

**Towards a borderless market in securities post-trading: issues of competence and competition**

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Presentation at the Joint ECB-Commission Conference on “The Safety and Efficiency of Post-Trading Arrangements in Europe”, Frankfurt am Main, 21-22 April 2008

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## **1. Introduction**

I would like to thank the organizers of this conference for their invitation to speak here, in this city which I visited often when I participated in the Legal Committee of the ESCB. It is a joy to be back.

The request concerns a difficult subject of a highly technical nature. At the outset, let me confess that the subject of post-trading is an issue on which I am an interested outsider. Of course, I'm neither an outsider on the competition issues nor on issues of competence of the European Central Bank. That's why I have taken up this invitation.

I will focus on the related issues of competence and competition. Before doing so, let me briefly describe the main features of T2S as I understand them from my somewhat distant perspective.

## **2. T2S as I understand it**

The introduction of the single currency has brought far-reaching changes to the European financial landscape beyond the major achievement of introducing the euro and establishing a Europe-wide central banking system. Looking only inwards, the effects on the European money market, on the issuing of bonds and other securities and on the European banking landscape have been immense. Of course, the outside world has been affected as well, with the euro gaining an important place as a reserve currency and the phenomenon of economic and monetary union attracting interest across the globe. Nevertheless, there are certain pockets of economic activity that have thus far largely remained outside the euro's effects. Non-cash payments are a case in point. SEPA is to remedy this. The clearing and settlement of euro-denominated securities is another area where national markets remain. Banking retail markets are still national in scope, as well. The Commission and the National Competition Authorities (NCAs) continue to follow a national geographical definition of banking retail markets. The changes in the European banking landscape with the emergence of truly transnational banks and the incidence on retail banking of wider use of the internet may change this. Unfortunately, even the Commission does not yet propose a cross-border switching facility for retail bank customers, something the ECA (i.e. the combined European competition authorities) have argued for<sup>1</sup>.

Focusing on post-trading activities, the current system is based on national arrangements, with Central Securities Depositories (CSDs) serving their national markets and only limited involvement of International Central Securities Depositories (ICSDs). The many obstacles to a truly integrated European capital market have been identified in the two Giovannini reports.<sup>2</sup> Several steps have already been taken to overcome these obstacles. Now, in the absence of private initiatives which provide secure and fast Europe-wide clearing and settlement, the ECB has proposed to fill the gap with T2S.

This system is intended to provide settlement in euro-denominated securities (and, possibly, securities denominated in another EU currency) with central bank money. I understand that CSDs and ICSDs will be able to link up on this technical platform without the legal links between them and their customers being affected. Although, as I understand, they will store centrally the databases containing their securities accounts on the T2S platform, they alone will be responsible for contractual relationships with their clients. The ECB will provide no services beyond settlement, leaving all other post-trading business to the depositories. As principle no. 3 of the T2S Consultation Paper of 26 April 2007 says: “T2S is purely an IT settlement service (...) This excludes the possibility of T2S engaging in any asset-servicing business (such as the management of corporate actions)”. The T2S platform will be built and serviced by the same National Central Banks (NCBs) that provide the TARGET2 large-value payment system, possibly with the inclusion of one other NCB.

### **3. Competence**

#### Issue

The first question to be answered is, whether the ECB and the ESCB are competent to offer T2S. For an answer to this question, we need to establish the scope of competences of the ECB and the ESCB laid down in the EC Treaty and the ESCB Statute. In order to do so, I propose to look, first, what kind of bodies the ECB and ESCB are.

#### Qualification of the ECB

Prior to the possible ratification of the Treaty of Lisbon, the European Central Bank is to be considered an “organ” of the European Community, i.e. a body established by the Treaty which is fully subject to Community law. I have elaborated this view in my inaugural address<sup>3</sup> and stick to it after the decision of the European Court of Justice (ECJ) in the *OLAF* Case (Case C-11/00). I mention Lisbon not because I love this city which I hope to visit again in seven days, or because of the Lisbon Agenda for making Europe, by 2010, the most competitive economy globally, but because the amendments introduced into the EU and EC Treaties by “Lisbon” include a reference to the ECB as one of the Union’s institutions. This re-qualification is immaterial to the competence issue.

#### Qualification of the ESCB (and the Eurosystem)

The ESCB, which is the combination of the ECB and the National Central Banks, is entrusted with objectives and tasks by the current Treaty and the Treaty as amended by “Lisbon”.

