

Targeted consultation on integration of EU capital markets – Part 1

Fields marked with * are mandatory.

For technical reasons, the questionnaire has been divided into 2 parts.

This is part 1

Part 2 on **horizontal barriers to trading and post-trading infrastructures, asset management and funds, supervision, and horizontal questions on the supervisory framework** is available here:

[Respond to part 2](#)

Also note that the **question numbering might differ compared to the original pdf version** of the consultation document published on 15 April.

Introduction

Implementation of the [savings and investments union \(SIU\) strategy](#), as presented in the **Commission Communication of 19 March 2025**, is a top priority of the Commission. The [SIU](#) will be a key enabler of wider efforts to boost competitiveness in the EU economy by improving the way the EU financial system mobilises savings for productive investment, thereby creating more and better financial opportunities for citizens and businesses.

The development and integration of EU capital markets should be a market-driven process, but various barriers to that market-driven process must first be removed. Despite the harmonisation of regulatory frameworks and the existence of financial services passports, the persistent fragmentation due to these barriers is limiting the potential benefits of the EU's single market. Financial-market participants cannot fully benefit from scale economies and improved operational efficiency, or are not adequately incentivised to facilitate cross-border investments, raising the costs and restricting the choice of financial services available to businesses and citizens. By delivering better and cheaper financial services, the SIU will be a key element in boosting economic competitiveness.

More integrated and modernised EU capital markets should also allow us to explore and benefit from technological developments and innovation. The use of newer generation technologies such as distributed ledger technology, tokenisation of financial instruments, will allow us to empower our capital markets and equip them for the opportunities and challenges ahead.

The Communication on the SIU announced legislative proposals in the fourth quarter of 2025 to remove barriers to cross-border trading and post-trading, cross-border distribution of investment funds and cross-border operations of asset managers. This reflects [President von der Leyen's mission letter to Commissioner Albuquerque](#), which includes the task to “*explore further measures to [...] promote scaling up of investment funds, and remove barriers to the consolidation of stock exchanges and post-trading infrastructure*”. To this end, the Commission has already launched external studies to identify barriers affecting the consolidation of trading and post-trading infrastructures and the scaling up of investment funds in the EU. These barriers include those of an economic, legal (at national and EU level), technological, behavioural and operational nature.

Divergences in supervisory practices can also act as a specific barrier to capital-market integration, as financial-market participants operating across borders must manage different requirements across the single market. Accordingly, any strategy to integrate EU capital markets naturally leads to the need for more efficient and harmonised supervision. The aforementioned studies also seek to identify barriers to integration that are linked to supervision and the Commission will propose legislative measures in the fourth quarter of 2025 to strengthen supervisory convergence and to transfer certain supervisory tasks for capital markets to the EU level.

As part of implementing the SIU strategy, this targeted consultation seeks stakeholders' feedback on several issues and possible measures, legislative or non-legislative on 2 main areas:

- barriers in general to the integration and modernisation of trading and post-trading infrastructures, the distribution of funds across the EU and efficient cross-border operations of asset management
- and barriers specifically linked to supervision

In line with the [simplification communication](#), simplification will underpin all efforts to implement the SIU strategy and respondents are invited to indicate any areas in which regulatory simplification would be appropriate.

As a swift action is required under the savings and investments union strategy to untap EU enormous potential and give it the means to secure its economic future, this consultation must be completed within eight weeks. It is acknowledged that this consultation is extensive and to the extent that not all questions will be relevant to all stakeholders, respondents are invited to reply only to those questions that are most relevant to them.

Responding to this consultation

In this targeted consultation, the Commission is interested in the views of a wide range of stakeholders. Contributions are particularly sought from financial institutions and other markets participants, national supervisors, national ministries, the ESAs, EU institutions, non-governmental organisations, think tanks, consumers, users of financial services and academics. Market participants include operators and users of trading and post-trading infrastructures in the EU, notably trading venues, broker-dealers, issuers, institutional and retail investors, clearing counterparties (CCPs), central securities depositaries, trade repositories, other financial market infrastructure operators, asset managers, investment funds, regardless of where they are domiciled or where they have established their principal place of business.

This consultation should be seen as a distinct exercise from any targeted queries received by relevant stakeholders in relation to the currently ongoing external studies to identify barriers affecting the consolidation of trading and post-trading infrastructures and the scaling up of investment funds in the EU.

Responses to this consultation are expected to be most useful where issues raised in response to the questions are supported with a clear and detailed narrative, evidenced by data (where possible), concrete examples, legal references and qualitative evidence, and accompanied by specific suggestions for solutions to address them in the Regulation.

Urgent action is required to address persistent fragmentation that limits the benefits to be gained from the EU's single market and contribute to secure EU's prosperity and economic strength. All interested stakeholders are invited to reply by 10 June 2025 at the latest to the online questionnaires below.

Please note that to ensure a fair and transparent consultation process only responses received through the online questionnaires will be taken into account and included in the report summarising responses.

Recognising the comprehensive nature of this consultation, it has been decided to divide it into six key topics: simplification, trading, post trading, horizontal barriers to trading and post-trading, asset management and funds and supervision. This approach aims to streamline the response process and ensure each aspect is thoroughly addressed, thereby making it more manageable for respondents to engage with and contribute their insights effectively. By organising the consultation in this manner, the aim is to encourage detailed and focused feedback on each specific area, ultimately leading to a more robust and inclusive dialogue.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-markets-integration-supervision@ec.europa.eu.

More information on

- [this consultation](#)
- [the consultation document](#)
- [savings and investments union](#)
- [the protection of personal data regime for this consultation](#)

About you

* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
-

- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

* First name

Dusan

* Surname

Ristic

* Email (this won't be published)

dusan.ristic@deutsche-boerse.com

* Organisation name

255 character(s) maximum

Duetsche Börse Group

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

20884001341-42

* Country of origin

Please add your country of origin, or that of your organisation.

- | | | | |
|---|--|-------------------------------------|--|
| <input type="radio"/> Afghanistan | <input type="radio"/> Djibouti | <input type="radio"/> Libya | <input type="radio"/> Saint Martin |
| <input type="radio"/> Åland Islands | <input type="radio"/> Dominica | <input type="radio"/> Liechtenstein | <input type="radio"/> Saint Pierre and Miquelon |
| <input type="radio"/> Albania | <input type="radio"/> Dominican Republic | <input type="radio"/> Lithuania | <input type="radio"/> Saint Vincent and the Grenadines |
| <input type="radio"/> Algeria | <input type="radio"/> Ecuador | <input type="radio"/> Luxembourg | <input type="radio"/> Samoa |
| <input type="radio"/> American Samoa | <input type="radio"/> Egypt | <input type="radio"/> Macau | <input type="radio"/> San Marino |
| <input type="radio"/> Andorra | <input type="radio"/> El Salvador | <input type="radio"/> Madagascar | <input type="radio"/> São Tomé and Príncipe |
| <input type="radio"/> Angola | <input type="radio"/> Equatorial Guinea | <input type="radio"/> Malawi | <input type="radio"/> Saudi Arabia |
| <input type="radio"/> Anguilla | <input type="radio"/> Eritrea | <input type="radio"/> Malaysia | <input type="radio"/> Senegal |
| <input type="radio"/> Antarctica | <input type="radio"/> Estonia | <input type="radio"/> Maldives | <input type="radio"/> Serbia |
| <input type="radio"/> Antigua and Barbuda | <input type="radio"/> Eswatini | <input type="radio"/> Mali | <input type="radio"/> Seychelles |

- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
-
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo

- Heard Island and McDonald Islands
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena, Ascension and Tristan da Cunha
- Samoa
- San Marino
- Sao Tome and Principe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Slovakia
- Slovenia
- South Africa
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Sweden
- Switzerland
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- Timor-Leste
- Timor
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia

- Democratic Republic of the Congo
- Denmark
- Lesotho
- Liberia
- Saint Helena
- Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- Zimbabwe

* Field of activity or sector (if applicable)

- Auditing
- Central bank
- Central Counterparty (CCP)
- Central Securities Depository (CSD)
- Clearing house
- Credit institution
- Credit rating agency
- Energy trading company (non-financial)
- European supervisory authority
- Insurance
- Investment firm
- Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- Market infrastructure operation (except CCPs, CSDs, stock exchanges)
- Member State Authority other than a national supervisory authority
- Multilateral development bank
- National supervisory authority
- Organisation representing European consumers' interests
- Organisation representing European retail investors' interests
- Pension provision
- Public authority
- Publicly guaranteed undertaking
- Settlement agent
- Stock exchange
- System operator
- Technology company
-

Other

Not applicable

The Commission will publish all contributions to this targeted consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, ‘business association, ‘consumer association’, ‘EU citizen’) is always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

* Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

Anonymous

Only the organisation type is published: The type of respondent that you responded to this consultation as, your field of activity and your contribution will be published as received. The name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

Public

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

I agree with the [personal data protection provisions](#)

Select the topics

To the extent that not all questions will be relevant to all stakeholders, respondents are invited to reply only to those questions that are most relevant to them within the questionnaires they have chosen to respond to.

Choose the section(s) you want to respond to:

- 1. Simplification and burden reduction
- 2. Trading
-

3. Post-trading

For technical reasons, the questionnaire has been divided into 2 parts.

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1. Simplification and burden reduction

The focus of this targeted consultation is to remove barriers to enhance the integration of the EU capital markets and to support their modernisation. By doing so, it will contribute to simplify the framework of EU capital markets and support the Commission's initiative to make Europe faster and simpler. This section seeks stakeholders' view on general questions regarding simplification and burden reduction of the EU regulatory framework in the trade, post-trade and asset management and funds sectors. Respondents are asked to provide concrete examples to support answers provided, and, where possible, quantitative and qualitative information.

Question 1. Is there a need for greater proportionality in the EU regulatory framework related to the trade, post-trade, asset management and funds sectors?

- 1 - Strongly agree
- 2 - Agree
- 3 - Neutral
- 4 - Disagree
- 5 - Strongly disagree
- Don't know / no opinion / not applicable

Question 1.1 Please explain your answer to question 1 and provide suggestion on what form it should take:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

DBG believes that a key objective of the EU regulatory framework should be to foster a level playing field, competition, and promote efficiency. While acknowledging the diverse nature of market participants, we

believe that simplifying and reducing the burdens for all market participants should be a priority, enabling a dynamic and competitive European market. Specifically, streamlining reporting requirements, fostering harmonization across Member States, and reducing duplicative processes would significantly improve operational efficiency, freeing up resources for investments in innovation and growth, thus contributing to a more robust and competitive market. A simplified and efficient regulatory framework is crucial for maintaining the EU's global competitiveness.

We see a greater need for proportionality regarding product interventions. EU regulation has rightly set investor protection as one of its most important political objectives. DBG supports increased investor protection across sectoral legislation and actively promotes investors' access to capital markets and a broad spectrum of investment possibilities. We believe that proportionality is key and that overly prescriptive rules may disincentivize retail participation in capital markets. In this context, authorities shall consider taking a more cautious approach as regards product intervention mechanisms.

DBG fully shares ESMA's objective of safeguarding investor protection and agrees that product intervention measures at European level might occasionally be necessary for specific products, such as binary options and contracts for difference (CFDs). Product intervention measures should always be proportionate and appropriate, as exemplified by ESMA's measures on these instruments. Generally, the investor protection regime should not be a market entry barrier for new products and assets catering for investor needs (e.g. ETDs for risk management and hedging). Investor protection concerns typically arise from misconduct or overly burdensome provisions. Therefore, a prudent and nuanced approach is necessary when assessing the need for supervisory action against certain products.

As an important principle, MiFID II's safeguards and organizational requirements for regulated trading venues should be considered a differentiating factor. Policymakers and supervisors rightly acknowledged the beneficial contribution that these regulated trading venues bring to markets, particularly for asset classes in early development stages. Allowing products to transfer to transparent environments enables secure, transparent trading on established exchanges. These MiFID II achievements should be leveraged and enhanced for any investor protection measures. OTC-traded CFDs, vulnerable to fraudulent players, should not be categorized with products embedded within robust regulatory, functional, and technical environments, particularly standardized exchange-traded derivatives. Such structures mitigate counterparty risk and market abuse, offering high investor protection. Continuous market surveillance ensures fair pricing and early detection of market manipulation or misconduct.

Finally, we would like to highlight the very essential contribution to investor protection by market operators as well as financial market infrastructures in times of market stress. They organize fair and transparent markets to finance businesses and offer investment opportunities. They provide a resilient environment for investors, issuers and market members enabling them to fulfil their needs with arrangements that protect investors. Overregulation through product intervention could limit the availability of useful risk management tools for retail investors.

A balanced regulatory approach that preserves investor protection without curbing access to well-regulated products is more effective and essential.

Question 2. In particular, in relation to question 1 above, should the [Alternative Investment Fund Managers Directive \(AIFMD\)](#) threshold for sub-threshold AIFMs take into consideration for instance the market evolution and/or the cumulated inflation over the last 10-15 years?

- 1 - Strongly agree
- 2 - Agree

- 3 - Neutral
- 4 - Disagree
- 5 - Strongly disagree
- Don't know / no opinion / not applicable

Question 2.1 Please indicate what could be an appropriate fixed threshold, or whether the threshold should be set in a delegated act to allow easier adjustments based on a methodology that you are invited to outline in your response, and why:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We believe that a dynamic, evidence based approach to threshold setting would enhance the effectiveness and fairness of the AIFMD framework. We encourage the Commission to consider both inflation and market evolution as part of this recalibration.

Question 3. Would you see a need for introducing greater proportionality in the rules applying to smaller fund managers under AIFMD?

- 1 - Strongly agree
- 2 - Agree
- 3 - Neutral
- 4 - Disagree
- 5 - Strongly disagree
- Don't know / no opinion / not applicable

Question 3.1 Please explain and provide suggestion on what form it should take, indicating if possible estimates of the resulting cost savings:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Smaller AIFMs typically manage limited assets, operate with leaner teams, and pose minimal systemic risk. Yet, they are subject to many of the same requirements as large institutional managers. This creates a significant compliance burden that can deter market entry and innovation, divert resources from core investment activities, and reduce competitiveness, particularly for EU-based boutique managers.

The introduction of a tiered regulatory framework for AIFMs would scale obligations based on AUM, investor type, and operational complexity. This could take the form of: (i) a simplified compliance regime for sub-threshold AIFMs, with reduced reporting, lighter governance requirements, and streamlined risk management expectations; (ii) delegated authority for the European Commission to adjust thresholds and proportionality criteria periodically, based on inflation, market evolution, or supervisory insights; (iii) optional proportionality modules that allow national competent authorities to tailor requirements for specific fund types

or business models.

This proportionality framework could be implemented through: (i) a dedicated annex to the AIFMD Level 2 regulation outlining simplified obligations; (ii) ESMA guidelines to ensure consistent application across Member States; (iii) a delegated act mechanism to update thresholds and criteria without full legislative revision. A simplified regime could reduce compliance costs for smaller AIFMs, depending on the scope of activities and jurisdiction. This includes savings on legal and advisory fees, internal compliance staffing, reporting infrastructure and audit requirements.

