EACB Response to the EC Public consultation on post-trade in a Capital Market Union: dismantling barriers and strategy for the future.

November 2017

Introduction

The European Association of Co-operative Banks (EACB) welcomes the opportunity to contribute to the discussion and European Commission's work on post-trade in a Capital Markets Union"

The EACB is the voice of the cooperative banks in Europe. It represents, promotes and defends the common interests of its 31 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the cooperative banks' business model. With 4,200 locally operating banks and 68,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 205 million customers, mainly consumers, retailers and communities. The cooperative banks in Europe represent 78 million members and 860,000 employees and have a total average market share of about 20%.

At this point, we would like to make a few general remarks which are important from a co-operative banks' view and which we consider should always be kept in mind when it comes to post-trading and any relevant work. We consider that it is necessary for the EC to take a step back and look at the bigger picture, test past thinking and consider improvements taking a holistic approach. In particular:

- Legal requirements and unintended consequences in terms of liquidity fragmentation: Liquidity has already moved to centralised CCP and there will be move away from bilateral trading. This will become even more evident when the Trading Obligation under MiFIR kicks in. This has huge consequences (among others regarding pricing and liquidity) for smaller non financial counterparties (NFC-) but also smaller cooperative banks and building societies for example. Indeed this will leave them with more difficult access to hedging possibilities. This hedging is a vital part of the retail and real economy focused business of cooperative banks, providing an essential managing tool that then allows those banks to effectively finance individuals and SMEs.

  We have already seen that the use of and access to OTC derivatives by NFCs have substantially and considerably decreased. This is due to several factors among others:

  - The complexity of the regulations for parties that may not have sufficient legal knowledge;
  - The increase of the price of the OTC derivatives - such products have become very costly - due to the decrease of liquidity in the derivative markets;
  - The pass through of costs incurred by FCs in connection with the implementation of EMIR (IT costs, operational setup, project management, repapering, legal support, etc.); and

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  - The leverage ratio impact under Basel III.

  As no alternative to (OTC) derivatives for these firms exists to be able to hedge the risks incurred in connection with currencies, commodities or interest rates, this means that such parties are not able to hedge their risks. It should also be borne in mind that when no hedging is possible, this involves risks for NFCs which will be taken into account by credit institutions when considering the creditworthiness of NFCs. This leads to a direct impact on the financing possibilities for NFCs because credit institutions account non-hedging as an increased counterparty risk. The decrease of financing possibilities has a direct impact on the economy and the customers' interest.

  Additionally, it is important to ensure that the legislation does not limit the repo markets in being a very useful tool that allows to transform collateral and to safeguard liquidity. Indeed, collateral management is becoming ever more important. Demand for collateral for use in payments and settlement systems, as well as in the exchange-traded and OTC derivatives markets, is being compounded by regulatory pressure on market users to hold larger liquidity reserves and make greater use of (collateralised) central clearing counterparties (CCPs). Repo provides a source of short-term capital, facilitating liquidity and, therefore, efficient and stable financial markets. An active repo market is crucial for liquid markets in derivative instruments. Repo markets should remain for all parties a viable instrument to transform collateral and to ensure liquidity.

- **Reporting requirements** generate (one of) the highest costs among the regulatory obligations. These costs generate an increasingly high burden for all banks but are disproportionately high for smaller banks. Overall costs as well as those in all specific areas are considerably higher relative to business size (e.g., balance sheet) for smaller banks. Banks anticipate still higher regulatory costs. Notably, in each size category 80% of all banks expect that reporting requirements will generate the highest additional costs. Streamlining reporting requirements is essential for efficient reporting.

  In that regard, we understand that the European Commission is currently looking into this issue. The Chair of ESMA referred to this point in his opening speech at the ESMA conference on the State of European Financial Markets and stressed the need for more efficient reporting[1]. The EACB is looking forward to such development. A more centralised EU approach to reporting, including harmonisation of data reporting between different sets of legislation and the development of EU-wide database(s) would be very much welcomed and appreciated.Such an approach if designed correctly will enhance the ability of EU and National Authorities to collect and effectively use data regarding transactions in financial instruments to fulfil their objectives, will reduce duplication of data collection and processing by multiple authorities, and will make it more process and cost efficient for firms reporting this information. We are indeed in favour of an approach that follows the principle that market participants should only have to report the relevant information once, to one single authority, in one format.

