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Business requirements for ESMIG Network Service Providers

– Attachment 1.2 to the Concession Contract –

The following requirements principally aim at ensuring that NSPs observe a minimum set of non-technical requirements which are necessary for the Eurosystem to have reasonable confidence in the soundness and stability of the NSP and the Connectivity services. In some cases, they also define minimum service levels which may otherwise – despite competition between NSPs – be difficult to negotiate for Di.Co.A. with limited connectivity business. Consequently, these requirements should allow Di.Co.A. to obtain a sustainable minimum level of service, and/or a minimum amount of information allowing them to make informed decisions about their choice of NSP(s) and their preferred way of interaction with the ESMIG Services and Applications.

These requirements are specified in this document as minimum conditions to be fulfilled during the Term of the Concession Contract, as from the time indicated separately in this document for each of the requirements. Every breach of a requirement will – beyond any indemnities resulting from the application of the liability provisions of the Concession Contract – trigger payment of penalties as indicated for each of the requirements, and may ultimately result in the termination of the Concession Contract, according to the provisions specified below.

Upon termination of the concession for cause by the Eurosystem, the NSP is obliged to offer all Connectivity Services to the Eurosystem and to the Di.Co.A. that have an ESMIG Connectivity Services Agreement with this NSP, for a period of up two years after the Termination. During this period, any breaches of the Concession Contract will continue to be subject to the indemnities and penalties, set out below.

Taking into account the systemic relevance of the ESMIG Services and Applications as pan-European market infrastructures, NSPs are expected to be subject to the oversight requirements which the relevant Central Banks may define.

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1 Requirements applicable to the providers of Connectivity Services

1.1 Financial strength

Reference ID	ESMIG.UC.BC.010	
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Objective

This requirement aims at mitigating the risk that the NSP becomes insolvent at short notice, or becomes financially weak enough for its creditors to cease offering services (or threatening to do so), as a result of which Di.Co.A. face service (continuity) problems.

Requirement

The NSP shall fulfil each of the following requirements:

1. Have a minimum value in own funds of 100m €;
2. Have a maximum level of indebtedness of 200%, calculated as the ratio of total debts over own funds;

In addition, the NSP shall – for information purposes only - provide the Eurosystem with the yearly turnover, as well as the share of the turnover that is covered by the provision of connectivity services and/or data transmission services.

The NSP shall fulfil each of these requirements, either at the level of the entity that will sign the Concession Contract, or at the consolidated level (if the NSP is a subsidiary and its accounts are consolidated according to internationally recognised standards).

Verification

As soon as the Concession Contract is signed, and within one month after every closure of the annual accounts, either of the NSP itself or of the entity at which level the NSP's annual accounts are consolidated, the NSP will provide the Eurosystem with a statement, certified by a competent accountant or auditor, specifying that the annual accounts have been audited according to internationally accepted standards, as well as the amount of own funds, the level of indebtedness and the level of profitability, calculated as specified above and according to internationally accepted accountancy standards.

If the NSP is a subsidiary or a branch, this statement will be accompanied by a guarantee, issued by the entity at which level the annual accounts are consolidated, that it will provide all necessary financial support to the NSP, allowing the latter to continue offering the required services during a minimum period of two years, both to the Eurosystem and to any Di.Co.A. that have a ESMIG Connectivity Services Agreement with that NSP.

Breaches

In the event that the NSP fails to deliver the required statement within the time specified above, the Eurosystem will – during the first month of delay – levy a penalty of 1.000 € per day delay. For every additional month of delay, this penalty will be increased by 1.000 € per day, up to a maximum of 10.000 € per day. Without prejudice to these penalties, upon a delay of three months, the Eurosystem may terminate the Concession Contract.

In the event that the NSP delivers the required statement, but reaches a ratio between the required value and half of this value, the NSP will – together with the statement - explain the reasons behind the decline and present an action plan to redress the situation within the next 6 months. Provided the Eurosystem accepts the action plan, the NSP will provide quarterly updates on the progress achieved compared to the plan. If the required value is not reached at the next annual verification, the Eurosystem may terminate the Concession Contract.

In the event that the NSP delivers the required statement, but reaches a ratio below half of the required value, the Eurosystem may terminate the Concession Contract immediately.

