ECSDA response to the

AMI-SeCo survey on remaining barriers to securities post-trade integration in Europe

1. Background, purpose and execution

1.1 Brief history of European post-trade integration efforts

At the end of 1990s and early 2000s European policy makers recognised that a lack of integration in securities post-trade services across EU Member States was a very important factor preventing achieving a European single market for capital and financial services. In 2001 and 2003 the work of the Giovannini group took stock of the state of integration of the post-trade markets and prepared a first structured overview of the identified barriers. It also proposed a set of recommended actions for their removal. The reports generated extensive follow-up discussions and in some cases actions by stakeholders (see e.g. work by the CESAME Groups launched by the European Commission). The European industry set up two working groups, one related to define standards on Corporate Actions processing (CAJWG or Corporate Actions Joint Working Group) and the other on General Meetings processing (JWGGM Joint Working Group on General Meeting). These groups created and updated the relevant set of standards for corporate actions and general meetings. In 2008, the Eurosystem's TARGET2 Securities (T2S) project and associated harmonisation agenda were launched. In addition, after 2008, also based on global level discussions in the G20 in the wake of the financial crisis, a set of EU regulatory measures were introduced that targeted a wide spectrum of financial markets and services, including post-trade services. The most important among these was the CSD Regulation (CSDR) which was also accompanied by other pieces of regulatory action directly or indirectly affecting post-trade services (including but not limited to Shareholder Rights Directive, MiFID / MiFIR, EMIR, SFTR, UCITS). In 2016, as part of the European Commission Capital Markets Union initiative, the European Post-Trade Forum (EPTF) was formed. The EPTF published their report in 2017 which took stock of the progress made until then and reformulated existing and identified new barriers (EPTF barriers) with recommendations on addressing these barriers. In 2015, T2S went live which drove most T2S markets to align their core securities settlement practices. In 2020, the European Commission launched a follow-up initiative on the vision of the Capital Markets Union with an action plan affecting also post-trade services (focused review of CSDR, withholding tax procedures and review of the Shareholder Rights Directive / shareholder engagement). The European Commission and the EU law-makers in general are currently in the process of completing these steps.

The Eurosystem's Advisory Group on Market Infrastructures for Securities and Collateral (AMI-SeCo) and its predecessors, the ECB Contact Group on Euro Securities Infrastructures and in partiuclar the T2S Advisory Group, have contributed to the above developments by either directly driving harmonisation, standardisation discussions or providing input to the European Commission and EU law-makers in various post-trade areas.

European Central Securities Depositories Association, aisbl
Rue Royale 75, 1000 Brussels, Belgium
ecsda.eu – info@ecsda.eu - +32 2 230 99 01
RPM/VAT : BE0464619112 – Tribunal de l'entreprise francophone de Bruxelles
ING – BE30 3630 9647 3311

1.2 Developments in already removing or reducing certain barriers

The reports and the initiatives highlighted in the previous section have contributed significantly to the reducing or dismantling the identified barriers:

- **The launch and evolution of T2S, including the core T2S harmonisation agenda** has directly contributed to removing a number of barriers identified by the Giovannini and the EPTF reports, including the different national settlement systems, differing business hours and calendars, absence or differences in intraday settlement finality affecting cross-border transactions, remote or foreign access to settlement systems, proprietary information technology or communication / messaging standards.

- **The progress on compliance with market harmonisation standards** including the corporate action standards (T2S CA, CAJWG, SCoRE), standards on shareholder identification, although far from completely removing the barrier related to corporate events, has significantly contributed to aligning practices by creating a path of convergence followed (at different speeds) by most markets on these practices.

- **The EU regulatory measures, in particular the CSDR** (but also some of the other mentioned in the previous section), has directly dismantled barriers (although in some cases with smaller frictions still remaining due to differing national implementations) related to different settlement cycles, settlement finality, non-discrminative access to foreign infrastructures, high-level protection of collateral arrangements, differing supervisory practices.

  Already identified barriers where limited or no progress has been achieved include differing national registration practices, differences of national securities and corporate laws (resulting in potential conflicts of laws and uncertainty regarding the rights to or the owner of securities held across borders), lack or limited use of standard identifiers or lack of STP processes due to inefficient data exchange processes.

1.3 Objective of this survey

The motivation for this survey is two-fold:

1) With T2S cementing its role in realising the vision of a single pool of EUR central bank money liquidity for securities transactions, the CSDR having been fully implemented and with the awareness (and in some cases also the compliance) on the relevant harmonisation agendas in corporate events and other domains at an all-time high, it is timely to take stock of remaining, potentially not articulated barriers that prevent leveraging those achievements to ensure a fully integrated post-trade securities landscape. To note, the last systematic EU-level stock-take of post-trade barriers took place in 2016 / 2017 in the context of the work of the EPTF.

