



COLLECTIVE AGREEMENT

Between:

- (1) The European Central Bank (ECB);
- (2) The Nationale Bank van België/Banque Nationale de Belgique;
- (3) The Deutsche Bundesbank;
- (4) The Central Bank of Ireland;
- (5) The Central Bank of Cyprus;
- (6) The Central Bank of Malta;
- (7) The Bank of Greece,
- (8) The Banco de España;
- (9) The Banque de France;
- (10) The Banca d'Italia;
- (11) The Banque centrale du Luxembourg;
- (12) De Nederlandsche Bank;
- (13) The Oesterreichische Nationalbank;
- (14) The Banco de Portugal;
- (15) Banka Slovenije;
- (16) Národná banka Slovenska;
- (17) Eesti Pank;
- (18) Suomen Pankki;
- (19) Latvijas Banka;
- (20) Lietuvos Bankas
- (21) Danmarks Nationalbank;
- (22) Narodowy Bank Polski;
- (23) Bulgarian National Bank;
- (24) Banca Națională a României; and
- (25) Hrvatska narodna banka.

Hereinafter referred to individually as “a Central Bank” or collectively as “all Central Banks”;

And

- (1) Bank of Greece Securities Settlement System
- (2) Centrálny depozitár cenných papierov SR, a.s.
- (3) Clearstream Banking AG
- (4) Depozitarul Central S.A.
- (5) AS Eesti Väärtpaberikeskus
- (6) Euroclear Belgium
- (7) Euroclear France
- (8) Euroclear Nederland
- (9) Euroclear Finland
- (10) Iberclear - BME Group
- (11) Interbolsa – Sociedade Gestora de Sistemas de Liquidação e de Sistemas Centralizados de Valores Mobiliários, S.A.
- (12) KDD - Centralna klirinško depotna družba, d.d.
- (13) KELER Központi Értéktár Zrt.
- (14) AS “Latvijas Centrālais depozitārijs”
- (15) AB “Lietuvos centrinis vertybinių popierių depozitoriumas”
- (16) LuxCSD SA
- (17) Malta Stock Exchange Plc
- (18) Monte Titoli S.p.A.
- (19) National Bank of Belgium Securities Settlement Systems
- (20) OeKB CSD GmbH
- (21) SIX SIS Ltd.
- (22) VP LUX S.à.r.l.
- (23) VP Securities A/S
- (24) Narodny centralny depozitar cenných papierov, a.s.

Hereinafter referred to individually as “a CSD” or collectively “all CSDs”,

All of the above are hereinafter referred to individually as ‘a Party’ or collectively as ‘the Parties’.

PREAMBLE

- (1) The Governing Council set up a service to support securities settlement in Central Bank Money, to be provided to CSDs under the name of TARGET2-Securities (T2S), as part of the Eurosystem's tasks in accordance with Articles 17, 18 and 22 of the Statute of the European System of Central Banks and of the European Central Bank. T2S facilitates post-trading integration by supporting core, neutral and borderless pan-European cash and securities settlement in central bank money so that CSDs can provide their customers with harmonised and commoditised settlement services in an integrated technical environment with cross-border capabilities.
- (2) All Parties have agreed to use the T2S Platform as a common settlement infrastructure. In accordance with Article 3(4) and 5 second subparagraph of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, as amended from time to time, (SFD), in the case of interoperable systems, a lack of coordination as to which rules apply on the moment of entry and irrevocability may expose participants in one system, or even the system operator itself, to the spill-over effects of a default in another system. Therefore, in order to limit systemic risk, it is desirable to provide that system operators of interoperable systems coordinate the rules on the moment of entry and irrevocability in the systems they operate.
- (3) To that effect, CSDs using the T2S Platform have agreed to an identical moment of entry of transfer orders into their respective systems. This is the moment when the validation process is positively performed according to the T2S validation criteria, regardless of whether this function is carried out in the T2S platform. Such T2S validation criteria can be (i) either a set of rules based on which all incoming instructions received during the settlement day are validated, as provided and amended from time to time in the User Detailed Functional Specifications (for A2A functions) and Users Handbook (for U2A functions), or, (ii) for CSDs having a separate matching component, as listed in Annex I, a set of comparable rules, including the validation rules performed by T2S, based on which all incoming instructions received during the settlement day and to be submitted to T2S are validated, as provided and amended from time to time.
- (4) For transactions that result in a debit or credit on a Dedicated Cash Account, all Parties have agreed to an identical moment of irrevocability of transfer orders into their respective systems. This is the moment when the matching is positively performed on the T2S Platform. Activities carried out by the separate matching component, which the CSDs listed under Annex I have decided to operate, are as a technical preparatory step aiming at facilitating subsequent matching on the T2S Platform and do not replace matching on the T2S Platform.
- (5) The Parties have decided, in the context of T2S, to increase the legal certainty and offer early SFD protection by enabling the moment of entry to occur for all transfer orders in T2S at the same point in time, irrespective of whether the transfer orders relate to securities or cash, be it denominated in Euro or in another currency and irrespective of the CSD which receives the transfer order. To that effect, the central banks signatories to this Collective Agreement are either operators of the TARGET2 component systems constituting TARGET2, providing RTGS for payments in euro with settlement in central bank money, or central banks having signed with the Eurosystem a Currency

