

NexTrust Deliverable 6.4 - Report on the legal definition of the trustee concept and on the legal forms

Deliverable 6.4

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PROJECT INFORMATION			

Executive Summary

In the NexTrust project, the implementation of a new player in the supply chain market is tested: The introduction of a 'trustee' or service provider with a 'trustee function'. The goal of the NexTrust project is to find ways to reduce greenhouse gas emissions in the transport sector. Shippers (i.e. manufacturing companies) usually outsource the transportation of their goods from their manufacturing sites to warehouses and/or the retailers. Shippers most of the times only look at their own transport lanes and goods and try to optimize these flows. As a consequence, in every day transport across Europe the available capacities are only partially used resulting in many vehicles running empty or only partially loaded. This, of course, leaves room to create synergies and use transport capacities in an efficient way. Within NexTrust, we are convinced that vehicle capacities can be used in a much more efficient way. If this is accomplished, vehicle kilometers in the transport sector can be reduced significantly and not only a reduction of greenhouse gas emissions, but also a reduction of congestion on the roads can be achieved.

The key to reach that goal is collaboration. However, collaboration faces barriers and legal restrictions. For good reasons competitors may not exchange sensible data which might lead to less competition on the market. Any infringement can lead to severe penalties. That is why most companies refrain from collaborations or make only very restricted use of them. Successful collaborations in the transport sector have mostly been a matter of luck, i.e. two companies finding out about synergies more or less by chance.

NexTrust was built up on the questions: *What, if we do not leave it to chance whether or not companies find out about synergies? What, if this matchmaking is facilitated and professionalized? How can such facilitation process be implemented in a legally compliant way?*

The idea of installing a neutral, independent person with trustee function who acts under strict confidentiality was born. In NexTrust, different approaches to the role of the trustee are tested in practice. The roles varied from a supervisor to existing collaborations to an orchestrator who actively looks for new opportunities to a platform provider.

In this Deliverable 6.4, we will summarize first results and elaborate on the legal qualification of the trustee entity. From a legal perspective, the idea is to install him as a service provider on the basis of a service level agreement. For reasons of stricter regulation and especially liability the trustee should not provide freight forwarding services, i.e. not entering into contracts of carriage itself and/or trading transport capacities. Therefore, he should not stand between the shippers and the carriers in the transport execution but rather outside this relationship as a third party adviser providing his services.

In most of the cases, the shippers will be the trustees principals hiring his services. They can do so as a partnership or joint venture, on the basis of a multilateral agreement or on the basis of several bilateral agreements between each one of them and the trustee. If the shippers decide to do so on as a partnership, they should carefully consider the respective applicable law on such a partnership and agree upon the most relevant terms such as representation, liability and profit distribution.

This Deliverable will later on be supplemented by the following other legal deliverables:

- D6.1: “Consolidated legal report on the NexTrust pilot cases”;
- D6.3: “Competition law aspects of horizontal and vertical collaboration and blueprint for the competition law training”;
- D6.5: “The effect of the absence of an international convention on multimodal transport”;
- D6.6: “Interaction between the key players in the logistics chain”;
- D6.7: “The legal framework for collaboration in logistics in e-commerce and CITS-ICT”.

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Introduction D6.4

1. Background to this Deliverable 6.4

This deliverable is the report for D6.4, the legal definition of the trustee concept and on the legal forms as well as the implementation and testing of the agreed contracts, due month 31 (December 2017). A model agreement between collaborating shippers and the trustee had been developed. However, the position of the trustee needed to be further defined. From the legal perspective, we have done more research in respect of the functions of the trustee and the legal characterization of the relationships between the trustee and the other parties involved.

2. NexTrust project overview

The NexTrust project has been granted funding from the EU Horizon 2020 Research and Innovation Programme under Grant Agreement 635874. In broad outline, the NexTrust Project specifically aims to increase efficiency and sustainability in the logistics chain by developing trusted collaborative networks that enable horizontal and vertical collaboration across shippers and industry sectors with all their respective supply chains, including last mile (e-commerce), in the European logistics market. These networks fully integrate shippers, logistics service providers (“LSP’s” or “LSP”) and intermodal operators as equal partners. These networks already show a significant reduction of greenhouse gas emissions and traffic congestion, while simultaneously improving asset utilization and logistics cost efficiencies, thus creating a more sustainable, competitive arena for European logistics that will be an inspirational example for the market. The NexTrust Project original plan was to cover 23 pilot cases in five different categories. By now, more than 30 pilot cases have been set up. The action engages major shippers as partners, plus SME shippers and LSP’s with a track record in ICT innovation. Characteristic of the NexTrust project is the focus on market driven research and innovation. NexTrust intends to create ‘stickiness’ for collaboration in the marketplace, validated through large-scale pilot cases carried out in real market conditions. The underlying foundation of the NexTrust consortium is the belief that horizontal and vertical collaboration should not be viewed only in the context of a theoretical or technological exercise, but when applied and validated pragmatically, can lead to a new level of business maturity and innovation strategy.

NexTrust already shows that it achieves a high impact with improved asset utilization and logistics cost efficiency, creating a sustainable, competitive arena for European logistics that will be an inspirational example for the market. In the FTL (full truck load) pilot cases, results show that up to 40% of greenhouse gas emissions (GHG) and up to 46% of empty vehicle kilometers can be saved on single freight lanes.

3. Purpose and Scope of Deliverable 6.4 – the legal definition of the trustee concept and on the legal forms as well as implementation and testing of the agreed contracts

NexTrust is working with a rather new concept in logistics, the neutral trustee function. The trustee has a crucial role during the entire collaboration. The purpose of the herein presented deliverable (6.4) is to describe the legal definition of the trustee concept and on legal forms of the

collaboration. The trustee is a neutral party and is an essential *new player* in the logistic market to manage horizontal and even vertical collaboration. It performs multiple transparent functions. It offers neutral external support to the collaborating shippers and logistics service providers (LSP's) to develop so called 'trusted networks'.

This deliverable is the result of a research in respect of the functions of the trustee and the legal characterization of the relationships between the trustee and the other parties (shippers and LSP's) involved.

Within NexTrust, different approaches to the role of such trusted person are further considered. Previously, it was presumed that shippers entering into a collaboration only enter into commitments under the law of obligations. In most cases that indeed seems a logical starting point. Shippers want to bundle their freight and not to start a new company together. But what are the consequences if their collaboration would unintentionally be considered a separate entity? Furthermore, it is conceivable that sometimes it is desirable/practical to incorporate a company, for example when a large group of companies sets up a common rail connection. What legal aspects need to be taken into account in such case? We will pay attention to the legal forms of logistics collaboration.

