BANKING AND FINANCE

Public consultation on post-trade in a Capital Market Union: dismantling barriers and strategy for the future

Fields marked with * are mandatory.

Introduction

Capital Markets Union ("CMU") is a key element in the Commission's efforts to boost jobs and growth. The CMU Action Plan noted that, despite the significant progress, there are still barriers to a single market for capital, particularly for cross-border investment. This concerns in particular post-trade services.

Post-trade services cover services related to the processing of a transaction between two parties (e.g. clearing, settlement, collateral management) that are performed after the execution of a trade, e.g. financial instruments will only be credited to the issuer's account after related post-trade services. Efficient and integrated post-trade markets are a prerequisite for efficient and integrated financial markets.

Barriers relating to post-trade identified in 2001 are referred to as "Giovannini barriers". These barriers have not been reviewed, although major changes have taken place in trading, clearing and settlement with the adoption of the European Market Infrastructure Regulation (EMIR), Central Securities Depositaries Regulation (CSDR) and Securities Financing Transactions Regulation (SFTR), and the start of Target2-Securities (T2S).

In 2015, the Commission announced its intention to undertake a broad review of the progress of removing those barriers. In early 2016, the Commission established in an expert group, the European Post-Trade Forum ("EPTF"), to assess the evolution of the EU post-trade landscape and progress in removing barriers. The group delivered a Report that is published along with this consultation.

The purpose of this consultation is to learn stakeholders' views about the current state of post-trade markets, the main trends and challenges faced by post-trade services providers and their users, and to determine the existence and scale of remaining or new barriers, the risks associated with such barriers and the best ways to address them. Some barriers are being addressed by ongoing actions (e.g. code of

conduct on withholding tax procedures) and reviews of existing legislation (e.g. EMIR). The results of this consultation will feed into future legislative reviews and contribute to the communication on post-trade planned for the end of 2017.

Responding to this consultation and follow-up to the consultation

Stakeholders' responses can help define the barriers, estimate their scale and assess the best way to address those barriers. Evidence will help the Commission to determine the needs and priorities. The relevance, effectiveness, efficiency, coherence and added value of future EU actions and proposals with respect to different barriers will be assessed in due time in line with the Better Regulation principles.

This consultation provides an opportunity for all stakeholders to provide their views. Views are welcome from citizens, the Member States, competent authorities of financial institutions and market participants, industry, consumer and investors organisations, to name just a few. EU institutions, the Single Supervisory Mechanism and think tanks are also invited to take part.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-post-trade@ec.europa.eu.

More information:

- on this consultation
- on the protection of personal data regime for this consultation

1. Information about you

*Are you replying as:

- ○ a private individual
- ○ an organisation or a company
- ◉ a public authority or an international organisation

*Name of the public authority:

Autorité des Marchés Financiers (AMF)

Contact email address:

The information you provide here is for administrative purposes only and will not be published

a.bargas@amf-france.org

* Type of public authority

- ( ) International or European organisation
- ( ) Regional or local authority
- ( ) Government or Ministry
- (•) Regulatory authority, Supervisory authority or Central bank
- ( ) Other public authority

* Where are you based and/or where do you carry out your activity?

France

* Field of activity or sector (*if applicable*):

at least 1 choice(s)

- [x] Regulator or supervisor
- [x] Corporate
- [ ] Banking
- [x] Investment management (any type of fund other than pension)
- [ ] Pension
- [ ] Insurance
- [x] Central counterparty (CCP)
- [x] Central Securities Depositary (CSD)
- [x] Stock exchange
- [ ] Other market infrastructure operator
- [ ] Accounting
- [ ] Auditing
- [ ] Law firm / consulting
- [ ] Academia
- [ ] Private individual
- [ ] Other

Important notice on the publication of responses

This consultation is divided into two sections:

3.1. EU and global trends, new technologies and competition in post-trade;

3.2. remaining barriers and solutions to remove them.

* Contributions received are intended for publication on the Commission's website. Do you agree to your contribution being published?
(see specific privacy statement)

- (●) Yes, I agree to my response being published under the name I indicate (*name of your organisation /company/public authority or your name if your reply as an individual*)
- ( ) No, I do not want my response to be published

2. Your opinion

3.1. EU and global trends, new technologies and competition in post-trade

3.1.1. The main trends in post-trade in the EU

Capital markets are undergoing constant development due to factors such as globalisation, mobility of investors and issuers, technological innovation or regulatory changes. To design future policy it is essential to understand the trends that shape markets.

The EPTF expect in the near future:

1. increased automation at all levels of the custody chain;
2. new technological developments such as distributed ledger technology ("DLT") being increasingly used in post-trade;
3. more cross-border issuance of securities driven by the CSDR-based right for issuers to use any Central Securities Depository (CSD) in the EU;
4. more trading in equities taking place on regulated trading venues due to trading obligations for equities under Markets in Financial Instruments Regulation (MiFIR) and Markets in Financial Instruments Directive (MiFID 2);
5. improved shareholder relations and better opportunities for shareholders to exercise their rights cross-border, driven by the review of Shareholders Rights Directive (SRD); and
6. a shift of issuances to CSDs that participate in the Target2-Securities ("T2S") platform.

The above trends may not be the only ones driving the evolution of post-trade markets.

Question 1

Question 1.a) Which of the trends are relevant for shaping EU post-trade services today?

Please indicate in order of importance

	1 (most important)	2	3	4	5	6 (least important)
increased automation at all levels of the custody chain	○	○	○	○	○	●
new technological developments such as DLT	○	○	○	○	●	○
more cross-border issuance of securities	○	●	○	○	○	○
more trading in equities taking place on regulated trading	○	○	●	○	○	○
improved shareholder relations	○	○	○	●	○	○
a shift of issuances to CSDs participating in T2S	●	○	○	○	○	○

Question 1.b) Are there other trends that are not listed above?

Please describe and indicate in order of importance.

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- The way Brexit is handled may create uncertainty for European and
international actors located in the UK (CCPs in particular), notably regarding
how they access the European single market. This should drive the EC to focus
closely on regulatory convergence and on the debate over the location of key
financial market infrastructures,
- the increasing number of derivatives and SFT products on trading platforms
and CCPs,
- the concentration of actors in the clearing business, which results from
economies of scale and regulatory requirements (prudential requirements and
conduct rules),
- the increasing competition between intermediaries and financial market
infrastructures on some high added-value markets (custody of securities,
collateral management).
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Question 1.c) For each trend, please indicate if the impact on post-trade markets is positive, mixed or negative:

→ *increased automation at all levels of the custody chain*

● positive ○ mixed ○ negative

Please explain why and indicate if EU policies should further encourage the trend:

```
Custodians would be able to process transactions in a more efficient, safer and
faster way. This will reinforce investors' confidence.
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→ *new technological developments such as DLT*

○ positive ◉ mixed ○ negative

Please explain why and indicate if EU policies should further encourage the trend or address negative implications:

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mixed since if, on one hand, DLTs could bring obvious benefits (faster
settlement and confirmation processes, easier reporting structure) and would
aim, on the long term, to reduce costs and speed up some processes on certain
market segments which are too manual or too costly, they can, on the other
hand, have some limitations (absence of netting, scalability issues,
transparency on positions and transactions) which prevent their full
development in the regulated financial markets. It is also worth noting that
DLTs bring risks (cyber-risks, fragmentation and problems of regulatory unlevel
playing field if DLTs start to provide settlement or clearing services). In
order to deal with such issues, we encourage the Commission to propose a
regulatory framework for DLTs.
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→ *more cross-border issuance of securities*

◉ positive ○ mixed ○ negative

Please explain why and indicate if EU policies should further encourage the trend:

