EUROPEAN CENTRAL BANK

EUROSYSTEM

AMI-SeCo

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Summary of HSG discussion on enforcing markets' compliance with post-trade harmonisation standards

1. Background

In recent HSG / AMI-SeCo discussions several participants expressed the view that, as regards the implementation of the T2S harmonisation standards, there seems to be some complacency among some of the non-compliant T2S markets and that achieving full compliance appears not to be a priority for these markets. The problem might be exacerbated given the need for implementing the collateral management harmonisation standards. Therefore, the AMI-SeCo mandated the HSG to analyse potential ways to enforce achieving full compliance by AMI-SeCo markets with AMI-SeCo standards. The aim of this note is to provide a summary of the discussion held within the HSG, and thereby to support a discussion in the AMI-SeCo on possible steps that could be taken to enforce relevant markets' compliance with post-trade harmonisation standards. Once agreed, these could be reflected in the framework for the AMI-SeCo's monitoring of compliance with post trade harmonisation standards.

The AMI-SeCo currently monitors two (distinct) sets of standards[1]:

- The **T2S harmonisation standards** which were put in place in 2013 and the compliance with which has been monitored since. According to the most recent T2S harmonisation progress report[2], in absolute terms, all 20 T2S markets are fully compliant with nine out of the 15 core T2S settlement harmonisation standards. Overall, the ratio of the number of fully compliant statuses to the number of all assessments (all monitored standards across all T2S markets) is at 87.5 %.

- The **AMI-SeCo collateral management harmonisation standards elaborated by the AMI-SeCo's Collateral Management Harmonisation Task Force (CMH-TF).** Standards for corporate actions, billing and triparty collateral management have already been endorsed and are monitored as of 2020. 29 markets are monitored in total (EU, UK and Switzerland). The first monitoring exercise took place in H1 2020 (markets' adaption plans to the standards), the results

[1] Subject to the AMI-SeCo and the CAJWG agreeing to consolidate the monitoring of all European corporate action standards (CAJWG standards, T2S CA standards and the CMH / SCoRE CA standards with the latter two being part of the two sets of standards above), the reflections and considerations outlined in this note could similarly apply to the single CA compliance monitoring.

[2] 10th T2S harmonisation progress report, February 2020

of which was published in June 2020[3]. It is noted that the work towards reaching full compliance on the collateral management harmonisation standards may have more inherent momentum, compared to the T2S harmonisation standards, as the implementation deadline for SCoRE has not yet been reached. In addition, stakeholders' preparation for the Eurosystem Collateral Management System (ECMS) provides a strong incentive for at least euro area market participants to comply with the collateral management harmonisation standards.

2. Summary of discussion

The HSG recognises the usefulness of the existing framework for monitoring and assessing compliance; for example, the standardised format of the T2S harmonisation progress monitoring allows for a comparable overview of the impact of non-compliance and the progress made to reach further compliance. There are, however, several cases of non-compliance for which in recent years there has been little or no progress towards compliance, and for which there is little inherent prospect of progress. These cases are often closely associated with national legal and fiscal structures and typically progress towards compliance would require action by multiple stakeholders.

When considering future enforcement measures[4] the HSG expressed the view that negative incentives had little chance of success, so that there was a need to continue to rely on positive incentives. With respect to the cases of non-compliance, the HSG expressed the view that a change in approach was needed. The recommendation from the HSG is that the existing compliance framework should be complemented by specific in-depth analysis on non-compliance cases in order to identify and make outstanding issues visible for potential future action by all relevant stakeholders, including for example the European Commission.

3. Recommendations for future in-depth analysis

The HSG recognises that the in-depth analysis on non-compliance cases will be take some time to prepare and recommend that it is undertaken in systematic and sequential order, commencing in the suggested order as listed below. The results of the analysis should be brought to the HSG for discussion and determination of potential follow-up actions.

3.1 Spain – Matching fields

The Spanish market does not comply fully with the T2S standard 2 on matching fields. The non-compliance stems from the fact that for intra-CSD settlements on equities there is a requirement in place in the Spanish market by which the T2S optional matching field "Client of the CSD participant" is filled in

[3] SCoRE Adaptation Plans Status Report, June 2020 and SCoREBOARD - First Compliance & Progress Report, June 2020.

[4] See Annex 1 for an overview of potential enforcement measures to enhance the commitment by AMI-SeCo markets to comply with post trade harmonisation standards as identified by the HSG.

with the end-investor information which is not necessarily the client of the CSD participant, and therefore results in a misuse of the matching field. The deeper investigation of this non-compliance case should focus on determining the underlying drivers and rationale for this practice, elaborating on the exact impact on the T2S community and, in particular, foreign service providers operating in Spain, and on setting potential steps that should be taken by relevant stakeholders to achieve a resolution of the problem. It should be noted that the Spanish market practice is related to registration requirements beyond the settlement domain which is in general an issue that requires further attention (see also FR case below).

