

## ECSDA response to the EPTF consultation

This paper constitutes the response of the European Central Securities Depositories Association (ECSDA) to the [consultation](#) published by the EU Commission on 23 August 2017 on post-trade in a Capital Market Union: dismantling barriers and strategy for the future.

The European Central Securities Depositories Association (ECSDA) is a member of the EU Transparency Register under number 92773882668-44. The association represents 41 central securities depositories (CSDs) across 37 European countries. As regulated financial market infrastructures, CSDs play a vital role in supporting safe and efficient securities transactions, whether domestic or cross-border. If you have any questions on this paper, please contact Anna Kulik, Secretary General, at [info@ecsd.eu](mailto:info@ecsd.eu) or +32 2 230 99 01.

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

#### **The main trends in post-trade in the EU**

**Q1. 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**

For each of the trends below, please rank them in terms of importance by indicating on a scale of 1 (most important) to 6 (least important).

Trend	(1) Most important	(2)	(3)	(4)	(5)	(6) Least important
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					

**Q1.b) Are there other trends that are not listed above? Please describe and indicate in order of importance.**

Central Securities Depositories (CSDs) note several trends in their immediate ecosystem which are important to post-trade more widely. CSDs are highly regulated institutions, not only at the national level but going forward', they are also highly regulated within the European Economic Area (EEA) as a result of the CSD Regulation (Regulation EU 909/2014, hereafter “CSDR”). At the time of writing, as only one CSD is operating on the basis of the European CSDR licence, the broader consequences of this regulation on European post-trade landscape are not fully known and remain to be examined at a later stage.

European CSDs successfully provide infrastructure solutions allowing European investors to invest outside the EU. It is important in our view that European investors should continue to benefit from highly efficient and secure infrastructure when they would like to invest outside the borders of the Union.

CSDs are also crucial pipelines which drive investment in the European economy. They create an access point for international investors. The percentage of foreign participants is relatively stable. Five EU-based CSDs have more international participants than domestic ones, and four out of those five have more than 70 percent of foreign participants (both intra-EEA and outside the EEA).

European CSD settlement fees are reasonable. For memory, in one of its reports on transactions costs for one of the EU markets, Oxera states that the part of CSD settlement fees among all infrastructure trade and post-trade costs accounts only for 0.9 % to 5.2 % (depending on the trading venue on which the securities are traded)<sup>2</sup>.

<sup>1</sup> One EU CSD has already received its authorisation and licenses as of the end of September (Nasdaq CSD SE), whilst the vast majority expect to receive authorisation not before Q2 2018.

<sup>2</sup> Please see page 14 and of the Oxera, ‘Costs of securities trading and post-trading—UK equities’, 26 February 2010.

Further trends are listed and described below.

- **Securities issuance overview**

ECSDA notes that the number of securities recorded within CSDs has slightly increased. At 31 December 2016, ECSDA members collectively held securities worth more than EUR 54.9 trillion, which is a 2.3 % increase in comparison with the previous year. In addition to the securities that are mandatory for recording in a book-entry form within a CSD (listed under the Market in Financial Instruments Directive), most CSDs accept a vast variety of other products. The consequences of the Capital Market Union (CMU) remain to be seen. We understand that, among other things, CMU aims at increasing the number of security types (e.g. promoting securitisation of loans instruments) and growing the volume of securities issuance within the EU. We already take note of various initiatives designed to make a positive impact with regards to securitisation that is expected to contribute to the overall goal.

In this context, we, however, note that alternative investment and UCITS funds are subject to issuance processes that are different to securities market instruments, where the principal parties are not subject to the requirements of the CSDR.

Depending on the market organisation and practice, CSDs accept both smaller and not necessarily listed companies as well as the biggest issuers to record their securities in the system. The number of issuers issuing securities in European CSDs has slightly decreased since the previous year. The reasons for this trend could be multiple and require further analysis. They could include for example issuance patterns that may have changed or a shift to alternative financing platforms (such as crowdfunding).

ECSDA expects that the cross-border issuance of shares will be positively influenced by the possibility for an issuer to issue shares in a foreign CSD. This is an opportunity which is underpinned by article 49 of the CSDR. However, before the CSDR entered into force, cross-border issuance was mostly done for debt instruments. Many issuers were already issuing their debt securities in a CSD of another Member-State without a need for this CSD to obtain a specific passport for that purpose. The CSDR now requires that, to support issuers' freedom to issue securities in a CSD of a different Member-State (for all types of securities, including debt), a CSD has to follow a complex procedure for obtaining a special passport for cross-border issuance. The procedure does not consider the difference in legal implications between shared and debt securities. We, therefore, expect that at least until the CSDs that used to accept debt securities from a foreign issuer obtain necessary

passports for all relevant Member-States, there might be a negative impact on the capacity of issuers to raise financing abroad.

- ***Infrastructure solutions to enable cross border investment are available: either CSD participants can connect directly to a European CSD where the securities are issued or the CSD can provide cross-border settlement for foreign securities***

The percentage of ECSDA members providing services for securities issued in another jurisdiction both within and outside of the EU reached 90% in 2016. These CSDs have at least one outbound link and provide settlement, often asset servicing and other ancillary services for securities issued in another jurisdiction. The average EU CSD has 8 CSD links. The development of a CSD link is primarily driven by the market demand for securities issued in another CSD. Leaving the international CSDs aside, the percentage of ECSDA members with participants connecting directly from other countries (both within and outside the EU) reached 19% on average in 2016. For international CSDs this percentage is around 95%.