2) A new European Commission will take up its mandate in 2024 and will reflect on priorities for their term. It is expected that the integration of EU capital markets will continue to feature high on the incoming Commission's list of priorities. A timely input on the remaining post-trade barriers is expected to be welcome by European policy makers.

The primary focus of this survey is on remaining barriers not yet explored in detail or on the radar of the AMI-SeCo. Hence, the survey would not focus on well-known and systematically monitored areas, such as lack of full compliance with corporate event standards or T2S harmonisation standards in general. Nevertheless, the information collected via the survey could also complement the existing knowledge on already identified barriers by collecting concrete evidence at detailed or technical level (rather than simply identifying problematic areas at a high level). In any case, the on-going EU-level harmonisation initiatives (e.g. SCoRE, CAJWG standards) will continue and the feedback to this survey is expected to inform any potential complementing activities targeting better integration.

Respondents are requested to make their feedback on barriers as specific as possible and to provide detailed examples. Suggestions for possible enhancements or solutions to tackle the barriers are welcome. The survey is intended to cover all major post-trade areas: settlement, asset servicing, clearing and collateral management. The AMI-SeCo will analyse the feedback received and prepare a report on its basis. It is expected that the outcome will form the basis of future AMI-SeCo harmonisation / market integration initiatives as well as potential recommendations by the AMI-SeCo to European or national law-makers and regulators.

1.4 Target audience / expected respondents

The primary addressees of this survey are AMI-SeCo members and members of AMI-SeCo National Stakeholder Groups. European industry associations that are part of the AMI-SeCo and NSG secretaries are invited to distribute the link to their members (ECB will facilitate association members' individual response). Both NSG secretaries and European industry association secretariats are also encouraged (but not required) to submit a summary response on behalf of their constituency (to complement the feedback received from their members). National industry associations that are members of their respective NSGs are not expected to forward the link to their respective individual members but would be welcome to provide a summary view on behalf of their constituency.

1.5 Deadline for feedback and next steps

The deadline for feedback by respondents is **31 January 2024**. The AMI-SeCo Secretariat will process the responses and the AMI-SeCo Securities Group will prepare a report to the AMI-SeCo on the key takeaways and findings. The report and the outcome of the subsequent AMI-SeCo discussions will be made public.

1.6 Execution of the survey – Epsilon tool

The survey is released via the Eurosystem's Epsilon survey tool. The AMI-SeCo Secretariat will distribute the survey link via emails explaining how to use the survey tool and attach this document so that respondents know the questions in advance. To fill in the Epsilon survey a quick and easy registration will be necessary by prospective respondents who will be asked to register their email address. Those who register will receive a personal link to their own instance of the survey page in Epsilon. Respondents will be requested to indicate their names and the names of the institution on behalf of which they respond. The AMI-SeCo Secretariat will not process anonymous responses. Respondents will be able to save, close the survey and return to it later (by using their personal link) before finally submitting their response. After finalising and having submitted their response, the respondents will be able to download their submission as a pdf document. The AMI-SeCo Secretariat will not share individual responses to the survey with anyone outside the ECB.[1]

2. Survey questions

The questions below are raised and structured to be conducive to open and detailed feedback on any barriers / issues that the respondent sees in their practice or that they are aware of. A categorisation is used, and specific questions are raised also with this objective and not to exclude categories that may be completely unknown to the authors of the survey. Therefore, even if the respondent does not agree with the categorisation, grouping or formulation of the questions or if they do not find a question covering the issues / barriers they perceive, they are encouraged to provide their input in the most detailed way possible, if not applicable elsewhere then under the open question at the end of the survey. Furthermore, if they have
a view, respondents are encouraged to highlight not only the issues / barriers but also what measures and by whom could potentially resolve the issues / barriers in their views.

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[1] Please refer to the Epsilon survey page for more details on how data protection requirements are complied with

I. Broad areas not covered by the Giovannini or EPTF reports

For reference, a list of the barriers identified by the Giovannini and EPTF reports is included in Annex 1 (incl. where they overlap). Although the work by both the Giovannini group and the EPTF were outstanding and very thorough, there may be areas of barriers that did not emerge or come into focus at the time of their reports. Before turning to the detailed questions by areas / categories, the following question aims to identify broad areas that may not have been captured by the Giovannini and EPTF lists or part of the on- going harmonisation / integration activities (see a high-level overview in Annex 2).

Q1: Do you perceive any broad areas of barriers to post-trade integration not covered by the Giovannini or EPTF reports? If yes, please describe them, also giving as many details as possible. In case you would complement the Giovannini and EPTF analysis on one or more of barriers identified by them please feel free to do so here as well.

