

The T2S Framework Agreement: A management summary

What is the Framework Agreement, its purpose and its scope?

The Framework Agreement (FA) is the core legal document governing the rights and obligations of the Eurosystem and the CSDs in relation to the development and operation of T2S. In particular, it determines the parties' rights and obligations in respect of the outsourcing of the CSDs' IT related securities settlement functions to the Eurosystem and the ancillary legal issues of the T2S Services, including confidentiality and data protection, intellectual property rights, liability, termination, and dispute resolution and arbitration. The FA is composed of a core agreement and a number of schedules and annexes to those schedules. The schedules include, among others, the T2S Programme Plan, the T2S Service Level Agreement, the governance arrangements and pricing policy. The FA is a contract between the Eurosystem and each CSD. It does not intervene in the contracting CSDs relationship with its customers, including the market participants directly connected to the platform (so-called Directly Connected Parties); nor does it have any effect on the CSDs relationship with its competent authorities. Each CSD will enter into a separate but identical FA with the Eurosystem. This uniformity of contractual agreement is to ensure a level-playing field and equality of treatment between all contracting CSDs.

How was the Framework Agreement negotiated? When will it be signed?

The FA has been negotiated between the Eurosystem and the CSDs which had signed the Memorandum of Understanding of 16 July 2009. It is the result of more than two years of negotiation. The FA has also benefited from the feedback from the T2S Advisory Group and National User Groups. It has also been through several rounds of consultations with the relevant competent authorities to ensure that there are no regulatory obstacles to signing the agreement. On 17 November 2011 the Governing Council of the ECB endorsed the FA. ECB President Draghi submitted the FA to CSDs and invited them to sign the contract by April 2012 or, in case they need more time to complete their feasibility studies, by June 2012. The Eurosystem has proposed an "early bird" financial incentive scheme to encourage an early signature by the CSDs and their early migration to the live system in 2015-2016.

Structure and main content

The FA is made of 7 chapters and 13 schedules, and encompasses in total almost 700 pages. The schedules are usually theme-specific and provide a more technical and operational description, thus appropriately complementing the provisions of the core agreement. Given that the FA is a very long and dense legal contract, the tables below provide a management summary of its content, highlighting the key issues of relevance to market participants. The reader who needs to go further can then easily refer to the corresponding parts of FA to get more precise information. Further technical documentation can also be found in the T2S Scope Defining Set of Documents, such as the User Requirement Document (URD), the User Detailed Functional Specifications (UDFS) and the GUI Business Functionality. All the quoted documents, including the FA and its schedules, are now available on the T2S website.

A) The Framework Agreement

The core Framework Agreement has seven chapters.

Chapter	Topics covered and issues of relevance to market participants
Chapter 1. Scope and construction of the agreement	<ul style="list-style-type: none"> • Defines the scope of the development and operational phases of T2S. • Provides contracting CSDs with assurance that T2S will not interfere with the CSD's contractual relationship towards its clients or its regulators or competent authorities.
Chapter 2. Rights and obligations of the parties	<ul style="list-style-type: none"> • <u>Multilateral character</u>: the T2S Services shall be provided to all contracting CSDs on the basis of uniform requirements and governance rules. Hence, the same level of services will be available to all CSDs. Both the Eurosystem and contracting CSDs shall seek to promote integration in the European post-trading infrastructure by making reasonable efforts to adapt their operational, internal guidelines as well as its processes and related technical systems to T2S. • <u>Non-discriminatory access</u>: any CSD complying with the requirements set down in the Access Criteria is eligible to access T2S on a non-discriminatory basis. • <u>Assignment and subcontracting</u>: any assignment or subcontracting of a right or an obligation of a party arising out of or in connection with the FA is subject to the prior approval of the other party, unless provided otherwise in the contract. • <u>Compliance and non-interference with legal and regulatory requirements</u>: The relevant competent authorities of the contracting CSD remain exclusively in charge of regulating and supervising the contracting CSD. Eurosystem Central Banks have to separate their role as a Party to the FA, their regulatory, supervisory and oversight functions, and their function as an operator of its own CSD. • Compliance of T2S with high-standard <u>information security requirements</u>. • <u>Network services</u>: contracting CSDs and DCPs will be allowed to connect their IT systems to the T2S platform, either via a Value-added Network Connection or via a Dedicated Link solution. • <u>Specific provisions</u> of the FA describe the rights and obligations of the contracting parties with regard to the development and testing of and the migration to T2S, as well as the provision of the T2S Services. • <u>Securities account balances rules</u>: securities account balances of contracting CSDs operated on the T2S platform shall be only changed in T2S. CSDs are obliged to adjust their operational processes and rules to ensure the unconditionality, irrevocability and enforceability of settlement processed on the T2S Platform. • <u>Crisis management policy</u>, to ensure any financial or operational crisis is effectively dealt with.

