

Official Journal

of the European Union

L 215



English edition

Legislation

Volume 55

11 August 2012

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II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION

of 13 December 2011

on the signing, on behalf of the Union, of the Agreement between the United States of America and the European Union on the use and transfer of Passenger Name Records to the United States Department of Homeland Security

(2012/471/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 82(1)(d) and 87(2)(a), in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) On 2 December 2010, the Council adopted a decision, together with negotiation directives, authorising the Commission to open negotiations between the Union and the United States of America on the transfer and use of Passenger Name Records (PNR) to prevent and combat terrorism and other serious transnational crime.

(2) The negotiations were successfully concluded by the initialling of the Agreement between the United States of America and the European Union on the use and transfer of Passenger Name Records to the United States Department of Homeland Security, ('the Agreement').

(3) The Agreement respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably the right to private and family life, recognised in Article 7 thereof, the right to the protection of personal data, recognised in Article 8 thereof and the right to effective remedy and fair trial recognised in Article 47 thereof. This Agreement should be applied in accordance with those rights and principles.

(4) In accordance with Articles 1 and 2 of the Protocol (No 21) on the Position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Decision and are not bound by it or subject to its application.

(5) In accordance with Articles 1 and 2 of the Protocol (No 22) on the Position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by the Agreement or subject to its application.

(6) The Agreement should be signed, subject to its conclusion,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Agreement between the United States of America and the European Union on the use and transfer of Passenger Name Records to the United States Department of Homeland Security is hereby authorised on behalf of the Union, subject to the conclusion of the said Agreement.

Article 2

The President of the Council is authorised to designate the person(s) empowered to sign the Agreement on behalf of the Union.

Article 3

The Declaration of the Union on the Agreement in respect of its obligations under Articles 17 and 23 thereof is hereby approved.

The text of the Declaration is annexed to this decision.

Article 4

This Decision shall enter into force on the day of its adoption.

Done at Brussels, 13 December 2011.

For the Council
The President
M. CICHOCKI

ANNEX

Declaration of the Union on the Agreement on the use and transfer of Passenger Name Records to the United States Department of Homeland Security ('the Agreement'), in respect of its obligations under Articles 17 and 23 of thereof

1. In the context of the joint review and evaluation mechanism set out in Article 23 of the Agreement, and without prejudice to other matters that may be raised through this mechanism, the Union will seek information from the United States on the exchange of information where appropriate, regarding the transfers of the Union citizens' and residents' PNR data to the authorities of third countries as laid down in Article 17 of the Agreement;
 2. In the context of the joint review and evaluation mechanism referred to in point 1 of this Declaration, the Union will request from the United States all appropriate information on the implementation of the conditions governing those transfers in accordance with Article 17 of the Agreement;
 3. The Union, in the context of the joint review and evaluation mechanism referred to in point 1 of this Declaration, will pay particular attention to the respect of all the safeguards for the implementation of Article 17(2) of the Agreement, so as to be satisfied that third countries receiving such data have agreed to afford to the data the privacy protections comparable to that provided to PNR by DHS under the Agreement.
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COUNCIL DECISION

of 26 April 2012

**on the conclusion of the Agreement between the United States of America and the European Union
on the use and transfer of passenger name records to the United States Department of Homeland
Security**

(2012/472/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(1)(d) and Article 87(2)(a), in conjunction with Article 218(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament ⁽¹⁾,

Whereas:

- (1) On 2 December 2010, the Council adopted a decision, together with negotiation directives, authorising the Commission to open negotiations between the Union and the United States of America on the transfer and use of passenger name records (PNR) to prevent and combat terrorism and other serious transnational crime.
- (2) In accordance with Council Decision 2012/471/EU ⁽²⁾, the Agreement between the United States of America and the European Union on the use and transfer of passenger name records to the United States Department of Homeland Security ('the Agreement') was signed on 14 December 2011, subject to its conclusion.
- (3) The Agreement respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably the right to private and family life, recognised in Article 7 thereof, the right to the protection of personal data, recognised in Article 8 thereof and the right to effective remedy and fair trial recognised in Article 47 thereof. This Agreement should be applied in accordance with those rights and principles.
- (4) In accordance with Article 3 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified its wish to take part in the adoption and application of this Decision.

(5) In accordance with Articles 1 and 2 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

(6) In accordance with Articles 1 and 2 of Protocol (No 22) on the Position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by the Agreement or subject to its application.

(7) The Agreement should be approved,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the United States of America and the European Union on the use and transfer of passenger name records to the United States Department of Homeland Security is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall designate the person(s) empowered to proceed, on behalf of the Union, to the exchange of the notifications provided for in Article 27 of the Agreement, in order to express the consent of the Union to be bound by the Agreement.

Article 3

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Luxembourg, 26 April 2012.

For the Council
The President
M. BØDSKOV

⁽¹⁾ Consent of 19 April 2012 (not yet published in the Official Journal).

⁽²⁾ See page 1 of this Official Journal.

AGREEMENT**between the United States of America and the European Union on the use and transfer of passenger name records to the United States Department of Homeland Security**

THE UNITED STATES OF AMERICA,

hereinafter referred to also as 'the United States', and

THE EUROPEAN UNION,

hereinafter referred to also as 'the EU',

together hereinafter referred to as 'the Parties',

DESIRING to prevent and combat terrorism and serious transnational crime effectively as a means of protecting their respective democratic societies and common values;

SEEKING to enhance and encourage cooperation between the Parties in the spirit of transatlantic partnership;

RECOGNISING the right and responsibility of States to ensure the security of their citizens and protect their borders and mindful of the responsibility of all nations to protect the life and safety of the public including those using international transportation systems;

CONVINCED that information sharing is an essential component in the fight against terrorism and serious transnational crime and that in this context, the processing and use of passenger name records (PNR) is a necessary tool that gives information that cannot be obtained by other means;

DETERMINED to prevent and combat terrorist offences and transnational crime, while respecting fundamental rights and freedoms and recognising the importance of privacy and the protection of personal data and information;

HAVING REGARD for international instruments, US statutes and regulations requiring each air carrier operating passenger flights in foreign air transportation to or from the United States to make PNR available to the Department of Homeland Security (DHS) to the extent they are collected and contained in the air carrier's automated reservation/departure control systems, and comparable requirements that are or may be implemented in the EU;

NOTING that DHS processes and uses PNR for the purpose of preventing, detecting, investigating and prosecuting terrorist offences and transnational crime in compliance with safeguards on privacy and the protection of personal data and information, as set out in this Agreement;

STRESSING the importance of sharing PNR and relevant and appropriate analytical information obtained from PNR by the United States with competent police and judicial authorities of Member States of the European Union, hereinafter 'EU Member States', and Europol or Eurojust as a means to foster international police and judicial cooperation;

ACKNOWLEDGING both Parties' longstanding traditions of respect for individual privacy, as reflected in their laws and founding documents;

MINDFUL of the EU's commitments pursuant to Article 6 of the Treaty on European Union on respect for fundamental rights, the right to privacy with regard to the processing of personal data as stipulated in Article 16 of the Treaty on the Functioning of the European Union, the principles of proportionality and necessity concerning the right to private and family life, the respect for privacy, and the protection of personal data under Article 8 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, Council of Europe Convention No 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data and its additional Protocol 181, and Articles 7 and 8 of the Charter of Fundamental Rights of the European Union;

MINDFUL that DHS currently employs robust processes to protect personal privacy and ensure data integrity, including physical security, access controls, data separation and encryption, audit capabilities and effective accountability measures;

RECOGNISING the importance of ensuring data quality, accuracy, integrity, and security, and instituting appropriate accountability to ensure these principles are observed;

NOTING in particular the principle of transparency and the various means by which the United States ensures that passengers whose PNR is collected by DHS are made aware of the need for and use of their PNR;

FURTHER RECOGNISING that the collection and analysis of PNR is necessary for DHS to carry out its border security mission, while ensuring that collection and use of PNR remains relevant and necessary for the purposes for which it is collected;

RECOGNISING that, in consideration of this Agreement and its implementation, DHS shall be deemed to ensure an adequate level of data protection for the processing and use of PNR transferred to DHS;

MINDFUL that the United States and the European Union are committed to ensuring a high level of protection of personal information while fighting crime and terrorism, and are determined to reach, without delay, an agreement to protect personal information exchanged in the context of fighting crime and terrorism in a comprehensive manner that will advance our mutual goals;

ACKNOWLEDGING the successful Joint Reviews in 2005 and 2010 of the 2004 and 2007 Agreements between the Parties on the transfer of PNR;

NOTING the interest of the Parties, as well as EU Member States, in exchanging information regarding the method of transmission of PNR as well as the onward transfer of PNR as set forth in the relevant articles of this Agreement, and further noting the EU's interest in having this addressed in the context of the consultation and review mechanism set forth in this Agreement;

AFFIRMING that this Agreement does not constitute a precedent for any future arrangements between the Parties, or between either of the Parties and any other party, regarding the processing, use, or transfer of PNR or any other form of data, or regarding data protection;

RECOGNISING the related principles of proportionality as well as relevance and necessity that guide this Agreement and its implementation by the European Union and the United States; and

HAVING REGARD to the possibility of the Parties to further discuss the transfer of PNR data in the maritime mode;

HEREBY AGREE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose

1. The purpose of this Agreement is to ensure security and to protect the life and safety of the public.

2. For this purpose, this Agreement sets forth the responsibilities of the Parties with respect to the conditions under which PNR may be transferred, processed and used, and protected.