Regarding the identified barriers what concrete measures do you propose? Who could potentially address / resolve the issues / barriers? What priority level do you attach to the issue (high, medium or low)?

ECSDA Response:

ECSDA welcomes this consultation and fully shares the objective pursued by AMI-SeCo to address the remaining barriers to post-trade integration. CSDs have continuously contributed to the post-trade integration efforts pursuing all the actions and recommendations towards the removal of the barriers identified by the Giovannini and EPTF Reports. We are also playing an active role in all policy and market initiatives summarised in the preamble of this consultation. Specific focus has been dedicated to the harmonisation, the effectiveness of link arrangements to support cross-border investments and delivering the objectives of the core T2S harmonisation agenda. Furthermore, European CSDs continuously strive for innovation and enhanced efficiency for their participants. Some of them pursued initiatives consolidating technology and platforms across multiple CSDs, for example, for the management of corporate actions.

Further improvements in terms of the ability of CSDs to operate across borders are expected as a consequence of the coming into force of Regulation 2023/2845 amending CSDR (i.e. CSDR Refit), being one of the explicitly stated objectives of the CSDR Refit. The simplification of the procedure to provide notary and central maintenance services for financial instruments constituted under the law of a Member State other than the law of the Member State where the CSD is authorised – which was strongly promoted and supported by CSDs in the review exercise - is expected to lighten the barriers to cross-border settlement enabling CSDs to benefit more from the freedom to provide such services in the Union.

These initiatives significantly contributed to reducing the level of fragmentation in the European market. Such fragmentation is not only due to the remaining barriers but also to the decentralised nature of the European markets and business strategies and choices pursued by the relevant actors along the custody chain as well as of the issuers in response to investors' needs. As a consequence, certain indexes of the level of integration of the market highlighted in this consultation, such as the level of cross-CSD and cross-border settlement volumes should not be considered as purely the consequence of the remaining barriers, whether already identified by the well-known outstanding reports or not yet articulated.

Integrated post-trade does not solely depend on harmonisation at the CSD level

While CSDs are certainly a key actor in the post-trade landscape and despite their willingness to support consolidation and dismantle the barriers, it should be noted that the achievement of a further integrated post-trade landscape does not fully depend on CSDs.

Irrespective of the benefits (to be) achieved by CSDR, national differences and market-level fragmentation remain. Among other consequences, they hinder a significant increase in cross-CSD activity, hence preventing CSDs from supporting an even deeper capital market integration.

CSDR and T2S have not tackled some areas of underlying fragmentation such as tax and local laws acting as a deterrent barrier for CSD activity. As a result, CSDs have not been able to fully benefit from the expected harmonisation in these areas. The actual overcoming of such issues is outside of CSD control and requires significant effort and political support in decision-making across Member States.

With reference to broad areas not covered by the Giovannini and EPTF reports, one case already highlighted by ECSDA in the past relates to cross-currency fragmentation and specifically the need to facilitate access to non-domestic central bank money. By experience of some CSDs, access to central bank money is subject to cumbersome requirements and procedures, such as the provision of legal opinions including content that seem capable of being revisited especially with respect to EEA countries where European Directives – such as the Settlement Finality Directive – already apply by virtue of EEA decisions already adopted since a very long time. Enacting mutual recognition and revisiting and harmonising such local NCB requirements could be beneficial to facilitate access to non-domestic central bank money for CSDs as highly regulated infrastructures. We particularly aspire for the support of the European Central Bank in that area.

To conclude, ECSDA and its members are committed to further cooperating in the identification and practical understanding of issues with a significant degree of relevance in fostering further integration of the European post-trade.

II. Legal, tax and other administrative barriers / barriers stemming from national laws or public policies

In the legal area, the Giovannini and EPTF reports focused on conflict of laws stemming from differing national securities laws and definitions of securities ownership or settlement finality. They did not or not extensively cover national bias embedded in local laws or regulatory practices favouring the local CSD(s) or other post-trade providers over their counterparts based in other EU countries. Based on anecdotal information available to the ECB, there are EU jurisdictions where nearly 10 years after the entry into force of the CSDR and several years after the European Commission initiative to create a Capital Markets Union, national law / regulation or public policies treat domestic CSD(s) or other domestic post-trade service providers more favourably than CSDs or other post-trade service providers that want to offer services in these countries but are established in other EU Member States.