<p>Chapter 3. Participation and controlling rights of the contracting CSDs</p>	<ul style="list-style-type: none"> • <u>Change and Release Management</u>: All members of the governance structure have the right to propose changes to the T2S platform. Common changes will apply to every contracting CSD. Specific changes can be requested by one or a subset of participating CSDs, to which a specific change shall apply. The requesting CSD(s) commit to bear the costs related to such change. All CSDs using the given functionality shall share such costs. The procedure to evaluate change requests will be highly transparent and inclusive of all parties to the governance structure. • <u>Examination of T2S services</u>: An External Examiner, which shall be a well-reputed, internationally active accounting firm, will be responsible for technical and operational examinations. • <u>T2S governance</u>: This section defines the bodies which constitute the governance framework. The rules and procedures of the governance arrangement are all found in Schedule 8.
<p>Chapter 4. Intellectual property rights, confidentiality and data protection</p>	<ul style="list-style-type: none"> • Each CSD maintains all <u>intellectual property rights</u> in the data it has provided to T2S or which is attributable to it. The Eurosystem maintains all intellectual property rights in respect of the T2S application. • Each party recognises the <u>confidentiality</u> of data and information received in connection with the FA and agrees to act accordingly, in particular in compliance with the EU data protection regime.
<p>Chapter 5. Liability</p>	<ul style="list-style-type: none"> • No limitation of liability of either party for loss or damage resulting from fraud or wilful misconduct • Limitations with regard to the liability for negligence: For ordinary negligence, the Eurosystem's maximum liability vis-à-vis all contracting CSDs is capped at €30 million per calendar year. For gross negligence, the Eurosystem's liability vis-à-vis all CSDs is capped at €500 million per year. The Eurosystem's liability is generally limited to CSDs' direct losses, but also includes losses due to claims of CSDs' customers, • CSDs are also liable for ordinary and gross negligence vis-à-vis the Eurosystem: liability is limited to the equivalent of 12 months of T2S fees of the respective CSD for ordinary negligence per calendar year, and 5 times this amount for gross negligence.
<p>Chapter 6. Suspension, technical disconnection, duration and termination</p>	<ul style="list-style-type: none"> • T2S has the <u>right of suspension</u> and <u>technical disconnection</u> of a CSD under certain conditions • Termination rights: the CSDs and the Eurosystem have the right to terminate for cause (e.g. due to a material breach of an obligation under the FA); CSDs may terminate for convenience at any time subject to financial compensation, the Eurosystem may only terminate for convenience after a minimum of five years of operation. • The party terminating the contract for cause has the right to claim financial compensation from the other party, as further detailed in the FA.
<p>Chapter 7. Miscellaneous</p>	<ul style="list-style-type: none"> • Rules for dispute resolution, escalation, and arbitration • Rules for amending the FA and schedules • Choice of German law

B) The Schedules

Thirteen Schedules are attached to the FA and provide the definitions and operational and technical documentation underpinning the agreement.

