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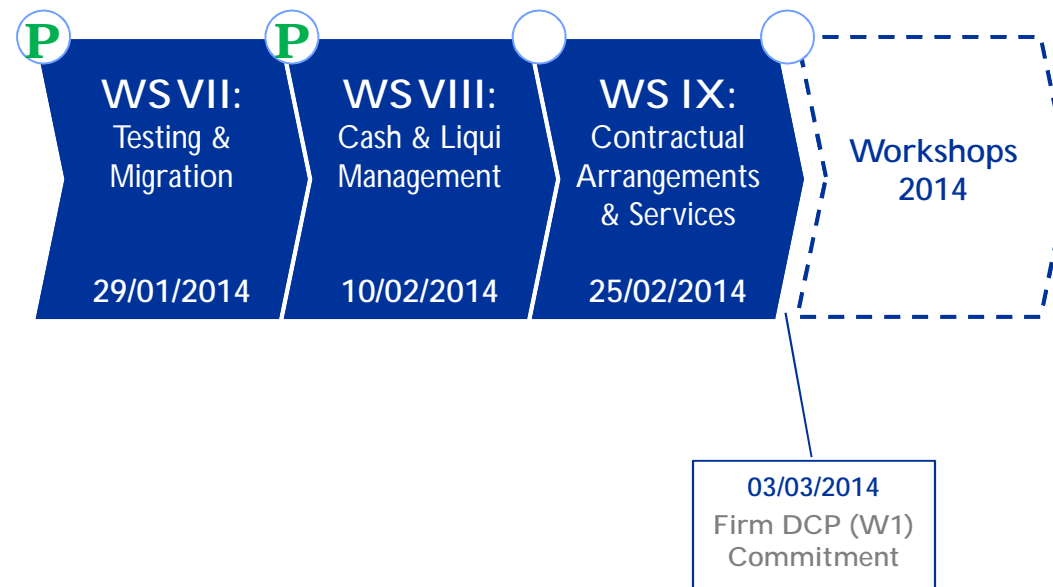
CSD DCP Workshops

Session IX
Contractual Arrangements and DCP Services

25th February 2014

Workshop Overview & Timeline 2014

Currently three joint DCP CSD workshops are set-up for Q1-2014 which will continue the facilitation of workshops in 2013



Agenda

Introduction

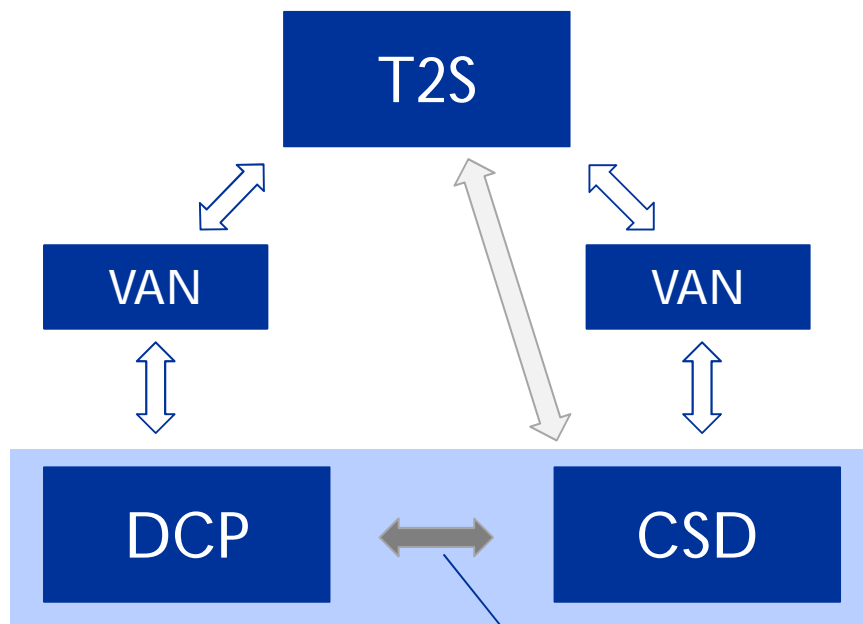
Legal Aspects

1. Binding Declaration
2. Connectivity
3. DCP Certification & DCP Authorization
4. Liability
5. Termination
6. Suspension
7. Technical Disconnection
8. Miscellaneous
9. Questions of DCPs

Service Aspects

Scope and Topics of Today's Workshop

Overview of contractual relationships



Technical contractual relationship



Contractual relationship

Focus of today's workshop

Topics of today's workshop

Binding Commitment

Connectivity

DCP Certification & Authorization

Liability

Termination

Suspension

Technical Disconnection

Objectives of today's Workshop

Situation

- § A first workshop on contractual arrangements was conducted in September 2013
- § Meanwhile DCPs have submitted their Non-Binding Declaration
- § For Wave 1 DCPs, March 3rd 2014 the date for the Binding Declaration is approaching
- § Further questions arising from DCPs as their internal projects have been progressed

Objective

- § Finalize binding commitment procedure
- § Identify areas of contractual harmonization
- § Determine areas which will be subject to bilateral contractual arrangement
- § Exchange of views about all DCP relevant contractual topics

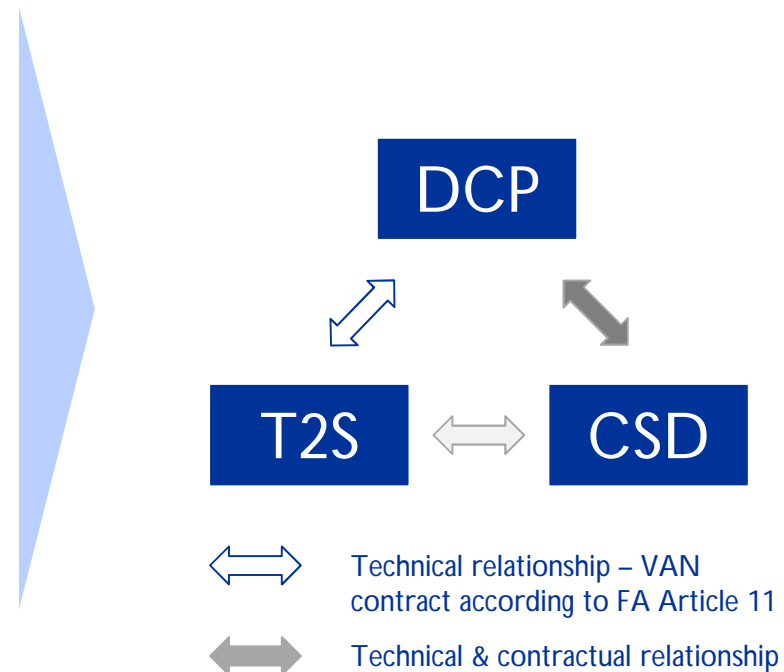
CSD obligation to define DCPs' contract

Extract - Framework Agreement

Article 12 – Directly Connected Participants

1. The Contracting CSD shall maintain a contractual relationship with the DCP that it has designated to the Eurosystem. The Eurosystem shall not maintain a contractual relationship with that DCP for the matters dealt with under this Agreement.

2. The Contracting CSD shall only have the obligations in respect of the DCP that it has designated, as provided for in this Agreement and in the T2S Scope Defining Set of Documents. The Contracting CSD shall reflect the obligations that need to be performed by the DCP in relation to the T2S Services in its contractual relationship with such DCP.