```
positive impact since it would allow a larger choice for issuers. Increased
competition between CSDs would potentially lead to lower costs and better
services for issuers. There is no need for EU policies to further encourage
this trend. However, it is useful to remind European authorities that legal
criteria are not the only factors taken into consideration by firms when it
comes to choosing their place of issue: market liquidity, operational issues,
tax framework, insolvency and securities laws are factors which are also
relevant and which could not be changed by EU laws
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→ *more trading in equities taking place on regulated trading*

◉ positive ○ mixed ○ negative

Please explain why and indicate if EU policies should further encourage the trend:

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positive impact since well-regulated and supervised trading venues would
increase investor confidence. There is no need for EU policies to further
encourage this trend beyond the ongoing regulatory reforms (MiFID II), provided
the latter can produce their expected results, which could only be assessed
over the medium term.
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→ *improved shareholder relations*

(●) positive ( ) mixed ( ) negative

Please explain why and indicate if EU policies should further encourage the trend:

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positive, since this trend would allow not only issuers to know their investors
better, but would also allow final investors to exercise their rights and to
diversify their investments. In this field, the EU regulatory reforms (CSDR,
T2S) are useful. More than a strict policy measure, other industry-led
projects, which would allow issuers to interact with their investors, based on
innovative and cross-border platforms, could complete the policy actions. Such
projects could be supported by the European Commission.
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→ *a shift of issuances to CSDs participating in T2S*