I consider the ECB combined with the NCBs, i.e. the ESCB, also to be a Community “organ”. In order not to become too legalistic, I will not dwell on the difference between the ESCB as a whole, encompassing all NCBs, and the Eurosystem, which brings together the ECB and the NCBs of the Member States that have adopted the euro. In both these compositions, I discern a “body” of the Community, i.e. an entity or set of entities entrusted with the achievement of a public task at EU level.

### Qualification of the NCBs

Finally, to end this exercise in qualification of the entities concerned, the National Central Banks are creatures of national law that may have a mandate stretching beyond their ESCB activities. In so far as they exercise Eurosystem (or, for the NCBs of the <outs>, ESCB) functions, they are an integral part of the European central banking system. NCBs of the <ins> are to act in accordance with guidelines and instructions of the ECB. The NCBs' "other" functions may only be exercised as long as the Governing Council does not find that they interfere with the objectives or tasks of the ESCB. (Except for the Bank of England, whose position as central bank of the UK benefits from that State's Opt-out Protocol which contains more exceptions than those applied to the other <outs>.)<sup>4</sup>

### Scope of competences of the various actors

I made this brief detour towards the qualification of the actors concerned, in order to determine their competences. As may have become clear already, the ECB and the ESCB are creatures of Community law. This means that they are bound by the principle of attributed competences, a requirement to act within the limits of competences given by the Treaty (Article 8 EC; Article 1.1 ESCB Statute). Not so, the NCBs. As Article 14.4 ESCB Statute makes clear, they are permitted to engage in other activities than those relating to their ESCB functions, supposing they can undertake these other functions under their national charters. I will come back to this distinction shortly.

### Monetary policy

The ESCB has been entrusted with the definition and implementation of the Community's monetary policy (Article 105 (2) EC). As long as there are Member States which have not yet adopted the single currency, we should read: "eurozone" for "Community". This monetary policy requires translation through the banking system, implying a close connection with the oversight of payment systems. That's one of the reasons why the ESCB Statute makes the ESCB competent to provide facilities, and allows for the ECB to make regulations, "to ensure efficient and sound clearing and payment systems within the Community and with other countries" (Article 22). Beyond monetary policy considerations, the oversight of payment systems has traditionally been a central bank concern. Monetary policy is exercised through a variety of instruments, with a predominance of open market and credit operations. The ESCB Statute requires lending to be "based on adequate collateral" (Article 18.1, second indent). In order for this collateral to be available on a cross-border basis, the ESCB has established a Correspondent Central Banking Model (CCBM), recently renewed with a single list of eligible collateral. The importance of this arrangement cannot be overstated in view of the credit crunch and the ability of the ESCB to continue lending without bending its collateral rules, as was necessary for other central banks.

The conduct of monetary policy requires secure and fast settlement of securities which can be used as collateral, also on a cross-border basis. Monetary policy must be as consistent and as uniform as

possible throughout the euro area. Quoting this afternoon's chairman from a collection of legal writings in honour of our late Legal Committee colleague Paolo Zamboni: "The more integrated the financial markets become, the more homogenous the performance and the effects of the Eurosystem's single monetary policy will be" (Liber Amicorum Paolo Zamboni, 2005, p. 398)<sup>5</sup>. Thus, there is a prima facie competence for the ESCB and the ECB deriving from their monetary policy task to establish a platform providing for safe and fast securities settlement integrating hitherto divided national markets. For this competence to be exercised, a clear business case has to be made for the establishment of a mechanism that markets fail to offer.

### Financial stability

The ESCB is to "contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system" (Article 105 (5) EC). This systemic stability task, although auxiliary in nature, is clearly not exhausted by the specification in Article 25.1 ESCB Statute that the ECB may be consulted or offer advice in this area. Financial stability may require further action, such as the provision of facilities in an area that is also of crucial importance to the conduct of monetary policy. Operational and legal risks involved in the use of commercial bank money may provide valid arguments for real-time delivery-versus-payment (DvP) in central bank money. These arguments increase in force in these volatile times. The central banking system's concern for systemic risk underpins its involvement with the surveillance of providers of settlement facilities. The work undertaken by the Committee on Payment and Settlement Systems (CPSS), operating in the context of the BIS, and the Standards for Securities Clearing and Settlement in the European Union, jointly adopted by the ECB and the Committee of European Securities Regulators (CESR)<sup>6</sup>, mark clear focal points of the interest central banks justifiably have in this area. This is a second ground for concluding that the ECB may be competent to establish T2S in the absence of a workable market solution.