Definition of a DCP

The Framework Agreement establishes that:

Directly Connected Party (DCP)' means a T2S User, which has been authorised by its Contracting CSD or Central Bank to access T2S directly to use T2S Services, i.e. without the need for the Contracting CSD or Central Bank to act as a technical interface (which would in this case be termed an 'Indirectly Connected Participant' (ICP))

The term "DCP" refers to the technical connection to T2S

- *(Direct) network connection between a T2S Actor and the T2S platform*
- *Via a VAN Service Provider (e.g. SWIFT or SIA/Colt)*
- *Modes of communication: A2A, U2A*
- *The CSD or Central Bank needs to set-up the access/privileges for the DCP in T2S*

Being a DCP in one CSD does not automatically imply becoming a DCP on the cash side (i.e. in one or several NCBs) or in other CSDs while at the same time being a DCP in one NCB does not automatically imply becoming a DCP on the securities side (i.e. in one or several CSDs) or in other NCBs as well

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Content and Consequences of Binding Commitment

Recap from last CSD DCP WS and DCP Forum Meeting 12/02/2014

- Binding declaration is of bilateral nature and needs to be sent to the CSD where the institution intends to become a DCP
- DCP's binding declaration should include the following data:
 - Name of institution (legal entity) which intends to become a DCP
 - Date by when the institution intends to become active as a DCP
 - Indication whether DCP intends to use DCP and ICP channel parallel or exclusively
 - NSP selected *
- Consequences out of binding declaration
 - Late declarations considered to be handled on best effort basis
 - Withdraw possible within a reasonable timeframe before migration
 - Required to participate in Authorization testing
 - Readiness reporting

Dates of Binding Commitment

Firm Confirmation DCP connectivity mode

- § An additional deadline (“DCP communication mode indication”) will be defined by the Eurosystem after consultation within the User Testing Sub Group.
- § As discussed in the AG meeting in November, former DCP workshops and last DCP Forum meeting in Rome the deadline to provide a binding declaration over the respective CSD to the Eurosystem for all entities that intend to be DCP from the first wave for securities and/or cash business in A2A is Monday, March 3rd 2014.
- § It is suggested by the DCP Forum Members to provide a firm commitment 12 months before the commencement of a particular wave community test period. The following dates can be derived:

	DCP Non-binding Commitment	DCP Firm Commitment ²	Community Test Commences ¹
Wave I	15 Oct 2013	03 Mar 2014	02 Mar 2015
Wave II	15 Oct 2013	22 Sep 2014	21 Sep 2015
Wave III	15 Oct 2013	16 Feb 2015	15 Feb 2016
Wave IV	15 Oct 2013	12 Oct 2015	10 Oct 2016

1) Dates according to T2S Detailed Plan Version 2.1.4 31.07.2013

2) Date on which information shall be provided to the ECB. For clarification: Also the deadline of February 24th, 2014 for Wave 1 has been communicated which however should be understood as an internal deadline.

Declaration procedure for DCA Holders/DCPs*

- § The institutions intending to become directly connected DCA holders/DCPs should inform the Eurosystem (in a binding manner) at the latest:
- for A2A mode, 1 year before the start of the Community testing stage of the respective migration wave with which they first time migrate to T2S
 - for U2A mode, 3 months before the start of the Community testing stage of the respective migration wave with which they first time migrate to T2S

	A2A mode	U2A mode
Wave 1	3 March 2014	3 December 2014
Wave 2	19 September 2014	19 June 2015
Wave 3	16 February 2015	16 November 2015
Wave 4	09 October 2015	11 July 2016

- § NCBs/CSDs can define earlier deadlines towards its communities due to adaptation/operational aspects
- § Declaration is the precondition for certification

Binding Commitment related Questions

- DCP binding commitments for securities and cash accounts: confirmation of procedures/requirements for all CSDs and NCBs, especially urgent for CSDs in MW1 (deadline of 3/03/2014) – Question 2

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T2S DCF/ DCP-ICP Matrix

The following matrix has been delivered by the DCP-Forum members on 25 Sept 2013 to support the clarification of the definition of a DCP

Scenario	T2S ACTOR 1					T2S ACTOR 2					T2S ACTOR 3					Description	Questions	ECB Certification	CSD Authorisation
	ICP/DCP Mode	CSD A/C Owner	Business Sender	Technical Sender		ICP/DCP Mode	CSD A/C Owner	Business Sender	Technical Sender		ICP/DCP Mode	CSD A/C Owner	Business Sender	Technical Sender					
1	Actor1	ICP	YES	-	-			-	-	-	CSD	n.a.	YES	YES	Actor 1 is ICP using a CSD to access T2S	Confirm that CSD is recognised as Technical Sender in T2S. Would the CSD also be considered a DCP?			
2	Actor1	ICP	YES	YES	-			-	-	-	CSD	n.a.	-	YES	ICP/CSD Relationship, CSD is only Technical Sender	Confirm that CSD is recognised as Technical Sender in T2S. Would the CSD also be considered a DCP?			
3	Actor1	ICP	YES	-	-	AB	noDCP (TO)	-	YES	-	CSD	n.a.	-	YES	Actor 1 is ICP using an AB/3P to access T2S	If Actor 1 is ICP and AB/3P is only acting as Business Sender, confirm that AB/3P is not acting as a DCP (though it may be a DCP for other business)			
4	Actor1	ICP	YES	YES	-	AB	DCP (TO)	-	-	YES					Actor 1 is ICP using an AB/3P to access T2S	If Actor 1 is Business Sender + CSD account owner and AB/3P is acting as a Technical Sender as well as DCP (for its own and third party business) and uses its DCP connectivity to send Actor 1's messages to T2S, should Actor 1 be considered an ICP?			
5	Actor1	DCP	YES	YES	YES			-	-	-			-	-	Actor 1 is DCP Direct in T2S	none			
6	Actor1	DCP	YES	YES	-	AB/3P	noDCP (TO)	-	-	YES			-	-	Actor 1 is DCP Direct in T2S, using an AB/3P as Technical Sender	If Actor 1 is DCP and AB/3P is only acting as Technical Sender, confirm that AB/3P is not acting as a DCP (though it may be a DCP for other business)			
7	Actor1	DCP	YES	-	-	AB/3P	noDCP (TO)	-	YES	YES			-	-	Actor 1 is DCP Direct in T2S, using an AB/3P as Business & Technical Sender	If Actor 1 is DCP and AB/3P is acting as its Business & Technical Sender, confirm that Actor 1 is still the recognised DCP in T2S and AB is not acting as a DCP			
8	AB	DCP	YES	YES	YES			-	-	-			-	-	Actor 1 is an Agent Bank/Custodian and is DCP Direct in T2S	Will full service clients of AB be considered T2S Actors in any way (e.g. ICP)?			
9	TV	DCP	-	YES	YES			-	-	-			-	-	Actor 1 is a Trading Venue sending matched instructions directly into trading members' CSD accounts (non CCP-cleared business)	Can the TVs be DCP when they are not CSD account owners?			
10	CCP	DCP	YES	YES	YES	CM/SA	DCP or ICP?	YES	-	-					Actor 1 is a CCP instructing for its own CSD account and with PoA on behalf of the Clearing Member/Settlement Agent	Is it necessary that the Clearing Member/Settlement Agent (who is the CSD account owner on whose behalf the CCP instructs) becomes itself a DCP, if the CCP wants to instruct in DCP mode? Or can CM/SA operate as an ICP?			

