the links between such systems must have a sound legal basis, ensuring that the settlement of payment and securities transfers is final, and must provide for adequate**

<sup>8</sup> The requirements on the operating hours and days are partially covered in the ESCB-CESR Recommendations, but not covered by the CPSS-IOSCO Principles for Financial Market Infrastructures. To ensure full coverage of these requirements the second-layer standards are based on the mapping against the CPSS-IOSCO Principles for Financial Market Infrastructures.



**protection for the rights of the NCBs and the ECB in respect of securities held in their accounts in such systems.**

#### KEY CONSIDERATIONS

1. The entitlement to securities held within a system shall not expose NCBs (or the ECB, under exceptional circumstances as decided by the Governing Council), as collateral takers to the insolvency of the system operator or of a third party (e.g. a depository). Any shortfall allocation (regardless of the reason for the existence of such a shortfall) and procedures to claim securities under the legal framework of an SSS should be clear and transparent. No formalities shall be required at the level of an issuer SSS if the securities are used as a collateral at an investor SSS.
2. The CSD in its capacity as the SSS operator must ensure that the liabilities to which it or any other third party (e.g. a depository or a linked issuer SSS in the case of links) is subject are adequate and clearly formulated. This applies in particular to the extent to which NCBs and the ECB as collateral takers are exposed to risks of loss in the event of default, negligence or fraud on the part of the system operator or any other third party.
3. SSSs should clearly inform the Eurosystem of the points in time when transfer orders are entered into their system and are thus bankruptcy remote (settlement finality I), when transfer orders are irrevocable (settlement finality II) and when the transfer of securities is considered to be final (settlement finality III). When acting as an investor SSS, SSSs should indicate that they have taken steps to find out whether other legal systems recognise the finality of settlement of payment and delivery arrangements, and have taken this into account in the design of their links.<sup>9</sup>

#### EXPLANATORY NOTES

##### Nature of entitlement

It is important for the Eurosystem as a collateral taker that the entitlement to securities held within a system (e.g. in respect of specific securities or securities held on a pooled or fungible basis) represents a right which is bankruptcy remote – i.e. that the NCB/ECB having such entitlement to securities is not exposed to the insolvency of the system operator or of a third party (e.g. a depository). This also holds true in the case of links between SSSs where longer chains of securities accounts and several jurisdictions are involved. In order to ensure the effectiveness of such proprietary rights, the legal framework applicable to SSSs should clearly prohibit the unauthorised use, by the SSS's operator, of securities held within the system. If segregation or identification procedures (whether by the system operator or any other third party, such as a depository or an SSS in the case of links) are necessary for the existence or enforceability of such a proprietary right, then these procedures should be followed.

##### Liability for losses/errors

The SSS should have clear and adequate liability provisions, including the liability for the acts and omissions of an issuer SSS in a link. The SSS should be able to clearly state what measures it

<sup>9</sup> To be reviewed upon adoption of the CSD Regulation.

will take to recover securities held in a link for its participants, including any measures to limit the damage to the Eurosystem in the event that it does not assume full liability. The SSS should be able to specify to the Eurosystem how the liability regime is financially covered, whether there are any insurance or other compensation schemes to support the liability that the SSS assumes towards its participants or investor SSSs.

### Finality

SSSs should ensure and clearly define the moments of enforceability and irrevocability of transfer orders and the final settlement of securities transfers. The Eurosystem should therefore be informed of these definitions so that it may understand when exactly the risk is transferred and so that it is able to use the SSSs properly for its credit operations. When acting as an investor SSS, SSSs should take steps to ensure that the finalities between the two SSSs in a link are properly coordinated to prevent the risk of the revocation, unwinding or rescission of or challenge to the securities transfers made within their links with linked issuer SSSs.

### STANDARD 2: SETTLEMENT IN CENTRAL BANK MONEY

**SSSs shall enable the use of central bank money for the delivery-versus-payment (DvP) settlement of Eurosystem credit operations. If DvP settlement is not used, collateral shall be pre-deposited on a free-of-payment (FOP) basis.**

#### KEY CONSIDERATIONS

1. Eurosystem credit operations shall be settled on a DvP basis only if DvP is executed in central bank money, i.e. the settlement of the cash leg of the transaction takes place between accounts held within the Eurosystem.
2. If DvP settlement is not used, collateral shall be pre-deposited on an FOP basis.

#### EXPLANATORY NOTES

Central bank money is a liability of a central bank. Settlement in central bank money typically involves the discharge of settlement obligations on the books of the central bank of issue. Commercial bank money is a liability of a commercial bank, in the form of deposits held at the commercial bank.

An SSS and its participants may face credit and liquidity risks from cash settlement. Credit risk may arise because a settlement bank may default on its obligations (for example, if the settlement bank becomes insolvent). When an SSS settles the cash leg on its own books, participants face credit risk from the CSD operating it (excluding SSSs operated by central banks). Liquidity risk may arise in cash settlements if, after a payment obligation has been settled, participants or the SSS itself are unable to readily transfer their assets at the settlement bank into other liquid assets, such as claims on a central bank.

SSSs shall enable the use of central bank money for DvP settlement of Eurosystem credit operations so that the Eurosystem is not exposed to credit and liquidity risks. With the use of central bank money, a payment obligation related to a credit operation is discharged by the transfer of the cash leg between accounts held within the Eurosystem, which fully eliminates credit and liquidity risks

stemming from the default of the settlement bank. In the event that an SSS settles on a DvP basis using only commercial bank money, collateral for the central bank should be pre-deposited on a FOP basis. In most cases, a pre-deposit on a FOP basis would suffice because the NCBs mainly use pledge collateralisation techniques.

In the course of the assessment, the Eurosystem reviews the cash settlement arrangements available in the SSS, and in particular the precise settlement procedures to be used by the NCBs for the collateralisation of credit operations so that they avoid any exposure to settlement bank risk.

While the comprehensive review aims to obtain a full understanding of the overall DvP mechanism in a link arrangement, only the DvP mobilisation in central bank money or FOP mobilisation of collateral (with a pre-deposit of collateral) within the investor SSS is relevant for the determination of compliance with Standard 2.

In the context of assessing *links*, the cash settlement arrangements involving the investor SSS and the issuer SSS are reviewed (this analysis includes the operational arrangements related to the investor SSS's participation in the issuer SSS and the investor SSS's entitlement to the securities in the issuer SSS).

In the case of *relayed links*, the cash settlement arrangements involving the investor SSS, the intermediary SSS (also referred to as the middle SSS) and the issuer SSS are reviewed in detail. This analysis includes the operational arrangements related to the investor SSS's participation in the intermediary SSS and the investor SSS's entitlement to the securities in the intermediary SSS. The same information is also reviewed for the relationship between the intermediary SSS and the issuer SSS.

### STANDARD 3: NO UNDUE CUSTODY RISK

**SSSs shall employ adequate measures to protect collateral provided to the Eurosystem by counterparties in credit operations against custody risk.**

#### KEY CONSIDERATIONS

1. A CSD which operates an SSS shall have a unique and direct relationship with the issuer, or its SSS shall have a direct or relayed link with an SSS operated by a CSD which has this relationship.
2. In the case of links where an operator represents the investor SSS in its relationship with the issuer SSS (operated links), the investor SSS shall ensure that the Eurosystem is not exposed to custody risk originating from the operator and that the Eurosystem has access to its collateral at any point in time (including in the event of a change of operator or the insolvency of the operator). In particular the investor SSS should ensure that:
  - 2.1. The account in the books of the issuer SSS shall be open in the name of the CSD operating the investor SSS and the liabilities and obligations as regards the registration, transfer and custody of securities shall only be enforceable between the investor SSS and the issuer SSS.

