

# Access and Interoperability Guideline - 28 June 2007

## Table of Contents

1	Introduction.....	1
2	General Principles and Definitions.....	1
3	Access & Interoperability scenarios.....	7
4	Business Case.....	12
5	Application Standards.....	12
6	Mediation mechanisms.....	13
7	Legal, Fiscal & Regulatory arrangements.....	14
8	Miscellaneous – status of this Guideline.....	15

## 1 Introduction

1. This Guideline defines the Principles and Conditions for Access and Interoperability in line with the Code of Conduct as required by end of June 2007. These take the form of commitments and recommendations by the Organisations as to how these requirements can be met for cash equities post-trading services. As stated in the Code “The ultimate aim is to offer market participants the freedom to choose their preferred provider of services separately at each layer of the transaction chain (trading, clearing and settlement) and to make the concept of “cross-border” redundant for transactions between EU members States”.

## 2 General Principles and Definitions

### 2.1 Regulatory framework

2. MiFID will give some access rights in the post-trade area to regulated markets and to investment firms in the EU. The Code is not intended to contradict and is complementary to the MiFID provisions. In particular, MiFID grants the following access rights in its Articles 34 and 46:
  - The right of a market participant to access remotely a foreign CCP and/or CSD;
  - The right of market participants to choose the settlement location for their trades (but not the Central Counterparty Clearing one) provided links are in place between the regulated market and the Organisation in question;
  - The right of regulated markets to choose a particular CCP and/or CSD to clear and settle their transactions.
3. To further facilitate Access and Interoperability between the providers of services in equities trading, clearing or settlement within the relevant jurisdictions, this Guideline addresses the effective extension of these principles to additional relationships in the clearing and settlement sector.
4. According to the Code, Organisations providing post-trade services in equities clearing or settlement should be able to access any other Organisation in the same or another relevant jurisdiction to extend their service provision to other markets or products (the “Requesting Organisation”). The responding Organisation (the “Receiving Organisation”) should provide such Access or Interoperability in line with the conditions and procedures described in this Guideline.

5. Nevertheless, a precondition for obtaining full and cost-effective integration in the provision of cross-border post-trading services is the dismantling of the remaining Giovannini and other barriers. Therefore the European and national authorities should continue to work towards the elimination of legal, fiscal and regulatory barriers and encourage supervisory convergence to fully exploit the potential from the Code and this Guideline. (see also Chapter 7 - *Legal, Fiscal & Regulatory arrangements*)

## **2.2 Organisation-specific Principles and Definitions**

6. These principles apply to all signatories of the Code of Conduct that adopt the Guideline (hereinafter referred to as "Organisations") whose European activities are subject to the supervision of a competent European authority.

### **2.2.1 Trading Platform**

7. This Guideline applies to regulated markets and MTFs as defined under MiFID.
8. The Transaction Feed remains the property of the Trading Platform. Unless otherwise agreed, the transaction feed should be used solely for concluding the clearing and settlement process of trades.
9. A CCP cannot request a transaction feed from a Trading Platform if that Trading Platform does not use a CCP.
10. A CCP cannot request a Transaction Feed from a Trading Platform for cleared products without establishing a relationship with the CCP and CSD currently used.
11. A CSD cannot request a Transaction Feed from a Trading Platform without establishing an appropriate relationship with the CSD currently used, and the CCP currently used in relation to products where use of a CCP is mandatory.

### **2.2.2 CCP**

12. This Guideline applies to Organisations whose CCP activities are subject to supervision as a CCP by a competent authority in Europe; or where there is no such specific regulatory status:
  - In relation to its CCP activities, it must be currently assessed by its competent national authorities as observing CPSS-IOSCO Recommendations for Central Counterparties 1-6, 8, 10 & 11<sup>1</sup>; at least broadly observing all other Recommendations<sup>2</sup>; and as Observing the Recommendations as an overall assessment; and
  - Central counterparty clearing must be clearly separated from other risk taking activities of the Organisation.
13. Competition between CCPs must not have a significantly detrimental effect on risk management standards in place. (see Operational Efficiency Principle, Chapter 2.4 - *Principles for Access and Interoperability* – Article 49)

### **2.2.3 CSD**

14. This Guideline comprises the provision of settlement and custody services by parties offering issuer CSD services.

---

<sup>1</sup> i.e. those covering Legal risk; Participation requirements; Measurement and management of credit exposures; Margin requirements; Financial resources; Default procedures; Operational risk; Physical deliveries; and Risks in links between CCPs.