Schedule	Topics covered and issues of relevance to market participants
Schedule 1. Definitions	<ul style="list-style-type: none"> • Defines the terms used in the FA and in one or more of the schedules.
Schedule 2. T2S Programme Planning and Monitoring	<ul style="list-style-type: none"> • Provides the framework for monitoring the level of readiness of the Eurosystem and the contracting CSD. • Specifies 17 so-called “synchronisation points”, i.e. agreed dates in the plan at which the Eurosystem and CSDs should have achieved clearly defined objectives. The use of synchronisation points aims at ensuring timely and proactive identification and notification of any event that would have a material effect on the T2S Programme Plan and the go-live of T2S. • Provides an executive summary plan, which is also broken down into a detailed plan and an operational plan.
Schedule 3. User Testing	<ul style="list-style-type: none"> • Covers the general responsibilities of the Eurosystem and the contracting CSD, in both the preparation and execution phase. It sets clearly the different testing phases: <ul style="list-style-type: none"> - connectivity testing for each communication channels a CSD intends to use towards T2S - interoperability testing, with bilateral testing first and then multilateral testing with other CSDs and central banks - community testing with all users a CSD has a contractual relationship with - business day testing • Covers the compliance of the T2S Services with the T2S Service Description and the T2S Scope Defining Set of Documents, the certification of CSDs and DCPs (i.e. their ability to interact with T2S without harming other parties or the T2S platform) and also migration testing.
Schedule 4. Migration	<ul style="list-style-type: none"> • Describes the responsibilities of the Eurosystem and the contracting CSD during the migration process. • The Eurosystem must ensure the readiness of the production platform, provide the necessary migration tools and support, and play a coordination role. The CSD must determine its preferred migration date by the end of June 2012 out of three or four regular migration waves. • The CSD is responsible for the readiness of its community and for mitigating the risk that one member of its community could impede its migration to T2S. It also has to manage cross-CSD links with investor- and issuer-CSDs that migrate earlier or later throughout the migration period.

Schedule 5. T2S Service Description	<ul style="list-style-type: none"> • Provides the contracting CSD with a non-technical, user-oriented overview of all services provided by T2S in operation. • Complements the T2S Scope Defining Set of Documents.
Schedule 6. T2S Service Level Agreement	<ul style="list-style-type: none"> • Describes the principles, expectations and commitments of the contracting parties related to the T2S performance and operational support, covering also the testing and the production environment. • Service review meetings will take place on a quarterly basis. • The Eurosystem will set up a service desk as a single contact point for any contracting CSD, as well as a Crisis Manager, which will be permanently reachable. CSDs are required to do the same. • To monitor the performance of T2S Services delivered to the T2S Actors, Key Performance indicators consisting of (i) Service Availability, (ii) Settlement Performance, (iii) Query Response Times, and (iv) Operational Support will be reported.
Schedule 7. Pricing	<ul style="list-style-type: none"> • Provides the (i) general pricing policy of T2S, i.e. to set the price of a DvP instruction at 15 cents until end 2018; (ii) the price list in euro cent for each individual T2S service; (iii) the pricing structure, in particular the precise fee triggers; and (iv) a miscellaneous inventory of other services, apart from those on the price list, which will be charged for (most notably the rules for financing change requests).
Schedule 8. Governance	<ul style="list-style-type: none"> • Sets out the rules and procedures concerning the management of the T2S services, including related decision-making and the roles of T2S stakeholders therein. • Describes how all stakeholders will be able to exercise the control necessary to exercise their commercial and policy objectives. • Transparency, market involvement and consensus are the key elements in the T2S decision-making process. All relevant decisions of respective governance bodies will be published and relevant stakeholders will be represented in the T2S Board, the CSD Steering Group, the Non-Euro Currencies Steering Group, the T2S Advisory Group and the sub-structures of these bodies.
Schedule 9. Change and Release Management	<ul style="list-style-type: none"> • Sets out the detailed procedures how changes to the T2S functionalities will be managed, from the submission of a change request to the implementation of an agreed change in a new T2S release. • The change and release management process is closely linked to the decision-making process outlined in Schedule 8.
Schedule 10. Information Security	<ul style="list-style-type: none"> • Outlines the framework to protect the confidentiality, integrity and availability of T2S information according to the ISO 27002 standard.
Schedules 11-13	<ul style="list-style-type: none"> • The procedure for exit processes (Schedule 11), subcontracting (Schedule 12) as well as payment of claims (Schedule 13) are defined in these schedules.