  Interim solutions that lead to interim costs for financial institutions and other market participants that will never be recovered should in any case be avoided.

- Market participants have very recently implemented or are in the process of implementing very complex pieces of legislation that could also have significant impact on post-trading. For that reason we do consider that **a "pause" of the EU co legislators** would be necessary to allow

[1] https://www.esma.europa.eu/sites/default/files/library/esma71-99-635_the_state_of_european_financial_markets_-_steven_maijoor_opening_address_esma_conference.pdf

the market to a correctly implement or ameliorate implementation solution but also co legislators to evaluate and assess the holistic effect of various legislation.

In the same vain, as many current changes in the European market structures (such as T2S, MiFiD II, CSDR etc.) are very new or even not (fully) implemented and cannot have shown a significant and "measurable" effect .It might be too early to discuss the impact of such significant changes at this stage. Therefore, we would like to encourage the EC not to carry out quantitative studies to analyse whether any market deficiencies continue to exist until well after implementation of the post-crisis regulation.
More in general on this point, we would like to draw your attention to the need to make a differentiation between deficiencies in European or international regulation/legislation and possible improvements/developments in the markets. While the first requires adequate action from the authorities in charge (e.g. harmonisation of taxation, or clarification of insolvency protection of asset owners across the European legislations), the second should be left to the search process of an open market economy.

- **" Fintechs":** In this fast-changing environment, a level playing field is key to assure not only fair competition but also consumer protection. The latter should remain the key priority. A level playing field has the role of ensuring clients are not put at risk and that financial stability is maintained, irrespective of the service provider. The Digital Single Market is an opportunity for all operators willing to embrace the digital transformation. The same regulatory conditions and supervision should apply to all actors who seek to innovate and compete on FinTech: large digital players (big tech firms), financial institutions players (incumbent banks) and FinTech start-ups.

  Any regulatory framework must keep barriers to entry to a minimum, and should also not hinder incumbents' ability to innovate and develop. The principle of 'same services, same risks, same rules and same supervision' in order to ensure consumer protection and market integrity should always apply.

- Another important point that needs to be duly considered in the design of the regulatory framework is the **timing factor**. Adequate, realistic and legally effective implementation periods should ensure in future that the legislative acts of the different stages are coordinated with each other and that there is still sufficient time to implement the new regulations in time. Two recent examples show that this is not always the case. Both MiFID II and the PRIIPs Regulation are supplemented by comprehensive Level II measures, without which implementation cannot take place. Both legislative projects failed to adhere to the timetable envisaged, which led to considerable legal uncertainty and significant additional costs for market participants and in particular banks and investment firms.

- **Brexit** could also have important consequences and implications for derivatives markets and the post-trading EU market in general and all relevant developments need very close attention.

- The report of the EPTF is highly appreciated.

Please find below the EACB response to the consultation questions.

Answers to questions

QUESTION 1

a) Which of the trends are relevant for shaping EU post-trade services today? Please indicate in order of importance.

(i) increased automation at all levels of the custody chain;

(ii) new technological developments such as DLT;

(iii) more cross-border issuance of securities;

(iv) more trading in equities taking place on regulated trading;

(v) improved shareholder relations;

(vi) a shift of issuances to CSDs participating in T2S.

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

In general, this question provides a mixture of very different issues with very different consequences.

In general, we agree that all trends referred to in the consultation document are relevant for EU post-trade services. In particular, the increase in automation as well as new technological developments can have significant effects on post-trade services. The disruptive character of any of those developments can change its nature and hence the demand for such services. It is at this stage difficult to quantify the exact impact of each of those developments on post-trade services. Any changes, either operational or structural, should be market driven.

Although mass adoption of the DLT would at this stage be premature, the EACB members see a potential for future application. The technology may prove especially valuable in post-trading. Among other potential benefits, standardized information, which is commonly used, could be exchanged using the technology. However, the exact benefits of the technology are still to be demonstrated.

We would not expect regulatory objectives to change by the DLT but the organisation, the circumstances and the responsibilities of securities markets could be modified, which would, in turn, require adjustments to certain regulatory rules.

In any case, in order to foster innovation in the EU, regulatory rules should be flexible and should not pose an impediment.