<sup>2</sup> i.e. those covering Custody and investment risks; Money settlements; Efficiency; Governance; Transparency; and Regulation and oversight (which includes at 4.15.4 provisions regarding supervisory co-operation in relation to CCP links).

15. To achieve the goals of the Code Access and Interoperability is meant to include cross-border DVP services (where possible) (see Chapter 7 – *Legal, Fiscal & Regulatory arrangements*).

### 2.3 Access types and Interoperability

16. "Access" and "Interoperability" are used in the specific meaning of the Code, i.e. Access subject to the access conditions specified in paragraphs 23, 25-33 of the Code of Conduct and Interoperability subject to the Interoperability conditions specified in paragraphs 24, 34-36 of the Code of Conduct.

17. "Link" is a generic reference for any of the Access types and Interoperability described below.

18. The General Principles as defined in Chapter 2.4 - *General Principles for Access and Interoperability*, apply to all Links as detailed below, unless explicitly stated differently.

19. The following matrix describes the possible Links between the Trading Platforms and post-trading Organisations. It shows the possible type of Links per Requesting Organisation and Receiving Organisation. The types of relationship are specified in this chapter however each combination is further detailed in Chapter 3 - *Access & Interoperability scenarios*.

Receiving Requesting	Trading Platform	CCP	CSD
Trading Platform		[3.1] TF	[3.2] TF
CCP	[3.3] TF	[3.5] SA/CA/ IO	[3.6] SA/CA/ TF
CSD	[3.4] TF	[3.7] TF	[3.8] SA/CA/ IO

**Legend**

SA Standard Access  
 CA Customised Access  
 TF Transaction Feed  
 IO InterOperability  
 [x.x] Scenario chapter reference  
 Vertical link  
 Horizontal link

#### 2.3.1 Access types

20. **Standard Unilateral Access:** An Organisation (CCP or CSD where applicable) is a standard participant in another Organisation. This is hereafter referred to as "Standard Access".

21. **Customised Unilateral Access:** An Organisation (CCP or CSD where applicable) is a participant in another Organisation, but in addition certain parts of the service offering to the Requesting Organisation are customised. This is hereafter referred to as "Customised Access".

22. **Transaction Feed Access:** Access by an Organisation (CCP or CSD) to a transaction feed from another Organisation.

### **2.3.2 Standard Access**

23. Standard Access is a right.
24. Standard Access will be provided on the same terms and conditions as provided to any other standard participant of the Receiving Organisation.
25. Functions that are developed and made available to all standard participants or to be developed as part of the elimination of the Giovannini Barriers should be available through Standard Access. These functions should be made available to standard participants as part of the standard service level within the specific timescales.
26. Standard Access involves one Organisation opening an account in the other Organisation.

### **2.3.3 Customised Access**

27. Customised Access is a conditional right subject to the conditions described below. Customised Access involves one Organisation opening an account in the other Organisation.
28. The Receiving Organisation will be requested to develop special functions for the Requesting Organisation. Provided the request is reasonable (in terms of e.g. scope, resources and timing), the Receiving Organisation should respond to the request in good faith. Where Customised Access implies excessive use of resources, it should be possible for a Receiving Organisation on an objective and impartial basis to limit the customisation.
29. Customisation will only benefit the Requesting Organisation(s) and will have no impact on the standard participants of the Receiving Organisation. Therefore it will be compensated by the Requesting Organisation on a cost-plus basis unless bilaterally agreed otherwise (see also Chapter 4 - *Business Case*).
30. Any customisation provided for one Organisation should also be made available to other Organisations upon request.
31. Requests that would lead to fundamental changes to the Receiving Organisation are beyond Customised Access.
32. Any customisation should always be aligned with international industry standards where applicable. This includes the elimination of the Giovannini Barriers, such as the Giovannini Barrier 1 protocol (GB1) and ECSA/ECSDA GB3 standards for the harmonisation in the processing of corporate events.