These can include (as examples):

- Different regulatory treatment of the domestic CSD or domestic post-trade service providers vis-à-vis other EU CSDs or foreign service providers (incl. tax-related regulation, related to access to pimary issuance system by sovereign issuers)
- The domestic CSD is explicitly mentioned in national regulation as the entity that is exclusively authorised to perform certain post-trade functions / services that are crucial to securities that are governed by the national law
- Different regulatory treatment of foreign CSDs based on their business strategies (e.g. different treatment of the 'ICSDs' under national tax or securities laws)
- Post-trade consequences of national regulatory incentives for domestic issuers to issue in the domestic CSD rather than other EU CSDs.
- National requirements to use a specific national platform(s) handling tax matters or other regulatory compliance matters
- Practice of sovereign debt issuers (DMOs or Treasuries) to require Primary Dealers to use the domestic CSD for the settlement of public debt issuance

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Q2: Do you perceive / have you encountered provisions in national laws, regulatory practices or other administrative barriers that prevent non-domestic post-trade service providers to provide fully-fledged services on a level playing field in an EU Member State? Are you aware of such barriers in your own jurisdiction? Please provide detailed and concrete evidence.

Regarding the identified barriers what concrete measures do you propose? Who could potentially address / resolve the issues / barriers? What priority level do you attach to the issue (high, medium or low)?

ECSDA Response:

ECSDA acknowledges the existence of provisions in national laws that to some extent limit the capability of a foreign CSD to provide services on a level playing field in a Member State.

Set up and use of links

T2S has fully enabled cross-CSD settlement, connecting CSDs to a common infrastructure on which securities and cash can be transferred between investors across Europe based on common rules and practices, and irrespective of where securities accounts are located.

However, local rules prevent the full deployment of T2S cross CSD capabilities.

In particular, specificities in the local securities or tax law (such as registration practices existing in some jurisdictions) sometimes create additional burden from an operational or legal point of view influencing business choices in the set up and use of link arrangements among market infrastructures and cross-border issuance.

We believe that the legal barriers creating specific operational issues (such as registration requirements etc.) should be prioritised. The removal of these barriers does not necessary imply full harmonisation of company laws across Member States but at least the removal of those aspects preventing the standardisation of CSD links operational model.

Securities law and Shareholder rights directive

In the context of securities laws and the Shareholder Rights Directive, we note that it would be beneficial to clarify of the definition of shareholder and beneficial ownership and also harmonise/clarify/remove some shareholder identification practices that have been proven particularly burdensome such as (PTI and French registered securities).

Currently these differences cause issues in the identification of shareholders based in multiple jurisdictions. While acknowledging that a single definition of Shareholder can hardly be achieved, given the significant impact on the legal system of the Member States and specifically on the national securities law, company law and tax law, ECSDA is of the opinion that clarifications and improvements of the concept are still possible, reducing the effects of barriers to cross-border investment and the use of links.

Irrespective of any specific definition, the shareholder should be identified as the one that holds the voting right or the "economic right" at the end of the holding chain; in some EU States, such as Ireland, the shareholder is considered to be the CSD which means that no shareholder identification request can be answered below the CSD level.

In the national implementation of the SRD, some Member States have decided to extend the scope of assets beyond shares listed on a regulated market within the EEA. It is therefore difficult for a first intermediary from another jurisdiction to check whether a disclosure request is valid or not. In this respect, further clarity and mapping exercise would be welcome.

Tax law specificities

As to the harmonisation of tax management aspects, one example could be the operational complexity created by the divergent fiscal treatment of market claims/dividend. (e.g. in France, these are always paid gross because the local CSD's participant or its underlying client acts as a withholding tax agent, while, for example, in Belgium and in the Netherlands, it is always paid net because the issuer is withholding tax agent (if exempted, there is a quick refund process).

Further, requirements provided by local fiscal rules are not fully aligned with the processing of corporate actions at post-trade level requiring actors in the holding chain to adapt operational model to each Member State, even though they are providing the same services. For instance, some jurisdictions provide for tax exemptions according to outdated definition and roles (e.g. definition of "international clearing systems") which does not match the current European regulation .

Cross border provision of issuance services

ECSDA acknowledges that the amendments of Article 23 CSDR by the CSDR Refit has mostly addressed the issues encountered by CSDs in relation to the passporting proceedings, limiting the assessment of the measures to be undertaken by CSDs to ensure compliance by its users with the applicable corporate law to shares and thanks to a better interaction with the actors of the markets.

The objective was to allow CSDs to provide their services on a cross-border basis without having to comply with different sets of national requirements such as those concerning the authorisation, supervision, organisation or risks of CSDs"[1].

Therefore, the expectation is that if, in each jurisdiction, the EU law/CSDR is applied consistently and as is, the barriers could significantly be limited. However, notwithstanding the stated intention to reduce regulatory complexity for market operators and CSDs, some jurisdictions "transposed" CSDR into national regulations and laws.