Article 2

Scope

1. PNR, as set forth in the Guidelines of the International Civil Aviation Organisation, shall mean the record created by air carriers or their authorised agents for each journey booked by or on behalf of any passenger and contained in carriers' reservation systems, departure control systems, or equivalent systems providing similar functionality (collectively referred to in this Agreement as 'reservation systems'). Specifically, as used in this Agreement, PNR consists of the data types set forth in the Annex to this Agreement ('Annex').

2. This Agreement shall apply to carriers operating passenger flights between the European Union and the United States.

3. This Agreement shall also apply to carriers incorporated or storing data in the European Union and operating passenger flights to or from the United States.

Article 3

Provision of PNR

The Parties agree that carriers shall provide PNR contained in their reservation systems to DHS as required by and in accordance with DHS standards and consistent with this Agreement. Should PNR transferred by carriers include data beyond those listed in the Annex, DHS shall delete such data upon receipt.

Article 4

Use of PNR

1. The United States collects, uses and processes PNR for the purposes of preventing, detecting, investigating, and prosecuting:

(a) Terrorist offences and related crimes, including:

- (i) Conduct that —
 - 1. involves a violent act or an act dangerous to human life, property, or infrastructure; and
 - 2. appears to be intended to —
 - a. intimidate or coerce a civilian population;
 - b. influence the policy of a government by intimidation or coercion; or
 - c. affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage-taking;
- (ii) Activities constituting an offence within the scope of and as defined in applicable international conventions and protocols relating to terrorism;
- (iii) Providing or collecting funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the acts described in subparagraphs (i) or (ii);
- (iv) Attempting to commit any of the acts described in subparagraphs (i), (ii), or (iii);
- (v) Participating as an accomplice in the commission of any of the acts described in subparagraphs (i), (ii), or (iii);
- (vi) Organising or directing others to commit any of the acts described in subparagraphs (i), (ii), or (iii);
- (vii) Contributing in any other way to the commission of any of the acts described in subparagraphs (i), (ii), or (iii);
- (viii) Threatening to commit an act described in subparagraph (i) under circumstances which indicate that the threat is credible;
- (b) Other crimes that are punishable by a sentence of imprisonment of three years or more and that are transnational in nature.

A crime is considered as transnational in nature in particular if:

- (i) it is committed in more than one country;
- (ii) it is committed in one country but a substantial part of its preparation, planning, direction or control takes place in another country;
- (iii) it is committed in one country but involves an organised criminal group that engages in criminal activities in more than one country;

(iv) it is committed in one country but has substantial effects in another country; or

(v) it is committed in one country and the offender is in or intends to travel to another country.

2. PNR may be used and processed on a case-by-case basis where necessary in view of a serious threat and for the protection of vital interests of any individual or if ordered by a court.

3. PNR may be used and processed by DHS to identify persons who would be subject to closer questioning or examination upon arrival to or departure from the United States or who may require further examination.

4. Paragraphs 1, 2, and 3 shall be without prejudice to domestic law enforcement, judicial powers, or proceedings, where other violations of law or indications thereof are detected in the course of the use and processing of PNR.

CHAPTER II

SAFEGUARDS APPLICABLE TO THE USE OF PNR

Article 5

Data security

1. DHS shall ensure that appropriate technical measures and organisational arrangements are implemented to protect personal data and personal information contained in PNR against accidental, unlawful or unauthorised destruction, loss, disclosure, alteration, access, processing or use.

2. DHS shall make appropriate use of technology to ensure data protection, security, confidentiality and integrity. In particular, DHS shall ensure that:

(a) encryption, authorisation and documentation procedures recognised by competent authorities are applied. In particular, access to PNR shall be secured and limited to specifically authorised officials;

(b) PNR shall be held in a secure physical environment and protected with physical intrusion controls; and

(c) a mechanism exists to ensure that PNR queries are conducted consistent with Article 4.

3. In the event of a privacy incident (including unauthorised access or disclosure), DHS shall take reasonable measures to notify affected individuals as appropriate, to mitigate the risk of harm of unauthorised disclosures of personal data and information, and to institute remedial measures as may be technically practicable.

4. Within the scope of this Agreement, DHS shall inform without undue delay the relevant European authorities about cases of significant privacy incidents involving PNR of EU citizens or residents resulting from accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, or any unlawful forms of processing or use.

5. The United States confirms that effective administrative, civil, and criminal enforcement measures are available under US law for privacy incidents. DHS may take disciplinary action against persons responsible for any such privacy incident, as appropriate, to include denial of system access, formal reprimands, suspension, demotion, or removal from duty.

6. All access to PNR, as well as its processing and use, shall be logged or documented by DHS. Logs or documentation shall be used only for oversight, auditing, and system maintenance purposes or as otherwise required by law.

Article 6

Sensitive data

1. To the extent that PNR of a passenger as collected includes sensitive data (i.e. personal data and information revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, or data concerning the health or sex life of the individual), DHS shall employ automated systems to filter and mask out sensitive data from PNR. In addition, DHS shall not further process or use such data, except in accordance with paragraphs 3 and 4.

2. DHS shall provide to the European Commission within 90 days of the entry into force of this Agreement a list of codes and terms identifying sensitive data that shall be filtered out.

3. Access to, as well as processing and use of, sensitive data shall be permitted in exceptional circumstances where the life of an individual could be imperilled or seriously impaired. Such data may be exclusively accessed using restrictive processes on a case-by-case basis with the approval of a DHS senior manager.

4. Sensitive data shall be permanently deleted not later than 30 days from the last receipt of PNR containing such data by DHS. However, sensitive data may be retained for the time specified in US law for the purpose of a specific investigation, prosecution or enforcement action.

Article 7

Automated individual decisions

The United States shall not make decisions that produce significant adverse actions affecting the legal interests of individuals based solely on automated processing and use of PNR.

Article 8

Retention of data

1. DHS retains PNR in an active database for up to five years. After the initial six months of this period, PNR shall be depersonalised and masked in accordance with paragraph 2 of this Article. Access to this active database shall, unless otherwise permitted by this Agreement, be restricted to a limited number of specifically authorised officials.

2. To achieve depersonalisation, personally identifiable information contained in the following PNR data types shall be masked out:

(a) name(s);

(b) other names on PNR;

(c) all available contact information (including originator information);

(d) general remarks, including other supplementary information (OSI), special service information (SSI), and special service request (SSR); and

(e) any collected Advance Passenger Information System (APIS) information.

3. After this active period, PNR shall be transferred to a dormant database for a period of up to ten years. This dormant database shall be subject to additional controls, including a more restricted number of authorised personnel, as well as a higher level of supervisory approval required before access. In this dormant database, PNR shall not be repersonalised except in connection with law enforcement operations and then only in connection with an identifiable case, threat or risk. As regards the purposes as set out in Article 4(1)(b), PNR in this dormant database may only be repersonalised for a period of up to five years.

4. Following the dormant period, data retained must be rendered fully anonymised by deleting all data types which could serve to identify the passenger to whom PNR relate without the possibility of repersonalisation.

5. Data that are related to a specific case or investigation may be retained in an active PNR database until the case or investigation is archived. This paragraph is without prejudice to data retention requirements for individual investigation or prosecution files.

6. The Parties agree that, within the framework of the evaluation as provided for in Article 23(1), the necessity of a 10-year dormant period of retention will be considered.

*Article 9***Non-discrimination**

The United States shall ensure that the safeguards applicable to processing and use of PNR under this Agreement apply to all passengers on an equal basis without unlawful discrimination.

*Article 10***Transparency**

1. DHS shall provide information to the travelling public regarding its use and processing of PNR through:

- (a) publications in the Federal Register;
- (b) publications on its website;
- (c) notices that may be incorporated by the carriers into contracts of carriage;
- (d) statutorily required reporting to Congress; and
- (e) other appropriate measures as may be developed.

2. DHS shall publish and provide to the EU for possible publication its procedures and modalities regarding access, correction or rectification, and redress procedures.

3. The Parties shall work with the aviation industry to encourage greater visibility to passengers at the time of booking on the purpose of the collection, processing and use of PNR by DHS, and on how to request access, correction and redress.

*Article 11***Access for individuals**

1. In accordance with the provisions of the Freedom of Information Act, any individual, regardless of nationality, country of origin, or place of residence is entitled to request his or her PNR from DHS. DHS shall timely provide such PNR subject to the provisions of paragraphs 2 and 3 of this Article.

2. Disclosure of information contained in PNR may be subject to reasonable legal limitations, applicable under US law, including any such limitations as may be necessary to safeguard privacy-protected, national security, and law enforcement sensitive information.

3. Any refusal or restriction of access shall be set forth in writing and provided to the requesting individual on a timely basis. Such notification shall include the legal basis on which information was withheld and shall inform the individual of the options available under US law for seeking redress.

4. DHS shall not disclose PNR to the public, except to the individual whose PNR has been processed and used or his or her representative, or as required by US law.