Question 4. Are there any barriers that could be addressed by turning into a Regulation (certain provisions of) the

- [Alternative Investment Fund Managers Directive \(AIFMD\)](#)
- [Financial Collateral Directive \(FCD\)](#)
- [Markets in Financial Instruments Directive \(MiFID\)](#)
- [Undertakings for Collective Investment in Transferable Securities Directive \(UCITSD\)](#)
- [Settlement Finality Directive \(SFD\)](#)

- 1 - Strongly agree
- 2 - Agree
- 3 - Neutral
- 4 - Disagree
- 5 - Strongly disagree
- Don't know / no opinion / not applicable

Please explain your answer to question 4:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

While it may make sense to turn (certain provisions of) directives into a regulation to ensure a level playing field, a targeted approach must be taken, as for other instances a certain degree of flexibility and discretion to Member States is helpful. In general, the directive format, while allowing for national flexibility, has led to several persistent barriers such as regulatory fragmentation due to divergent national transpositions (particularly in fund marketing, investor disclosures), cross-border inefficiencies (hindering seamless operation of fund managers, custodians, and CSDs across jurisdictions), and duplicative authorization and reporting requirements (especially under AIFMD and UCITSD). These barriers increase compliance costs, delay market entry, and reduce the competitiveness of EU financial services. Converting certain provisions from directives into regulations can ensure uniform application across the EU, reducing legal uncertainty and compliance complexity; facilitate cross-border scalability for fund managers and infrastructure providers; streamline supervisory practices by eliminating differing national implementation (processes); and support

innovation by enabling consistent treatment, e.g. of digital assets and DLT-based services.

As further examples: Converting core operational and supervisory provisions, such as fund passporting, disclosure templates, and reporting obligations, into a regulation or harmonizing investor protection and conduct rules through delegated acts or ESMA guidelines to preserve flexibility where needed.

Looking at MiFID, we also see that certain provisions would benefit from being turned into a regulation while others profit from granting some discretion. In the status quo, MiFID creates a general regulatory framework to bring de facto rules and requirements into play but also leaves some discretion for national authorities to decide on the methods/ways in which they will implement those rules and requirements. National authorities have the flexibility to decide on a national level to stick with the base framework or to be stricter than other authorities. In our opinion, turning MiFID into a Regulation, in theory merging MiFID and MiFIR, may result in the opportunity to put concrete requirements for all jurisdictions into law and create more of a level playing field. As an example, that could be helpful in the “Direct Electronic Access (DEA)” topic. For DEA, having concrete requirements and harmonization in the authorization requirements for DEA clients, including third country clients, would be beneficial as currently it is open for different interpretations by jurisdictions and trading venues. On the other hand, we also highlight that discretion power of trading venues should not be disregarded in some cases where it is beneficial in the potential scenario of turning MiFID into a regulation.

For example, MiFID Article 48 and RTS 7 include a general regulatory framework for the application of circuit breakers by trading venues, and they leave discretion power to trading venues, regarding deciding on parameters activating circuit breakers, on instruments to apply it and when to trigger it. Trading venues also have discretion not to disclose sensitive parameters. This is important because the application of circuit breakers cannot be assessed based on concrete criteria as different jurisdictions have different market structures, different instruments have different volatility parameters, and some trading venues have other systems to handle massive volatility. Here, granting certain discretionary powers is considered beneficial.

Question 5. Are there areas that would benefit from simplification in the interplay between different EU regulatory frameworks (e.g. between asset management framework and MiFID)?

- 1 - Strongly agree
- 2 - Agree
- 3 - Neutral
- 4 - Disagree
- 5 - Strongly disagree
- Don't know / no opinion / not applicable

**Question 5.1 Please explain and provide suggestions for simplification.
Also if possible present estimates of the resulting cost savings:**

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Some areas can benefit from simplification in the interplay between different EU regulatory frameworks. A positive example is that in the recent MiFID RTS 7 review, we see an alignment with the Digital Operational Resilience Act (DORA) by removing redundant/duplicative articles from RTS 7 for simplification as similar

ones already exist in DORA. This way, organizational requirements for trading venues become less burdensome.

Further suggestions for simplification include:

(I) Investor Protection: Harmonize core conduct and disclosure rules across MiFID, AIFMD, and UCITS.

(II) Fund Distribution: Align marketing rules and notification procedures across frameworks to reduce fragmentation.

(II) Sustainable Finance: Both SFDR and Taxonomy Regulation, in principle, serve the purpose of decreasing greenwashing, increasing transparency, and incentivizing trading green products. In general, both guide market players with “what investments have sustainable objectives/characteristics” and check firms’ sustainability levels. These regulations share even the same RTS to follow specificities of the regulation in level 1. However, implementing two very similar regulations simultaneously, and with several differing terminologies and definitions, is complex and burdensome for the industry. Streamlining these two regulations would reduce inconsistencies/redundancies, make it easier for market participants to comply with sustainability requirements and reduce compliance costs.

(IV) Reporting

In the reporting area, requirements have increased over the years, and we welcome potential efficiency gains by simplification in the interplay between different EU regulatory frameworks.

a) Reducing Double Reporting

- Currently, reference data under RTS 23 is used for both transaction reporting and transparency calculations. A streamlined approach could harmonize data fields across these RTSs to eliminate redundant requirements.

- The alignment of identifiers (such as LEIs and ISINs) across RTS 22, RTS 23, and RTS 24 could reduce inconsistencies and improve data accuracy.

b) Streamline Duplicative CCP Reporting (EMIR/MiFIR/REMIT): Overlapping data requirements and reports under EMIR, MiFIR, and REMIT create redundant effort. Examples include identical data fields reported under Art. 9 EMIR & Art. 8 REMIT, and ETD transaction reporting under both Art. 9 EMIR and Art. 26 MiFIR. Further complexity arises from redundant reporting under EMIR, MiFID II, MiFIR, REMIT, and MAR, particularly for energy derivatives. This is even more burdensome considering many entities are in addition subject to overlapping non-EU regimes (US, Japan, Canada) since equivalence is only given one way. For each reporting obligation, several IT connections with numerous supervisory authorities such as ACER, ESMA, EC, Trade Repositories (TRs) and national competent authorities (NCAs) or even non-EU authorities are necessary. We recommend enacting a ‘report once’, to ensure that CCPs do not have to provide duplicated data. Specifically, overlapping requirements are contained in Art. 9 EMIR & Art. 8 REMIT; and ETD transaction reporting is covered both under Art. 9 EMIR and Art. 26 MiFIR.

c) Standardizing Data Formats

- ESMA reviews RTS 22 and 24 to ensure consistency with EMIR and SFTR to have unified data standards.

- A common template for order book data (RTS 24) was proposed to simplify record-keeping for trading venues.

d) Improving Data Interoperability

- The integration of RTS 23 reference data into transaction reporting (RTS 22) could ensure that firms do not need to report the same data multiple times.

- Introduction of JSON reporting format for all MiFIR reporting requirements, excluding those on (pre- and post-trade transparency) real-time data, can improve automation and reduce manual intervention.

e) Develop harmonized reporting templates.

f) MiFIR reporting for AIFMs: Lastly, when considering extending MiFIR reporting requirements to AIFMs, we

call authorities to explore if and to which extent this may result in undue reporting burdens for the affected management companies. In any case, when extending the reporting requirement to AIFMs, the provision of the information required for MiFIR reporting purpose should remain in the sole responsibility of these entities. However, if the AIFMs are required to report under MiFIR, this should be done the same way it is envisaged in the AIFMD Art. 24: the manager should report on behalf of its funds.

Question 6. Would the key information documents for packaged retail and insurance-based investment products (PRIIPs KID) benefit from being streamlined and simplified?

- 1 - Strongly agree
- 2 - Agree
- 3 - Neutral
- 4 - Disagree
- 5 - Strongly disagree
- Don't know / no opinion / not applicable

Question 6.1 Please explain and provide suggestions for simplification. Also indicate what should be prioritised and if possible present estimates of the resulting cost savings:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We strongly agree that KIDs for PRIIPs should benefit from being streamlined and simplified. Exchanges should either have a generic KID in place for the level 1 (EU No 1286/2014) or ETDs should be excluded from the scope. It is practically not easy and necessary to provide KID for every ETD product with its different asset classes, options, futures, different maturities. Exchanges manufacturing exchange traded derivatives (ETDs) are not involved in the marketing and distribution of these products and have no knowledge of the end investor. Exchanges are therefore unable to complete certain sections of the KID, while others are not applicable at all, e.g., exchanges do not know the actual costs that brokers charge end investors. Exchanges provide in the costs section only the costs they charge brokers, which may mislead retail investors as the information on costs is incomplete, and exchanges are unable to fill the information gap. With regard to performance information, ETDs do not promise any performance as they are purchased primarily for hedging purposes. We therefore recommend excluding ETDs from the scope of the PRIIPs Regulation. ETDs are not designed for a specific target group. The structure of the KID does not fit the specific features of an ETD. In addition, ETDs were originally not intended to fall within the scope of the PRIIPs Regulation as it focuses on investment funds and other long-term investment products.

Furthermore, we would like to recall the original objectives of the PRIIPs KID: Providing a short and understandable disclosure document that provides retail investors with essential product information they need to make informed investment decisions. The Retail Investment Strategy could expand the KID even further by adding the sections "product at a glance" and "How environmentally sustainable is this product?", as proposed by the Commission. The first new section would not add value for retail investors as its objective is the same as the entire KID document: To provide a summary of the main product features. The introduction of the sustainability section should also be questioned, since not all financial products require a sustainability section due to their characteristics. In any case, duplication of information should be avoided

and information that is not directly necessary for the investment decision should not be included in the KID. Section headings should be short and clear “labels” rather than (sometimes lengthy) questions. Question-type headings should only be used for documents that are likely to be used only once, not for those that users will refer to regularly. For example: "What are the risks and what can I get out of it?" can be replaced by "Risk and reward profile" and "How long should I hold this product and can I take money out early?" by "Investment horizon" or "Time horizon".

Finally, consumer testing showed that the KID is not widely used and understood by retail investors. 69% of clients in a survey conducted on behalf of the German Banking Industry Committee did not read the KID.

Both performance scenarios and implicit transaction costs are not easy to understand from an investor perspective. Regarding performance scenarios, the KID should only disclose past performance information (directly in the document, not only through a link), but no future performance scenarios. This approach was successfully tested with consumers in the context of UCITS KIID. When it comes to transaction costs, we propose to remove the requirement to calculate implicit transaction costs, as recently proposed by the FCA. These costs are in fact an estimate, which may be negative and reduce the explicit costs, and are based on a costly methodology, the implementation of which is detrimental to investors given the (very low) amount of these estimated implicit costs in relation to the calculation costs incurred – ultimately paid by the investor. The fund industry welcomes this approach and it's of the view that the EU legislator should also abandon the requirement to calculate implicit transaction costs, in order to ensure consistency.

Question 7. Do you have other recommendations on possible streamlining and simplification of EU law, national law or supervisory practices and going beyond cross-border provision?

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

Question 7.1 Please list your recommendation and suggested solutions. Please rank them as high, medium or low priority:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Simplify ETD Reporting (EMIR): Current ETD reporting regime is highly redundant as, unlike e.g. the US, it requires:

- A) double-sided reporting leading to double efforts and need for reconciliation with no added benefit.
- B) ETD position and transaction reporting, even though relevant default and market risk is only with ETD positions and not with transaction. Other jurisdictions like US don't require any ETD reporting, and in the EU, ETD transactions are already covered by MiFID II.
- C) reporting of zero positions, which has no usefulness for regulators.

EC should descope ETD reporting from EMIR altogether or at least ETD transaction reporting. If ETD position reporting is kept, remove requirement to report valuations of zero positions. Further, rules should move to one-sided reporting to remove duplication of effort and create a level playing field with the US.

Streamline Securities Financing Transaction Regulation (SFTR) Reporting for CCPs: SFTR reporting requirements contain aspects not useful or needed from a regulatory perspective, while creating unnecessary burden for CCPs and market participants. We recommend that:

- A) Pre-novated trades should not be reported, as these will be deleted in any case (after novation or

novation rejection).

- B) Cleared SFT reporting should become one sided by the CCP, as additional reporting by seller and buyer adds no value.
- C) ISIN should be sufficient to clearly identify securities used as collateral, other static data fields should be removed.
- D) Tolerances for reconcilable fields for trade repository reporting should be increased, to reduce meaningless reconciliation errors.

Streamline clearing model treatment in G-SIB Framework to provide relief for clearing members (CMs): The G-SIB framework favors "agency" clearing model (predominant in US) over "principal-to-principal" model (more common in EU), while underlying risk for CM is the same. This disincentivizes global CM banks to offer balance sheet capacity for client's OTC derivative activities which involve central clearing at EU CCPs. We recommend aligning the treatment of both clearing models under Basel G-SIB framework for risk indicators, aiming to boost the competitiveness of EU clearing.

Address Punitive Treatment of Reverse Repos under the Liquidity Coverage Ratio (LCR): Reverse repos traded on an open basis have no final legal maturity date but can be called with 24hrs notice. Based on LCR regulation legal text, the lack of a legal maturity date means that open reverse repos cannot be included in cash inflows maturing within 30 days, with a punitive impact on bank's LCR management. While EBA has issued a Q&A with forthcoming guidelines in support of a more economic approach to the treatment of open reverse repo in the LCR calculation, this still puts the onus of proof on banks to demonstrate the 24hrs notice provisions. We recommend amending CRR to explicitly allow open reverse repo positions with documented 24hr call provisions to be included within the scope of cash inflows maturing within 30 days. Such change would boost attractiveness and liquidity of the EU repo market, benefiting overall financial stability considering importance of repo market for liquidity management.

Avoid further expansion of Review and Evaluation (R&E) reporting for CSDs: According to CSDR, Art. 22 and DR 2017/392, Art. Art. 40 (1, 2a), CSDs need to provide regular R&E reports. On top of a considerable number of required R&E reports, there are further event driven/periodic CSDR reports provided to NCAs upon request. Furthermore, ESMA proposed in its Consultation Paper 16 new R&E reports and changes to 14 existing reports. Disregarding CSDR refit, NCAs can request further information (report) under DR 2017 /392 Art. 40 (2c). We urge to avoid further expansion of reporting requirements, reducing burden.

DORA:

- A) DORA third party management requirements for the entire ICT sub-contracting chain are extremely onerous. We suggest limiting the scope to the first three tiers of ICT subcontractors, whose failure would materially impact the financial entity's ICT-Service. DORA must ensure in level 2/3 that all critical 3rd parties contracting with the financial sector (material outsourcing) are also DORA regulated.
- B) The broad definition of ICT services includes standard hardware and software services from broad range of standard IT suppliers, resulting in disproportionate administrative burden. Therefore, we propose adjusting the ICT services definition to exclude such services from standard IT suppliers.

Question 8. Does the EU trade, post-trade, asset management or funds framework apply disproportionate burdens or restrictions on the use of new technologies and innovation in these sectors?

- 1 - Strongly agree
- 2 - Agree
- 3 - Neutral
- 4 - Disagree
- 5 - Strongly disagree

- Don't know / no opinion / not applicable

Please explain your answer to question 8 and provide examples:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Burdensome CCP Approval Procedures: ESMA's draft RTS for CCP approval procedures under EMIR 3.0 will increase complexity and burden, hindering time-to-market and innovation. Whilst applying to CCPs, trading venues are also impacted, as their ability to bring innovative products to market may depend on the CCP gaining approval to clear that product. Under the current RTS drafts, service extensions and changes to models, that would have previously not required any regulatory approvals, would have to go through the accelerated procedure, while many minor changes would be subject to the regular process. Extensive documentation requirements for CCPs, would mark a burden increase, particularly the proposed lookback period for model changes. Introducing a broader scope of minor changes benefiting from accelerated procedures and exemptions, and more proportionate documentation for ex-ante approvals, would improve CCPs' (and indirectly trading venues') ability to innovate. To allow ESMA to provide more flexible RTS, it may be beneficial to reduce the prescriptiveness of the L1 text as part of the EMIR review clause for the new regime.

