



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 Depositories 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 your organisation:

Swedish Securities Dealers Association

Contact email address:

The information you provide here is for administrative purposes only and will not be published

lars@fondhandlarna.se

* Is your organisation included in the Transparency Register?

(If your organisation is not registered, [we invite you to register here](#), although it is not compulsory to be registered to reply to this consultation. [Why a transparency register?](#))

- Yes
 No

* If so, please indicate your Register ID number:

7777147632-40

* Type of organisation:

- | | |
|---|---|
| <input type="radio"/> Academic institution | <input type="radio"/> Company, SME, micro-enterprise, sole trader |
| <input type="radio"/> Consultancy, law firm | <input type="radio"/> Consumer organisation |
| <input checked="" type="radio"/> Industry association | <input type="radio"/> Media |
| <input type="radio"/> Non-governmental organisation | <input type="radio"/> Think tank |
| <input type="radio"/> Trade union | <input type="radio"/> Other |

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

Sweden

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

at least 1 choice(s)

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

* Please specify your activity field(s) or sector(s):

Investment Services



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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
new technological developments such as DLT	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
more cross-border issuance of securities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
more trading in equities taking place on regulated trading	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
improved shareholder relations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
a shift of issuances to CSDs participating in T2S	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

Please describe and indicate in order of importance.

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

→ *new technological developments such as DLT*

positive mixed negative

→ *more cross-border issuance of securities*

positive mixed negative

→ *more trading in equities taking place on regulated trading*

positive mixed negative

→ *improved shareholder relations*

positive mixed negative

→ *a shift of issuances to CSDs participating in T2S*

positive mixed negative

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
- 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

in the next 10 years:

at most 4 choice(s)

- 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

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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
certainty on “who owns what” where no intermediaries are involved	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
redefining of the role of financial markets infrastructures	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
changes to financial markets structure and competition between intermediaries and financial markets infrastructures	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
lowered costs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
others	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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 (most important)	2	3	4 (least important)

higher operational risks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
higher legal risks related to unregulated ways in which services would be provided	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
changes to financial markets structure and competition between intermediaries and financial markets infrastructures	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
others	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

Question 2.d) Do you have specific proposals as to how the existing post-trade legislation could be more technology neutral?

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

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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
lack of full harmonisation of internationally agreed principles for financial markets infrastructures	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
the growing importance of collateral in international financial markets	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
others	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 4.b) Which fields of EU post-trade legislation would benefit from more international coherence?

- clearing
- settlement
- reporting
- 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?

- removal of legal barriers
- removal of market barriers
- removal of operational barriers
- others

Question 4.d.1) Would EU post-trade services benefit from **more competition**?

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

Question 4.d.2) Would EU post-trade services benefit from **more consolidation**?

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

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**?

Question 4.a)2. What should the EU post-trade markets look like **10 years from now**?

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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
need for greater EU harmonisation of legal and operational frameworks – please define where	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
need for more competition within the EU – as defined in your answers above	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
need for greater consolidation – as defined in your answers above	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
lack of international competitiveness	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
need for more regulatory coherence internationally	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
financial stability issues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
others	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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):

Yes, we agree but at the same time the cross-border business in the securities industry has become much more important than twenty years ago. IT development and automation has been one driver made it possible. Another main drivers has been the need of legal certainty in the cross-border context. The industry, supervisory authorities and legislators have all played their role in the removing of barriers.

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?

Question 7

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

- Fragmented corporate actions and general meeting processes
- Lack of convergence and harmonisation in information messaging standards
- 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
- 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
- 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
- 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:

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

Legal uncertainty regarding ownership rights in book-entry securities and third-party effects of assignment of claims

Inefficient withholding tax collection procedures

Deficiencies in the protection of client assets as a result of the fragmented EU legal framework for book-entry securities; For the SSDA the need of a European Securities Legislation is obvious and has been so for many years. The Legal Certainty Group as well as The Hague Securities Convention points in the same direction. Europe needs a harmonization to ensure that all end investors in the Union enjoy ownership right over all securities credited to an account.

We have been waiting for an even longer time for a precise and harmonized Conflict of Laws rule regarding securities. In our firm opinion, it is time for the Commission to act.

Uncertainty as to the legal soundness of risk mitigation techniques used by intermediaries and of CCP's default management procedures. See also answer 13

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 rules concerning communication between a company and its shareholders should be complemented with a definition of who should be regarded as shareholder. Without such a definition, the forthcoming rules are incomplete and unjust bringing heavy administrative burdens to the industry in some Member States compared to others.

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.:

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?

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

Please explain your answer to question 8.4.b):

Question 8.4.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 8.4.c) 1.:

Question 8.4.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 8.4.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.:

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.:

The SSDA agrees with the EPTFs report that the EU-legislation does not sufficiently protect close-out netting agreements in cross-border settings. There is considerable variation between Member States on the scope of protected close-out netting. The protection in Financial Collateral Directive is furthermore limited and as an add-on, Insolvency legislation in the Member States are diverging.