*Article 12***Correction or rectification for individuals**

1. Any individual regardless of nationality, country of origin, or place of residence may seek the correction or rectification, including the possibility of erasure or blocking, of his or her PNR by DHS pursuant to the processes described in this Agreement.

2. DHS shall inform, without undue delay, the requesting individual in writing of its decision whether to correct or rectify the PNR at issue.

3. Any refusal or restriction of correction or rectification shall be set forth in writing and provided to the requesting individual on a timely basis. Such notification shall include the legal basis of such refusal or restriction and shall inform the individual of the options available under US law for seeking redress.

*Article 13***Redress for individuals**

1. Any individual regardless of nationality, country of origin, or place of residence whose personal data and personal information has been processed and used in a manner inconsistent with this Agreement may seek effective administrative and judicial redress in accordance with US law.

2. Any individual is entitled to seek to administratively challenge DHS decisions related to the use and processing of PNR.

3. Under the provisions of the Administrative Procedure Act and other applicable law, any individual is entitled to petition for judicial review in US federal court of any final agency action by DHS. Further, any individual is entitled to petition for judicial review in accordance with applicable law and relevant provisions of:

- (a) the Freedom of Information Act;
- (b) the Computer Fraud and Abuse Act;
- (c) the Electronic Communications Privacy Act; and
- (d) other applicable provisions of US law.

4. In particular, DHS provides all individuals an administrative means (currently the DHS Traveller Redress Inquiry Program (DHS TRIP)) to resolve travel-related inquiries including those related to the use of PNR. DHS TRIP provides

a redress process for individuals who believe they have been delayed or prohibited from boarding a commercial aircraft because they were wrongly identified as a threat. Pursuant to the Administrative Procedure Act and Title 49, United States Code, Section 46110, any such aggrieved individual is entitled to petition for judicial review in US federal court from any final agency action by DHS relating to such concerns.

Article 14

Oversight

1. Compliance with the privacy safeguards in this Agreement shall be subject to independent review and oversight by Department Privacy Officers, such as the DHS Chief Privacy Officer, who:

- (a) have a proven record of autonomy;
- (b) exercise effective powers of oversight, investigation, intervention, and review; and
- (c) have the power to refer violations of law related to this Agreement for prosecution or disciplinary action, when appropriate.

They shall, in particular, ensure that complaints relating to non-compliance with this Agreement are received, investigated, responded to, and appropriately redressed. These complaints may be brought by any individual, regardless of nationality, country of origin, or place of residence.

2. In addition, application of this Agreement by the United States shall be subject to independent review and oversight by one or more of the following entities:

- (a) the DHS Office of Inspector General;
- (b) the Government Accountability Office as established by Congress; and
- (c) the US Congress.

Such oversight may be manifested in the findings and recommendations of public reports, public hearings, and analyses.

CHAPTER III

MODALITIES OF TRANSFERS

Article 15

Method of PNR transmission

1. For the purposes of this Agreement, carriers shall be required to transfer PNR to DHS using the 'push' method, in

furtherance of the need for accuracy, timeliness and completeness of PNR.

2. Carriers shall be required to transfer PNR to DHS by secure electronic means in compliance with the technical requirements of DHS.

3. Carriers shall be required to transfer PNR to DHS in accordance with paragraphs 1 and 2, initially at 96 hours before the scheduled flight departure and additionally either in real time or for a fixed number of routine and scheduled transfers as specified by DHS.

4. In any case, the Parties agree that all carriers shall be required to acquire the technical ability to use the 'push' method not later than 24 months following entry into force of this Agreement.

5. DHS may, where necessary, on a case-by-case basis, require a carrier to provide PNR between or after the regular transfers described in paragraph 3. Wherever carriers are unable, for technical reasons, to respond timely to requests under this Article in accordance with DHS standards, or, in exceptional circumstances in order to respond to a specific, urgent, and serious threat, DHS may require carriers to otherwise provide access.

Article 16

Domestic sharing

1. DHS may share PNR only pursuant to a careful assessment of the following safeguards:

- (a) Exclusively as consistent with Article 4;
- (b) Only with domestic government authorities when acting in furtherance of the uses outlined in Article 4;
- (c) Receiving authorities shall afford to PNR equivalent or comparable safeguards as set out in this Agreement; and
- (d) PNR shall be shared only in support of those cases under examination or investigation and pursuant to written understandings and US law on the exchange of information between domestic government authorities.

2. When transferring analytical information obtained from PNR under this Agreement, the safeguards set forth in paragraph 1 of this Article shall be respected.

Article 17

Onward transfer

1. The United States may transfer PNR to competent government authorities of third countries only under terms consistent with this Agreement and only upon ascertaining that the recipient's intended use is consistent with those terms.

2. Apart from emergency circumstances, any such transfer of data shall occur pursuant to express understandings that incorporate data privacy protections comparable to those applied to PNR by DHS as set out in this Agreement.

3. PNR shall be shared only in support of those cases under examination or investigation.

4. Where DHS is aware that PNR of a citizen or a resident of an EU Member State is transferred, the competent authorities of the concerned Member State shall be informed of the matter at the earliest appropriate opportunity.

5. When transferring analytical information obtained from PNR under this Agreement, the safeguards set forth in paragraphs 1 to 4 shall be respected.

Article 18

Police, law enforcement and judicial cooperation

1. Consistent with existing law enforcement or other information-sharing agreements or arrangements between the United States and any EU Member State or Europol and Eurojust, DHS shall provide to competent police, other specialised law enforcement or judicial authorities of the EU Member States and Europol and Eurojust within the remit of their respective mandates, as soon as practicable, relevant, and appropriate, analytical information obtained from PNR in those cases under examination or investigation to prevent, detect, investigate, or prosecute within the European Union terrorist offences and related crimes or transnational crime as described in Article 4(1)(b).

2. A police or judicial authority of an EU Member State, or Europol or Eurojust, may request, within its mandate, access to PNR or relevant analytical information obtained from PNR that are necessary in a specific case to prevent, detect, investigate, or prosecute within the European Union terrorist offences and related crimes or transnational crime as described in Article 4(1)(b). DHS shall, subject to the agreements and arrangements noted in paragraph 1 of this Article, provide such information.

3. Pursuant to paragraphs 1 and 2 of this Article, DHS shall share PNR only following a careful assessment of the following safeguards:

- (a) Exclusively as consistent with Article 4;
- (b) Only when acting in furtherance of the uses outlined in Article 4; and
- (c) Receiving authorities shall afford to PNR equivalent or comparable safeguards as set out in this Agreement.

4. When transferring analytical information obtained from PNR under this Agreement, the safeguards set forth in paragraphs 1 to 3 of this Article shall be respected.

CHAPTER IV

IMPLEMENTING AND FINAL PROVISIONS

Article 19

Adequacy

In consideration of this Agreement and its implementation, DHS shall be deemed to provide, within the meaning of relevant EU data protection law, an adequate level of protection for PNR processing and use. In this respect, carriers which have provided PNR to DHS in compliance with this Agreement shall be deemed to have complied with applicable legal requirements in the EU related to the transfer of such data from the EU to the United States.

Article 20

Reciprocity

1. The Parties shall actively promote the cooperation of carriers within their respective jurisdictions with any PNR system operating or as may be adopted in the other's jurisdiction, consistent with this Agreement.

2. Given that the establishment of an EU PNR system could have a material effect on the Parties' obligations under this Agreement, if and when an EU PNR system is adopted, the Parties shall consult to determine whether this Agreement would need to be adjusted accordingly to ensure full reciprocity. Such consultations shall in particular examine whether any future EU PNR system would apply less stringent data protection standards than those provided for in this Agreement, and whether, therefore, this Agreement should be amended.

Article 21

Implementation and non-derogation

1. This Agreement shall not create or confer, under US law, any right or benefit on any person or entity, private or public. Each Party shall ensure that the provisions of this Agreement are properly implemented.

2. Nothing in this Agreement shall derogate from existing obligations of the United States and EU Member States, including under the Agreement on Mutual Legal Assistance between the European Union and the United States of 25 June 2003 and the related bilateral mutual legal assistance instruments between the United States and EU Member States.

Article 22

Notification of changes in domestic law

The Parties shall advise each other regarding the enactment of any legislation that materially affects the implementation of this Agreement.

*Article 23***Review and evaluation**

1. The Parties shall jointly review the implementation of this Agreement one year after its entry into force and regularly thereafter as jointly agreed. Further, the Parties shall jointly evaluate this Agreement four years after its entry into force.
2. The Parties shall jointly determine in advance the modalities and terms of the joint review and shall communicate to each other the composition of their respective teams. For the purpose of the joint review, the European Union shall be represented by the European Commission, and the United States shall be represented by DHS. The teams may include appropriate experts on data protection and law enforcement. Subject to applicable laws, participants in the joint review shall be required to have appropriate security clearances and to respect the confidentiality of the discussions. For the purpose of the joint review, DHS shall ensure appropriate access to relevant documentation, systems, and personnel.
3. Following the joint review, the European Commission shall present a report to the European Parliament and the Council of the European Union. The United States shall be given an opportunity to provide written comments which shall be attached to the report.