At the same, necessary changes to the rules should be seen in a global context and should be coordinated with non-EU regulators and global standard-setters.

Our current understanding and view of DL technologies with regard to securities markets (particularly post-trading), is reflected in our response to ESMA's Discussion paper ESMA/2016/773 (link: http://v3.globalcube.net/clients/eacb/content/medias/publications/position_papers/Banking_Supervision/FINAL_EACB_FMWG_PP_LDT_equalls_reply_form_version.pdf)

In addition, in a broader context, the implications of pieces of legislation such as EMIR and MiFID II should also be assessed and taken into account as some requirements such as the clearing obligation, transparency requirements, the newly introduced SI internaliser regime, the new category of trading venues, the trading obligation etc should also be considered. Indeed, some of this requirements could have consequences in terms of liquidity and possibilities to hedge. Liquidity has already moved to centralised CCP and there will be move away from bilateral trading. This will become even more evidence when the Trading obligation kicks in. This has huge consequences (among others regarding pricing and liquidity) for smaller non financial counterparties (NFC-) but also smaller cooperative banks and building societies for example. Indeed this will leave them with more difficult access to hedging possibilities. Such liquidity concentration is already evidenced in the market and will further develop with the clearing requirements. This hedging is a vital part of the retail and real economy focused business of cooperative banks, providing an essential managing tool that then allows those banks to effectively finance individuals and SMEs. This is something that should be looked at closely.

Another point that needs very close attention is the consequences and implications of the Brexit.

Please see also our general comments above in that regard.

b) Are there other trends that are not listed above? Please describe and indicate in order of importance.

Yes, there are some important trends that are not listed above. Please see our general comments in that regard. Moreover, apart from the potential threat of future fragmentation of liquidity and markets and the impact of Brexit , we would like to mention the following trends as being particularly relevant:

- New client demands – speed (real-time) / choice (flexible / unbundled services) / access to information (data / transparency) resulting in pricing shifts with continued focus on fee compressions;
- Widespread regulation regarding capital markets and subsequent regulatory reporting;
- Focus on transparency in the post-trade space with enhanced "know-your customer" (KYC) processes, reporting requirements and impact on preferential account structures;
- Focus on cybersecurity – asset and investor protection, and data (i.e. client data) protection;
- Development of alternative assets like, for instance, virtual currencies, trading and processing of non-security goods or assets;
- Potential threat of future fragmentation of liquidity and markets (also link with Brexit)

- Cultural changes, i.e. move towards a different approach to working, for example agile / distinct staff preferences (millennials);
- New / increasing competition.

c) For each trend, please indicate if the impact on post-trade markets is:

(i) positive - explain why and indicate if EU policies should further encourage the trend (ii) mixed - explain why and indicate if EU policies should further encourage the trend or address negative implications

(iii) negative - explain why and indicate if EU policies should specifically address negative implications.

(i) **Increased automation at all levels of the custody chain:** POSITIVE

We would expect this to be in particular advantageous for investor protection, asset mobility and/or liquidity. Moreover, increasing volumes and reduction of human errors will be drivers in that regard.

(ii) **New technological developments such as DLT:** MIXED

New technological developments will need to be considered carefully and have a balanced approach. Innovation, especially in respect of automation, de-layering operational processes, reducing actors, reducing cost, increasing speed and creating issuer transparency (e.g. through central asset registers) as well as contribution to asset protection would be positive.

However, a single set of standards and governance would be required including transparency of the participants in the DL, eligibility and other vital factors.

Furthermore, legal harmonisation might be required for the DLT to be operated across borders. This will also need cooperation on global level. Technology should be considered neutral and should not be linked to geographical issues. Harmonised regulation for financial services should acknowledge that new technology can help applying the same rules for the same services.

(iii) **More cross-border issuance of securities**; MIXED

We do not see it as a major trend so far. After implementation of the CSDR, issuers will have the choice to issue in their preferred jurisdiction but whether CSDs will actually offer such services across borders, remains to be seen and how issuers will use this possibility. It could be seen as positive if issuers issued their securities in markets where most of their investors are located and would therefore create more demand on their securities.

(iv) **More trading in equities taking place on regulated trading**: MIXED

This could contribute to automation. Trades on regulated trading venues are typically or often centrally cleared and subsequently settled in a matched block at the CSD level. It could also lead to a further risk concentration at the level of CCPs with highlighting their risk-models and systemic importance. As another result, CSD volumes that remain to be settled will be reduced having a potential impact to large infrastructure projects and their viability to repay the investments (e.g. T2S).