3.2 Italy – Tax info

The Italian market does not fully comply with the T2S standard 4 on interaction for tax info. According to the T2S standard on tax info requirement, tax-related information for domestic and cross-CSD transactions is not to be passed via T2S messages. However, the Italian market has defined a Market Practice to manage Portfolio Transfer through T2S. This market practice includes in T2S messages some details regarding the portfolio to be transferred, which are tax-related and can be used for calculating future taxation. The non-compliance in this case could be resolved by possibly finding a common approach to portfolio transfers and reviewing T2S standard 4 accordingly. The HSG has already discussed potential amendments to T2S standard 4 in this spirit.

3.3 Germany and Austria – Corporate Actions (Market Claims)

The Austrian and German markets do not fully comply with the T2S standard 6 on Corporate Actions. The non-compliance case with highest priority for deeper analysis for the German and Austrian market refers to the “CUM” indicator in T2S messages and the generation of market claims only after the underlying transaction has settled. In both the Austrian and German markets discussions with the ministry of finance is foreseen and prior approval necessary before compliance can be reached. In addition, the German community believes that the use of the “CUM” indicator in T2S markets should be surveyed and, subject to the outcome of such survey, the need for the “CUM” indicator and the formulation of the relevant standards could be discussed.

3.4 France – Restrictions on Omnibus Accounts

The French market is not compliant with the T2S standard 14 on restrictions on omnibus accounts. This is due to a requirement in France to segregate holdings in dedicated accounts based on the legal form of the security (i.e. bearer or fully registered)[5]. The requirement also applies to omnibus accounts of Investor CSDs; i.e. two distinct omnibus accounts are required for the servicing of registered and bearer securities. The deeper investigation of this non-compliance case could focus on analysing the legal aspects of the requirements, in particular as this could form an obstacle for adopting solutions applied in

[5] The two forms of the security are represented by a single ISIN.

other markets (e.g. using separate ISINs for bearer and registered forms of a security as done by other markets). Further, the need for a Eurosystem wide solution should be considered with a thorough investigation at the European level on the role and functionality of registration.

Based on the above considerations it is proposed that the HSG takes the above non-compliance cases one-by-one in upcoming HSG meetings and discussions with the ambition of the fullest possible elaboration of their root causes, their impact on the community (by both quantitative and qualitative measures) and of a practical path for resolving them.

Annex 1: Potential enforcement measures to enhance the commitment by AMI-SeCo markets to comply with post trade harmonisation standards as identified by the HSG

There are a few additional measures or activities that could be discussed on how to increase the commitment by T2S markets to step up efforts towards reaching compliances. These measures can rely on negative or positive incentives or aim at providing further support to the respective stakeholders, and can also complement each other.

a) Analysing more in-depth the impact and effort of required actions

It would be worthwhile initiating a more detailed and targeted assessment aimed at understanding where the difficulties lie what the root causes of non-compliance are. This would allow for an analysis as to which actions would need to be taken in order to remove the barriers. With this, one could also determine in which cases compliance could be achieved with rather low efforts. Such investigation could include looking into the role that new technologies could play for improving the process towards compliance.

A small group composed of HSG members and ECB experts could look into this and develop the next steps for action.

b) Pro-active support for non-complying T2S markets

Following a more in-depth assessment as suggested under 4.1., those T2S market that currently do not comply with one or more T2S standards could be supported more pro-actively by other T2S stakeholders. This could include activities like those carried out by the CMH-TF when educating market participants on the newly established standards laid down in the Single Collateral Management Rulebook for Europe. Accordingly, the ECB could initiate meetings in certain markets, bringing together all stakeholders relevant for the progress of harmonisation, i.e. not only CSDs or banks, but also the relevant public authorities. While the focus in the context of CMH standards was on informing and educating, the main goal in the context of T2S harmonisation standards could be to make better understandable where the difficulties are, and to explore where other stakeholders could support the convergence process.

In the same vein, one could reassess the compositions of the NSG as to whether the relevant actors are indeed on board

Another or additional possibility is to establish a sponsor system, again similar to the approach in the E-MIG (in relation to the CAJWG standards) or in the CMH-TF (in relation to the SCoRE standards).

c) Raising awareness of the impact of changing national legislation on other jurisdictions

Complementary to the proposed steps under 4.1 and 4.2 it could be investigated how to better involve - ex ante - affected stakeholders of different jurisdictions in the process preceding a change of national legislations, which impacts securities settlement harmonisation. This could be possibly achieved by involving lawmakers, where needed, in the proposed meetings under 4.2.

d) Bringing non-compliant cases to the attention of the Governing Council

As foreseen in the T2S Board’s view, the matter of non-compliance could be escalated to the Governing Council. It is however not clear how the Governing Council should react to this as the Governing Council would face the limits with regards to the Eurosystem’s legal authority – as mentioned also in section 2 – in these matters over the relevant stakeholders.

e) Bringing need for speedier harmonisation to the attention of the European Commission

The HSG could propose to the AMI-SeCo to write a letter to the European Commission, highlighting the need for a speedier harmonisation process across jurisdictions in the field of securities settlement, which would support progress towards CMU. This could possibly trigger regulatory changes that would provide for a legal basis enabling the enforcement of compliance.