### Operations of the E(S)CB

As a third element of competence, I suggest looking at the functions ("operations") of the ESCB. The payment systems oversight task (Article 105 (2) EC) and operations (Article 22 ESCB Statute), already mentioned, would seem to imply competence to act in respect of securities settlement where the two are intertwined, as is the case in DvP arrangements. The specific operations mentioned in Article 17 on opening accounts and accepting assets, including book-entry securities, as collateral, and in Article 18, already mentioned, provide clues for competence of the ECB to act in respect of securities trading. Finally, Article 23 ESCB Statute concerns external operations. It is couched in such wide terms that any legal methods of transferring securities seems implied. The wide scope of competences given empowers the ECB to establish a mechanism linking payments and securities settlement.

### Conclusion as to competence

When action by the ECB is warranted in the context of its first basic task, i.e. monetary policy, and in the context of an auxiliary function (furthering financial stability) and its competence in respect of specific operations is widely drawn, as is the case, there should be no hesitation to consider the ECB competent to establish a Europe-wide settlement platform for securities when the market fails to do so. Should the conclusion have been otherwise, the ECB would act ultra vires.

### **3. Competence and competition**

An interesting aspect of the competence issue is the question of the application of competition law. Articles 81 and 82 EC apply to “undertakings”. Case law makes clear that a public authority is not to be considered an undertaking when exercising its public functions. The Community Courts take a wide view of “undertakings”, distinguishing between activities undertaken in the exercise of public authority and activities which qualify as economic in nature (*Eurocontrol* [Case C-364/92], *SELEX Sistemi*, also on *Eurocontrol* [Case T-155/04, subject to appeal: Case C-13/07 P]). Although “every entity engaged in an economic activity regardless of its legal status and the way it is financed” (*Höfner & Elser* [Case C-4/90]) is an undertaking, not all activities are economic in nature. The Court has held that “any activity consisting in offering goods and services on a given market is an economic activity” (*Commission v. Italy* [Case C-35/96]). It will adopt a functionalist approach and differentiate between activities which are pure exercise of authority and those that go beyond this. If authorities engage in offering goods and services on a given market, they will find it hard to see these activities considered outside the scope of the competition provisions.

With a central banking system conducting its monetary policy through market instruments, with resort to more directive instruments subject to decisions taken by special majority in the Governing Council and subject to the free market imperative (Article 20 ESCB Statute), most activities carried out in the pursuit of monetary policy and financial stability objectives are not, as such, distinguishable from activities undertaken by commercial entities. This is why central banks can make a profit when exercising their public functions even though the profit motive is absent from the public policy considerations underlying their actions. It is the umbrella of the central bank’s objective which shields them from direct application of Articles 81 and 82 EC, distinguishing market operations and the offering of facilities by the ESCB from similar activities undertaken by commercial entities.

Quoting my own previous findings on this, and the only author I know of who has written on the ESCB and the antitrust provisions of the Treaty (José Fernández-Martin<sup>7</sup>): “(...) the legal entities which form the ESCB do not qualify as ‘undertakings’ when they perform monetary-policy or payment-oversight functions. Therefore, all ECB activities which are instrumental or directly or indirectly related to the fulfilment of its public tasks should be considered to be covered by the public

character of the ECB [...] and, hence, are not directly subject to Articles 81 and 82.” The relevance of this finding is that DG COMP’s and the NCAs’ enforcement powers do not apply.

I have to add a caveat. The ECJ is notoriously precise in its qualification of activities as economic or otherwise and decides on a case-specific basis. Therefore, whether the EU judiciary will follow this approach remains to be seen.

Supposing the ECB would act beyond its mandate by setting up T2S, it would qualify as an “undertaking” and its activities would be considered “economic activities”. Thus, it would be subject to the normal enforcement powers of the Commission and, as the case may be, the NCAs. At the same time, the ECB would not be competent to act. This would be different for the NCBs who, as argued, may have a wider scope of activities than purely ESCB functions. For these other activities, they would qualify as “undertakings” without simultaneously being considered to act ultra vires. The ECB and the NCBs together forming the ESCB, the European central banking system is characterized by a somewhat lopsided makeup: its ‘centre’ of decision-making is not competent to act beyond functions given in Maastricht, whereas the ‘periphery’ of the NCBs may be competent, to the extent that the national charters empower them to do so, to go beyond ESCB functions. The ECB does not have what the failed European Constitution called a “flexibility clause”, an enabling power such as Article 308 EC. This makes the Community competent to act if action is necessary but a specific competence is lacking. In order for the ECB’s competence to be able to evolve with time and with market developments, such a provision would have been helpful. In any case, for establishing the settlement platform T2S, no such additional competence-granting provision is necessary.