- 2.2. In the event of a divergence in the reconciliation process, the securities positions of the issuer SSS shall ultimately prevail over the securities positions of the link operator.
- 2.3. The link operator shall not receive any ownership rights over the securities positions.
- 2.4. The investor SSS shall remain liable to the Eurosystem for acts and omissions by its operator.
- 2.5. The investor SSS should notify the Eurosystem in a timely manner of material changes to the set-up of eligible operated links, as well as changes of an operator.

#### EXPLANATORY NOTES

Custody risk is the risk of the loss of assets held in custody in the event that the custodian becomes insolvent or arising from claims made by its creditors, the failure to protect a participant's interests in securities, negligence, the misuse of assets, fraud, poor administration or inadequate recordkeeping. If the custody risk in respect of securities provided by counterparties to the Eurosystem as collateral for its credit operations is not properly managed, the Eurosystem could potentially suffer financial losses.

To limit its exposure to custody risk, the Eurosystem holds securities provided by its counterparties as collateral for its credit operations only in eligible SSSs and direct and relayed links between eligible SSSs. Furthermore, the Eurosystem requires that CSDs operating SSSs and links protect assets against custody risk. A CSD should have rules and procedures consistent with its legal framework and robust internal controls to achieve these objectives.

Thus the Eurosystem requires a CSD operating an SSS to have a unique and direct relationship with the issuer, or its SSS to have a direct or relayed link with an SSS operated by a CSD which has this relationship. The Eurosystem does not accept possible risks arising from the use of a depository, i.e. a third-party institution, such as a bank or any party other than the eligible SSS, acting as intermediary between the issuer and the issuer SSS in the absence of a direct contractual relationship between the two latter parties.

Protection against custody risk in view of international debt securities in global bearer form and global registered form is achieved by, among other things, the establishment of a direct contractual relationship between the issuer and the (I)CSDs. The issuer deposits the physical global note representing the securities issue in an (I)CSD (rather than a private bank), and the records of the (I)CSDs are established as the legally relevant records of the indebtedness of the issuer and of the amounts held on customer accounts with each (I)CSD. A physical global note can only be held for safekeeping by an (I)CSD that has been positively assessed by the Eurosystem under the Eurosystem user assessment framework.

The Eurosystem allows direct links to be operated on behalf of the CSD of the investor SSS by a service provider, to which the CSD of the investor SSS may outsource part of the operational processes necessary to handle the links transactions. To protect the Eurosystem from risks stemming from the operated links, it is very important that outsourcing is supported by adequate



legal arrangements, which ensure that the Eurosystem is not exposed to custody risk originating from the operator. In particular, the Eurosystem should have access to its collateral at any point in time (also in the event of a change of operator or the insolvency of the operator). The Eurosystem requires, among other things, the obligations and liabilities of the CSD of the investor SSS and the operator of the link to be clearly defined, taking into account:

- the CSD of the investor SSS should remain liable vis-à-vis the Eurosystem for the acts and omissions of the selected operator in connection with the registration and transfer of collateral used for Eurosystem credit operations;
- the responsibility for the obligations and liabilities in connection with the registration, transfer and custody of securities should remain legally enforceable only between the CSD of the investor SSS and the CSD of the issuer SSS.

Furthermore, the participants retain full ownership of the securities in the issuer SSS and the operator has no ownership right in the securities. The operator should reconcile positions in the technical accounts it operates with the positions on the accounts with the issuer SSS at least daily. In case of divergence, the operator should make every effort to resolve this with the issuer SSS. In exceptional cases where this process is not sufficient to resolve the divergence, the securities positions of the issuer SSS shall ultimately prevail over the securities positions that are reflected in the technical account in the operator's system.

For the purposes of assessing operated links, the Eurosystem may require copies of the relevant contractual documentation between the CSD of the investor SSS and the operator. Moreover, the Eurosystem will also require legal evidence outlining that the CSD of the issuer SSS is mandated to accept instructions received from the operator that acts on behalf of the CSD of the investor SSS.

The CSD of the investor SSS should notify its local NCB of any subsequent changes to the above documentation, as well as changes to the entity acting as operator. This allows the Eurosystem to assess whether such changes affect the safety of its collateral.

#### **STANDARD 4: INTRADAY FINALITY OF SETTLEMENT**

**SSSs shall provide facilities to settle Eurosystem credit operations with intraday finality.**

##### **KEY CONSIDERATIONS**

1. An SSS used for the settlement of central bank transactions shall have facilities in place to allow the option of either intraday DvP settlement in central bank money or intraday FOP settlement (this may take the form of real-time gross settlement (RTGS) or a series of batch processes with intraday finality).

##### **EXPLANATORY NOTES**

Eurosystem credit operations include, among others, collateralised intraday credit in TARGET2 and auto-collateralisation of securities transfers in certain SSSs and therefore require intraday final settlement. Hence, SSSs should provide arrangements to ensure intraday finality of settlement.

Delivery of collateral to NCBs with intraday finality (both on a DvP and FOP basis) may be met by the following operational mechanisms:

1. net settlement systems with several processing cycles during the day;
2. real-time gross settlement systems<sup>10</sup>;

As regards settlement via links between SSSs, it shall be additionally ensured that:

1. the settlement finality of a transaction is achieved in one SSS before it enters the next SSS in the settlement chain;
2. linked net settlement systems with several processing cycles per day ensure that the cycles are synchronised to allow for intraday settlement.

The optimal solution for final intraday settlement is the use of RTGS systems. SSSs with very frequent batch processes (e.g. every 30 minutes) also ensure timely settlement.

#### STANDARD 5: OPERATING HOURS AND DAYS

**The operating hours and opening days of SSSs shall comply with Eurosystem requirements for conducting credit operations.**

##### KEY CONSIDERATIONS

1. An SSS and its links shall operate in accordance with the TARGET2 opening days.
2. An SSS shall operate in accordance with the TARGET2 operating hours.
3. SSSs involved in direct/relayed links shall enable Eurosystem counterparties to submit instructions concerning same-day DvP settlement via the issuer and/or middle SSS (as applicable) to the investor SSS until at least 3.30 p.m. CET.
4. A direct/relayed link shall enable Eurosystem counterparties to submit instructions concerning same-day FOP settlement via the issuer and/or middle SSS (as applicable) to the investor SSS until at least 4 p.m. CET.
5. SSSs and links shall have measures in place to ensure the extension of the above operating times in case of emergencies.

##### EXPLANATORY NOTES

SSSs opening days and operating times should comply with the Eurosystem requirements for the TARGET2 system and the cross-border use of eligible marketable assets in order to meet the Eurosystem needs for the collateralisation of central bank credit operations. The Eurosystem needs to encompass both the local settlement (delivery of local collateral to an NCB) and the broader context of the cross-border use of collateral including the delivery of assets to NCBs via the CCBM.

<sup>10</sup> Innovative enhancements, such as “technical netting” have created a broader view of DvP model 1. These enhancements can now be considered as possible variants of this model.

Compliance with the TARGET2 opening days and operating times means that SSSs shall be open in line with the TARGET2 calendar, as published on the ECB website<sup>11</sup>, between 7 a.m. CET and 6 p.m. CET.

The mobilisation of collateral via links and in particular via relayed links involves two or three SSSs and is procedurally more time-consuming than settlement in a single SSS. The Eurosystem considers compliance with this standard to have been achieved if the link service level is comparable to that of the CCBM, i.e. if a Eurosystem counterparty may instruct delivery of securities held via the link to the NCB by 4 p.m. CET. Depending on the kind of link (direct or relayed) and whether the collateral is mobilised on a DvP or FOP basis, different cut-off times for the delivery of instructions by counterparties may be applied by SSSs. If participants of the investor SSS wish to move securities on a DvP basis from the issuer SSS/middle SSS to the investor SSS (and obtain same-day settlement), they should be able to send their instructions until at least 3.30 p.m. CET. This would allow the issuer SSS/middle SSS to receive instructions for DvP before (or at) 4 p.m. CET. If participants of the investor SSS wish to move securities on an FOP basis from the issuer SSS/middle SSS to the investor SSS (and obtain same-day settlement), they should be able to send their instructions until at least 4 p.m. CET. This means that the issuer SSS/middle SSS shall perform the movement of securities just after 4 p.m. CET.