- ***Total number of CSD participants decreases***

ECSDA notes that there is a diminishing number of institutions that are subject to the CSDR requirements for CSD participants. The total number of participants at ECSDA member-CSDs has decreased from 7,021 in 2015 to 6,785 in 2016 (3.4 percent less).

- ***Settlement within the CSD Settlement systems decreases***

Even though the amount of securities held has increased, the number of securities settled within ECSDA member-CSD system has decreased by 5 % between 2015 and 2016. The value of delivery instructions going through CSDs' Securities Settlement Systems decreased to €67 trillion (by nearly almost 6 percent) since 2014.

- ***The European Central Bank is a major stakeholder in the ecosystem of European CSDs***

It influences the strategic developments of CSDs in different ways:

- First, for the oversight of CSDs Securities Settlement Systems, links and triparty activity for use in Eurosystem credit operations.
- Second, the central banks in the Euro-zone and the ECB for the oversight of links and triparty activity for use in Eurosystem credit operations and through involvement in the CSD authorisation process by being consulted by the national central banks for the Euro-zone CSDs settling in Euro or Euro is the relevant currency for the purposes of determining the central bank to be involved in the non-Eurozone CSD.

- Finally, the Eurosystem itself provides significant services to CSDs and other stakeholders. They have created a single settlement interface and infrastructure (T2S), and are integrating Real Time Gross Settlement System (connecting T2 and T2S), developing the Eurosystem's collateral management system, working on infrastructure supporting pan-European issuance, experimenting with the distributed ledger technology. Through these projects, the Eurosystem and the ECB have influenced, and will continue to influence technological and behavioural changes in post-trade.

- ***The number of CSDs in Europe is relatively stable***

In the past, a number of attempts have been made to consolidate the CSDs infrastructure. Some CSDs delivered solutions that have significantly improved the management of securities accounts across different jurisdictions. However, until recently CSDs have not been able to fully consolidate: i.e. with separate legal entities and the accounts provided from a single location. In September 2017, there has been a successful merger of three CSDs that resulted in a creation of a single legal entity. Despite this major step of creating a single legal entity and deployment of common CSD system, the securities accounts, however, continue to be maintained in three different securities settlement systems governed by the laws of three different Member States.

A few new CSDs have been established recently, notably in Luxembourg and Slovakia. However, there have also been some non-conclusive attempts to create new CSDs.

The recent attempts to create a blockchain-based securities settlement system should also be noted. The technology is not an end in itself, but an enabler to address the needs of market participants. One of the most important needs addressed by the CSDs is to ensure that securities settlement is safe and provides for high level of legal certainty of ownership, disregarding the technology.

Well established CSDs also experiment or already use DLT. We note that the non-DLT technology used by the CSDs has proven to address the needs of CSD participants quite well. And DLT is most suited and brings most benefits for ancillary CSD services, such as e-voting. In any case, we expect the co-existence of different types of technology, depending on which fits best CSD participants' needs in specific areas. Hence, any regulation shall be technology-neutral.

- ***Trends CSDs deem important:***

Based on the above-mentioned observations, ECSDA notes the following additional trends:

1. **The facts noted above, i.e. the decreasing number of CSD participants and decrease of securities settlement instructions on CSD books**, combined with the ESMA opinion on AIFMD<sup>3</sup> (with regard to the unlimited liability, which is not compatible with a CSD profile, that may need to be taken to continue providing cross-border services to fund depositories) and the ESMA Q&A on article 35 of the CSDR (if not all levels of the holding chain are required to use international communication standards at the same time)<sup>4</sup> might set a negative trend of decreasing the portion of regulated settlement.
  
2. **International competitiveness among financial centres is growing. Costs of post-trade are an important factor.** Although we have not yet seen all the effects of the recent regulation, for CSDs it has already resulted in significant increase in compliance costs and additional costs of capital for EEA CSDs. At the same time, costs (for the totality of transaction processing steps and involved intermediaries) continue to be important for the end-investor. European policy-makers should endeavour to decrease the administrative burden and be even more conscious of the cost implication of their decisions to increase the competitive attractiveness of European infrastructure and market places in comparison with other financial centres worldwide.
  
3. **Importance of collateral and collateral mobilisation continue growing.** For regulatory and risk management reasons, market counterparties need to be able to find and to mobilise sufficient and quality collateral. Impeding collateral flows may have significant negative consequences for liquidity of markets, exercise of central bank's monetary policy operations and for short-term money market functioning<sup>5</sup>. Through their collateral management services, triparty, securities lending and borrowing and other services, CSDs are cornerstones in enabling market participants to manage and optimise their collateral. They facilitate safe and legally transparent re-use and efficiency in collateral mobilisation, both locally and globally. Policy-makers should be conscious of this critical to the markets CSD function.
  