Although we do not think that those national implementations aimed at applying openly a different regulatory treatment for foreign CSDs or restricting the services in favour of the sole domestic CSD. Nevertheless, to some extent, they have created such an effect. In particular, the European authorities should scrutinise these cases to ensure that national barriers do not extend the territorial scope of the national regulations and laws overruling or changing (adapting) the meaning of certain provisions of EU regulations to the foreign CSDs operating from their home countries. These shall be carefully monitored to avoid that the choice of issuers for a CSD (not incorporated in its jurisdiction) is sanctioned by an extension of the regulatory burden for other EEA CSDs.

Some of these rules require the applicant foreign CSD or the passported CSD to comply with regulatory rules applicable to locally supervised entities, more specifically, to comply with different sets of national requirements such as those concerning the organisation, the maintenance of accounts, recordkeeping or the proprietary aspects related to the assets held by the foreign CSD (including pledges and any type of restrictions), i.e. beyond what shall be considered as corporate law as per article 49.1 CSDR.

In respect of the above, the following measures can be considered:

1. *to ensure that the passporting proceedings refer to the sole activities carried out within the territory of the host Member States for services being de facto provided in the market supervised by the host regulator;*

2. *harmonisation of the securities laws so that every Member State in the EU has the same understanding of the notion of securities, when they are created or about the concept of share (keeping in mind the various discrepancies created by the implementation of SRD II by certain jurisdictions), bond or funds units. This will also enable to harmonise the issuance processes (to focus on the rights and duties of the issuers and their agents within the EU market towards their holders, the CSDs, the regulated markets);*

[1] Recital 5 of CSDR

3. *to harmonise the processing of the assets servicing to avoid that isolated practices and rules could be complied with by the sole local CSD. Such harmonisation would address the elimination of the technical and legal differences in national rules relating to corporate actions, beneficial ownership and custody. The implementation of a common practice regarding the payment of proceeds could also be considered to avoid exposures of the CSDs in case of default of payment by the issuer and/or the issuer agent;*

4. *to have a definition of corporate law (with reference to Article 49.1 CSDR) that excludes any provisions applicable to the organisation, the maintenance of accounts, recordkeeping or the proprietary aspects related to the assets held with the foreign CSD. This would avoid that restrictions are included into the financial laws and regulations of a jurisdiction as corporate law measures for the purpose of Art. 49 of CSDR;*

5. *to improve the control of the list of key relevant provisions applicable on each market by the ESMA or the EC, taking into account the above-mentioned definition of corporate law. The local regulators should report to their peers the status of their national laws and regulations applicable to the CSDs within their territory and inform them when a regulation or a law ruling of post-trading activities could be relevant for and applicable to other CSDs and why. The local regulators should also justify when an EU rule is disapplied locally (e.g. banning of immobilised securities wherever the securities are immobilised);*

6. *to improve the quality of the level 1 EU texts (where they are cross-referencing without clear definitions, concepts left open for further clarifications). The EU texts should not be drafted with the views to be complemented by level 2 texts or worst Q&As, sometimes issued after the implementation deadline. Periodic review of the level 1 text with consultations processes of the obliged parties (to whom such rules are directed at) is a good tool to improve the legal framework.*

As to who could potentially address / resolve the issues / barriers, in our view, these are EU legislators by changing EU Law and in particular level 1 texts.

III. Technical and functional barriers to cross-CSD or cross-border settlement and asset servicing

Although the level of market integration cannot be measured solely by the value and volume of cross-CSD settlement, it is fair to say that the current volumes observed in T2S are significantly lower than what most stakeholders expected before the launch of T2S. While T2S facilitates cross-CSD settlement and also contributes to easier cross-border settlement via other channels more than any other pre-existing arrangement or infrastructure did, based on discussions within the T2S community, there are still technical barriers, impediments preventing fully efficient, seamless cross-CSD settlement.

Some concrete examples highlighted by AMI-SeCo members:

- Technical limitations / potential functional improvements in T2S for cross-CSD settlement (e.g. the way CSD links are set up and used in T2S and vis-à-vis non-T2S CSDs and not aligned Cross-CSD already matched processing)
- Charging for cross-CSD settlement / realignment within T2S (some CSDs charge for realignment transactions within T2S while others do not)
- Lack of clarity of market practices / guidelines for cross-CSD settlement and asset servicing related to messaging (e.g. different existing interpretations or limited awareness on the global market practice on using the 'Place of Settlement' or 'Place of Safekeeping' fields in relevant messages, different market practices in identifying parties further down the custody chain)
- Remaining issues in cross-CSD settlement between (i) T2S CSDs ii) T2S CSDs and non-T2S CSDs, in particular when moving securities out of T2S or into T2S (differences in market cut-offs, difficulties in local market / global inventory alignments)
- Challenges in non-domestic access by CCPs to settlement services / CCP-restrictions on settlement locations
- Differences in CCP timings and processing

Q3: Do you perceive / have you encountered remaining technical barriers to cross-CSD or cross-border settlement of securities within the EU or between the EU and other jurisdictions? Please provide detailed and concrete evidence.