Participation Agreement, thus making their currencies available for Central Bank Money settlement in T2S.

- (6) The harmonised definition of the moment of entry and irrevocability of Transfer Orders to be settled on T2S gives rise to a greater dependencies among the Parties, especially as regards the processing of such Transfer Orders in case of insolvency proceedings being opened against the Parties' participants; information sharing mechanisms and cooperation arrangements are, more particularly, needed in order to ensure that the Parties process the transfer orders impacted by the insolvency of a Party's participant in accordance with their rules on the moment of entry and irrevocability of transfer orders and relevant laws; termination and liability provisions need also to be designed, should any of the Party fail to comply with its obligations under this Collective Agreement;
- (7) In view of the above, the present Collective Agreement sets out the rights and obligations of the Parties arising in connection with the harmonised definition of the moment of entry and irrevocability of transfer orders which are subject to matching.

Article 1

Definitions

In this Collective Agreement the following terms written with a capital letter shall have the meanings assigned to them below:

1. 'Confidential Information' shall mean any information, data, documentation or material required to fulfil the obligations set out in Article 2(4) and 2(5) of this Collective Agreement, that includes trade and business secrets, know-how and information regarding the business, strategy, financial situation, products and prospects, processes and methodologies, customers, suppliers and employees, systems, programs, algorithms, source codes, technical and security requirements and specifications (including any information that any party is obliged to keep confidential according to a contractual agreement or by law), and any other information, material or documentation (in each case to the extent marked as confidential or with a similar designation, or which a reasonable person would consider as confidential) related to a party or its Affiliates, which such a party has disclosed (in whatever form) to the other party in connection with this Collective Agreement. Confidential Information does not include information that: (a) has been designated by a party as being intended for disclosure to third parties and does not reveal Confidential Information received by another Party; (b) becomes generally available to the public other than as a result of a breach of the confidentiality obligations under this Collective Agreement; or (c) is received from a third party not bound by an obligation of confidentiality with respect to such information (while the receiving party is aware or made aware by the other Party of this fact); (d) was known to or legally in a Party's possession without obligations of confidentiality prior to such information being provided as Confidential Information in accordance with this Collective Agreement; or (e) is developed by either party (or its Affiliates or their employees or representatives) independently without the use of Confidential Information of the other Party.