Barriers to Collateralized Lending Solutions: FMI's created unique collateralized lending solutions tailored to needs of the market for baskets with a broad spectrum of collateral issuers and substitutability intraday. While baskets are defined according to credit quality and issuer standards, precise collateral received can change at any time, which makes it challenging to apply prescriptive national interpretations of the Large Exposures rules, which require banks engaging in collateralized lending to report exposures to the collateral issuer rather than counterparty when risk of the counterparty is deemed greater than risk of the collateral issuer. Due to conservative national interpretation of these rules, banks are required to establish credit limits for issuers of any collateral received. To avoid gold-plating, uniform application of Large Exposure standards should be applied across EU jurisdictions which is not prejudicial to collateralized lending solutions that were tailored to market needs.

Facilitate DLT settlement solutions by CSDs: Art. 39 CSDR requires CSDs to provide settlement services only within a settlement system in the meaning of the Settlement Finality Directive (SFD), requiring full operator control over the underlying technical infrastructure. This prevents CSDs from developing innovative DLT-based settlement solutions. While the DLT Pilot Regime addresses this issue, its restrictive scope and time limit discourage investment in DLT solutions, leading to an innovation barrier. Removing restrictions of Art. 39 CSDR and SFD would enable CSDs to make use of decentralized settlement infrastructures and to choose to apply for recognition as securities settlement system in the meaning of SFD or not as appropriate for the respective use case. In addition, CSDR outsourcing rules should not apply to a decentralized system.

Promote digital wholesale CBDC: To boost future capital market growth and build a fully digital SIU, a robust digital infrastructure is crucial. This involves establishing an EU framework for digital euro in the wholesale sector (wCBDC), that transfers the stabilizing role of central bank money (CeBM) into digital environments. Building on the success of the ECB Trials, continued efforts and concrete steps are needed. Robust governance structure and stakeholder collaboration should be prioritized for timely implementation. A meaningful forward-looking step would be to clarify, as part of the planned review of CDR 153/2013 EMIR, that CCPs may accept wCBDC as cash collateral.

Facilitate digital cross-border issuance: Diverging regulatory and technical standards for issuance of a security lead to legal uncertainty, additional costs. A security following the EU standard could be easily issued in various Member States, instead of having to follow different national laws. Hence, standardization of terms and conditions, harmonization of products and classes of products and a more harmonized EU framework for securities are crucial, or at least a new EU framework to standardize elements of issuance.

Asset Management and Fund Distribution: Regulatory fragmentation across AIFMD, UCITS, MiFID creates operational complexity for digital fund servicing models. Divergent rules on investor protection, marketing, and reporting hinder the development of scalable, cross-border digital platforms.

Innovation in Private Markets and Transfer Agency: While digital transfer agencies and tokenization solutions are under development, regulatory uncertainty around investor onboarding, fund registration, and cross-border servicing continues to delay full-scale deployment. Remaining legal uncertainty around settlement finality, asset servicing, and cross-border recognition of digital assets limits scalability of tokenized securities and smart contract-based workflows.

Question 9. Would more EU level supervision contribute to the aim of simplification and burden reduction?

- 1 - Strongly agree
- 2 - Agree
- 3 - Neutral
- 4 - Disagree
- 5 - Strongly disagree
- Don't know / no opinion / not applicable

2. Trading

This section seeks stakeholders' feedback in the trading space on the nature of barriers to integration, modernisation and digitalisation of liquidity pools and on several issues that can be grouped into two key objectives/areas, as well as their interplay: barriers to cross-border operations in the trading space and barriers to liquidity aggregation and deepening. Respondents are asked to provide concrete examples to support answers provided, and, where possible, quantitative and qualitative information.

Please note that regulatory barriers to the operation of groups and their capacity to leverage intra-group synergies is addressed in the separate questionnaire on horizontal barriers.

2.1. Nature of barriers to integration, modernisation of liquidity pools

Question 1. What is your assessment of the current level of integration of liquidity pools across the EU?

- 1 - Absent
- 2 - Inefficient
- 3 - Neutral
- 4 - Slightly efficient
- 5 - Efficient
- Don't know / no opinion / not applicable

Question 1.1 What are the barriers that limit the level of integration of liquidity pools in the EU?

Please select as many answers as you like

- Legal/regulatory barriers at EU level
- Legal/regulatory barriers at domestic level (including also insolvency law, tax, etc., and including barriers resulting from goldplating of EU law)
- Non-regulatory barriers (market practices)
- Supervisory practices
- Other barriers

Please specify to what other barriers you refer in your answer to question 1.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

At the European Union level, a fundamental challenge lies in the absence of harmonized regulations governing both the broader economy and financial markets. This regulatory fragmentation significantly impedes the development of a truly integrated internal market. According to estimates by the International Monetary Fund, administrative barriers to cross-border service provision within the EU are equivalent to a 110% tariff, underscoring the scale of inefficiency caused by divergent national rules. Despite the existence of the Single Market, these inconsistencies continue to obstruct the free movement of capital and services.

At the domestic level, legal frameworks differ substantially across member states in key areas such as bankruptcy law, contract enforcement, investor protection, and taxation. These disparities create legal uncertainty and elevate transaction costs for cross-border financial activities. As a result, EU-based firms face structural disadvantages when attempting to scale operations across the bloc. This fragmentation may be cause to smaller average issuance sizes in EU capital markets compared to the United States, where a more unified legal and regulatory environment supports deeper and more liquid markets. Addressing these foundational discrepancies should be prioritized before introducing new EU-level regulations, as additional layers of regulation risk increasing compliance burdens without resolving the root causes of market fragmentation.

Beyond regulatory issues, several non-regulatory factors also hinder the development of EU capital markets, particularly on the demand side. Retail investor participation remains low due to a combination of historical, structural, and behavioral factors. Older generations, shaped by the legacy of war and economic instability, tend to favor low-risk, bank-based savings over capital market investments. Furthermore, negative experiences with underperforming and high-cost financial products—such as Germany’s “Riester Rente”—have eroded public trust in investment vehicles. In many EU countries, robust public pension systems reduce the perceived need for private retirement savings, further dampening demand for capital market instruments. Compounding these issues is a general lack of appealing investment products, insufficient tax incentives, and widespread financial illiteracy, all of which discourage retail engagement with capital markets. To address these challenges, a comprehensive strategy is required. This should include the introduction of targeted tax incentives to encourage long-term investment, the implementation of standardized value-for-money benchmarks to enhance transparency, and the expansion of financial education initiatives to improve investor literacy. Additionally, reforms to the Systematic Internalizer regime and simplification of waiver rules could help increase lit trading and improve market transparency and integrity.

Structural market barriers further constrain the EU capital market. The limited number of large, liquid issuances is a significant obstacle. For example, only 50 out of 3,500 listed equities on Deutsche Börse are sufficiently liquid to be included in the DAX index. This lack of scale limits the ability of institutional and

international investors to engage with the broader market. Moreover, the incomplete implementation of the Single Market continues to impose substantial economic costs. According to the European Economic and Social Committee, fragmentation costs the EU economy up to €500 billion annually—€228 billion in goods and €279 billion in services—despite the Single Market contributing an estimated 6–8% to EU GDP. This fragmentation not only increases costs for businesses and consumers but also restricts the competitiveness and growth potential of EU firms.

The EU also lags behind in the development of a globally competitive technology sector, which limits the availability of high-growth investment opportunities and reduces the attractiveness of EU capital markets.

To address these issues, policy measures should focus on harmonizing listing requirements and tax regimes across member states, establishing a unified EU prospectus passporting system, and promoting the development of a competitive technology sector and private data economy. Policymakers should also avoid regulatory interventions, such as price controls, that could deter innovation and investment in these critical areas.

Question 2. Please provide concrete examples of the identified barriers.

In case of legal barriers (excluding on the “group operations” dealt with in the section on horizontal barriers), please indicate the relevant provisions.

Where possible, please provide an estimate of resulting additional costs and /or impacts on execution quality:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Overall, while significant strides have been made towards integration, ongoing efforts are needed to fully harmonize the regulatory practices and avoid inconsistencies when it comes to implementation of regulatory obligations. The key challenge for derivatives is the lack of development within the trading obligation which still excludes the largest share of derivatives from being traded at transparent venues limiting access and transparency from being broadened. Additionally, despite efforts to harmonize regulations, there is still a noticeable imbalance in regulatory requirements between different types of execution venues, such as Systematic Internalizers (OTFs), Multilateral Trading Facilities (MTFs), and Regulated Markets. Systematic Internalizers operate with more discretion compared to MTFs and exchanges, which follow non-discretionary rules. This discrepancy can lead to uneven playing fields and regulatory arbitrage. This regulatory arbitrage creates a “loophole” which brings unlevel advantageous to trading facilities which are regulated in a less strict way than others. Hence, we face with a threat of a trend of more internalization and shift away from transparent venues to OTC, off-book and dark trading.

2.2. Regulatory barriers to cross-border operations in the trading space

Question 3. What is your assessment of the current level of harmonisation of EU rules applicable to:

	1 (insufficiently harmonised)	2 (poorly harmonised)	3 (partially harmonised)	4 (sufficiently harmonised)	5 (fully harmonised)	Don't know - No opinion - Not applicable
Regulated markets and their operators	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other trading venues and their operators	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The provision of execution of orders on behalf of clients	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The provision of reception and transmission of orders	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 3.1 How necessary would you deem, for the purpose of fostering cross-border operations, an increase in the level of EU harmonisation of rules applying to:

	1 (not needed)	2 (rather not needed)	3 (neutral)	4 (rather needed)	5 (highly needed)	Don't know - No opinion - Not applicable
Trading venues and their operators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The provision of execution of orders on behalf of clients	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The provision of reception and transmission of orders	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 4. For which areas do you believe that further harmonisation would be beneficial?

Please select as many answers as you like

- Rules of trading venues (i.e. exchange rulebook)
 - Approval of rules of trading venues and oversight over their implementation /changes
 - Governance of the market operator
 - Open/fair access provisions
 - Other areas
-

Question 5. Please explain and provide concrete examples of areas where a lack of harmonisation might hamper the full harnessing of the benefits of the single market and, where relevant, differentiate between regulated markets and other trading venues (notably, multilateral trading facilities (MTFs), small and medium enterprises (SME) growth markets and organised trading facilities (OTFs)).

Please provide an estimate of costs and benefits of greater harmonisation in each specific case, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Our assessment reveals significant shortcomings in the current level of harmonization of regulatory practices across the EU, affecting regulated markets, trading venues, and the provision of cross-border services. This fragmentation creates significant challenges and inefficiencies that limit the attractiveness of EU markets for both issuers and investors, hindering the development of a truly integrated and efficient capital market in the EU. As an example, single market maker venues are accepted and registered as regulated markets in some jurisdictions, such as Germany, while their business model would not be permitted in others. As noted in our response to Q55, the favorable treatment of single market maker venues in certain jurisdictions raises concerns about regulatory arbitrage, distortion of incentives, and uneven playing field.

The current regulatory framework discourages cross-border investment and limits the ability of EU trading venues to compete effectively on a global scale. Existing market landscape, characterized by a high number of trading and execution venues and a significant volume of dark trading, undermines market transparency and price discovery.

Therefore, we stress the need for increased harmonization of listing requirements, waiver regimes, pre- and post-trade transparency for all instruments, regulatory frameworks governing SIs and dark pools, and data reporting as far as sensible. Harmonized application of EU rules would promote a level playing field, reduce compliance costs, and facilitate cross-border operations. This would not only benefit market participants but also enhance the overall efficiency and competitiveness of EU capital markets, attracting more investment and fostering innovation.

We believe that addressing the identified harmonization and enforcement challenges is critical to unlock growth potential for EU capital markets, drive economic prosperity, and strengthen the EU's global competitiveness.

2.3. Non-regulatory barriers (market practices) to liquidity aggregation and deepening

2.3.1. Integrating liquidity pools across the Union

Question 6.1 Can the use of new digital technology solutions contribute to integrating liquidity pools or connecting different pools across the EU?

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

Please explain your answer to question 6.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 6.2 What barriers do you face in implementing such technology-based solutions? Please explain:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Intermediaries and venues interconnections

Question 7. What is your overall assessment of the level of direct connection (i.e., ability to directly execute orders) of EU investment firms to execution venues across the Union, especially to execution venues located in a different Member State than that of the investment firm?

- 1 - Absent

- 2 - Inefficient
- 3 - Neutral
- 4 - Slightly efficient
- 5 - Efficient
- Don't know / no opinion / not applicable

Please explain your answer to question 7:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

To our knowledge, EU investment firms do not have issues connecting directly to trading venues (RMs and MTFs) across the EU. Indeed, connection fees do not differ depending on the firm's domicile. We however understand that the investment firm might not connect to some trading venues for commercial reasons as they do not have demand for the instruments listed on those venues or because the MTF for example offers only trading under a pre trade transparency waiver which does not fit in the best execution policy established by the firm. Moreover, the term 'execution venues' encompasses bilateral venues like Systematic Internalizers and for those venues, we would recall that SIs can choose their clients and discriminate between them, which is not the case of trading venues.

Question 8. What is your overall assessment of the level of indirect connection (i.e., ability to execute orders via another intermediary) of EU investment firms to execution venues across the Union, especially to execution venues located in a different Member State than that of the investment firm?

- 1 - Absent
- 2 - Inefficient
- 3 - Neutral
- 4 - Slightly efficient
- 5 - Efficient
- Don't know / no opinion / not applicable

Please explain your answer to question 8 and provide a comparison of cost efficiency of direct and indirect connection:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

To our knowledge, EU investment firms do have access to a range of rather large investment firms and banks acting as brokers for a wide range of EU instruments and this option is often used by investment firms as it appears as a cost efficient solution with the larger broker or a bank internalizing costs like direct connection fees to trading venues but also proposing additional services like transaction reporting which

requires a level of expertise the investment firm might not have. Moreover, trading venues also offer direct electronic access service to their members which can render indirect connection to the exchange more efficient.

Question 8.1. If you think therefore that there is room for improvement in terms of connection of investment firms to multiple execution venues across the Union, how big of a barrier to the creation of deeper and more integrated pools of liquidity in the EU would you consider this suboptimal level of connection?

- 1 - Not a barrier
- 2 - An insignificant barrier
- 3 - Neutral
- 4 - A significant barrier
- 5 - A very significant barrier
- Don't know / no opinion / not applicable

Please explain your answer to question 8.1 and provide an explanation and, where available, estimate(s) of costs that this drives:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We see room for improvement in terms of connection of investment firms to multiple execution venues for specific trading models which will by their construct offer only a limited number of instruments. This is particularly true for retail platforms like single dealer models where the retail broker would send client orders to an exchange where a single systematic Internalizer is the counterparty to all trades. In that case, and if the best execution policy of the broker is to select only one venue (which is allowed), then the offering will be limited to the instruments the SI is willing to trade.

We would also see limitations not at the trading level but rather at the post trading level which remains fragmented and has undoubtedly an impact on the decision of an investment firm to propose a large number of instruments especially in another Member State. The costs of a fragmented post-trading landscape will impact commercial decisions, and those costs would remain even if the trading set up is efficient.