(v) **Improved shareholder relations**: POSITIVE

Improving investor and issuer confidence is essential for the European market, its growth and stability. Improvements for better transparency in custody chains including asset servicing is also beneficial for issuers. This could also render European markets more attractive to foreign investors and potentially increase capital inflows. However, this trend will have to be closely monitored in order to ensure that the relevant parties in the process cooperate on technology aspects and bear resulting costs on a shared basis.

(vi) **A shift of issuances to CSDs participating in T2S**: MIXED

We are not aware of any significant shift of issuances from non-T2S CSDs to T2S-CSDs. Issuers are, in our perception, rather focused on where their investor base is located.

d) Please specify the four main trends that will be the most important for EU post-trade

(i) in the next five (5) years

(ii) in the next ten (10) years

Trend	5 Years	10 Years
increased automation at all levels of the custody chain	X	X
new technological developments such as DLT	X	X
more cross-border issuance of securities		X
more trading in equities taking place on regulated trading	X	
improved shareholder relations	X	
a shift of issuances to CSDs participating in T2S		X

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.

(i) real-time execution of post-trade functions;

(ii) certainty on 'who owns what' where no intermediaries are involved; (iii) redefining of the role of financial markets infrastructures;

(iv) changes to financial markets structure and competition between intermediaries and financial markets infrastructures;

(v) lowered costs; (vi) others (explain).

Trend - priority	1	2	3	4	5	6
real-time execution of post-trade functions	X					
certainty on 'who owns what' where no intermediaries are involved		X				
redefining of the role of financial markets infrastructures				X		
changes to financial markets structure and competition between intermediaries and financial markets infrastructures					X	
lowered costs			X			
others (explain)						X

General comment: There are many technological innovations currently being considered by market participants to assess their ability to increase the safety and efficiency of securities post-trading, including distributed ledger technology (DLT), artificial intelligence, big data analytics etc.

However, in this question we will limited our thoughts to the use of DLT.

In that context, we note that the EACB is following relevant discussions taking place within different forums and has responded to the relevant ESMA consultation (link: http://v3.globalcube.net/clients/eacb/content/medias/publications/position_papers/Banking_Supervision/FINAL_EACB_FMWG_PP_LDT_equalls_reply_form_version.pdf)

It should be borne in mind that any technology – including DLT – can solve only technological problems and not eliminate other barriers. This latter limitation means that while DLT can be used for transfer of ownership in a closed loop system without external settlement in central bank money but that this is less evident in the context of DVP settlement or long term counterparty relationships.

Analysis:

(i) real-time execution of post-trade functions: Such trend would require a review of the post-trade landscape from pre-funding and settlement instructions to handling of corporate actions.

(ii) certainty on 'who owns what' where no intermediaries are involved: Depending on legal certainty regarding the records in the DL/protocol and taking into account the validation mechanisms and governance of the DL. It also depends on the future functions in a DLT set-up, particularly, if the DL is operated between intermediaries, whereby end beneficiary information might still be located on proprietary systems.

(iii) redefining of the role of financial markets infrastructures: There might be a need in the future to determine which intermediaries will still exist / be required in the future and for which functions.

(**iv) changes to financial markets structure and competition between intermediaries and financial markets infrastructures:** We do not expect any major changes in that regard but remains to be seen.

(v) lowered costs: Costs may come in different ways and pricing models will change accordingly to reflect more of a cost and value based component pricing model. Implementation costs regarding the DLT must also be taken into account.

A multiple set of different DLT's relating to different products, definitions and standards would fragment the market and make it complex to adapt each bank's legacy systems in order to participate at the relevant market. The more DLT's the more implementation costs will be implied. Even if DLTs would cover a huge part of the Post- Trading activities, significant efforts would still be required to maintain legacy systems (for a lower number of transactions) which is likely to increase the costs for

non-DLT transactions for a client. This would also mean that interoperability among DLTs and between legacy systems has to be established. We believe that this will be a great challenge.