4. **Increasing needs in global infrastructure solutions**  
 European policy-makers should support global connectivity of European infrastructures to international financial centres in order to ensure their international competitiveness to

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<sup>4</sup> ESMA Q&A on the CSDR, question 4, last updated 2 October 2017.

<sup>5</sup> Manmohan Singh, [IMF working papers on Collateral Reuse and Balance Sheet Space](#), 2017.

attract international investors and allow European investors to diversify and invest in foreign assets in a safe infrastructure environment.

**5. Gradual change in business models of CSD users**

CSDs respond to the needs of corporate clients not only as issuers, but also for example as users of triparty CSD functionalities. AIFMD and UCITS V have empowered fund depositories in the selection of an underlying custody holding chain. While earlier it was a fund administrator who was frequently taking a decision on the underlying custody network. Finally, social evolution and high speed of advancement of financial services industry have a direct impact on post-trade as well. We notably expect more retailisation and, through that, a difference in CSD users' profiles.

CSDs are universal infrastructures that serve a vast range of clients and should be able to flexibly adapt to the evolving needs of their current and future users. Regulation should not impede this flexibility (with relevant risk considerations) and be neutral to the profile of CSD users, which is not fully recognised today (notably, under ESMA opinion on AIFMD and UCITS, the differentiation is done for fund depository CSD users that hold assets issued cross-border)<sup>6</sup>.

**Q1.c) For each trend (from i.-vi.), 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.**

For each of the following trends, please indicate whether the impact is positive/mixed/negative Please note that it is mandatory to choose between 'positive' 'mixed' and 'negative.' Unfortunately, there is no choice to select neutral. Please advise us as to your choice.

*(i) increased automation at all levels of the custody chain; **positive/mixed/negative***

Increased automation is inevitable in the context of technological advancements, given the potential cost savings and efficiency gains. ECSDA notes that in many areas there has already been a significant increase in the amount of automation and straight-through-processing. In many areas

<sup>6</sup> ESMA, *Op.cit.*

the market can still gain in efficiency by automation of some processes even further. This is the case for example, for complex corporate actions, for funds order routing and others. ECSDA would encourage regulators to examine whether an EU policy could encourage an increased automation, in areas where it is still needed.

Automation is a constant goal, supported by T2S and standardisation. The EU work on registration (question 4.9) and withholding tax (question 4.10) will support and encourage this. In order to enable automation further standardisation and interoperability should be encouraged, such as for example in the areas specified below:

- Solutions based on business logic, such as smart contracts, may provide some additional automation possibilities, for example for predictable corporate action events. It could reduce errors and delays caused by manual processing. However, there could be risks created around errors in their code causing them not to perform as expected. One could hence consider defining standards around the coding of smart contracts.
- Artificial Intelligence systems (AI) could in the future be used to provide insight and analytics on a wide range of services, touching everything from client service interactions to compliance and fraud monitoring. However, the nature of deep learning techniques is that patterns are figured out based on exposures to large data sets through multiple layers of nonlinear processing. Over time, it can become difficult to work out why a deep learning engine arrived at a certain result based on a given input, and we run the risk of creating black boxes that arrive at decisions without the paths to those decisions being clearly understood. Ultimately, one may therefore need to define standards around the question, how the artificial intelligence systems operate.
- Cybersecurity is directly linked to automation, increasing interconnectedness and availability of systems. However, one needs to highlight the severity of the problem requiring extensive, global collaboration on cyber-defence and resilience – with peers, regulators and authorities required, since cyber threats have morphed into a globally federated industry. Adequate response demands coordinated (among these stakeholders) action to face well-organised adversaries.

*(ii) new technological developments such as DLT; positive/mixed/negative*



As ECSDA has stated in its response<sup>7</sup> to the EU Commission's consultation on FinTech, in post-trade environments new technologies such as DLTs hold the promise to simplify some of the current processes (reconciliation, data management etc.). DLT solutions could provide the market with not only a high degree of transparency, but also could they be beneficial in terms of reducing cost throughout the whole process and life cycle of an asset, from issuance to trading and post-trade, including clearing, settlement and custody services. DLT could potentially bring about enhanced transparency, making it much easier for issuers and regulators to identify shareholders, bondholders and other investors. The registration of securities could be managed in the distributed ledger, removing the need for investor identification details to be “passed on” from one intermediary to another. This kind of technology could be used, for example, for the authentication of shareholders in the process of e-voting and could be matched with an application for counting votes and obtaining voting results by the shareholder.

We also note the development of crypto assets and the expected demand for these (not yet regulated) assets, while the legal aspects, ownership and property law aspects are not fully thought through and hence could lead to systemic risks.

Some effects of the technological developments could be negative, if not well managed. Lack of interoperability and reliability of such technology in terms of processing higher volumes is still to be proven. The development of those technologies should not be forbidden by regulation, and DLT specific requirements should not be introduced until the technology and use cases are more developed. However, regulators should ensure that if a Fintech provider is in effect performing a regulated activity, then the provider must be authorised, and the service must comply with relevant regulation, according to a consolidated functional approach.

EU policies should allow for innovation, but it should primarily be driven by market and not by regulatory needs. Furthermore, the application of existing policy and regulatory objectives should be technology neutral. Where this does not occur, negative effects should be expected. We encourage a wider political debate in the EU to find answers to topics such as “data security”, “legal certainty”, “cross-border ownership” and an overall regulatory “level playing-field” between all service providers.