(●) positive ( ) mixed ( ) negative

Please explain why and indicate if EU policies should further encourage the trend:

```
positive impact since it would allow a larger choice for issuers. Increased
competition between CSDs would potentially lead to lower costs and better
services for issuers. There is no need for EU policies to further encourage
this trend. However, it is useful to remind European authorities that legal
criteria are not the only factors taken into consideration by firms when it
comes to choosing their place of issue: market liquidity, operational issues,
tax framework, insolvency and securities laws are factors which are also
relevant and which could not be changed by EU laws.
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Question 1.d) Please specify the four main trends that will be the most important for EU post-trade:

in the next 5 years:

at most 4 choice(s)

- [ ] increased automation at all levels of the custody chain
- [ ] new technological developments such as DLT
- [x] more cross-border issuance of securities
- [ ] more trading in equities taking place on regulated trading
- [ ] improved shareholder relations
- [x] a shift of issuances to CSDs participating in T2S

in the next 10 years:

at most 4 choice(s)

- [ ] increased automation at all levels of the custody chain
- [x] new technological developments such as DLT
- [ ] more cross-border issuance of securities
- [x] more trading in equities taking place on regulated trading

- [x] improved shareholder relations
- [ ] a shift of issuances to CSDs participating in T2S

3.1.2. Technological developments and their implications for post-trade

Technological developments (i.e. distributed ledger technology (DLT)) may provide solutions to current post-trade issues. The main novelty that DLT may be able to deliver is that account holders could modify their records (e.g. securities or cash balances) themselves and such update would be reflected in the shared distributed ledger and be authoritative. For financial intermediaries this could significantly lower back-office costs and possibly collateral requirements.

The impact of DLT on post-trade was one of the areas explored in Commission consultation on FinTech. This consultation focuses on whether existing EU legislation allows sufficient scope for DLT to develop.

DLT can also pose new regulatory challenges in terms of investor protection, financial stability and market integrity. With a greater degree of interconnectedness between financial institutions, the nature of risks in post-trade may transform, impacting operational risk and potentially financial stability.

The views on these new technologies and their impacts on post-trade are welcomed.

Question 2

Question 2.a) Do you agree that the possible benefits of DLT for post-trade include the following elements?

Please indicate in order of importance and add your comments if needed

	1 (most important)	2	3	4	5	6 (least important)
real-time execution of post-trade functions	○	●	○	○	○	○
certainty on “who owns what” where no intermediaries are involved	●	○	○	○	○	○
redefining of the role of financial markets infrastructures	○	○	○	○	●	○
changes to financial markets structure and competition between intermediaries and financial markets infrastructures	○	○	○	●	○	○
lowered costs	○	○	●	○	○	○
others	○	○	○	○	○	○

Please provide your comments (if needed) on real-time execution of post-trade functions:

Please provide your comments (if needed) on certainty on “who owns what” where no intermediaries are involved:

Please provide your comments (if needed) on redefining of the role of financial markets infrastructures:

Please provide your comments (if needed) on changes to financial markets structure and competition between intermediaries and financial markets infrastructures:

Please provide your comments (if needed) on lowered costs:

Question 2.b) Do you agree that the list below covers the possible risks that DLT may bring about for post-trade markets?

Please indicate in order of importance and add your comments if needed

	1			4

	(most important)	2	3	(least important)
higher operational risks	○	○	○	○
higher legal risks related to unregulated ways in which services would be provided	○	○	○	○
changes to financial markets structure and competition between intermediaries and financial markets infrastructures	○	○	○	○
others	●	○	○	○

Please specify what other elements could cover the possible risks that DLT may bring about for post-trade markets. Provide your comments on them (if needed):

We do not agree that this list covers the possible risks that DLT bring to post-trade markets. Even if DLTs have many obstacles (operational challenges or related to the fragmentation) as regards their potential development in post-trading activities, it is difficult to qualify those impediments as “risks”. Regarding operational risks, it is still not certain that DLTs are structurally less resilient than existing financial market infrastructures. Relationships between market infrastructures and intermediaries, and more generally the role of intermediaries, will be most certainly be impacted by DLTs. We consider this point is of paramount importance for market organisation in the coming years, however it is less clear whether it represents a real risk. Regarding legal risk, we are of the opinion that it is impossible to allow the development of DLTs without a clearly defined legal framework. As a consequence, similarly to ongoing French legal and regulatory initiatives, introducing a harmonised legal framework at the EU level is of utmost importance.
DLTs bring many risks (high dependency on cyber-threats, risk of propagation, which may be amplified by their decentralized nature), which can be magnified if assets which are dealt on DLTs are “public” such as bitcoins.

Question 2.c) Does the existing legal environment facilitate or inhibit current and expected future technological developments, such as the use of DLT?

○ It facilitates ● It inhibits ○ It is technology neutral

Please explain how it inhibits technological developments and provide concrete examples:

From a general point of view, the EU way of regulating post-trading activities is at odds with DLTs, since it is silo-based approach (custody is regulated in AIFMD/UCITSD, settlement in CSDR, clearing and reporting in EMIR and SFTR) whereas DLTs integrate the whole chain. Moreover, the regulatory approach, adopted more than 10 years ago in Europe and globally (EMIR, Dodd-Franck Act) has aimed at strengthening surveillance of operations implemented by centralised entities (CCPs, CSDs, TRs) and to attract flows of transactions to those centralised entities, whereas DLTs, on the contrary, rely on a decentralised organisation. Thus, it is hard to advocate that the existing legal environment could facilitate the use of DLTs. It remains to be seen

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whether the existing legal environment inhibits the development of DLTs or is
neutral. To answer this, it is necessary to proceed on a case-by-case basis: if
it would be possible prima facie to use DLTs for some segments, within the
existing legal framework (clearing of spot transactions, bilateral exchanges of
margins for OTC derivatives, settlement of non-MIFiD instruments, reporting),
which may indicate that the existing legal framework is neutral, those
applications are limited and do not allow to benefit from the all advantages of
the Blockchain (integration of entire post-trading chain, disintermediation,
fast processes).
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Question 2.d) Do you have specific proposals as to how the existing post-trade legislation could be more technology neutral?

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Generally, the AMF favors the principle of technological neutrality in EU
policy making. More specifically on DLTs, we would invite the European
Commission to adopt a gradual approach:
•        first, to gather all expertise (regulators, central banks, private
firms and fintechs which are active in post-trading activities) and the co-
legislators (European Parliament) in order (i)to deeply understand the needs
and initiatives of the actors related to DLT activities in post-trading, (ii)
to analyse any possible national legal or European impediment. This analysis
should build on existing reports (such as those published by ESMA and ECB) and
on existing national initiatives (such as the Blockchain Order in France). On
the medium term, this meeting of experts could lead to the creation of an
"Innovation Academy" where fintechs could present their DLT projects to the
Commission, both of which would benefit from this dialogue. Such use -cases
could cover different fields, such as reporting,  settlement of financial
instruments or the improvement of record-keeping for asset managers,
•        secondly, and based on the expertise and the analysis of national
initiatives, to propose a harmonised European framework  on DLTs and the legal
definition of digital assets (or tokens). This framework would bring legal
certainty to all European actors (investors, issuers, banks or fintechs which
develop DLT projects) while ensuring fair and equal market conditions within
the EU. This framework would detail to which extent DLTs can implement some
post-trading activities and on which markets.
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3.1.3. Financial stability issues

As described above, recent developments in the post-trade area may also have implications on systemic risks that require close monitoring and analysis. Other factors may also influence financial stability. For example, some financial instruments (i.e. Exchange Traded Funds (ETFs)) may experience liquidity disruptions. Thin margins on certain types of financial instruments could create incentives for providers to engage in excessive securities lending to boost returns. The use of such instruments as collateral in a long chain of secured lending and rehypothecation may create operational risks and contribute to the build-up of excessive leverage.

Question 3

a. Please list and describe the post-trade areas that are most prone to systemic risk.

b. In each of the areas identified please describe the significance and drivers of the systemic risk concern.

c. Describe solutions to address each of the systemic risk concerns identified or the obstacles to addressing them.

How many areas prone to systemic risks have you identified?

- (●) 1 area
- ( ) 2 areas
- ( ) 3 areas
- ( ) 4 areas
- ( ) 5 areas

Area of risk n.1:

Please describe this 1st post-trade area prone to systemic risk:

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CCPs have become essential actors which simplify and centralise counterparty
risk management. However, this trend has also concentrated risks in CCPs, which
in turn generated risks for the all financial system. Those risks are a result
of (i) inherent risk related to the function of the CCP itself and (ii) risks
related to clearing members and their ability to honour their obligations
relating to their transactions, with a liquidity risk if the CCP must honour
the payments that clearing members cannot pay, as well as a credit risk if the
CCP cannot cover the losses related to its default.
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Please describe the significance and drivers of the systemic risk concern for this 1st post-trade area:

Please describe solutions to address the systemic risk concern identified in this 1st post-trade area or the obstacles to addressing it:

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The current proposal of CCP RR would address the systemic risk concern.
However, the absence of a harmonised and comprehensive recovery toolbox could
raise some issues, particularly as regards the use of recovery tools which
could be systemic (IM Haircutting, complete tear-up, forced allocation).
Moreover, the cross-border dimension of clearing raises the issue on the
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appropriate calibration of equivalence regimes, particularly in the context of
Brexit. It is important that those equivalence regimes do not create regulatory
arbitrage, which may be detrimental to financial stability.
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3.1.4. The international dimension and competition in post-trade

The trends driving the development of post-trade services globally also affect EU markets. All EU market infrastructures are subject to international oversight standards in the form of the Principles for Financial Market Infrastructures (PFMI). The PFMI set out the principles for the legal framework, governance and risk management of all market infrastructures. Nonetheless, several areas within post-trade, such as settlement and trade reporting may be concerned with rules that are not fully coherent internationally.

Another issue this consultation aims to address is how to make EU post-trade markets internationally more attractive. As the Mid-Term Review Communication also acknowledges, the departure of the United Kingdom from the Single Market reinforces the need and urgency of further developing and integrating EU capital markets. There might be certain barriers that could be addressed to make EU markets more attractive internationally.

Looking into competition within the EU, a general trend seems to be that incumbents tend to protect their traditional provision of settlement and clearing services within their domestic markets and therefore there is relatively little competition. However, in addition to open and non-discriminatory access provisions under EMIR and MIFID 2, new services, such as those related to collateral management, reporting or issuance of securities, gain importance and attract both incumbents and newcomers. You are invited to provide views on where more consolidation would be needed and which areas would benefit from more competition.

Question 4

Question 4.a) What are the main trends shaping post-trade services internationally?

Please indicate in order of importance and add your comments if needed

	1 (most important)	2	3	4 (least important)
internationally agreed principles for financial markets infrastructures to the extent that they harmonise the conduct and provision of post-trade services	◉	○	○	○
lack of full harmonisation of internationally agreed principles for financial markets infrastructures	○	◉	○	○
the growing importance of collateral in international financial markets	○	○	○	◉
others	○	○	◉	○

Please provide your comments (if needed) on internationally agreed principles for financial markets infrastructures to the extent that they harmonise the conduct and provision of post-trade services:

```
If PFMIs contributed to establish a level playing field allowing an
harmonisation of operational practices and risk management issues, global
competition between financial market infrastructures to attract flows of
international actors is mainly based on four points : (i) the first entities to
invest in certain products (commodities derivatives, CDSs), (ii) the ability
for actors to invest, in particular in new IT structures and to design new
products, (iii) differences in regulatory framework related to risk management
(for example, differences in margin requirements) and (iv) the level of
investor protection which can be granted by local law (insolvency law, contract
law, securities laws) and the tax regime
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Please provide your comments (if needed) on lack of full harmonisation of internationally agreed principles for financial markets infrastructures:

Please provide your comments (if needed) on the growing importance of collateral in international financial markets:

Please specify what other elements could be the main trends shaping post-trade services internationally. Provide your comments on them (if needed):

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the risk of deregulation emerging in certain jurisdictions (in the US or in the
UK) and creating regulatory divergence, the ability of actors to invest in new
products and in new IT systems, asset protection granted by local law
(insolvency law, contract law, securities laws).
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Question 4.b) Which fields of EU post-trade legislation would benefit from more international coherence?

- [x] clearing
- [ ] settlement
- [x] reporting
- [x] risk mitigation tools and techniques
- [ ] others

Please explain your reply to question 4.b):

Question 4.c) What would make EU financial market infrastructures more attractive internationally?