Question 8.2.1. What are in your view the causes of this insufficient level of connection? Please explain:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 8.2.2. Could the more advanced and developed use of new technology (e.g. API aggregation) and technology-based solutions contribute to achieving higher levels of connection?

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

Question 8.3. What is your overall assessment of the potential negative impact of that situation on retail investors in particular?

- 1 - No impact
- 2 - Almost no impact
- 3 - Slightly negative impact
- 4 - Significantly negative impact
- 5 - Highly negative impact
- Don't know / no opinion / not applicable

Please explain your answer to question 8.3:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please refer to our response to question 8.1. The specificities of the retail market shall be dealt with looking at the specific set up of retail trading but also considering other aspects as financial literacy, home bias, tax regimes, which hinder retail participation. It is crucial to adopt a holistic view and not to assimilate limitations in retail trading with those for institutional trading.

Question 9. Are there any barriers to the use of technology-based solutions that contribute to achieving higher levels of connection?

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

Please specify what these barriers are, and whether they are of a policy, regulatory or supervisory nature:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The application of the Digital Operational Resilience Act (DORA) regulation is, to some extent, a barrier to the use of technology-based solutions that contribute to achieving higher levels of connection besides the improvements it brings to the market. Our observation in general is that DORA has a very broad interpretation by different market players. DORA puts limitation on firms to prove that they are not overly

dependent on one or small number of providers to avoid concentration risk and it puts location restriction as well i.e., when selecting the carrier providers. This limits a firm's ability to use certain providers if these are already heavily used in the market i.e., critical ICT service providers. As an example, as Eurex, we can only buy carriers, for our connectivity lines, from providers who signed DORA even if they are less quality providers than the ones who did not sign DORA. DORA adds some new/more compliance burdens i.e., more documentation, more reporting, more checks etc. although firms have been using the same systems for a very long time and did not have many issues. As a result, DORA might further increase concentration and dependency on only a few providers in the industry. Therefore, DORA makes clients more reluctant to use the leased connectivity lines (although these are better) as this could lead them to comply to more requirements. They prefer internet, which is less reliable/secure, over the leased lines. All in all, in our opinion this regulation intervenes negatively with to an already well functioning system and hinders higher level of connection.

Question 10. Are you aware of instances where intermediaries charge their clients higher fees for executing clients' orders on a trading venue in a Member State that is different from the Member State of the intermediary?

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

Question 10.1. What are the reasons why intermediaries charge their clients higher fees?

Please select as many answers as you like

- It is more expensive for an intermediary to connect to a trading venue that is located in another Member State, because the trading venue charges more than to an intermediary located in its Member State;
- It is more expensive for an intermediary to connect to a trading venue that is located in another Member State, because of complex cross-border post-trading arrangements;
- Intermediaries are not directly connected to trading venues located in another Member State and therefore need to rely on other intermediaries, hence increasing the cost;
- It is a commercial policy at the intermediary's level to apply different fees to clients depending on whether the order is executed in another Member State, independently from what exchanges charge that intermediary;
- Other

Please explain your reasoning for your answer to question 10.1 and provide relevant data, where available:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

To our knowledge, some intermediaries may charge their clients higher fees when executing orders on trading venues located in other Member States. This is however not due to different fees applied by trading venues to their members depending on their location. The different platforms operated by DBG do not charge different fees depending on the location of the broker. The fees, be it connection fees or trading fees, are transparent and available on our website and we do not discriminate between our members (see our pricing list with connection fees here: https://www.xetra.com/resource/blob/2689138/cdf8a2f417ee9bc9129355663761c71c/data/2025_03_01_dbag_preisv_t7_xontro_en.pdf)

Please specify where any of this could also be relevant in the context of the same Member State with multiple trading venues.

Please provide detail on costs incurred by intermediaries of establishing multiple connections to trading venues

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 11. Are there any barriers that may limit the possibility for trading venues to offer trading in financial instruments that have been initially admitted to trading on another trading venue?

Please reply differentiating by type of trading venue:

	Yes	No	Don't know - No opinion - Not applicable
Regulated markets	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
MTF	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
SME Growth Markets	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Focus on ETFs

Question 12. How would you rate the impact of multiple ETF listings in the EU on the attractiveness of the market in comparison to other third-country markets?

- 1 - Very negative
- 2 - Rather negative
- 3 - Slightly negative impact
- 4 - Rather positive
- 5 - Very positive
- Don't know / no opinion / not applicable

Question 13. In your view, which of the following are the most relevant drivers for multiple listings of ETFs in the EU?

Please select as many answers as you like

- Market practices pertaining to investment firms (e.g. lack of direct connection to venues situated in a different Member State than the one where the investment firm is located)
- Market practices pertaining to trading venues
- Market practices pertaining to CSDs
- Barriers linked to interoperability between CCPs
- Supervisory practices
- Other barriers (including legal barriers at EU level, legal barriers at national level, tax)

Please explain your answer to question 13. and provide concrete examples, and where possible estimates of costs.

In case of legal barriers to a more integrated trading landscape for ETFs leading to necessary multiple listings, please indicate the relevant provisions and what legislative measures you would recommend to solve this issue:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not consider that any of the drivers mentioned above has a significant impact on multiple listings of ETFs in the EU. Moreover, we do not believe that multiple listings of ETFs are the consequence of "barriers" per se; to the contrary, we see that trading on ETFs in the EU is characterized by a very competitive environment between exchanges combined with an investor's home bias resulting in the same instrument being listed on more than one trading venue. Indeed issuers will list their products in different Member States as they address local investors and cater their services to that end. Multiple listings of ETFs are seen as the

sign of healthy competition between trading venues, which benefit investors by ensuring low costs and efficient price formation via the arbitrage realized by market makers.

Whereas we do not see multiple listings as an issue but as a sign of effective competition, we believe that costs especially for retail investors could be brought down if a larger share of the ETF flow were to take place on exchanges. Large parts of ETF trading in the EU are being internalized or executed on non-transparent trading venues, while only a minor portion ends in the lit order book, obscuring true market conditions and weakening market liquidity and price formation. Further, ESMA has noted a heightened risk of settlement failures in ETF markets which may be attributable to a large extent to settlement internalization in the bilateral sphere (Cf. ESMA50-524821-3444 Trends, Risks and Vulnerabilities (TRV) Report, No. 2, 2024).

Changes could be made to improve market structure by tackling the proliferation of alternative execution venues. To this end, regulatory action at Level 1 under MiFID II/MiFIR is necessary to introduce targeted measures like the introduction of a trading obligation for ETFs, requiring that trades below a certain transaction size (e.g. the large-in-scale threshold) are executed on lit trading venues that operate a central limit order book. Alternatively, it could be considered to introduce a capping mechanism for the volume of ETF trades executed via internalization; A proportional limit on the total volume of ETF trades that can be internalized by SIs would ensure that a meaningful portion of trading activity occurs on public order books. Moreover, introducing a central clearing obligation could enhance liquidity and reduce counterparty risk, making the market more attractive for investors (e.g. reducing settlement flows and fails through multilateral netting). To implement these measures effectively, Level 1 amendments to the reviewed MiFIR and MiFID II could provide ESMA with the authority to define the scope, thresholds, and monitoring mechanisms for these obligations. Additionally, ESMA could be tasked with producing regular impact assessments to evaluate the effects of these interventions on market efficiency and liquidity. Such structural reforms would ensure that a larger proportion of ETF trading occurs in well-regulated and transparent environments.

Those changes in market structure could be combined with enhanced transparency obligations; pre and post trade transparency requirements (RTS 1 and RTS 2 of MiFID II) should mandate that all actionable indications of interest (IOIs) and quotes for ETFs be made public. Also, post-trade transparency requirements should be amended to ensure that all ETF trades, including those executed off-exchange, are reported in a timely manner.

In addition, waivers such as the “large-in-scale” (LIS) and the “order management facility” (OMF) waiver should be reviewed and adjusted. For instance, the thresholds for LIS waivers shall be amended to better reflect current market conditions and trading volumes, specifically for ETFs. In case of an ETF trading obligation within MiFIR, the LIS threshold could be reduced to EUR 1 million. This includes considering the liquidity of the underlying assets and the typical trade sizes in the ETF market. As regards the OMF waiver, the conditions under which orders can be held in an OMF without being subject to pre-trade transparency requirements could be further clarified and standardized to specifically cater to the ETF market.

Finally, to allow for regulators to better monitor market dynamics, and investors can gain a more accurate understanding of liquidity and pricing, leading to more efficient markets, transaction reporting shall be more detailed; RTS 22 of MiFIR should be amended to require detailed reporting of internalized ETF trades. This includes specifying the volume and price of trades that are internalized, providing regulators and market participants with a clear picture of market activity.

Means to improve the consolidation of liquidity through better interconnections

Question 14. In your view, should any intermediary offer its clients the possibility to trade, on any EU regulated market, MTF and SME growth market , in all shares and ETFs admitted to trading in the EU?

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

Please explain your reasoning for your answer to question 14 and provide where possible estimates of costs and benefits:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We would differentiate between large brokers and small brokers/retail brokers. In the first case, we understand that the range of instruments offered by the broker is broad and covers most of the EU instruments as well as non-EU ones, in particular in the US. Smaller brokers/retail brokers following their commercial interests will offer direct access to potentially a limited number of instruments, due to the lack of interest from their clients driven by a combination of home bias, lack of information, tax regimes or insufficient financial literacy or because they are connected to one venue only. The focus should be on addressing these demand-side barriers and implementing measures (e.g. such as the proposed FESE Blueprint for a European Savings and Investments Accounts) to better mobilize household savings. Tackling these underlying issues would stimulate greater interest in cross-border EU investments and, in turn, increase incentives for retail brokers to offer access to those stocks where they currently do not.

If it is considered that the broker's offering shall nevertheless cover all EU instruments independently from the demand from investors then indirect connection, via a larger broker would be an efficient solution, at least in the case of retail investors. We believe that the competition between brokers is key and it should ensure that retail investors do have access to brokers who provide an offering wide enough by being connect directly or indirectly to more than one trading venue as to not limit the range of instruments available and by having best execution principles include more than one trading venue to also ensure competitive costs to retail investors.

In any case, while connectivity to trading venues is relatively straightforward, it is important to note that brokers would still be required under the current framework to have clearing and settlement arrangements in place for each market. Inefficiencies in the post-trade regulatory frameworks often pose significant barriers and contribute to higher associated costs. Proposals focusing on the trading layer should not be considered unless steps are taken to tackle these obstacles to further integration in the post-trade space, which stem from divergent national regimes. The Commission could engage with Member States to work towards more efficient cross-border post-trade regimes.

Furthermore, in the proposal detailed in Question 14, brokers would offer access to all EU instruments, which does guarantee that investors (in particular retail investors) are not limited to domestic shares or US shares. In the proposals with limitation to a subset of shares or a subset of trading venues, the offering would be incomplete at EU level. As explained earlier, large brokers do already propose trading in many EU instruments, definitely in EU Blue Chips, hence it remains unclear how these proposals would improve current market structures; to the contrary, they would entail a costly multiplication of memberships at trading level and accounts at post trading level.

Lastly, Brokers are currently bound by their Best Execution policies, which are about to be strengthened in terms of definition, monitoring and assessment following the review of Article 27 in EU Regulation 2024/791 (MiFIR Review) and the new Level 2 requirements. We would consider that the best execution requirements shall provide the adequate framework for brokers to connect to the relevant trading venues. However, for retail brokers in particular, the practice of payment for order flow (currently still accepted in Germany) and the access to single dealer markets are de facto limiting both the range of instruments offered to retail investors and the quality of order execution; changes in the existing regulation on best execution policy to require the connection to a minimum of two execution venues and the review of single dealer platforms should be considered as first steps in the right direction (see our response to Question 55 and 56).

Question 15. Do you believe that intermediaries could improve clients' access to liquidity across the EU by using Smart Order Routing or other similar technologies?

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

What would be the potential costs associated with it and what are the most useful/promising technologies in your view?

Please explain:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We understand that intermediaries already use Smart Order Routing based on clients' interests, their best execution policies and the benefits of such technology.

Question 16. Beyond membership and execution fees, trading venues may charge connection fees.

To the extent this information is available to you, could you provide figures on the amounts charged by individual trading venues or types of trading venues (e.g. regulated markets, MTFs, etc.)?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

DBG is operating the platform T7 where the trading systems Xetra and Boerse Frankfurt run. The pricing for our platform T7 for Xetra is available publicly at: https://www.xetra.com/resource/blob/2689138/cdf8a2f417ee9bc9129355663761c71c/data/2025_03_01_dbag_preisv_t7_xontro_en.pdf

Question 17 Increased access to financial instruments on a cross-border basis can also be ensured by improving the interconnection between all relevant EU regulated markets and MTFs.

To that end, would you consider important to ensure an increased level of interconnection between trading venues in the EU?

- Yes
- Yes, provided it is funded/co-funded by public funds
- No
- Don't know / no opinion / not applicable

Question 17.1. Which of the following options do you prefer?

- Requiring every EU regulated market and MTF to offer the possibility to trade any share or ETF that has been initially admitted to trading on a regulated market across the EU
- Requiring every EU regulated market and MTF to collect the orders and reroute them to one of the venues where a given share or ETF is traded (i.e. without requiring all venues to directly offer trading in all shares and ETFs)
- Leaving the choice of the option to each EU regulated market and MTF
- Don't know / no opinion / not applicable

Question 17.1.1. Would see merit in limiting the options to only a subset of regulated markets/MTFs (e.g. MTFs with a cross-border dimension)?

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

Please explain your answer to question 17.1.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In general we do believe that RMs and MTFs shall have the choice of the instruments they list, be it primary or

a secondary listings; The core function of regulated markets is to support listings to allow companies to raise capital; they would have SME Growth Markets to provide access to capital markets to small companies and support them in reaching the next level by going public on the segments for the largest companies (Prime Standard or the General Standard segments for Deutsche Boerse Cash Market). A healthy and vibrant secondary market is essential for those listing companies as it supports their development and participates to the overall economic growth. Xetra and Boerse Frankfurt would also offer a large range of secondary listings following demand from investors and those listings can covers any instruments in the EU but also outside of the EU like the US – Boerse Frankfurt offers trading in instruments from a number of countries outside of the EU – US, Canada, UK, Singapore, New Zealand, Japan etc).

As response to Question 11, trading venues can offer trading in shares initially admitted to trading on another trading venue. In more detail, on a Regulated Market:

- If an initial admission to several regulated markets takes place simultaneously, the admission requirements and follow-up obligations of the trading venues must be fulfilled cumulatively. However, there are no additional admission requirements for dual listings, the requirements of a normal listing need to be met.
- If securities are already admitted to a regulated market and are to be admitted to another regulated market at a later date, there are already simplifications in prospectus law: no prospectus must be drawn up, but only an information document if the securities have already been admitted to the other regulated market for at least 18 months. The Listing Act has significantly lowered the requirements for this information document and created more freedom in design and less substantive information to be provided by the issuer. We welcome these simplifications.

On the Open Market, if a security is already admitted to trading on another domestic or foreign trading venue recognized by Deutsche Börse AG, it may be included in the Quotation Board. The inclusion is requested by one of our Specialists and is not subject to the consent of the issuer. Only if the issuer has agreed to the inclusion, some legal obligations arise from the Market Abuse Regulation (e.g., Ad-hoc publicity, maintenance of insider directories, notification of directors' dealings). We would insist that the existing legal situation according to which inclusion does not depend on the consent of the issuer shall be maintained.