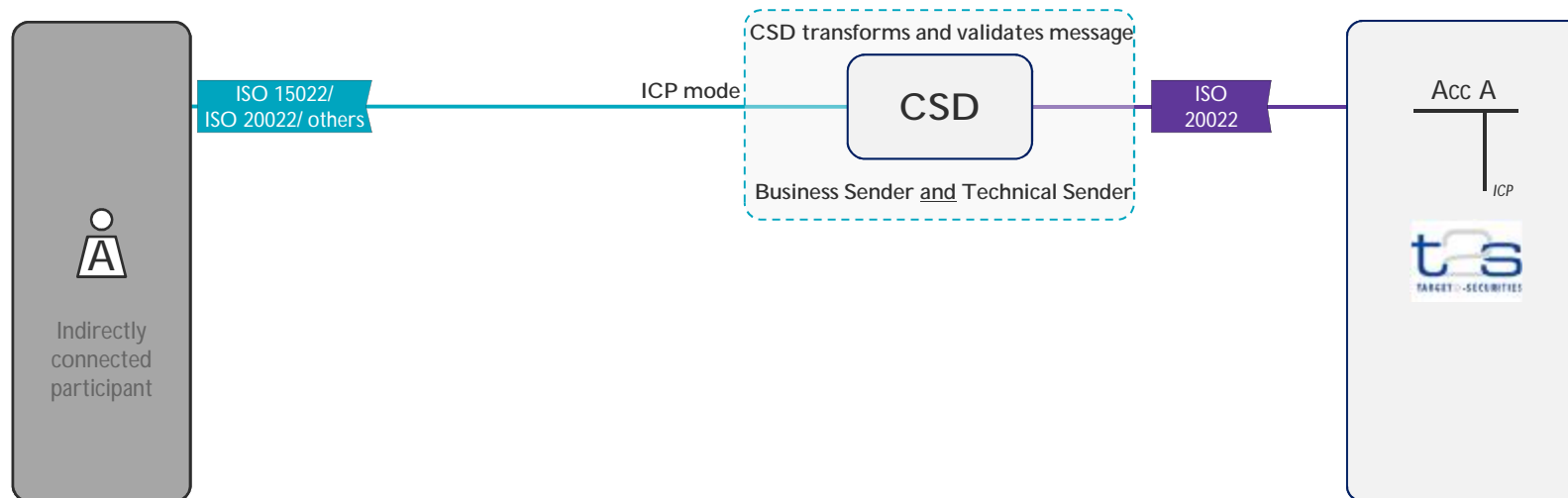
T2S Actors:
 CSD = CSD participating in T2S
 Actor1 = Bank, B/Dealer, Custodian, CCP, etc.
 AB/3P = Agent Bank/3rd Party
 TV = Trading Venue (Stock Exchange, MTF, etc)
 CM/SA = Clearing Member/Settlement Agent
 TO = Technical Operator

The following slides are illustrating the various connectivity options from a legal and technical perspective

ICP Scenarios (1/2)

Scenario 1 Participant A acts as ICP via CSD (core ICP Scenario)

- § Participant A owns account outsourced to T2S (participant A is account holder)
- § Based on existing contractual relationship between the customer and the CSD participant A fully relies on CSD that is acting both as a technical and business sender on behalf of Participant A (CSD is responsible for instructions sent to T2S)
- § Legal /Contractual relationship as defined on slide 4

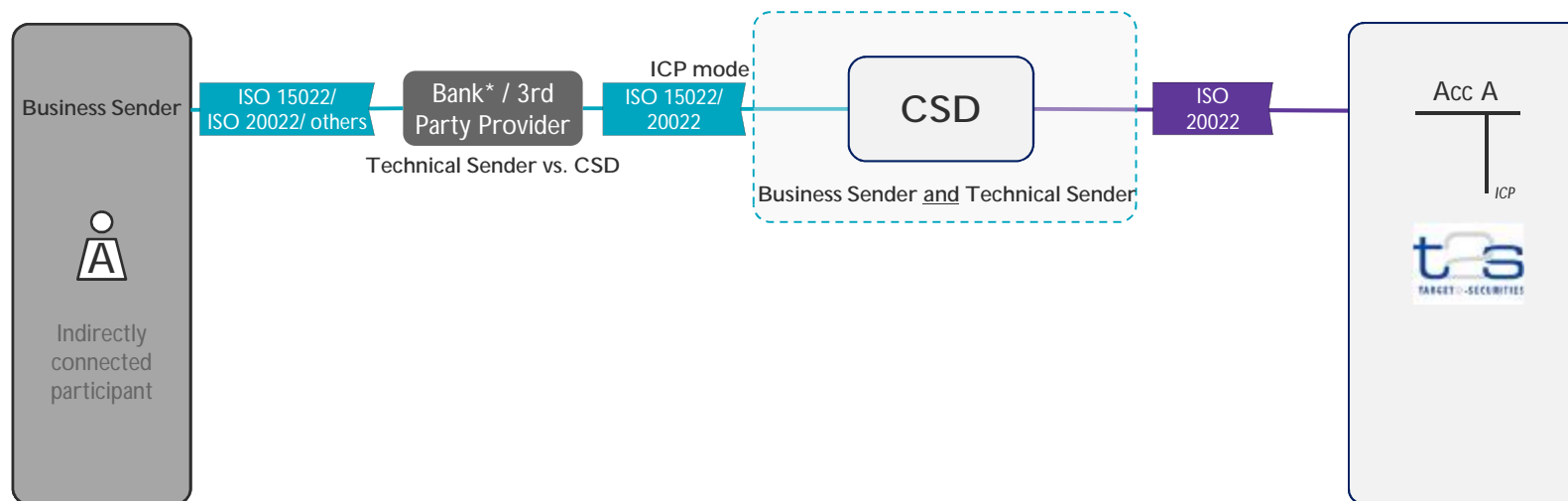


- § Participant A acts as an ICP
- § CSD has direct connectivity but is not a DCP according to DCP definition
- § Participant A does not need to apply for a DCP Certification, only the CSD Authorization with respective CSD

ICP Scenarios (2/2)

Scenario 2, 3 & 4 ICP connection via Bank / third party provider

- § Participant A owns account which will be outsourced to T2S (participant A is account holder)
- § Participant A uses third party provider as instruction sender (the third party provider has no direct connectivity to T2S)
- § Participant A keeps full responsibility for signing the business request. Participant A acts as business sender, Bank / 3P + CSD acting as technical sender
- § Bank / 3rd Party Provider acts as business and technical sender in case ICP does not send in ISO 20022
- § Depending on service level the CSD might also act as the Business Sender
- § Legal /Contractual relationship as defined on slide 4