*Article 24***Resolution of disputes and suspension of agreement**

1. Any dispute arising from the implementation of this Agreement, and any matters related thereto, shall give rise to consultations between the Parties, with a view to reaching a mutually agreeable resolution, including providing an opportunity for either Party to cure within a reasonable time.
2. In the event that consultations do not result in a resolution of the dispute, either Party may suspend the application of this Agreement by written notification through diplomatic channels, with any such suspension to take effect 90 days from the date of such notification, unless the Parties otherwise agree to a different effective date.
3. Notwithstanding any suspension of this Agreement, all PNR obtained by DHS pursuant to this Agreement prior to its suspension shall continue to be processed and used in accordance with the safeguards of this Agreement.

*Article 25***Termination**

1. Either Party may terminate this Agreement at any time by written notification through diplomatic channels.
2. Termination shall take effect 120 days from the date of such notification, unless the Parties otherwise agree to a different effective date.

3. Prior to any termination of this Agreement, the Parties shall consult each other in a manner which allows sufficient time for reaching a mutually agreeable resolution.

4. Notwithstanding any termination of this Agreement, all PNR obtained by DHS pursuant to this Agreement prior to its termination shall continue to be processed and used in accordance with the safeguards of this Agreement.

*Article 26***Duration**

1. Subject to Article 25, this Agreement shall remain in force for a period of seven years from the date of its entry into force.
2. Upon the expiry of the period set forth in paragraph 1 of this Article, as well as any subsequent period of renewal under this paragraph, the Agreement shall be renewed for a subsequent period of seven years unless one of the Parties notifies the other in writing through diplomatic channels, at least twelve months in advance, of its intention not to renew the Agreement.
3. Notwithstanding the expiration of this Agreement, all PNR obtained by DHS under the terms of this Agreement shall continue to be processed and used in accordance with the safeguards of this Agreement. Similarly, all PNR obtained by DHS under the terms of the Agreement between the United States of America and the European Union on the processing and transfer of passenger name record (PNR) data by air carriers to the United States Department of Homeland Security (DHS), signed at Brussels and Washington, 23 and 26 July 2007, shall continue to be processed and used in accordance with the safeguards of that Agreement.

*Article 27***Final provisions**

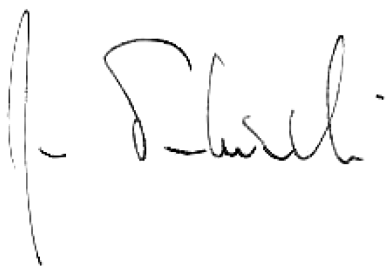
1. This Agreement shall enter into force on the first day of the month after the date on which the Parties have exchanged notifications indicating that they have completed their internal procedures for this purpose.
2. This Agreement, as of the date of its entry into force, shall supersede the 23 and 26 July 2007 Agreement.
3. This Agreement will only apply to the territory of Denmark, the United Kingdom or Ireland, if the European Commission notifies the United States in writing that Denmark, the United Kingdom or Ireland has chosen to be bound by this Agreement.
4. If the European Commission notifies the United States before the entry into force of this Agreement that it will apply to the territory of Denmark, the United Kingdom or Ireland, this Agreement shall apply to the territory of the relevant State on the same day as for the other EU Member States bound by this Agreement.

5. If the European Commission notifies the United States before the entry into force of this Agreement that it will apply to the territory of Denmark, the United Kingdom or Ireland, this Agreement shall apply to the territory of the relevant State on the first day following receipt of the notification by the United States.

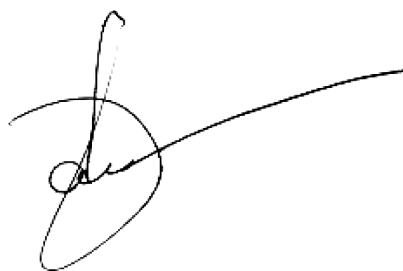
Done at Brussels this fourteenth day of December in the year two thousand and eleven, in two originals.

Pursuant to EU law, this Agreement shall also be drawn up by the EU in the Bulgarian, Czech, Danish, Dutch, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages.

For the European Union

A handwritten signature in black ink, appearing to be 'J. Barroso', written on a white background.

For the United States of America

A handwritten signature in black ink, appearing to be 'Barack Obama', written on a white background.

—

ANNEX

PNR DATA TYPES

1. PNR record locator code
 2. Date of reservation/issue of ticket
 3. Date(s) of intended travel
 4. Name(s)
 5. Available frequent flier and benefit information (i.e. free tickets, upgrades, etc.)
 6. Other names on PNR, including number of travellers on PNR
 7. All available contact information (including originator information)
 8. All available payment/billing information (not including other transaction details linked to a credit card or account and not connected to the travel transaction)
 9. Travel itinerary for specific PNR
 10. Travel agency/travel agent
 11. Code share information
 12. Split/divided information
 13. Travel status of passenger (including confirmations and check-in status)
 14. Ticketing information, including ticket number, one-way tickets and automated ticket fare quote
 15. All baggage information
 16. Seat information, including seat number
 17. General remarks including OSI, SSI and SSR information
 18. Any collected APIS information
 19. All historical changes to the PNR listed under points 1 to 18
-

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) No 731/2012

of 10 August 2012

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multi-lateral trade negotiations, the criteria whereby the

Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.

- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 10 August 2012.

For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and
Rural Development

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	MK	45,6
	TR	55,3
	ZZ	50,5
0707 00 05	TR	100,7
	ZZ	100,7
0709 93 10	TR	107,9
	ZZ	107,9
0805 50 10	AR	95,1
	TR	92,0
	UY	83,5
	ZA	101,6
	ZZ	93,1
0806 10 10	EG	202,6
	MA	168,7
	MK	50,2
	MX	186,3
	TN	203,8
	TR	142,8
	ZZ	159,1
0808 10 80	AR	82,0
	BR	97,8
	CL	112,3
	NZ	115,9
	US	188,2
	ZA	99,9
	ZZ	116,0
0808 30 90	AR	129,0
	CL	165,2
	CN	91,7
	NZ	165,5
	TR	172,4
	ZA	106,8
	ZZ	138,4
0809 30	TR	158,1
	ZZ	158,1
0809 40 05	BA	66,5
	IL	69,8
	ZZ	68,2

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION IMPLEMENTING REGULATION (EU) No 732/2012**of 10 August 2012****amending the representative prices and additional import duties for certain products in the sugar sector fixed by Implementing Regulation (EU) No 971/2011 for the 2011/12 marketing year**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 951/2006 of 30 June 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 318/2006 as regards trade with third countries in the sugar sector ⁽²⁾, and in particular Article 36(2), second subparagraph, second sentence thereof,

Whereas:

- (1) The representative prices and additional duties applicable to imports of white sugar, raw sugar and certain syrups for the 2011/12 marketing year are fixed by Commission Implementing Regulation (EU) No 971/2011 ⁽³⁾. Those prices and duties were last amended by Commission Implementing Regulation (EU) No 725/2012 ⁽⁴⁾.

- (2) The data currently available to the Commission indicate that those amounts should be amended in accordance with Article 36 of Regulation (EC) No 951/2006.

- (3) Given the need to ensure that this measure applies as soon as possible after the updated data have been made available, this Regulation should enter into force on the day of its publication,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties applicable to imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Implementing Regulation (EU) No 971/2011 for the 2011/12 marketing year, are hereby amended as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 10 August 2012.

*For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 178, 1.7.2006, p. 24.

⁽³⁾ OJ L 254, 30.9.2011, p. 12.

⁽⁴⁾ OJ L 212, 9.8.2012, p. 17.

ANNEX

Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 11 August 2012

(EUR)

CN code	Representative price per 100 kg net of the product concerned	Additional duty per 100 kg net of the product concerned
1701 12 10 ⁽¹⁾	39,31	0,00
1701 12 90 ⁽¹⁾	39,31	2,81
1701 13 10 ⁽¹⁾	39,31	0,00
1701 13 90 ⁽¹⁾	39,31	3,11
1701 14 10 ⁽¹⁾	39,31	0,00
1701 14 90 ⁽¹⁾	39,31	3,11
1701 91 00 ⁽²⁾	48,19	3,01
1701 99 10 ⁽²⁾	48,19	0,00
1701 99 90 ⁽²⁾	48,19	0,00
1702 90 95 ⁽³⁾	0,48	0,22

⁽¹⁾ For the standard quality defined in point III of Annex IV to Regulation (EC) No 1234/2007.⁽²⁾ For the standard quality defined in point II of Annex IV to Regulation (EC) No 1234/2007.⁽³⁾ Per 1 % sucrose content.