This ability to list and trade easily shares in the EU is reflected on many trading venues: Boerse Frankfurt for instance proposes trading in all instruments listed on Xetra plus another thousands of instruments listed on other trading venues in and outside the EU. Investors benefit from a wide range of instruments they can trade and as well from the protection of clearing via the CCP, without having to connect to other platforms. We would hence consider that this option is the most viable economically and practically for small and retail brokers.

As for the possibility to require all EU RMs and MTFs to collect orders and reroute them to one of the venues where the share is traded, this solution is extremely costly, redundant with the existing infrastructure, without any guarantee to be used – not even by retail investors – and would have fundamental flaws in terms of best execution, latency and could only function for a small portion of the order flow. This proposal would also only address the trading layer but the segmentation at post trading level, especially regarding clearing and settlement, would not be included; even worse, it could require intermediaries to increase their post trading connections, increasing de facto costs instead of reducing them.

Selecting only a subset of RMs and MTFs simply based on their size would be redundant compared to the existing offering from large intermediaries.

We disagree with the proposals' intent to mandatorily connect liquidity pools. Rather, we believe that the connection is not the issue, but the proliferation of trading models and in particular bilateral trading, leading to excessive fragmentation. The solutions leave aside that part of the traded volume which is, although addressable, not available to all investors. We do in that sense regret that the proposals are focusing on the

offering side, where there is still no guarantee that investors' demand will follow if other aspects like financial education are not addressed.

We would hence encourage the European Commission to maintain the dialogue with market participants to have a constructive and factual discussion ahead of any decision which could harm the European market structure.

Question 17.2. What would be the impact in terms of building cross-border liquidity?

What would be the potential estimated costs or savings associated with such a measure (where relevant, for each respective type of market participant)?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We would like to address the terms "building cross-border liquidity" and the perceived need to build connections; pan European venues exist in the EU, whether they are servicing rather institutional or retail investors. Investment firms do also propose to their clients a certain number of instruments, beyond those listed in the Member State they are located in. Hence a wide range of instruments is available to investors. At this stage we do not fully understand what the 'collection and rerouting of orders' would mean and especially how best execution requirements would be fulfilled. We see two possibilities for an interconnectedness set up of RMs and MTFs:

- Each trading venue is required to become a member to all the other trading venues in the EU. We would anticipate barriers in the admission rules of RM and MTF in respect to other RM or MTF becoming member firms, as well as conflicts with the authorizations of RM or MTF (on-ward route of orders and stepping into a trade would both be an investment firm activity). The subsequent technical setup would be in the region of seven-figure digits per year for each trading venue and would mean an increase of the fees for all members plus a re-routing fee applied on a transaction basis. The access to the post trading infrastructure is also a complex matter as we do not see how the trading venue would then pass on the order back to the broker for clearing and settlement.
- The trading venues are rerouting the orders to other venues using by appointing a member (investment firm) to act on its behalf; this may involve using a Smart Order Router; however if the routing of the order is done by the trading venue, it is necessary for a (large) broker to manage the SOR; it is required for any broker going through this process to be a client of this single broker which eventually can increase costs for all brokers and their clients, on top of the rerouting fees to be applied by the trading venue. When an RM / MTF would appoint a specific investment firm to onward route and execute the to-be-routed orders to a third party RM / MTF, we anticipate conflicts with equal treatment principles as well as competitive issues from the perspective of other investment firms (who do not get appointed with this special role); In practice, the rerouting of orders necessarily means that trading venues would have to manage orders which are not compatible with their own systems and rulebooks, but with the trading system and rulebook of the targeted trading venue. In return it is for example unclear how technically and legally mistrades would be handled. The routing to venues with a different currency would also be complex. Those aspects might look as simple technicalities but they will add immense complexity and increase costs. Not the least important, the rerouting of the orders also introduces additional latency to the execution of orders which shall be accounted for especially in the best execution policies, together with the additional rerouting costs. Note as well that contrary to the US subject to the Reg NMS, there is no regulatory case for rerouting orders in the EU (see our response to Question 19 and 20).

Question 17.3. Do you see any post-trade challenges associated with this?

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

Please explain your answer to question 17.3:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We fail to see how the proposals at trading level would reduce costs at post trading level; to the contrary if a broker leaves it to the rerouting venue to redirect his orders to one venue or another, he will be required to have all post trading connections and accounts for clearing and settlement which could be costlier than currently; as the proposal only tackles the trading layer however ignores the specificities of the post trading infrastructure.

Question 18. Which of the options referred to in questions 14 and 14.1 (better access to trading venues by intermediaries – option A) and question 17 (increased interconnection between trading venues – option B) would better achieve the following objectives?

	Option A (increased interconnection between trading venues)	Option B (better access to trading venues by intermediaries)	Don't know / No opinion
Increasing the level of liquidity for shares and ETFs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Improving the quality of execution	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Increasing the speed of execution	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reducing the cost of execution for clients	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Delivering a more efficient EU trading landscape	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain your answer to question 18:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not consider that any of the two options is adequate for EU capital markets. Instead, as explained in our response to Question 17.1, we see some benefits in having trading venues listings most of if not all shares traded on an EU trading venue.

Question 19. In other jurisdictions, notably the US, an increased level of interconnection at the level of trading venues resulted from the application of the ‘order protection rule’ ([Rule 611 of the Regulation National Market System](#)) that established intermarket protection against trade-throughs for certain shares.

Do you have any experience with this rule?

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

Question 20. Where implemented, the order protection rules required technological adaptations, so to allow the swift rerouting of the orders.

What is your assessment of the ability of the current state of connections among trading venues in the EU to cater for the rerouting of orders to venues offering the best price, as required by the order protection rule in the US?

- 1 - Insufficient
- 2 - Rather insufficient
- 3 - Neutral
- 4 - Rather adequate
- 5 - Fully adequate
- Don't know / no opinion / not applicable

Please explain your answer to question 20:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As explained in our responses to the previous questions, trading venues are not currently rerouting orders to other venues; investment firms would usually have via direct or indirect connections access to a number of

trading venues, depending on the demand from investors and their best execution policy which would also include or not dark venues and systematic Internalizers. There is no commercial interest for trading venues to connect to each other, and the risk of trading based on stale prices does defeat the purpose.

Question 21. Do you consider that geographical dispersion of EU trading venues would pose issues to an effective implementation of similar rules?

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

Please explain your answer to question 21:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Indeed, the geographical dispersion of EU trading venues would be problematic. A key issue is the prevalence of stale prices, which results from latency disparities across fragmented venues. While consolidating all data centers into a single location could mitigate this issue, such centralization creates issues and is not seen as feasible within the EU due to legal, infrastructural, and sovereignty constraints. It appears that six major data centers host most of the exchanges in Europe (London, Frankfurt, Bergamo, Stockholm, Zurich, Madrid). This means that for an order sent to a stock exchange based in Bergamo, it would take another 14ms to send the order to a trading venue in Stockholm. We do not see how best execution requirements in terms of price could be fulfilled, adding rerouting costs on top. (Latency currently is as follows: London-Frankfurt: 5ms, Frankfurt-Stockholm: 10ms, Madrid-Stockholm: 22ms, Stockholm-Bergamo: 14ms; Please see or response to Question 29).

Question 21.1. Are there any means to tackle them?

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

Please explain your answer to question 21.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 22. If the current set-up does not allow for it, what are in your view the necessary arrangements to allow for sufficiently fast connections, and what would be the associated costs?

Please provide cost estimates where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 23. Crypto-markets have seen the emergence of a market architecture whereby retail investors have direct access to a crypto-asset trading venue.

Do you see merit in allowing or promoting the direct access of retail participants to trading venues for financial instruments, without an intermediary?

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

Please explain the advantages and disadvantages of such a model, as well as the risks and how they could be mitigated:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Allowing retail investors direct access to all trading venues would come at the cost of higher expenses, reduced investor protection, and the loss of netting benefits—particularly in the post-trade phase. The current structure, in which orders are routed through intermediaries, is designed to enable cost-effective trading and ensure robust investor safeguards, including post-trade protections. Without intermediaries, these safeguards would be lost, and costs for retail investors would rise significantly. Trading venues would also likely face increased operational costs, as they would need to take on additional controls currently managed by intermediaries.

Similarly, same investor safeguards and protections as well as additional risk controls should also apply for

retail clients who have direct access to crypto-asset trading venues. In our view, there is a big gap in regulatory standards between accessing crypto exchanges and regulated markets. Retail clients need to comply with very light requirements, i.e., quick registration with ID authorization to access crypto exchanges. On the other hand, for regulated exchanges, stricter and stronger controls are required i.e., higher KYC standards. Eurex, DBG's derivatives exchange, can assess that retail clients these days can easily tend to trade in crypto markets in an expectation to substitute it with derivatives because they have access barriers to derivatives exchanges.

Thus, we do not support allowing retail investors to have an easy and direct access to regulated trading venues, and even more, we recommend applying the same level of regulatory framework for crypto-asset trading venues as regulated venues have.

2.4. Ensuring fair access to market infrastructure to foster deep and liquid EU-wide markets

Question 24. What is your assessment of the effect of the removal of exchange-traded derivatives from the so-called 'open access' to CCPs and trading venues provision under Articles 35 and 36 of the reviewed MiFIR?

Please include elements in terms of costs of trading and clearing, depth of market, switch to OTC.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We strongly welcomed the EU regulators' recent decision to remove exchange traded derivatives (ETDs) from the scope of the regime. This decision finally provided a permanent solution for the treatment of ETDs after several national postponements due to risks associated with applying the regime to ETDs, ultimately preserving the EU's financial stability and competitiveness. It also reflects the distinct characteristics of ETD markets and the need to preserve the integrity, stability, and innovation capacity of trading venues. ETD markets are structurally different from markets for transferable securities—with innovation, issuance, trading, position-keeping, and risk management being inseparable. The global standard is an integrated trading and clearing model that ensures market integrity and resilience, rather than a regulatory mandate. Choice in trading and clearing should add value, not fragment the market or increase costs for end customers. Moreover, low fee levels across venues globally show that competition is strong without enforced open access rules.

ETDs are among the EU's most liquid and successful markets and are indispensable for achieving the EU's SIU ambitions. A transparent and resilient price discovery system for ETDs is crucial for financial markets overall, as ETD markets serve as reference prices, reflecting expectations of future fluctuations in underlying markets. With sovereign bond markets opaque and fragmented in the EU, most participants use ETDs as benchmarks to manage exposures to Euro Area sovereign debts (e.g., German Bund Future, French OAT, Italian BTP, Spanish BONO). Functioning ETD markets are also key for monetary policy, as Interest Rate Derivatives indicate how markets expect central bank rates to evolve, indirectly impacting underlying products.

Lastly, the proper functioning and liquidity of EU ETD markets is also relevant for the European Commission's growing role as a major bond issuer to finance the SIU and other political objectives, such as defense, and to strengthen the Euro as an international currency and safe haven for global investors, as seen during

recent market volatility in Q2 2025. However, the previous inclusion of ETDs in the open access regime risked undermining this well-functioning market structure and the above political objectives by potentially breaking Euro-denominated liquidity pools of EU FMIs, slowing innovation, raising costs, and increasing operational and systemic risks. The removal thus recognized that ETDs are fundamentally different from other asset classes like transferable securities and money market instruments. Linking FMIs for ETDs would have made default management, recovery, and resolution processes more complex, time-consuming, and risky. Applying open access to cash market products, which are fungible and settle at T+2, requires less sophisticated risk management and poses less systemic risk than for ETDs. Linking FMIs for ETDs would have drastically changed their risk profile, introducing contagion risks, liquidity constraints, and costs incomparable to cash market links. Such ETD links would have created direct contagion channels between CCPs via inter-CCP exposures, potentially resulting in under-collateralization and liquidity issues. Higher margin and default fund contributions, as well as concentration add-ons, would have been needed to mitigate risks, increasing costs for market participants.

Further, because ETD markets already function efficiently under integrated models, applying the regime to ETDs would have fragmented liquidity pools. Fragmentation across multiple FMIs would impair price formation and reduce netting efficiencies, increasing costs for market participants.

Moreover, under the current regime, FMIs are incentivized to launch innovative products to remain competitive globally, thereby strengthening the EU's capital markets. However, open access would have impaired innovation. The higher risk of "copycat" products and the need for compatibility in a multi-FMI environment would have disincentivized FMIs from innovating and launching new products, reducing EU competitiveness.

In contrast, any potential benefits of including ETDs in the regime remained uncertain. Notably, the only ETD link ever established was terminated in 2019, as the expected benefits failed to materialize and unresolved risks outweighed them in the view of local authorities.

We support open access where it adds value—such as in cash equity and repo markets. But for ETD markets, we believe an integrated trading and clearing model ensures better stability, efficiency, and competitive pricing without regulatory intervention. Against this background, it was a logical step for the EU to remove ETDs from the regime and align with other major jurisdictions (e.g., UK, US) that either lack equivalent provisions or have actively rejected them.

Question 25. What is your assessment of the effectiveness of the open access provisions under Articles 35 and 36 of the reviewed MiFIR on other financial instruments, notably equity?

- 1 - Not at all functioning
- 2 - Not functioning very well
- 3 - Neutral
- 4 - Functioning quite well
- 5 - Perfectly functioning
- Don't know / no opinion / not applicable

Please explain your answer to question 25:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please refer to our response in the Question 26.

Question 26. Have you identified any barriers to the proper functioning open access provisions under Articles 35 and 36 of the reviewed MiFIR?

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

Question 27. Have you identified other barriers in terms of fair access relating to trading infrastructure, beyond those addressed under Articles 35 and 36 of the reviewed MiFIR?

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

Please explain your answer to question 27:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Yes, there are additional barriers in terms of fair access relating to trading infrastructure beyond those addressed under Articles 35 and 36 of the reviewed MiFIR. For derivatives, key points are the lack of development in trading and clearing obligations. The development of trading obligations has not kept pace with market needs specifically promoting OTC traded volumes instead of ETD trading. Different national regulations across EU member states can create inconsistencies within the definitions of market making or high frequency trading activity. These divergences complicate cross-border trading and clearing activities, making it harder for firms to operate seamlessly across the EU. Firms must navigate varying regulatory landscapes, which can increase compliance costs and operational complexity. Multilateral Trading Facilities (MTFs) and Organized Trading Facilities (OTFs) still face different regulatory requirements compared to regulated markets and these requirements are very likely less stricter/lower than those of regulated markets even though OTFs and MTFs provide less transparency in the market. This can lead to competitive imbalances, where some platforms may have advantages over others. These differences in regulatory treatment can affect market access, liquidity, and overall market efficiency.

2.5. Enhanced quality of execution through deeper markets

Question 28. When the same financial instrument is traded on multiple execution venues, the best execution rule plays a key role. The rule seeks to protect investors, ensuring the best possible result for them, while also enhancing the efficiency of markets by channelling liquidity towards the most efficient venues.

What is your assessment of the effectiveness of the best execution rules in the EU?