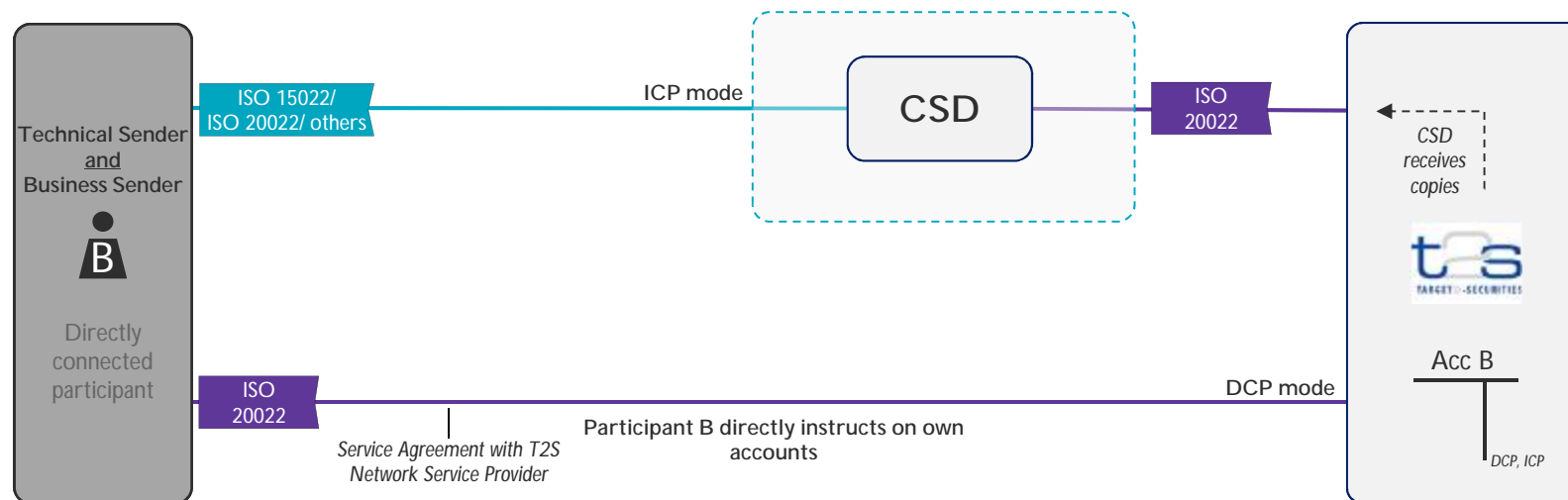
- § Participant A acts as an ICP
- § Bank* / 3rd Party provider is technical router (and potentially as business sender) for ICP messages towards the CSD
- § Participant A does not need to apply for the DCP Certification, only the CSD Authorization with respective CSD

*) Bank can act in different roles

DCP Scenarios (1/4)

Scenario 5 DCP connection (core DCP scenario)

- § Participant B owns account which will be outsourced to T2S (B is account holder); account is maintained as DCP and optional as ICP Account
- § Participant B sends in ISO 20022
- § DCP has contract with VANSP for direct access to T2S
- § T2S actor directly connects to T2S and also signs the business requests. T2S actor acts both as a technical & business sender
- § CSD receives copies of the messages based on subscription configuration
- § Legal /Contractual relationship as defined on slide 4

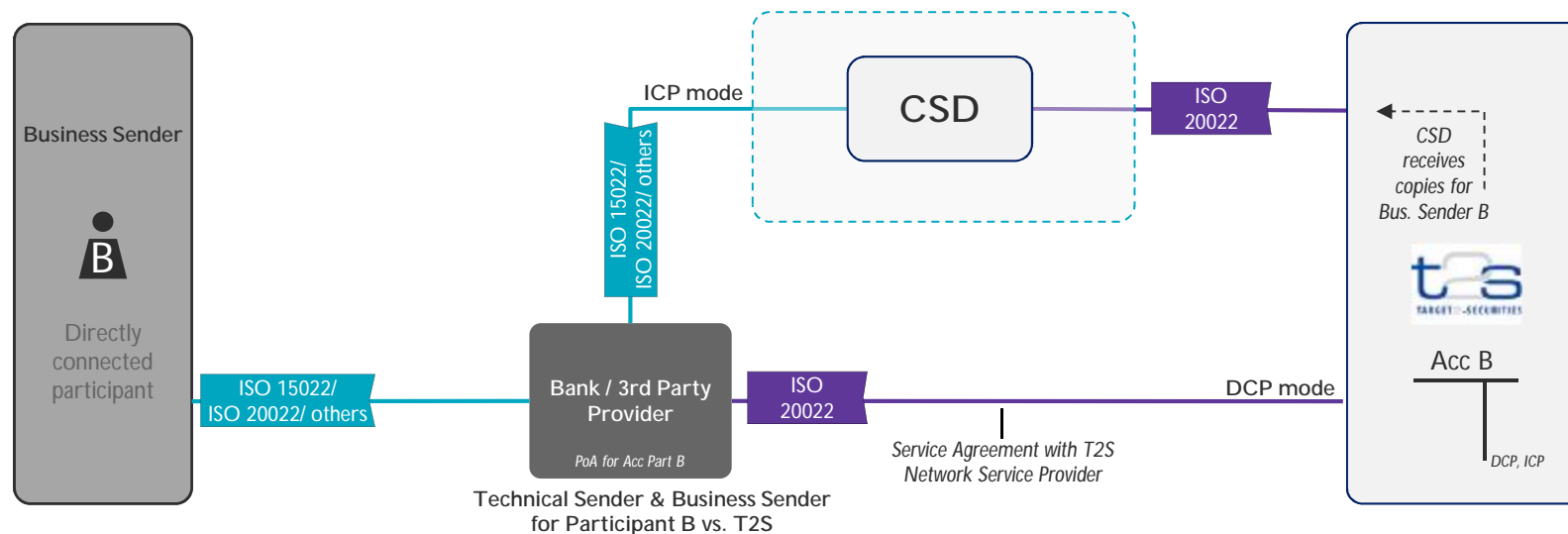


- § Participant B acts as a DCP for its own accounts
- § Legal relationship remains with the CSD (individual contractual arrangement between participant and CSD)
- § To maintain a direct connection to T2S a contractual agreement between participant B and the network service provider is necessary
- § Participants B needs to pass DCP Certification and DCP Authorization with respective CSD

DCP Scenarios (2/4)

Scenario 7 DCP connection and account operating via Bank / 3rd Party Provider

- § Participant B owns account which will be outsourced to T2S; account is maintained as DCP and as ICP account (e.g. as back-up solution)
- § Bank / 3rd Party Provider operates B-Accounts with POA
- § In case participant B sends in ISO 20022 Bank / 3rd Party Provider acts as technical sender only vs. T2S
- § Bank / 3rd Party provider has direct connectivity to T2S
- § Participant B receives all T2S related messages/reportings via Bank / 3rd Party-Provider
- § Legal /Contractual relationship as defined on slide 4