(vi) **others:** There might be changes to credit risk and liquidity requirements, especially if shortened settlement cycles are achieved; still at the same time with the changed roles of intermediaries, the safe keeping aspect and linked liabilities, the asset servicing aspect (focused on local regulations and requirements), the tax processing and possibly providing liquidity and taking out risks are important functions that still need to be fulfilled.

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.

(i) higher operational risks;

(ii) higher legal risks related to unregulated ways in which services would be provided;

(iii) changes to financial markets structure and competition between intermediaries and financial markets infrastructures;

(iv) others – please specify.

Possible Risks- priorities	1	2	3	4
higher operational risks			X	
higher legal risks related to unregulated ways in which services would be provided		X		
changes to financial markets structure and competition between intermediaries and financial markets infrastructures	X			
others – please specify				X

In general, DLT is a technology, which has to be implemented according to regulation (see also the recent opinion of the SEC about ICO that regulation is technology agnostic, but any new innovations has to comply with existing technology), legislation (e.g. data protection) and technical standards (e.g. data security).

Fraud and Money-laundering, maturity and quality of the DLT's software codes and the secure access of end investors to the system are crucial points that need to be closely looked at.

For more info on the EACB views on DLT please see the EACB response to the relevant ESMA consultation(link:http://v3.globalcube.net/clients/eacb/content/medias/publications/position_papers/Banking_Supervision/FINAL_EACB_FMWG_PP_LDT_equalls_reply_form_version.pdf)

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

(i) It facilitates – explain how and provide concrete examples; (ii) It inhibits – explain how and provide concrete examples;

(iii) It is technology neutral – explain why and provide concrete examples.

Any legal (or regulatory) environment has to be technology agnostic, as especially the change cycle of technology developments is much shorter compared to adaption of legislation or regulation.

Moreover, the principle of 'same services, same risks, same rules and same supervision' in order to ensure consumer protection and market integrity should always apply.

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

The EACB considers that the current regulation is already technology neutral/agnostic.

Industry participants need to work together with regulators to ensure that a sound / controlled legal and regulatory framework exist or is developed (if necessary) within which the technology operates, however, regulators should not try to regulate the technology itself.

QUESTION 3

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

i) The concentration of clearing to a limited number of CCPs globally.

ii) Availability and mobility of collateral and liquidity

b) Describe the significance and drivers of the systemic risk concern in each of the areas identified.

i) In terms of systemic risk we fear that the centralisation of clearing via CCPs via clearing versus the bilateral clearing world results in a concentration of risks due to the small number of CCPs on the one hand and a small number of clearing brokers offering this service to a broad range of clients on the other. This risk needs to be addressed. It is therefore crucial to implement measures that mitigate the risk of potential CCP failure to protect against systemic risks and we are happy that the EC has already made a proposal in that regard.

ii) At the same time, regulation has improved the quality of collateral which has reduced risk but at a cost of increased demand from a limited pool of collateral. A liquidity crisis could (further) lead to a credit crisis and impact default funds. See also our general comments above regarding liquidity and collateral.

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

i) When it comes to systemic risk of CCPs the following are important: Sufficient 'skin in the game' at CCP level, appropriate risk and margin processes and models, sufficient CCP supervision, sufficient recovery and resolution planning.

ii) When it comes to harmonisation of collateral management activities – the work of the CMH-TF of the T2S-AmiSeco needs to be monitored and supported.

QUESTION 4

a) What are the main trends shaping post-trade services internationally? Please list in order of importance and provide comments if needed.

(i) internationally agreed principles for financial markets infrastructures to the extent that they harmonise the conduct and provision of post-trade services;

(ii) lack of full harmonisation of internationally agreed principles for financial markets infrastructures;

(iii) the growing importance of collateral in international financial markets; (iv) others – please specify.

Trend- priority	**1**	**2**	**3**	**4**
internationally agreed principles for financial markets infrastructures to the extent that they harmonise the conduct and provision of post-trade services		X		
lack of full harmonisation of internationally agreed principles for financial markets infrastructures			X	
the growing importance of collateral in international financial markets	X			
others – please specify				X

Analysis:

(i) Internationally agreed principles for financial markets infrastructures to the extent that they harmonise the conduct and provision of post-trade services:

Of course, any international harmonisation would be highly appreciated by all market participants. The CPMI-IOSCO principles for financial market infrastructures principles (PFMI) will remain to be a driver for further harmonisation regarding the conduct and provision of post-trade services, particularly regarding EU.