- 1 - Insufficient
- 2 - Rather insufficient
- 3 - Neutral
- 4 - Rather efficient
- 5 - Fully efficient
- Don't know / no opinion / not applicable

Please explain your answer to question 28:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The best execution rules in the EU have the merits of including several dimensions to be accounted for by investment firms as per Art 27(1) MiFID II. Those include price, costs, speed, likelihood of execution, etc. Recently, the review of MiFID II included the effective monitoring of the policies and mandated ESMA to specify the criteria to be considered for the definition, monitoring and review of the best execution policies and the distinction between retail and professional clients. Whereas we would expect a positive effect of the to-be-adopted requirements, we regret that reports allowing for greater transparency have been at the same time removed from the legal text; the removal of best execution reports under RTS 27, and notably RTS 28, pursuant to MiFID II made it more difficult for market participants to assess execution quality. While these reports were sometimes criticized for their complexity and limited relevance to end investors, they nonetheless served an important function by promoting transparency and enabling comparisons of execution quality across trading venues.

In particular, the absence of structured reporting under RTS 28 has created a significant transparency gap and impeded the ability to evaluate best execution practices in the bilateral trading space. To address this shortcoming, investment firms should be required to publish more detailed, structured, and standardized disclosures on how they ensure best execution, potentially within their existing quarterly or annual reporting obligations. We would for this suggest looking into the reports produced in the US and in particular Rule 606 which requires that brokers disclose their top 10 routing destinations, financial incentives with destinations including payment for order flow (PFOF) and profit sharing. This type of reports would be particularly useful for retail investors and would allow for an effective monitoring of the ban on PFOF.

Question 29. There are important differences between best execution rules in the EU and in the US. In particular, in the EU, the obligation to obtain the best possible result for the clients lies on the intermediary. In the US, the quality of execution is guaranteed also through the aforementioned “order protection rule” that prevents trading venues from executing orders if a better execution price can be found on another exchange.

Which of the following options would most accurately reflect your assessment of the best execution framework in the EU vis-à-vis the US?

- The EU framework is better suited than the US framework to obtain the best results for clients
- The US framework is better suited than the EU framework to obtain the best results for clients
- Both models are equally effective
- Both models are equally ineffective
- Don't know / no opinion / not applicable

Please explain your answer to question 29:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The best execution in the US is very different from the EU and in particular the interaction between lit books and dark pools is distinct from one area to the other. Indeed, if we consider only the order protection rule from the US, it covers lit books – without protecting them given the surge in dark pools – whereas the best execution framework in the EU is broader and more diverse. Additionally, the best execution frameworks in place in the EU and the US are not directly comparable and what may function effectively in the US is often not fit for purpose in the EU due to several factors:

- The geographic dispersion of trading venue data centers in the EU affects execution outcomes, particularly if a model similar to the Order Protection Rule (OPR), including exchanges' routing, were implemented. Whereas in the US the data centers are all located in New Jersey with latency measured in microseconds, in Europe they are distributed all over Europe with latency measured in milliseconds (see our response to Q21).
- The lack of post-trade harmonization in the EU which would otherwise, enable seamless and cost-efficient cross-border arrangements. A seemingly simplified access at trading level does not solve fragmentation for post-trading.
- The OPR is not a best execution rule in itself. While FINRA provides best execution guidance—such as FINRA Rule 5310—OPR is not the most effective mean to get the best results for clients.

The US has specificities which we do not see in the EU like trading venues located in close physical proximity, all trading occurring in a single currency, more standard insolvency laws, a common language, a more unified tax regime for instance. These factors simplify trading processes and thus the best execution obligations. In contrast, many of these conditions are not replicable in the EU, or at least not in the short term. While latency is a major issue in the US market structure, it is significantly higher in Europe between trading centers.

Moreover, the US market's strong focus on price, enforced through the OPR, has introduced its own set of problems. Brokers are compelled to connect to and attempt to trade on venues that may increase their costs with little corresponding value. As a result, trade size and other factors important to end investors take a back seat to the "protected" price obligations. This restricts brokers' flexibility in fulfilling client needs. Furthermore, this emphasis on price has driven trading innovation in the US to focus primarily on speed—being the first to reach a price—rather than addressing other investor pain points, such as trading in size. In conclusion, a more nuanced approach to best execution, tailored to the European context rather than modelled directly on the US, would better serve European markets.

Furthermore, given the latency and geographic dispersion in Europe, implementing an OPR-like rule could lead to higher slippage costs than those seen today. Orders may attempt to execute against quotes that are no longer available, while prices on other venues continue to move against the original order, forcing them to worse execution prices than if the orders are traded immediately in more easily accessible markets.

Question 30. For equity instruments, the consolidated tape will disclose the European Best Bid Best Offer (EBBO) in an anonymised form. The tape will allow to have increased and integrated visibility on the different pools of liquidity available.

How effective would lifting the anonymity of the EBBO be in achieving the following objectives?

	1 (not at all effective)	2 (rather not effective)	3 (neutral)	4 (rather effective)	5 (highly effective)	Don't know - No opinion - Not applicable
Improving the ability of investment firms to assess the quality of execution	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ensuring a more integrated market whereby investment firms are able to direct their order to the most efficient options	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contributing to the efficiency of the price formation mechanism	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please specify to what other objective(s) you refer in your answer to question 30:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The CT will be incomplete, be it due to the lack of smaller venues who may decide on not opting in to the CT or due to the de facto exclusion of SI quotes according to current regulation. Hence, from the start, the dispersed liquidity across the EU will not be comprehensively visible, while fragmentation may continue. While the CT is not adequate for trading purposes, or real-time best execution verification, we consider it to provide for a very good basis for ex post best execution verification, and as a basis to develop a best execution policy including the necessary information to investors (i.e. similar to Rule 606 under RegNMS and beyond – please see as well our comments in this respect to Q28).

Please explain your answer to question 30, providing a cost/benefit assessment:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Current Priorities

It is important to note that the equity Consolidated Tape is not yet operational, and therefore, evaluating the implications of proposals concerning the pre-trade space may be premature. The removal of anonymity from top-of-book data would represent a significant structural change to the market and requires careful up-front consideration. We are concerned that such a change could undermine the central role of Central Limit Order Books (CLOBs) in aggregating liquidity, potentially leading to increased market fragmentation and fostering unfair competitive dynamics.

Execution Quality Considerations

Even with non-anonymous quotes, a centralized EBBO does not inherently capture the full spectrum of execution quality metrics—such as execution speed, market impact, fill probability, and associated costs. These costs can vary not only by execution venue but also due to post-trade fees and differing tax regimes across member states. Consequently, the EBBO provides only for a partial view of the information necessary to achieve best execution within the EU. Additional limitations to execution quality include latency and market fragmentation. In a fragmented environment, quotes may become stale or non-executable due to delays introduced by the CT. Non-anonymity does not address this issue; in fact, it may exacerbate it by systematically misrepresenting the best bid and offer (BBO) and the associated trading venues. Moreover, the EBBO reflects only displayed liquidity and does not address the growing prevalence of hidden or dark liquidity, driven by the rise in non-pre-trade transparent bilateral trading. This trend, also observed in the U.S. despite the presence of a CT and an Order Protection Rule (OPR), raises significant concerns. The expansion of bilateral trading has become a matter of increasing scrutiny in both the U.S. and the EU. While systematic bilateral liquidity is not new, its accelerated growth in response to evolving market conditions as well as technology is prompting renewed attention to its potential implications for market transparency and efficiency. For example, The Trade recently highlighted this issue in its 2025 article, “Participants keeping watchful eye on growing bilateral trading segment.”, and further Frustration builds over Europe’s hidden liquidity - Global Trading.

Market Integration Challenges

A non-anonymous EBBO does not ensure genuine market integration, even in scenarios involving order routing. While the “best price” may not equate to “best execution,” non-anonymous quotes could incentivize strategic behaviors such as quote stuffing or spoofing, thereby eroding trust in displayed prices and the

venues behind them. Additionally, a non-anonymous EBBO may systematically favor certain venues being displayed at the top of the book, not due to superior pricing, but because of their geographic proximity to the tape. Academic literature has shown that diminished trust and liquidity in secondary markets can reduce issuer interest in those venues for primary listings, including IPOs (see Mahoney, 2020, Equity Market Structure Regulation: Time to Start Over, 10 Mich. Bus. & Entrepreneurial L. Rev. 1). Regulators must take these dynamics into account when considering structural reforms. Ultimately, exchanges must remain capable of supporting the broader EU economy to raise capital as needed.

Implications for Price Formation

While, in theory, routing orders to trading venues rather than executing them bilaterally may enhance price formation, a centralized EBBO alone does not guarantee cost-efficient routing or execution across venues. It is also essential to recognize the structural differences between the EU and the U.S. The EU's market is inherently more fragmented, with diverse Member State regulations, languages, investor behaviors, and market infrastructures. These complexities pose additional challenges for all market participants in the EU. In this context, the limitations of the EBBO - particularly regarding the accuracy of top-of-book data and the availability of liquidity - could have far-reaching consequences, including a potential decline in IPO activity within the EU (Mahoney, 2020). Therefore, any proposed changes must be subject to a rigorous cost-benefit analysis.

Conclusion

In conclusion, DBG strongly recommends proceeding with the implementation of an anonymized EBBO as originally planned. Any future modifications to the Consolidated Tape framework must be preceded by a comprehensive and transparent cost-benefit analysis, particularly in light of the current market environment.

Question 31. For equity instruments, the consolidated tape will disclose the EBBO only in relation to one layer of quotes (i.e., show only the best bid and offer, but not the second, third, etc.).

How important do you deem expanding the depth of the EBBO displayed by the equity tape?

- 1 - Not needed
- 2 - Not really needed
- 3 - Neutral
- 4 - Rather needed
- 5 - Essential
- Don't know / no opinion / not applicable

Please explain your answer to question 31, providing a cost/benefit assessment:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The Consolidated Tape (CT) is designed to cater to a wide range of users, including retail investors, who generally do not require access to detailed market-depth data. By concentrating on top-of-book and post-

trade information, the CT aims to provide essential, high-value data at a lower cost, effectively addressing the needs of the majority of its intended audience.

Collecting and integrating full order book data from approximately 150 to 200 trading venues presents significant technical and financial challenges. The availability and granularity of market depth data vary.

Moreover, the CT is not intended to serve as a trading tool. Expanding its scope to include pre-trade data beyond the top-of-book could heighten concerns regarding its potential use as a benchmark for trading and execution decisions.

It is also important to note that the pre-trade CT does not offer a complete market view anyways. It excludes bilateral Systematic Internalizers (SI) quotes, and all hidden liquidity – an increasing volume. Mandating the inclusion of depth-of-book data could further deter smaller trading venues from participating, due to concerns over the erosion of their market data revenues, which are critical to their financial sustainability and their ability to provide IPOs. Such a development could exacerbate the anticipated revenue losses for regulated markets stemming from the CT's implementation, with the proposed revenue-sharing mechanisms unlikely to provide adequate compensation. This would disproportionately affect smaller and less-diversified markets, posing a threat to the growth and resilience of local capital market ecosystems. Consequently, reduced participation from these venues would diminish the CT's overall coverage and utility.

Recognizing these complexities, the European Commission and ESMA have adopted a phased implementation strategy, initially focusing on core data elements such as executed trades and best bid/offer quotes. The inclusion of market depth data may be revisited in future phases, contingent upon its technical feasibility, cost-efficiency, and the absence of adverse unintended consequences.

Question 32. Under the current MiFIR, the speed at which core market data is disseminated by the equity consolidated tape is not regulated.

How important do you deem defining in legislation the speed at which core market data should be disseminated by the equity consolidated tape?

- 1 - Not needed
- 2 - Not really needed
- 3 - Neutral
- 4 - Rather needed
- 5 - Essential
- Don't know / no opinion / not applicable

Please explain your answer to question 32, specifying what should be the adequate speed:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The latency of Consolidated Tape (CT) data dissemination cannot be evaluated in isolation from the physical infrastructure supporting it. The geographic location of the equity Consolidated Tape Provider (CTP)

significantly influences transmission delays, and the volume of data to be processed further affects the speed at which information can be consolidated and distributed. Additionally, it is not feasible to prescribe a fixed latency between the CTP's outbound interface and the (final) recipient/user, particularly when recipients may be located as well further outside the European Union (increasing geographical distance even further). Network-related impacts, which fall outside the CTP's control, further complicate the ability to guarantee uniform dissemination speeds.

Given these constraints, establishing a single, standardized latency benchmark for CT data delivery (outbound) is impractical. Imposing overly stringent latency requirements could also jeopardize data integrity. Regardless of the performance achieved, CT data will inherently trail behind proprietary direct feeds, rendering it unsuitable for trading applications—a limitation that must be explicitly acknowledged.

Rather than prioritizing dissemination speed, emphasis should be placed on implementing a robust sequencing mechanism. This would allow the CTP to accurately order incoming best bid and offer (BBO) messages, thereby mitigating the effects of geographic dispersion and network variability. Such an approach would enhance the reliability and accuracy of the core data delivered to users. Neglecting to enforce message reordering would risk distorting the representation of the European Best Bid and Offer (EBBO), introducing systemic inaccuracies. These include: (i) excessive dependence on latency disparities caused by physical distance and network performance, and (ii) a skewed EBBO view favoring trading venues located closer to the CTP's data center, whose BBO updates would arrive sooner and more frequently influence the EBBO. Unlike the U.S., where trading venues are concentrated within a compact geographic area (approx. 65 kilometers), European trading infrastructure is widely dispersed, with average and median distances between the five primary data centers exceeding 1,300 kilometers.

Question 33. Which of the following options reflects your assessment of the impact on the consolidated tape of requiring systematic internalisers to contribute to the equity pre-trade consolidated tape?

- It would improve the quality of the data displayed by the tape
- It would reduce the quality of the data displayed by the tape, also considering that systematic internalisers, under certain conditions, can trade at prices that are better than the quoted prices
- It would be irrelevant
- Don't know / no opinion / not applicable

Please explain your answer to question 33:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Integrating Systematic Internaliser (SI) quotes into the EU Consolidated Tape for equities has the potential to enhance market transparency by revealing additional sources of liquidity. Such inclusions would align with the objectives of the Single Market for Investment Union (SIU), offering investors a more complete picture of available pricing and liquidity across the EU. This broader visibility could particularly benefit retail investors by improving access to pre-trade information and supporting better execution outcomes. Importantly, limiting the display to mid-prices derived from exchange data would fall short of transparency goals and offer little added value to the SIU initiative overall.

Nevertheless, incorporating SI quotes presents several challenges. The quality and comparability of SI quotes can vary, and without clear differentiation pre-trade data from regulated markets, there is a risk of misinterpretation. To preserve clarity, SI quotes may need to be displayed separately from prices on trading venues. Additionally, the technical and operational demands of aggregating and harmonizing data from a wide array of SIs could increase the complexity and cost of operating the Consolidated Tape. Concerns also persist among SIs regarding the potential erosion of competitive advantages. Despite these concerns, the inclusion of SI quotes—if carefully implemented—could contribute meaningfully to market efficiency and investor protection. Ensuring data quality and cost-effectiveness will be essential to the success of such an initiative.

On the post-trade side, there is a clear benefit to requiring the identification of SIs in their post-trade data. Replacing generic identifiers such as "SINT" with specific SI identifiers (MIC or LEI) would enhance transparency, enable investors to better evaluate execution quality across brokers, and strengthen accountability. This would also support more effective regulatory oversight, particularly in cases where SI transactions may involve conflicts of interest. Such measures would be consistent with the EU's broader commitment to fostering a common, fair, transparent, and well-functioning financial market and the SIU.