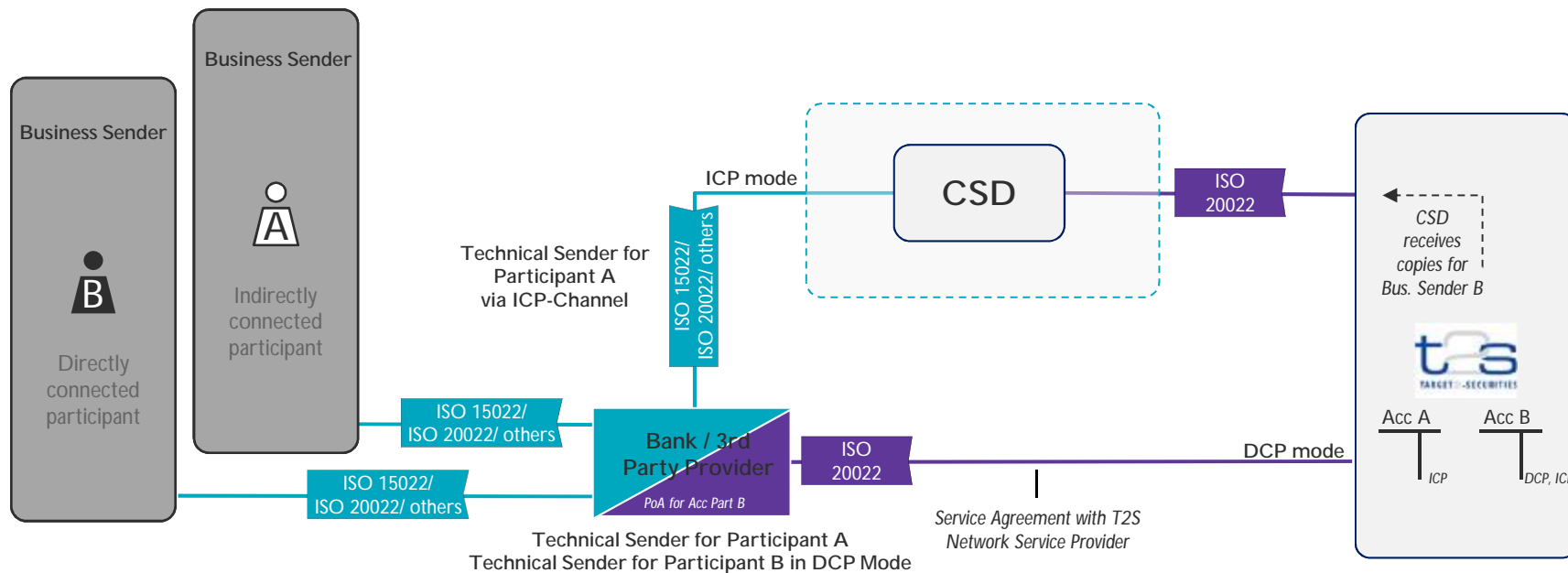


- § Bank / 3rd Party Provider is DCP
- § Participant B is DCP (and maintains relationship with CSD)
- § Participant B needs to pass the DCP Authorization with the respective CSD
- § Bank / 3rd Party Provider needs to pass the DCP Certification

DCP Scenarios (3/4)

Scenario 8 ICP and DCP customers via Bank / 3rd Party Provider

- § Both participants (A & B) are using a Bank / 3rd party provider for account operations
- § Participant A acts in ICP mode ⇒ Bank / 3rd Party Provider has to use ICP-Channel for instructions sent by participant A
- § Bank / 3rd Party Provider operates B-Accounts via its direct connection to T2S
- § Participant B receives all T2S related messages/reportings via Bank / 3rd Party-Provider
- § Legal /Contractual relationship as defined on slide 4

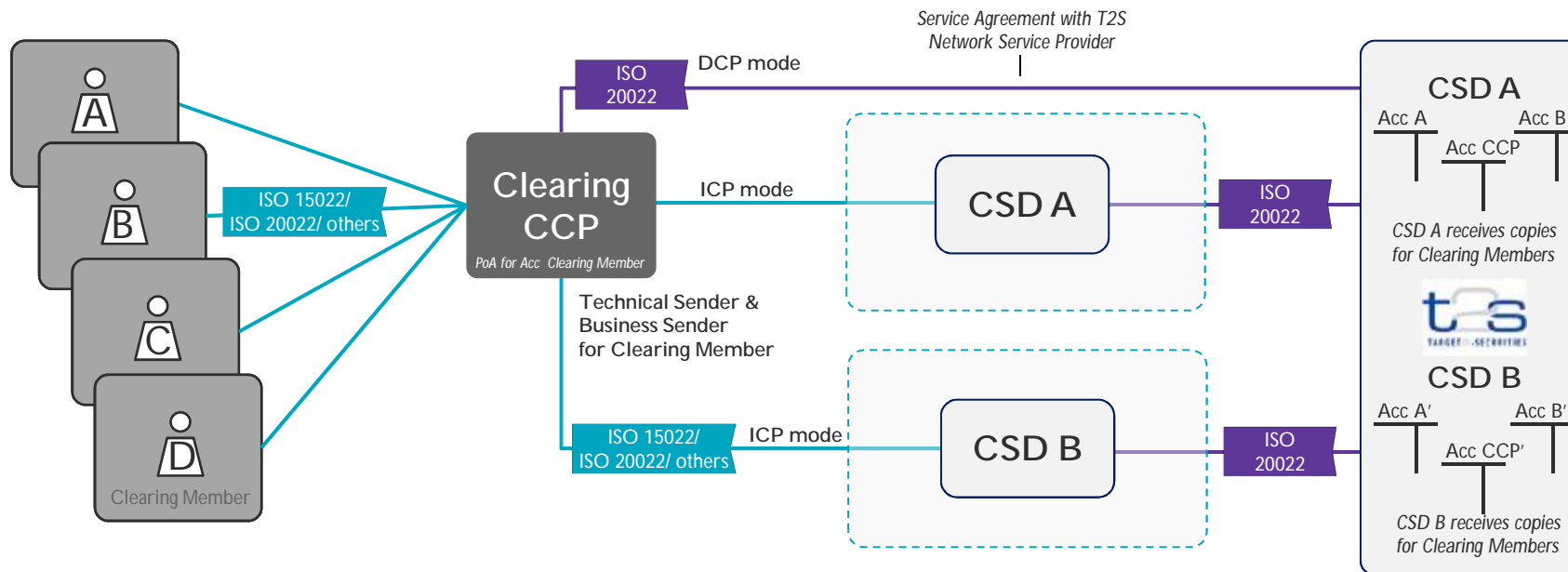


- § Bank / 3rd Party Provider is a DCP
- § Participant A is ICP; Participant B is a DCP (both parties maintain an according relationship with the CSD)
- § Bank / 3rd Party Provider has to differentiate ICP and DCP message flow
- § Participant A needs to pass CSD Authorization and Participant B needs to pass DCP Authorization with respective CSD
- § Bank / 3rd Party Provider needs to pass DCP Certification

DCP Scenarios (4/4)

Scenario 9 & 10 DCP and ICP connection via Clearing CCP

- § Clearing CCP acts either in ICP or DCP mode independent of the respective ICP/DCP decision of its clearing members
- § Clearing Member receives all T2S related messages/reportings via Clearing CCP
- § Legal /Contractual relationship as defined on slide 4



- § Clearing CCP is a DCP
- § Clearing CCP to choose between ICP and DCP connectivity
- § Clearing CCP needs to pass DCP Certification and DCP Authorization (if only ICP mode, then only CSD Authorization)

T2S DCF/ DCP-ICP Matrix (answered)

The following matrix has been delivered by the DCP-Forum members on 25 Sept 2013 to support the clarification of the definition of a DCP