The earlier cut-off time for the submission of instructions by counterparties for DvP settlement is justified since DvP settlement involves both a cash leg and a securities leg. During the assessment of a link, compliance with this standard for the cut-off times of all involved SSSs are examined to make sure that they are compatible and allow for the mobilisation of collateral via the link until 4 p.m. CET.

In emergency situations, e.g. delayed closing hours of TARGET2, counterparties may need to mobilise collateral later than usual, so CSDs should be able to extend the operating hours of SSSs and links.

In the event that there are differences between the operating hours and days of an SSS (or link) and those of TARGET2, compliance is determined according to the adequacy of the measures in place to ensure that the Eurosystem can be sufficiently confident that settlement is possible on those days/times if needed (e.g. on-call availability of the CSDs' staff, availability of systems, use of tested and documented procedures, execution of regular and adequate testing).

#### 4 ASSESSMENTS OF SSSs AND LINKS IN A T2S CONTEXT

The launch of T2S brings the opportunity for further streamlining of the user assessment process, mainly as a result of two factors: 1) common technical functionalities for all SSSs joining T2S and 2) the setup and functioning of links in T2S. These developments allow for the application of the so-called “T2S common features” approach and the “node” approach.

<sup>11</sup> See ECB website for link to holidays for current and future years: <http://www.ecb.int/home/html/holidays.en.html>

## 4.1 ASSESSMENT APPROACH

### T2S common features approach

As T2S will offer several features that are common to all SSSs participating in T2S, the assessment of these features against the user standards is conducted at the level of T2S instead of at the level of individual SSSs. These common features are assessed against standards on legal soundness (only for settlement finality aspects), settlement in central bank money, intraday finality of settlement and operating hours and days. This implies that SSSs participating in T2S are only assessed individually against the standard on legal soundness (with the exception of settlement finality aspects) and the standard on no undue custody risk.

### Node approach

SSSs participating in T2S will technically be able to set up networks of internal links (where the SSS' role is comparable to that of a "node" in a network of links). The settlement between two SSSs in this context is technically considered equivalent to the settlement of a transaction between two participants of the same SSS because the settlement takes place within the same technical environment, under the same rules and conditions, and employing the same set of (common) safeguards against risks. Therefore the user assessment of SSSs in a T2S context focuses on the soundness and safety of each SSS as a node. When the outcome of the SSSs' (nodes) assessment is positive it implies that the internal links they establish with each other are deemed eligible for use in Eurosystem credit operations.

As a direct consequence, assessments of individual T2S internal links are not necessary, with the exception of customised features, where some specific aspects relating to legal and custody risks need to be separately assessed at link level. The customised features shall be identified during the assessment of the SSSs (nodes) on the basis of answers to the questions in Annex 5 and examined in the scope of the SSS assessment.

For standard 1 on legal soundness, taking into account (i) the current (and future) state of the harmonisation of the legal aspects of settlement finality and CSDs which took place in the European Union, such as the Financial Collateral Directive and the Settlement Finality Directive, and (ii) that such harmonisation applies to CSDs both participating and not participating in T2S, the node approach will – in principle – apply to all EU SSSs.

## 4.2 ASSESSMENT PROCESS

The assessment of SSSs/links in the T2S context follows the two-layer approach, as in the case of any SSS/link outside of T2S (cf. Section 3 above), subject to a number of changes resulting from the T2S common features and node approaches. These changes are further described below.

### T2S

The assessment process in relation to T2S relies on the oversight assessment of T2S for the first layer and a dedicated assessment of T2S common features as the second layer.

Taking into account that T2S plays the role of a shared technical platform providing the SSSs with settlement services, in order to ensure a comprehensive first-layer assessment of SSSs and links, the outcome of T2S oversight assessment (in addition to the oversight assessments of the SSSs) also needs to be factored into the user assessment process.



The assessment of T2S common features as indicated above is conducted against standards on legal soundness (only for settlement finality aspects), settlement in central bank money, intraday finality of settlement and operating hours and days.

### SSSs

The assessment of SSSs participating in T2S under the first layer is conducted in the same manner as described in section 3.1.

Under the second layer, SSSs participating in T2S are assessed individually only against standards on legal soundness (with the exception of settlement finality aspects) and no undue custody risk.

Annex 5 includes questions to verify SSSs' compliance with requirements applied to them in line with the T2S common features approach and node approach.

### T2S internal links

In line with the node approach, some legal and custody risk aspects of customised features are assessed at link level albeit within the scope of the assessment of respective SSSs. Therefore the relevant questions verifying compliance with these aspects are included in the questionnaire for T2S SSSs (Annex 5).

Since in T2S the settlement between two SSSs is technically considered equivalent to the settlement of a transaction between two participants of the same SSS, the length of the internal link is not limited in the context of its use for Eurosystem credit operations.<sup>12</sup>

### T2S in/out links

There may be several different models of T2S in/out links which differ depending on whether they are direct or relayed link arrangements, how many SSSs in the arrangement participate/do not participate in T2S and whether the non-T2S-participating SSS(s) is/are acting as issuer, middle or investor SSS(s). The extent to which the node approach may be used for assessing in/out links depends on the specificities of the in/out link. For most of the models of in/out links the node approach may be applied. However, in a few specific cases some aspects of second-layer standards (e.g. related to operated links or cut-off times for counterparties' instructions) might need to be assessed at link level. As in the case of customised features of internal links, the assessment of these aspects will be conducted within the scope of the SSSs assessment. The relevant questions verifying compliance of in/out links with second-layer standards are included in the questionnaire for T2S SSSs (Annex 5).

T2S in/out links eligible for use in Eurosystem credit operations may be composed of up to a maximum of two SSSs not participating in T2S in addition to the SSSs participating in T2S.

<sup>12</sup> It is noted that there are some technical limitations to the length of a link in T2S.

## GLOSSARY

**Central bank money:** liabilities of a central bank, in the form of either banknotes or bank deposits held at a central bank, which can be used for settlement purposes.

**Central securities depository (CSD):** an entity that: 1) enables securities transactions to be processed and settled by book entry; 2) provides custodial services (e.g. the administration of corporate actions and redemptions); and 3) plays an active role in ensuring the integrity of securities issues. Securities can be held in a physical (but immobilised) form or in a dematerialised form (whereby they exist only as electronic records).

**Collateral:** an asset or third-party commitment that is used by a collateral provider to secure an obligation vis-à-vis a collateral taker.

**Correspondent central banking model (CCBM):** a mechanism established by the Eurosystem with the aim of enabling counterparties to use underlying assets in a cross-border context. In the CCBM, NCBs act as custodians for one another. This means that each NCB has a securities account in its securities administration for each of the other NCBs. The CCBM is also available to counterparties of certain central banks of the EU Member States whose currency is not the euro.

**Counterparty:** the opposite party in a financial transaction (e.g. any party transacting with the central bank).

**Custody:** the holding and administration, by an entity entrusted with such tasks, of securities and other financial instruments owned by a third party.

**Custody risk:** the risk of a loss being incurred on securities in custody as a result of a custodian's insolvency, negligence, misuse of assets, fraud, poor administration or inadequate record-keeping.

**Delivery versus payment (DvP):** a securities settlement mechanism which links a securities transfer and a funds transfer in such a way as to ensure that delivery occurs if – and only if – the corresponding payment occurs.

**Direct link:** an account opened by a central securities depository (CSD), referred to as the “investor SSS”, in the books of another CSD, referred to as the “issuer SSS”, in order to facilitate the transfer of securities from participants in the issuer SSS to participants in the investor SSS.

