



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

Fields marked with \* are mandatory.

## Introduction

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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](mailto: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

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\* Are you replying as:

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

\* Name of your organisation:

Eumedion

Contact email address:

**The information you provide here is for administrative purposes only and will not be published**

\* 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:

65641341034-11

\* 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?

The Netherlands

\* 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



## 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

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### 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
new technological developments such as DLT	<input checked="" 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 checked="" type="radio"/>				
more trading in equities taking place on regulated trading	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
improved shareholder relations	<input type="radio"/>	<input checked="" 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 checked="" 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

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

As already stated in our response to the consultation document on the Capital Markets Union mid-term review 2017, we believe that ‘distributed ledger technology’ (also known as blockchain technology) could potentially facilitate the recording of ownership and the voting process. According to p. 16-18 of ESMA’s report ‘The Distributed Ledger Technology Applied to Securities Markets’ (ESMA50-1121423017-285) there are several legal issues, such as company law, that may have an impact on the deployment of distributed ledger technology. We believe that solving these issues should be a top priority for the European Union.

→ *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

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

As already stated in our response to the consultation document ‘EU Company law upgraded: Rules on digital solutions and efficient cross-border operations’ (2017), we believe that digital tools, such as block chain voting facilities, audio and video conferencing software and online voting, could make the interaction between listed companies and their shareholders easier. Nowadays the full potential of the use of digital tools is not achieved. For example in The Netherlands scarce use is made of online voting. We believe that the obstacles that listed companies face when they want to use digital tools to interact with their shareholders should be identified and resolved. According to p. 5/6 of ESMA’s report ‘The Distributed Ledger Technology Applied to Securities Markets’ (ESMA50-1121423017-285) the SRD II implementing measures could be helpful if they facilitate a wider use of electronic means. We believe that attention should be paid to this topic.

→ *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 checked="" 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 checked="" 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 checked="" 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 checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

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

Block chain could potentially facilitate the recording of ownership. This is also demonstrated by the IOSCO Research Report on Financial Technologies (Fintech) which elaborates on the use of block chain technology for keeping corporate records (p. 53).

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:

We believe that distributed ledger technology could potentially facilitate the voting process and as a result could reduce the costs.

Please specify what other elements could be among the possible benefits of DLT for post-trade. Provide your comments on them (if needed):

Enhanced interaction with shareholders. We believe that distributed ledger technology could improve the efficiency of voting and the exercise of other shareholder rights, in particular in a cross-border context.

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

Please provide your comments (if needed) on higher operational risks:

According to p. 10-12 of ESMA's report 'The Distributed Ledger Technology Applied to Securities Markets' (ESMA50-1121423017-285) the use of distributed ledger technology may not only give rise to operational risks but also to other kind of risks (for example cyber risks).

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

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

Shares are usually held through a chain of securities intermediaries across borders. We agree with the remark of EPTF in its report (p. 54) that in that case the process for issuers to identify who their shareholders are, is often complex and difficult. As already mentioned above, we believe that distributed ledger technology could potentially facilitate the recording of ownership. In that case companies no longer have to obtain information from central securities depositories and securities intermediaries in order to find out who their shareholders are.

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

- It facilitates     It inhibits     It is technology neutral

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

According to p. 16-18 of ESMA's report 'The Distributed Ledger Technology Applied to Securities Markets' (ESMA50-1121423017-285) there are several legal issues, such as company law, that may have an impact on the deployment of distributed ledger technology. We believe that solving these issues should be a top priority for the European Union.

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"/>							
need for more competition within the EU – as defined in your answers above	<input type="radio"/>							
need for greater consolidation – as defined in your answers above	<input type="radio"/>							
lack of international competitiveness	<input type="radio"/>							
need for more regulatory coherence internationally	<input type="radio"/>							
financial stability issues	<input type="radio"/>							
others	<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):

## Question 7

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

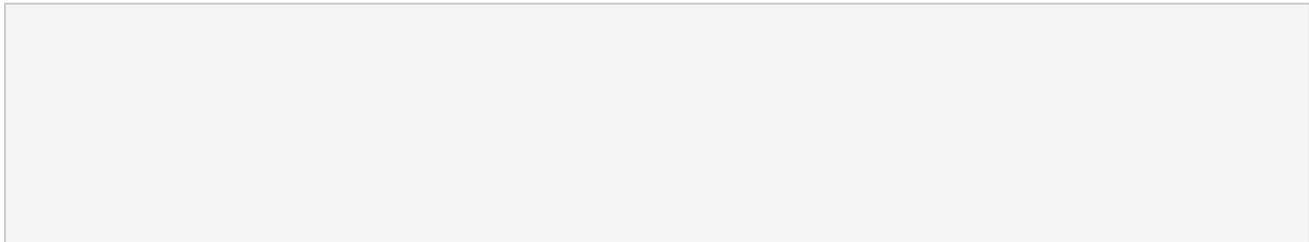
- Fragmented corporate actions and general meeting processes
- Lack of convergence and harmonisation in information messaging standards
- Lack of harmonisation and standardisation of Exchange Traded Funds (ETF) processes
- Inconsistent application of asset segregation rules for securities accounts
- 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:

We believe that fragmented corporate actions and general meeting processes and the lack of harmonisation of registration and investor identification rules and processes are the two most significant barriers.