Scenario	T2S ACTOR 1					T2S ACTOR 2					T2S ACTOR 3					Description	Questions	ECB Certification	CSD Authorisation
	ICP/DCP Mode	CSD A/C Owner	Business Sender	Technical Sender		ICP/DCP Mode	CSD A/C Owner	Business Sender	Technical Sender		ICP/DCP Mode	CSD A/C Owner	Business Sender	Technical Sender					
1	Actor1	ICP	YES	-	-			-	-	-	CSD	n.a.	YES	YES	Actor 1 is ICP using a CSD to access T2S	Confirm that CSD is recognised as Technical Sender in T2S. Would the CSD also be considered a DCP?		ICP	
2	Actor1	ICP	YES	YES	-			-	-	-	CSD	n.a.	-	YES	ICP/CSD Relationship, CSD is only Technical Sender	Confirm that CSD is recognised as Technical Sender in T2S. Would the CSD also be considered a DCP?		ICP	
3	Actor1	ICP	YES	-	-	AB	noDCP (TO)	-	YES	-	CSD	n.a.	-	YES	Actor 1 is ICP using an AB/3P to access T2S	If Actor 1 is ICP and AB/3P is only acting as Business Sender, confirm that AB/3P is not acting as a DCP (though it may be a DCP for other business)		ICP	
4	Actor1	ICP	YES	YES	-	AB	DCP (TO)	-	-	YES					Actor 1 is ICP using an AB/3P to access T2S	If Actor 1 is Business Sender + CSD account owner and AB/3P is acting as a Technical Sender as well as DCP (for its own and third party business) and uses its DCP connectivity to send Actor 1's messages to T2S, should Actor 1 be considered an ICP?		ICP	
5	Actor1	DCP	YES	YES	YES			-	-	-			-	-	Actor 1 is DCP Direct in T2S	none	DCP	DCP	
6	Actor1	DCP	YES	YES	-	AB/3P	noDCP (TO)	-	-	YES			-	-	Actor 1 is DCP Direct in T2S, using an AB/3P as Technical Sender	If Actor 1 is DCP and AB/3P is only acting as Technical Sender, confirm that AB/3P is not acting as a DCP (though it may be a DCP for other business)	AB/3P	DCP	
7	Actor1	DCP	YES	-	-	AB/3P	noDCP (TO)	-	YES	YES			-	-	Actor 1 is DCP Direct in T2S, using an AB/3P as Business & Technical Sender	If Actor 1 is DCP and AB/3P is acting as its Business & Technical Sender, confirm that Actor 1 is still the recognised DCP in T2S and AB is not acting as a DCP	AB/3P	AB/3P DCP	
8	AB	DCP	YES	YES	YES			-	-	-			-	-	Actor 1 is an Agent Bank/Custodian and is DCP Direct in T2S	Will full service clients of AB be considered T2S Actors in any way (e.g. ICP)?	AB/3P	DCP	
9	TV	DCP	-	YES	YES			-	-	-			-	-	Actor 1 is a Trading Venue sending matched instructions directly into trading members' CSD accounts (non CCP-cleared business)	Can the TVs be DCP when they are not CSD account owners?	DCP	DCP	
10	CCP	DCP	YES	YES	YES	CM/SA	DCP or ICP?	YES	-	-					Actor 1 is a CCP instructing for its own CSD account and with PoA on behalf of the Clearing Member/Settlement Agent	Is it necessary that the Clearing Member/Settlement Agent (who is the CSD account owner on whose behalf the CCP instructs) becomes itself a DCP, if the CCP wants to instruct in DCP mode? Or can CM/SA operate as an ICP?	DCP	DCP	

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Connectivity related Questions

- Legal status of DCPs: scenarios for DCPs vs ICPs, technical sender vs business sender (following workshop of 09/10/2013). – Question 1
- Account operator/Sponsored access for DCPs: if technical sender is different from the business sender, who is the party that needs to obtain DCP certification and authorization? Need for a harmonized/consistent approach across CSDs.
- Will existing *membership* agreements be “novated”, possibly with the addition of new clauses for T2S, or will there be entirely new agreements?
- Choice of legal vehicles as contracting entities in DCP mode: any restrictions by CSDs to the choice of one single vehicle across the T2S region? Any specific requirements by CSDs in case of change of DCP contracting legal entity from current vehicle to a new vehicle post T2S migration?
- Contingency arrangements: will it be possible to switch between VAN SPs? Will it be possible to switch between DCP mode and ICP mode? Please consider both questions in relation to testing/migration period as well as for production.
- Use of POAs: scenarios, methods and restrictions. – Question 4

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DCP Certification and DCP CSD Authorization

DCPs need to pass two steps which are very different to each other with regard to their objectives and comprehensiveness.

DCP Certification	DCP CSD Authorization
<ul style="list-style-type: none"> § According to the Framework Agreement, the DCP Certification aims to provide evidence that the adapted IT platforms of a DCP does not harm T2S as the result of inappropriate technical communication or procedures. § As this is a ECB requirement, ECB will define the test cases which need to be successfully executed (test cases will be available 6 months before the community testing stage for wave 1). § The DCP Certification needs to be passed at an early stage of Community Testing. § The DCP Certification is less comprehensive than the DCP Authorization. § The DCP Certification has only to be passed once by a DCP, also when the DCP plans to connect to multiple CSDs. 	<ul style="list-style-type: none"> § The CSDs are responsible for the authorization and therefore define the test cases that a DCP needs to successfully execute to show its compliance with CSD's processing according to market and legal specific requirements. § The test cases will cover specific business processes including market and CSD specific requirements (e.g. domestic settlement, cross-border scenarios with In-CSD and Out-CSD). CSDs will individually provide the test cases in adequate time. § DCP Authorization needs to be successfully passed by the DCP for each of its CSDs prior to the end of the Community Test stage. § The CSDs aim to achieve a high degree of standardization. However, the degree of standardization depends on market and legal specific characteristics.

Note: Specific test cases can be subject to both, DCP Certification and DCP Authorization. If a test case has been already passed in the DCP Certification it serves as a proof for the DCP Authorization.

DCP Re-Certification

The Eurosystem can request a Re-Certification of the DCPs

Extract - Framework Agreement

Article 5.6.5 – DCP Certification

[...] The DCP certification of the Contracting CSD's participant shall remain valid until the Eurosystem deploys a major release with a significant scope change in the Application-to- Application interface or major structural changes to the processing model and/or data model. The Eurosystem shall recommend to the Steering Level whether the new release requires a recertification of the DCPs, based on the scope of changes that the Change Review Group (CRG) has approved for the new T2S release.

- DCP Certification aims to provide evidence that the adapted IT platforms of a DCP does not harm T2S
- The DCP Certification needs to be passed at an early stage of Community Testing.
- The DCP Certification has only to be passed once by a DCP, also when the DCP plans to connect to multiple CSDs.
- A Re-Certification can only be triggered by the Eurosystem based on the scope of changes

DCP Re-Authorization

A Re-Authorization is necessary under certain conditions

- The need for a DCP Re-Authorization can have two causes:
(1) The T2S platform has experienced significant changes, or (2) The CSD deploys a major change to its structural changes, to the processing model and/or data model.
Both scenarios trigger the need to test the respective changes on a CSD DCP via a Re-Authorization
- The DCPs' respective CSD recommends and decides whether a Re-Authorization is needed based on the scope of changes



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DCP Certification & DCP Authorization related Questions

- Review of DCP obligations, as envisaged in the FA (e.g. Certification and Authorization)

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Liability

The Eurosystem is liable to the Contracting CSD for a claim of a DCP

Extract - Framework Agreement

Article 32.3 – Liability rules

The Eurosystem shall also be liable to the Contracting CSD for a claim of a Contracting CSD's customer against the Contracting CSD in connection with T2S Services (hereinafter a 'Customer Claim'), resulting from the Eurosystem's gross or ordinary negligence in performing its duties and obligations under this Agreement, if and to the extent that all of the following criteria are satisfied: (a) the Contracting CSD has, with the approval of the Eurosystem (such approval shall not be unreasonably withheld or delayed), settled the Customer Claim or is held legally liable for the Customer Claim pursuant to an Enforceable Judgment; (b) the loss or damage of a customer is the direct result of an act or omission of the Eurosystem and (c) the Customer Claim would have been settled according to local market practice (marktübliche Bedingungen).