*(iii) more cross-border issuance of securities; **positive**/mixed/negative*

<sup>7</sup> ECSDA [response](#) to the EU Commission’s consultation on FinTech, 15/06/2017.

As mentioned above, the CSDR establishes a procedure for the listed issuers to issue their shares cross-border. However, the extension of this procedure to debt and the uncertainty related to the procedure itself, may negatively impacts the current cross-border issuance. Therefore, despite the appetite of issuers to be able to issue securities cross-border, ECSDA does not see a clear short-term trend for more cross-border issuance. If done in a way that avoids regulatory arbitrage, ECSDA would encourage EU policy-makers to reconsider the approach of CSDR taking into account specificities of different financial instruments in the upcoming review of CSDR. (Please also see our response to questions 7b and 11.)

Current issuance processes are the result of adaptation to the operating environment and existing securities market laws. The market is still adapting to the changes brought about by the post-T2S environment the full implementation of CSDR. A recent Aite study<sup>8</sup> indicated that the market expects these two regulatory initiatives to lead over time to greater development in this area. With the Capital Markets Union (CMU) initiative going forward, the next steps will be assessing new business models to take advantage of strategic as well as cost saving opportunities presented by these developments to support greater levels of cross border issuance.

*(iv) more trading in equities taking place on regulated trading; **positive/mixed/negative***

ECSDA welcomes more trading in equities taking place on regulated trading platforms since this results in additional price transparency. If these securities are subject to central clearing – it results in reduced counterparty risks, and if netting is used in clearing – it reduces the counterparty risk in the system.

Investment firms operating internal matching systems (broker crossing networks) will have to seek authorisation as a MTF. Furthermore, Systematic Internalisers may not be misused to establish new Systematic Internalisers networks but remain restricted to bilateral activities. Attempts to compromise this through the plans to address other barriers (i.e. Barrier 10) must not be permitted.

In sum, these features of MiFID II/R will contribute to reduce the share of OTC trading in equities and improve transparency of equities markets.

*(v) improved shareholder relations; **positive/mixed/negative***

<sup>8</sup> Aite group, [The Future of global debt issuance: 2025 Outlook](#), September 2017.

ECSDA expects that this could result in improved General Meeting processing and easier beneficial owner identification. CSDs will have a critical and important role to play in defining the future landscape in this regard.

*(vi) a shift of issuances to CSDs participating in T2S: positive/mixed/negative*

We do not see it as positive or negative. European CSDs see no reason for policy-makers to intervene in the shifts of issuance among CSDs based within the EEA. ECSDA would encourage EU policies to take this trend into account in a neutral and factual way. EU policy-makers should aim at enabling more extra-EU issuance in the European CSDs, in order to ensure that Europe is more competitive as a whole.

**Q1.d) (i) Of the 6 trends, please select 4 which you think will be important for EU post-trade industry in the next 5 years:**

***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***

Among the mentioned trends, we see that the following trends will be important for the EU post-trade industry:

1. new technological developments such as DLT
2. increased automation at all levels of the custody chain
3. improved shareholder relations
4. more cross-border issuance of securities

**Q1.d) (ii) Of the 6 trends, please select 4 which you think will be important for EU post-trade industry in the next 10 years:**

***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***

ECSDA believes that these trends will be most influential within a five-year time frame. The importance of most of them will decrease after that time. The relevance of technology evolutions will remain the driver for a longer period, although it may be a different technology than the one we expect today.

**Q2. Technological developments and their implications for post-trade**

**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.**

For each of the possible benefits of DLT for post-trade below, please rank them in terms of importance by indicating on a scale of 1 (most important) to 6 (least important).

Possible benefit	(1) Most important	(2)	(3)	(4)	(5)	(6) Least important
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						Not a benefit in X our view
lowered costs					X	
others						

**(i) Real-time execution of post-trade functions**

CSDs already allow for real-time settlement. Execution efficiency could be increased by further automation, establishment of straight-through processing and machine-to-machine communication in the areas where this is still a problem, such as corporate actions or shareholder ID. However, the replacement of underlying settlement processing technology will not change the needs and related procedures of CSD participants that may require differed settlement.

**(ii) Certainty on who owns what where no intermediaries are involved**

ECSDA agrees that DLT could be of help potentially help in obtaining the information on the end investor through the holding chain quicker. CSDs however also see a number of matters requiring careful reflection. For example, this refers to the impossibility to change the ledger ( which can be an advantage, but also an issue) or a need to perform advanced procedures for Know Your Customer obligations. Hence, we particularly see the use of DLT not in replacement, but as a supplement for the core CSD systems.

**(iii) redefining the role of financial market infrastructures**

The impact of DLT in redefining the role of financial market infrastructures will be mixed and is subject to a case-by-case analysis, depending on whether it replaces the core of the post-trade infrastructure technology or is used as a supporting technology in the areas where it is most appropriate. In some cases, it may make certain services unnecessary and in others, the use of DLT will create the need for additional infrastructure services such as private key and smart contract management.