**Eligible assets:** assets which can be used as collateral in order to obtain credit from the Eurosystem.

**Free-of-payment (FOP) delivery:** a delivery of securities which is not linked to a corresponding transfer of funds.

**International central securities depository (ICSD):** a central securities depository (CSD) that is active in the settlement of internationally traded securities from various domestic markets, typically across currency areas.

**Intraday finality:** final settlement achieved continuously or at various times in the course of the settlement day. Intraday finality can be provided through real-time settlement procedures and/or the settlement of the results of batch processing during the settlement day.

**Investor SSS:** a term used in the context of links between securities settlement systems (SSS). A CSD of an investor SSS – or a third party acting on behalf of the CSD of the investor SSS – opens an account in another CSD, which is operating the issuer SSS, so as to enable the cross-system settlement of securities transactions.

**Issuer SSS:** a securities settlement system (SSS) operated by a central securities depository (CSD) in which securities are issued (or immobilised). The CSD of the issuer SSS opens accounts allowing investors (in a direct holding system) and/or intermediaries (including investor SSSs) to hold these securities.

**Link between securities settlement systems (SSSs):** a set of technical and legal arrangements between securities settlement systems (SSSs) for the cross-system transfer of securities. See also direct link, operated direct link, relayed link.

**Node approach:** a user assessment approach for links whereby the soundness and safety of each SSS, as a node in a network of links, is assessed. Consequently links between SSSs participating in T2S can, in principle, be assessed within the scope of the respective SSSs' assessment and not on an individual link basis.

**Operated direct link:** a direct link between two securities settlement systems (SSSs) where a third party, typically a custodian bank, operates the account in the issuer SSS on behalf of the CSD of the investor SSS.

**Reconciliation:** a procedure to verify that two sets of records issued by two different entities match.

**Relayed link:** a contractual and technical arrangement that allows issuer and investor securities settlement systems (issuer and investor SSSs) to hold and transfer securities through an account with a third SSS (a “middle SSS”), which acts as an intermediary.

**Securities settlement system (SSS):** a system which allows the transfer of securities, either free of payment (FOP) or against payment (delivery versus payment).

**T2S common features approach:** a user assessment approach whereby, instead of carrying out the assessment exclusively at the level of individual SSSs, the assessment is conducted at the level of T2S for the relevant features which are common to all SSSs participating in T2S.

**T2S internal link:** an arrangement where all SSSs involved in the link participate in T2S.

**T2S in/out link:** an arrangement where at least one of the SSSs involved in the link participates in T2S and at least one (but no more than two) of the SSSs involved in the link does not participate in T2S.

## 1998 USER STANDARDS AND CORRESPONDING OVERSIGHT PRINCIPLES/RECOMMENDATIONS

User standards	CPSS-IOSCO PFMI	ESCB-CESR Recommendations
<b>User standards fully covered by oversight assessment</b>		
<b>Regulation and/or control by competent authorities</b>	CPSS-IOSCO Responsibility A: Regulation, supervision and oversight of FMIs and Responsibility B: Regulatory, supervisory and oversight power and resources	ESCB-CESR Recommendation 18: Regulation, supervision and oversight
<b>Transparency of risks and conditions for participation in a system</b>	PFMI 3 Framework for the comprehensive management of risks, PFMI 17 Operational risk, PFMI 18 Access and participation requirements, PFMI 20 FMI links, PFMI 23 Disclosure of rules, key procedures and market data	ESCB-CESR Recommendation 17: Transparency and Recommendation 14: Access
<b>Risk management procedures</b>	PFMI 2 Governance, PFMI 3 Framework for the comprehensive management of risks, PFMI 4 Credit risk, PFMI 5 Collateral, PFMI 7 Liquidity risk, PFMI 8 Settlement finality, PFMI 12 Exchange-of-value settlement systems, PFMI 11 Central securities depositories, PFMI 13 Participant-default rules and procedures, PFMI 20 FMI links, PFMI 23 Disclosure of rules, key procedures and market data	ESCB-CESR Recommendation 5: Securities lending, Recommendation 1: Legal framework, Recommendation 9: CSD risk controls to address participants' failures to settle, Recommendation 6: Central securities depositories (CSDs)
<b>Operational reliability of technical systems and availability of adequate backup facilities</b>	PFMI 17 Operational risk, PFMI 20 FMI links, PFMI 22 Communication procedures and standards, PFMI 23 Disclosure of rules, key procedures and market data	ESCB-CESR Recommendation 11: Operational risk
<b>User standards partly covered by oversight assessment</b>		
<b>Legal soundness</b>	PFMI 1 Legal basis, PFMI 8 Settlement finality, PFMI 11 Central securities depositories, PFMI 12 Exchange-of-value settlement systems, PFMI 20 FMI links	ESCB-CESR Recommendation 1: Legal framework, Recommendation 6: Central securities depositories (CSDs), Recommendation 12: Protection of customers' securities, Recommendation 19: Risks in cross-system links or interoperable systems, Recommendation 8: Timing of settlement finality, Recommendation 14: Access, Recommendation 18: Regulation, supervision and oversight
<b>Settlement in central bank money</b>	PFMI 9 Money Settlements, PFMI 12 Exchange-of-value settlement systems	ESCB-CESR Recommendation 10: Cash settlement assets
<b>Custody risk</b>	PFMI 3 Framework for the comprehensive management of risks, PFMI 11 Central securities depositories, PFMI 17 Operational risk, PFMI 18 Access and participation requirements, PFMI 20 FMI links	ESCB-CESR Recommendation 6: Central securities depositories (CSDs), Recommendation 14: Access, Recommendation 19: Risks in cross-system links or interoperable systems, Recommendation 12: Protection of customers' securities
<b>Intraday finality of settlement</b>	PFMI 7 Liquidity risk, PFMI 8 Settlement finality, PFMI 9 Money settlements, PFMI 12 Exchange-of-value settlement systems	ESCB-CESR Recommendation 8: Timing of settlement finality, Recommendation 19: Risks in cross-system links or interoperable systems
<b>Operating hours and days</b>	Not covered	ESCB-CESR Recommendation 3: Settlement cycles and operating times

## ANNEX 2

### QUESTIONNAIRE FOR THE ASSESSMENT OF SECURITIES SETTLEMENT SYSTEMS AGAINST THE STANDARDS DETERMINING THEIR ELIGIBILITY FOR USE IN EUROSISTEM CREDIT OPERATIONS

#### SECOND LAYER ASSESSMENT

[JURISDICTION]

[SECURITIES]

RESPONDING INSTITUTION: [NAME]

INFORMATION PROVIDED IN THE ANSWERS IS ACCURATE AS OF [DATE]

ANY ENQUIRIES SHOULD BE SENT TO [CONTACT DETAILS]

#### STANDARD 1: LEGAL SOUNDNESS

##### Nature of entitlement

1.1. What law governs the nature of entitlements in the SSS?

1.2. What is the nature of the entitlement to securities held in the SSS

- (i) for the participant,
- (ii) when acting in the capacity of an issuer SSS, for the linked investor SSS, and
- (iii) when acting in the capacity of an investor SSS to securities held with a linked issuer SSS?

1.3. In the event of the insolvency of (i) the SSS operator (ii) any third party (e.g. a depository) or (iii) any linked issuer SSS, how are shortfalls allocated (if any), especially with regard to a central bank holding collateral in the context of Eurosystem credit operations? Is there any lien or similar mechanism which may negatively impact such entitlements in general, and especially with regard to a central bank holding collateral in the aforementioned context? What are the procedures to claim the securities under the legal framework of the SSS?

1.4. When acting in the capacity of an issuer SSS, are there any legal formalities to be performed at the level of the SSS for a pledge or any similar security interest granted by one participant in the linked investor SSS to another participant in the linked investor SSS with respect to securities held with the SSS (acting in the capacity of an issuer SSS), in order for such security interest to be perfected and to be valid and enforceable vis-à-vis third parties?