In NexTrust there is a trustee and standardization support which facilitates multiple pilot cases (WP's 1, 2, 3, 4) as an internal neutral trustee consultant. It is testing, validating, and where required, improving trustee functions described in the 3-STEP trust-methodology under live pilot conditions. A critical success factor is the implementation of a comprehensive standard of communications to ensure an efficient horizontal and vertical collaboration between the partners. The trustee in NexTrust supports and tests market relevant tools. This include fair gain sharing models along with other market accepted models, as well as anti-trust compliant pilot participation guidelines, covering procurement support, exit/entry rules, and legal frameworks that can be applied in market relevant situations. Trustee functions include transport flow matchmaking to identify synergies between partners, implementing stable and fair gain sharing structures, partner agreements and entry/expansion/exit rules for the network, conflict resolution and securing data confidentiality and carrying out audit-controls. The trustee acts as a so-called 'black-box' communications facilitator to enable anti-trust compliant transport procurement on behalf of the trusted network, which is required when managing collaboration between (direct) competitors and large shippers. Furthermore, the trustee can support shipment combination and synchronization, as well as the physical structure and assets to enable the network to perform at a maximum level of efficiency and sustainability.

In NexTrust the neutral trustee:

- observes, consults and, where necessary, facilitates pilot processes and activities and
- validates and documents trustee functions that have been used in the pilots, including identified functions and new ones that have been developed to facilitate the successful execution of the pilots.

The report gives an overview of the legal aspects of a trustee definition. How can a trustee be described given its different roles and tasks in a potential collaboration? And how can the

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relationships between the trustee and other parties involved be characterized? Furthermore this deliverable addresses the legal forms of logistics collaboration. How can such a collaboration between shippers be described? Do they start a new company together or not? What are the consequences of their relationship would unintentionally be considered a separate entity? What are the legal snares and pitfalls and how can parties overcome these difficulties? Legal difficulties should be considered as challenges and should not be a reason for the parties not to undertake new business approaches. In fact, it stresses the importance of making clear arrangements and subsequently laying those arrangements down in writing. That starts already in the identification and preparation stages, as Deliverable 6.2 has shown.

Report on the legal definition of the trustee concept and on the legal forms

1. Part 1: Legal definition of the trustee and legal forms of collaboration

1.1 Relevant criteria for the selection of the trustee

Given the crucial role of the trustee in a collaboration it is of utmost importance that it meets certain criteria. The most relevant criteria are:

- **Neutrality:** The trustee shall not enter into the collaboration itself and shall have no stakes in any of the participants' organizations.
- **Independence:** The trustee shall be a service provider for facilitating cooperation in a legally compliant way and shall therefore be distinguished from the role of the common supply chain participants such as general freight forwarders and carriers.
- **Confidentiality:** The shippers will provide their competition law sensitive information confidentially to the trustee only. This way they will not need to share sensitive information to the other shippers.

1.2 Functions of the trustee

The trustee function can be categorized as a "Transport optimizer".

The functions include transport flow matchmaking to identify synergies between partners, implementing stable and fair gain sharing structures, partner agreements and entry/expansion/exit rules for the network, conflict resolution and securing data confidentiality and carrying out audit-controls. The trustee acts as a so called "black box" communications facilitator to enable anti-trust compliant transport procurement on behalf of the trusted network, which is especially required when managing collaboration between (direct) competitors. Furthermore, depending on the specific assignments to the trustee, he can take support daily collaboration operations, including shipment combination and synchronization, as well as the physical structure and assets to enable the network to perform at a maximum level of efficiency and sustainability.

The different possible functions of the trustee can be summarized as follows:

- neutral external support to the collaborating shippers (management), e.g.: matchmaking; creating critical mass; stability and fair gain sharing; entry, expansion and exit; legal compliance; conflict resolution; data confidentiality; audit.
- neutral support of daily collaboration process (operation), e.g.: loads combination and synchronization; prioritization; network orchestration; ICT systems and interfaces; incident management; "Collaborative Control Tower" and "Sense and Respond".

1.3 Project phasing

The NexTrust approach follows a 3-step methodology as a standard approach to guide the shippers and carriers from the first contact to the actual test phase of the horizontal collaboration is also being used in NexTrust:

(1) Identification → (2) Preparation → (3) Operation

This straightforward and simple roadmap offers a clear guideline for all members in transport collaboration. It has been now proven on large scale with more than 30 pilot cases to be an effective way to start a horizontal collaboration project and build stable communities. It should be mentioned that although for each horizontal collaboration project the three basic phases are identical, every project requires a tailor-made approach depending on its complexity, its stakeholders, its group dynamics and its operational level of ambition. The identification phase and preparation phase may overlap because it is not uncommon for additional partners to join the community at any moment during the second project phase. On the other hand, it can also happen that community members drop out of the project for a variety of reasons, forcing the search for compatible shippers (identification phase) to start all over again. Even during the operational phase, the collaborative community is often a very dynamic environment which needs constant monitoring and support from the neutral trustee.

The three steps shall be further explained at this point because the legal description of the role of the trustee may change during these steps.

1.3.1 Identification

In the first phase of the 3-step-methodology, the neutral trustee either (i) identifies shippers who are interested in horizontal collaboration and/or (ii) is being approached by one or more shippers who want to hire his services. The trustee then collects and analyses information about the shippers' structural freight flows on a confidential basis. After a potential collaborative match has been identified, if the shippers request so, the trustee can draw up the outlines of a business case in close consultation with each shipper (which trade lanes and which partners are interesting to compare). The trustee will communicate in writing or electronically to the participants individually the mere existence of a potential match for collaboration. Participants can then decide to opt out of any and all collaboration opportunities with specific partners simply by indicating to the trustee that they are not willing to further explore possible collaboration with any of the other companies.

The trustee will help the participants of a collaboration to identify, set up and organize the pilot cases by first collecting individually from the proposed participants some (preselected) transport data for the express purpose of matching this data with the similar data of (one or more) potential other collaboration candidates and identifying if there are any potential 'collaborative matches' for freight flow bundling on identical or compatible lanes. Again, the aim is to develop more sustainable and/or multimodal solutions. It is as if an impartial observer would take a helicopter view to look for bundling chances across the millions of structural freight flows and transport asset movements that exist everywhere in the European transport market.

The trustee already provides a service in this stage to the individual shipper respectively to the group of shippers. He collects, processes, analyses and compares the data. Besides the NDA, in real market conditions the trustee will most likely also request the shipper to conclude a simple service provision contract in which the instructions and his tasks are formulated and which also can include that the trustee is entitled to a compensation. Of course, such a service contract would also include the non-disclosure obligations and data rules.

If two or more shippers agree to pursue a collaboration opportunity, the trustee will provide the individual shippers with the lanes that are in scope for a potential collaboration opportunity. The participants must then advise the trustee as to which of these lanes - if any - they are interested in exploiting the collaboration opportunities.

Once information is exchanged, the participants, by mutual consent, may elect to proceed with the development of a business case for one or more of the match scenarios presented. That is where phase 2, the preparation, starts.