It is clear that many of the services (such as private key and smart contract management) would need to continue being provided by trusted and highly regulated institutions, potentially by entities such as CSDs which are designated for the purposes of the Settlement Finality Directive, and authorised (or to be authorised) as CSDs under the EU CSDR. Although the regulation for these trusted institutions should be flexible enough to allow for provision of new services based on a different technology. DLT is only one of many technologies that could be used in post-trade. It is not the technology that should be defining the strategic developments of an industry, but rather the needs of the industry stakeholders that should guide the choice of the most appropriate technology. In some areas distributed ledger and smart contracts are relevant, in others - different technology is more appropriate.

As mentioned, European policies should aim at being technology-neutral. In that sense, we would like to draw the European Commission's attention to the fact that **DLT is in many ways inconsistent with many of the core concepts underpinning CSDs (such as location of securities accounts)**<sup>9</sup>.

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

Market participants rely on the high protection from risks granted by financial market infrastructures. Financial stability and systemic risk considerations should be at the core of any EU financial policy. CSDs however should be encouraged to innovate and experiment with the new technology.

**(v) lowered costs;**

<sup>9</sup> ECB AMI-SeCo, [The potential impact of DLTs on securities post-trading harmonisation and on the wider EU financial market integration](#), September 2017. Euroclear and Slaughter and May, *Blockchain settlement: Regulatory and legal aspects related to the use of distributed ledger technology in post-trade settlement*, November 2016.

ECSDA sees that the replacement of the technology and its testing, the establishment of interoperability between the systems and with other services may require a significant investment. However, ECSDA expects that the technology could result in some cost savings in the areas of reconciliation, reporting, dealing with complex corporate actions or tax processing, as well as some services to issuers and shareholders such as e-voting, shareholder identification/registration and know your customer process. However, as mentioned above, current post-trade services provided by CSDs are a minute part of the transaction related costs supported by the investor.

**(vi) others (explain).**

**Q2. 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.**

For each of the possible risks that DLT may bring about for post-trade below, please rank them in terms of importance by indicating on a scale of 1 (most important) to 4 (least important).

Possible risk	(1) Most important	(2)	(3)	(4) Least important
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				

**Q2. c) Does the existing legal environment facilitate or inhibit current and expected future technological developments, such as the use of DLT?**

**Please select one:**

- (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.**

It is rather technology neutral. Although many of the regulatory requirements are tackling the risks of the current technology. However, the current legislation does not facilitate DLT at the level of core CSD settlement<sup>10</sup>.

**Q2. d) Do you have specific proposals as to how the existing post-trade legislation could be more technology neutral?**

With regard to that, ECSDA recalls a Latin proverb appropriate for the regulatory attitude on this matter: *“In necessariis unitas, in dubiis libertas, in omnibus caritas”* (In necessary things unity, in doubtful things liberty, in all things care). The regulatory environment for post-trade reflects the high criticality of the service provided and therefore is very stringent. At the same time, it has a characteristic of being very detailed and prescriptive in defining the exact ways in which the infrastructure should tackle certain risks and provide some services.

The evolving technology introduces a range of possible alternative solutions to provision of post-trade services and ways of dealing with related risks. This particularly concerns, among others, different operational risks and ways of managing them, ways of insuring the integrity of the issue and protection of securities of participants etc. For these areas, ECSDA believes that more flexibility on the possible ways of addressing risks or providing certain services (although still leading to the high quality of outcome) would help to introduce new technology.

ECSDA believes that it is too early for legislative action in this area, given that the market development is still at an early state. European Institutions should continue the dialogue with market participants and actively participate in discussions with regards to the use of new technology.

We further take the view that Fintech companies should not be treated different than established businesses. This is not only a question of level playing field, but a special treatment could potentially hamper FinTechs in a future stage of development, e.g. if the business model only works with a tailored regulatory framework and would not be viable in a real-world setting. We believe that the European Supervisory Authorities play a role in encouraging National Competent Authorities to allow for flexibility in using and adapting to new technology, ensuring a harmonious development throughout the European single market and facilitating the provision of cross-border services.

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<sup>10</sup> ECB AMI-SeCo, *Op.cit.*

Going forward, standards, interoperability and built-in porting mechanisms should be promoted at EU level. However, it should be ensured that the spirit behind regulation such as EMIR and MiFID is carried through to new technological solutions, even though some adaptations of the letter may be needed. Generally, we believe that European legislative framework for financial services does not prevent the introduction of blockchain based services. Services based on new technology – be it in the area of blockchain or other FinTechs – where they undertake similar services with similar risk profiles as incumbents, should abide by the same rules as the incumbents to ensure investor protection as well as the integrity and stability of the financial system.

**Q3. Financial stability**

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

I. CSDs have always been the robust service providers, have a robust Single Rule book and legislative provisions (such as Settlement Finality Directive) allowing them to be relatively protected from systemic risks. We note, however, that the possible regulatory disincentives to settle securities transactions within a CSD (and the use other CSD services) could lead to increase of the counterparty and overall systemic risk in the system and warn the legislators about the possible consequences. (Please see the first trend we have highlighted in response to question 1).