Regarding the identified barriers what concrete measures do you propose? Who could potentially address / resolve the issues / barriers? What priority level do you attach to the issue (high, medium or low)?

ECSDA Response:

ECSDA shares the consideration that the level of market integration cannot be measured solely by the value and volume of cross-CSD settlement and recommends to specifically distinguish the concepts of cross-CSD settlement from the more general concept of cross-border settlement.

Preliminary, it should be noted that given the high level of operational integration achieved with T2S, the actual relevance of remaining technical barriers in respect of the increase of cross CSD volumes in T2S is probably marginal compared to the relevance of the remaining tax and legal-related barriers and the strategic choices of all stakeholders along the custody chain.

Nevertheless, CSD-internal settlement still remains less complex than cross-CSD settlement (even within T2S), hence, while the existence of various EU CSD-links has multiple benefits for the European Capital Markets, operational issues related to cross-CSD settlement would require further attention and analysis by all stakeholders.

In respect of T2S, ECSDA would like to recall that such operational issues have been raised by the CSDs to the ECB actively participating in the discussions held within the various T2S governance bodies.

Furthermore, as the scope of the AMI-SeCo is beyond T2S, we also need to take into account that a higher level of operational and technical differences remains with the non-T2S/DKK countries.

To the extent we can and where relevant, ECSDA is attempting further alignment of CSD actions and guidance on harmonised interpretation of some legal requirements, such as recently through the ECSDA penalties framework, alignment of deadlines on compliance with standards, issuing the recommendations on ISO 20022, and regular working group discussions.

IV. Market practices and market behaviour

Even though significant progress has taken place at the level of infrastructures and the market standards facilitating cross-border post-trade services, an inertia has been observed by some stakeholders with regards to market participants' behaviour and own adaptations to the new environment. Such inertia might be due to lack of awareness of new possibilities or the challenges inherent in changing internal systems and procedures at market participants. The following symptoms (as examples) have been noted by AMI- SeCo members:

- Limited use of CSD links and cross-CSD settlement
- Lack of adaptation to T2S functionalities or in general to the possibility of cross-border settlement by post-trade service providers for cross-CSD settlement and asset servicing (e.g. use non- domestic 'Place of Settlement' field in relevant messages, partialsettlement options)
- Limited use of T2S auto-collateralisation and T2S settlementoptimisation features
- Outdated references to settlement arrangements and use of legacy conventions in issuance programme documents (e.g. use of national settlement calendars)
- High proportion of day-time settlement volumes (compared to night-timesettlement)
- Differences in pre-settlement practices affecting settlement efficiency (shaping, allowing partial settlement, auto-partialling)

Q4: Do you perceive / have you encountered barriers or inefficiencies related to market practices or behaviour of market participants that impede efficient cross-border post- trade services? Please provide detailed and concrete evidence.

Regarding the identified barriers what concrete measures do you propose? Who could potentially address / resolve the issues / barriers? What priority level do you attach to the issue (high, medium or low)?

ECSDA Response:

T2S Framework agreement offers the relevant process for the participating CSDs to address any issues arising regarding the efficiency of the platform. Therefore, there is no reason for us to address them in this response.

However, we will be particularly attentive to the responses to this question from other stakeholders. In that context, ECSDA has issued considerations on settlement efficiency (based on the survey of CSD participants) in order to share some recommendations to improve settlement efficiency in Europe having the objective to reduce the number of fails while not reducing the volume and value of transactions to be settled. You can find the link to the paper here.

ECSDA is constantly looking for areas where it can bring further level of harmonisation in CSD approaches, where it is relevant and appropriate, or support other ways of ensuring cross-border efficiency.

One of the areas of our ongoing work is related to the different market practices on reverse stock splits. Recently, there were some cases of (ETF) issuers performing it without an ISIN change, which is not the best market practice. ECSDA is taking the lead in organising the work together with different associations and relevant market stakeholders. Not only at the country level there were local differences of approaches, but also the standards of some associations were not coheren

V. Standards and data

Although a well-known area of remaining challenges to cross-border activity, standards and data processing is worth highlighting as not all potential barriers / challenges to cross-border activity in this domain may have been discovered or discussed in detail. Issues highlighted so far (as examples) are:

- Lack of standard data exchange models for securities issuance
- Data challenges due to lack of common reference data / golden source for client and instrument (set up / distribution) and resulting lack of straight-through processing
- Limited use of global standard identifiers (e.g. LEI, UTI) in post-trade interactions
- Absence of a common pricing source for collateral and MTM operations
- Differences in standards such as messaging / format and syntax in trade settlement messaging and corporate actions

Q5: Do you perceive / have you encountered barriers or inefficiencies related to the availability or management of data and lack of compliance of available data exchange standards that impede efficient cross-border post-trade services? Please provide detailed and concrete evidence.