- [x] removal of legal barriers
- [ ] removal of market barriers
- [ ] removal of operational barriers
- [x] others

Please provide examples of how the removal of legal barriers would make EU financial market infrastructures more attractive internationally:

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regarding CCPs, there are elements which are not harmonised at the
international level, through the PFMI (such as the margin requirements or
calibration of default funds), could  create an unlevel playing field.
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Please provide examples of other elements that would make EU financial market infrastructures more attractive internationally:

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the growth of market infrastructures, and in particular their ability to reach
critical size/mass which would allow them to invest in new products and to
constitute a credible alternative to the biggest global infrastructures (CCPs,
CSDs, TRs)
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Question 4.d.1) Would EU post-trade services benefit from **more competition**?

- (●) Yes
- ( ) No
- ( ) Don’t know / no opinion / not relevant

Please explain in which area (clearing, settlement, trade reporting) EU post-trade services would benefit from **more competition** and how this could be achieved:

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The real issue is not so much to spur more competition in clearing or
settlement businesses within the EU, but to ensure a level playing field at the
global level. More specifically, regarding CSDs, more competition in this
sector is welcome but it would be important to take into account the
consequences of the ongoing European initiatives (CSDR, T2S) to really assess
the level of competition. Moreover, if CSDs wish to provide custody services,
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they shall respect the same requirements as custodians.
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Question 4.d.2) Would EU post-trade services benefit from **more consolidation**?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain in which area (clearing, settlement, trade reporting) EU post-trade services would benefit from **more consolidation** and how this could be achieved

```
Fragmentation of TRs and reporting activities (derivatives and SFTs) has
overall increased costs (due to data reconciliation between TRs, multiplication
of intermediaries for delegation, need to supervise TRs and to correct
reporting errors), without really bringing real benefits for users, in terms of
costs. Moreover, of out seven authorised TRs, five are located in the United
Kingdom, which could lead to some legal uncertainty if those TRs' statuses
change (from "EU TR" to "Third Country TR").
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3.1.5. Future strategy for European post-trade services

Since the Giovannini Reports, regulators and stakeholders strived for more efficient and safer post-trade markets. Due to further globalisation, the financial crisis and internationally agreed regulatory reforms, the post-trade landscape has changed markedly. Developments include an increase in central clearing, the entry into application of the variation margins requirements for OTC derivatives, the introduction of trade repositories to collect reporting data, the introduction of intra-day settlement and finality and the launch of the T2S platform, just to mention some of the major changes. Taking into account recent developments, please provide your views on EU post-trade markets in the near and more distant future.

Question 5

Question 4.a)1. What should the EU post-trade markets look like **5 years from now**?

```
The next 5 years should be used for:
(i) finalising the implementation of post-trading reforms (MIFID, EMIR, CSDR,
SFTR) on market infrastructures, and even to allevate the most problematic
points (which is being done through EMIR REFIT),
(ii) learning lessons from the current situation where, outside the EU, most
actors are concentrated and can rely on large investment capacities, whereas
European actors (in particular infrastructures) are relatively fragmented,
(iii) paving the way for a relocation, within the EU, of financial activities
which are considered as of systemic importance for the EU because of their
size, in terms of financial stability,
(iv) championing new type of European innovative actors (on DLTs) to access
global markets.
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Question 4.a)2. What should the EU post-trade markets look like **10 years from now**?

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The outlook for the next 10 years should be focused on the following objectives:
(i) strengthening European actors across the whole post-trading chain, in order
to bring more competition and market liquidity,
(ii) relying on a comprehensive European rulebook for CCPs and CSDs, which
could prevent any failure of a CCP (thanks to resolution procedures for all
types of FMIs). This rulebook should include provisions on the degree of
responsibility of financial market infrastructures, should they fail,
(iii)  consolidation of the European TRs,
(iv) IT processes for settlement and clearing of securities and derivatives,
which could be the fastest and the most efficient in the world, through the
definition of ambitious objectives related to the settlement period,
(v) increased competition on custody, settlement and collateral management
segments: main feature could be the emergence of new type of competition (ie
between market infrastructures and banks), the entry of new innovative actors
(DLT) and by the emergence of new commercial products, more finely targeted (by
type of clients or products), leading to a decrease of the overall cost of
cross-border transactions, for investors and for issuers.
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Question 4.b) Please list main challenges to deliver on the vision you described above and rank, in the order of priority, which of those challenges should be addressed first:

	1 (addressed first)	2	3	4	5	6	7	8 (addressed last)
fragmentation of EU markets – please define in which market segments	○	○	○	○	○	○	●	○
need for greater EU harmonisation of legal and operational frameworks – please define where	○	●	○	○	○	○	○	○
need for more competition within the EU – as defined in your answers above	○	○	○	○	○	●	○	○
need for greater consolidation – as defined in your answers above	○	○	○	○	●	○	○	○
lack of international competitiveness	○	○	●	○	○	○	○	○
need for more regulatory coherence internationally	○	○	○	●	○	○	○	○
financial stability issues	●	○	○	○	○	○	○	○

others								

Please explain your views on the fragmentation of EU markets – please define in which market segments:

Please explain your views on the need for greater EU harmonisation of legal and operational frameworks – please define where:

Please explain your views on the need for more competition within the EU – as defined in your answers above:

Please explain your views on the need for greater consolidation – as defined in your answers above:

Please explain your views on the lack of international competitiveness:

Please explain your views on the need for more regulatory coherence internationally:

Please explain your views on the financial stability issues:

3.2. Remaining post-trade barriers to integrated financial markets and solutions

This section considers which barriers still remain and what actions could be taken to remove them.

In 2001 and 2003, the Giovannini Reports identified 15 barriers. In 2017, according to the EPTF, five Giovannini barriers have been dismantled:

1. need for multiple infrastructure memberships;
2. practical impediments to access to national clearing and settlement systems;
3. absence of intra-day settlement finality in CSD;
4. national differences in settlement periods; and
5. national differences in operating hours/ settlement deadlines.

The remaining Giovannini barriers have been reclassified, where needed, re-formulated, and listed along with other barriers which in the experts' opinion emerged in recent years. The EPTF identified 12 barriers, ("EPTF Barriers"), including redefined Giovannini barriers. Besides those 12 barriers, the EPTF identified 5 issues to be closely followed to ensure new barriers do not emerge (so called EPTF "watchlist")

The assessment of the EPTF is that of an independent expert group and does not represent the official views of the European Commission. The Commission is interested in hearing from stakeholders on the list of barriers identified by the EPTF and on potential other barriers.

Question 6

Question 6.a) Do you agree that there are fewer barriers for cross-border provision of clearing and settlement services and processes than 15 years ago?