It is important that this process of collecting and matching is managed in complete confidentiality – supported by an NDA between partners – and that any sensitive information is shared only and exclusively through the trustee. The precondition is the design upfront (so before the trustee starts to work) of an anti-trust compliant legal framework that defines how to handle the collected data between the shippers.

1.3.2 Preparation

After the neutral trustee has identified two or more shippers who are open for collaboration, has mapped their structural freight flows and has identified matches, the trustee can invite the shippers around the table to propose a concrete collaboration and to set up a business plan. The trustee helps the participants in building profitable business cases and quantifying the benefits and risks of the collaboration scenarios in the preparation phase. This can be done from three perspectives: efficiency (logistics cost savings), sustainability (reduction in greenhouse gas emissions) and effectiveness (service level improvement). The preparation stage starts here.

The shippers who up to now only interacted with the trustee on a one-to-one basis, are now introduced and start to work out their collaboration project under the direction of the trustee who does not only manage the process but also functions as a 'black box' to avoid the exchange of commercial sensitive information. Therefore, at the beginning of the preparation stage, the shippers and trustee need to provide for some basic rules in respect of confidentiality, data and competition law, for example by means of an NDA. The partners express their ambition to set up a collaboration project and outline a high level scope. The participants will each separately (and again on strict confidential basis) provide to the trustee(s) their respective current costs for lanes that are in the scope for the matches and any required terms and conditions. The potential benefits and expected barriers of transport bundling are documented. Cost data will be used by the trustee to calculate the current baseline to measure potential benefits.

The trustee, if so requested, will support the candidate collaborating companies and advise them on possible opportunities and risks. Once the neutral trustee identifies a number of bilateral or

multilateral horizontal collaboration opportunities (transport matches), NexTrust follows a multi-step process of qualifying and ranking them, before calculating in a structured way the business case for each opportunity. This will often be a dynamic, iterative process, requiring increasing levels of detailed case information and commitment from the candidate partners. These parties do not, as in the initial phase, only include the shippers. At this point, also carriers/LSP's will be approached as value adding partners in the community. The shippers communicate a list of acceptable carriers/LSP's with the trustee. The trustee will then create a mutually acceptable list of carriers and start the process for price quotation for the collaborative lanes.

A constructive dialogue between shippers and carriers/LSP's during this preparation stage is therefore critical, in order to test and validate whether the theoretically assumed synergy savings can indeed be realized in practice, given the market conditions and constraints for the collaborating parties. This interaction will also be typically facilitated by the neutral trustee and can be supported by ICT tools. This important step will build momentum and tackle internal skepticism, provide a stable basis for the operational implementation afterwards and will enhance the 'sense of community' between the coalition partners.

During the meeting or afterwards, parties also need to have an outlook on the next step of the operation. For that reason the (content of the) contracts the parties will need to conclude in the operational phase have to be discussed already during the preparation phase.

Once the participants have individually agreed to the new costs negotiated by the trustees, they can individually engage in facilitated discussions with the nominated carrier on specific issues related to the transport of their goods, including service requirements. The nominated carrier will be bound to an obligation to keep business sensitive information of the other participants confidential, in order to avoid the risk of indirect exchange.

The information in respect of individual lane specific costs is provided to the trustee for the express purpose of identifying joint baseline cost for a round trip or bundling in conjunction with the development of a business case for a specific pilot case. This information, along with the new carrier offers that may be solicited as part of the business case development process, is a key element in determining a no-go or go-ahead. In a joint go/no-go decision, the parties decide whether further expansion of the project is worthwhile.

1.3.3 Operation

After the preparation phase, in which proposed participants should also have their collaboration evaluated by a competition law and IT-law expert (in-house or external legal counsel) on the concrete merits of the case and should consider the responsible case managers to receive a competition law training (see also NexTrust Deliverable 6.2 Report - legal aspects of the initial phase of matchmaking and the pre-contractual phase, p. 20 cq), parties sign the agreement(s) and start to work in the operational stage.

In the last phase, the actions and shipments of the collaborating partners are executed by the carriers with the support where need by the trustees to overcome any constraints.

The trustee can carry out various tasks during the operation phase, depending on his level of involvement as described before (see article 1.5), a list of potential tasks are such as: receiving transport orders from shippers, real-time synchronizing and balancing of the transport movements in both directions and making the operational planning to forward to the logistic service provider, incident solving and management of the administrative and financial flows, coordination of the collaboration, audits (periodically performing audits to make sure that the agreed gain sharing principles are respected in the invoicing process) and joint tender support.

1.4 Added value trustee from a legal point of view

A neutral trustee not only manages the cooperation between the participants of a collaboration and makes sure that the maximum benefit is achieved within the collaboration. It was one of the goals of the NexTrust project from the beginning that every collaboration must meet the highest legal compliance standards. The introduction of a trustee in the supply chain business is seen as a critical success factor of a collaboration. Through the installation of a trustee it is ensured that the requirements of applicable competition law are met and confidential data is not (in)directly shared with (actual or potential) competitors. In addition, with the support of a trustee function in the collaboration possible concerns with respect to abuse of purchasing power can be effectively minimized. This will be discussed in more detail in another Deliverable Report 6.3.

Furthermore, the trustee structure prevents that the shippers will receive information concerning each other's costs and/or price structures via the LSP. Such information can be regarded as commercially sensitive information and the exchange thereof is prohibited under competition law.

The trustee is responsible for collecting and analysing all the relevant data and for the management of the collaboration of a number of different shippers and LSP's. Through the trustee, it is possible that confidential data of shippers can be analysed together with that of other shippers who might even be competitors. Without him, the opportunities of a legally compliant matchmaking analysis in the supply chain are significantly less and successful, substantial and efficient cooperation rather than a matter of good luck of two parties finding each other. The involvement of the trustee is crucial for safeguarding confidentiality. There is no real exchange of sensitive information (prices, volumes etc.) between the shippers because the trustee shall be obliged to keep the sensitive information confidential and only use the information for the purpose for which it has been provided/collected. In the collaboration the individual shippers pass on the information about the freight volumes they are expected to contract out to transport service providers to the trustee. The trustee asks the LSP's what they would charge for the carriage in respect of the bundled cargo. The trustee informs each individual shipper of the transport costs it is 'accountable' for. In this way the information is not identifiable and no secret, sensitive and/or strategic information will be exchanged amongst the shippers and between shippers and LSP's. The individual shipper will only be able to evaluate his own current transport costs (in the case he bundles his freight flow) against his own historic transport costs in the situation that he was not yet collaborating.

