

Regulatory News Alert

EU Consultation on the post-trade Capital Market Union

4 September 2017

In 2015, the current EU Commission worked on a plan to encourage jobs and economic growth: The CMU for Capital Market Union. Its aim: reviewing regulation to stimulate business and economic activity.

On 23 August 2017, the EU Commission released in this framework a [consultation](#) on how to **better integrate post-trade activities across the EU**. This consultation should help the EU Commission to define its regulatory strategy for **post market activities for the next 5 to 10 years**, it is fundamental and likely marks a turning point (evidenced a few weeks ago by the ESMA opinion on segregation, see [Deloitte alert](#)).

Although this document is a consultation, thus at the very early stage in the regulatory process, it is nevertheless important to have it in sight for long-term developments. It should impact scores of regulations:

- EMIR, (European Market Infrastructures Regulation),
- CSD-R, (Central Securities Depositories Regulation),
- T2S (ECB Target 2 Securities),
- SFD (settlement finality directive),
- Removing tax processing barriers,
- Asset segregation,
- Client protection against bankruptcy,
- In addition, this implements grounds to review cross border property rights definition on securities.

This consultation will also address some structural themes, such as asset segregation rules, optimization of collateral management, processing of corporate actions, and the use of blockchain in custody.

The road will likely be long and full of surprises from the origin to the finalization of EU texts and other regulations. However, there are **forward thinking ideas** that will be sure to shape EU Institution minds for future regulatory initiatives **impacting market structures and organization at their roots**.

This consultative document is accompanied by an earlier published report called EPTF report (accessible [here](#)). It is more telling in terms of potential outcomes and demands. In the report, the EU Commission invited a pan-EU group of experts of the custody to state their views on how to improve post-trade securities handling across the EU. Hence, if your **activities are in the custody or depositary activities, a major milestone has been set.**

How Deloitte can help you

The European post trade market infrastructure is dramatically changing. With its experts, Deloitte can support your organization to define and implement strategies that will help you to adapt to the new regulatory framework including post MIFID II, post Brexit, and leverage new business opportunities.

EPTF Barrier

| EPTF Barrier nr. | EPTF Barrier Title | Priority (2) | Responsible entity (2) | Chapter | Synergies and dependencies | GB Barrier nr. |
|-------------------------|---|--------------|--|----------------------|--|---------------------------------|
| I. Operational Barriers | | | | | | |
| EPTF 1 | Fragmented corporate actions and general meeting processes | High | Private sector (all relevant parties), EU and national policy makers | Operational Barriers | EPTF 2 (messaging standards), EPTF 5 (shareholder registration), EPTF 9 (client asset protection) and EPTF 11 (ownership rights) | GB 3 |
| EPTF 2 | Lack of convergence and harmonisation in information messaging standards | High | Market participants and regulators | Operational Barriers | | GB 1 |
| EPTF 3 | Lack of harmonisation and standardisation of ETF processes | Medium | Private sector, EU Commission | Operational Barriers | | New |
| II. Structural Barriers | | | | | | |
| EPTF 4 | Inconsistent application of asset segregation rules for securities accounts | High | EU Commission and Member States | Structural Barriers | EPTF 9 (client asset protection) and EPTF 11 (ownership rights) | New |
| EPTF 5 | Lack of harmonisation of registration and investor identification rules and processes | High | Private sector, EU Commission and Member States | Structural Barriers | EPTF 2 (messaging standards) | New |
| EPTF 6 | Complexity of post-trade reporting structure | High | EU Commission | Structural Barriers | EPTF 2 (messaging standards) | New |
| EPTF 7 | Unresolved issues regarding reference data and standardised identifiers | Medium | EU Commission | Structural Barriers | | GB 8 & 9 redefined and combined |
| III. Legal Barriers | | | | | | |
| EPTF 8 | Uncertainty as to the legal soundness of risk mitigation techniques used by intermediaries and of CCPs' default management procedures | High | EU Commission | Legal Barriers | EPTF 11 (ownership rights) | GB 14 |

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| EPTF 9 | Deficiencies in the protection of client assets as a result of the fragmented EU legal framework for book entry securities | High | EU Commission | Legal Barriers | EPTF 4 (asset segregation) and EPTF 11 (ownership rights) | GB 13 |
| EPTF 10 | Shortcomings of EU rules on finality | High | EU Commission | Legal Barriers | EPTF 8 (risk mitigation) | New |
| EPTF 11 | Legal uncertainty as to ownership rights in book entry securities and third party effects of assignment of claims | High | EU Commission | Legal Barriers | EPTF 9 (client asset protection) | GB 15 |
| IV. Tax Barriers | | | | | | |
| EPTF 12 | Inefficient withholding tax collection procedures | High | EU Commission and Member States | Tax Barriers | EPTF 4 (asset segregation) and EPTF 5 (shareholder registration) | GB 11 |
| V. Barriers on Watchlist | | | | | | |
| EPTF WL1 | National restrictions on the activity of primary dealers and market makers | Watchlist | | Watchlist | | GB 10 |
| EPTF WL2 | Obstacles to DvP settlement in foreign currencies at CSDs | Watchlist | | Watchlist | | New |
| EPTF WL3 | Issues regarding intraday credit to support settlement | Watchlist | | Watchlist | | New |
| EPTF WL4 | Insufficient collateral mobility | Watchlist | | Watchlist | | New |
| EPTF WL5 | Non-harmonised procedures to collect transaction taxes | Watchlist | | Watchlist | | GB 12 |

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