- All three (a, b, c) criteria need to be satisfied to settle a customer claim
- No customer claim will be paid directly by the Eurosystem to the Contracting CSD's customer

Limitation of Liability

The Eurosystem's liability is limited

Extract - Framework Agreement

Article 32.5 (a) – Liability rules

The liability of the Eurosystem shall be limited to a maximum total amount per calendar year for all losses or damages suffered by the Contracting CSD and all Participating CSDs that were caused by events that occurred in the same calendar year.

(i) In case of the Eurosystem's ordinary negligence, the liability of the Eurosystem vis-à-vis, combined, the Contracting CSD and all Participating CSDs shall be limited to a maximum total amount of EUR 30,000,000 for the relevant calendar year.

(ii) In case of the Eurosystem's gross negligence, the liability of the Eurosystem vis-à-vis, combined, the Contracting CSD and all Participating CSDs shall be limited to a maximum total amount of EUR 500,000,000 for the relevant calendar year.

If the aggregate amount of losses or damages suffered by the Contracting CSD and all Participating CSDs in any calendar year exceeds the maximum set out in this subparagraph, then the amount due to the Contracting CSD shall be determined by the Eurosystem pro rata, i.e. having regard to the total amount of all losses or damages suffered by the Contracting CSD and all Participating CSDs.

- The liability limit for ordinary negligence is EUR 30 Mio.
- The liability limit for gross negligence is EUR 500 Mio.
- If the aggregated amount exceeds the maximum in any calendar year, the Eurosystem will serve the claims on a pro rata basis

CSD Liability regimes in Europe – ECSDA November 8th, 2011 (1/2)

- The liability regimes of CSDs are generally publicly available on CSDs' website and communicated to their users and regulators.
- Differences in the liability regimes of CSDs reflect a variety of factors such as whether or not the CSD operates a transparent system and whether or not the CSD is responsible for acting as registrar. Logically, CSDs with different risk profiles have different liability regimes.
- In almost all cases, the CSD's liability regime is described in its GTCs. When the liability framework is contained in national laws or regulations, the GTC typically provide more details on the implementation (written procedure for lodging a claim, deadlines etc.). Usually, the dispositions included in national laws and regulations focus on the specific liabilities linked to registrar activities of CSDs (notary function).
- To cover their liabilities, CSDs often buy insurance. For a few CSDs, such insurance is actually mandatory. Some also use a guarantee fund made up of contributions from CSD participants.

CSD Liability regimes in Europe – ECSDA November 8th, 2011 (2/2)

- Whereas liability for gross negligence/wilful misconduct tends to be unlimited, CSD liability for ordinary negligence is sometimes capped (amounts, in millions of EUR, depend on market specifics).
- As in other industries, CSDs are not liable for damages caused by circumstances outside their control (natural disasters, etc.).
- In general, liability regimes apply to CSD participants and few CSDs have a specific regime for issuers, distinct from the general regime. Some CSDs however have different liability regimes for their main book-entry services and for other additional services (liability in the latter case being the object of a contractual agreement with participants, issuers and/or other parties).
- Finally, it is important to note that in the level of liability of a CSD should not be seen in isolation but in conjunction with the liability of its participants towards itself/the settlement system.

Questions related to Liability

- Liability regime for DCPs, liability caps, claims procedures.
- Outsourcing of services by CSDs to T2S: liability issues for CSDs vs ECB and for ICPs/DCPs vs CSDs (also linked to CSDR Art 28). – Question 6

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Termination

- The termination of a business relationship will be subject to the CSDs' respective General Terms and Conditions
- It is assumed that a Termination clause does not need to be DCP specific as existing formats, standards and contracts will be applicable to this event
- A DCP should also consider the matter of termination of the business relationship of its VAN provider (e.g. SWIFT or SIA/Colt)

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Suspension

A Suspension of the Contracting CSD can have effects on its DCPs

Extract - Framework Agreement

Article 35 – Right of suspension by the Eurosystem

1. The Eurosystem shall be entitled to suspend the Contracting CSD from using some or all T2S Services with immediate effect if the Relevant Competent Authority requests or supports the suspension. If the Contracting CSD is subject to an Insolvency Event or is in non-compliance with the Access Criteria, the Eurosystem, together with the Relevant Competent Authority, shall assess the required timing and level of suspension. Where possible, the suspension shall be limited to the T2S Services that are relevant to the cause of the suspension.

2. The implementation of the suspension of the Contracting CSD from using some or all T2S Services shall trigger Article 23 on Crisis management. The Eurosystem and the Contracting CSD shall use their best efforts to remove the suspension in collaboration with the Relevant Competent Authorities.

- A suspension of the Contracting CSD can only come into effect with the request/support of the relevant Competent Authority
- If the Contracting CSD is suspended from using some or all T2S Services its DCPs are also effected
- A Contracting CSD's suspension can limit a DCP's ability to send instructions to T2S

Suspension related Questions

- Legal aspects of suspension or technical disconnection of a DCP.
- Contingency planning requirements for DCPs; obligations for DCPs to establish back-up ICP connections? – Question 10

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Technical Disconnection

The Eurosystem is entitled to technically disconnect a DCP from T2S

Extract - Framework Agreement

Article 36.2 – Right of Technical Disconnection by the Eurosystem

The Eurosystem shall be entitled to technically disconnect a DCP from the T2S Platform with immediate effect if, in the Eurosystem's reasonable opinion, the technical connection of such DCP to the T2S Platform represents a major threat to the security or integrity of T2S Framework Agreement T2S. The Eurosystem shall, to the extent possible, provide reasonable prior notice of the imminent technical disconnection of the DCP to and consult the Relevant Competent Authorities, the Contracting CSD and the DCP that is impacted.

- The Eurosystem can technically disconnect a DCP from T2S if the DCP represents a major threat to the platform
- If possible, a DCP can use its ICP connectivity to maintain access to T2S Services in such circumstances

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Miscellaneous

Scanning of instructions

- As a regulated financial institution, CSDs have to comply with all applicable financial sanctions in force. These financial sanctions in general result from the UN/EU and OFAC (among others)
- Even though CSDs will outsource their settlement activities to T2S they remain responsible to fulfil the above mentioned requirements
- In an ICP situation this is less of an issue as the CSD receives the settlement instruction before T2S and is at least in a position to perform an adequate scanning against the sanctions list
- In a DCP situation a CSD does not receive the settlement instruction before T2S and therefore the DCP would need to perform an adequate scanning against the sanctions list itself

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Service Aspects



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Questions and Issues from DCP Forum

Email: Marcello Topa, 19/02/2014

Questions and Issues for Discussion (1/5)

Answered in
presentation

- 1) Legal status of DCPs: scenarios for DCPs vs ICPs, technical sender vs business sender (see matrix attached, following workshop of 09/10/2013).