2. 'CPA' means the Currency Participation Agreement endorsed by the ECB Governing Council on 23rd February 2012 and available on the ECB website.
3. 'Dedicated Cash Account' means a cash account held in T2S operated by a Central Bank.
4. 'Direct Loss' shall mean loss or damage directly caused to the damaged Party as a result of the gross or ordinary negligence of the other Party in performing its duties and obligations under this Agreement.
5. '*Force majeure*' shall mean any circumstances beyond the reasonable control of the non-performing contracting party, including, without limitation, an element of nature or an act of God, earthquake, fire, flood, war, terrorism, civil, industrial or military disturbance, sabotage, labour strike or lock-outs, pandemic, epidemic, riot, loss or malfunction of utilities or communication services, court order, act of civil or military authority, or governmental, judicial or regulatory action, but explicitly excluding Insolvency Proceedings.
6. 'Framework Agreement' means the Framework Agreement on TARGET2 Securities endorsed by the ECB Governing Council on 17th November 2011 and available on the ECB website.
7. 'Insolvency Proceedings' or 'insolvency' shall mean any collective measure provided for in any laws governing any participants, either to wind up the participant or to reorganise it, where such measure involves the suspending of, or imposing limitations on, transfers or payments;
8. 'Matching' shall mean the process used for comparing the settlement details provided by parties to a transaction in order to ensure that they agree on the terms of such transaction; 'matched' shall mean having been successfully subjected to matching;
9. 'Participant' shall mean any participant (in the sense of Article 2(f) SFD) holding a Dedicated Cash Account or any participant (in the sense of Article 2(f) SFD) in a CSD, irrespective of where it is established.
10. 'Transfer Orders' (in the sense of Article 2(i) SFD) shall mean:
 - any instruction by, or on behalf of, a participant holding a Dedicated Cash Account, operated by a Central Bank to place at the disposal of a recipient an amount of money by means of a book entry on the account of another participant holding a Dedicated Cash Account operated by the same or another Central Bank, or any instruction which results in the assumption or discharge of a payment obligation as defined by the rules of the system, or;
 - any instruction by a participant in a CSD to transfer the title to, or interest in, a security or securities to another participant of such CSD or of any other CSD, by means of a book entry in a register, or otherwise.

*Article 2***Rights and Obligations of the Parties with respect to the moment of entry and the moment of irrevocability**

1. For the purposes of Articles 3(1), 3(3) and 5 of the SFD, the Parties shall amend their corresponding rules on the moment of entry and irrevocability of transfer orders so that transfer orders to be settled on Dedicated Cash Accounts on the T2S Platform which are subject to matching shall be deemed entered into the systems operated by the Parties at the moment at which such transfer orders have been declared compliant with the technical rules of T2S by the T2S Platform and irrevocable at the moment the transaction has been given the status “matched” on the T2S Platform.
2. As an exception to the previous paragraph, for transactions that result in a debit or a credit on a Dedicated Cash Account and involve one CSD having a separate matching component (as enlisted in Annex I to this Collective Agreement), where transfer orders are sent directly to that CSD to be matched in its separate matching component, the corresponding cash and securities transfer orders are deemed entered into the systems operated by the Parties at the moment at which they have been declared compliant with the technical rules of T2S by that CSD and irrevocable from the moment the transaction has been given the status “matched” on the T2S Platform.
3. The occurrence of the moment of entry and irrevocability of Transfer Orders must be fully automated, identifiable and retrievable.
4. Information on moment of entry and irrevocability of Transfer Orders impacted by the insolvency of a participant shall be made available by the relevant Party without undue delay and upon first demand to all interested Parties. For the purposes of this Article:
 - Transfer Orders shall be deemed impacted by the insolvency of a participant if they are to be debited to the account of such insolvent participant; and
 - A Party shall be deemed interested if it acts as the operator of any system in which a transfer order impacted by the insolvency of a participant has been entered.
5. Information provided in accordance with paragraph 4 must be valid, accurate and complete.
6. Any Party who has been informed of the insolvency of a participant in accordance with Article 6 of the SFD shall make this information available to all other Parties without undue delay, together with a copy of the corresponding decision, provided such decision is in its possession.
7. Without prejudice to paragraph 9 of this Article, any interested Party (within the meaning of paragraph 4) shall, when dealing with the impacted transfer orders in accordance with the law applicable to its system, in the meaning of Article 8 of the SFD, be bound by the moment of entry and irrevocability of Transfer Orders, as defined pursuant to the paragraph 1 and 2 of this Article.