II. ECSDA also notes that possible issues could arise in the context of increasing interconnectedness and interdependencies from multiple stakeholders. Therefore, it seems important to us to strengthen the quality of the entire network and to allow no regulatory exemption for any of the market actor.

III. Cyber is a universal systemic risk, relevant to all areas of financial services, including post-trade. (Please also see our response to question 1.c).(i) last paragraph on automation).

**Q3. b) Describe the significance and drivers of the systemic risk concern in each of the areas identified.**

We are concerned by the possible increase of the counterparty risk and its systemic consequences. As noted above, European CSD already see a decrease in the number of direct participants and securities settlement. We note that the current regulatory regime is aggravating this trend.

CSDs, both in their so-called issuer- and investor-CSD roles, are legally distinct from commercial/multi-market custodian banks. They are neutral infrastructure providers and their risk



profile is limited in comparison with other post-trade actors. Other post-trade actors (providing activities listed in the annex of the CSD regulation) are not required to comply with this regulation for the services they provide on the margin of settlement of securities transactions. Equally, CSDs should not be made subject to the regulation that is not drafted for them and does not take into account their regulatory environment and operational reality. (Although this point was recognised in MiFID II, it is not taken into account in ESMA opinion on AIFMD and UCITS V mentioned above). CSDs are already regulated for the totality of their services under the CSDR.

**Q3. c) Describe solutions to address the systemic risk concerns identified or the obstacles to addressing them.**

One should cater for a clear and concise regulatory framework, making difference between CSDs and other post-trade actors. It should ensure that as much as possible investors benefit from the highly regulated infrastructure environment for their post-trade.

**Q4. The international dimension and competition in post-trade**

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

For each of the main trends main trends listed below, please rank them in terms of importance by indicating on a scale of 1 (most important) to 4 (least important).

Main trends	(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				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	X			

“Others”:

- i. Custody regimes and harmonisation of asset protection norms (which take a neutral view over omnibus vs. segregated structures) would provide financial market intermediaries

with significant comfort and simplify a complex area of due diligence, whilst preserving choice of account structures.

ii. Access provisions (see our comment to question 4.c)

**Q4. b) Which fields of EU post-trade legislation would benefit from more international coherence? For each of the 5 areas, please explain why.**

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

ECSDA favours more international coherence in all the mentioned areas. Financial services are global by nature and hence require internationally coherent regulation and supervision.

**Q4. 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.**

European CSDs believe that the main factors of international attractiveness of EU financial markets are:

- High market place activity,
- Facility of access to most European markets and to a post-trade infrastructure through a single entry-point,
- Access to safe commercial Bank money (hence, the importance of the barrier to DvP settlement in foreign currencies identified on the EPTF watch list) or to central bank money. , and
- Alignment of European regulation for market and CSD participants with the one of the biggest financial centres.

Finally, we note the absence of reciprocal provisions for market access in other jurisdictions: while Europe allows CSDs with equivalent requirement to compete with the European CSDs on their grounds, we note the absence of similar provisions in any other jurisdiction. Hence, there is a disadvantage for European CSDs in that respect.

**Q4. 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. If yes, please explain why.**

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

In the area of settlement, ECSDA believes that the balance between competition and consolidation is satisfactory today. ECSDA is in support of improving the competition among actors of post-trade (disregarding their governance). If based on common regulatory grounds, competition generally encourages the innovation and better service offering.

ECSDA also acknowledges that post-trade competitive environment includes other actors than the infrastructures. The services of critical importance for the market including such as collateral management, triparty, custody of assets benefit from being provided by highly regulated infrastructures. It is important that the competition is not being incentivised to the detriment of financial stability and safety of financial market places, and is leading to higher activity going through less regulated and more risky roads.

CSDs consider that many of the challenges for which the consolidation is necessary could be solved by greater connectivity and technical solutions as it is done across several markets today.

**Q5. Future strategy for European post-trade services**

**(a) What should the EU post-trade markets look like:**

**(i) 5 years from now;**

**(ii) 10 years from now.**

Evolution of post-trade should be considered as part of evolution of financial services industry as a whole. ECSDA believes that financial stability and global alignment should be the main characteristics of the post-trade industry.

European CSDs should be supported to continue providing efficient pipelines enabling that even more investments in the European economy are coming from foreign investors. CSD should be also be encouraged to provide the services facilitating Investments within the Union, which are easy, timely and safe. Both for European-wide active and international investors, it is important to create safe entry-points to European markets, through efficient, well-connected, and secure financial market infrastructures. High level of efficiency and innovation within the industry should be

encouraged. Post-trade actors should be subject to rules allowing them to evolve in line with the changing market and social realities, and provide solutions for all types of investors, ticket sizes and assets.

**Q5. (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:**

For each of the main challenges to deliver on the vision which was described in question 5(a) please rank them in terms of importance by indicating on a scale of 1 (most important) to 7 (least important).

**Any views? Examples?**

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

**Q5.c) Please explain your views on each of the issues you listed above.**

In our view the key focus of regulators should be on:

- financial stability issues – to make sure that investors can benefit from the regulation created by policy makers and perform settlement in a highly regulated and safe infrastructure environment., and

- more international alignment as financial markets are global in nature and need a global regulatory and supervisory approach.