1.5. When acting in the capacity of an issuer SSS, is it possible for a security held by a linked investor SSS to be subject to attachment by the creditors of the SSS (acting in the capacity of an issuer SSS) or its participants and/or be subject to freezing or blocking instructions from local courts or other authorities?

1.6. When acting in the capacity of an investor SSS, and under the private international law rules of the SSS's jurisdiction, is it the law of the SSS's jurisdiction that determines the nature of the

participant's right in the securities transferred through the link in question to a participant's account in the SSS? Would the same law govern the constitution (validity and enforceability) of collateral in the system held by such a participant in favour of an NCB or the ECB?

#### Liability for losses/errors

1.7. To what extent are the NCBs and the ECB as collateral takers, or the participants of a linked investor SSS, exposed to the risks of loss in the event of default, negligence or fraud on the part of the SSS or any other third party (e.g. a system operator, operator of a link, depository)? What kind of liability does the SSS assume towards its participants or, when acting in the capacity of an issuer SSS, towards linked investor SSSs?

1.8. When acting in the capacity of an investor SSS, does the SSS accept any obligations or liabilities vis-à-vis its participants (including any linked investor SSSs) for acts or omissions of the linked issuer SSS? Please indicate the legal basis for the liability regime of the SSS when acting in the capacity of an investor SSS in relation to the acts of the linked issuer SSS.

1.9. When acting in the capacity of an investor SSS, and if the SSS does not assume full or any liability pursuant to question 1.8 above, does the SSS commit itself legally (by law or contract or terms and conditions) to assist its participants (including linked investor SSSs) in the event of losses resulting from acts or omissions of the linked issuer (including any middle) SSS? Please indicate the scope, limitations and exceptions of the SSS's liability regime with regard to risk related to the securities issued at the linked issuer SSS and provided as collateral to the Eurosystem: would the SSS cover the entire cost that the Eurosystem may face due to acts and omissions of the linked issuer (including any middle) SSS? In the event that full liability is not assumed, can the SSS confirm it would make every reasonable effort to limit damage to its participants (including NCBs), which may require it to sue the linked issuer (including any middle) SSS in order to recover any loss on behalf of, and for the benefit of its participants? Please specify the measures the SSS is obliged to undertake in order to recover the loss that the Eurosystem may face.

#### Finality

1.10. Under the rules of the SSS and the laws applicable to the SSS, (i) when are the transfer orders entered into its system considered to be bankruptcy remote in accordance with the Settlement Finality Directive, (ii) when are the transfer orders irrevocable and (iii) when are the transfers of securities considered to be final?

1.11. When acting as an investor SSS, is the finality of the settlement of securities transfers made via links with the linked issuer (including any middle) SSSs assured, i.e. is there no possibility to revoke, unwind, rescind (or challenge) securities transfers made via links with an issuer (including any middle) SSS?

1.12. When acting in the capacity of an investor SSS, what law governs the finality of transfers in the bilateral relationship between the SSS and its participants, on the one hand, and in the relationship between the SSS, acting in the capacity of an investor SSS, and the linked issuer SSS on the other hand?

### Questions on links<sup>1</sup>

1.13. Please list any links which are eligible for Eurosystem credit operations and/or any links which are being submitted for assessment for use in Eurosystem credit operations. Please specify whether the SSS acts in such links as an investor, middle or issuer SSS.

1.14. Are any of the links listed above, in which the SSS acts as an investor SSS, operated by a third party? If so, does the responsibility for the obligations and liabilities in connection with the registration, transfer and the custody of securities remain legally enforceable between the SSS and the issuer (including any middle) SSS?

1.15. Do the conclusions drawn from questions 1.1. – 1.12. fully apply to links which are listed under question 1.13? If so, please provide confirmation of this fact. If not, please provide explanations for all derogations, including the underlying legal documentation.

### Legal opinion

Please provide a legal opinion covering as a minimum the following issues:

1. The legal nature and the law governing the entitlement:

- (i) of the SSS's participants, to securities held in the SSS acting as issuer SSS or as investor SSS (i.e. when the SSS holds the securities for the participant in another, linked issuer SSS);
- (ii) if different from (i), of any linked investor SSSs to securities held by such linked investor SSSs in the SSS.

The legal opinion should state that such entitlement ensures adequate protection of collateral provided by a participant in the SSS, particularly in the event of the bankruptcy/insolvency of the SSS, the participant providing collateral or any third party (e.g. other participants, registrar, sub-custodian (i.e. linked issuer or middle SSS);

2. The SSS's liability vis-à-vis its (i) participants and (ii) any linked investor SSSs, including its liability for acts and omissions or the choice of any linked issuer or middle SSS acting as direct and/or indirect sub-custodian and/or provider of services;

3. The enforceability and irrevocability of transfer orders, as well as the finality of settlement and their bankruptcy protection; and

4. When acting in the capacity of an investor SSS, the law applicable to a collateral right in securities (whether or not it involves a transfer of ownership) granted by a participant in the SSS to another participant in the SSS, with respect to securities held in the issuer (including any middle) SSS.

### STANDARD 2: SETTLEMENT IN CENTRAL BANK MONEY

2.1. Describe the cash settlement arrangements available in the SSS (irrespective of whether or not they are used for Eurosystem collateralisation purposes).

2.2. Specify which settlement modality is used for Eurosystem credit operations: FoP, DvP or both. If DvP is used, does the settlement take place in central bank money? If FoP is used, is collateral

<sup>1</sup> These questions will be asked during comprehensive assessments of SSSs and links. For the ad hoc assessment of new links similar questions are included in the questionnaires for the assessment of direct and relayed links.

pre-deposited and/or in the case of real-time FoP, does the procedure ensure that the NCB provides credit on a payment after delivery basis?

### STANDARD 3: NO UNDUE CUSTODY RISKS

3.1. Does the CSD that operates the issuer SSS have a direct and unique relationship with the issuer for all eligible assets issued in this SSS and used by its participants in Eurosystem credit operations?

3.2. If applicable, are international debt securities kept safe in a Eurosystem-eligible (I)CSD? Does this (I)CSD have a direct contractual relationship with the issuer?

3.3. Does the SSS have links with other entities for holding securities? If so, for which type of instruments and which of the direct entities are involved (main characteristic such as name, type, etc.)? What types of safeguards are taken against custody risk with these entities?

### STANDARD 4: INTRADAY FINALITY OF SETTLEMENT

4.1. Does the SSS provide facilities to settle operations with intraday finality? If so, for what type of operations? Is the intraday settlement provided on a DvP (which model) or FoP basis? What are the characteristics (e.g. RTGS or batch processes) and the timing (e.g. when is RTGS settlement available, frequency and timing of batches) of the intraday settlement facilities? If not, when does the SSS plan to provide such facilities?

4.2. Does the SSS provide facilities or procedures that could expose the NCBs to settlement risk when settling operations (domestically or via links)? If so, what facilities or procedures and what measures are taken in order to minimise this risk?

### STANDARD 5: OPERATING HOURS AND DAYS

5.1. Are the opening days of the SSS fully synchronised with the TARGET2 operating calendar? If not, on which days and for what reasons is the SSS closed when TARGET2 is open?

5.2. Are the operating hours of the SSS fully synchronised with the TARGET2 operating hours? If not, what are the SSS's operating hours?

5.3. In cases where full synchronisation of opening days and operating hours with TARGET2 is not available, what are the procedures and measures in place (staff on call, documented procedures discussed with NCBs and regularly tested, etc.) to allow for the execution of Eurosystem collateral operations on the days or times when TARGET2 is open but the SSS is closed? Are there any ongoing discussions between the involved parties that seek to mitigate the effects of non-full compliance with TARGET2 opening days and hours?