### **2.3.4 Transaction Feed Access**

33. Transaction Feed Access is a conditional right subject to the conditions described below.
34. For the purpose of this Guideline Transaction Feed will be used as the term to cover trade feed and settlement feed.
35. Transaction Feed Access is the access by an Organisation (CCP or CSD) to a Transaction feed from another Organisation (Trading Platform or CCP). The main difference between Transaction Feed Access and the other types of Access is that Transaction feeds do not necessitate the opening of accounts at the Organisations.

36. The Transaction Feed will always flow vertically from a Trading Platform or a CCP to a CSD, or from a Trading Platform to a CCP. There might be a need for reporting in the opposite direction for regulatory, operational or other purposes.
37. As a condition of meeting the request, a CCP to CCP or CSD to CSD Link may need to be established. Further details are provided in the scenarios.
38. Routing the Transaction Feed in order to make use of multiple post-trade providers could potentially require significant development and implementation costs (business and IT).
39. Such Access will have no impact on the existing participants of the Receiving Organisation. Therefore it will be compensated by the Requesting Organisation on a cost-plus basis unless bilaterally agreed otherwise (see also Chapter 4 - *Business Case*).
40. Transaction Feed Access therefore typically involves customisation even if formats and communication means are standardised. Provided the request is reasonable (in terms of e.g. scope, resources and timing), the Receiving Organisation should respond to the request in good faith. Where this implies excessive use of resources, it should be possible for a Receiving Organisation on an objective and impartial basis to limit the customisation.
41. The existing Transaction Feed may be enriched for further processing and this enrichment should be made available on a non-discriminatory basis.

### **2.3.5 Interoperability**

42. Interoperability means advanced forms of relationships where an Organisation is not generally connecting to existing standard service offerings of the other Organisations but where they agree to establish mutual solutions.

#### **2.3.5.1 CCP to CCP Interoperability**

43. Choice of CCP as demanded by users in line with Article 1 of the Code is best delivered by Interoperability between CCPs.
44. Interoperability between CCPs, as defined in Chapter 3.5.3 - *Scenario: CCP to CCP - Interoperability*, is not likely to have an impact on the standard participants of the Receiving CCP, and is a conditional right of the Requesting Organisation, subject to agreement based on the Business Cases of the Organisations involved.
45. Where Interoperability requests imply excessive use of resources, it should be possible for a Receiving Organisation on an objective and impartial basis to limit the requests.

#### **2.3.5.2 CSD to CSD Interoperability**

46. Choice of settlement provider in line with Article 1 of the Code can be delivered by Standard and/or Customised Access between CSDs. Interoperability is not a requirement to deliver such choice of settlement provider; CSDs may however mutually agree to deliver such interoperability if they so choose.
47. Interoperability between CSDs, as defined in Chapter 3.8.3- *Scenario: CSD to CSD - Interoperability*, consists of fundamental changes to the Receiving CSD and will have an impact on the standard participants of the Receiving CSD. Interoperability between CSDs is a conditional right, subject to mutual agreement based on the Business Cases of the Organisations concerned. Both CSDs have to evaluate, in particular, the impact on their participants and systems, which constitute part of the business case required by both.