GUIDELINES

GUIDELINE OF THE EUROPEAN CENTRAL BANK

of 18 July 2012

on TARGET2-Securities

(recast)

(ECB/2012/13)

(2012/473/EU)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first indent of Article 127(2) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank and in particular Articles 3.1, 12.1, 17, 18 and 22 thereof,

Whereas:

- (1) A number of changes are made to Guideline ECB/2010/2 of 21 April 2010 on TARGET2-Securities⁽¹⁾. In the interests of clarity that Guideline should be recast.
- (2) On 6 July 2006, the Governing Council of the European Central Bank (ECB) decided to explore, in cooperation with the central securities depositories (CSDs) and other market participants, the possibility of setting up a new Eurosystem service for securities settlement in central bank money, to be called TARGET2-Securities (T2S). As part of the Eurosystem's tasks in accordance with Articles 17, 18 and 22 of the Statute of the ESCB, T2S is aimed at facilitating post-trading integration by offering 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 delivery-versus-payment settlement services in an integrated technical environment with cross-border capabilities. As the provision of central bank money is a core task of the Eurosystem, T2S has the nature of a public service. The euro area national central banks (NCBs) will provide collateral management services and settlement in central bank money in T2S.
- (3) Article 22 of the Statute of the ESCB mandates the Eurosystem to 'ensure efficient and sound clearing and payment systems within the Union'. Moreover, settlement

in central bank money avoids liquidity risks and is therefore essential for sound post-trading of securities, and for the financial market in general.

- (4) On 17 July 2008, the Governing Council decided to launch the T2S project and to provide the resources required until its completion. On the basis of an offer made by the Deutsche Bundesbank, the Banco de España, the Banque de France and the Banca d'Italia (hereinafter the '4CB'), the Governing Council also decided that T2S would be developed and operated by the 4CB.
- (5) The Governing Council adopted Decision ECB/2012/6 of 29 March 2012 on the establishment of the TARGET2-Securities Board and repealing Decision ECB/2009/6⁽²⁾. The T2S Board is a streamlined management body of the Eurosystem that will develop proposals for the Governing Council on key strategic issues and execute tasks of a purely technical nature. The T2S Board's mandate contained in Annex I to Decision ECB/2012/6, represents one of the cornerstones of T2S governance. The T2S Board was simultaneously entrusted with certain implementing tasks by the Eurosystem central banks so that it can be fully operational and act on behalf of the whole Eurosystem.
- (6) This Guideline lays down in particular the basic foundations of T2S in its specification, development and operational phases. It is complemented by additional legal acts and contractual arrangements under the ultimate responsibility of the Governing Council as T2S is further developed.

The internal governance of T2S is based on three levels. On the first level of governance, ultimate decision-making in relation to T2S vests in the Governing Council, which assumes overall responsibility for T2S and, under Article 8 of the Statute of the ESCB, is the decision-maker for the whole Eurosystem. On the second level of governance, the T2S Board was established to assist the ECB decision-making bodies in ensuring

⁽¹⁾ OJ L 118, 12.5.2010, p. 65.

⁽²⁾ OJ L 117, 1.5.2012, p. 13.

the successful and timely completion of the T2S Programme. Finally, the third level of governance is provided by the 4CB.

- (7) As T2S services are offered to CSDs, non-euro area NCBs and other central banks on the basis of contractual arrangements, it is important to structure the relationship with them throughout the development, migration and subsequent operation of T2S. A CSD Steering Group and a Non-euro Currencies Steering Group have been set up for that purpose. National User Groups are a forum for communication and interaction with providers and users of securities settlement services within their national market. The T2S Advisory Group is a forum for communication and interaction between the Eurosystem and external T2S stakeholders.
- (8) T2S is not a commercial venture and is not intended to compete with CSDs or any other market participant. Thus, while the financial regime of T2S aims at full cost recovery, T2S services are not provided for profit. An internal decision has been taken on the total investment in T2S for the Eurosystem, while the decision on the pricing of T2S services aims at full cost recovery. Moreover, the Eurosystem should strictly apply the principle of non-discrimination regarding CSDs, and aim to ensure a level playing field among CSDs outsourcing their settlement platform to T2S.
- (9) T2S is a technical device that will not only be available for settlement in euro, it will also be open to non-euro area NCBs and other central banks that may wish to participate by making their currency available for central bank money settlement in T2S, as provided for in this Guideline,

HAS ADOPTED THIS GUIDELINE:

SECTION I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. T2S shall be based on a single technical platform integrated with central bank real-time gross settlement systems. It shall be a service provided by the Eurosystem to CSDs allowing for the core, neutral and borderless settlement of securities transactions on a delivery-versus-payment basis in central bank money.
2. This Guideline lays down the rules on the internal governance of T2S. It also lays down the main features of T2S, defining the respective roles and responsibilities of the T2S Board and the 4CB, and the relations between them during the specification, development and operational phases. It also specifies the main decisions to be taken in relation to T2S by the Governing Council. Moreover, this Guideline provides for the basic principles of all of the following in relation to T2S: (a) the financial regime, rights and warranties;

(b) how access of CSDs to T2S and contractual relations with CSDs shall be determined; (c) how currencies other than the euro become eligible for use in T2S; (d) the development of T2S.

Article 2

Definitions

For the purposes of this Guideline:

- (1) 'central securities depository' (CSD) means an entity that: (a) enables securities to be established and settled in book entry form, and/or maintains and administers securities on behalf of others through the provision or maintenance of securities accounts; (b) operates or provides for a securities settlement system in accordance with Article 2(a) 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⁽¹⁾ or for entities not located in the European Economic Area (EEA) in accordance with the relevant national legislation equivalent to Directive 98/26/EC and/or is regulated by a central bank; and (c) is recognised as a CSD by national regulations and/or legislation and/or is authorised or regulated as such by a competent authority;
- (2) 'delivery-versus-payment' means a securities settlement mechanism, which links a securities transfer and a funds transfer in such a way as to ensure that delivery occurs only if the corresponding payment occurs;
- (3) 'euro area NCB' means the NCB of a Member State whose currency is the euro;
- (4) 'Eurosystem central bank' means either a euro area NCB or the ECB, as the case may be;
- (5) 'Framework Agreement' means the contractual framework entered into by a CSD and the Eurosystem for the development and operational phase;
- (6) 'general functional specifications' (GFS) means a general functional description of the T2S business application to be developed to comply with the T2S user requirements. It will include elements such as the functional architecture (domains, modules and interactions), the conceptual models, the data model or the data flow process;
- (7) 'Level 2-Level 3 agreement' means the supply and operation agreement that is negotiated between the T2S Board and the 4CB, endorsed by the Governing Council and subsequently signed by the Eurosystem central banks and the 4CB, as amended when necessary. It contains the additional details of the tasks and responsibilities of the 4CB, the T2S Board and the Eurosystem central banks;
- (8) 'non-euro area NCB' means the NCB of a Member State whose currency is not the euro;
- (9) 'operational phase' means the time period starting once the first CSD has migrated to T2S;

⁽¹⁾ OJ L 166, 11.6.1998, p. 45.

- (10) 'other central bank' means the central bank of a country that is outside the Union;
- (11) 'payment schedule' means a schedule indicating the payment sequence for instalments of reimbursement to the 4CB;
- (12) 'service level agreement' means both the agreement defining the level of services to be provided by the 4CB to the Eurosystem, and the agreement defining the level of services to be provided by the Eurosystem to the CSDs, in relation to T2S;
- (13) 'specification and development phase' means the time period beginning with the approval of the URD by the Governing Council and ending with the start of the operational phase;
- (14) 'T2S business application' means the software developed and operated by the 4CB on behalf of the Eurosystem with a view to enabling the Eurosystem to provide the T2S services on the T2S platform;
- (15) 'T2S Change and Release Management Procedure' means a set of rules and procedures that is applied whenever a change to T2S services is initiated;
- (16) 'T2S platform' means the hardware and all software components, i.e. all software used excluding the T2S business application, required to run and operate the T2S business application;
- (17) 'T2S Programme' means the set of related activities and deliverables needed to develop T2S until the full migration of all CSDs, which have signed the Framework Agreement and all Eurosystem central banks, non-euro area NCBs and other central banks;
- (18) 'T2S Board' means the Eurosystem management body established pursuant to Decision ECB/2012/6, which has the task of developing proposals for the Governing Council on key strategic issues and executing tasks of a purely technical nature in relation to T2S;
- (19) 'T2S project account' means the T2S account used to collect and distribute instalments, reimbursement and fees. The project account can have sub-accounts to separate different kinds of cash flows. It does not have a budgetary character;
- (20) 'T2S services' means the services to be provided by the Eurosystem to CSDs and central banks on the basis of the contractual arrangements entered into between the Eurosystem and CSDs, non-euro area NCBs or other central banks;
- (21) 'T2S users' means CSD participants, legal entities or individuals having a contractual relationship with the CSD for the processing of their securities settlement-related activities in T2S, or members of a central bank, whose currency is available for settlement-related processing in T2S, having a contractual relationship with the central bank for the processing of their securities-related cash-processing activities in T2S;
- (22) 'User detailed functional specifications (UDFS)' means a detailed description of the functions managing the T2S

external data flows, from application to application. It will include the necessary information for the users to adjust or to develop their internal information system in view of connecting it to T2S;

- (23) 'User Handbook' means the document describing the way in which T2S users can make use of a number of T2S software functions that are available in a user to application (screen-based) mode;
- (24) 'User requirements document' (URD) means the document setting out the user requirements for T2S as published by the ECB on 3 July 2008 and as subsequently amended through the T2S Change and Release Management Procedure.

SECTION II

GOVERNANCE OF T2S

Article 3

Internal governance levels

The internal governance of T2S shall be based on three levels. Level 1 shall consist of the Governing Council, Level 2 shall consist of the T2S Board and Level 3 shall consist of the 4CB.