5.4. What are the procedures in place to ensure an extension of operating times in the event of an emergency?



## ANNEX 3

### QUESTIONNAIRE FOR THE ASSESSMENT OF DIRECT LINKS AGAINST THE STANDARDS DETERMINING THEIR ELIGIBILITY FOR USE IN EUROSISTEM CREDIT OPERATIONS

#### SECOND LAYER ASSESSMENT

#### QUESTIONNAIRE FOR THE INVESTOR SSS

RESPONDING INSTITUTION: [NAME]

INFORMATION PROVIDED IN THE ANSWERS IS ACCURATE AS OF [DATE]

ANY ENQUIRIES SHOULD BE SENT TO [CONTACT DETAILS]

#### GENERAL INFORMATION

1. Do you have more than one link established between your SSS and the issuer SSS in question? If yes, how many links will be maintained with the issuer SSS in question and what are the differences between this link to be assessed and the other links with this same issuer SSS? How is it ensured that risks associated with the other (non-assessed) links with the same SSS do not pose additional risks to the link to be assessed?
2. Are all assets issued in the issuer SSS included in the link to be assessed? If not, which assets cannot be transferred through the link?
3. Have you signed a standard participation agreement with the issuer SSS without any modifications (even operational modifications)? If any aspects of the agreement and/or the operational procedures deviate from the standard agreement and standard procedures agreed with participants, please specify.
4. When did the link that is to be assessed become operational?

#### STANDARD 1: LEGAL SOUNDNESS<sup>1</sup>

- 1.1. Is the link operated by a third party? If so, does the responsibility for the obligations and liabilities in connection with the registration, transfer and custody of securities remain legally enforceable between the SSS and the issuer (including any middle) SSS?
- 1.2. Do the conclusions drawn from questions 1.1. – 1.12. in the SSS assessment questionnaire fully apply to the link under assessment? If so, please provide confirmation of this fact. If not, please provide explanations for all derogations, including the underlying legal documentation.

<sup>1</sup> General legal soundness of links is assessed within the assessment of an SSS, so all link-related questions are covered in the questionnaire for SSS. The questions below are only to be used for the ad hoc assessment of the specific customised features of a new link that differ from the general SSS assessment.

**STANDARD 2: SETTLEMENT IN CENTRAL BANK MONEY**

2.1. Does the link settle cross-system transactions on a DvP or FOP basis? If on a DvP basis, is the cash leg of cross-system transactions settled in central bank money? If DvP is not used, is collateral for Eurosystem credit operations pre-deposited on an FOP basis?

**STANDARD 3: NO UNDUE CUSTODY RISKS**

3.1. Does the CSD which operates the investor SSS have a direct and unique relationship with the issuer SSS? What type(s) of account(s) are opened in the issuer SSS?

3.2. Is the account in the issuer SSS operated by or through any third party? If yes, what measures are used to protect collateral provided to the Eurosystem against custody risk originating from the operator and to ensure that the Eurosystem has access to its collateral at any point in time (including in the case of a change of operator or insolvency of the operator)? Are arrangements based upon specific laws and regulations?

3.2.1. Is it ensured that securities holdings in the issuer SSS are kept in the name of the CSD which operates the investor SSS?

3.2.2. Who is responsible for the reconciliation of records? In the event that a discrepancy is identified when reconciling the records, whose records shall prevail?

3.2.3. If the direct link under assessment is an operated link, is it ensured that the account operator does not receive any ownership rights on the securities?

3.2.4. Does the arrangement with the operator cover the operator's insolvency (i.e. timely recovery of securities)? Is there, for investor SSS participants, a limitation on the right to free disposal of the securities held in the issuer SSS?

3.2.5. Does the CSD of the investor SSS remain liable vis-à-vis the Eurosystem for the acts and omissions of the selected operator (i.e. in the event that the operator makes an operational mistake)? What arrangements are used to protect customers' securities from theft, loss or misuse?

3.2.6. Is the investor SSS able to quickly change the link operator in case of need?

**STANDARD 4: INTRADAY FINALITY OF SETTLEMENT**

4.1. Is the settlement of cross-system transactions based on intraday finality or end-of-day finality? Please specify for both FOP transactions and DvP transactions. In the case of intraday finality, is it achieved by means of real-time gross settlement or through a series of batch processes? Does it allow securities to be reused the same day?

**STANDARD 5: OPENING DAYS AND OPERATING HOURS**

5.1. Is the link fully open on all TARGET2 operating days? If not, on which days does it not open and what are the reasons for not opening? Please describe which services are not fully available in such circumstances and disclose the plans in place to ensure settlement of Eurosystem transactions

that are normally settled over the link on the days and at the times when TARGET2 is open but link settlement is not possible.

5.2. What is the earliest and the latest time the investor SSS can receive instructions from its participants for settlement with same-day value in the issuer SSS? Please provide cut-off times separately for DvP and FOP settlement.

5.3. What is the earliest and the latest time the issuer SSS can receive instructions from the investor SSS for settlement with same-day value?

5.4. What is the earliest and the latest time the investor SSS can receive settlement confirmation from the issuer SSS, with the same day value in the investor SSS, such that the investor SSSs' participants can transfer/pledge the securities with the same-day value to the investor NCB?

5.5. Can the later cut-off times before which participants must instruct their SSS, as indicated in 5.2 above, be extended in the event of an emergency, in particular for Eurosystem credit operations? If so, what/who would determine such a case? Please provide the cut-off times in emergency situations separately for DvP and FOP settlement.

5.6. Are there any plans (e.g. as a consequence of further automation) to revise any of the above deadlines?

## ANNEX 4

**QUESTIONNAIRE FOR THE ASSESSMENT OF RELAYED LINKS AGAINST THE STANDARDS DETERMINING THEIR ELIGIBILITY FOR USE IN EUROSISTEM CREDIT OPERATIONS**
**SECOND LAYER ASSESSMENT**
**RESPONDING INSTITUTION: [NAME]**
**INFORMATION PROVIDED IN THE ANSWERS IS ACCURATE AS OF [DATE]**
**ANY ENQUIRIES SHOULD BE SENT TO [CONTACT DETAILS]**
**GENERAL INFORMATION**

1. Is the middle SSS the only intermediary involved in the relayed link between investor SSS and the issuer SSS in question? Is there a direct link between the investor SSS and the issuer SSS? How is it ensured that the links between the involved SSSs do not pose additional risks to the settlement across the relayed link (e.g. when securities received by the middle SSS from the issuer SSS cannot be transferred to the investor SSS until their final settlement in the middle SSS)?
2. When did the relayed link under assessment become operational?
3. Are all assets issued in the issuer SSS included in the relayed link under assessment? If not, which assets can or cannot be transferred through the relayed link?
4. Was the issuer SSS informed about the existence of the relayed link?

**STANDARD 1: LEGAL SOUNDNESS**

*No additional issues further to those presented for direct links.*

**STANDARD 2: SETTLEMENT IN CENTRAL BANK MONEY**

*No additional issues further to those presented for direct links.*

**STANDARD 3: CUSTODY RISKS**

3.1. Are the risks related to the custody of securities held by the middle SSS addressed in the same way as those related to the securities held by the underlying direct links? Or does the relayed link, as compared to the underlying direct links, imply any different features in terms of custody of securities, in particular in relation to the involvement and role of an operator? If yes, provide a detailed description of these features.

**STANDARD 4: INTRADAY FINALITY OF SETTLEMENT**

*No additional questions further to those presented for direct links.*

## STANDARD 5: OPENING DAYS AND OPERATING HOURS<sup>1</sup>

5.1. Is the link fully open on all TARGET2 operating days? If not, on which days does it not open and what are the reasons for not opening. Please describe which services are not fully available in such circumstances and disclose the plans in place to ensure settlement of Eurosystem transactions that are normally settled over the link on the days and at the times when TARGET2 is open but link settlement is not possible.

5.2. What is the cut-off time before which the customers of the investor SSS must submit instructions for same-day delivery of securities from the issuer SSS (requiring settlement at the issuer SSS)? Please provide cut-off times separately for DvP and FOP settlement.