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

**Q6.**

**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.**

Please indicate:

- **Yes, there are fewer barriers now than 15 years ago**
- No, there are an equal amount or more barriers than 15 years ago

Overall, we see that many of the barriers defined 15 years ago have been solved, either by European legislation, by market efforts or specific technological solutions. However, some of the barriers, such as significant differences in securities (and property) laws cannot be solved without further efforts at other levels than post-trade and financial services community.

T2S is expected to serve as a basis for drastically simplifying cross-border settlement services. Further work needs to be done in terms of standardisation of corporate actions and other market practices to truly achieve the full benefits possible from this platform.

**Q6.b) If you agree that certain barriers have been removed, for each of those please explain what were the main drivers removing those barriers?**

ECSDA has contributed to the EPTF report and, therefore, supports its conclusions on the removed barriers.

**Q7.**

**a) Which of the below issues listed by the EPTF as remaining barriers constitute a barrier to post-trade? Please select the ones which you think are barriers 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.**

ECSDA has contributed to the report describing the European post-trade landscape. CSDs are aligned with the other stakeholders on the above list of the key barriers and supports its main conclusions. However, it is our view that barriers 1, 5 and 12 should be tackled in priority.

**Q7.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.)**

I. The CSDR aimed at promoting the possibility for securities issuers to issue securities in another EU CSD. As mentioned above, we doubt that complexities related to the CSD passporting to support cross-border issuance of debt might result in temporary difficulties for some issuers to find financing cross-border. We do not see this process as being supportive of the increase in cross-border issuance of debt.

II. Another barrier resulting from the CSDR is linked to the complexities of CSDs without a banking licence to provide settlement of the cash leg of securities transaction in foreign currencies that would comply with the requirements of the CSDR. It leads to additional complexities for the CSD participants settling securities transactions in foreign currencies. As this barrier is mentioned on the watchlist, please see our response to question 12.

We further consider the following barriers, all of which included as well on the EPTF Watchlist (WL), as relevant obstacles for post-trade service providers:

1. Obstacles to DVP settlement in foreign currencies at CSDs (EPTF WL2).
2. Issues regarding intraday credit to support settlement (EPTF WL3).
3. Insufficient collateral mobility (EPTF WL4).
4. Non-harmonised procedures to collect transaction taxes (EPTF WL 5).

As CSDR is implemented, ECSDA expect the watchlist barriers will hinder or in some cases prevent CSDs from offering effective investor-CSD services and, therefore, consider the reduction of these barriers vital. Ultimately, ECSDA calls for the notion of assigning higher priorities to the EPTF WL

barriers and to view them as indeed concrete barriers with real impacts, both commercially and operationally, to carry out cross -CSD services.

**Q7.c) If there are issues that you think are not barriers, please explain why.**

We understand the reasons for which market actors believe that all barriers on the list are relevant.

**Q7.d) Please list what you consider to be the 5 most significant barriers.**

We believe that the three following barriers are the most significant and should be solved in priority:

1. Fragmented corporate actions and general meeting processes;
5. Lack of harmonisation of registration and investor identification rules and processes;
12. Inefficient withholding tax collection procedures.

**Q8. This question is applicable to the following EPTF barriers: Diverging 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, 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, 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**

**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.**

**Q8.b) Do you have any evidence proving the existence of this barrier and its implications in terms of costs or other detrimental effects?**

**Q8.c) Will the solution proposed by EPTF address the issue? Is there any need for further or different action to remove the barrier?**

**Q8: Comment/answers applicable to Barrier 2: Lack of convergence and harmonisation in information messaging standards:**

**Barrier 2 - 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.**

**Barrier 2 - b) Do you have any evidence proving the existence of this barrier and its implications in terms of costs or other detrimental effects?**

**Barrier 2 - c) Will the solution proposed by EPTF address the issue? Is there any need for further or different action to remove the barrier?**

We are supportive of the standardisation across sectors. However, three points need to be specifically considered:

1. For a certain time-frame, there is a commonly agreed co-existence between ISO 15022 and ISO 20022 in established areas enabling harmonized information messaging and allowing STP already today.
2. It is crucial that the efforts are being done at all levels of the transaction processing chain at the same time.
3. Finally, sufficient time for implementation and a clear and set in advance deadline need to be given to allow all stakeholders to make the necessary changes. The time for implementation needs to take into account all other changes that are being done to the financial market community in parallel.

**Q8 - 7: Comment/answers applicable to Barrier 9: Deficiencies in the protection of client assets as a result of the fragmented EU legal framework for book entry securities**

As highlighted by EPTF report, there are no harmonised rules as regard to the transfer of ownership in book-entry intermediated securities, management of shortfalls return of asset in case of failure of the account provider at the European level. However, it should be noted that each EU jurisdictions already provide for asset protection requirements governing the topics referred above as well as the relationship between the account provider and the holder of financial instruments.