8. All Parties informed of the Insolvency Proceedings of one of their respective Participants in accordance with paragraph 6 shall, without undue delay, take all necessary actions to ensure that any Transfer Orders impacted by the Insolvency Proceedings of a Participant which have been entered into any system operated by other Parties after the moment of being informed of such Insolvency Proceeding shall not be submitted for settlement, unless required to do otherwise under the law applicable to the afore mentioned Insolvency Proceeding, or ordered to do otherwise by a competent court, administrative authority or the insolvency trustee.
9. Without prejudice to the previous paragraph, a CSD into which a transfer order deemed impacted by the Insolvency Proceeding of a Dedicated Cash Account holder has been entered, shall follow the instructions given by the Central Bank operating such Dedicated Cash Account with a view to comply (or allow the Central Bank to comply) with any orders that the Central Bank may receive from a competent court, administrative authority or the insolvency trustee.

Article 3

Standard of Liability

1. The Parties shall be bound by a general duty of reasonable care in relation to each other in performing their obligations under this Collective Agreement.
2. Each Party shall be obliged to perform only the duties and obligations specifically attributed to it in this Agreement and shall be only liable in respect of those duties and obligations as provided for in this Agreement.
3. Each Party shall take all reasonable and practical actions and measures to mitigate any loss, damage or adverse consequence that it may cause to another Party or that it may suffer by reason of the acts or omissions of another Party.

Article 4

Liability rules

1. Each Party shall be liable to the other Party without limitation for any loss or damage resulting from fraud or wilful misconduct in performing its duties and obligations under this Agreement.
2. Each Party shall be liable to the other Party for any Direct Loss incurred resulting from its gross or ordinary negligence in performing its duties and obligations under this Agreement. Lost revenues, lost profits, lost savings and reputational damage shall not qualify as Direct Loss; instead they shall qualify as indirect losses. Liability for indirect loss and damages not qualifying as Direct Loss is excluded to the extent permitted by German Law.
3. Each Party shall be liable to the other Party in proportion of the contribution of its fraud, wilful misconduct, gross or ordinary negligence in the loss or damage of the other Party.

4. No Party shall be liable for losses or damages of the other Party, if these losses or damages are the result of a failure to perform any of its obligations under this Arrangement insofar as such failure is caused by an event of *Force Majeure*. Each Party shall inform the other Party without delay of any actual or imminent failure referred to in this paragraph, and use its best efforts to resolve such a failure as soon as reasonably possible.

Article 5

Indemnification Obligations of the Parties

1. Any Party in breach of this Collective Agreement, within the conditions as set out in Article 3 and 4, shall indemnify and hold harmless any other Party from any claim asserted directly or indirectly against the latter in connection with the processing (or non-processing as the case may be) of any transfer orders impacted by the insolvency of a participant.
2. If legal action is commenced or threatened pursuant to the above paragraph, the Party against which legal action is commenced or threatened shall inform the Party allegedly in breach as soon as reasonably practicable, so as to allow such latter Party, at its expense, control the defence of the claim, without prejudice to the right of the Party allegedly in breach to take an active role in the proceedings at its own expense. The Party against which legal action is commenced or threatened shall not make admissions, agree to any settlement or otherwise compromise the defence of the claim without the prior written consent of the Party allegedly in breach. Such consent shall not be unreasonably withheld.
3. If a Party against which legal action has commenced is held legally liable towards the holder of a Dedicated Cash Account or a securities Account held with a CSD according to a final enforceable judgment pursuant to paragraphs 1 and 2 of this paragraph or has, with the prior written consent of the Party allegedly in breach settled the claim, such Party allegedly in breach shall reimburse the Party held legally liable for the payments that the latter has to make to the holder of the Dedicated Cash Account or CSD Account, in accordance with article 3 and 4 of the Collective Agreement.

Article 6

Transparency of the measures adopted by the Parties in compliance with this Collective Agreement

1. Each Party shall in accordance with the rules applicable to it make publically available the rules implementing the moment of entry and moment of irrevocability. Each Party shall also make these rules available in an English language version.
2. Where a Party considers that another Party does not comply with the obligations set out in Article 2(1) and 2(2) of this Collective Agreement it shall inform all Parties and request that Party to make the necessary adaptations to its rules implementing the moment of entry and moment of irrevocability of this Collective Agreement. Articles 42 and 43 of the T2S Framework Agreement (Dispute resolution and escalation) and Articles 37 and 38 of the T2S Currency Participation Agreement (Dispute Resolution and Escalation Procedure) respectively shall apply *mutatis mutandis* in the context of ensuring compliance with this request.