## 2.4 General Principles for Access and Interoperability

48. The following principles establish the conditions for Links between Organisations. They shall be applied universally across all Organisations subject to the Code and this Guideline and are applicable to all Access and Interoperability scenarios. Where applicable these principles are detailed in Chapter 3 - *Access & Interoperability scenarios*.
49. The **Operational Efficiency Principle**: Any agreement to request/offer Access to, or Interoperability between, Organisations should ensure that the existing operational efficiency of financial markets will not be significantly weakened by the development of new Links. In case of refusal the Receiving Organisation will disclose any negative impact on Operational Efficiency based on significant, quantifiable and clear indications. Loss of market share cannot be used to invoke the Operational Efficiency Principle.
50. The **Reciprocity Principle**: This principle entitles the Receiving Organisation to deny any Link in the case where the Requesting Organisation is itself demonstrably impeding an actual parallel request for a reciprocal Link.
51. The **Receiving Party Principle**: This principle ensures the orderly operation of the existing market. The Requesting Organisation should, in principle, comply with the legal, fiscal and regulatory arrangements applicable to the Receiving Organisation. The Receiving Organisation can not allow Links on terms that would cause any breach of legal, fiscal and regulatory arrangements outside the control of the Receiving Organisation.
52. The Receiving Organisation can not be forced to change its own market practices and standards towards its own participants, unless mutually agreed.
53. Subject to the Receiving Party Principle, the Requesting Organisation has the right to define its own market practices and standards towards its own participants.
54. **Non-extension Principle**: The Receiving Organisation is under no compulsion to extend its product scope. Requests for new products are subject to mutual agreement.
55. **Non-discrimination Principle**: Any Link relationships should be established and maintained on a non-discriminatory basis. Subject to existing non-disclosure agreements the Receiving Organisation should disclose relevant details (including fee arrangements) of Link relationships with other Organisations at an appropriate stage in the Application Process. The Receiving Organisation may require the Requesting Organisation to guarantee the confidentiality of its commercially sensitive information provided to the latter in order to achieve Customised Access or Interoperability.
56. Adoption of the above principles does not oblige Organisations who currently have existing Links in place to alter the terms and conditions of those Links, however any Organisation can make a new request in light of this Guideline, which may lead to a renegotiation of the existing contract.
57. To ensure user choice of CCP for all relevant securities and to maintain operational efficiency in terms of orderly functioning of markets and use of collateral, a CCP requesting entry to a market through an Interoperability agreement with a Receiving CCP should offer its services for all cash equity instruments eligible at the Receiving CCP for the market in question.

### **3 Access & Interoperability scenarios**

58. The following scenarios illustrate the possible Links between the Organisations enhancing customers' choice under the framework of the Code of Conduct.

59. Organisations have the right to request Access or Customised Access to other Organisations, the right to request access to Transaction feeds, and the right to request Interoperability with other Organisations.

#### **3.1 Scenario: Trading Platform to CCP - Vertical**

60. In this scenario the Trading Platform requests a CCP to accept its Transaction Feed.

61. As a condition of meeting the request, a CCP to CCP Link may need to be established. The principles and conditions for this Link are further detailed in Chapter 3.5. – *Scenario: CCP to CCP - Horizontal*.

62. The CCP to CCP Link, if required, is by default Peer-to-Peer unless otherwise agreed, see Chapter 3.5.3 - *Scenario: CCP to CCP - Interoperability – Article 79*.

63. In the event that loss of business threatens the safe and sound continuous operation of a CCP's services, that CCP should have the ability to renegotiate its service agreement with the Trading Platform. However this should not affect the Trading Platform's relationship with the Requesting CCP.

#### **3.2 Scenario: Trading Platform to CSD - Vertical**

64. In this scenario there is no CCP and the Trading Platform requests a CSD to accept its Transaction Feed.

65. The following conditions must be in place before a Link can be built between a Trading Platform and a CSD:

- If securities are traded by two Members of the Trading Platform which are participants in two different CSDs, a horizontal Link between the CSDs must be in place as of Chapter 3.8- *Scenario: CSD to CSD - Horizontal*.
- Trading Platform members or their agents must provide the CSD with an authorization (e.g. "Power of Attorney") to accept instructions on their behalf from third-parties, when applicable.

66. The Organisation(s) may require a flow of information between the CSD and the Trading Platform to enable the Trading Platform to fulfil its Regulatory Obligations. An example could be a settlement status reports (i.e. matched/unmatched, settled, rejected or failed, etc.).

#### **3.3 Scenario: CCP to Transaction Feed from Trading Platform - Vertical**

67. In this scenario a CCP requests a Transaction Feed from a Trading Platform.

68. A Trading Platform may make access to its Transaction Feed by a Requesting CCP dependent on that CCP concluding a Link arrangement with any CCP(s) already serving that market, and on that CCP obtaining Access to any CSD or other provider of settlement services in respect of instruments traded on that platform.

69. The CCP to CCP Link, if required, is by default Peer-to-Peer unless otherwise agreed, see Chapter 3.5.3 - *Scenario: CCP to CCP - Interoperability– Article 79*.

#### **3.4 Scenario: CSD to Transaction Feed from Trading Platform - Vertical**

70. In this scenario the CSD requests the Transaction Feed from the Trading Platform, where no CCP is involved and where the existing CSD or Trading Platform is

performing the risk management function (if any). This requires the Trading Platform to recognise multiple CSDs. A Link with the existing CSD must be in place.