Article 4

The Governing Council

1. The Governing Council shall be responsible for the direction, overall management and control of T2S. It shall also be responsible for ultimate decision-making in relation to T2S and shall decide on the allocation of tasks not specifically attributed to Levels 2 and 3.

2. In particular, the Governing Council shall have the following competences:

- (a) responsibility for the governance of T2S through all of the following activities:
 - (i) deciding on any issue regarding T2S governance; assuming responsibility for T2S overall and therefore being the final decision-maker if any dispute arises;
 - (ii) taking, on an ad hoc basis, decisions on tasks assigned to the T2S Board or to the 4CB;
 - (iii) allocating the performance of subsequent or additional specific tasks relating to T2S to the T2S Board and/or to the 4CB, while determining which decisions relating thereto it reserves to itself;
 - (iv) adopting any decision regarding the organisation of the T2S Board;
- (b) dealing with requests from members of the T2S Advisory Group, the Non-euro Currencies Steering Group (NECSG) or the CSD Steering Group (CSG) presented in accordance with the rules of the respective group;
- (c) deciding on the basic financial regime for T2S, namely:
 - (i) the pricing policy for T2S services;

- (ii) the cost methodology for T2S;
- (iii) the financial arrangements pursuant to Article 12;
- (d) deciding on the CSD access criteria;
- (e) validating and accepting the T2S Executive Summary Plan; monitoring progress of the T2S Programme and deciding on measures to reduce any delay in implementing T2S;
- (f) deciding on the basic operational aspects of T2S, namely:
 - (i) the T2S operational framework, including the incident and crisis management strategy;
 - (ii) the T2S information security framework;
 - (iii) the T2S Change and Release Management Procedure;
 - (iv) the strategy for testing T2S;
 - (v) the T2S migration strategy;
 - (vi) the T2S risk management framework;
- (g) endorsing the basic contractual framework, namely:
 - (i) the agreements between Levels 2 and 3;
 - (ii) the service level agreements that shall be negotiated between the T2S Board and the CSDs and Eurosystem central banks as well as with the 4CB;
 - (iii) the contracts with the CSDs that shall be negotiated by the T2S Board jointly with the Eurosystem central banks and the CSDs;
 - (iv) the contracts with non-euro area NCBs, other central banks or other competent monetary authorities, including respective service level agreements;
- (h) responsibility for taking appropriate measures to ensure enforcement of oversight rules and principles;
- (i) deciding on the date of the start of the first migration of CSDs to T2S.
- (b) developing and building T2S on behalf of the Eurosystem, and providing the technical components of T2S in accordance with the T2S Executive Summary Plan and with the URD, the GFS and the UDFS and other specifications and service levels;
- (c) making T2S available to the T2S Board in conformity with the approved timing, specifications and service levels;
- (d) submitting the following to the T2S Board for the purposes of the T2S financial arrangements pursuant to Article 12:
 - (i) an estimate, in a form that can be assessed and/or audited by the relevant European System of Central Banks (ESCB) or Eurosystem committee and/or external auditors, of the costs they will incur in developing and operating T2S;
 - (ii) a financial offer, including the type, payment schedule as well as the time period covered;
- (e) obtaining all licences necessary to build and operate T2S and to enable the Eurosystem to be in a position to provide T2S services to the CSDs;
- (f) implementing changes to T2S in accordance with the T2S Change and Release Management Procedure;
- (g) providing answers in their field of competence to requests formulated by the Governing Council or the T2S Board;
- (h) providing training, technical and operational support for tests and for migration, under the coordination of the T2S Board;
- (i) negotiating any amendments to the Level 2-Level 3 agreement with the T2S Board.

Article 5

The T2S Board

The composition and mandate of the T2S Board is laid down in Decision ECB/2012/6. The T2S Board shall be in charge of the tasks assigned to Level 2 within the general framework defined by the Governing Council.

Article 6

The 4CB

1. The 4CB shall develop and operate T2S and shall provide information on their internal organisation and allocation of work to the T2S Board.

The 4CB shall, in particular, perform all of the following tasks:

- (a) preparing, on the basis of the URD and the guidance of the T2S Board, the GFS, the UDFS and the User Handbooks in accordance with the T2S Executive Summary Plan;

2. The 4CB shall be jointly and severally liable vis-à-vis the Eurosystem for the performance of their tasks. The liability shall cover fraud, wilful misconduct and gross negligence. The liability regime shall be further specified in the Level 2-Level 3 agreement.

3. Outsourcing or subcontracting the above tasks by the 4CB to external providers shall be without prejudice to the 4CB's liability towards the Eurosystem and other stakeholders and shall be transparent to the T2S Board.

Article 7

Relations with external stakeholders

1. The T2S Advisory Group is a forum for communication and interaction between the Eurosystem and external T2S stakeholders. The T2S Advisory Group shall provide advice to the T2S Board and may, in exceptional cases, bring matters to the Governing Council's attention.

2. The T2S Advisory Group shall be chaired by the chairperson of the T2S Board. The composition and mandate of the T2S Advisory Group are laid down in the Annex.

3. The T2S Advisory Group shall perform its function according to the Rules of Procedure which are prepared by the T2S Advisory Group and endorsed by the T2S Board.

4. The CSG is the T2S governance body which, with respect to a set of matters stipulated in the Framework Agreement, shall make resolutions and deliver opinions on behalf of the CSDs having signed the Framework Agreement. The CSG's mandate is annexed to the Framework Agreement.

5. The NECSG is the T2S governance body which, with respect to a set of matters stipulated in the Currency Participation Agreement shall make resolutions and deliver opinions on behalf of the non-euro area NCBs and other central banks having signed the Currency Participation Agreement. The NECSG's mandate is annexed to the Currency Participation Agreement.

6. The National User Groups are a forum for communication and interaction with providers and users of securities settlement services within their national market, in order to support the development and implementation of T2S and assess the impact of T2S on the national markets. As a rule, the National User Groups shall be chaired by the respective NCBs. The composition and mandate of the National User Groups are laid down in the Annex.

Article 8

Good governance

1. In order to avoid conflicts of interest between the provision of T2S services by the Eurosystem and the Eurosystem's regulatory functions, the Eurosystem central banks shall ensure that:

- (a) T2S Board members shall not be directly involved in the oversight of T2S or of CSDs that outsource settlement operations to T2S. They may not be part of a Eurosystem/ESCB committee having any of these oversight responsibilities. They shall not be part of the Eurosystem IT Steering Committee (EISC) or the Internal Auditors Committee; and
- (b) there shall be separation between T2S oversight and T2S operational activities.

2. The T2S Board shall be subject to reporting obligations, controlling and audit, as defined in this Guideline. Audits relating to the development, operation and cost of T2S shall be initiated and conducted on the basis of the principles and arrangements set out in the Governing Council's ESCB audit policy in force at the time when the relevant audit takes place.

Article 9

Cooperation and information exchange

1. The 4CB and the T2S Board shall cooperate with each other, exchange information and provide technical and other support to each other during the development and operation of T2S.

2. The 4CB, the other Eurosystem central banks and the T2S Board shall inform each other immediately of any issues that could materially affect the development or building and operation of T2S, and shall endeavour to mitigate any related risk.

3. The T2S Board shall report on a regular basis to the Governing Council on the development of the T2S Programme and the operation of T2S. These reports shall be sent to the EISC, which may advise the ECB's decision-making bodies. The Payment and Settlement Systems Committee (PSSC) shall receive the reports for information purposes.

4. The T2S Board shall share the agendas, the summaries and the relevant documentation of its meetings with the members of the PSSC, to allow such members to provide input in case of need.

5. The T2S Board may consult, and may be consulted by, any competent ESCB committees as necessary.

6. The 4CB shall provide regular reports on the T2S Programme and on the operation of T2S to the T2S Board.

7. The content and detailed procedure for the reporting obligations of the T2S Board and of the 4CB shall be detailed in the Level 2-Level 3 agreement.

SECTION III

FINANCIAL REGIME

Article 10

Pricing policy

The pricing policy for T2S shall be guided by the basic principles of being not for profit, of full cost recovery and of non-discrimination towards CSDs.

Article 11

Cost and accounting methodology

1. T2S shall be subject to the Eurosystem common cost methodology and the Guideline ECB/2010/20 of 11 November 2010 on the legal framework for accounting and financial reporting in the European System of Central Banks ⁽¹⁾ unless the Governing Council decides otherwise.

2. The T2S Board shall, at a very early stage, involve the relevant ESCB/Eurosystem committees in the assessment of the correct implementation of:

- (a) the Eurosystem common cost methodology in the context of T2S cost estimates and the calculation of annual T2S costs; and
- (b) Guideline ECB/2010/20 by the ECB and the 4CB in the context of T2S cost and asset recognition.

Article 12

Financial arrangements

1. The T2S Board shall submit proposals on the adjustment of the T2S financial regime to the Governing Council, which shall include the T2S costs, i.e. the 4CB and ECB costs for developing, maintaining and operating T2S.

⁽¹⁾ OJ L 35, 9.2.2011, p. 31.

2. The proposal shall also include:

- (a) type of offer;
- (b) payment schedule;
- (c) time period covered;
- (d) cost sharing mechanism;
- (e) the cost of capital.