The role of the trustee in the NexTrust project is experienced as essential and value-adding by the shippers as well as the LSP's. Critical success factors mentioned by shippers and LSP's are the established trust and transparency on all levels and modified operational processes to align with

the shared collaboration operational process flow. The presence of the trustee function is an essential and useful feature, as it allows the shippers to keep sensitive information confidential, particularly in the management of the flows, the calculation of the efficiencies and importantly ensuring that any efficiencies in the system are passed on by the LSP's to the shippers. This way it is possible to ward the interests of each party and, at the same time, to provide substantial grounds to support the compliance of a collaboration with competition law and to avoid competition law liabilities are incurred by the shippers. A thorough awareness of competition law risk and the disciplined implementation of a competition law compliance policy are key to the success of the trustee's mandate.

In essence, the introduction of a trustee in the supply chain shall not be seen as another cost element and new individual interest squeezing in into the traditional supply chain scheme. In contrary, the trustee function shall be seen as a third party to the traditional shipper-LSP relationship with the potential to create significant additional value for all parties involved: As a neutral, independent person committed to confidentiality towards each other party, shippers and/or LSP's are able to entrust him with their sensitive data and information. In the hands of the trustee it will be ensured that these data and information may be thoroughly analyzed without infringing competition law and privacy law. This is way, shippers and LSP's are able to get knowledge of potential to enter into cooperation with other players to combine and optimize their transport flows. Without the trustee, shippers and LSP's are very limited to get knowledge of any such potential as they are restricted to share and receive such information from third parties, especially from potential competitors. For details on the legal framework and restrictions with respect to competition law and privacy law, we refer to chapter 3 of the previous Deliverable 6.2.

In addition to the circumvention of the (reasonable) legal barriers for direct implementation of collaboration, the trustee administrating the data and information for the shippers and LSP's might even be able to foresee future potential for greater efficiency and advise the parties proactively in that regard. This way, shippers and LSP's can take the findings from the trustee's "hawk-eye" view of the market and the participants' particularities into account when they make their strategic planning. The trustee can thus not only be of additional value for the status quo but he can also contribute to constant improvement of each single participant's supply chain operations.

1.5 Legal forms of collaboration

As explained before, the implementation of the trustee function in the transportation chain allows a collaboration in a legally compliant way is an innovation of the NexTrust project. There are several different ways, which have been tested on how the trustee position can be filled in:

1.5.1 Trustee as service provider for several parties

The trustee can be an independent service provider offering his matchmaking services to any shipper interested in collaboration opportunities. In this case, the shipper provides his data to the trustee on a bilateral basis who will then analyze these data with the other data the trustee has been provided with by other shippers. The result of the analysis will show possible opportunities for cooperation between two or more of the shippers who have provided the data. The trustee will then inform the respective shippers and bring them together to implement the cooperation. Generally,

the trustee will also take the lead managing the procurement process to find suitable LSP's who can serve the cooperation. The trustee has access to all relevant data such as volumes, origin/destination and special equipment requirements. Throughout the cooperation the trustee will remain available for the cooperating parties for situations where sensitive data must be processed or evaluated in order to enable and maintain the cooperation without the shippers getting knowledge of any sensitive data of the other shipper(s).

This model is especially being used currently for Full-Truck-Loads (FTL) in Work Packages 2 (FTL) and 3 (Intermodal).

1.5.2 Trustee as supervisor hired by two or more parties

The trustee can also act as initial facilitator and, once established, supervisor of a cooperation. The situation could be as follows: Two or more shippers want to find out about the potential of their cooperation. The trustee then assists in the discovery of a potential of cooperation without in depth analysis of data and, in a subsequent step, after at least two shippers want to proceed, finding an LSP to serve the cooperation, e.g. by means of a tender process. The shippers will then enter into bilateral agreements with the LSP on terms which take the efficiency gains of the cooperation into consideration, i.e. allowing each party a fair share of the efficiency gain. The trustee will arrange for the synchronization of the freight flows in this phase. Once established, throughout the cooperation the trustee will mainly audit the realization, e.g. by regularly reviewing the freight flows as well as the accounting under the agreements and this way safeguarding that all parties involved get their fair share of the benefits of the cooperation. From the operational perspective, the trustee plays a rather passive role.

This model was used in some pilot cases in Work Package 1 (LTL).

1.5.3 Trustee as orchestrator hired by two or more shippers

A third approach to make use of a trustee is to assign him the role of an orchestrator hired by two or more shippers. The shippers together will instruct the trustee to play an active role in the transport execution in addition to the services described in article 1.5.2 above, among others to also constantly look for synchronization improvements. As an orchestrator, the services of the trustee will also include managing the LSP who will be hired for the operational part of the cooperation.

This model is especially being used in some pilot cases in Work Package 1 (LTL).

1.5.4 Trustee as a platform provider

In NexTrust, also the model of a trustee as a platform provider is tested. This approach is tested in two ways in NexTrust: In one, the trustee hosts an online platform where shippers in form of retailers, carriers in form of white van owners and drivers can meet to efficiently match freight flows on the last mile transport of goods. As host of the platform, the trustee can safeguard that all confidential information, if any, will be administrated by him only and only the relevant information for the specific transport will be accessible by the users. The second way this approach is tested is

by offering a holistic IT solution for intermodal transport of goods as a supply chain manager (4PL) with trustee function.

This model is being used in Work Package 4 (e-commerce) and Pilot 3.4 (Intermodal).

1.5.5 Similarities and differences

All of the above approaches have in common that the trustee plays a neutral role. He is assigned with specific tasks by one or more shippers (or a joint venture, art. 1.4.4). In so far, it does not matter whether such assignment is made on multiple bilateral contracts or in a multiparty agreement. In each case the trustee is a third party. The trustee is only bound to comply with the terms of the assignment and acts independently and neutral fulfilling these assignments. This role allows him to handle the sensitive information which must be handled to efficiently handle the cooperation and efficiently manage the project.

The differences in the above mentioned models can be found in the structure of the cooperation with respect to the trustee's principals and the scope of the instructions: How much of the orchestration do the principals want to assign to the trustee? For a great part, this will depend on the question of how much of the orchestration do the principals want to do or are able to do themselves, especially with respect to competition law. The involvement of the trustee will certainly become more intensive and bear more responsibilities, the more sensitive data must be handled during the cooperation.

1.6 Legal qualification of the role of the trustee

The consequence of the introduction of a trustee in the supply chain is that a new player must be contractually interwoven in the traditional supply chain scheme. Against the background of the aforementioned, the idea is not to break up the direct contractual relationship between shippers and carriers or LSP's and to create a new contractual layer between the shippers and the LSP's, but rather to see the trustee function as a service provider for the shippers and/or the LSP's to enable an efficiency gain to the shippers/LSP's relationship for the benefit of all parties involved.

1.6.1 Relationship between trustee and shippers

As shown before, the trustee can typically perform two types of collaboration support: He can offer his matchmaking services and management of the procurement process (for example article 1.5.1 above) or as an orchestrator for two or more shippers (for example article 1.5.3 above). Also, he can act as a supporting supervisor (for example article 1.5.2 above) or a platform provider (see for example article 1.5.4 above).

