



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:

ICMA European Repo and Collateral Council (ERCC)

Contact email address:

The information you provide here is for administrative purposes only and will not be published

alexander.westphal@icmagroup.org

* 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:

0223480577-59

* 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?

Switzerland

* 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):

capital markets - trade association



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 checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
more cross-border issuance of securities	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" 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.

One additional factor which should be listed as a trend in its own right is Regulation. Regulation is expected to reinforce some of the trends above, but the impact is expected to go far beyond. The different regulations that are being implemented at the moment are expected to profoundly reshape the EU post-trade environment. Major examples are MiFID II/R, CSDR, and SFTR which will all have a major impact on post-trade services.

Related to Regulation, we also note inward looking tendencies in EU and global politics which threaten cross-border integration in both trade and post-trade between the EU and the rest of the world and which could disrupt current trends. We would also note some more specific regulatory threats, such as inconsistency between EU rules and other major jurisdictions, local capital and liquidity requirements, possible restrictions on re-use etc. Shrinking margins, partly resulting from regulation, is likely to further increase pressures on firms to cut costs. This typically leads to concentration in search of

economies of scale.

From a collateral management perspective more specifically, we would mention the following trends, some of which are explained more in detail in ANNEX 3 of the EPTF Report (collateral management chapter) as well as in the watchlist section of the main report:

- 1) Cost reduction and collateral optimisation, across both commercial and central bank money frameworks;
- 2) Cross border efficiency, supported e.g. by T2S and ongoing harmonisation initiatives in Europe;
- 3) Collateral product development;
- 4) Increasing focus on the efficient management of intra-day liquidity.

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:

→ *new technological developments such as DLT*

positive mixed negative

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

→ *more cross-border issuance of securities*

positive mixed negative

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

→ *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

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

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 checked="" 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 checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
lowered costs	<input type="radio"/>	<input checked="" 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"/>

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

As a general remark, we would point out that the evolution of DLT and its implications for the post-trade space are still subject to significant uncertainty. Our comments to Q2 should thus be considered with caution. We would encourage authorities to also look at existing FinTech tools beyond DLT which are already available today and have the potential to significantly

impact operations and the post-trade space more generally. The ICMA ERCC Operations Group has established a FinTech WG which is looking at existing technology tools, with a particular focus on repo and collateral management operations. The WG is currently finalising a mapping inventory which provides a comprehensive overview of FinTech solutions available in this space, with around 100 different tools having been identified. The mapping is planned to be published on the ICMA website by mid-November.

On "who own what": DLT has the potential to simplify significantly the post-trade process and related reconciliation efforts that are necessary today by providing a common shared ledger.

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:

While cost effectiveness is certainly an important potential benefit of DLT, we would also like to highlight in this context cost efficiencies that can already be achieved today with existing technology tools.

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 checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
others	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please provide your comments (if needed) on higher legal risks related to unregulated ways in which services would be provided:

Depending on the approach taken by regulators

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

If implemented in a non-coordinated way, DLT might lead to further fragmentation

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?

No specific proposals. Appropriate coordination between legislators, regulatory authorities and central banks will be critical.

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:

The CP states: "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."

The ICMA ERCC believes that these statements are inaccurate and do not appropriately reflect risks related to securities financing transactions, including securities lending (SL) and repo, an activity essential for the functioning and stability of financial markets. In relation to the statements above we would like to clarify the following:

1) Operational risk: It is suggested that market participants might turn to SL because of thin margins on other instruments and that additional SL would overwhelm operational capabilities. This seems highly unlikely given that SL is a scalable and very low-risk/low-return business, mainly due to the risk aversion of beneficial owners, and based on well-established market practices and a sophisticated infrastructure.

2) Long chains: It also appears to be implicit in what is said that repo and SL work by pledge or pawning and that sellers/lenders have equity of redemption, which would mean trying to get the exact same security back. This would obviously raise operational issues if there was a long chain in an illiquid security. However, the European repo and SL markets predominantly use title transfer collateral arrangements, which mean that only equivalent securities have to be returned; and, if there is a problem, the obligation can be netted

against the collateral. In fact, the risk of non-return is the same as the risk of non-delivery in a cash trade. Moreover, it is only possible to trade multiple times with a liquid security, in which case, the length of a chain is not an issue. Finally, on the collateral side of SL, there is little re-use of non-cash collateral, which is the predominant form of SL collateral in Europe.

3) Rehypothecation: It is not accurate to introduce the term 're-hypothecation' in this context as this legal mechanism does not apply to repos and SL in Europe.