3. Unless otherwise agreed by all Parties, failure to ensure compliance with such request being upheld by resolvement or resolution of the dispute in accordance with Art. 42 Framework Agreement / Articles 37 Currency Participation Agreement or an arbitration decision of the Court of Justice of the European Union in accordance with Art. 43 Framework Agreement / Articles 38 Currency Participation Agreement {within 180 days} thereof shall result in the termination of all links between securities accounts and Dedicated Cash Accounts previously established in T2S with the Party not complying with the obligations set out in article 2(1) and 2(2) of this Collective Agreement.

Article 7

Amendments

1. Any amendment of, or supplement to, this Collective Agreement must be executed in writing and agreed by all Parties. Written form in the meaning of this Article requires a formal document containing the amendment or supplement with a statement that the document amends or supplements this Collective Agreement. The document shall be duly signed by Authorised Representatives of the Parties.
2. The Parties agree to negotiate in good faith to amend this Collective Agreement.
3. CSDs wishing to add or to remove their names from Annex I to this Collective Agreement, shall notify the other signing parties of their request a minimum of two weeks in advance of the change.

Article 8

No waiver

The exercise or waiver, in whole or in part, of any right, remedy, or duty provided for in this Collective Agreement shall not constitute the waiver of any prior, concurrent or subsequent right, remedy, or duty within this Collective Agreement.

Article 9

Invalid or incomplete provisions

If a provision of this Collective Agreement is or becomes invalid or is inadvertently incomplete, the validity of the other provisions of this Collective Agreement shall not be affected thereby. The invalid or incomplete provision shall be replaced or supplemented by a legally valid provision that is consistent with the Parties' intentions or with what would have been the Parties' intentions according to the aims of this Collective Agreement had they recognised the invalidity or incompleteness. It is the Parties' intention that this Article shall not merely result in a reversal of the burden of proof but that Section 139 of the Buergerliches Gesetzbuch (BGB) is contracted out in its entirety.

*Article 10***Confidentiality and data protection**

1. Parties acknowledge and agree that they may receive Confidential Information in connection with this Collective Agreement.
2. Parties agree that all Confidential Information received shall be used only for the purpose of exercising rights or complying with obligations under this Collective Agreement and the receiving Party shall ensure that only such personnel to whom disclosure of the Confidential Information is required for the purpose of exercising any rights or the performance of the receiving Party's obligations under this Collective Agreement shall have access to the Confidential Information and only to the extent necessary to exercise these rights or perform these obligations.
3. To the extent that Confidential Information disclosed by a Party consists of statistical or personal data, such data may only be used to prepare aggregated data, provided that such aggregated data does not allow for the direct or indirect identification of the content of the specific Confidential Information or any personal data.
4. The receiving Party of Confidential Information shall use all reasonable efforts to protect such Confidential Information from unauthorised use or disclosure (intentional, inadvertent or otherwise) and, in any event, shall exercise at least the same reasonable level of care to avoid any such unauthorised use or disclosure as it uses to protect its Confidential Information.
5. Notwithstanding the foregoing, a receiving Party may disclose Confidential Information of the disclosing Party to third parties with the prior written consent of the disclosing Party, and each Party shall be free to disclose Confidential Information without the consent of the disclosing Party only: (a) as required by a court of competent jurisdiction or a relevant competent authority or an administrative body of a competent jurisdiction, or otherwise required by the applicable laws, but only to the extent legally required; (b) in any potential or actual litigation among the Parties arising in connection with this Collective Agreement, to the extent required to establish, exercise or defend a legal claim; (c) to directors, officers, personnel, attorneys, consultants, auditors, subcontractors, insurers and agents of a Party (including persons belonging to an Affiliate of a Party) on a strict need-to-know basis in connection with their duties, as long as such persons are advised of the confidential nature of such information and their obligation to protect it as confidential and are bound by confidentiality undertakings consistent with those contained in this Collective Agreement, provided that, with respect to points (a) and (c), the Party shall, subject to the applicable laws, inform the other Party reasonably in advance in writing in order to enable it to take precautionary measures.