1.2 Data protection policy

Reference ID	ESMIG.UG.BC.060	
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Objective

This requirement aims at ensuring the protection of personal data and confidential data avoiding the risk that personal or confidential data about any instruction or account position can be accessed by any non-authorised entity, including a public entity, whether law enforcement or other, which has no jurisdictional competence over any of the EEA countries or Switzerland.

Requirement

The NSP shall comply with a data protection policy which is in full compliance with relevant EU legislation. In addition, data pertaining to Di.Co.A. falling under EU Data Protection legislation are not to be held on data stores located in – and should not be routed via – any country without a level of data protection at least equivalent to the one in the EU, unless necessary under extreme circumstances, strictly for the shortest time required to re-establish normal functioning conditions, and only according to procedures defined in Operations Manual. Finally, the NSP shall have appropriate measures in place to protect confidential data pertaining to Di.Co.A..

Verification

At the latest one year after the signature of the Concession Contract, the NSP shall demonstrate fulfilment of this requirement, either by means of a statement issued by the competent data protection authority, or by means of a legal opinion from an internationally recognised law firm, stating the adequacy of the NSP's data protection policy in conjunction with the EU data protection policy and its measures to protect confidential data from unauthorised access. In case of changes to the EU Data Protection legislation or to the NSP's data protection policy, the NSP will submit an updated version of the legal opinion, promptly in the former case. It will submit its proposed DPP changes to the Eurosystem for approval 12 months in advance in the latter case.

Breaches

In the event that the NSP fails to deliver the required legal opinion within the time specified above, the Eurosystem will – during the first month of delay – levy a penalty of 1.000 € per day delay. For every additional month of delay, this penalty will be increased by 1.000 € per day, up to a maximum of 10.000 € per day. Without prejudice to these penalties, upon a delay of three months, the Eurosystem may terminate the Concession Contract.

In the event that the legal opinion shows some risks, either the impact or the likelihood of which is declared as low, the NSP will – together with the legal opinion - present an action plan to redress the situation within 6 months, and will explain how the risks will be mitigated

in the meantime. Provided the Eurosystem accepts the action plan, the NSP will provide quarterly updates on the progress achieved compared to the plan. If the risks have not disappeared within the period of 6 months, the Eurosystem may terminate the Concession Contract.

In the event that the legal opinion states that the impact or the likelihood of the risks identified is other than low, the Eurosystem may terminate the Concession Contract.

1.3 Operational risk management framework

Reference ID	ESMIG.UG.BC.090	
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Objective

This requirement aims at ensuring that NSPs have the structures and processes in place to deliver reliable connectivity services, as well as high-quality support to Di.Co.A..

Requirement

The NSP shall have implemented an operational risk management framework or an information security management framework. The NSP shall explain to the Eurosystem which standard(s) or framework(s) it applies and which processes are used to implement it/them. Whenever a change to the framework(s) or the related processes have been agreed by the NSP's Board, the NSP shall seek the Eurosystem's approval at least 3 months before the implementation of such change.

Verification

At the latest one year after the signature of the Concession Contract, the NSP shall demonstrate fulfilment of this requirement by delivering to the Eurosystem the operational risk management policy or information security management policy, together with a statement from an external auditor, which certifies (i) that the policy is appropriate to the criticality of the Connectivity Services to be provided by the NSP in the context of ESMIG, and (ii) that adequate processes are in place to support the policy. The policy will explain the objective(s) and scope of the operational risk management framework or information security management framework, and on which methodology it is based (if it is internationally recognised), or give a comprehensive overview of the methodology (if it is a proprietary methodology). In addition, the policy will describe the approach to risk tolerance (in terms of likelihood and impact), as well as the roles and responsibilities in the risk management process, in particular with respect to risk acceptance.

In case of material changes to the framework, the policy or the processes, the NSP will seek approval of these changes to the Eurosystem at least 3 months before its envisaged implementation.

Breaches

In the event that the NSP fails to deliver the operational risk or information security management policy or the auditor's statement within the time specified above, the Eurosystem will – during the first month of delay – levy a penalty of 1.000 € per day delay. For every additional month of delay, this penalty will be increased by 1.000 € per day, up to a maximum of 10.000 € per day. Without prejudice to these penalties, upon a delay of three months, the Eurosystem may terminate the Concession Contract.

