

EUROPEAN CENTRAL BANK
Secretariat Division
Kaiserstrasse 29
D-60311 Frankfurt am Main

Per e-mail to: ecb.secretariat@ecb.int

Brussels, 14 April 2008

Dear Madam, dear Sir,

Re: COMMENTS TO THE ECB CONSULTATION PAPER ON TARGET 2 SECURITIES – USER REQUIREMENTS DATED 18 DECEMBER 2007

EuropeanIssuers would like to provide the ECB hereinafter with its comments on the ECB consultation document entitled « Target 2 Securities - User Requirements » dated 18 December 2007. Hereinafter we will refer to the project as “T2S”.

We apologise for not having been able to respect the deadline of 2 April 2008 due to circumstances but hope that the viewpoint of issuers, an important group of stakeholders in the T2S project, can still be taken into account.

We stay at your disposal to discuss the present letter at your convenience.

Yours sincerely,



Dorien FRANSENS
Secretary General

EuropeanIssuers promotes the interests of listed companies against the regulatory backdrop of the European Union. EuropeanIssuers represents the vast majority of publicly quoted companies in Europe. Its members are national associations and companies from the following countries: Austria, Belgium, Bulgaria, Cyprus, Finland, France, Germany, Greece, Italy, the Netherlands, Poland, Portugal, Spain, Switzerland and the United Kingdom. These markets count some 9,200 listed companies with a combined market value of some € 8,500 billion.

EuropeanIssuers was formed when EALIC and UNIQUE combined their organisations in early 2008.

EuropeanIssuers is an International Non Profit Association under Belgian law with registered seat and permanent secretariat in Brussels.

**COMMENTS OF EUROPEANISSUERS TO THE ECB CONSULTATION PAPER ON TARGET 2
SECURITIES – USER REQUIREMENTS DATED 18 DECEMBER 2007*****Reduction of costs***

EuropeanIssuers reiterates its support in principle to a project which aims at furthering the integration and harmonization of financial markets. It is expected, according to the General Principles, Chapter 1 of the Consultation document, that by developing a common settlement platform, the project will provide a “harmonised service” to all CSDs and achieve significant economies of scale leading to reduced settlement costs. By pooling the settlement process in a single settlement platform, it is asserted, there is a potential for a significant decrease in settlement fees, not only cross border but also domestic.

EuropeanIssuers would like to point out that it has not yet been demonstrated that T2S would also lead to reduced costs for issuers. On the contrary some say that T2S might even generate additional costs for issuers.

Any initiative must clearly take into account the inherent differences between direct and indirect holding systems. Our concern in this respect is that T2S or any other technical approach to centralised registration or settlement must not impose additional costs to issuers of markets that operate under a CSD that facilitates settlement at an end-client level and use end-client accounts, not only for registration but also for settlement purposes, as is the case in some European countries. It appears that the proposal of the ECB could increase costs for direct holding systems. Such costs are most likely to be transferred to market participants and hence negatively differentiate between securities of issuers operating under direct holding systems and those held in omnibus accounts. Eventually the said costs would be borne by issuers operating in direct holding systems.¹

There are also a number of additional settlement costs that may relate to the permitted collateral used for settlement purposes, matching costs among CSDs, telecommunication costs, costs related to the use of more than one Account Operators, the pricing of the additional custody services that CSDs are likely to perform after the implementation of T2S project etc. In this respect, if CSDs that facilitate settlement at an end-client level and use end-client accounts, not only for registration but also for settlement purposes, are required to add any further functionalities, for example additional settlement accounts, in terms of carrying out the settlement process, this will eventually increase transaction costs.

¹ Taking Greece as an example the following are costs that are likely to be imposed on issuers after the implementation of T2S project: Current law and regulations require one investor account per physical or legal entity to be kept at CSD level. The mapping of those accounts in T2S will increase the actual number of accounts kept. If it is the case that for each Account Operator and for each unique end investor currently at the CSD, a different T2S account needs to be opened and maintained by the CSD at T2S, this will increase the cost of opening and maintaining accounts at T2S. Such cost will be transferred to Market Participants. In addition, all Corporate Actions that today are handled by the CSD, during night processing, and which appear at the start of day as new balances in the investor accounts will be treated within T2S as Settlement Instructions. Their cost today, amounts in the order of 4 €cents per account charged to the issuer. As advised by our CSD in Greece, this cost will increase by 7 times at least according to the 29 €cents T2S Instruction cost estimation. Taking into account that in direct holding systems the number of accounts is considerably bigger than in indirect holding systems, one can imagine the negative impact that this will have on direct holding systems. From official CSD monthly figures, account holdings with a net worth below €3.000 amount in Greece to about half a million.

Finally it is Europeanissuers' understanding that the participation of the majority if not all CSDs would be necessary to result in a significant cost reduction and to make the project commercially favourable. As CSDs' participation is optional (Principle 12, Chapter1 of the consultation paper), there is a risk that the critical mass to render the project effectively interesting may not be reached.

As a consequence one should not jump to the conclusion that T2S will minimize transaction costs. At this stage the impact of T2S on issuers has not been fully analysed yet. The inherent differences between direct and indirect holding systems must be taken into account in a way that it will not penalize issuers operating under direct holding systems. In addition, the level of CSD participation to T2S will also impact the size of cost reduction. Finally, there is no clear picture on the allocation of the benefits that will be realised by the overall cost reduction. Those benefits should not only be enjoyed by the stakeholders that are directly concerned but should flow back to the users of the system.