Please describe the significance and drivers of the systemic risk concern for this 1st post-trade area:

To further elaborate on the ICMA ERCC's perspective regarding risk concerns associated with repos and securities financing transactions (SFTs) more generally as expressed in the CP, the following points reiterate views already articulated in a number of public responses submitted over recent years.

The ICMA European Repo and Collateral Council (ERCC) is concerned about the persistent suggestion that procedures need to be developed to allow the tracking of collateral in SFTs. This concern stems first and foremost from the fact that, given the fungibility of securities from within a single securities' issuance, such tracking is simply not feasible; but, furthermore, it is unclear why attempting to track reuse is really necessary and what benefits such an endeavour would bring.

One widely discussed point of concern which appears to colour thinking regarding the need to track collateral is a perceived need to keep track of where other people's assets have got to. This has led some to call for re-use to be monitored, but in the context of the European repo market the term re-use is itself a misnomer. In a repo effected using the EU's legal construction of a title transfer collateral arrangement (as occurs in repos under ICMA's Global Master Repurchase Agreement (GMRA)), the buyer becomes the owner of the collateral at the start of the transaction and can dispose of the collateral when and as he wishes.

In a GMRA repo the buyer's right of "re-use" is not a right granted by the seller, but is rather an automatic right arising from property ownership. In other words, it is a right of "use", as would apply to any other fully owned property, and not really a matter of re-use. This is very different from the legally distinct case of rehypothecation (or re-pledging), which is widely used by prime brokers involved in the collateralisation of derivatives transactions with hedge funds. It is this activity of rehypothecation which, quite rightly, is the subject of the FSB's recommendation #7, which calls for regulations governing re-hypothecation of client assets in order to ensure that there is appropriate transparency and control over this particular activity.

A second point of concern which appears to lead to the belief in a need to keep track of collateral involves the risk of default triggering interconnected collateral liquidation risks through a chain of re-use. This however is not the

case, as a default only gives rise to a liquidation requirement on the part of the directly impacted party, whilst all other contracts throughout a chain of re-use remain fully valid and enforceable. Hence there is no need to track collateral back through the chain to see where it came from.

And a third point of concern related to the need to keep track of re-use is the creation of excessive leverage. Some have theorised that it could be possible for someone to buy a security using their own funds and then repo out that security to raise more funds, which funds could then be used to buy another security, which could be repoed out for yet more funds, and so on, ad infinitum. However, in practice, this infinite multiplier would come up against the credit limits imposed by all banks on their counterparties and regulatory constraints. Indeed, the appropriate way to control the potential for excessive leverage is directly, which is just what the adoption of the Basel leverage ratio and other regulations already seeks to do. It is far from clear that there also needs to be an intense focus on collateral re-use in order to try and mitigate these same risks.

As also called for by the FSB in August 2013, the EU is pressing ahead with putting in place a detailed regime for the transparency of SFTs, through the EU SFT Regulation. This will mean that authorities have the information about which SFTs are taking place and can monitor where any risk concentrations are building up in the market. Wherever collateral is being re-used in a subsequent SFT this will already form part of the reported information, as that subsequent SFT will itself fall to be reported. This should provide authorities with more than adequate information. Concerns over interconnectedness and potential contagion at a systemic level should be monitored based on periodic reporting of positions between the largest global banks, broken down by types of collateral. The need to track individual pieces of collateral through the system does not arise.

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

Regarding the risks related to collateral management, the ICMA ERCC would point to the following factors that can help to reduce the related risks:

- 1) netting, to reduce risks related to failures to redeliver collateral;
- 2) robust default agreements and legal certainty to underpin these agreements. In this context, it is worth highlighting that the GMRA, the relevant legal agreement in the repo space, is widely considered to have performed extremely well during the financial crisis, including in the context of the default of Lehman Brothers;
- 3) robust CCPs;
- 4) efficient variation margining;
- 5) making whole accounts with cash if collateral is unavailable; and
- 6) efficient commercial bank money settlement for cross-border and cross-currency settlement and extended settlement windows.

Area of risk n.2:

Please describe this 2nd post-trade area prone to systemic risk:

In our view, the post-trade areas that are most prone to systemic risk are:
(1) cash settlement and the failure of a settlement bank; or
(2) doubts about a CCP.

Please describe the significance and drivers of the systemic risk concern for this 2nd post-trade area:

Please describe solutions to address the systemic risk concern identified in this 2nd post-trade area or the obstacles to addressing it:

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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
the growing importance of collateral in international financial markets	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
others	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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:

For detailed explanations, see Annex 3 of the EPTF Report (chapter on collateral management)

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):

(i) Clearing:

Legislation should be broadly consistent across borders. Importantly, in the context of CCP recovery and resolution and the proposed EU Regulation on this issue, it should be clear IM is not to be haircut and VM haircutting should only be in cases where the VM reflects an economic gain.