3. The Governing Council shall decide on the T2S financial regime.

Article 13

Payments

1. There shall be a T2S project account held at the ECB on behalf of the Eurosystem. The T2S project account shall not have a budgetary character but shall be used to collect and distribute all T2S cost-related pre-payments, instalments and reimbursements as well as T2S usage fees.

2. The T2S Board shall manage the T2S project account on the Eurosystem's behalf. Subject to validation and acceptance of the 4CB deliverables, the T2S Board shall approve the payment of instalments to the 4CB, in accordance with an agreed payment schedule approved by the Governing Council and set out in the Level 2-Level 3 agreement.

Article 14

The Eurosystem's rights to T2S

1. The T2S business application shall be fully owned by the Eurosystem.

2. To this end, the 4CB shall grant the Eurosystem licenses regarding the intellectual property rights required to enable the Eurosystem to provide the full range of T2S services to CSDs under the applicable rules and common service levels and on an equal basis. The 4CB shall indemnify the Eurosystem for any infringement claims raised by third parties in relation to such intellectual property rights.

3. The details regarding the Eurosystem's rights to T2S shall be agreed between the 4CB and the T2S Board in the Level 2-Level 3 agreement. The rights of the authorities that have signed a currency participation agreement as defined in Article 18 will be laid down in such agreement.

SECTION IV

CENTRAL SECURITIES DEPOSITORIES

Article 15

CSD access criteria

1. CSDs shall be eligible for access to T2S services provided that they:

- (a) have been notified in accordance with Article 10 of Directive 98/26/EC or, in the case of a CSD from a non-EEA jurisdiction, they operate under a legal and regulatory framework that is equivalent to that in force in the Union;
- (b) have been positively assessed by the competent authorities against the CESR/ESCB Recommendations for Securities Settlement System;

(c) make each security/ISIN for which they are an issuer CSD (or technical issuer CSD) available to other CSDs in T2S upon request;

(d) commit to offer to other CSDs in T2S basic custody service on a non-discriminatory basis;

(e) commit towards other CSDs in T2S to carry out their central bank money settlement in T2S if the currency is available in T2S.

2. The rules in relation to the access criteria for CSDs are laid down in Decision ECB/2011/20 of 16 November 2011 establishing detailed rules and procedures for implementing the eligibility criteria for central securities depositories to access TARGET2-Securities services⁽¹⁾, and shall be implemented in the contractual agreements between the Eurosystem central banks and the CSDs.

3. The ECB shall maintain a list on its website identifying the CSDs admitted to settle in T2S.

Article 16

Contractual relations with CSDs

1. The contracts between the Eurosystem central banks and CSDs, including the service level agreements, shall be fully harmonised.

2. The T2S Board, jointly with the Eurosystem central banks, shall negotiate amendments to the contracts with CSDs.

3. The contracts with CSDs and amendments thereto shall be approved by the Governing Council and subsequently signed by the Eurosystem central bank of the country where the seat of the CSD is located, or by the ECB for CSDs located outside the euro area, in either case acting in the name and on behalf of all Eurosystem central banks. In relation to Ireland, the contract shall be signed by the Eurosystem central bank of the Member State that has notified the securities settlement system in accordance with Article 10 of Directive 98/26/EC.

Article 17

Compliance with regulatory requirements

1. The T2S Board shall aim to support ongoing compliance by CSDs with relevant legal, regulatory and oversight requirements.

2. The T2S Board shall consider whether the ECB should issue recommendations in order to foster legislative adaptations to ensure equal access rights to the T2S services by CSDs, and make proposals relating thereto to the Governing Council.

SECTION V

CURRENCIES OTHER THAN THE EURO

Article 18

Eligibility conditions for inclusion in T2S

1. An EEA currency other than the euro shall be eligible for use in T2S provided that the non-euro area NCB, other central bank or other authority responsible for such currency enters

⁽¹⁾ OJ L 319, 2.12.2011, p. 117.

into a currency participation agreement with the Eurosystem and that the Governing Council has approved the eligibility of such currency.

2. A currency other than an EEA currency shall be eligible for use in T2S provided that the Governing Council has approved the eligibility of such currency, if:

- (a) the legal, regulatory and oversight framework applicable to settlement in that currency provides substantially the same or a higher degree of legal certainty as that in force in the Union;
- (b) the inclusion of such currency in T2S would have a positive impact on the contribution of T2S to the Union securities settlement market;
- (c) the other central bank or other authority responsible for such currency enters into a mutually satisfactory currency participation agreement with the Eurosystem.

3. In accordance with the mandate of the T2S Board, non-euro area NCBs and other central banks may be represented on the T2S Board.

SECTION VI

T2S PROGRAMME DEVELOPMENT

Article 19

T2S Executive Summary Plan

1. On the basis of proposals made by the T2S Board, the Governing Council shall assess, validate and accept amendments to the T2S Executive Summary Plan.

2. The T2S Board shall establish an operational plan on the basis of the T2S Executive Summary Plan. The operational plan and updates thereto shall be published and communicated to T2S stakeholders concerned.

3. If there is a serious risk that a milestone in the T2S Executive Summary Plan will not be achieved, the T2S Board shall promptly inform the Governing Council thereof, and propose measures to reduce any delay in implementing T2S.

SECTION VII

FINAL PROVISIONS

Article 20

Level 2-Level 3 agreement

1. Subject to this Guideline, a Level 2-Level 3 agreement shall provide for the additional details of the tasks and responsibilities of the 4CB, the T2S Board and the Eurosystem central banks.

2. The Level 2-Level 3 agreement and draft amendments thereto shall be submitted for endorsement by the Governing Council and then signed by the Eurosystem and the 4CB.

Article 21

Dispute resolution

1. If a dispute in relation to a matter regulated by this Guideline cannot be settled by agreement between the affected parties, any affected party may submit the matter to the Governing Council for a decision.

2. The Level 2-Level 3 agreement shall provide that the T2S Board or the 4CB may bring any dispute arising out of the Level 2-Level 3 agreement to the Governing Council.

Article 22

Repeal

1. Guideline ECB/2010/2 is repealed.

2. References to the repealed Guideline shall be construed as references to this Guideline.

Article 23

Entry into force

This Guideline shall enter into force two days after its adoption.

Article 24

Addressees and implementing measures

This Guideline is addressed to all Eurosystem central banks.

Done at Frankfurt am Main, 18 July 2012.

For the Governing Council of the ECB

The President of the ECB

Mario DRAGHI

ANNEX

T2S ADVISORY GROUP

MANDATE

1. Preamble and objectives

In line with the Treaty on the Functioning of the European Union and the Statute of the European System of Central Banks and of the European Central Bank, the Eurosystem aims to offer its TARGET2- Securities (T2S) services to central securities depositories (CSDs) and central banks in Europe. T2S services allow for the core, neutral and borderless settlement of securities transactions on a delivery-versus-payment basis in central bank money. This is performed in a single technical platform integrated with central banks' real-time gross settlement systems for all participating currencies.

In view of the provision of T2S services, the Governing Council of the European Central Bank (ECB), as ultimate decision-making body of the Eurosystem, established the T2S Advisory Group (AG) to ensure that T2S continues to meet the needs of the market. The AG maintains its role as an advisory body to the Eurosystem for all T2S-related issues. It may also advise the CSD Steering Group and the Non-euro Currencies Steering Group.

2. Responsibilities and tasks

The AG is responsible for:

- supporting the consistency of the T2S scope defining set of documents, in particular their full compliance with the user requirements document,
- supporting the Eurosystem's review and prioritisation of change requests to the T2S scope defining set of documents, in line with the applicable procedures specified in the Schedules of the Framework Agreement (FA) on 'Governance' and 'Change and Release Management',
- supporting the Eurosystem in any adjustment to the pricing framework,
- continuing to foster the work on harmonisation in the field of securities settlement related to T2S and supporting implementation efforts in the market,
- advising on decisions to be taken by the Governing Council, the T2S Board, the CSD Steering Group and the Non-euro Currencies Steering Group which, in the view of the T2S Board, have implications for the T2S users,
- advising on practices and policies that contribute to an effective and cost efficient implementation of T2S in the post-trading T2S environment,
- advising on operational issues,
- advising when disputes arise between the Eurosystem and one or more CSDs and/or between the Eurosystem and one or more non-euro area national central banks (NCBs), in line with the dispute resolution procedures in the FA and the Currency Participation Agreement (CPA).

Each individual full member of the AG may:

- propose advice on T2S-related issues,
- initiate a change request in line with the procedure in the FA Schedule on 'Change and Release Management'.

3. Composition and term

The AG is composed of the Chairperson, the Secretary, full members and observers.

The AG is chaired by the T2S Board Chairperson. The AG Secretary is a highly experienced ECB staff member and is appointed by the AG Chairperson. The ECB provides the AG Secretary with operational and secretarial support. The AG Chairperson may designate an alternate to replace the AG Secretary in exceptional circumstances.