- (●) Yes
- ( ) No

- [ ] Don't know / no opinion / not relevant

Please explain your answer to question 6.a):

```
AMF Staff agrees with the EPTF analysis according to which there are fewer
barriers for cross-border provision of clearing and settlement services and
processes today than 15 years ago. Since 2001 and 2003, certain barriers have
been removed and the post-trading landscape has significantly changed, which
makes it necessary to carry out a thorough assessment of the remaining
barriers, such as the achievements of the EPTF.
```

Question 6.b) If you agree that certain barriers have been removed, for each of those please explain what were the main drivers removing those barriers?

```
Among all initiatives which enabled the removal of barriers, we would like to
emphasise the major role played by the Giovannini and CESAME groups (in order
to allow an efficient monitoring process, a new CESAME group could be created)
but also by joint public-private initiatives (T2S) and regulatory agenda (CSDR,
EMIR, SFTR, MiFID and CRD). As regards corporate actions, several directives
have been adopted, such as the directive 2004/25/EC, 2009/10/EC, 2012/30/EU and
directives on mergers. The recent legislative proposal on insolvency (published
in 2016) could also raise (some) barriers. Regarding corporate actions,
directives 2007/36/EC and 2017/828 have allowed to harmonise certain
shareholders' rights and the industry standards have also allowed to narrow
down differences between national laws.
```

Question 7

Question 7.a) Which of the below issues listed by the EPTF as remaining barriers constitute a barrier to post-trade?

- [x] Fragmented corporate actions and general meeting processes
- [ ] Lack of convergence and harmonisation in information messaging standards
- [x] Lack of harmonisation and standardisation of Exchange Traded Funds (ETF) processes
- [ ] Inconsistent application of asset segregation rules for securities accounts
- [ ] Lack of harmonisation of registration and investor identification rules and processes
- [ ] Complexity of post-trade reporting structure
- [x] Unresolved issues regarding reference data and standardised identifiers
- [ ] Uncertainty as to the legal soundness of risk mitigation techniques used by intermediaries and of CCP's default management procedures
- [x] Deficiencies in the protection of client assets as a result of the fragmented EU legal framework for book-entry securities
- [ ] Shortcomings of EU rules on finality
- [ ] Legal uncertainty as to ownership rights in book-entry securities and third party effects of assignment of claims
- [x] Inefficient withholding tax collection procedures

Question 7.b) Are there other barriers to EU post-trade not mentioned in the above list?

(In part 4.11 of the questionnaire you will be asked to give more detailed views on those issues that you consider to be barriers)

- Yes
- No
- Don't know / no opinion / not relevant

Question 7.c) If there are issues that you think are not barriers, please explain why:

```
The AMF staff considers that the following points could constitute operational
obstacles or could raise uncertainties but cannot be qualified as barriers as
such, since we are of the opinion that "barrier" is a term that should be
reserved to cross-border or cross-entity transactions:

- Lack of convergence and harmonisation in information messaging standards;
- Inconsistent application of asset segregation rules for securities accounts;
- Lack of harmonisation of registration and investor identification rules and
processes;
- Complexity of post-trade reporting structure;
- Uncertainty as to the legal soundness of risk mitigation techniques used by
intermediaries and of CCP's default management procedures;
- Shortcomings of EU rules on finality;
- Legal uncertainty as to ownership rights in book-entry securities and third
party effects of assignment of claims;
```

Question 7.d) Please list what you consider to be the 5 most significant barriers:

```
1. Unresolved issues regarding reference data and standardised identifiers;
2. Fragmented corporate actions and general meeting processes;
3. Deficiencies in the protection of client assets as a result of the
fragmented EU legal framework for book-entry securities;
4. Inefficient withholding tax collection procedures;
5. Lack of harmonisation of registration and investor identification rules and
processes;
```

4. Questions on specific barriers

Questions in relation to the barriers which are not yet addressed

This consultation seeks stakeholders' views not only on the barriers identified by the EPTF, but also on other barriers. The following question relates to any barrier considered relevant, whether an EPTF barrier or other barriers defined in the replies to the question above.

In the on-line questionnaire only those EPTF barriers that you marked in your answer to Question 7 (a) as relevant currently in the EU will appear. Please describe the barrier and related problems, explain the evidence illustrating a specific barrier, and what could be done to address it.

The EPTF barriers are briefly summarised (for full description see the EPTF Report).

Question 8

4.1. Diverging corporate actions and general meeting processes

Events affecting securities issued by a company (equity or debt) are generally referred to as “corporate actions”. Examples of corporate actions include dividends, coupon payments or early redemptions, mergers and acquisitions, etc. As such actions often require authorisation by the company’s shareholders, processing of corporate actions and general meeting are often related.

The EPTF describes this barrier as concerning national differences in the rules governing operational processing. These result in increased costs, operational risks and inhibit the shareholders’ ability to exercise their rights. Since Giovannini Reports’ time, there have been industry initiatives to address these barriers through the common market standards. A recent Report of European Securities Markets Authority (ESMA) also describes the status of this barrier. Although difficult to determine on the basis of fact-based evidence, this barrier was listed by the EPTF as one of the top five priorities. To dismantle this barrier, the EPTF suggested further industry actions as well as Commission action when acting under its empowerment to develop implementing acts for the Shareholder Rights Directive. The Commission would be interested also to learn in which areas there is the biggest need for harmonisation and what approach should be followed.

Question 8.1.a) Do you agree with the definition and the scope of the barrier?

- (●) Yes
- ( ) No
- ( ) Don’t know / no opinion / not relevant

Question 8.1.b) Do you have any evidence proving the existence of this barrier and its implications in terms of costs or other detrimental effects?

- ( ) Yes
- ( ) No
- (●) Don’t know / no opinion / not relevant

Please explain your answer to question 8.1.b:

Question 8.1.c) 1. Will the solution proposed by EPTF address the issue?

- (●) Yes

- ○ No
- ○ Don't know / no opinion / not relevant

Please explain your answer to question 8.1.c) 1.:

```
The solutions proposed by EPTF make sense but they seem could be supported. As
indicated in the first Giovannini reports, this barrier deals with treatments
of corporate actions and operational processes related to their preparation and
the way general meetings are being held. This field is already at an advanced
stage of harmonisation, following two initiatives: the first is the market
standards developed by the industry (adoption of almost 120 voluntary standards
on corporate actions and 30 voluntary standards on operational processes
related to general meetings, under the aegis of European issuers) and the
second, through the ECB-led T2S project. Beyond this, the Shareholders Rights
Directive II (SRD II), if it cannot solve all difficulties identified in this
barrier, makes further progress towards the harmonisation of certain
shareholders' rights of listed companies.  Level 2 measures, which will be
adopted by the European Commission, could build on the voluntary standards
developed by the industry and thereby contributing to the standardisation and
interoperability of right and national systems.
```

Question 8.1.c) 2. Is there any need for further or different action to remove the barrier?

- ◉ Yes
- ○ No
- ○ Don't know / no opinion / not relevant

Please explain your answer to question 8.1.c) 2.:

4.2. Lack of convergence and harmonisation in information messaging standards

This EPTF Barrier concerns national differences in information technology and interfaces used by providers of clearing and settlement. For cash securities, the EPTF believes that harmonised information messaging standards would contribute to straight through processing of clearing and settlement and advocates a broader use of ISO20022. Derivatives and securities financing transactions are usually not covered by the protocols and standards used in the cash securities markets and the EPTF did not promote any particular standard but, due to global nature of derivatives markets, they suggest such a standard should be harmonised globally. Finally, broad use of the same messaging standards would facilitate meeting of regulatory reporting requirements. The EPTF considers that overall consequences of this barrier are higher (unquantified) processing costs and risk of errors due to more manual processing.

The solutions proposed include digitalisation, harmonisation or interoperability and standardisation. The EPTF suggests also a creation of a (Regulatory) Reporting Market Practice Group involving market participants and regulators to facilitate the reporting market practice.