(ii) Settlement:

Introducing mandatory buy-ins as called for by the CSDR would be both harmful to market liquidity and create huge operational challenges.

(iii) Reporting:

Comparatively extensive reporting requirements in Europe which are often not aligned with global standards raise concerns in relation to the competitiveness of EU markets, but also hamper the global aggregation of data.

In the case of the EU SFT Regulation, for example, transaction reporting requirements in Europe are far more granular than global standards set by the FSB and requirements implemented or considered in other major jurisdictions. This puts European firms at a competitive disadvantage, but more importantly may lead some important non-EU market participants (e.g. Sovereign Wealth Funds) to withdraw from European SFT markets. The requirements are not only more extensive, but also differ in some important respects structurally from global standards.

In particular, the SFTR requires (double-sided) trade-level reporting in the EU whereas global FSB standards require position level reporting. Deriving the latter from the former is far from straightforward and will hamper an efficient aggregation of global data. More consistency would also be desirable between different EU reporting regimes. In the specific case of SFTs, an alignment between SFTR and the ECB's MMSR would be beneficial. And given the existence of SFTR, there should not be any SFT transaction reporting under MiFIR. Such alignment would also be desirable on a larger scale between all the different EU financial reporting regimes, e.g. related to liquidity. Standardising formats, messaging and lifecycle treatment would facilitate implementation, lower costs and increase data quality.

(iv) Risk mitigation tools and techniques:

Important examples where a better alignment with global rules and market practices would be beneficial are in the area of recovery and resolution, as well as some aspects of the EU CSD Regulation.

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

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

General remark: For a detailed description of the individual barriers we refer to the full EPTF Report, which the ICMA ERCC fully supports. In particular, we note the following:

Legal barriers:

A more far reaching harmonisation of Securities Law in the EU in the longer term would be beneficial.

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

An important example for existing market barriers with an impact on the attractiveness of EU financial market infrastructure for global institutions would be the remaining national restrictions for primary dealers, as explained in more detail in the EPTF Report (see watchlist item 1).

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

Important initiatives are under way to achieve more harmonisation in the collateral management space and should be supported by authorities. This includes important work undertaken by the ECB's AMI-SeCo and its sub-groups, in particular the Task Force on Collateral Management Harmonisation (CMH-TF), as well as other market led initiatives, e.g. on tri-party interoperability.

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:

More competition would be beneficial with regard to services related to traditional clearing and settlement. This is in line with the objectives of both CSDR and the T2S project. It needs to be ensured that the relevant CSDR provisions facilitating cross-border issuance and settlement are effective and that financial market participants can utilise the full potential of T2S.

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

CCP clearing would rather benefit from more consolidation, as would trade reporting.

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 ICMA ERCC actively supports efforts undertaken by the ECB's AMI-SeCo and its sub-groups to achieve a more harmonised post-trade environment in Europe, with a specific focus on collateral management. More harmonisation in this area is important also to reap the full benefits of the new T2S settlement environment. The medium-term objective should be to create an environment where institutions are agnostic to the settlement location and which enables them to activate all inventory through a single CSD in T2S. These efforts should not stop at the level of T2S, but should indeed be expanded to fully involve settlement platforms outside T2S, within and outside of Europe, so that globally active institutions are able to manage collateral efficiently.

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

The journey described above will probably not be concluded within 5 years. In addition, we expect FinTech solutions, including DLT, to play an increasingly important role in shaping the post-trade market.

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 checked="" 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 checked="" 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 checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>				
lack of international competitiveness	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
need for more regulatory coherence internationally	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>					
others	<input type="radio"/>	<input type="radio"/>						

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

Challenges related to Brexit and more generally tendencies towards inward looking policies in EU and global politics.

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

An important first step would be to implement the proposals set out in the EPTF Report.

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

See Q4.d.1. above

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

See Q4.d.2 above

Please explain your views on the lack of international competitiveness:

See Q4.b and Q4.c above

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

See Q4.b above

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):

As a member of the EPTF, the ICMA ERCC actively contributed to the preparation of the EPTF report and fully supports its conclusions and recommendations. In line with the report we agree that some progress has been made over the past 15 years and some barriers dismantled since then. This should not conceal the fact that a lot of work remains to be done. The number of barriers might be understated given the merging of certain issues and the fact that some highly relevant issues are covered in the watchlist of the report (see response to Q12). It is also important to note that the post-trade environment is in a state of flux, with the recently completed migration to T2S and other evolving initiatives, including market led initiatives such as tri-party interoperability or important upcoming regulations which will have a profound impact on the post-trade space. It will thus be important to establish an effective mechanism to monitor progress in achieving the objectives set out by the EPTF and to review the issue within a few years.