EMIR, SFTR and CSDR are the latest pieces of legislation aiming at implementing the PFMIs in the EU. However, not all markets around the globe seem to implement those in the same way. While in the EU a stricter interpretation of some elements like, for instance, of the communication channels between CSDs and participants according to the CSDR, is desired although the PFMI explicitly leave room for the use of proprietary standards, there may be another development elsewhere.

A good example for international co-operation and harmonisation is the recently published "Foreign Exchange Global Code of Conduct" (see ECB, 26 July 2017), which has been developed by market participants globally.

(ii) lack of full harmonisation of internationally agreed principles for financial markets infrastructures:

With the PFMI there exists a good and solid basis for internationally agreed principles aiming at harmonising financial market infrastructures and the conduct and provision of post-trade services. However, given that CCPs apply different risk management procedures and margin requirements and CSDs utilise different settlement processes and cut-off times during the day, certain areas may need a review and update. The same applies to the different interpretation of the PFMI by different markets around the globe when implementing the PFMI into local law (please also see our example in (i) above).

(iii) the growing importance of collateral in international financial markets;

Collateral is the new requirement for any exposure in the post-trade market. Unsecured exposures are rare. It needs to be seen if collateral will further be needed in connection with securities settlements. This can depend on the level 2 measures to the CSDR as regards penalties and buy-in provisions with respect to settlement fails (Art. 7 CSDR)

b) Which fields of EU post-trade legislation would benefit from more international coherence? Please explain why.

(i) clearing; (ii) settlement; (iii) reporting; (iv) risk mitigation tools and techniques; (v) others – please specify.

Risk mitigation – global standards and cooperation is of critical importance.

All 4 points require international coherence particularly in the light of DLT developments. Any introduction of unregulated, non-domestic aligned services require true globally harmonised standards in order to inter-operate with new and already existing services in a DLT environment.

Clearing – from a clearing member perspective, certain CCP risks exist: Particularly any competition among CCPs by reducing margin requirements in order to get more volume is worrisome. It should be clarified that clients cannot be held liable beyond their CCP margins and default fund contributions. We therefore believe that standardised margin behaviour should be considered by lawmakers

c) What would make EU financial market infrastructures more attractive internationally? In each case, please provide concrete example(s).

(i) removal of legal barriers; (ii) removal of market barriers;

(iii) removal of operational barriers; (iv) others – please specify.

In principle, removing real identified barriers –no matter its nature- that render financial markets less efficient would be welcomed. For example, greater interoperability seems possible which could lead to process efficiency and to making available resources for further market developments.

d) Would EU post-trade services benefit from:

(i) more competition – please explain in which area (clearing, settlement, trade reporting), and how this could be achieved

(ii) more consolidation – please explain in which area (clearing, settlement, trade reporting), and how this could be achieved.

More consolidation in particular for trade reporting which is currently dysfunctional with a single trade being reported multiple times to meet various, often conflicting, regulatory regimes, and sometimes to several recipients (e.g. TRs or NCAs, ECB) with little transparency as to what the reported information is used for by the associated recipient or regulator. It would be much more efficient that each trade is reported once to a single regulator / single mandated body (e.g. ARM) with a clear strategy from the regulator as to what the reporting is serving for, how the reports are to be analysed and which consequences are to be taken.

QUESTION 5

(a) What should the EU post-trade markets look like: (i) 5 years from now;(ii) 10 years from now.

(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:

(i) fragmentation of EU markets – please define in which market segments; (ii) need for greater EU harmonisation of legal and operational frameworks – please define where;

(iii) need for more competition within the EU – as defined in your answers above;

(iv) need for greater consolidation – as defined in your answers above; (v) lack of international competitiveness;

(vi) need for more regulatory coherence internationally; (vii) financial stability issues;

(viii) others – please specify.

c) Please explain your views on each of the issues you listed above.

Trend- priotrity	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**
fragmentation of EU markets		X						
need for greater EU harmonisation of legal and operational frameworks	X							
need for more competition within the EU							X	
need for greater consolidation				X				
lack of international competitiveness						X		
need for more regulatory coherence internationally			X					
financial stability issues					X			
others								X

Currently, the EU post-trade markets are shaped by two developments from the point of view of active market participants:

- Implementation of T2S, with benefits to be generated in the years to come
- “Brexit” with open question concerning the Clearing of OTC derivatives

At the same time, different pieces of legislation that affect post trading are currently being implemented or will soon be implemented.

