

# **ESMIG Connectivity Services Agreements**

## **- Q&A No. 2 -**

*The document addresses questions of market participants on the rights and obligations of the Network Service Providers (NSPs) stemming from the Concession Contract, which forms a basis of the negotiations on the connectivity offers with those NSPs.*

*Further questions on the ESMIG connectivity can be sent to: [ESMIG-Connectivity@bancaditalia.it](mailto:ESMIG-Connectivity@bancaditalia.it)*

*Monthly updates of this document will be performed on the basis of new questions received and will be published as FAQ on the Banca d'Italia and ECB web sites.*

### **1. Application of the Concession contract's provisions to the ESMIG Connectivity Services Agreements.**

**Are there any legal grounds to limit the application of the provisions of the Concession contract in the ESMIG Connectivity Services Agreements concluded between a Di.Co.A and the selected NSP? Can the ESMIG Connectivity Services Agreements stipulate that not all the provisions of the Concession contract apply to the NSP - Di.CO.A relation, e.g. that only Article 7 as transposed in the Service Description of the NSP apply and all other provisions of the Concession Contract apply uniquely to the relationship between the NSP and the Eurosystem (as owner of ESMIG)?**

Article 7.2 of the Concession Contract provides that each ESMIG Connectivity Services Agreement shall meet "the minimum requirements more specifically described in, and be otherwise consistent with, this Contract (including its Attachments) and the Specifications". It follows that the application of the Concession contract to ESMIG Connectivity Services Agreements concluded between a Di.Co.A. and a NSP is not limited to Article 7 and encompasses all terms and conditions of the Concession Contract, including its Attachments and the Specifications, that directly govern or are otherwise relevant to the provision of the Network Connectivity Services to a Di.Co.A.. A provision in an ESMIG Connectivity Service Agreement providing that only Article 7 applies to the NSP-Di.Co.A. relationship and all other provisions of the Concession Contract apply uniquely to the relationship between the NSP and the Eurosystem (as owner and operator of ESMIG) would be inconsistent with Article 7.2 of the Concession Contract.

The foregoing cannot be interpreted as entitling the Di.Co.A. to request changes to the ESMIG Connectivity Services or other matters which are for the NSP and the Eurosystem to consider under the Concession Contract.

### **2. Transposition of the Concession contract's provisions into the NSPs' Service Descriptions**

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**Can the NSPs transpose the provisions of the Concession contract in their Service Descriptions? What is the order of precedence between the Service Descriptions and the Concession contract, in case of conflict between them?**

NSPs can transpose the provisions of the Concession Contract in their Service Descriptions and/or other contractual documents forming the ESMIG Connectivity Services Agreements, provided that they are consistent with the Concession Contract. The transposition of certain provisions of the Concession Contract into the NSP Service Descriptions or other contractual documents is without prejudice to the application of Concession Contract provisions which, in the event of inconsistency with the NSP Service Descriptions or other contractual documents, shall prevail.

**3. Provisional vs. final version of the Service Descriptions**

**In case a Di.Co.A awards an ESMIG Connectivity Services Agreement (i.e. bilateral Order) to an NSP, including a draft/provisional Service Description that will be subject to changes/finalisation at a later stage, will the updated/finalised versions automatically substitute the previous version that was part of the NSPs offer and the resulting bilateral contract between the Di.Co.A and the relevant NSP? If it is the case, will the substitution be retroactive from the date of signature of the bilateral order or will its effect start only from the date of the updated/finalised version?**

NSPs Service Descriptions are currently under review by the ESMIG operator to check their compliance with the Concession contract. It follows that the Service Descriptions currently being circulated by the NSPs in the context of their commercial contacts with potential Di.Co.A customers are to be considered provisional. Amendments made by the NSPs to their Service Descriptions as a result of the ESMIG operator review currently in progress will be retroactive insofar as they are necessary to ensure compliance of the said Service Descriptions with the Concession Contract.