Allow me to add a word on the proper domain of monetary and financial supervisory authorities. Even though I conclude that T2S is not a case of public authorities competing with private business when markets fail to provide an integrated settlement system which serves monetary and financial stability objectives and offer low-cost Europe-wide settlement, I would consider other ventures into business areas in principle “not done”, irrespective of the precise legal provisions applicable. As I understand, T2S is to bring about economies of scale and will assist in abolishing current, major inefficiencies in the European post-trading arrangements, thus increasing consumer welfare. Therefore, there would seem to be no competition concerns of principle.

Finally, the ECB has been wise enough to seek reassurances from the Ecofin Council. The qualified support for this project from the Ministers of Finance<sup>8</sup> gives the ECB comfort in view of possible allegations of going beyond its mandate and venturing out into areas preserved for private business.

#### 4. Competition

Focusing now on specific competition aspects, let me discuss the issue of applicability of competition law and the requirements resulting from antitrust law, if considered applicable, for T2S.

##### Adherence to Articles 81 and 82 EC required

Although, in my view, the ECB and the NCBs are not “undertakings” engaging in “economic activities” subject to Articles 81 and 82 EC and the normal enforcement procedures when they build and maintain the T2S platform, they are bound to competition law. This is for two reasons. The first is that institutions and organs of the Community are bound to respect the principles of Community law, including the economic freedoms and competition rules, even though the relevant provisions are addressed to Member States or citizens and companies. The governing bodies of the European Union cannot distract themselves from the basic laws for which the EU stands. There is scarcely case law supporting this but this conclusion derives from common sense and decency. Second, the EC Treaty specifically requires the ESCB to “act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources” (Article 105 (1)). Thus, the ECB and the NCBs are to adhere to competition law. In my inaugural address, I have pleaded for arrangements between the Commission and the ECB to embed “a permanent dialogue (...) to assess both the qualification of ESCB behaviour and its compliance with competition law”.

##### T2S and Articles 81 and 82 EC

###### Legal instruments...

T2S may be implemented through contracts which would thus have to be scrutinized against Article 81 EC. In so far as T2S would be created on the basis of ECB Guidelines, directed to NCBs, Article 81 EC would not seem to apply to these legal instruments, unless ECB Guidelines were construed as agreements in disguise. I would counsel for scrutiny of any legal instruments adopted in the context of T2S against the first paragraph of Article 81 EC, prohibiting anticompetitive agreements or practices. Of course, there is also a need to consider whether the exception of paragraph 3 applies. This paragraph saves agreements and practices which are prohibited in principle but whose pro-competitive effects outweigh the anti-competitive effects on four counts:

- 1) they contribute to improving the production or distribution of goods or to promoting technical or economic progress
- 2) they allow consumers a fair share of the resulting benefit, whilst
- 3) they are free of restrictions which are not indispensable for this progress to be made, and
- 4) they do not eliminate competition in respect of a substantial part of the products in question.

This secondary analysis of conduct on the basis of Article 81 (3) EC may be relevant in order to establish that the T2S activities remain within the free markets precepts. As said, but without proper investigation into the matter, it seems that T2S enhances competition and increases consumer welfare

so that there are no concerns on this account. Specifically, it has been argued that T2S will reduce the costs for settling securities trades and, because of the increased possibilities to raise funds across State borders and due to the possibility of maintaining one centralised liquidity pool (a single NCB cash account), it will increase welfare.

...and monopoly

Also, the creation of T2S will lead to a monopoly in the provision of securities settlement on a cross-border basis, at least in central bank money. Thus, the ESCB should take care not to abuse its dominant position (Article 82 EC).

Specific concerns

The characteristics of T2S as set out in the documents the ECB issued for consultation contain a few issues on which competition enforcers would focus their concerns. I will discuss four.