Under Dutch law a contract between shippers and the trustee following the approaches discussed under article 1.5 above for both the identification/preparation and the operation phase would qualify as

- an agreement for professional services in general, more specifically an agreement for the supply of consultancy services (management and services).

In the operation phase, next to an agreement for professional services the contractual relationship between shippers and trustee could also be qualified as:

- as far as the contract obliges the trustee to perform legal acts in its own name or in the name of the shippers, but always for the benefit of the shippers (as its principals) as a mandate contract. Under Dutch law a mandate contract is a special form of an agreement for professional services.
- a freight forwarding contract as far as the trustee would perform more traditional tasks in logistics and would (in its own name or in the name of the shippers) enter into carriage contracts with LSP's or negotiate such carriage contracts between its principals, the shippers, and the LSP's.

Dutch law perspective

Under Dutch law all these types of contracts are special contracts, specifically mentioned and arranged for by the Dutch Civil Code (Books 7 and 8). Furthermore Dutch law provides for rules how to deal with 'mixed' agreements. The contract between all the shippers and the trustee is a multiparty contract, separate to the collaboration agreement between the shippers. This way the shippers can replace the trustee without renegotiating their own contract, if any.

As said before, under Dutch law the contract between the shippers and the trustee qualifies as an agreement for professional services in the meaning of Section 1, Title 7 of Book 7 DCIC (articles 7:400 and further). Article 7:400 (1) DCIC stipulates:

“A service provision agreement is the agreement under which one of the parties (‘the service provider’) has engaged himself towards the other party (‘the client’) to perform work on another basis than an employment agreement, which work consists of something else than the making of a tangible construction, the safekeeping of property, the publication of a work or the transportation of persons or goods.”

In case of legal acts the contract qualifies as a contract of mandate in the meaning of section 2, Title 7 of Book 7 DCIC (articles 7:414 and further) as well. Article 7:414 DCIC stipulates:

“A mandate agreement is a service provision agreement under which one of the parties, (‘the mandatory’) has engaged himself towards the other party (‘the mandator’) to perform one or more juridical acts for account of the latter (the mandator).”

Article 7:415 DCIC also provides for mandate to two or more mandatories (more trustees):

“If two or more mandatories have engaged themselves under the same mandate agreement, then each of them is entitled to act independently.”

In case the trustee would negotiate about the conclusion of or conclude concrete carriage contracts on behalf of the individual shippers with LSP's, insofar the agreement would additionally

qualify as a freight forwarding contract in the meaning of Section 3 of Title 2 of Book 8 DCIC (articles 8:60 and further). The freight forwarding contract is described in article 8:60 DCIC:

“A contract to forward goods is a contract whereby one party (the forwarding agent) binds himself towards the other party (the principal) to enter, for the benefit of the latter, into one or more contracts of carriage with a carrier to transport things which are to be made available by the principal; or, it is a contract whereby the forwarding agent undertakes to include a stipulation for the benefit of the principal in one or more such contracts of carriage.”

The concern is that the trustee would be qualified as a freight forwarder in certain legal systems. This could bring about liabilities that it could possibly not carry and might not be able to get insurance for. For instance the trustee would be liable for timely delivery and the condition of the goods. Furthermore the freight forwarder under Dutch law concludes the contract of carriage *with himself*, according to article 8:61 (1) DCIC, which reads:

“To the extent that the forwarder himself performs the contract of carriage of goods that he was expected to conclude on behalf of his principal with someone else, he shall be deemed to be the carrier pursuant to that contract.”

Sub 2 of that article reads that *“any stipulation (clause) in derogation from the present Article is null and void.”* More obligations of the freight forwarder are stipulated in articles 8:62 DCIC (information duty) and 8:63 DCIC (obligations of the forwarder).

In view of the above the status of freight forwarder under Dutch law would entail serious obligations and liabilities for the trustee. Therefore a trustee needs to be aware of the qualification of its tasks and responsibilities during negotiating and concluding a contract with the shippers. For these reasons it is, in principle, not the intention that the trustee would ever become the contractual party of the LSP's. The trustee might negotiate a transport contract, but would only enter into such contract in the name of the shippers, who individually become the contractual other party of the LSP's. So, concrete carriage contracts shall always be concluded in a direct contractual relationship between the individual Shippers and the LSP's. The trustee will not (be authorized to) enter into any carriage contract on behalf of any of the Shippers in its own name and therefore will never become a contracting party to such transport agreements concluded within the framework of the collaboration between the Shippers itself.

From a competition law point of view, it is important that the trustee is an impartial third party, bound to confidentiality and not an 'extension' of the mutual shippers.

German law perspective

The situation under German law would be comparable to the Dutch law situation. Under German law, the trustee will be obliged to provide his services to the principal(s) in the form of data collection, data analysis, advice on freight flow optimization, and/or, depending on the assignments to the trustee, operational management of the collaboration. The professional services would be

qualified as *Dienstvertrag* under German law (par. 611 seq. GCiC). If the parties do not agree otherwise, German law provides the following to be applicable on the legal relationship:

- The trustee will be entitled to a remuneration for his services. If the parties do not agree upon a specified fee (e.g. fixed fee) or the calculation of the same (e.g. a percentage of cost savings achieved), then a “common remuneration for this kind of services” (*übliche Vergütung*) will be due to the trustee, par. 612 GCiC. Thus, in the first line it must be considered if there are market standards for the particular kind of trustee services offered in the particular situation which can serve as an orientation for the assessment of the remuneration. If there are no common standards for his remuneration available in a particular case, the terms and conditions agreed between the parties would be considered and interpreted with the intention to find an indication on how to calculate the remuneration of the trustee. E.g., if there are indications that the trustee is being considered a certain advisor or arranger comparable to established players in the market, then this might give reason to apply the remuneration scheme/usual tariffs of such advisor or arranger to the services of the trustee. If there is no such room for interpretation, then the trustee may unilaterally determine his remuneration on a reasonable and comprehensible basis. For such determination, all circumstances of the relationship between the trustee and his principals must be considered, such as scope of services, time spent, value delivered and risks assumed.
- If the trustee and his principal have not explicitly or implicitly agreed upon the period of the contractual relation and the means of termination, then the relationship may be terminated as follows: If a remuneration is payable upon periodically (e.g. per day/month/quarter), then the contract can be terminated by either party to the end of such period. If no such agreement on periodical payment is agreed upon and the relationship is not concluded for more than a five year period initially, then the contract can be terminated at any time with a termination period of not more than two weeks.
- Under the contractual relationship, both parties are obliged to duly fulfill their obligations as agreed upon (par. 611, 280 GCiC) and to be considerate of the rights, assets and interests of the contractual partner (par. 241 GCiC).