71. The Requesting CSD has to adhere to the current risk management rules of the existing CSD or Trading Platform.
72. The following conditions must be in place before a Link can be built between a CSD and a Trading Platform:
  - If securities are traded by two Members of the Trading Platform which are participants in two different CSDs, a horizontal Link between the CSDs must be in place as of Chapter 3.8 - *Scenario: CSD to CSD - Horizontal*.
  - Trading Platform members or their agents must provide the CSD with an authorization (e.g. "Power of Attorney") to accept instructions on their behalf from third-parties, when applicable.
73. The Organisation(s) may require a flow of information between the CSD and the Trading Platform to enable the Trading Platform to fulfil its Regulatory Obligations. An example could be a settlement status reports (i.e. matched/unmatched, settled, rejected or failed, etc.).

### **3.5 Scenario: CCP to CCP - Horizontal**

74. In this scenario a CCP requests Standard or Customised Access to another CCP or enter into an Interoperable Link.

#### **3.5.1 Scenario: CCP to CCP - Standard Access as Standard Member**

75. In this scenario a CCP requests Access to another CCP under the standard participant conditions of the Receiving CCP. It is the responsibility of the Requesting CCP to ensure its own regulatory compliance for this type of Access.
76. The following requirements should be put in place before a CCP can gain Access to another CCP:
  - The rules and regulations of the Receiving CCP must allow other CCPs to become standard participant in the Receiving CCP following the standard clearing membership rules.
  - The Receiving CCP should provide the Requesting CCP with all functionality made available to the Receiving CCP's other participants.

#### **3.5.2 Scenario: CCP to CCP - Customised Access as Standard Member**

77. In this scenario Customised Access means that the Receiving CCP will perform some customisation at the request of the other CCP, for which it will be compensated on a cost-plus basis unless bilaterally agreed otherwise. This customisation must not bring fundamental changes to the existing systems, processes and business model of the Receiving CCP, and may become available for all members and as a consequence costs incurred for the customisation could be shared. This customisation will have no impact on the standard participants of the Receiving CCP.

#### **3.5.3 Scenario: CCP to CCP - Interoperability**

78. In this scenario CCP to CCP Interoperability means that the Receiving CCP recognizes the Requesting CCP in its nature and regulatory status as a CCP and vice versa.
79. There are 2 models that apply to this scenario:
  - Peer-to-Peer Model: All CCPs receive their trades directly and simultaneously from the same source (Trading Platform or third-party). In this case the Requesting CCP should not be obliged to use the services of the Receiving CCP.



- Sub-CCP model: The Sub-CCP receives its trades from the Receiving CCP.
80. The CCP to CCP Link is by default Peer-to-Peer unless otherwise agreed.
81. The Receiving CCP will define the following key-standards for cross CCP transactions:
- Jurisdiction
  - Interposition and Trade registration process
  - Settlement process and location (cash and securities)
  - Netting
  - Corporate action processing
  - Management of Settlement Failures
  - Risk management model (subject to the general principles described below which needs to ensure fair and non-discriminatory treatment of both CCPs)
82. Interoperability between CCPs shall deliver:
- Transparency and minimum impact for customers:
    - Participants should not need to be aware which CCP their trading counterparty is using. Participants of the Receiving CCP shall not be adversely affected by establishing a CCP-CCP Link.
    - Where trades occur between customers of the same CCP, there would be no requirement for other CCP(s) to be informed of the trade in a Peer-to-Peer relationship.
  - No damage to risk management principles or approaches. CCP to CCP Interoperability will be fully compliant with CPSS-IOSCO recommendation 11.
83. No CCP can be forced to change these key standards and each is therefore solely responsible for their application to its own participants:
- The legal jurisdiction over contractual relations
  - Membership criteria, including capital and reporting requirements
  - Account structure
  - Settlement process and location (cash and securities) and netting
  - Initial margining methodologies, algorithms and parameters, including the ability to offer initial margin offsets or portfolio-based initial margining across positions traded on different platforms
  - Payment and collateral arrangements
  - Default rules and procedures, including powers over declaration and management of default
  - Default fund and stress-testing rules
  - Powers under market emergencies
  - Tariffs and rebate policies
84. Risk Management:  
CCPs will recognise the specific status of each other as CCPs and not as risk-taking intermediaries.
- The CCPs involved have to arrange an adequate collateralisation scheme to cover the exposure of potential losses.
  - No CCP is obliged to contribute to the other CCP's participants' default fund or other post default backing schemes.
  - A default of a Clearing Member at one CCP should not affect the other CCP unless the first CCP itself is in default.
85. Fees and Costs:  
Guidelines for fees and ongoing costs within CCP-CCP Link models vary depending on the structure of the Link:

- Peer-to-Peer model: There is no charging for internalised trades. Depending on the defined services used (if any) and agreed by the linked parties, fees and/or ongoing costs for cross-CCP transactions can be charged on a bilateral and equal basis for comparable services. The Requesting CCP should not be obliged to use services from the Receiving CCP. As a benchmark for the level of charging, the lower relevant fee, as applied to the other participants, of the two infrastructures should be used as a base for determining the level.
- Sub-CCP model: The Requesting CCP will incur costs of the defined services provided by the Receiving CCP for all trades within the Link. Charges apply for these services shall not exceed the standard participant rates.

### **3.6 Scenario: CCP to CSD - Vertical**

86. In this scenario the CCP requests Access to the CSD, either as Standard or Customised Access, and/or requests to send a Transaction Feed. For Standard or Customised Access there will be an account required at the CSD.
87. As a condition the Trading Platform may need to establish an agreement with the CSD.
88. Before a CCP to CSD Link can be established, the CSD participants must provide the CCP with an authorization (e.g. "Power of Attorney") to generate instructions on their behalf, when applicable.

### **3.7 Scenario: CSD to Transaction Feed from CCP - Vertical**

89. In this scenario the CSD requests Access to the Transaction Feed from the CCP.
90. As a condition the Trading Platform may need to establish an agreement with the CSD.
91. A CSD requests Access to a CCP Transaction Feed dependent on that CSD establishing the necessary Link to the issuer-CSD either directly or indirectly. In cases where the CCP - due to outsourcing arrangements – does not receive the Transaction Feed from the Trading Platform, the new CSD should receive and send the Transaction Feed in the same manner.
92. Before a CSD to CCP Link can be established, the CSD participants must provide the CCP with an authorization (e.g. "Power of Attorney") to generate instructions on their behalf, when applicable.

### **3.8 Scenario: CSD to CSD - Horizontal**

93. In this scenario a CSD requests Standard or Customised Access to another CSD. Access between two CSDs can be seen as a first step for Interoperability, although it can deliver enough added value by itself to comply with market demands. Standard Access should permit a quick, simple setup of a Link between infrastructures to permit business objectives to be fulfilled, even though subsequent moves towards customisation or Interoperability could further facilitate or enhance the efficiency of the Link if desired.
94. Standard or Customised Access can deliver competition between settlement services providers, as well as a choice for participants.
95. The following requirements should be put in place before a CSD to CSD Link can be established:

- The rules and regulations of the Receiving CSD must allow other CSDs to become participant in the Receiving CSD<sup>1</sup>.
- The regulations of the Receiving CSD should allow the use of nominee/omnibus accounts.
- The Receiving CSD should provide the Requesting CSD with all functionality made available to Receiving CSD's members.

### **3.8.1 Scenario: CSD to CSD - Standard Access - Horizontal**

96. In this scenario Standard Access means that a CSD links to another CSD like any other standard participant.
97. The following principles should apply:
- The Receiving CSD opens account(s) for the Requesting CSD.
  - Standard Service Documentation which is used as per any other member or participant defines the standard services provided by the receiver to the Requesting CSD.
  - All securities eligible in the Receiving CSD should be made available to the Requesting CSD except in case there are any legal restrictions applicable which also apply to all the other participants in a similar manner.

### **3.8.2 Scenario: CSD to CSD - Customised Access**

98. In this scenario Customised Access implies that the Receiving CSD will provide some specific services at the request of the other CSD. This customisation will only benefit the Requesting CSD and will have no impact on the standard participants of the Receiving CSD. Therefore it will be compensated by the Requesting CSD on a cost-plus basis unless bilaterally agreed otherwise (see also Chapter 4 - *Business Case*).
99. Any developments which eliminate the Giovannini Barriers (or similar like ESF-ECSDA matching procedure or ISO standards) which are made available to participants of a CSD become part of the standard service offering and therefore do not constitute customisation.
100. If a Receiving CSD is requested to remove all or part of these barriers in advance of its current deadline and this is feasible, this may fall within customisation (See Chapter 2.3.3 - *Customised Access*), unless it is made available to all other participants within the same timeframe and used commonly by the participants.