(i) Price

Pricing is a crucial element to any economic activity, even those not considered “economic” in the sense given to it by the Court’s case law on the applicability of antitrust provisions. Overcharging may lead to a conclusion that a dominant position is abused so that consumer welfare decreases. Any undertaking having a monopoly position should be careful to set prices at a reasonable level above cost and to avoid predatory pricing to keep potential competitors from its market or to chase them away once they have entered their fiefdom. Since the ECB has announced that T2S will work on a not-for-profit basis, i.e. only ensuring cost-recovery, there is no immediate concern here. The transparency of the price structure is crucial to verify actual conduct against this promise. Again, the announcements of transparent and non-discriminatory pricing and the ECB adhering to the European Code for Clearing and Settlement<sup>9</sup> reassures. The various price formats may be relevant for the assessment under Article 82 EC: volumes-based pricing with a decreasing price scale for larger volumes may raise issues of rebates and discounts which are not excluded per se but may be used to exclude competition. Of course, with no other arrangement being able to offer exactly the same services (settlement in central bank money), one might argue that there is no such competition: the market may be defined by Europe-wide settlement in central bank money. And I should add that the current pricing practices of CSDs may also have to be assessed against competition policy considerations.

(ii) Governance

I understand T2S will be subject to a special governance regime which will include CSDs and the ultimate users. In principle, this is to be welcomed. The interest of the users can help to achieve an innovative platform. Yet, with CSDs being the current monopolists within individual Member States, having a pivotal scheme in a certain industry run with input from the incumbents raises competition

concerns. The ECB should take scrupulously care to avoid any influence on the part of current service providers in the area of clearing and settlement which may help keep out newcomers in their field of business. New competitors entering the field of CSD activities or entering the changing landscape of securities trading should not be barred from taking part in the governance of the new platform. Also, including incumbents in an advisory committee raises the problem of sharing with them privileged, price- or product-sensitive information and of their influencing access rules to the detriment of potential competitors. Discussing settlement prices charged by the ECB should not extend to exchanging prices charged or costs incurred by CSDs. Finally, public authorities bringing together private parties in a certain field of business for consultations may thereby foster mutual contacts which are suspect from a competition point of view. They should be sensitive on this point without foregoing consultations which are, after all, an element of open governance and effective rule-making accepted in democracies and used by efficient regulators both to their advantage and that of those they supervise.

#### (iii) Access

This brings me to the issue of access to T2S. Access to the platform will need to be given on an open, transparent, non-discriminatory basis requiring only adherence to technical standards and, perhaps, qualification as an entity enjoying the benefit of certain legal rules. This is clearly stated in principles 12 and 13 of the consultation document previously mentioned. The finality of transfer orders in respect of moneys or securities is only ensured for designated systems under the Settlements Finality Directive. If this results in a restriction of access to T2S, such limitation would be due to legislative action rather than agency action. Although the ECB may be well-placed to suggest legislative amendments, any restrictions in access to its platform resulting from the law cannot be attributed to it.

#### (iv) Collateral

Close to the issue of access is the issue of exclusiveness of collateral settled on T2S. I concluded that monetary policy and financial stability objectives, in combination with specific operational competences, permit the ESCB to offer the T2S platform. There may be valid reasons to limiting Eurosystem collateral to those securities which can be settled and cleared through T2S. If the scope of parties linking up with T2S would be rather limited, this might mean that securities which can nowadays be used as collateral but will not be processed through T2S are no longer accepted as collateral. Depending on the strength of the argument that the T2S doorway is imperative for security reasons, this may raise a competition and non-discrimination issue. Let me be clear: even if there are sufficient security and efficiency reasons for creating T2S as part of the public authority functions of the ESCB, there may not be sufficient reasons to exclude as collateral securities which in the future would not be cleared through it. Excluding this collateral, if acceptable now, would require a necessity of a higher level, i.e. a higher standard of proof for the ECB. Thus, any amendments to the CCBM2 arrangements induced by T2S should be justified on their merits and not as a device to secure an

expansion of the use of T2S in the unlikely event of it not covering the entire potential user field. This is in line with the Ecofin's admonition that CSDs should not be barred from access to central bank money should they decide not to link up with T2S.

#### *Approach towards private entrants*

Let me add a word of caution on the ECB's attitude vis-à-vis private entrants into the clearing and settlement market. Although no private entity seems able to offer exactly the same facilities as the ESCB, transacting as it does in central bank money, there are private initiatives on the way. Certain CSDs have linked up to provide post-trade processing of cross-border securities transactions. Others may follow suit or organize their own alternative platforms. Perhaps, mergers between CSDs might provide the same kind of security and access to central bank money as T2S can. The ECB should be cautious not to discourage such commercial ventures, even though they may limit the attractiveness of T2S. After all, T2S will have to make its own business case, attracting customers on its advantages, including its openness, security and cost-recovery basis of operation. Chasing commercial ventures from the market of clearing and settlement of European securities would be incompatible with the ECB's obligation to act in accordance with open market principles and free competition.