The issues are most problematic at a global cross-border level, CSDs suggest that this issue is being addressed at the global level, not solely at the European one. Asset protection issues arising within a jurisdiction outside of the EEA area, could have similarly significant systemic risk consequences on European stakeholders. Any action taken solely within the EU would not completely solve the issue. In the meantime, cross-border uncertainty could benefit from enhancing standardised public disclosure and transparency on the topics throughout the custody chain. To this end, ECSDA suggest undertaking peer review of the information that are provided by market players to comply with the applicable requirements (such as in the context of CSDR article 38(6)). This will allow regulators to identify possible inconsistency as well as convergence or different national regimes. Peer reviews of non-EU countries could also be appropriate.

**Q9. Lack of harmonisation of registration and investor identification rules and processes**

**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.**



ECSDA is broadly in line with the definition and scope of the barrier. ECSDA recognises and acknowledges the central role that the CSDs play with regard to the registration and, to a certain extent, investor identification across most European markets (CSDs play an active role in 76% of market cases). The key ongoing role CSDs will play in this area is further underscored by the definition of core services under CSDR Annex Section A and Section B including:

- the provision of notary services,
- providing and maintaining securities accounts at the top tier level (‘central maintenance service’),
- as well as the explicit reference to these services related to the notary and central maintenance services, such as services related to shareholders’ registers.

With regard to bondholder identification (1(c)), it should be recognised that different bond types carry different characteristics that contribute to their appeal as instruments for investment. For example, domestic vs Eurobonds may be subject to different treatment and there is very little additional value to the global investment community of enforcing mandatory registration in the International market for example. Equally corporate money market instruments may have reduced appeal, if additional registration processes are implemented that compromise the efficiency of the market (trading through to settlement). Although solutions allowing for more transparency could be investigated.

In conclusion, ECSDA welcomes the inclusion of market infrastructures as a key constituent and endorses the role of CSDs as part of the process for developing a pan-European solution.

**Q9.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.**

ECSDA members have contributed to the development of a comprehensive report covering registration practices in Europe. This report entitled (“The Registration of Securities Holders” dated 19th July 2016) concludes a number of key points that contribute to an undesirable outcome and which are captured through the current draft of the barrier.

**Q9.c) Will the solution proposed by EPTF address the issue? Is there any need for further or different action to remove the barrier?**

ECSDA is broadly in line with the definition and scope of the barrier, there is a concern regarding the timing of the planned action to address the barrier. Whilst ECSDA further acknowledges that there is a real consistency to implementing both the remedial actions of the barrier and the Shareholder Rights Directive (SRD) II, the implementation timeline of the latter represents an overly ambitious target. Given that the level 2 and the standards for SRD II are currently under preparation, this would entail a significant level of change to SRD II level one text and a re-write. Therefore, it is more realistic to consider this as a two-step process - if the timeline for SRD II implementation is not to be disrupted.

Finally, the concerns raised by the European Issuers should be taken into account to develop a future solution. Although with regards to the first bullet point in Section 4 “Diverging Views”, it is difficult to accept that the harmonisation of processes and procedures can be achieved effectively without some sort of harmonisation of the actual content of registers.

**Q10. Inefficient withholding tax procedures**

**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?**

ECSDA broadly agrees with the approach outlined in the EPTF. Nevertheless, ECSDA would like to take this opportunity to reaffirm the pivotal role many CSDs play in the handling of withholding tax (in many cases as withholding tax agents) which is a crucial area for the development of cross-border links between market infrastructures. ECSDA would also like to recall the OECD TRACE group work in this area<sup>11</sup>.

**Q11.**

**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?**

**Q11. b) Providing evidence that proves the existence of the barrier.**

**Q11. c) Describing what solutions would dismantle the barrier and if there are any obstacles to achieving that solution.**

<sup>11</sup> OECD, [TRACE group recommendations](#), 2013.

As explained above, the extension of the procedure on the freedom of issuance initially intended to support cross-border issuance of shares (under article 49 of the CSDR) to debt negatively impacts the current cross-border issuance. If done in a way that avoids regulatory arbitrage, the CSD association would see liberalisation of the procedure for cross-border issuance of debt as a positive step which would make it easier for issuers to find the necessary financing within the EU. ECSDA encourages EU policy-makers to decrease the burden for cross-border debt issuance.

Please also see our response to question 12.

**Q12. The EPTF listed five issues on their watchlist as areas which may require greater attention in the coming years.**

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

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

ECSDA agrees with the description of the second issue<sup>12</sup> (obstacles to DVP settlement in foreign currencies at CSDs) an issue which ECSDA has raised in the past. ECSDA is of the opinion that art.54 of the CSDR imposes excessively burdensome restrictions on foreign currency settlement due to the prohibition for commercial banks and for CSDs with a banking license to provide limited banking services to non-bank CSDs. As a result, some CSDs may be forced to stop offering DvP services for certain securities due to the impossibility to appoint a designated credit institution (DCI). ECSDA believes that this concern shall be added to the list of barriers to be addressed and prioritised higher. We believe that this barrier is affecting attractiveness of European financial market infrastructures and does not help its international competitiveness.

***If not, please explain why:***

- a) any issue should be added to the watchlist;***
- b) any issue should be removed from the watchlist.***

<sup>12</sup> EPTF [Report](#), pg.115, 15/05/2017

**Q13.**

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

**We thank the European Commission for the high quality of the work performed by the European Post-trade forum and look forward to further discussion on the possible proposals with the European authorities and policy-makers.**