Regarding the identified barriers what concrete measures do you propose? Who could potentially address / resolve the issues / barriers? What priority level do you attach to the issue (high, medium or low)? Do you think the current AMI-SeCo reports and activity in monitoring compliance with the existing market standards (CAJWG, T2S, SCoRE, SRD2) is conducive to fostering market integration? If not, what would you propose to change in these activities?

ECSDA Response:

In respect of standards and data, ECSDA would like to recall the efforts of the standardisation of messages and in coordinating the instances of the various markets in this respect. In particular, in May 2023, ECSDA published its considerations on ISO messages for financial transactions and recommendations on their use and has stimulated the development of a timeline for the adoption of ISO 20022. Also, the ECSDA Board agreed to set up a dedicated Messaging Task Force to assess the current state of use of the different messaging standards and plans related to the migration to ISO 20022, as well as provide recommendations on the way forward.

Within the activities and discussions concerning settlement discipline, ECSDA has also focused on reference data for the calculation of settlement penalties, contributing in the identification of issues and proposing solutions. In this respect, *ECSDA reinstates its recommendation for ESMA to centrally provide and publish all reference data needed to calculate penalties in a single database accessible to all stakeholders. Further consideration of this issue might be beneficial, for example, in the context of the ongoing discussion on the review of the penalties mechanism and the respective ESMA consultation on the matter.*

VI. Other barriers

There may be other barriers to market access / full integration in the post-trade domain that do not fall in any of the categories above and they might be exposed by the survey.

Q6: Please provide any other observations on barriers / limiting factors that are relevant to cross-border post-trade services today. Please provide detailed and concrete evidence.

Regarding the identified barriers what concrete measures do you propose? Who could potentially address / resolve the issues / barriers? What priority level do you attach to the issue (high, medium or low)?

ECSDA Response:

As stated above, one additional barrier relates to cross-currency fragmentation and the need to facilitate access to non-domestic central bank money (cfr Q1).

Moreover, ECSDA would like to stress the need to closely monitor the transformative process that the industry is facing, for example in respect of the current evaluations and discussions concerning the shortening of the settlement cycle. At the moment, CSDs do not have a full picture of the impact on CSD participants and beyond and are working intensively to support such discussions. However, it is already clear that changes for the market will be significant and shall be monitored also in the light of the need to prevent additional barriers or limiting factors of efficient cross-border activities to arise.

Annex I.: Overview of the Giovannini and EPTF barriers

Giovannini	Giovannini barrier title	EPTF barrier	EPTF barrier title	EPTF assessment/treatment
I. Barriers related to technical requirements/market practice				
GB 1	National differences in information technology and interfaces	EPTF 2	Lack of convergence and harmonisation in information	
GB 2	National clearing and settlement restrictions that require the use of	n/a		Dismantled in T2S markets
GB 3	Differences in national rules relating to corporate actions,	EPTF 1	Fragmented corporate actions and general meeting processes	
GB 4	Absence of intraday settlement finality	n/a		Dismantled in T2S markets
GB 5	Practical impediments to remote access to national clearing and	n/a		Dismantled in T2S markets
GB 6	National differences in settlement periods	n/a		Dismantled in all EU markets
GB 7	National differences in operating hours/settlement	n/a		Dismantled in T2S markets
GB 8	National differences in securities issuance	EPTF 7	Unresolved issues regarding reference data and standardised identifiers	Merged with GB 9
GB 9	National restrictions on the location of			Merged with GB 8
GB 10	National restrictions on the activity of primary dealers and market	EPTF WL1	National restrictions on the activity of primary dealers and	
II. Barriers related to taxation				
GB 11	Domestic withholding tax regulations serving to disadvantage foreign	EPTF 12	Inefficient withholding tax collection procedures	