### **3.8.3 Scenario: CSD to CSD – Interoperability**

101. In this scenario CSD to CSD Interoperability will be established.
102. Interoperability between CSDs would be building on Access as previously described. Conditions that would make the difference between Customised Access and Interoperability are for example:
- Similar technical features
  - Similar cut-off times for corporate actions services
  - Similar service level
  - Where settlement occurs in batches, the batches are synchronised
  - Common contingency procedures
  - Negotiated fee schedule
- And any other changes that break the Receiving Party Principle are considered Interoperability.

---

<sup>1</sup> The Receiving CSD can either be the Issuer CSD of a specific security or another entity having a link with the Issuer CSD.

103. The Interoperability agreement must always be based on the business case of the entities concerned (see Chapter 4 - *Business Case*) and on proper risk control. These business cases must take into account the market demand on all sides as well as the recovery and amortisation time horizon.

## **4 Business Case**

### **4.1 Business Case General Principles and Definitions**

104. The Requesting Organisation's Business Case is the assessment of the user demand, financial, commercial and marketing issues and other terms of the implementation of a new service for the entity that will be offering this new service. In addition the Business Case should contain the costs incurred by the Receiving Organisation for any change required. The Receiving Organisation will specify to the Requesting Organisation all applicable tariffs.

105. The Requesting Organisation will provide the Receiving Organisation with the Service Description containing:

- Operating Model
- Legal Framework
- Regulatory Conditions
- Customisation required (if applicable)
- Requested timing

The Business Case of the Requesting Organisation will not be shared with the Receiving Organisation nor made public.

106. Loss of market share will not be used as part of the Receiving Organisation's Business Case and therefore cannot be used to deny a request.

107. For all Links it is the decision of the Requesting Organisation to make a request based on the analysis of its Business Case (i.e. the impact on its business). Any one-off investment costs associated with the creation of the Link should be charged to the Requesting Organisation on a reasonable cost-plus basis, unless otherwise agreed by both Organisations.

108. Provided the request is reasonable (in terms of e.g. scope, resources and timing), the Receiving Organisation should respond to the request in good faith.

109. In case a similar customisation is requested by more than one Organisation at the same time, or prior to implementation in the Receiving Organisation, the corresponding one-off costs should be shared between the Requesting Organisations equally.

110. If the request is received during the Receiving Organisation's amortisation period then the one-off cost should be adjusted accordingly.

## **5 Application Standards**

111. Every Organisation must provide terms and conditions in English, (as a minimum), as well as procedural and technical conditions for Access, Transaction Feed and CCP to CCP Interoperability requests.

### **5.1 Application Process**

112. The Standard Access criteria and its corresponding application procedures shall be made available upon request.

113. For Customised Access, Transaction Feed and CCP to CCP Interoperability requests the application process comprises the following steps and should be followed expeditiously:

Step 1. The Requesting Organisation should send a written application request and the proposed Service Description (see Chapter 4.1 - *Business Case General Principles and Definitions*, Article 105) should be included in the request.

Step 2. The Receiving Organisation must confirm the receipt of the application request within 15 business days.

Step 3. The Receiving Organisation will assess the request and respond (including an initial cost estimate and timeline) within 6 weeks after having discussed the requirements with the Requesting Organisation and any other third-party if applicable.

Step 4. Cost specification stage: the Receiving Organisation(s) and any other third-party if involved will specify in detail the costs of the customisation considering the final and agreed Functional Specifications from the Requesting Organisation. Costs indicated by the Receiving Organisation(s) in the business case should not be substantially modified after the "cost specification phase" and once they have been approved by the Requesting Organisation, unless enough justification is provided by the Receiving Organisation or bilaterally agreed by both Organisations or a reasonable time frame for implementation has lapsed.

114. Where the request is denied, the answer should include the legal, technical, operational reasons why this request is denied, and if possible, what would need to be done by the Requesting Organisation in order to enable its request.