Question 8.2.a) Do you agree with the definition and the scope of the barrier?

- (●) Yes
- ( ) No
- ( ) Don’t know / no opinion / not relevant

Question 8.2.b) Do you have any evidence proving the existence of this barrier and its implications in terms of costs or other detrimental effects?

- ( ) Yes
- ( ) No
- (●) Don’t know / no opinion / not relevant

Please explain your answer to question 8.2.b:

Question 8.2.c) 1. Will the solution proposed by EPTF address the issue?

- (●) Yes
- ( ) No
- ( ) Don’t know / no opinion / not relevant

Please explain your answer to question 8.2.c) 1.:

regarding identifiers used for derivatives, special attention should be paid to the costs and to the governance of issuing entities. Regarding messaging standards for settlement, we support the migration from ISO 15022 to ISO 20022 for cash transactions, since the possibility to get / obtain a complete standardisation is not achievable. Such a standardisation would require significant efforts which are manageable for big players but represent massive investments for small players. Regarding the other types of messages, the definition of standards should be established in a flexible way. Against this background, the terms “open” and “standardised” should be more precisely defined and should build on the existing market standards. It has to be underlined that prescribing a single format of communication standard would raise risk of dependency towards this standard. In order to avoid this risk, it would be wise to include back-up solutions, which may be based on a different format. Harmonising messaging standards would contribute to straight through processing of clearing and settlement and would lead to more frequent use of ISO 20022 format.

```
Regarding messaging standards for derivatives, the difference between vanilla
products and exotic products should be taken into account. We suggest pursuing
international work (within CPMI-IOSCO) on vanilla products. It is important
that the governance of those identifiers takes into account the needs of all
users, including European actors.
```

Question 8.2.c) 2. Is there any need for further or different action to remove the barrier?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain your answer to question 8.2.c) 2.:

4.3. Lack of harmonisation and standardisation of exchange traded funds (ETF) processes

An exchange-traded fund (ETF) is an investment fund traded on stock exchanges. An ETF is a type of fund which owns the underlying assets and divides ownership of those assets into shares. The EPTF describes ETFs (and generally Exchange Traded Products) as amongst the fastest growing investment globally. However, in Europe the growth of the ETFs is restrained by legal obstacles and a high degree of fragmentation, in particular in the post-trade area. As solutions, the EPTF suggests implementation of already existing market standards and special treatment for ETFs in settlement discipline under CSDR.

Question 8.3.a) Do you agree with the definition and the scope of the barrier?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Question 8.3.b) Do you have any evidence proving the existence of this barrier and its implications in terms of costs or other detrimental effects?

- ( ) Yes
- ( ) No
- (●) Don't know / no opinion / not relevant

Please explain your answer to question 8.3.b:

Question 8.3.c) 1. Will the solution proposed by EPTF address the issue?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain your answer to question 8.3.c) 1.:

Question 8.3.c) 2. Is there any need for further or different action to remove the barrier?

- ( ) Yes
- (●) No
- ( ) Don't know / no opinion / not relevant

Please explain your answer to question 8.3.c) 2.:

4.4. Complexity of post-trade reporting structure

Two issues were identified in relation to complexity of post-trade reporting:

1. lack of a harmonised structure for the various post-trade reporting requirements; and
2. mechanisms for applying post-trade reporting requirements on a day-to-day basis.

The EPTF concluded that this barrier increases costs for reporting entities, infrastructures and regulatory authorities. The EPTF suggest that overall the costs of investments have increased, but did not quantify the size of those increased costs. As a consequence of the barrier the EPTF mentions the complexity of data analysis for the regulators or other users. The solutions proposed by the EPTF include harmonisation of the reporting structure and introduction of a mechanism to maintain it.

Question 8.4.a) Do you agree with the definition and the scope of the barrier?

- [x] Yes
- [ ] No
- [ ] Don’t know / no opinion / not relevant

Question 8.4.b) Do you have any evidence proving the existence of this barrier and its implications in terms of costs or other detrimental effects?

- [ ] Yes
- [ ] No
- [x] Don’t know / no opinion / not relevant

Please explain your answer to question 8.4.b:

```
We recommend to revise the existing reporting requirements, taking into account
the on-going work on MiFIR, CSDR and SFTR. We support the recommendation to set
up an expert group which would include market participants and regulators to
streamline and make market practices on reporting more fluid.
```

Question 8.4.c) 1. Will the solution proposed by EPTF address the issue?

- [x] Yes
- [ ] No
- [ ] Don’t know / no opinion / not relevant

Please explain your answer to question 8.4.c) 1.:

Question 8.4.c) 2. Is there any need for further or different action to remove the barrier?

- [x] Yes
- [ ] No
- [ ] Don’t know / no opinion / not relevant

Please explain your answer to question 8.4.c) 2.:

4.5. Unresolved issues regarding reference data and standardised identifiers

The Commission has been supporting open access to financial reference data and identifiers for all market participants. In line with this objective, the Commission made legally binding the commitments offered by Standard & Poor's (S&P) to abolish the licensing fees that financial institutions such as banks and fund managers had to pay for the use of US International Securities Identification Numbers (ISINs) within the European Economic Area (EEA) in case they received US ISINs not directly through S&P but from their information service providers. Additionally, for users that received US ISINs directly from S&P the fee was set with regard to cost data. The EPTF agree with the principle that financial reference data should be available to all market participants for free or at cost, free of license fees, copyright or similar restrictions. The EPTF noted also a legal dispute with US service providers that treat the provision of reference data as a commercial business. The EPTF propose an international agreement on the access to all reference data identifiers to tackle the issue.

Question 8.5.a) Do you agree with the definition and the scope of the barrier?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Question 8.5.b) Do you have any evidence proving the existence of this barrier and its implications in terms of costs or other detrimental effects?

- ( ) Yes
- ( ) No
- (●) Don't know / no opinion / not relevant

Please explain your answer to question 8.5.b:

Question 8.5.c) 1. Will the solution proposed by EPTF address the issue?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain your answer to question 8.5.c) 1.:

ISINs and LEIs should be treated separately. ISIN is a useful tool, which has been used for many years and which has led to more harmonisation among national jurisdictions. Regarding reference data, the large differences between commercial offers may have a negative impact and jeopardise the ability to compare services (which is necessary for the choice of providers) and on the ability to determine a fair price for those reference data. Against this

background, it seems necessary to get a full picture of the business needs - through an assessment of the current situation- before imposing new requirements. Some actors advocate free provision of reference data while others argue that it is fair that this service should be paid for. However, there is a global consensus to say that, should this service be provided on a commercial basis, the costs should only cover the processes necessary for this provision. All actors also converge on the need to prevent any commercial monopoly in the provision of reference data. To ensure an efficient functioning of those identifiers, it is important to have harmonised UTI/UPI/LEI governance. This is why a working group on the convergence of market practices and regulatory requirements is much welcome.

Question 8.5.c) 2. Is there any need for further or different action to remove the barrier?