In none of the approaches to the scope of work of the trustee as described in article 1.5 above the trustee intends to commit the carriage of the goods, thus he will not be considered a carrier under applicable law. However, the services of the trustee must be differentiated to those of a freight forwarder who commits to arrange for the carriage of goods. The legal relationship with the trustee could be considered a freight forwarding contract if the trustee (also) performed more traditional tasks in logistics and (in its own name or in the name of the shippers) entered into carriage contracts with LSP's or negotiate such carriage contracts between its principals, the shippers, and the LSP's. The status of freight forwarder would entail serious liabilities for the trustee. Especially in the case of the IT solution provider (see article 1.5.4 above) there might be a risk of qualification as freight forwarder if the supply chain manager with trustee function would also offer his transport services.

Under German law, freight forwarding is codified in art. 453 et seq. GCoC. If the contractual relationship between the shippers and the trustee were to be qualified as freight forwarding, probably the most relevant consequence would be that the trustee then will principally be liable for

the safe transport of the goods. In case of damage or loss of the goods the trustee would have to compensate the shippers/principals for the damage (art. 461, 462 GCoC). His liability would then be limited to 8.33 Special Drawing Rights (SDR, art. 461 cq. 431 GCoC). Any claims against the trustee as freight forwarder would however be time barred after one year beginning on the day of the (intended) delivery of the goods instead of the common three year-period (art. 463 cq. 439 GCoC).

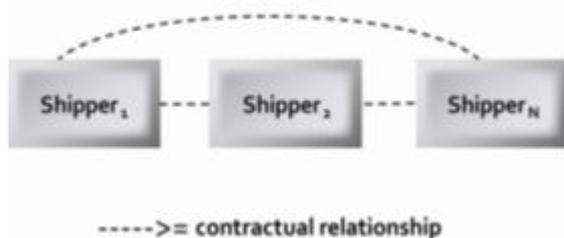
Pursuant to the NexTrust approach, carriage contracts with respect to a specific cargo will be entered into by the individual shippers with the individual LSP's directly (it is not a multi-party agreement). The trustee shall not become a party to these carriage contracts, among others to exclude the (liability) regimes applicable for carriers and/or freight forwarders (see before). The role of the trustee would therefore be limited to supplying out certain services on behalf of the shippers, but that they will not be mandating the LSP's in any way in their own name. Consequently, if the role of the trustee is thus limited purely to that of a consultant and does not involve acting on behalf of the shippers, the contract would qualify as a contract for the provision of services and fall within the common contract regime. In so far as the trustee can perform legal acts in its own name or in the name of the shippers, but for the benefit of the shippers as the principals of the trustee, such aspects could be considered as a contract of agency, subject to the general law of contract.

1.6.2 Relationship between trustee and LSP's

In NexTrust, it is not the intention that the trustee enters into a contractual relationship with the LSP's. The trustee shall only provide his services to the shippers. However, depending on his scope of services the trustee may have relevant contact with the LSP's. As described above, it will be deemed useful or even required from a legal compliance perspective that the trustee manages the tender process, if any, makes arrangements with the LSP on behalf of the shippers or audits the administration of the shipper-LSP relationship. What is important to know in that regard is that the trustee in each case acts on behalf of the shippers under the service agreement. Any rights of the trustee towards the LSP's can thus only result from the shippers granting him such powers. Such granting of powers or rights can be done directly in the service agreement between the shipper(s) and the trustee or indirectly by agreement between the shipper(s) and the LSP in which the LSP is obliged to provide certain data to the trustee upon request.

1.6.3 Relationship between shippers

For the definition of the legal role of the trustee it is also worth further examining the legal situation with his contractual partners, namely the shippers.



[figure 1]

In diagram 1 we see that within the legal framework the collaboration agreement between the shippers can be a multiparty contractual relationship. The legal qualification of this contractual relationship should be considered carefully. The shippers should especially pay attention to whether or not they want to set up a separate joint venture, a partnership or have a mere bi-/multiparty contractual relationship, if any contractual relationship at all. This should be thoroughly taken into consideration by the shippers when setting up the collaboration. Because even when the shippers do not intend to enter into a partnership, depending on the applicable law their collaboration might be considered a legal entity which could be subject to corporate law.

The situation under German and Dutch law, as two examples, will be as follows:

German law perspective

Under German law, in case two or more persons join efforts to achieve a common goal they will be considered a “*Gesellschaft bürgerlichen Rechts*” (partnership pursuant to civil law) which will be subject to art. 705 et seq. GCiC. If the terms and conditions of such partnership are not further defined, the applicable German law provides as follows:

- Each of the partners has to equally contribute to the partnership. That means, each partner would be able to request from the other partner(s) that a certain contribution in money or in kind must be made, such other partner(s) to be liable to contribute.
- In case of doubt, each of the shareholders is authorized to represent the partnership and legally bind the co-shareholders towards third parties. In consequence, a partner will be legally bound by agreements or arrangements made by another partner intentionally or implicitly done on behalf of the partnership.
- Each of the shareholders is personally liable for the obligations of the partnership. Such liability will be unlimited towards third parties/creditors of the partnership. In case one of the partners pays the debt which is exceeding his obligation to contribute to the partnership he may claim compensation from his partner(s). However, that implies that he also carries the burden of his partners' financial liquidity.
- Irrespective of the shares/contributions, each shareholder participates equally in the profit of the partnership. That means that even if it is obvious that one of the partners takes the lead in the venture and contributes more effort or money, any gains made on the partnership level are to be shared per capita.
- Each shareholder may terminate the partnership at any time. This can lead to serious consequences when the partners trust in the mid- to longer-term existence in the partnership.

The before mentioned serious consequences can be avoided by thoughtful preparation of the cooperation. Two approaches for avoiding are possible: One would be that the shippers explicitly state that their relationship shall not be regarded as a partnership and live by it also towards third parties such as the LSP's. In tripartite agreements which can be thought of especially for hiring the services of the trustee it should be made clear that each of the shippers is acting on his own behalf only, that the other shipper(s) in principal may not act or speak on his behalf and that any invoicing

is to be made directly by or towards him. If the shippers however intended to enter into a partnership, the partnership agreement should address, among others, the above mentioned points and provide for clear and transparent provisions.

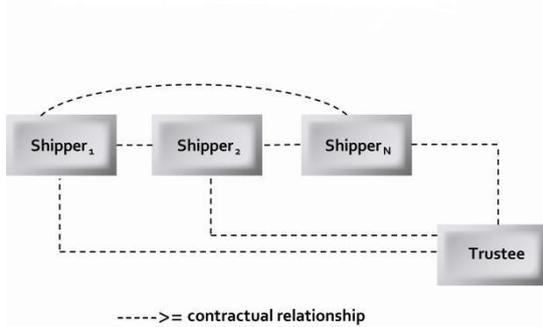
Dutch law perspective

Under Dutch law, a partnership (*vennootschap onder firma, v.o.f.*) requires two or more parties acting under a common name. Thus, even if two partners join forces to achieve a common goal, they will not be considered a partnership. In consequence, joining forces under Dutch law seems to bear less risks than German law.