Question 34. Which amendments to their regulatory framework would be required to effectively include systemic internalisers as contributors of equity pre-trade data?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

To effectively integrate SIs as contributors of equity pre-trade data into the EU Consolidated Tape, targeted adjustments to the existing regulatory framework - particularly under MiFIR/MiFID II and its technical standards - would be necessary.

First, RTS 1 would need to be updated to explicitly require the inclusion of SI quotes in the consolidated tape. These quotes would have to comply with standardized formats and reflect prevailing market conditions, including adherence to the tick size regime, to ensure consistency and comparability with trading venue data.

Second, clear definitions and scope would be essential. The regulation should specify which SIs are subject to the obligation—potentially based on activity thresholds—and clarify what qualifies as a quote for inclusion, explicitly excluding midpoint references derived from trading venues.

Third, real-time pre-data submission by SIs to the CTP would need to be mandated. SIs would need to transmit their quotes to the Consolidated Tape Provider (CTP) without delay, mirroring the obligations already placed on trading venues.

Fourth, the framework should establish or delegate authority to the CTP to standardize data formats and transmission protocols, ensuring interoperability and maintaining high data quality across sources if necessary, and in line with the current regulatory framework.

Finally, enhanced supervisory mechanisms would be required. National Competent Authorities (NCAs) and ESMA would need the tools and authority to monitor compliance and enforce these obligations effectively.

Together, these reforms would support the transparent and equitable integration of SI data into the EU's consolidated market infrastructure, improving visibility into liquidity and supporting more informed decision-making by investors.

As regards the changes to SIs post-trade data, the acronym “SINT” would need to be replaced by an LEI or Operating MIC.

Question 34.1. Are there other hurdles (e.g. technical)?

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

Please explain your answer to question 34.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Nevertheless, incorporating SI quotes presents several challenges. The quality and comparability of SI quotes can vary, and without clear differentiation pre-trade data from regulated markets, there is a risk of misinterpretation. To preserve clarity, SI quotes may need to be displayed separately. Additionally, the technical and operational demands of aggregating and harmonizing data from a wide array of SIs could increase the complexity and cost of operating the Consolidated Tape. Concerns also persist among SIs regarding the potential erosion of competitive advantages. Despite these concerns, the inclusion of SI quotes—if carefully implemented—could contribute meaningfully to market efficiency and investor protection. Ensuring data quality, cost-effectiveness, and competitive neutrality will be essential to the success of such an initiative.

2.6. Building quality liquidity for EU market participants: impact of recent trends

2.6.1. Non-transparent ('dark') trading (for equity instruments)

Question 35. The EU's trading landscape is witnessing a decrease of lit order book equity trading (i.e. order book trading with pre-trade transparency).

In your view, what are the main reasons that explain such a trend?

Please select as many answers as you like

- Regulation
- Liquidity fragmentation
- Order flow competition (e.g. development of EMS/OMS)
- Technological developments (e.g. algorithmic trading/HFT)
- Surge in ETFs and passive management
- Other

Please specify to which regulation(s) you refer in your answer to question 35:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

MiFID 2, MiFIR, EMIR.

Please explain your answer to question 35:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The decrease in lit order book trading in the EU results from a combination of factors, which can be linked to each other. In terms of regulation, the MiFID II/MiFIR framework has reinforced the unlevel playing field between lit venues and dark venues/systematic Internalizers with trading conditions more lenient for the latter, making them overly attractive compared to lit venues. Where lit order books are pre- and post-trade transparent and must strictly follow the tick size regime for shares, systematic Internalizers can trade at midpoint even if off-tick, without limitations; Frequent Batch Auctions can also result in execution prices off-tick which shall not be possible under MiFID II, however, allowed in some Member States.

The current regulation has incentivized overall bilateral trading under different set-up, be it Systematic Internalizers but also Off Book On Exchange trading (OBOE). OBOE is an activity that can take place exclusively under the Negotiated Trade Waiver, hence non pre-trade transparent. These OTC trades are executed away from the order book but are reported to an exchange and traded under exchange rules. We will develop further on this matter in our response to Questions 50 to 54 but would highlight here that those trades are benefiting from a lack of transparency on the modus operandi behind those trades and a lack of clarity on their reporting.

The development of those numerous alternatives to lit order books has de facto increased liquidity fragmentation, in particular to the detriment of lit order books as price forming orders, small orders, are executed away from central limit order books. As mentioned earlier, systematic internalizers considerably grew in January 2018, at the favor of a set up combining lack of pre trade transparency, ability to select their counterparts, opacity in their activities, price referencing and poor transaction reporting. Indeed, SIs have a low minimum quote size (1,000EUR for most of the EU shares – see ESMA Third consultation Package on equity transparency (RTS 1 and CDR 2017/567), page 64), have to publish firm quotes up to 10,000EUR only for liquid shares, have been reporting trades which appear to be technical trades but also since the MiFIR Review can trade at the midpoint of the reference market – a lit market – without limitations.

Moreover, trading venues under pre trade transparency waivers will develop further with the change from the double volume cap to the single volume cap; starting September 2025 only the Reference Price Waiver will be subject to a cap on traded volumes but the Negotiated Trade Waiver will be significantly more used for OBOE transactions, allowing transactions to take place bilaterally, outside of lit order books.

Question 36. What is your assessment of the impact of the current levels of dark trading in the EU on orderly markets and sound price discovery?

- 1 - Too low to harm price formation
- 2 - Sufficiently low to hardly harm price formation

- 3 - Neutral
- 4 - Slightly excessive and harmful for price formation
- 5 - Excessive and very harmful for price formation
- Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 36:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The impact on price formation of dark trading in the EU is not easy to assess, it is also not a dimension which should be checked at one specific point in time but measured over time, looking at different parameters. Looking for example at spreads is simplistic and prone to cyclical episodes: in times of high volatility, spreads would widen because of the uncertainty and risks taken by investors posting limit orders; although price efficiency deteriorates, lit order books remain the best place for price formation, as investors avoid dark alternatives and prefer immediacy, decreasing their participation in auctions. Information efficiency can be measured by more complex models with both linear and non-linear effects as presented by C. Comerton-Forde and T. Putnins (Dark Trading and Price Discovery, 2015, Journal of Financial Economics); Aquilina M. et al., (Aggregate Market Quality Implications of Dark Trading, 2017, Occasional Paper 29, FCA) present an interesting methodology including in their regression model the proportion of the stock-day's total pound trading volume executed in the dark, the proportion of the stock-day's total pound volume of trades executed away from the lit venues, or a proxy for algorithmic trading. Both empirical analyses provide a tipping point where the level of dark trading causes deterioration in information efficiency, and the change in informational efficiency when dark trading exceeds this 'tipping point' is economically meaningful. The deterioration in informational efficiency begins to occur when dark trading in a given stock exceeds approximately 10% of dollar volume according to Comerton-Forde, whereas the tipping point is assessed at 15% for Aquilina.

The mechanisms leading to the deterioration of price formation are at least two-fold:

- Transactions executed away from lit venues would generally be considered as non-informed trades; uninformed investors would avoid liquidity shocks in the case of a large order or asymmetry of information if they face an informed trader. It appears, however, that a large number of small orders are executed on dark venues which would be easily traded on a lit book without market impact. The issue is that the more uninformed traders move away from lit books, the higher the risk of wider spreads as the flow on lit venues is more informed or 'toxic';
- Transactions executed away from lit venues would often take place at the reference price which can be the best bid or offer on the reference lit market or the midpoint of the lit market. The more the flow moves away from the reference market, the less informative and efficient is the reference price.

Regulators and market participants would benefit from an empirical analysis on recent data which would provide the status quo on price efficiency in the EU and the risks of bilateral trading or trading at midpoint deteriorating further price formation. Considering that the level of dark trading is stable in the EU currently negates the fact that volumes are constrained under the double volume cap and ignores that dark trading has developed significantly for example in the UK after the complete removal of the double volume cap. We would then urge regulators to allow for independent and in-depth research on the topic, which would guide future decisions on the design of market structure in the EU.

Question 37. In your view, how does a more sophisticated use of equity waivers by trading venues (i.e. the design of equity waivers is becoming more complex) affect the business model of these trading venues vis-à-vis bilateral trading systems?

Please explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

While exchanges use equity waivers, DBG's position is not that all waivers are harmful. Rather, we believe that the increasing complexity of these waivers, driven by sophisticated interpretations and applications, creates a disadvantage for trading venues compared to simpler bilateral trading systems. This growing complexity ultimately undermines the competitiveness of trading venues by creating an uneven playing field. Simplifying these waivers would benefit all market participants by promoting transparency and fair competition. In order to compete with systems operating with less stringent oversight, notably for pre-trade transparency and data reporting requirements, trading venues develop more sophisticated offerings which, to be authorized and compliant with the regulation, require complex regulatory construct with the combination of more than one waiver for instance.

As the offerings become more complex, the process of analysis and approval from regulators gets longer, complex and uncertain regarding the outcome, and can sometimes bring significant additional costs for the trading venue brought by required adjustments potentially disputable. When in place, those offerings remain costly in terms of compliance and reporting requirements. This increased operational burden translates into higher costs, which can make it difficult for trading venues to compete with bilateral trading systems that are not subject to the same regulatory constraints. The access to the products is also more costly for market participants, who need more expertise to understand the products and fulfill their own regulatory requirements. Compared to systems which are bilateral OTC and operate with minimum requirements in terms of transparency, functioning and reporting, the competitive disadvantage for trading venues is obvious.

The remedy to this situation would be twofold in order to achieve the level playing field: firstly streamlining and simplify the pre-trade transparency waiver regime (see our response to Questions 38 to 42) to limit dark trading and bring liquidity on transparent markets; and secondly, review the conditions for bilateral trading with a clear delineation between bilateral and multilateral systems and more stringent reporting requirements (see our response to Questions 50 to 54).

Question 38. Do you believe that the existing provisions on the reference price waiver (RPW) are fit for purpose?

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

Please specify what legislative amendments would be appropriate and why:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We consider that the current provisions for both the Reference Price Waiver (RPW) and the Negotiated Trade Waiver (NTW) are not fit for purpose. Indeed, it is important to limit the use of waivers when they undermine transparency objectives. The level of transparency in EU equity markets needs to be improved, in line with the original intent of MiFID to ensure the highest levels of market efficiency, support effective price formation, and address the underlying causes of dark trading.

We would propose some regulatory amendments to achieve this objective, within the MiFID II/MiFIR framework:

- Simplify and streamline the waiver regime: Only large orders in equity and equity-like instruments should be exempt from pre-trade transparency requirements; hence we would repeal the reference price waiver and the negotiated trade waiver for transactions which are not technical trades and restrict Systematic Internalizers (SIs) to large-in-scale transactions. Those measures would reduce regulatory arbitrage, improve market transparency, and promote level playing field between different types of execution venues.
- Introduce robust trade reporting flags: Implement midpoint trading and SI-side direction flags, as well as a manual flag for SI trades while retaining granular flags like size, liquidity, reference price, and trade type. Those measures would significantly improve data quality, allowing regulators and market participants to better understand trading dynamics and identify potential risks.
- Review and clarify the scope of SIs: Align the definition of SIs with their original intent of facilitating large institutional orders. This would curb the current practice of SIs executing smaller trades, which fragments liquidity and undermines the price discovery function of lit exchanges.
- Strengthen the pre-trade transparency regime: Review and extend existing pre-trade transparency requirements, including those already in place for certain instruments and venues prior to the MiFID II/MiFIR review, to selected trading models for non-equity instruments. This would enhance price discovery, improve best execution, and reduce the information asymmetry between different market participants.

Question 39. Do you agree with the current criteria to determine the reference price?

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

Please explain your answer to question 39:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The reference price is currently determined as the midpoint on the most relevant market in terms of liquidity for the relevant instrument. As such it represents the liquidity available on the largest trading venue for the relevant instrument, which can be accessed by all types of investors, and is fully transparent. It would also be the venue where price formation takes place as market participants are a mix of informed traders, non-informed traders, retail investors, institutional investors, liquidity providers etc. Any flow on another type of execution venue would either be too small or available only to selected market participants and could not be considered as a reference.

We would hence not recommend a change in the way the reference price is defined; introducing the

possibility of a dynamic reference based for example on the pre trade consolidated tape would be misleading: because of the inherent latency, transactions could be made at stale prices or prices disconnected to the efficient price of the relevant instrument.

Question 40. Do you believe that the existing provisions on the negotiated trade waiver (NTW) are fit for purpose?

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

Please specify what legislative amendments would be appropriate and why. If possible, provide estimates on the costs and benefits associated with the changes:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Consistent to our response to Question 38, DBG does not believe that the existing provisions on the negotiated trade waiver (NTW) are fit for purpose. The rationale for the Negotiated Trade Waiver (NTW) is to allow privately negotiated trades to be reported into a trading venue and be brought under the rules of the exchange as those transactions would not otherwise been easily transferred to the order book and are reported as OBOE. Whereas the double volume cap applies to a subcategory of transactions executed under the negotiated trade waiver, there will be no restriction on volumes from 29 September 2025 onwards. Ahead of this repeal of the double volume cap, it appears that bilateral trading under the waiver has developed. According to data from BMLL, between January 2023 and December 2024, the market share of OBOE trades has nearly doubled in Europe, from 13% to 23% (+77%). For lit continuous volume, over the same period, the share was reduced from 29% to 24% (-17%). In absolute terms, OBOE monthly notional rose from 249 bn EUR to 374 bn EUR (+50%), whereas lit continuous notional decreased from 556 bn EUR to 392 bn EUR (-29%).

Our understanding is that bilateral trading is now organized in an automated, systematic manner and that the trades are then reported to a trading venue without any pre-trade transparency, be it by investment firms or liquidity providers. This is done either through their own negotiation and streaming systems or via third-party negotiation and streaming systems. Hence, the NTW has become a significant loophole that undermines pre-trade transparency and facilitates the shift of trading activity away from lit, regulated markets. This, in turn, harms price discovery, erodes trust of issuers in listing venues, and contributes to broader market fragmentation.

A more effective approach would involve simplifying the waiver regime and promoting greater pre-trade transparency. This could include tightening the criteria for NTW application, enhancing regulatory oversight of its use, or, ideally, repealing the NTW altogether. By closing this loophole and promoting greater transparency, we can create a level playing field, improve price discovery, and foster the development of a more robust and efficient EU capital market ecosystem.

DBG proposes the following legislative amendments to address the shortcomings of the Negotiated Trade Waiver (NTW):

- Amend MiFID II/R to remove the NTW altogether. The NTW has proven to be overly broad and prone

to misuse, contributing significantly to market fragmentation and the decline of lit trading. Its removal would simplify the waiver regime, enhance transparency, and promote a more level playing field. Legitimate use cases currently covered by the NTW can be accommodated through other, more narrowly defined waivers.

- If complete repeal is not feasible, amend MiFID II/R to substantially restrict the scope of the NTW. This could involve, for example, limiting its use to specific instrument types or transaction sizes that genuinely require negotiated trading. Narrowing the scope of the NTW would reduce opportunities for regulatory arbitrage and encourage greater use of lit markets.

- Empower ESMA to monitor and review the use of the NTW, collecting data on its application and identifying potential abuses. Increased regulatory scrutiny would deter misuse of the waiver and enhance market transparency. This data collection could also inform future policy decisions regarding the NTW or other waivers.

- Issue clear guidelines and standards for NTW application to ensure consistency across all EU member states. Harmonization reduces regulatory uncertainty and complexity for market participants operating across borders, contributing to a more integrated single market.