- ○ Yes
- ○ No
- ○ Don't know / no opinion / not relevant

Please explain your answer to question 8.5.c) 2.:

4.6. Uncertainty as to the legal soundness of risk mitigation techniques used by intermediaries

One of the objectives of the recent reforms following the financial crisis was to increase the soundness of risk mitigation tools used by financial market infrastructures and intermediaries (see e.g. EMIR and CSDR). Despite those efforts, in EPTF's opinion, there are areas where risk mitigation techniques could be improved. In particular, in the opinion of the EPTF risk mitigation actions of intermediaries would require greater protection given existing difficulties with enforceability of bilateral close-out netting arrangements (Referring to "bilateral netting" (i.e. between two market participants) rather than "multilateral netting" within securities settlement systems) in case of insolvency of another party due to differences in the national implementation of the Financial Collateral Directive (FCD), diverging national insolvency rules and ambiguity of interpretations regarding terms used by the FCD (e.g. 'financial collateral arrangements', "provision of collateral', etc.). The solutions proposed by the EPTF include revision of relevant EU legislation.

Question 8.6.a) Do you agree with the definition and the scope of the barrier?

- ◉ Yes
- ○ No
- ○ Don't know / no opinion / not relevant

Question 8.6.b) Do you have any evidence proving the existence of this barrier and its implications in terms of costs or other detrimental effects?

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not relevant

Please explain your answer to question 8.6.b:

Question 8.6.c) 1. Will the solution proposed by EPTF address the issue?

- ◉ Yes
- ○ No
- ○ Don’t know / no opinion / not relevant

Please explain your answer to question 8.6.c) 1.:

Question 8.6.c) 2. Is there any need for further or different action to remove the barrier?

- ◉ Yes
- ○ No
- ○ Don’t know / no opinion / not relevant

Please explain your answer to question 8.6.c) 2.:

Despite divergences due to different national transpositions, financial actors have developed techniques (relocation of securities accounts, appropriate choice of the applicable law…) which allowed them to process cross-border transactions while minimising legal uncertainties. Regarding the Financial Collateral Directive, we propose to deal with the identified issues in the following way:
- keep the early termination of the contracts without jeopardising the insolvency process of the counterparty,
- allow the counterparty which takes the collateral to obtain the security without formality.
Furthermore, as regards conflicts of law rules, to prevent the automatic choice of certain jurisdictions (which are indicated in the templates of the ISDA and

ISLA contracts), we wish to promote the Euro Master Agreement, sponsored by the EBF.
Regarding legal protection of default management process of the CCP, we are of the opinion that the solution by the EPTF is adequate.

4.7. Deficiencies in the protection of client assets as a result of the fragmented EU legal framework for book entry securities

One of the objectives of the recent EU legislation (e.g. MiFID, EMIR, CSDR and others) is to ensure the safety and protection of the clients' assets maintained by the financial market infrastructures and financial entities. Despite EU rules, the EPTF observes that there is insufficient protection of client assets in case of an intermediary's failure because of legal uncertainty about the ownership rights of clients and end investors, and delays in returning securities to their owners in case of a shortfall. The EPTF argues that this is due to the fragmented legal framework defining ownership/proprietary rights in book-entry securities and absence of harmonised rules and processes on the treatment of shortfalls. The EPTF proposes introduction of certain principles concerning book entry securities and of harmonised rules on loss attribution in case of shortfalls and on common processes.

Question 8.7.a) Do you agree with the definition and the scope of the barrier?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

If you do not agree with the definition and the scope of the barrier, please explain how it should be better described or what, according to you, its scope is:

Question 8.7.b) Do you have any evidence proving the existence of this barrier and its implications in terms of costs or other detrimental effects?

- ○ Yes
- ○ No
- ◉ Don't know / no opinion / not relevant

Please explain your answer to question 8.7.b:

Question 8.7.c) 1. Will the solution proposed by EPTF address the issue?

- ○ Yes
- ◉ No
- ○ Don't know / no opinion / not relevant

Please explain your answer to question 8.7.c) 1.:

```
even if the proposals suggested in the EPTF report do not seem, prima facie, to
raise any legal issue, we would recommend the European Commission to conduct a
comprehensive impact analysis before any regulatory initiative which may have a
detrimental impact on certain custody regimes. As a matter of fact, some of the
recommended measures seem to point more theoretical situations than real cross-
border barriers.
```

Question 8.7.c) 2. Is there any need for further or different action to remove the barrier?

- ○ Yes
- ○ No
- ○ Don't know / no opinion / not relevant

Please explain your answer to question 8.7.c) 2.:

4.8. Shortcomings of EU rules on finality

The Settlement Finality Directive (SFD) regulates designated systems used by participants to transfer financial instruments and payments, guaranteeing that transfer orders entered into such systems are finally settled, regardless of sending participant's insolvency or revocation of transfer orders. The EPTF argues that the SFD caters for a limited number of scenarios and does not address delivery versus payment mechanisms. The EPTF also argues that the Directive lacks definitions of some elements that are crucial for a uniform application of its rules and that it is not sufficiently tailored for central clearing. EPTF proposes a number of revisions to SFD to address these issues.

Question 8.8.a) Do you agree with the definition and the scope of the barrier?

- ◉ Yes
- ○ No
- ○ Don't know / no opinion / not relevant

Question 8.8.b) Do you have any evidence proving the existence of this barrier and its implications in terms of costs or other detrimental effects?

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not relevant

Please explain your answer to question 8.8.b:

Question 8.8.c) 1. Will the solution proposed by EPTF address the issue?

- ◉ Yes
- ○ No
- ○ Don’t know / no opinion / not relevant

Please explain your answer to question 8.8.c) 1.:

```
we generally agree with the definition and the scope of the barrier, but it
could be added that ESMA would specify criteria to be taken into account by
national competent authorities (NCAs) for the admission of new participants to
those securities settlement systems. NCAs should be closely associated in the
definition of those criteria, which would be based on risk considerations. Such
a process would help to create a harmonised European framework for the
admission of those participants.
```

Question 8.8.c) 2. Is there any need for further or different action to remove the barrier?

- ◉ Yes
- ○ No
- ○ Don’t know / no opinion / not relevant

Please explain your answer to question 8.8.c) 2.:

Questions related to the ongoing Commission work

The questions below concern barriers on which the Commission has already pending working streams.

4.9. Lack of harmonisation of registration and investor identification rules and processes

The diversity of national regimes for registration of securities becomes problematic in a cross-border setting when it increases complexity and cost. Similarly, shareholder identification and transparency practices vary widely from country to country. In a cross-border context, investors and their intermediaries have to comply with the differing requirements, which may lead to additional costs and operational risk. The EPTF describes this barrier referring to the Report by the European Central Securities Depositories Association and the report for the Target2-Securities Advisory Group. Furthermore, EPTF notes that these divergent national requirements lead to difficulties for CSDs to compete for issuer services business because issuers choose their CSDs considering whether they are equipped to comply with applicable company law and its registration requirements. Hence, uniform requirements (e.g. data fields, notification triggers, thresholds, deadlines and data formats) would help reduce this complexity. The EPTF concludes that procedures for investor transparency and, where applicable, for operational registration should be harmonised and standardised.

Moreover, the SRD (as mentioned under 4.1) and the Transparency Directive also include shareholder identification requirements. In particular, the Transparency Directive requires shareholders to notify major shareholdings in an issuer to inform the public of major changes. Therefore any future policy work on this barrier should look at interactions and possible synergies between these different EU requirements.