è Slides 12 to 17 provide an overview of the different scenarios

Yes

- 2) DCP binding commitments for securities and cash accounts: confirmation of procedures/requirements for all CSDs and NCBs, especially urgent for CSDs in MW1 (deadline of 3/03/2014).

è Slides 8 and 9 display the procedure and timeline for DCP binding commitment

Yes

- 3) ICPs/DCPs Membership requirements: any common criteria across CSDs, or specific criteria for each CSD (as per current practices)?

Dis.

- 4) Use of POAs: scenarios, methods and restrictions.

è Slides 12 to 17 provide an overview of the different scenarios

Yes

- 5) Common principles for contractual arrangements (as noted by Monte Titoli on 31/01/2014, but analysis to be extended to all other CSDs):

Dis.

- general details of obligations and undertakings by DCPs vis-à-vis the CSDs of their choice;
- general details of program plans that DCPs will be asked to adhere to.

Questions and Issues for Discussion (2/5)

Answered in
presentation

6) Outsourcing of services by CSDs to T2S: liability issues for CSDs vs ECB and for ICPs/DCPs vs CSDs (also linked to CSDR Art 28).

è Slides 24 to 26 provide an overview of the different scenarios

Yes

7) Any regulatory or operational restrictions by CSDs or by relevant local authorities related to the following two scenarios:

a. restrictions to accept as CSD members only those firms that have a cash account opened in the NCB of the same country where the CSD operates?

Dis.

b. restrictions by CSDs to accept settlement instructions only from their members, e.g. a CCP that is not a member of a CSD would not be allowed to send instructions (under POA) for settlements in a SAC account belonging to another participant in that CSD?

Dis.

8) Legal aspects/differences of CSD links (pre-T2S) vs External settlements (post-T2S). Analysis also relevant to the periods between migration waves.

Dis.

Questions and Issues for Discussion (3/5)

Answered in
presentation

9) Conduct of Business Rules for Participants and specifically for DCPs:

a. Eligibility criteria and requirements (for participating institutions, or also for individuals within those firms?)

è Refer to question 3

b. Diligence requirements? Technical and operational requirements (e.g. obligations to match / settle within predefined cutoffs)? Also linked to CSDR settlement discipline measures. References to any MOP obligations also in the DCP contracts?

c. Obligations to monitor availability of sufficient positions (cash & securities) in the accounts vs the settlement obligations?

d. Monitoring and supervision measures, "auditing" and control activities (in BAU and in case of anomalies).

e. Any disciplinary measures?

Dis.

Dis.

Dis.

Dis.

Dis.

Questions and Issues for Discussion (4/5)

Answered in
presentation

10) Contingency planning requirements for DCPs; obligations for DCPs to establish back-up ICP connections?

è Slides 12 to 17 and slide 34 provide information on contingency measures

Yes

11) DCP readiness reporting: basic principles and procedures expected to be shared and common across CSDs

Dis.

12) Access rights and cross-system entities: legal implications of option 1 vs option 2; plans by CSDs to prepare for option 2 (via intra-group legal arrangements)?

Dis.

13) Pricing of services: will CSDs publish their prices before requesting participants to sign new membership agreements?

Dis.

14) Auto-collateralisation and client collateralization:

a. Availability to DCPs of prices and haircuts applied by NCBs in their collateral evaluations, so that DCPs (and PBs) may use the same pricing information in their liquidity management procedures and in their own collateral evaluations;

Dis.

b. Recent Shadow Banking proposal, Art 15: rules for collateral availability in receiver's accounts before the same collateral assets can be re-hypothecated;

Dis.

c. Recent Shadow Banking proposal, Art 15: requirements for explicit client consent on collateral re-use, any impact on CSDs' legal docs?

Dis.

Questions and Issues for Discussion (5/5)

Answered in
presentation

Miscellaneous:

- 15) Consultation on usage of BIC during User Testing (three options proposed for feedback by 19/02): pros and cons of each option.
- 16) Contingency arrangements of 6 months notification period for a switch between VAN providers (as per FA) is deemed as too long, follow-up in OMG (is this issue still open?).

Dis.

Dis.

Questions from DCP Forum concerning Legal Aspects

Questions remained open from former CSD DCP Workshops

1. What specific operational/service level rules for DCPs are envisaged to be added to existing membership agreements?
2. Is the start of DCP testing activities dependent upon the signing of DCP-specific contracts?
3. Harmonization of Settlement Finality rules and of operational procedures in case of an insolvency (both for a direct and an indirect participant).
4. Legal value of statements and reports, e.g. the statement of holdings, issued by T2S on behalf of CSDs.

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Service Aspects

Questions from DCP Forum concerning Service Aspects

Questions remained open from former CSD DCP Workshops

1. Will CSDs maintain current rules and deadlines during the whole migration period till the last wave?
2. Will CSDs joining T2S in different waves harmonize rules and deadlines prior their migration in T2S?
3. Matching functionalities: considering that DCPs will typically have large business volumes and numerous securities accounts (both omnibus accounts and individual segregation accounts), the risk of cross-matching will be heightened for DCPs, more than for ICPs. What services and functionalities will be available specifically for DCP usage, to help minimize such risk?



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Appendix

Outsourcing by a CSD of its services according to CSDR Art. 28

A CSD can transfer its responsibilities to public entities

Extract - CSDR

Article 28

Considering the importance of the tasks entrusted to CSDs, this Regulation should provide that CSDs do not transfer their responsibilities to third parties through outsourcing by contract of their activities to third parties. Outsourcing of such activities should be subject to strict conditions that maintain the CSDs' responsibility for their activities and ensure that the supervision and oversight of the CSDs are not impaired. Outsourcing by a CSD of its activities to public entities may, under certain conditions, be exempted from these requirements.

- Outsourcing of a CSD's activities is subject to strict conditions
- Outsourcing by a CSD of its activities to public entities (i.e. T2S platform) is exempted from these requirements

Pre-requisites and conditions for becoming a DCP in T2S

To successfully become a DCP several analysis and evaluation activities related to bilateral agreements need to be taken into account

Evaluation and Analysis phase

- § Strategic analysis and evaluation on how to approach T2S
- § Communication and provisioning of non-binding declaration to become a DCP
- § Set-up of bilateral contractual arrangements with CSD related to T2S¹⁾
- § Provide firm commitment to become a DCP
- § Contractual arrangements with Network Service Providers
- § Evaluate testing and migration strategy to T2S

Testing and Pre- Migration Phase

- § Assess potential DCP migration scenarios
- § Execute internal system tests and T2S Community/ Business Day Tests (incl. Migration Testing)
- § DCP must pass certification of ECB and successful establish connectivity to T2S
- § DCP must pass authorization criteria determined by the CSD

Go-Live Phase/ DCP Migration to T2S

- § CSD to successfully finish community and business day testing phase and ready to migrate to T2S
- § DCP to receive access from CSD to different parts of T2S services
- § Set-up account-structure, define privileges and configuration, grant access rights (done by CSDs)
- § Start operation in DCP mode based on agreed go-live scenario

1) Assumption: DCP candidate has already an established relationship with the according CSD (i.e. securities account exists or will be opened at the CSD prior to migration)