5.3. What is the cut-off time before which the investor SSS must submit instructions to the middle SSS (for FOP and DvP settlement)? Please provide both cut-off times.

5.4. What is the cut-off time before which the middle SSS must submit instructions to the issuer SSS (FOP and DvP) for same-day settlement?

<sup>1</sup> Questions refer to same-day settlement and securities held by the investor SSS so as to enable Eurosystem credits to be granted.

## ANNEX 5

**QUESTIONNAIRE FOR THE ASSESSMENT OF SECURITIES SETTLEMENT SYSTEMS PARTICIPATING IN T2S AND THE RESPECTIVE T2S INTERNAL LINKS AND IN/OUT LINKS AGAINST THE STANDARDS DETERMINING THEIR ELIGIBILITY FOR USE IN EUROSISTEM CREDIT OPERATIONS**

**SECOND-LAYER ASSESSMENT**

**[JURISDICTION]**

**[SECURITIES]**

**RESPONDING INSTITUTION: [NAME]**

**INFORMATION PROVIDED IN THE ANSWERS IS ACCURATE AS OF [DATE]**

**ANY ENQUIRIES SHOULD BE SENT TO [CONTACT DETAILS]**

**STANDARD 1: LEGAL SOUNDNESS**

**Nature of entitlement**

1.1. What law governs the nature of entitlements in the SSS?

1.2. What is the nature of the entitlement to securities held in the SSS

- (i) for the participant,
- (ii) when acting in the capacity of an issuer SSS, for the linked investor SSS, and
- (iii) when acting in the capacity of an investor SSS to securities held with a linked issuer SSS?

1.3. In the event of the insolvency of (i) the SSS operator (ii) any third party (e.g. a depository) or (iii) any linked issuer SSS, how are shortfalls allocated (if any), especially with regard to a central bank holding collateral in the context of Eurosystem credit operations? Is there any lien or similar mechanism which may negatively impact such entitlements in general, and especially with regard to a central bank holding collateral in the aforementioned context? What are the procedures to claim the securities under the legal framework of the SSS?

1.4. When acting in the capacity of an issuer SSS, are there any legal formalities to be performed at the level of the SSS for a pledge or any similar security interest granted by one participant in the linked investor SSS to another participant in the linked investor SSS with respect to securities held with the SSS (acting in the capacity of an issuer SSS), in order for such security interest to be perfected and to be valid and enforceable vis-à-vis third parties?

1.5. When acting in the capacity of an issuer SSS, is it possible for a security held by a linked investor SSS to be subject to attachment by the creditors of the SSS (acting in the capacity of an issuer SSS) or its participants and/or be subject to freezing or blocking instructions from local courts or other authorities?

1.6. When acting in the capacity of an investor SSS, and under the private international law rules of the SSS's jurisdiction, is it the law of the SSS's jurisdiction that determines the nature of the

participant's right in the securities transferred through the link in question to a participant's account in the SSS? Would the same law govern the constitution (validity and enforceability) of collateral in the system held by such a participant in favour of an NCB or the ECB?

#### **Liability for losses/errors**

1.7. To what extent are the NCBs and the ECB as collateral takers, or the participants of a linked investor SSS, exposed to the risks of loss in the event of default, negligence or fraud on the part of the SSS or any other third party (e.g. a system operator, operator of a link, depository)? What kind of liability does the SSS assume towards its participants or, when acting in the capacity of an issuer SSS, towards linked investor SSSs?

1.8. When acting in the capacity of an investor SSS, does the SSS accept any obligations or liabilities vis-à-vis its participants (including any linked investor SSSs) for acts or omissions of the linked issuer SSS? Please indicate the legal basis for the liability regime of the SSS when acting in the capacity of an investor SSS in relation to the acts of the linked issuer SSS.

1.9. When acting in the capacity of an investor SSS, and if the SSS does not assume full or any liability pursuant to question 1.8 above, does the SSS commit itself legally (by law or contract or terms and conditions) to assist its participants (including linked investor SSSs) in the event of losses resulting from acts or omissions of the linked issuer (including any middle) SSS? Please indicate the scope, limitations and exceptions of the SSS's liability regime with regard to risk related to the securities issued at the linked issuer SSS and provided as collateral to the Eurosystem: would the SSS cover the entire cost that the Eurosystem may face due to acts and omissions of the linked issuer (including any middle) SSS? In the event that full liability is not assumed, can the SSS confirm it would make every reasonable effort to limit damage to its participants (including NCBs), which may require it to sue the linked issuer (including any middle) SSS in order to recover any loss on behalf of, and for the benefit of its participants? Please specify the measures the SSS is obliged to undertake in order to recover the loss that the Eurosystem may face.

#### **Finality**

1.10. Under the rules of the SSS and the laws applicable to the SSS, (i) when are the transfer orders entered into its system considered to be bankruptcy remote in accordance with the Settlement Finality Directive, (ii) when are the transfer orders irrevocable and (iii) when are the transfers of securities considered to be final?

1.11. When acting as an investor SSS, is the finality of the settlement of securities transfers made via links with the linked issuer (including any middle) SSSs assured, i.e. is there no possibility to revoke, unwind, rescind (or challenge) securities transfers made via links with an issuer (including any middle) SSS?

1.12. When acting in the capacity of an investor SSS, what law governs the finality of transfers in the bilateral relationship between the SSS and its participants, on the one hand, and in the relationship between the SSS, acting in the capacity of an investor SSS, and the linked issuer SSS on the other hand?

**Questions on links<sup>1</sup>**

1.13. Please list any links which are eligible for Eurosystem credit operations and/or any links which are being submitted for assessment for use in Eurosystem credit operations. Please specify whether the SSS acts in such links as an investor, middle or issuer SSS.

1.14. Are any of the links listed above, in which the SSS acts as an investor SSS, operated by a third party? If so, does the responsibility for the obligations and liabilities in connection with the registration, transfer and the custody of securities remain legally enforceable between the SSS and the issuer (including any middle) SSS?

1.15. Do the conclusions drawn from the most recent assessment of the SSS under questions 1.1.-1.12. (of this Annex or Annex 2) fully apply to links which are listed under question 1.13? If so, please provide confirmation of this fact. If not, please provide explanations for all derogations, including the underlying legal documentation.

1.16. If the SSS has migrated (is about to migrate) to T2S: Do any of its links involve SSSs which have not (yet) migrated to T2S? Do such links include ISINs which are settled in T2S? If so, please describe how the final transfer of such securities in T2S is ensured in case part of the settlement takes place via a link with a CSD which has not (yet) migrated to T2S. In particular, how is it ensured that the securities held in the inter-CSD account will constitute a valid and enforceable legal entitlement to such securities in favour of another CSD in T2S before the realignment outside T2S takes place?

**Legal opinion**

Please provide a legal opinion covering as a minimum the following issues:

1. The legal nature and the law governing the entitlement:

(i) of the SSS's participants to securities held in the SSS acting as issuer SSS or as investor SSS (i.e. when the SSS holds the securities for the participant in another linked issuer SSS);

(ii) if different from (i), of any linked investor SSSs to securities held by such linked investor SSSs in the SSS.

The legal opinion should state that such entitlement ensures adequate protection of collateral provided by a participant in the SSS, particularly in the event of the bankruptcy/insolvency of the SSS, the participant providing collateral or any third party (e.g. other participants, registrar, sub-custodian (i.e. linked issuer or middle SSS)).

2. The SSS's liability vis-à-vis its (i) participants and (ii) any linked investor SSSs, including its liability for acts and omissions or the choice of any linked issuer or middle SSS acting as direct and/or indirect sub-custodian and/or provider of services;

<sup>1</sup> These questions will be asked during comprehensive assessments of SSSs and links. For the ad hoc assessment of new links similar questions are included in the questionnaires for the assessment of direct and relayed links.