GB 12	Transaction taxes collected through a functionality integrated	EPTF WL5	Non-harmonised procedures to collect transaction taxes	
III. Barriers relating to legal certainty				
GB 13	The absence of an EU-wide framework for the treatment of interests	EPTF 9	Deficiencies in the protection of client assets as a result of the fragmented EU legal	
GB 14	National differences in the legal treatment of bilateral netting for	EPTF 8	Uncertainty as to the legal soundness of risk mitigation techniques used by	
GB 15	Uneven application of national conflict of law	EPTF 11	Legal uncertainty as to ownership rights in book entry securities and third-party	
IV. EPTF barriers not covered by Giovannini				
EPTF 3	Lack of harmonisation and standardisation of ETF processes			
EPTF 4	Inconsistent application of asset segregation rules for securities			
EPTF 5	Lack of harmonisation of registration and investor identification			
EPTF 6	Complexity of post-trade reporting			
EPTF 10	Shortcomings of EU rules on finality			

ANNEX II – High-level overview of existing European (or global with European relevance) harmonisation / integration initiatives:

T2S Harmonisation Agenda: The T2S Harmonisation activities arose in the context of the implementation of T2S. The standards and the activities are owned / coordinated by the AMI-SeCo and apply to T2S markets. They cover a wide range of technical standards directly relevant for settlement in T2S (core T2S harmonisation activities, such as use of ISO20022 messaging, matching rules, business hours, settlement finality rules, corporate actions on pending transactions, etc.) as well as broader areas of activities (post- trade environment of securities settlement such as the regulation of location of securities accounts in national laws, withholding tax procedures, corporate actions on stock, shareholder transparency, securities amount data). Regarding the core standards T2S itself has ensured a very high level of compliance rate with the defined standards while this has not been the case on the post-trade environment activities where the direct influence of the T2S community or the AMI-SeCo is much more limited. Nevertheless, in some of these areas the European Commission and the EU law-makers in general have taken significant steps (Shareholder Identity, Withholding Tax) recently. The AMI-SeCo monitors the progress on compliance with T2S harmonisation standards on an annual basis in its regular T2S Harmonisation Progress Reports.

Single Collateral Rulebook for Europe (SCoRE): The SCoRE initiative contains 10 broad harmonisation areas that the AMI-SeCo identified in 2017. Concrete standards have been endorsed and the compliance on them monitored in 3 of these areas: corporate actions (building on and elaborating the CAJWG CA standards), billing and tri-party collateral management. The SCoRE standards are currently under implementation with a deadline of April 2024 for the first wave of implementing actors. The ECMS being rolled out by the Eurosystem (see below) relies also on the SCoRE standards and will require that all external actors directly interacting with the ECMS also follows the standards in the three areas where they have already been defined.

CAJWG Corporate Action standards. The Corporate Actions Joint Working Group representing all major stakeholder groups created the so-called 'Market Standards for Corporate Actions processing' which include high-level standards on both corporate events on stock and on flow (pending transactions). Both the T2S corporate action standards and the SCoRE CA standard build on and are consistent and coherent with the CAJWG CA standards as their foundation. The compliance of all three sets of these standards are monitored by the AMI-SeCo.

Industry Shareholder Identification Standards: To facilitate a harmonised technical implementation of the Shareholder Rights Directive (SRD2) the industry agreed on a set of standards on the technical steps for shareholder identification. The AMI-SeCo also monitors compliance with this set of standards via its Corporate Events Group.

EU Issuance Service: The European Commission together with NBB-SSS and the European Central Bank is rolling out a post-trade arrangement building on T2S ensuring a neutral and efficient arrangement of issuing debt instruments on behalf of the EU (as well as EURATOM). The EIS builds on the SCoRE standards and on the state-of-the-art settlement services provided by T2S in EUR central bank money.

DIMCG harmonisation agenda: The DIMCG was an initiative by the ECB to bring together stakeholders of the whole debt issuance value chain to explore opportunities for higher efficiency and integration. The DIMCG made a set of harmonisation recommendations to various stakeholders on most of which those stakeholders have actively followed up.

Eurosystem TARGET Services developments: the Eurosystem continuously develops and updates its infrastructures for EUR central bank money settlement with the vision of a single pool of EUR central bank money liquidity. Major milestones in this work have been the launch of T2S, the consolidation of T2 and T2S and the future roll-out of the Eurosystem Collateral Management System (ECMS) which builds on common market standards across all of the CSDs (more than 20) that the Eurosystem currently uses to take marketable collateral in. The TARGET Services catalyse harmonisation of market practices by providing the same rules and platforms across the euro-zone and even beyond, to all stakeholders of EUR central bank money settlement.

Work by European and global industry associations relevant in the post-trade domain. The European and global industry associations perform and promote key harmonisation activities by agreeing and maintaining frameworks in various areas to be followed by their members. Initiatives to highlight are ECSDA's work on various CSD frameworks in the domain of settlement discipline or matching, ICMA's work on primary market standards the data models used in debt issuance and the work done by AFME and EBF in sponsoring various market standardisation initiatives.