Without any measurable experience with any of these developments, it is difficult to provide a perspective on the market infrastructures in five or even ten years.

We need to see how these will pieces of legislation will affect or are already affecting efficiency in Europe and take a more holistic approach in the future.

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? Please explain.

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

Concerning the success that some Giovanni Barriers have be reduced, please, see the EPTF report.

We would also like to point out that solutions for many of the dismantled barriers were found by the private sector/market participants as described in the table on pages 22 and 23 of the EPTF report.

We would like to highlight that Target-2 Securities (T2S) has improved CSD interoperability (by using cross-border links and “bridges” between national CSDs) and streamlined cross-border transactions and has rendered them more efficient. Following the development of the T2S platform, improved harmonisation and synchronisation between regulatory and private initiatives took place (e.g. Corporate Actions Standards: CAJWG and E-MIG (EU Commission driven) and T2S CASG).

QUESTION 7

a) Which of the below issues listed by the EPTF as remaining barriers constitute a barrier to post-trade? Please select from the list.

1. Fragmented corporate actions and general meeting processes;

2. Lack of convergence and harmonisation in information messaging standards;

3. Lack of harmonisation and standardisation of Exchange Traded Funds (ETF)

processes;

4. Inconsistent application of asset segregation rules for securities accounts;

5. Lack of harmonisation of registration and investor identification rules and processes;

6. Complexity of post-trade reporting structure;

7. Unresolved issues regarding reference data and standardised identifiers;

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

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

10. Shortcomings of EU rules on finality;

11. Legal uncertainty as to ownership rights in book-entry securities and third party effects of assignment of claims;

12. Inefficient withholding tax collection procedures.

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

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

c) If there are issues that you think are not barriers, please explain why. d) Please list what you consider to be the 5 most significant barriers.

The EPTF report is highly appreciated, and has provided a good material concerning the current status, remaining barriers and open issues. Generally it is supported by our members except points 4, 9 and maybe 11.

In particular,

- When it comes to "EPTF barrier 4" following ESMA's opinion on asset segregation dated 20 July 2017 (ESMA34-45-277), we consider that asset segregation rules should not apply in an inconsistent manner any longer and this barrier will disappear.

  As ESMA rightly sets out in paras. 59 to 61 of the opinion, "only minimum EU-wide segregation requirements should be prescribed. This approach would on the one hand, leave room for stricter requirements or different account structures, if national laws (on ownership, insolvency, tax or fiscal matters) in Member States, or clients' preferences, make them necessary. On the other hand, this approach would acknowledge insolvency protection provided by some account structures. The proposed approach would therefore deviate from the options discussed in the original consultation and the CfE."

  We welcome ESMA's proposal that "the EU framework regulating asset segregation regime shall focus on:

  - ensuring that assets are clearly identifiable as belonging to the AIF or UCITS, and
  - ensuring that investors receive adequately robust protection by avoiding the ownership of the assets being called into question in case of the insolvency of any of the entities in the custody chain."

- The EPTF states that the current EU legal framework fails to establish legal certainty with regard to ownership rights of end investors in securities held through an intermediary (page 85). This statement is correct since there is no harmonisation of substantive law on book-entry-securities in the EU.

  Nevertheless, we do not see this fact constituting a barrier in the sense of a "EPTF barrier 9" as no risk for end-investors or for client asset protection exits due to the lack of EU legal framework for book-entry securities. Client asset protection is a question of sound bookkeeping and proper national substantive law and proper supervisory law. Without an EU legal framework it might be more complicated than with an EU legal framework to define the legal position of end-investors but unless there will be a worldwide harmonisation there will always be legal questions as to which law applies. There will be no deficiencies in client asset protection, if national law provides for client asset protection and if supervisory law ensures that securities holdings chains only lead to national law with adequate client asset protection. We consider that whatever the level in a custody chain, the enforcement of the ownership rights of a client (or of a client of the custodian 's client) relies on accurate recordings of those rights at both the custodian and at client level, which need to reconcile.

- When it comes to point 5. Lack of harmonisation of registration and investor identification rules and processes, we would like to note that we believe that the transposition of Art. 3a Shareholders Rights Directive will address the relevant concerns.
- In addition, it is very important that the complexity of post-trade reporting structure is indeed a major issue that needs to be resolved.