3. The enforceability and irrevocability of transfer orders, as well as the finality of settlement and their bankruptcy protection; and

4. When acting in the capacity of an investor SSS, the law applicable to a collateral right in securities, (whether or not it involves a transfer of ownership) granted by a participant in the SSS to another participant in the SSS, with respect to securities held in the issuer (including any middle) SSS.

## **STANDARD 2: SETTLEMENT IN CENTRAL BANK MONEY**

No questions are included in respect of SSSs and T2S internal links as relevant aspects are addressed in the assessment of T2S common features.

### **Questions for in/out direct links<sup>2</sup>**

2.1. Does the link settle cross-system transactions on a DvP or FOP basis? If on a DvP basis, is the cash leg of cross-system transactions settled in central bank money? If DvP is not used, is collateral for Eurosystem credit operations pre-deposited on an FOP basis?

## **STANDARD 3: NO UNDUE CUSTODY RISKS**

### **Questions for SSSs**

3.1. Does the CSD that operates the issuer SSS have a direct and unique relationship with the issuer for all eligible assets issued in this SSS and used by its participants in Eurosystem credit operations?

3.2. If applicable, are international debt securities kept safe in a Eurosystem-eligible (I)CSD? Does this (I)CSD have a direct contractual relationship with the issuer?

3.3. Does the SSS have links with other entities for holding securities? If so, for which type of instruments and which of the direct entities are involved (main characteristic such as name, type, etc.)? What types of safeguards are taken against custody risk with these entities?

### **Questions for direct links both internal and in/out<sup>3</sup>**

3.4. Does the CSD which operates the investor SSS have a direct and unique relationship with the issuer SSS? What type(s) of account(s) are opened in the issuer SSS?

3.5. Is the account in the issuer SSS operated by or through any third party? If yes, what measures are used to protect collateral provided to the Eurosystem against custody risk originating from the operator and to ensure that the Eurosystem has access to its collateral at any point in time (including in the case of a change of operator or insolvency of the operator)? Are arrangements based upon specific laws and regulations?

3.5.1. Is it ensured that securities holdings in the issuer SSS are kept in the name of the CSD which operates the investor SSS?

3.5.2. Who is responsible for the reconciliation of records? In the event that a discrepancy is identified when reconciling the records, whose records shall prevail?

<sup>2</sup> In the event that several links are under assessment, the concrete set-up might vary from one link to another. In this case the information in the reply should be provided for each individual link.

<sup>3</sup> In case of the assessment of more than one link, please provide information per link.

3.5.3. If the direct link under assessment is an operated link, is it ensured that the account operator does not receive any ownership rights on the securities?

3.5.4. Does the arrangement with the operator cover the operator's insolvency (i.e. timely recovery of securities)? Is there, for investor SSS participants, a limitation on the right to free disposal of the securities held in the issuer SSS?

3.5.5. Does the CSD of the investor SSS remain liable vis-à-vis the Eurosystem for the acts and omissions of the selected operator (i.e. in the event that the operator makes an operational mistake)? What arrangements are used to protect customers' securities from theft, loss or misuse?

3.5.6. Is the investor SSS able to quickly change the link operator in case of need?

#### Questions for relayed links both internal and in/out<sup>4</sup>

3.6. Are the risks related to the custody of securities held by the middle SSS addressed in the same way as those related to the securities held by the underlying direct links? Or does the relayed link, as compared to the underlying direct links, imply any different features in terms of custody of securities, in particular in relation to the involvement and role of an operator? If yes, provide a detailed description of these features.

### STANDARD 4: INTRADAY FINALITY OF SETTLEMENT

No questions are included in respect of SSSs and T2S internal links as relevant aspects are addressed in the assessment of T2S common features.

#### Questions for in/out direct links<sup>5</sup>

4.1 Is the settlement of cross-system transactions based on intraday finality or end-of-day finality? Please specify for both FOP transactions and DvP transactions. In the case of intraday finality, is it achieved by means of real-time gross settlement or through a series of batch processes? Does it allow securities to be reused the same day?

### STANDARD 5: OPERATING HOURS AND DAYS

No questions are included in respect of SSSs and T2S internal links as relevant aspects are addressed in the assessment of T2S common features.

#### Questions for in/out links<sup>6</sup>

##### Direct links

5.1. Is the link fully open on all TARGET2 operating days? If not, on which days does it not open and what are the reasons for not opening? Please describe which services are not fully available in such circumstances and disclose the plans in place to ensure settlement of Eurosystem transactions that are normally settled over the link on the days and at the times when TARGET2 is open but link settlement is not possible.

<sup>4</sup> In case of the assessment of more than one link, please provide information per link.

<sup>5</sup> In case of the assessment of more than one link, and where the reply is different for individual links, please provide information per link.

<sup>6</sup> In case of the assessment of more than one link, and where the reply is different for individual links, please provide information per link.

5.2. What is the earliest and the latest time the investor SSS can receive instructions from its participants for settlement with same-day value in the issuer SSS? Please provide cut-off times separately for DvP and FOP settlement.

5.3. What is the earliest and the latest time the issuer SSS can receive instructions from the investor SSS for settlement with same-day value?

5.4. What is the earliest and the latest time the investor SSS can receive settlement confirmation from the issuer SSS, with the same-day value in the investor SSS, such that the investor SSSs' participants can transfer/pledge the securities with the same-day value to the investor NCB?

5.5. Can the later cut-off times before which participants must instruct their SSS, as indicated in 5.2 above, be extended in the event of an emergency, in particular for Eurosystem credit operations? If so, what/who would determine such a case? Please provide the cut-off times in emergency situations separately for DvP and FOP settlement.

5.6. Are there any plans (e.g. as a consequence of further automation) to revise any of the above deadlines?

#### Relayed links

5.7. Is the link fully open on all TARGET2 operating days? If not, on which days does it not open and what are the reasons for not opening. Please describe which services are not fully available in such circumstances and disclose the plans in place to ensure settlement of Eurosystem transactions that are normally settled over the link on the days and at the times when TARGET2 is open but link settlement is not possible.

5.8. What is the cut-off time before which the customers of the investor SSS must submit instructions for same-day delivery of securities from the issuer SSS (requiring settlement at the issuer SSS)? Please provide cut-off times separately for DvP and FOP settlement.

5.9. What is the cut-off time before which the investor SSS must submit instructions to the middle SSS (for FOP and DvP settlement)? Please provide both cut-off times.

5.10. What is the cut-off time before which the middle SSS must submit instructions to the issuer SSS (FOP and DvP) for same-day settlement?

#### General information on in/out links not related to individual user standards<sup>7</sup>

##### Direct links

1. Do you have more than one link established between your SSS and the issuer SSS in question? If yes, how many links will be maintained with the issuer SSS in question and what are the differences between this link to be assessed and the other links with this same issuer SSS? How is it ensured that risks associated with the other (non-assessed) links with the same SSS do not pose additional risks to the link to be assessed?

2. Are all assets issued in the issuer SSS included in the link to be assessed? If not, which assets cannot be transferred through the link?

<sup>7</sup> In case of the assessment of more than one link, please provide information per link.

3. Have you signed a standard participation agreement with the issuer SSS without any modifications (even operational modifications)? If any aspects of the agreement and/or the operational procedures deviate from the standard agreement and standard procedures agreed with participants, please specify.

4. When did the link that is to be assessed become operational?

#### Relayed links

1. Is the middle SSS the only intermediary involved in the relayed link between investor SSS and the issuer SSS in question? Is there a direct link between the investor SSS and the issuer SSS? How is it ensured that the links between the involved SSSs do not pose additional risks to the settlement across the relayed link (e.g. when securities received by the middle SSS from the issuer SSS cannot be transferred to the investor SSS until their final settlement in the middle SSS)?

2. When did the relayed link under assessment become operational?

3. Are all assets issued in the issuer SSS included in the relayed link under assessment? If not, which assets can or cannot be transferred through the relayed link?

4. Was the issuer SSS informed about the existence of the relayed link?