Conflict of laws – ownership rights

Another aspect of the T2S project that must be more closely examined is the place of maintenance of the securities (accounts) after the implementation of the T2S project. For many jurisdictions proprietary rights on unregistered securities are governed by the law of the location where the securities are maintained. This could mean for example that proprietary rights in Greek Securities would be governed by German Law. To mitigate some of these legal implications, a distinction is attempted in the ECB's proposal between "technical" and "legal" maintenance of the securities and cash accounts on the T2S platform. However, such distinction is not entirely clear, it is not tested, it has no legal background and there is no indication on how the courts in different jurisdictions are going to react. This may be a major harmonisation inefficiency that could considerably affect the operation of T2S. In general terms while T2S mainly focuses on technical aspects, it raises issues in areas where no harmonised rules exist. There is a clear risk in proceeding with a harmonisation at a technical level without harmonising first the governing legal rules.

More analysis is needed on the meaning of the "technical maintenance" of the accounts concerned, as it is crucial to realize the nature of such maintenance. The question is whether these accounts should be "information only accounts", for example mirrored accounts of the respective securities accounts kept in the CSDs' books or securities accounts in their meaning as accounts through which book entries, transfers (debits-credits) or registration of the relevant securities takes place.

For this reason, EuropeanIssuers is of the opinion that the implementation of the T2S should be done in liaison with necessary new EU legislation or in general legal harmonisation in this area in the European Union.

Liquidity

EuropeanIssuers welcomes a project that will help to improve the liquidity of the issuers' securities. T2S will serve as a technical platform for providing settlement services to CSDs (Principle 3, Chapter 1 of the consultation document). These services, which will be outsourced by the CSDs on a voluntary basis, consist of completing delivery versus payment

(DVP) settlement in central bank money for all securities denominated in Euro that are held in the accounts of the participating CSDs. It is our understanding that the project does not imply the opening of new securities accounts for users, who will maintain their accounts with the existing CSDs. Section 9.4, Chapter 9 of the consultation paper (“Specific settlement processing requirements”) refers to the fact that “one of the major benefits of T2S is that settlement of cross-CSD transactions can be as efficient as intra-CSD settlement”. By bringing together the securities accounts of the users of multiple CSDs on a single platform, the project will make the securities available to a wider range of participants via a single entry point and therefore ease the settlement of trading and, accordingly, of trading itself.

Notary function – core vs non core services

EuropeanIssuers noted that the performance of the CSD’s notary function (e.g. record-keeping for issuers) falls outside the scope of the T2S project and should therefore remain attributed to each CSD or, where applicable, to the company’s Registrar. This could also be deduced from the fact that “*the CSD will continue to be legally responsible for opening, maintaining and closing the securities account of its users*” (Principle 4, Chapter 1). T2S would only deliver the settlement process (delivery versus payment- DVP), which would be effectuated on a single platform, while CSDs retain legal responsibility vis-à-vis the issuers and the CSD’s participants (banks, investment firms) and continue to perform the custody function.

It appears however that the issuance accounts will be maintained at the common T2S platform and that the entire settlement process will take place there. Central to the issuers’ concern in this respect is the integrity of the securities issuance. The notary function of the issuer CSD should not be negatively impacted by T2S. The issuer CSD must be able to ensure the first level concordance, namely that there are never more securities in circulation than exist on the issuance account. Such integrity also requires that the securities clearing and settlement systems do not create and propagate financial risk by mixing up core with non core or competitive activities. As a result, not only should the notary function clearly be separated from other activities assumed by the CSDs, or where applicable by the Registrars, but this should also be acknowledged EU wide, which is far from being presently the case, if one considers the still blurred distinction between core and non core activities in the Code of conduct.

Risk

The use of central bank money for the settlement of cash has the advantage of eliminating both the credit risk and the settlement risk (delivery versus payment), given that cash transfers take place on the books of the central bank.

Corporate actions

EuropeanIssuers welcomes the contribution that T2S would make to the harmonisation of the processing of corporate actions. (See footnote 1 however for the cost issue). T2S provides a standardised set of settlement processes for corporate actions. Typically, the processing of a corporate action can be broken down into several steps: first, the collection of corporate action information; second, the announcement to the holder; third, the reception of participants’ instructions where relevant; fourth, the calculation of the

entitlement and fifth, processing the settlement related to the corporate action. Once the corporate action information has been collected and announced to the relevant holder and the entitlement has been calculated, T2S should be instructed to perform related settlement activities. Even if T2S only performs the settlement processing part of corporate actions, it can do so by using components selected from a single harmonised set of process steps, thus facilitating further corporate actions harmonisation developments in the same direction.

EuropeanIssuers believes that it should be clearly spelled out that the contribution by T2S in the area of corporate actions solely concerns the operational aspects of the processing of corporate actions and that it has no impact whatsoever on the legal framework governing corporate actions. Furthermore EuropeanIssuers would like to draw the ECB's attention to the work that the private sector is currently carrying out in this area. Indeed a cross sector working group composed by CSDs, intermediaries, stock exchanges and issuers, is mandated by the European Commission to draft market standards in the context of the removal of the Giovannini barriers (barrier 3). EuropeanIssuers recommends the ECB to liaise with this working group.

Single point of record

In a Europe wide securities market, trading will occur through multiple execution venues for the same stock. MiFID determines that such execution venues will include Recognised Investment Exchanges, Multi-Lateral Trading Facilities and Systematic Internalisers. Settlement will come from stock held in multiple CSD's. With this fragmentation it is vital that issuers are able to obtain details of individual trades in their shares on an ongoing basis. This is important also when issuers are in the midst of a corporate action such as a takeover or rights issue. A single point of record of trades can help to identify potential market abuse. T2S has the opportunity to provide a single source for issuers [or their agent Notaries/Registrars] to obtain details of all the individual trades, therefore movements in its shares, on an intraday basis. This can provide an important safeguard for issuers, their shareholders and therefore for the market.