- In order to establish a partnership, no specific form requirements have to be met. Article 22 DCoC seems to imply this, but a deed just has an evidentiary function. It is by no means a condition of existence. Even without an explicit agreement, a partnership can be established. To assess this, consideration is given to the circumstances of the case, such as the actual conduct and statements of the parties. It should be noted, however, that it is necessary to run the company under a joint name (Article 16 DCoC). Thus, if two parties instruct an intermediary, they cannot speak of a partnership as long as they do not do this under a joint name.
- Each of the partners is jointly and severally liable to the company for the company's commitments. Partners can be held liable directly by creditors (Article DCoC). This applies regardless of any representation restrictions.
- If the agreement does not contain any provision regarding the distribution of profits, the profits are distributed among the partners proportionally (Article 7A:1670 DCiC) Each partner participates in the profit of the partnership. It is not permitted that all profits be awarded to one of the partners (Article 7A:1672 par. 1 DCiC). Furthermore, partners can decide how the profit is distributed. It is allowed for partners to agree that the losses are taken on account of one of the partners. The profit sharing measure is determined jointly by the partners.

Bi-/multilateral relationship

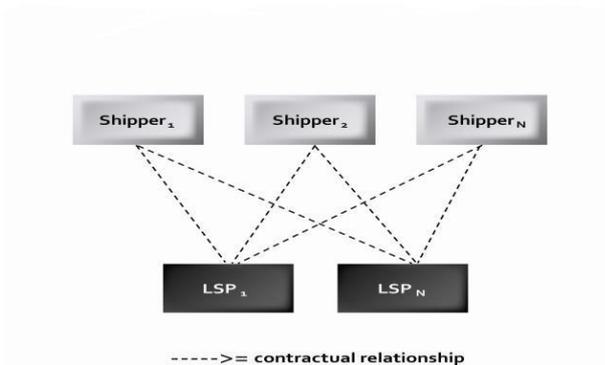
If the shippers choose for a bi-/multilateral relationship, the contract between the shippers and the trustee can be a multiparty contract or a bilateral contract between each shipper and the trustee:



[figure 2]

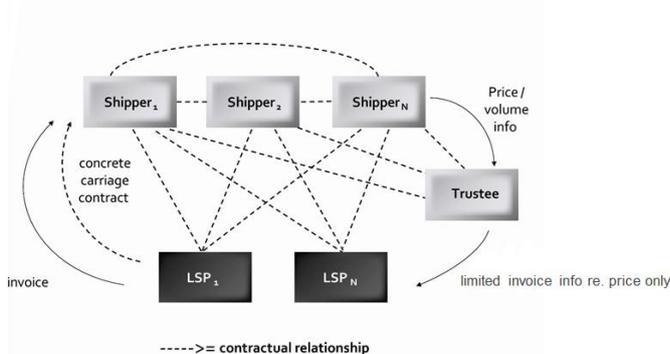
This is also reflected in diagram 2. The agreement between the shippers and the trustee in this case is a multiparty agreement. All shippers enter into this agreement with the trustee on an individual basis. All individual shippers are the contractual other party of the trustee, not the collectivity of the shippers (which again does not exist).

The shippers will then each conclude separate agreements with the LSP for the transportation of the goods:



[figure 3]

The full picture of legal relationships between the parties involved will then be as follows:



[figure 4]

2. Part 2: Implementation of agreed contracts

2.1 Non-disclosure agreement

The first and most relevant agreement required is a non-disclosure agreement (“NDA”). Resulting from the NexTrust idea of the trustee as a neutral, independent third party it is necessary that the shippers can entrust the trustee with their confidential, sensitive data and that, in turn, the information provided by the trustee is equally treated confidentially. Information coming from the trustee which might require protection under the NDA will be, for example, research and analysis results, (standard) documentation, reports, software et cetera. The NDA must therefore be mutual for both parties involved.

In NDA's in general, it is usually recommendable to choose a rather broad definition of what confidential information can be in terms of form, such as: any information, technical data, or know-how disclosed by the disclosing party, including - but not limited to - information which relates to the disclosing party's research, product plans, customers, suppliers, markets, software, developments, inventions, processes, designs, drawings, engineering, hardware configuration, marketing, finances, products, services, pricing, or contract terms and conditions. In addition, in order to limit this rather broad description, the definition can be narrowed with respect to content resp. labelling, such as: Confidential information would only be such information which is marked as confidential or which by its nature reasonably should be understood by the recipient to be of confidential nature. It is self-explanatory that information which is, for example, publicly available, which is received from third parties or which must be disclosed on the grounds of applicable law should not be considered confidential.

Another aspect in connection with NDA's is the protection of the information within the recipient's sphere. The greater the entity of the recipient, the greater the risk that confidential information will be – intentionally or unintentionally – misapplied. Taking this into account, it is advisable to include wording in an NDA that the recipient is obliged to grant access to the confidential information received only to those persons within its business who require the information to accomplish the purpose of the contractual relationship between the sender and the recipient of the information. This serves as a warning to the recipient that information received will be treated carefully and thoughtfully distributed within its organization. In case of an – intentional or unintentional – breach the recipient will have the burden of proof why the respective person needed to have access to the information.

The before mentioned issues relating to NDA's are commonly used in the market. They also formed the basis for the NDA's used within the NexTrust project. These conditions of the NDA's were widely accepted in the NexTrust pilot cases.

As shown before, different approaches to the role of the trustee are being practiced within NexTrust. For the identification and preparation phases, i.e. for the preparatory work of the trustee, no service contracts were concluded. Thus, an NDA was mandatory to safeguard the confidentiality. This will also apply to trustee role approaches described in articles 1.5.1 and 1.5.3 if some sort of discovery shall be done by the trustee before a service agreement shall be entered

into and the operation phase commences. After all, without safeguarding confidentiality no shipper will provide his sensitive data to a trustee for obvious compliance reasons.

In NexTrust, all the pilot cases across the different WP's have used NDA's. Overall, we can summarise that at least around 37 trusted collaboration pilot NDA agreements have been established. In some cases, where necessary, multiple NDA agreements were signed also among the shippers, so that some pilot cases were backed up with several NDA's.

2.2 Service Agreement

As NexTrust is a research project and not yet active on the market without EU subsidy, no service agreement for the services of the trustee has been established.

However, in bringing the results of the project beyond the EU funding period, the legal research activities also need to reflect on service agreement requirements.

There might be several challenges which should be considered when drafting a service agreement for the trustee services, irrespective of the particular scope of work depending on how the role of the trustee is filled in.

First of all, confidentiality is a key issue in the service agreement as well. In fact, the non-disclosure obligations discussed before could be included in the service agreement safeguarding confidentiality. This way, a separate NDA might not be necessary any more.