6. If this Collective Agreement is terminated or expires for any reason, all Parties that have received Confidential Information shall return it to the disclosing Party and/or, at the disclosing Party's discretion, destroy it and provide a corresponding certificate to the disclosing Party, except to the extent that retention of any Confidential Information is required by applicable laws or expressly permitted under this Collective Agreement. A receiving Party may keep one copy of the Confidential Information for backup, audit and compliance purposes, subject to the obligation to keep this copy confidential and not use the information for any other purpose. This confidentiality obligation shall remain in force following the termination or expiration of this Collective Agreement.
7. Nothing in this Article limits the ability of the Parties to provide the text of this Collective Agreement to the relevant Union institutions and bodies, and national authorities, including the relevant competent authorities, for purposes related to receiving regulatory assessments or approvals necessary for provision and use of the T2S Services.
8. The Parties acknowledge and agree that the uniform text of this Collective Agreement may be made public (including publication on the T2S or ECB websites).
9. Each Party shall comply with the data protection laws applicable to it and in particular the relevant implementations of Directive 95/46/EC or, as applicable, Regulation (EC) No 45/2001 (both as amended from time to time) or, in the case of a CSD from a non-European Economic Area jurisdiction, with a data protection framework that is equivalent to these directives and/or regulations.

Article 11

Entire Agreement and non-retroactivity

This Collective Agreement represents the complete agreement regarding the subject-matter hereof and replace any prior oral or written communications among the Parties.

Article 12

Notices

All notices to be given or other communications to be made pursuant to this Collective Agreement shall be valid only if made in writing, including e-mail or facsimile transmission, to the representatives notified by the Parties.

*Article 13***Governing law – Entry into force – relationship with the Framework Agreement – accession clause**

1. This Collective Agreement shall be governed by the laws of Germany.
2. The entry into force of this Collective Agreement shall be conditional (aufschiebend bedingt) upon i) a prior agreement between the Parties on the insolvency procedures and related tools be recorded in a manual of operational procedures to be agreed upon at a later stage, and ii) the approval of these procedures and related tools by each Party by notification to the ECB in the form as attached hereto as Annex II. The ECB shall inform all Parties in writing once conditions i) and ii), above, have been met. This Collective Agreement shall enter into force two weeks after the ECB has confirmed to all Parties that conditions i) and ii) have been met. Notwithstanding this, this Collective Agreement shall be applicable to CSDs migrating to T2S only as of the respective dates of their migration.
3. This Collective Agreement shall stay in force for each CSD as long as the respective Framework Agreement signed between a CSD and the relevant Central Bank stays in force.
4. This Collective Agreement shall stay in force for each Central Bank operating a TARGET2 component as long as that Central Bank operates a TARGET2 component.
5. This Collective Agreement shall stay in force for each Central Bank having signed a Currency Participation Agreement as long as the respective Currency Participation Agreement signed between that Central Bank and the Eurosystem stays in force.
6. Parties to this Collective Agreement shall unconditionally accept the accession thereto of (i) any central bank becoming the operator of a TARGET2 component, (ii) any central bank becoming party to a Currency Participation Agreement with the Eurosystem, and (iii) any CSD becoming party to a Framework Agreement with the Eurosystem. Parties agree such accession shall be effected by a duly signed letter of the acceding entity. The letter shall be addressed to the ECB, which shall inform all other Parties by transmitting a certified copy thereof.

ANNEX I

LIST OF THE CSDs OPERATING THEIR OWN MATCHING COMPONENT

VP LUX S.à.r.l.

VP Securities A/S

Malta Stock Exchange Plc

KDD - Centralna klirinško depotna družba, d.d.

Euroclear Finland Ltd.



ANNEX II – Form for notification

The notification should be signed by the authorised representative of the party. The signed notification should be scanned and send as attachment via e-mail to T2S.CSG@ecb.int.

'We [*insert name of institution*] hereby notify you, in line with Article 13 (2(ii)) of the Collective Agreement, and Annex II thereto, of our approval of the insolvency procedures and related tools, as agreed upon between the Parties

[Signed by authorised representative of institution]'