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.:

Furthermore, there is a clear need to protect collateral takers such as settlement agents guaranteeing the executions of transactions. In providing securities settlement, banks and other service providers can provide credit in relation to trading activity of their clients. This is many times a condition for a smoothly functioning market. Service providers can in such cases take a securities interest to protect themselves. There are many good reasons to safeguard this type of pledge. But, as pointed out in the EPTF report many problems arise from the lack of clarity regarding the meaning of possession in the applicable law.

Regarding CCPs, we have no experience of a default (and never will we hope) but investor protection as regards the transfer and porting of a client's positions has be to be respected.

The Settlement Finality Directive was, when introduced, a huge and necessary step to protect extremely important settlement systems but there is a clear need to update the Directive and we support the proposed way forward by the EPTF report.

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

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.:

We believe that an EU-legislation should be introduced to ensure that end investors enjoy ownership right over all securities credited to an account. The lack of harmonized rules on the end investors' legal position in cross-border settings constitutes a barrier to the CMU. One consequence of the barrier is that it is difficult to determine who should be considered as the "owner" of a security by third parties and by the issuers. How should securities held in an omnibus account be treated in the case of a failure of the intermediary (or fellow-investor who holds securities in the same account)? Who has the right to exercise the right flowing from the security that an investor has acquired? Who can attach book-entry securities?

One of the issues listed above, the inconsistent application of asset segregation rules for securities accounts, would be much easier to solve if the concept of ownership were the same through the Union.

The SSDA supports the recommendation of the EPTF regarding book-entry securities. However, in our opinion the EU should go even further. Financial markets today are global and many financial institutions are active in one way or another outside the home jurisdiction and also outside the Union. For the global securities market, The Geneva Securities Convention will promote legal certainty and economic efficiency with respect to cross-border holdings and dispositions of securities held with an intermediary. In our firm opinion, it is extremely important to achieve global compatibility regarding the substantive law of securities dispositions. EU should, in the interest of the Union, as a global financial market implement legislation that is fully compatible with the Convention.

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.:

See our answer on previous question

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.:

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.:

Furthermore, there is a clear need to protect collateral takers such as settlement agents guaranteeing the executions of transactions. In providing securities settlement, banks and other service providers can provide credit in relation to trading activity of their clients. This is many times a condition for a smoothly functioning market. Service providers can in such cases take a securities interest to protect themselves. There are many good reasons to safeguard this type of pledge. But, as pointed out in the EPTF report many problems arise from the lack of clarity regarding the meaning of possession in the applicable law.

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

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:

The rules concerning communication between a company and its shareholders should be complemented with a definition of who should be regarded as shareholder. Without such a definition, the forthcoming rules are incomplete and unjust bringing heavy administrative burdens to the industry in some Member States compared to others.

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.:

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.:

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?

The SSDA supports the code but has some doubts regarding its effectiveness.

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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Obstacles to DVP settlement in foreign currencies at CSDs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Issues regarding intraday credit to support settlement	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Insufficient collateral mobility	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Non-harmonised procedures to collect transaction taxes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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:

SSDA welcomes the opportunity to comment on the EPTFs report and the consultation from the Commission. SSDA supports the response from EBF.

We are of the opinion that the EPTF has done a good analysis of the European Post Trade Landscape and a correct assessment of the remaining barriers against a well-functioning post trade market in the Union. In our opinion the Commission should set up a plan for and a process over the forthcoming dismantling of all EPTF Barriers.

For the SSDA the need of a European Securities Legislation is obvious and has been so for many years. The Legal Certainty Group as well as The Hague Securities Convention points in the same direction. Europe needs a harmonization to ensure that all end investors in the Union enjoy ownership right over all securities credited to an account.

We have been waiting for an even longer time for a precise and harmonized Conflict of Laws rule regarding securities. In our firm opinion, it is time for the Commission to act.

Two of the issues above, legal uncertainty regarding ownership rights in book-entry securities as well as third-party effects of assignment of claims and inefficient withholding tax collection procedures have already been given high priority by the Commission. It is our opinion that EU needs an EU uniform conflict of laws rule that govern those issues which are of crucial practical importance for holdings and dispositions of securities by an intermediary. Uncertainties in this regard lead to significant costs for market participants and add an unnecessary risk to the global capital market.

Uncertainty as to the legal soundness of risk mitigation techniques used by intermediaries and of CCP's default management procedures;

The SSDA agrees with the EPTFs report that the EU-legislation does not sufficiently protect close-out netting agreements in cross-border settings. There is considerable variation between Member States on the scope of protected close-out netting. The protection in Financial Collateral Directive is furthermore limited and as an add-on, Insolvency legislation in the Member States are diverging.

Furthermore, there is a clear need to protect collateral takers such as settlement agents guaranteeing the executions of transactions. In providing securities settlement, banks and other service providers can provide credit in relation to trading activity of their clients. This is many times a condition

for a smoothly functioning market. Service providers can in such cases take a securities interest to protect themselves. There are many good reasons to safeguard this type of pledge. But, as pointed out in the EPTF report many problems arise from the lack of clarity regarding the meaning of possession in the applicable law.

Regarding CCPs, we have no experience of a default (and never will we hope) but investor protection as regards the transfer and porting of a client's positions has to be respected.

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 \(http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en\)](http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

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

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

Contact

fisma-post-trade@ec.europa.eu