Question 9

Question 9.a) Do you agree with the definition and the scope of the barrier?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Question 9.b) Do you have any evidence proving the existence of this barrier and its implications in terms of costs or other detrimental effects?

- ( ) Yes
- ( ) No
- (●) Don't know / no opinion / not relevant

Question 9.c) 1. Will the solution proposed by EPTF address the issue?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain your answer to question 9.c) 1.:

```
We do not share the whole analysis of the EPTF report:
- regarding registration rules and processes, the existing differences between
Member States do not constitute per se a barrier to cross-border operations
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within the Union. The identified obstacles are mainly due to the lack of
compliance, by financial intermediaries, of existing requirements.
Harmonisation should target transmission procedures of information on
shareholders, which is treated in the Shareholders' Rights Directive II, and
not on the custody and content of registers, which are not mentioned in the
directive,
- regarding shareholders' identification procedures, it has to be noted that
those procedures vary considerably from one Member Sate to another and
represent complexities and additional costs. Voluntary standards adopted by the
industry could be incorporated in the Leavel 2 measures of the Shareholders'
Rights Directive II, keeping in mind that this directive does not harmonise, at
EU level, the definition of shareholders.
```

Question 9.c) 2. Is there any need for further or different action to remove the barrier?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Please explain your answer to question 9.c) 2.:

```
The solutions envisaged in the EPTF report are to some extent logical but seem
optimistic.

As regards registration rules and processes, issues will persist as the
Shareholders Rights Directive II does not per se harmonise legislation across
the EU and as its scope is limited to shares listed on a regulated market
within the EU. In addition, national specific features unrelated to the
transmission of information between issuers and shareholders may remain since
Level 2 measures will not address those aspects.

As regards shareholder identification rules and processes, the revised
Shareholders Rights Directive II will not solve all difficulties, for the three
reasons explained in the answer to question 6.

Nevertheless, it is correct to note that the implementing acts to be adopted by
the European Commission before 10 September 2018 will ensure uniform
application of certain elements of article 3 of this directive, in particular
as regards the transmission of the information between companies and
shareholders. Therefore, this aspect of the barrier will not be confirmed.
```

4.10. Inefficient withholding tax procedures

To avoid double taxation of cross-border investment, most bilateral tax treaties provide for withholding tax refund mechanisms. However, all financial markets participants across the EU face complex, demanding and costly recovering proceedings. The cost of those inefficiencies in 2016 has been estimated at EUR 8.4 billion per year. This issue has also been mentioned in the March 2017 Report on national barriers to capital flows. The EPTF also specifies other issues regarding the withholding tax

procedures, such as different structure for withholding tax relief in each market, mandatory use of local tax advisory firms, forcing foreign intermediaries to use local fiscal agents, etc.

As committed in the CMU Action Plan, the Commission has promoted best practice and developed with Member States a code of conduct for more efficient withholding taxes procedures. The code will propose pragmatic and operational solutions to achieve standardisation and simplification of refund (and existing relief at source) procedures. Despite being a non-binding instrument, the code is a valuable, practical, operational short-term solution to simplify withholding tax procedures.

Question 10

The code of conduct focuses on addressing withholding tax barriers to investment through improvements to the efficiency of relief procedures. Which other issues or approaches could be explored?

4.11. Questions on the barriers not listed by the EPTF

If under Question 7 above you identified further barrier(s), please describe them here.

Moreover, the Commission is interested to learn if the barriers identified by you are instrument specific such as may be the case of the ETFs or emission allowances. Emission allowances will become financial instruments in the meaning of MIFID 2 from January 2018. Similarly to the ETFs, emission allowances carry multiple ISINs of different entities which first place them on the financial market.

Question 11

How many barriers have you identified that exist today but are not mentioned by the EPTF?

- 1 barrier
- 2 barriers
- 3 barriers
- 4 barriers
- 5 barriers

Question 12

The EPTF listed five issues on their watchlist as areas which may require greater attention in the coming years.

Question 12. Do you agree that the issues listed below need to be followed closely in the future?

	Yes	No	Don't know / no opinion / not relevant
National restrictions on the activity of primary dealers and market makers	◉	○	○
Obstacles to DVP settlement in foreign currencies at CSDs	◉	○	○
Issues regarding intraday credit to support settlement	◉	○	○
Insufficient collateral mobility	◉	○	○
Non-harmonised procedures to collect transaction taxes	○	○	◉

5. Final comments

Two barriers mentioned in the EPTF Report are not covered in this consultation.

5.1. Inconsistent application of asset segregation rules for securities accounts

Asset segregation requirements were introduced across different EU directives and regulations such as MiFID, EMIR, CSDR, Alternative Investment Fund Managers Directive (AIFMD) and Undertakings for Collective Investment in Transferable Securities Directive (UCITS Directive) with the aim of increasing asset safety, facilitating the prompt return of securities in default scenarios and decreasing the risk of loss of securities. The EPTF Report mentions multiplicity of asset segregation requirements as a barrier leading to legal complexities, costs and risks. The issue of inconsistent asset segregation requirements has been commented on by the stakeholders replying to the Commission Call for Evidence and ESMA has also conducted two consultations on this issue under AIFMD Directive and UCITS Directive. The European Commission is expecting to receive an opinion from ESMA on this subject matter and will decide on the further course of action in due time. Given the above, this consultation does not seek views on asset segregation requirements.

5.2. Legal uncertainty as to ownership rights in intermediated securities and third party effects of assignment of claims

The EPTF Report explores the legal uncertainty in proprietary rights in intermediated securities and third party effects of assignment of claims as one out of four legal barriers to post-trade. On this issue, the Commission has announced a legislative proposal for the end of 2017 and carried out a public consultation.

5.3. Other final comments

Question 13

Please make additional comments here if areas have not been covered above. Please, where possible, include examples and evidence:

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Another point is related to some concerns expressed by the asset management
industry. As a consequence of the IOSCO work on the management of liquidity
risk, asset managers should, in so far as it is possible, gain a better
knowledge of their final investors. Against this background, asset management
companies are invited to communicate closely with all the actors of the
distribution chain to collect the necessary information and analyse, on this
basis, historical patterns of redemption by categories of investors. In
addition, there are also new requirements based on EU regulation. This is the
case for money market funds, whereby managers of funds “shall establish,
implement and apply procedures and exercise all due diligence with a view to
anticipating the effect of concurrent redemptions by several investors taking
into account at least the type of investors, the number of shares in the fund
owned by a single investor and the evolution of inflows and outflows”. This
implies that where investors route their investment via an intermediary, the
manager of the fund shall request the information to comply with regulation
from intermediary. Should they not receive this information, they cannot comply
with the regulation. It would seem that intermediaries might be read to
consider communicating this piece of information, but as an additional service
for which they would require a fee. This may have consequences on the
commercial relationship between funds and managers. We may need, as a
consequence, to find ways to limit bias due to this regulation between those
actors.
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3. Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

Useful links

More on the Transparency register (http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

Consultation details (https://ec.europa.eu/info/consultations/finance-2017-post-trade_en)

Specific privacy statement (https://ec.europa.eu/info/sites/info/files/2017-post-trade-specific-privacy-statement_er pdf)

Contact

fisma-post-trade@ec.europa.eu