If the auditor's statement reveals minor areas of improvement, either with respect to the policy or in relation to the supporting risk management processes, the NSP shall present – together with the auditor's statement – an action plan to eliminate these deficiencies within a period of 6 months. Provided the Eurosystem accepts the action plan, the NSP will provide quarterly updates on the progress achieved compared to the plan. If the deficiencies have not disappeared within 6 months, the Eurosystem may terminate the Concession Contract.

In the event that the auditor's statement shows other than minor deficiencies, the Eurosystem may terminate the Concession Contract.

1.4 Technology risk management framework

Reference ID	ESMIG.UG.BC.080	inclusion
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Objective

This requirement aims at ensuring that the NSP uses mainstream technology which is widely supported, which has a proven track record, and the access to which is not limited by anti-competitive behaviour of the owners of the intellectual property rights on the technology.

Requirement

The NSP shall have implemented a technology risk management framework. The NSP shall explain to the Eurosystem which standard(s) or framework(s) it applies and which processes are used to implement it/them. Whenever a material change to the framework or the processes related to it have been agreed by the NSP's Board, the NSP shall seek the Eurosystem's approval for such change, at least 3 months before implementation.

Verification

At the latest one year after the signature of the Concession Contract, the NSP shall demonstrate fulfilment of this requirement by delivering to the Eurosystem the technology risk management policy, together with a statement from an external auditor, which certifies (i) that the policy is commensurate to the criticality of the Connectivity Services to be provided by the NSP in the context of ESMIG, and (ii) that the adequate processes are in place to support the policy. The policy will explain the objective(s) and scope of the technology risk management framework and give a comprehensive overview of the methodology. As a minimum, the policy should cover the risk – for all layers in the Open Systems Interconnection (OSI) model – that a new technology that becomes mainstream in the industry diverges from the NSP's active technology and that the number of vendors of NSP-compatible technologies decreases. In addition, the policy will describe the approach to risk tolerance (in terms of likelihood and impact), as well as the roles and responsibilities in the risk management process, in particular with respect to risk acceptance.

In case of changes to the framework, the policy or the processes, the NSP will explain these changes to the Eurosystem within a period of 3 months.

Breaches

In the event that the NSP fails to deliver the technology risk management policy, the Eurosystem will – during the first month of delay – levy a penalty of 1.000 € per day delay. For every additional month of delay, this penalty will be increased by 1.000 € per day, up to a maximum of 10.000 € per day. Without prejudice to these penalties, upon a delay of three months, the Eurosystem may terminate the Concession Contract.

In case the auditor's statement reveals minor areas of improvement, either with respect to the policy or in relation to the supporting risk management processes, the NSP shall present –

together with the auditor's statement – an action plan to eliminate these deficiencies within a period of 6 months. Provided the Eurosystem accepts the action plan, the NSP will provide quarterly updates on the progress achieved compared to the plan. If the deficiencies have not disappeared within this period, the Eurosystem may terminate the Concession Contract.

In the event that the auditor's statement shows other than minor deficiencies, the Eurosystem may terminate the Concession Contract.

2 Business criteria related to the Connectivity Services

2.1 User Documentation

Reference ID	ESMIG.UG.BC.100	
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Objective

This requirement aims at facilitating a smooth “on-boarding” process and a resilient implementation of the required connectivity services on the Di.Co.A.’ side.

Requirement

The NSP shall ensure the availability of comprehensive and clear documentation, as well as a support structure, that allows the directly connected market participant to implement the ESMIG connectivity services in a timely, cost-effective and resilient way.

Verification

At the latest six months after the Concession Contract has been signed, the NSP shall explain to the Eurosystem:

- which technical solutions are available at each layer of the Open Systems Interconnection (OSI) model for different types of Di.Co.A., and which options are available for Di.Co.A. to influence or deviate from those solutions;
- what documentation and support structure is available to potential Di.Co.A., and which procedures have to be followed, in order to allow them to make an informed decision about the viability and cost-effectiveness of the Di.Co.A.’ ESMIG connectivity solutions;
- what documentation and support structure is available to actual Di.Co.A. and which procedures have to be followed, in order to allow them to implement their preferred ESMIG connectivity solution;
- which are the different stages of the implementation of an ESMIG connectivity solution is on the Di.Co.A.’ side and which are the mandatory and/or optional validation points, and which testing opportunities (and support) are available at these points;

Breaches

In the event that the NSP fails to deliver the required information within the time specified above, the Eurosystem will – during the first month of delay – levy a penalty of 1.000 € per day delay. For every additional month of delay, this penalty will be increased by 1.000 € per day, up to a maximum of 10.000 € per day. Without prejudice to these penalties, upon a delay of three months, the Eurosystem may terminate the Concession Contract.