#### *Closing remarks*

Finally, the T2S initiative comes at a time of turbulence in the markets and changes in the landscape of securities trading and post-trading. The LSE's chairperson's recent warning against vertically integrated derivatives' trading and settlement<sup>10</sup> highlights the topicality of changes and market initiatives, with Chi-X, Turquoise, LinkUp and so on. It would be best if efficient, EU-wide solutions emerge for the obstacles and inefficiencies that currently exist. This would serve the interest of an economically sound and strong Europe. And it would allow Europe to devote its energies to pressing concerns here and elsewhere. An outward-looking EU needs speedy resolutions of internal technical issues so as to be able to address the larger issues of our times, including energy supply and conservation, protection of the environment, including tackling climate change, peace, economic development for the more than 1 billion people living on less than \$ 1 a day, and the coexistence and cooperation among people of different religions and cultures<sup>11</sup>. The interesting issues discussed during this conference should not make us forget the bigger challenges Europe and the world face.

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<sup>1</sup> *Competition issues in retail banking and payments systems markets in the EU*, a report by the Financial Services Subgroup of the ECA, May 2006. It contains the following statement: “NCAs believe that customer mobility is also an important issue in creating SEPA. Subject to the abolition of existing legal barriers to cross-border switching, the introduction of European account numbers and ‘number portability’ could – in the long run – be the best way forward, depending on the expected costs and benefits. An alternative would be to introduce a European switching facility, or at least the harmonisation of national switching facilities.” See: [http://www.nmanet.nl/Images/ECA%20FINAL%20REPORT%20PUBLIC%20VERSION\\_tcm16-89513.pdf](http://www.nmanet.nl/Images/ECA%20FINAL%20REPORT%20PUBLIC%20VERSION_tcm16-89513.pdf).

<sup>2</sup> The Giovannini Group, *Cross-Border Clearing and Settlement Arrangements in the European Union*, First Report, November 2001; see: [http://ec.europa.eu/internal\\_market/financial-markets/docs/clearing/first\\_giovannini\\_report\\_en.pdf](http://ec.europa.eu/internal_market/financial-markets/docs/clearing/first_giovannini_report_en.pdf); The Giovannini Group, *Second Report on EU Clearing and Settlement Arrangements*, April 2003; see: [http://ec.europa.eu/internal\\_market/financial-markets/docs/clearing/second\\_giovannini\\_report\\_en.pdf](http://ec.europa.eu/internal_market/financial-markets/docs/clearing/second_giovannini_report_en.pdf).

<sup>3</sup> *The European Central Bank in the European Constitutional Order*, Eleven Publishing, Utrecht (NL), 2003. See: <http://www.elevenpub.com/Publications/ShowPublications.aspx?searchId=978-90-77596-01-2>.

<sup>4</sup> The situation of NCBs of the Member States which have adopted the single currency is determined by Articles 14.3 and 14.4 ESCB Statute, whereas the situation of NCBs of Member States with a derogation is determined by Article 14.4 only; see Article 43.1 ESCB Statute. The special position of the Bank of England is laid down in Paragraph 8 of the UK Opt-out Protocol.

<sup>5</sup> See: <http://www.ecb.int/pub/pdf/other/legalaspectsescben.pdf>.

<sup>6</sup> *Standards for Securities Clearing and Settlement in the European Union*, September 2004; see: <http://www.ecb.int/pub/pdf/other/escb-cesr-standardssecurities2004en.pdf>.

<sup>7</sup> José Fernández-Martin, *The Competition Rules of the E.C. Treaty and the European System of Central Banks*, in [2001] *European Competition Law Review*, 51-8.

<sup>8</sup> *Press release 660/07* of the Council of the European Union after its 2787th meeting, Brussels, 27 February 2007. See, also, the *Council conclusions on clearing and settlement* after the 2822<sup>nd</sup> meeting, Luxembourg, 9 October 2007.

<sup>9</sup> See: [http://ec.europa.eu/internal\\_market/financial-markets/docs/code/code\\_en.pdf](http://ec.europa.eu/internal_market/financial-markets/docs/code/code_en.pdf).

<sup>10</sup> Clara Furse, *Speak up to keep clearing houses competitive*, *Financial Times*, 16 April 2008.

<sup>11</sup> See [www.tv1111.eu](http://www.tv1111.eu).