## 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):

Shares are usually held through a chain of securities intermediaries across borders. The poor performance of the chain of intermediaries makes it very difficult and often very costly for shareholders to exercise their shareholder rights (especially cross-border). For example shareholders who must cast their votes via proxy are still confronted with practical and legal problems, despite the development of information technology. We agree with the remark of EPTF in its report (p. 28) that national differences in the rules governing corporate actions processing and general meetings-related operational processes increase costs and operational risks, especially in a cross-border context. It is hard to pinpoint the exact costs involved, but the bulk of them stem from extra manpower.

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.:

EPTF suggests in its report further industry actions as well as action by the European Commission via the SRD II implementing measures. We agree with that and believe that key aspects of the transmission of information and the facilitation of the exercise of shareholder rights (like formats and deadlines) could be harmonised via the SRD II implementing measures. This is also in line with p. 5/6 of ESMA's report on shareholder identification and communication systems (ESMA31-54-435).

In addition to that we believe that the use of digital tools, like block chain

voting facilities, audio and video conferencing software and online voting, could make the interaction between listed companies and their shareholders easier. For example distributed ledger technology could potentially improve the efficiency of voting and the exercise of other shareholder rights (in particular in a cross-border context). This is also demonstrated by the IOSCO Research Report on Financial Technologies (Fintech) which elaborates on the use of distributed ledger technology for corporate actions processes such as proxy voting (p. 54). Unfortunately, the use of digital tools is not encouraged in SRD II itself. According to ESMA's report on shareholder identification and communication systems (ESMA31-54-435) the SRD II implementing measures could be particularly helpful if they facilitate a wider use of electronic means and thereby streamline and reduce the burden of communication duties for issuers and shareholders. We believe that attention should be paid to this topic.

For the avoidance of doubt, while we welcome and encourage the use of digital tools to expand shareholder participation and voting in general meetings, we strongly believe that so called virtual general meetings should supplement – and not replace – physical meetings. For more details we refer to our response to the consultation document 'EU Company law upgraded: Rules on digital solutions and efficient cross-border operations' (2017).

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.:

We refer to our answer to question 8.1.c) 1.

## 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):

Transaction reporting requirements are included in EMIR, MiFIR and the SFTR. Nevertheless, the transaction reporting requirements itself are not aligned yet. With respect to EMIR and MiFIR this is also recognized by ESMA in

paragraphs 11-18 of the Final Report Review of the Regulatory and Implementing Technical Standards on reporting under Article 9 of EMIR (ESMA/2015/1645). Parties that have to comply with multiple transaction reporting requirements, for example asset managers, have to spend significant amounts of effort to meet the different requirements.

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.:

We agree with the EPTF that the reporting structure should be harmonised and that a mechanism should be introduced to maintain it.

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.:

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.:

#### **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.:

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

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

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

#### 4.8. Shortcomings of EU rules on finality

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

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

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

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

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

Please explain your answer to question 8.8.b:

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

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

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

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

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

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

### Questions related to the ongoing Commission work

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

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

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

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

### Question 9

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

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

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

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

Question 9.b)1. Please provide examples where lack of harmonised shareholder identification or registration rules resulted in an undesirable outcome (e.g. unreliable data, deprivation of service to shareholders or issuers, high costs or other burden):

Where necessary, please indicate if the evidence in your reply is confidential.

(Note that indicating here the confidentiality of your response will not prevent them from being published if you did not specify at the beginning of this questionnaire that you do not want your replies to be published)

Question 9.b)2. Please provide examples where the barrier actually prevented shareholder identification or registration in an appropriate manner, cost and timeline:

Where necessary, please indicate if the evidence in your reply is confidential.

(Note that indicating here the confidentiality of your response will not prevent them from being published if you did not specify at the beginning of this questionnaire that you do not want your replies to be published)

Several countries have national systems for shareholder identification. Those systems are, by their nature, limited in scope and it is often difficult to apply them in a cross-border context. In practice shares are usually held through a chain of securities intermediaries across borders. We agree with the remark of EPTF in its report (p. 54) that in that case the process for issuers to identify who their shareholders are, is often complex and difficult. This is also demonstrated by ESMA's report on shareholder identification and communication systems (ESMA31-54-435). According to this report (p. 12) there are legal and practical barriers with respect to the shareholder identification process. We believe that those barriers should be solved. In this respect we would like to note that SRD II is already a step in the right direction, since it introduces a right for companies to obtain information from intermediaries on their shareholders.

Question 9.b)3. Please provide examples where lack of harmonised registration rules resulted in issuer's decision not to choose certain CSD for issuing securities cross-border.

Where necessary, please indicate if the evidence in your reply is confidential.

(Note that indicating here the confidentiality of your response will not prevent them from being published if you did not specify at the beginning of this questionnaire that you do not want your replies to be published)

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.:

Our response is limited to the proposals of the EPTF with respect to shareholder identification. The EPTF recommends in its report (among other things) to harmonise, where possible, data fields, contents and formats. We agree with that and we believe that this could be achieved via the SRD II implementing measures. This is also in line with p. 5 of ESMA's report on shareholder identification and communication systems (ESMA31-54-435).

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?

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

## 3. Additional information

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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)

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## Contact

fisma-post-trade@ec.europa.eu

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