In the event that the documentation provided by the NSP trigger additional questions from the Eurosystem, the NSP shall reply to these questions within a period of 1 month and, where needed, shall update its User Documentation within 3 months.

2.2 Operational risk reporting

Reference ID	ESMIG.UG.BC.110	
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Objective

This requirement aims at ensuring that Di.Co.A. can make informed risk management decisions based on information that is made available by the NSP.

Requirement

The NSP shall make available to the Eurosystem and all its Di.Co.A. a yearly SAS70 Type II report or a report based on at least equivalent standards (such as ISAE 3402 or the US SSAE 16), covering all T2S connectivity services, together with a statement from an internal or external auditor that the report presents a fair overview of the risk situation at the NSP.

Verification

At the latest one year after the Concession Contract is signed, and every year thereafter until the termination of the Concession Contract, the NSP will transmit promptly after completion an annual SAS70 Type II report or a report based on at least equivalent standards (such as ISAE 3402 or the US SSAE 16) to the Eurosystem, together with the list of Di.Co.A. connected to any of the ESMIG Services and Applications via the NSP, and a statement from the NSP that all these entities have received the same report.

Breaches

In the event that the NSP fails to deliver the required report within the time specified above, the Eurosystem will – during the first month of delay – levy a penalty of 1.000 € per day delay. For every additional month of delay, this penalty will be increased by 1.000 € per day, up to a maximum of 10.000 € per day. Without prejudice to these penalties, upon a delay of three months, the Eurosystem may terminate the Concession Contract.

In the event that the report reveals minor areas of improvement, the NSP shall – within 1 month after the delivery of the report to the Eurosystem – present an action plan to the Eurosystem to eliminate these deficiencies within a period of 6 months, and explain how the related risks will be mitigated until their elimination. Provided the Eurosystem accepts the action plan, the NSP will provide quarterly updates on the progress achieved compared to the plan. If the deficiencies have not been eliminated within 6 months, the Eurosystem may terminate the Concession Contract.

In the event that the report or the auditor's accompanying statement shows other than minor deficiencies, the Eurosystem may terminate the Concession Contract.

3 Publication of maximum prices

Reference ID	ESMIG.UG.BC.130	
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Objective

This requirement aims at ensuring transparency among Di.Co.A. about the maximum prices that a NSP will charge to them for each of the ESMIG connectivity services, listed in the Attachment 1.4 of the Concession Contract (Economic Offer (maximum prices)).

Requirement

The NSP shall make available its maximum fees for each of the ESMIG connectivity services listed in Attachment 1.4 of the Concession Contract (Economic Offer (maximum prices)).

Verification

At the latest one month after the signature of the Concession Contract, the NSP shall deliver to the Eurosystem a price publication policy, indicating how the maximum fees for each of the ESMIG connectivity services have been and/or will be made public. In the event of any change in content of the published information or if the NSP intends to change the publication media, the latter shall notify the Eurosystem at least one month in advance.

The list of connectivity services for which the fee has to be made public are those listed in Attachment 1.4 of the Concession Contract (Economic Offer (maximum prices)). All prices shall be indicated in euro with a maximum precision of 4 decimals (i.e. 1/100 of eurocents), both in numbers and in letters. In case of discordance, the price expressed in letters shall be considered valid.

Breaches

In the event that the NSP fails to deliver the required information within the time specified above, the Eurosystem will – during the first month of delay – levy a penalty of 1.000 € per day delay. For every additional month of delay, this penalty will be increased by 1.000 € per day, up to a maximum of 10.000 € per day. Without prejudice to these penalties, upon a delay of three months, the Eurosystem may terminate the Concession Contract.