A representative of any of the following groups is eligible to be a full AG member:

(a) Central banks:

The ECB and each of the NCBs of the Member States whose currency is the euro are represented by one full member. When a Member State adopts the euro, its NCB will participate as a full AG member from the date of adoption of the euro. A central bank outside the euro area that has signed the CPA and participates with immediate effect in T2S will

also be represented by one full member from the date of the signature. A central bank representative will be nominated by the Governor or President of the central bank concerned pursuant to the applicable central bank statute;

(b) CSDs:

All full members of the CSD Steering Group are full members of the AG. As an exception and reflecting their share of settlement volume, the Euroclear Group has four members, the Clearstream Group four and Monte Titoli two ⁽¹⁾. This composition is frozen for one year from the start of operation of T2S, following which the Governing Council will revise the additional members to reflect the actual settlement volume in T2S;

(c) Users:

Both the User stakeholder group and the CSD group have the same number of members in the AG, so that market T2S stakeholder groups are equally represented. The Governing Council nominates user representatives on the basis of a proposal from the T2S Board. The T2S Board's proposal is based on applications received from the European Banking Federation, the European Savings Bank Group, the European Association of Cooperative Banks, the Association for Financial Markets in Europe, and the European Association of Clearing Houses with a view to balancing the different user interests in T2S, including small and large institutions and markets, domestic and international players, and different scopes of services provided by users, focusing on users that have a significant securities business in T2S, in euro or other currencies that are eligible for settlement in T2S, irrespective of their place of incorporation. Each of these institutions shall have at least one of their applicants selected. In addition, the following parameters apply:

- (i) at least 11 full members represent major commercial banks;
- (ii) at least two full members represent international investment banks;
- (iii) at least two full members represent banks active in the securities settlement industry and serving their local customers;
- (iv) at least one full member represents a central counterparty.

The heads of the following institutions and organisations are each entitled to nominate one observer to the AG:

- the Association for Financial Markets in Europe,
- the European Association of Cooperative Banks,
- the European Banking Federation,
- the European Association of Clearing Houses,
- the European Savings Bank Group,
- the Federation of European Securities Exchanges,
- the European Securities and Markets Authority,
- the European Commission,
- the Eurosystem oversight function,
- one representative of each of the 4CB (these representatives shall present their view to the AG in a uniform way).

In addition, T2S Board members are invited to the AG meetings as observers.

Each nominee shall have the appropriate level of seniority and relevant technical expertise. The nominating entities shall ensure that a nominee has sufficient time available to be actively involved in the AG's work.

To limit the size of the AG, no more than two full members or observers originating from a single central bank may attend the AG at the same time. The AG Chairperson is exempted from this rule in order to allow for sufficient neutrality.

The full members and the observers are nominated for a renewable term of two years. Replacements of user members who resign during a regular term can be nominated by the T2S Board based on applications received from the relevant user organisation. The AG mandate starts in July 2012, replacing the mandate and the rules of procedure of the AG initially drafted for the specification phase and extended until the FA enters into force. The new mandate expires with the replacement of the FA and the CPA with a new agreement and/or with the termination of the FA and CPA by the signatories.

⁽¹⁾ This composition is specified under the assumption that the Euroclear Group participates with Euroclear Belgium, Euroclear Finland, Euroclear France and Euroclear Nederland and the Clearstream Group participates with Clearstream Banking Frankfurt and with LuxCSD in T2S.

4. Reporting

The AG provides advice to the T2S Board. Upon request, the AG may also advise the CSD Steering Group or the Non-euro Currencies Steering Group. In exceptional cases, the AG may provide advice directly to the Governing Council if the AG considers that the General Principles of T2S or other core elements of T2S are at risk.

The Governing Council and the T2S Board (for issues delegated by the Governing Council to the T2S Board) may provide general guidance to the AG, either on their own initiative or upon request.

5. Working procedures

Full members are entitled to take part in AG decision-making. Observers are entitled to participate in AG meetings, but do not participate in its decision-making process.

Decisions of the AG take the form of advice or of resolutions concerning the organisation of the AG work or the work of the sub-groups. The AG's advice is sent directly to the T2S Board, the Governing Council, the CSD Steering Group or the Non-euro Currencies Steering Group, as the case may be. The AG's advice and resolutions should be adopted by way of consensus. Where consensus cannot be reached, the AG Chairperson may decide to assess the degree of support for a specific decision, in which case their advice or resolutions are adopted by simple majority of the full members of the AG. The AG Chairperson and Secretary are not entitled to take part in the adoption of advice or resolutions.

The AG may establish sub-structures to support its work if considered necessary. It coordinates with the T2S Board who organises the work so that all relevant governance bodies are properly involved without duplicating sub-structures on similar topics.

As a rule, the AG meets at least twice a year. Additional meetings may be called by the AG Chairperson, the dates of which are to be communicated sufficiently in advance to the AG. In principle, meetings take place at the ECB's premises. In addition, the AG Chairperson may invite the AG to provide its advice via other means, such as written procedures.

The AG works in an open and transparent manner and AG documentation is published on T2S's website. Detailed working procedures are to be specified in the 'Rules of Procedure' drafted by the AG and endorsed by the T2S Board.

NATIONAL USER GROUPS

MANDATE

1. Objectives

The National User Groups (NUGs) bring together providers and users of securities settlement services within their national markets in order to support the development, implementation and operation of TARGET2-Securities (T2S). They create fora for involving national market participants in the T2S Advisory Group's (AG) work and establish the formal link between the AG and the national markets. They act both as a sounding board for the T2S Programme Office and as providers of input to the AG in relation to all matters considered by the AG. As such, they may also suggest issues for AG consideration.

The NUGs may be involved in the change and release management process and can play an important role in assessing such requests in the context of the operation of the national markets. The NUGs should adopt the T2S principle of seeking to avoid incorporating national specificities in T2S, and should actively promote harmonisation.

2. Responsibilities and tasks

The NUGs in markets participating in T2S are responsible for:

- assessing the impact of the T2S functionality, and in particular any changes in the T2S user requirements, on their national market; when doing so, due consideration should be given to the concept of a 'lean T2S' that aims at avoiding national specificities and at promoting harmonisation,
- contributing to the monitoring and implementation tasks associated with the T2S harmonisation activities supported by the AG,
- bringing material concerns of the national market to the attention of the AG,
- raising the awareness of T2S in all segments of the national securities community,
- supporting the AG members representing the national community.

While fulfilling their responsibilities, the NUGs shall adhere to the high standards of transparency that are a key element of T2S.

Although the focus of this mandate is on markets participating in T2S, also markets not yet participating in T2S are welcome to establish NUGs. If such market decides to establish an NUG, it shall follow a similar mandate in order to prepare its market for participation in T2S.

3. Composition and term

The NUGs comprise a Chairperson, Secretary and members.

The Chairperson of an NUG should preferably be a full member or observer of the AG. This role will typically be performed by a senior official of the relevant national central bank. In the case where the relevant national central bank does not provide or designate the chairperson of the NUG, the chairperson will be nominated by the AG Chairperson who will look for consensus amongst the main participants in the relevant market. Should the Chairperson not be a member of the AG, an AG member should coordinate between the AG and the NUG Chairperson to ensure a close link between the AG and the NUG. Should no member of an NUG be represented in the AG, the NUG shall seek close cooperation with the AG Secretary in order to be informed about T2S developments.

The secretary of an NUG is provided by the relevant national central bank in euro area countries; in other countries the NUG Secretary is appointed by the NUG Chairperson and should ideally be provided by the respective national central bank. The secretary is expected to attend regular briefings organised for NUG secretaries by the T2S Programme Office via the NUG experts network. The NUG secretaries of markets that do not participate in T2S may participate as guests in the NUG experts network.

The members of an NUG comprise the relevant AG members and observers (or their nominated senior representatives, acceptable to the NUG Chairperson) and additional persons with the knowledge and standing to be broadly representative of all categories of users and providers in the national market, including experts on cash matters. NUG members may thus include CSDs, brokers, banks, investment banks, custodians, issuers and/or their agents, central counterparties, exchanges and multilateral trading facilities, the relevant national central bank, regulatory authorities and the relevant banking associations.

The NUGs' mandate expires at the same time as the mandate of the AG, i.e. with the replacement of the Framework Agreement and the Currency Participation Agreement with a new contract and/or with the termination of the Framework Agreement and Currency Participation Agreement with all signing CSDs and non-euro area central banks.

4. Working procedures

NUGs only deal with issues relevant to T2S. They are invited to actively seek briefing from the T2S Programme Office in relation to live issues, and provide national views in a timely fashion on matters requested by the AG Secretary or raised by the NUG. The T2S Programme Office regularly provides information to the NUGs on markets participating in T2S and organises meetings with such NUG secretaries via the NUG experts network to foster the interaction between the NUGs and the T2S Programme Office.

The NUGs will endeavour to have regular meetings aligned with the schedule of AG meetings, so that they can offer advice to national AG members. However, no AG member is bound by any such advice. NUGs may also make written submissions to the AG via the AG Secretary and invite an AG member to present its view.

The NUG Secretary aims at circulating an agenda and relevant documents for discussion at an NUG meeting at least five business days ahead of the meeting. A summary of an NUG's meeting will be published on the T2S website and, if deemed appropriate, on the website of the respective NCB. The publication should ideally be made in English and, if required, in the relevant national language within three weeks after each NUG meeting.

The members of the NUGs will be published on the T2S website. The NUGs will also publish an NUG-contact e-mail address on the T2S website, so that participants in national markets know whom to contact to express their views.

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