The three core features of the trustee – neutrality, independence and confidentiality – should be made clear in the agreement, whether directly or indirectly. Irrespective of whether the principal is a sole shipper, the agreement is entered into as a multiparty agreement with several shippers or with a shipper joint venture, the trustee shall be considered as a service provider.

It should be avoided to include any indication into the contract which might be characteristic for a freight forwarder in the scope of services of the trustee (see article 1.6.1 above). Especially, it should be made clear that the trustee does not conclude the contracts of carriage with the LSP's in his own name. Rather, it must be made clear that he supports to organize the collaboration for the sake of greater efficiency and acts as intermediary where sensitive data must be considered or analysed.

From the shippers point of view it will be important to assign all compliance-sensitive tasks to the trustee and make clear that they do not wish to receive any sensitive data from (potential) competitors. It will be one of the main tasks of the trustee to safeguard that the dataflow between him and the shipper and among the shippers, as far as it is orchestrated by him, always remains compliant, especially with regard to competition law and privacy.

Special attention should be paid to the remuneration for the trustee. It should be avoided that the trustee invoices transport costs to the shippers because, other than a freight forwarder, he shall not trade transport capacities and organize the transport as such. Rather, his services for increasing efficiency shall be remunerated.

A particular case is the trustee as a platform provider (see article 1.5.4 above): Here, also, the trustee will act as a service provider whereby his service is providing and managing the platform. Since this will be his core obligation the trustee should also provide for transparent rules using the platform. If the supply chain manager with trustee function also offers his transportation services in this regard, it is advisable to keep the transportation services and the IT platform services separated from each other to avoid the liability scheme of the freight forwarder which would apply if the whole relationship was be qualified as freight forwarding.

2.3 Notes on the contractual relationship between the shippers

In order to provide a wider picture of the contractual relationships, some notes shall be made on the relationships between the shippers.

Different approaches for the relationship of the shippers are possible, ranging from a partnership or joint venture to a mere contractual collaboration agreement and, last but not least, no direct agreement at all between the shippers and instead bilateral agreements with the trustee.

2.3.1 Joint venture / partnership

As explained above (article 1.6.3), if the shippers want to enter into a joint venture or partnership they are advised to thoroughly consider the terms of such collaboration. Depending on the applicable law, there might be serious consequences applicable by law if this is not carefully prepared. The partners will have to agree on:

- Which legal form shall be entered into? If an entity with limited liability is intended the parties should be aware that this in most jurisdictions requires certain standards of corporate organization which leads to less flexibility with respect to inter alia decision making, accounting, registration and entry/exit options.
- Clear rules on representation: Who shall be authorized to represent the joint venture or partnership? Depending on the liability regime of the shareholders resp. partners this might have serious consequences.
- How shall the profit be distributed? This requires that it is clearly defined what the profit is and how expenses shall be covered.
- How can the joint venture or partnership be terminated? Transparent entry/exit rules should be defined and agreed upon.

2.3.2 Multiparty agreement with trustee

If the shippers wish to enter into a multiparty agreement with the trustee without establishing a partnership among each other it is advisable that this is clearly stated in the agreement. This can be done by inserting clauses stating that each of the shippers is only entering into this agreement on its own behalf and may not and does not speak for any one of the other shippers. In addition, principally no shipper should be allowed to give instructions to the trustee on behalf of other shippers unless clearly defined in how far this is admissible. It is also advisable that each shipper has a right to drop out of the agreement at its own request without the agreement being automatically terminated at a whole (which would be a typical consequence in a partnership).

2.3.3 Collaboration agreement between shippers

Under Dutch and German law a collaboration agreement between the shippers would be a normal reciprocal contract (*sui generis*) creating obligations. It is ruled under the law of the obligations and by general contract law as included in Book 6 of the Dutch Civil Code. It does not qualify as a special contract, so no specific rules apply. A special point of interest is of course the legal form of the collaboration between the shippers. In our view this collaboration has a contractual nature only. In Dutch we use the notion '*verbindenisrechtelijk*', in German '*schuldrechtlich*', to express this. Both mean 'relating to the law of obligation'. The prospective participants to a collaboration (project) simply want to pool their cargo. Normally, they will not have the intention to enter into a joint venture or some kind of contractual partnership agreement.

Entry (and exit) clauses are a key element. From a competition law point of view it can be important to keep the collaboration transparent and open for others who want to enter the game, provided that they add and not destroy value. Another side of the coin is that trust (in terms of good working relationships) between the shippers is essential for success and newcomers can form a threat to the existing stability. In respect of access and entry clauses, we remark that the parties need to have the commitment to build on long term relationships. The whole idea behind horizontal collaboration between shippers in the supply chain is of course to improve efficiency in logistics. In this respect the shippers should have a dynamic (not static) view on their collaboration. In principle, they should want the trustee not to lean back but to actively seek new partners that can add value and improve efficiency even further.

Key elements of the collaboration agreement between the shippers are also the rules with respect to the commitment/obligation to bring in certain volumes and with respect to volume variation. This is certainly vital in collaborations in which shippers plan to bring together such volumes that it is possible to make a modal shift from road to inland waterways or rail. We have no principle opinion in this respect apart from the fact that we do believe it is essential to make clear written arrangements in respect of the commitment to bring in volume and regarding volume variation. As far as exclusivity is not needed to bring about the collaboration, we think it might be better not to straitjacket the shippers but leave them free of options.

A fair gain sharing mechanism is essential for the success of the collaboration. This gain sharing mechanism shall be included in the contract or at least in the methodology to use.

In NexTrust, the beneficiary Vlerick Business School has elaborated and analyzed different models. The Pilot Cases of NexTrust have mainly used the linear rule to be used as the preferred allocation rule. In the linear rule, as explained in more detail in Deliverable Report 7.1, the cost allocation is relevant for the collaboration, which is based on a ratio of each company's stand-alone cost compared to the network cost. By comparing the cost of each company to the total network both before and after the collaboration, costs are allocated based on how efficient each company can manage their stand-alone cost. In that sense, the linear rule does not look at how much each company makes use of the network, but proportionally assigns a fixed percentage of the total cost in order to ensure that companies are incentivised to operate efficiently and effectively

Compared to other benefit sharing rules, the linear rule is easily adjustable to a specific pilot case setting and provides the necessary transparency to ensure fair benefit sharing as well as long-term trust.

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- NexTrust project website www.nextrust-project.eu

List of Acronyms and Abbreviations

ACROYNM	EXPLANATION
DCiC	Dutch Civil Code
DCoC	Dutch Commercial Code
EC	European Commission
FTL	Full Truck Load
GCiC	German Civil Code
GCoC	German Commercial Code
LSP	Logistics Service Provider
LTL	Less Than Truck-load
NDA	Non-Disclosure Agreement
PU (Dissemination level)	Public
R (deliverable type)	Document, Report
WP	Work Package

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