115. The implementation process follows on from the successful completion of the application process and will lead to the following steps if applicable: Contractual documentation, Detailed Functional and Technical Specifications, IT development, Organisational Readiness, testing and implementation.

## **6 Mediation mechanisms**

116. In case of a dispute regarding interpretation or application of this Guideline (as described in this Guideline or in section IV in the Code of Conduct) both Organisations (Requesting and Receiving parties), hereinafter referred to as the "Parties" or individually as a "Party" shall try to solve the dispute expeditiously and in good faith.

### **6.1 Mediation process**

117. For any type of Link with a right or conditional right, a mediation process will be followed by both parties in the event of a dispute. However, for CSD to CSD Interoperability, in line with Article 36 of the Code, any appointed mediator will have to take into account the specificities and technical difficulties related to Interoperability between CSDs as well as the content of Article 46 of this guideline.

118. The mediation process does not constitute an arbitration procedure.

119. In order to start the mediation process a Party shall send a written request to the other Party demanding mediation. The Receiving Party shall respond to this request within two (2) weeks.

120. The Parties shall submit the dispute to a mediation mechanism in the jurisdiction of the Receiving Organisation, provided that there is one unless agreed differently. In the absence of a mediation mechanism in the jurisdiction of the Receiving

Organisation, the Receiving Organisation should refer the matter to the Amicable/Alternative Dispute Resolution procedure (ADR) of either the LCIA (London Court of International Arbitration) or the ICC (International Chamber of Commerce). In such case the mediation process shall be carried out by this organisation, in accordance with its current procedures.

121. Each Organisation shall bear its own costs (legal fees, expert fees or likewise) related to the mediation process, and shall equally share the cost for the mediator. However, in the event the Organisation initiating the Mediation Procedure is considered by the Mediator to have taken actions for Mediation Procedure without justified reasons, such Organisation shall pay the full cost of mediation.
122. The mediator shall:
- be impartial and independent.
  - disclose any circumstances likely to give rise to justifiable doubts about his impartiality and independence.
  - inform the Parties, before the mediation procedure begins, how the mediator will charge for his/her services.
  - The mediator will produce a report at the end of the mediation process
123. The EU Commission shall be informed of the decisions adopted regarding disputes submitted to the Mediation process. It is understood that any commercial information communicated to the EU Commission will be treated confidentially.

## **7 Legal, Fiscal & Regulatory arrangements**

124. There are limitations that stem from the legal, fiscal and regulatory sector in addition to the Giovannini barriers that would prevent competition from taking place on an equal footing even when Interoperability and Access rights are delivered by the industry under this Guideline. These limitations are outside of the Market Infrastructures' control. The following are some examples of these limitations:
- Intraday financing in Central Bank Money is provided only to local Organisations.
  - The non-banking status of most CSDs today will make it difficult to offer competitive services for the payment leg of the cross-border DVP transactions.
  - Of critical importance for CCPs, there are no internationally-agreed standards and application in relation to insolvency regimes, approaches to the treatment of exposures to CCPs for regulatory capital purposes, client money segregation and the appropriate level of mutualisation of risk between regulators, which may prevent the operation of a level playing field in terms of relative risk between CCPs
  - In countries that do not allow Omnibus account structures the additional cost of maintaining these accounts may undermine the Business Case of the Requesting Organisation.
  - Services that require a local agent e.g. payment leg of the DVP, tax reclaim.
125. Any potential barriers or limitations, outside of the control of the Market Infrastructures, that may be identified during implementation of Access or Interoperability will be reported to the Requesting Organisation and may be reported to the European Commission.
126. Therefore the Organisations call on the European and national authorities to continue to work toward elimination of such additional legal, regulatory and tax barriers and encourage supervisory convergence to fully exploit the potential from these Guidelines.

## **8 Miscellaneous – status of this Guideline**

127. This Guideline is a measure of mutual trust and voluntary in nature. However, the provisions of this Guideline shall not grant any new legal rights to, or duties for, the Organisations adopting this Guideline or third parties. Nothing in this Guideline should be interpreted as being inconsistent with competition law or the fiduciary duties of the directors of an Organisation.
128. Some of the Organisations understand that they may need supervisory approval before adopting the principles of this Guideline.