QUESTION 8 (APPLICABLE TO ALL BARRIERS MENTIONED ABOVE FROM 4.1 TO 4.8)

a) Do you agree with the definition and the scope of the barrier? If not, please explain how it should be better described or what, according to you, its scope is.

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

c) Will the solution proposed by EPTF address the issue? Is there any need for further or different action to remove the barrier?

See also our response to Q7 above.

When it comes to exchange traded funds (ETF), indeed, the European ETF market is indeed subject to certain legal obstacles and considerable fragmentation with regard to certain “multi-issued” products.

In the primary market, legal and consequently operational issuance structures differ and the fragmentation of the European post trade environment act as an impediment to delivering an efficient and liquid market.

In the secondary market, fragmentation of the European ETF industry through cross-listing of products in various European markets arises because market participants are required to deal with settlement rules that differ significantly across markets, impairing fungibility. In certain cases it might take up to three days to move ETF shares between two European CSDs due to re-registration requirements.

QUESTION 9

a) Do you agree with the definition and the scope of the barrier? If not, please explain how this barrier should be better described or what, according to you, its scope is.

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

(i) 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).

(ii) Provide examples where the barrier actually prevented shareholder identification or registration in an appropriate manner, cost and timeline.

(iii) 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.

c) Will the solution proposed by EPTF address the issue? Is there any need for further or different action to remove the barrier?In this context, also the question 10 is not clear, as the differences in withholding tax across Europe are the reason for significant inefficiencies, which could be optimised by a European harmonisation of the tax and the underlying processes.

Please see our response to Q7 above.

QUESTION 10

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

The differences in withholding tax across Europe are the reason for significant inefficiencies.

Governments should take steps to implement a standardised and harmonised system for both simplified tax refund procedures and tax relief at source procedures. The most advanced work in this area has been the development by the OECD Member State governments of the TRACE Implementation Package (TRACE IP) of which certain features, such as the ability for financial institutions to voluntarily participate in the relief system, should be retained. The Commission should investigate why TRACE has remained a theoretical model and which improvements/amendments are required.

QUESTION 11

Please describe the barrier(s) not mentioned by the EPTF that exist today by:

a) Describing the 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?

b) Providing evidence that proves the existence of the barrier.

c) Describing what solutions would dismantle the barrier and if there are any obstacles to achieving that solution.

Please see our general comments in the introduction. EACB has no further comments in that regard for the time being.

QUESTION 12

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

1. National restrictions on the activity of primary dealers and market makers;

2. Obstacles to DVP settlement in foreign currencies at CSDs;

3. Issues regarding intraday credit to support settlement;

4. Insufficient collateral mobility;

5. Non-harmonised procedures to collect transaction taxes. If not, please explain why:

a) any issue should be added to the watchlist;

b) any issue should be removed from the watchlist.

In general we agree with the watch list apart from point 1. National restrictions on the activity of primary dealers and market makers, which in our view should not be included herein as we do not see it as relevant for post trading activities. For point 5. Non-harmonised procedures to collect transaction taxes we do not have a comment for the moment.

When it comes to point 2. Obstacles to DVP settlement in foreign currencies at CSDs we would expect that this will become apparent as part of the CSDR implementation and could be problematic for non-bank CSDs.

We consider that issues regarding intraday credit to support settlement (point 3) could have an impact on daily processing and might require a change in operations, but is not a real barrier. Not much of a change is expected to already existing procedures in T2S. Regarding Euroclear or Clearstream, mobility of the collateral could be limited depending on segregation requirements.

For point 4. Insufficient collateral mobility could qualify for the watchlist in conjunction with possibilities to reuse received collateral for other purposes.

QUESTION 13

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

It should be noted that any regulation has to be based on clear and measurable deficits in an open and free market. Especially in the case of post-trade, measures to improve the post-trade efficiency have been implemented quite recently as e.g. T2S, while some others are in the process of being implemented. Therefore, before introducing any further initiatives we should wait and see the outcome and these measures. Any further (future) regulatory measures would require a cost/benefit analysis and justification, which has to be supported by quantitative studies.

See also our introductory comments in that regard.

Contact:

The EACB trusts that its comments will be taken into account.

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