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:

We support all the barriers above and have not identified any additional issues. In addition to these, we would however also stress the importance of the issues covered in the watchlist section of the EPTF Report (see our response to Q13).

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

We generally support the prioritisation proposed in the EPTF Report.

From an operational perspective, we would highlight the following barriers as most significant: 1, 2, 6, 7, 12.

All of these issues mean that institutions continue to be forced to rely on the (I)CSDs and/or other infrastructures / service providers to apply logic that lifts or creates efficiency which in principle could and should be embedded in market participants' core systems in terms of product, business process and messaging standardisation and adoption.

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):

For any evidence, we would like to refer to the EPTF Report as well as Annex 3 which includes a more detailed description of the EU post-trade environment.

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.:

In the short to medium term, yes.

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.:

In the longer term, more ambitious solutions could be warranted.

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:

For any evidence, we would like to refer to the EPTF Report as well as Annex 3 which includes a more detailed description of the EU post-trade environment.

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.:

In the short to medium term, yes.

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.:

In the longer term, more ambitious solutions could be warranted.

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):

For any evidence, we would like to refer to the EPTF Report as well as Annex 3 which includes a more detailed description of the EU post-trade environment.

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.:

In the short to medium term, yes.

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.:

In the longer term, more ambitious solutions could be warranted.

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:

For any evidence, we would like to refer to the EPTF Report as well as Annex 3 which includes a more detailed description of the EU post-trade environment.

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.:

In the short to medium term, yes.

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.:

In addition to a simplification and standardisation of EU reporting requirements in the short term, we would also urge authorities to review EU reporting obligations that are either already in place or will be introduced in the near future in view of their consistency with international standards and in comparison with similar obligations implemented in other major jurisdictions. Without compromise to the provision of appropriate transparency, it should be avoided that such requirements have an unduly negative impact on the competitiveness of EU financial markets or inhibit the aggregation of global data.

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):

For any evidence, we would like to refer to the EPTF Report as well as Annex 3 which includes a more detailed description of the EU post-trade environment.

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.:

In the short to medium term, yes.

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.:

In the longer term, more ambitious solutions could be warranted.

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:

For any evidence, we would like to refer to the EPTF Report as well as Annex 3 which includes a more detailed description of the EU post-trade environment.

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.:

In the short to medium term, yes.

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.:

In the longer term, more ambitious solutions could be warranted.

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):

For any evidence, we would like to refer to the EPTF Report as well as Annex 3 which includes a more detailed description of the EU post-trade environment.

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.:

In the short to medium term, yes.

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.:

In the longer term, more ambitious solutions could be warranted.

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:

For any evidence, we would like to refer to the EPTF Report as well as Annex 3 which includes a more detailed description of the EU post-trade environment.

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.:

In the short to medium term, yes.

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.:

In the longer term, more ambitious solutions could be warranted.

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.:

In the short to medium term, yes.

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.:

In the longer term, more ambitious solutions could be warranted.

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

Barrier n.1:

Question 11.1.a) Describe your 1st barrier, its scope and the actors affected by such barrier. Are there any specific barriers that apply to specific products such as EU ETS allowances?

We support all the barriers above and have not identified any additional issues. However, as pointed out under Q7.c above, we reiterate the importance of the watchlist section of the EPTF Report which in our view is not sufficiently reflected in this consultation (see also our response to Q13).

Question 11.1.b) Provide evidence that proves the existence of your 1st barrier.

Question 11.1.c) Describe what solutions would dismantle your 1st barrier and if there are any obstacles to achieving that solution.

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

The ICMA ERCC would like to highlight the importance of the issues covered in watchlist section of the EPTF Report, which in our view is not sufficiently reflected in this consultation paper. In particular, the issues related to insufficient collateral mobility (WL item 4) and the concerns around intraday credit (WL item 3) explained in more detail in the EPTF Report are of major importance for the financial market and need to be addressed.

In this context, we would like to recall that the reason for including these issues in the watchlist section of the EPTF report was not that they are considered less important or less urgent. In the case of collateral mobility, in particular, the reason was rather that the relevant issues are currently being assessed in the context of the ECB's AMI-SeCo and the relevant sub-groups. We encourage the Commission to closely follow the work undertaken by AMI-SeCo and to provide the necessary regulatory support where deemed necessary. The same applies to concerns around remaining national restrictions on the activity of primary dealers and market makers (item 1), an issue which is being considered at the level of the ECB as a first step, but which might require regulatory involvement at a later stage.

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:

[440a5d97-d4eb-4ad4-a85c-4c3446556449/EC_PT_consultation_ICMA_ERCC_response_cover_letter.pdf](#)

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