These amendments, whether through full repeal or targeted revisions, are critical to address the negative impacts of the NTW on market transparency, price discovery, and overall market integrity. By closing this loophole, we can foster the development of a more robust, efficient, and competitive EU capital market.

Question 41. The current state of EU legislation does not allow a trading venue to benefit from the negotiated price waiver for negotiated transactions that take place with the assistance of a system or trading protocol operated by the trading venue. This is in contrast to current trends observed in other jurisdictions (for example, in the United States, where “multilateral percentage of volume” or “trajectory crossing” venues are allowed).

Do you think that trading venues should be allowed to use the negotiated price waiver to execute negotiated transactions that take place with the assistance of a system or trading protocol operated by the trading venue?

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

Please explain the reasoning for your answer to question 41, specifying what legislative amendments would be appropriate and explain:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We would recall that the ban aforementioned is proposed by ESMA in the Final Report on RTS 1 in December 2024. If the proposal were to be adopted, we would see two issues: firstly, as mentioned in our response to Question 41, we would rather see a total repeal of the waiver rather than its limitation to a subset of industry stakeholders. Secondly, and following the first point, authorizing only investment firms to operate under the Negotiated Trade waiver brings additional unlevel playing field between operators of systems under the NTW: those systems operated by investment firms and those systems operated by trading venues. This could lead to increased internalization and off-market liquidity provision, further

exacerbating the decline in liquid, multilateral, and transparent trading pools in the EU.

According to ESMA's opinion on the Trading Venue Perimeter (February 2023, particularly paragraphs 50–51), investment firms are permitted to use systems to pre-arrange transactions, provided that the trades are formalized on a trading venue using a waiver. In practice, at least five major EU investment banks are already using this waiver in an automated manner. However, ESMA's proposed prohibition prevents trading venues from doing the same thing investment firms are allowed to do.

We would then rather consider the repeal of the negotiated trade waiver in particular for transactions subject to conditions other than the current market price rather than its prohibition for operators of trading venues only.

Question 42. Do you think that the existing provisions on the order management facility waiver (OMFW) are fit for purpose?

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

Please specify what legislative amendments would be appropriate and why. If possible, please provide estimates on the costs and benefits associated with the changes:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Overall, we would consider that the order management facility waiver is a special case in the universe of pre-trade transparency waivers, mainly because it does not provide full pre-trade opacity to the relevant order but rather progressive pre-trade transparency. Indeed, for iceberg orders, the order will be sliced and each part of the order will become visible in the order book as the quantities get matched. We hence do not consider that this waiver is problematic, especially as only a very limited volume is currently executed under this waiver.

Closing auctions

Question 43. In your view, what are the main reasons that explain the rising importance of closing auctions?

Please select as many answers as you like

- Rise of index investing/passive management
- Growing use of quantitative investment strategies benchmarked to the close
- Increased emphasis on best execution under MiFID II
- Move away/protection from HFTs
- Other

Please explain the reasoning of your answer to question 43:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Whereas we can confirm that indeed there is a trend towards the increase in the market share of closing auctions, we would also comment on the fact that the participation into the closing auction is subject to cyclical events with the most pronounced one being the index rebalancing affecting market participants with portfolios trades associated with those episodic index rebalances. The way portfolios are designed can be constrained by the "index balancing effect" although other effects exist and might not reflect on closing auctions. As an example, we observe a hedging effect with derivative contracts during intraday auctions on Xetra every third Friday of the month on the so called Double Witching Day, but more pronounced every third Friday of the last month in the quarter (March, June etc.) when derivative contracts on indices expire, so called Triple Witching Day. Because the strike price for underlying instruments traded on Xetra is mostly defined as the price of the intraday auction, market activity surges during the intraday auction due to program trading associated with index futures arbitrage and the order imbalances resulting from the unwinding of cash positions when options or futures expire (at 1pm on settlement days). Equity futures and options also expire on the same days, derivatives trading authorized until closing auction on spot market. But the increase in trading before closing does not. These seem much higher than on usual Fridays.

Economic conditions also influence participation in closing auctions. This is valid not only for closing auctions; it is in general one of the arguments why market participants might prefer to trade in lit continuous trading rather than using auctions or dark venues. The Covid-19 crisis in that sense is a good example: In times of uncertainty and higher volatility, market participants express a need for immediacy since prices move quickly and immediate access liquidity is preferable to waiting for the end of the trading session or even the few minutes the auction will last. The same way market participants turned away from SIs and dark venues in the EU during this period of high volatility. The need for immediacy is also reflected in the drop in the share of closing auctions compared to continuous trading. When the closing auction was then usually showing a market share of 20-25%, it was down to 14% on 13 March 2020 for example for DAX instruments.

DBG believes that one of the reasons for the growth of closing auctions in the EU can be associated with MiFID II itself. Relevant factors in this context relate to the increased fragmentation since the introduction of the framework harming liquidity sourcing and transparent price formation with the emergence of systematic internalizers and alternative trading systems like frequent batch auctions and the increase in the number of venues under pre trade transparency waivers.

Regarding avoidance of HFTs, we would like to underline that liquidity providers/market makers are not present during auctions in general as the framework does not fit their activity. High frequency market makers use their low latency connections to trading venues to provide liquidity on either side of the book and arbitrage price deviations and as such do contribute to price efficiency. Because closing auctions limit the effect of latency in order submission by aggregating all trading interests and matching them at a discrete point in time, high frequency market makers cannot apply successfully their trading strategies. While we do understand the argument that market participants might want to avoid high frequency market makers by switching to closing auctions instead of continuous trading, we cannot corroborate this assumption only by looking at the market share of high frequency market makers during the different phases of the trading session.

Question 44. What is your assessment of the current level of competition on closing auctions, including between trading venues that offer trading for the same financial instrument?

- 1 - No competition
- 2 - Low level of competition
- 3 - Neutral
- 4 - High level of competition
- 5 - Very high level of competition
- Don't know / no opinion / not applicable

Question 44.1. Please point to the main causes for such a situation and to the main implications on the broader functioning of EU markets.

Please specify which changes to the EU legislation would increase competition?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do consider that the level of competition is high between of trading venues but also with bilateral systems and internalization from banks. By construct closing auctions aim setting the price that maximizes the traded volume. Market participants do benefit from a highly efficient price and do not pay the spread; those aspects are highly valued by market participants and a number of competing offerings have developed in the past years. Number of alternative solutions are available to market participants which allow them to execute their transactions without participating to the closing auction on the primary market. Those products would usually run in parallel with the closing auction on the primary market; they would either match orders at the official closing price once it is fixed or offer competitive offerings in parallel of existing closing auctions on primary markets with price formation. Moreover, we would underline that some investment banks provide market at close products that match orders internally to avoid paying the exchange auction fee. This includes principal liquidity guaranteed at the close via their SI. According to data from BigXYT, looking at the addressable liquidity executed on all SIs – hence ELP SIs and bank SIs (so excluding technical transactions for instance), the volumes traded after the close represented on average each day 35% of their total traded volume.

As explained, the level of competition being already high around closing auctions, we would strongly advise to let competition and innovation continue in this area; to our knowledge, there has been no call, no analysis which require price regulation nor anti-competitive measures.

Question 44.2. Do you believe that the consolidated tape could play a role in that regard?

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

Please explain the reasoning of your answer to question 44.2:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As lined out in detail in our answers to Questions 30-35 affecting the CT, the CT is not supposed for direct trading purposes. The reasons for the selection of “auctions” vs. any other execution have been elaborated as well in our answers to Questions 43 and 44.

Question 45. What is your assessment of the level of fees charged by trading venues for orders submitted during a closing auction, compared to any other time of the trading day?

- 1 - Very low
- 2 - Rather low
- 3 - Neutral
- 4 - Rather high
- 5 - Excessive
- Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 45, in particular as regards the potential impact of these costs on the attractiveness of EU capital markets, should the concentration of trading in closing auctions continue to increase:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 45.1. Do you believe that measures should be taken to reduce costs for investors?

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

Please explain your answer to question 45.1, specifying what would these

measures be:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

DBG would like to underline that the fees that apply during the closing auction on its platform T7 also apply during continuous trading; they are publicly available on our website (see https://www.deutsche-boerse-cash-market.com/resource/blob/2689138/cdf8a2f417ee9bc9129355663761c71c/data/2025_03_01_dbag_preisv_t7_xontro_en.pdf).

Question 46. Have you identified other challenges linked to the raising importance of closing auctions?

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

Please explain your answer to question 46, specifying what these challenges are:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No, DBG has not identified challenges linked to closing auctions. Closing auctions are a crucial aspect of modern market structure and the value they provide should not be overlooked. They benefit the market by concentrating liquidity, reducing costs and safeguarding the price formation process. The popularity of closing auctions shows that there is a significant demand from investors for this highly transparent and non-discriminatory mechanism which is in the best interest of investors, public companies and the market as a whole.

Some market participants have voiced concerns that as a centralized system, any breakdown could destabilize the markets and impact the quality of price formation. This concern appears however unfounded since exchange systems are reliable, monitored in real-time, dimensioned and scalable to the order flow's needs. In addition, EU regulated markets are also required as per MiFID II Article 48 to have in place effective systems, procedures and arrangements to ensure their systems are resilient and are able to ensure orderly trading under conditions of severe market stress. Regulated markets must also have arrangements in place in the case of any failure of their trading systems. We would recall that centralization itself does not create uncovered stability risks and that with appropriate safeguards in place, primary exchanges have proven their value by creating trust in their rules and procedures. This trust from market participants is reflected by closing auctions' success and growth. Stability of the system would not be guaranteed with a less centralized distribution of liquidity; stability is guaranteed by the underpinning confidence that liquidity aggregation is framed by sound and safe practices. The centralization of liquidity in the closing auctions guarantees that the price formed is dependable since it is protected by the rules established by exchanges.

DBG would like to recall that competition cannot be an objective per se but rather a tool to achieve higher-ranking policy objectives. In an EU fragmented market structure, some of the buy-side have previously

warned that it is becoming increasingly burdensome to source liquidity and identify who they trade with; this is at odds with the overall MiFID II goals to 'democratize' the investment process. Investors themselves have indicated that alternatives might fragment the current system and agree that having a single closing price is preferable. Dispersing trading across a large variety of venues and execution modes will come at the cost of deterioration of price formation. The proliferation of order flow across execution venues raises concerns around liquidity aggregation and the quality, reliability and efficiency of price determination.

As shown by a research conducted by researchers from University St Gallen and reported by SIX Swiss Exchange, a removal of liquidity from the closing auction results in a shift in the closing auction price: A removal of 10% of the bid or ask liquidity dislocates the closing price between 8 and 12 bps across Blue Chips stocks.

Furthermore, trading participants are reactive to incoming liquidity in the call phase; fragmentation of closing auction liquidity would result in a dilution of closing order interaction and a subsequent weakening of price discovery (see K. Frauendorfer and L Mueller, 2020, Liquidity-related Price Sensitivities of Closing Auctions in Equity Market, Working Paper, University St Gallen).

Question 46.1. Have you identified other measures to be taken to address such challenges?

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

Please explain your answer to question 46.1, specifying what these other measures are:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

DBG does not believe that any action shall be undertaken to mitigate or reverse the increase in the closing auction share. As explained in our answer to the previous questions, we have not observed any sign that this trend would trigger a negative impact on the fairness, efficiency and transparency of the markets or posing an operational risk. To the contrary we would very much caution regulators against any measure which would disturb the price discovery process which takes place during the closing auction. Closing auctions, as their name indicates, determine the closing price that is in line with the stock's intraday performance, in the best interest of public companies and investors. They are relevant to set the reference price for a high number of financial instruments (ETFs, traditional funds etc.) and allow market participants to replicate exactly the price at which index rebalances are done. In addition, it is the official closing price that is used for calculations for corporate actions and other transactions, and indeed is the generally accepted reference price for many other purposes, such as tax matters or for the determination of settlement prices by CCPs.

Closing auctions aim at determining a representative closing price specifically because they concentrate liquidity over a limited period of time (few minutes only). The more participants in closing auctions, the higher the liquidity, and the more efficient the price. Closing auctions have become focal coordination venues for liquidity seekers (Admati A., and P. Pfleiderer, 1991, Sunshine trading and financial market equilibrium, Review of Financial Studies, Vol. 4, pp. 443-481; Spiegel M. and A. Subrahmanyam, 1995, On intraday risk premia, Journal of Finance, Vol. Issue1, pp. 319-339.), they also lower execution cost and sharpen price determination (see Pagano M. S. and R.A. Schwartz, 2003, A closing call's impact on market quality at Euronext Paris, Journal of Financial Economics, Vol. 68, pp. 439 – 484; Comerton-Forde C. and T.J.

Putniņš, 2011, Measuring closing price manipulation, Journal of Financial Intermediation, vol. 20, pp. 135-158). Studies also find that the introduction of call auctions significantly reduced day-end returns' skewness, suggesting less price manipulation.

Closing auctions contribute to make companies listed in the EU visible and tradeable at large quantities with a certain degree of execution probability and reliable price (as EU closing auctions take place when US markets are open). The global reference for each relevant stock is guaranteed by the robust price formation process carried out by primary exchanges, based on high quality matching algorithms that determine the closing price that maximizes the turnover. These auctions have a fixed schedule defined by trading venues and processes are transparent as the theoretical auction price is continuously published. They do not substitute continuous trading which facilitates all orders as rapidly as possible during regular trading hours so that the trades are executed on a continuous basis at the prevailing market price but instead serve different purposes.

24-hour trading

Question 47. How positive do you deem extended trading hours / 24-hour trading for the development and competitiveness of EU markets?

- 1 - Not significantly positive
- 2 - Slightly positive
- 3 - Sufficiently positive
- 4 - Very positive
- 5 - Extremely positive
- Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 47:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We understand that the move towards extended trading hours / 24 hour trading is mainly driven by retail investors; in that sense we consider that it is a positive development and believe that infrastructures shall support the demand from investors as one of the contributing factors to the Savings and Investment Union initiative; DBG considers in particular that keeping EU capital markets open later would have a positive effect on EU instruments as the EU trading sessions would overlap with the US session and offer a real alternative to trading in US names. However, the benefit of opening markets outside core European hours depends on asset classes / financial instruments and the investors' activities in these products as well as their demand to trade at any time of the day. Trading venues in particular will assess how they can support this trend looking into demand from investors while ensuring conditions are fulfilled for orderly market conditions including an adequate post trading set up (see our response to Questions 48 and 49).

Question 48. How advantageous or risky do you deem extended trading hours /24-hour trading for the orderly functioning of EU capital markets?

- 1 - Very advantageous
-

- 2 - Rather advantageous
- 3 - Neutral
 - 4 - Rather risky
 - 5 - Highly risky
 - Don't know / no opinion / not applicable

Please explain what these advantages are:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

DBG would mention that some exchanges already propose extended trading hours like Boerse Frankfurt which is more retail focused and allows for trading from 8am until 10pm CET. Eurex, for example, operates outside core European trading hours, offering most futures from 1:00 am to 10:00 pm CET, and selected futures from 1:00 am to 11:00 pm CET. While liquidity outside core European market hours is significantly lower, orderly markets can generally be maintained, and investors benefit from being able to timely react to market events and access products during their core office hours. Hence, higher risks due to thinner liquidity tend to be outweighed by these benefits. However, we do see a risk if the extension of the trading hours was mandated by regulators particularly a move towards continuous 24/7 trading which would significantly increase operational complexity for exchanges, trading participants and clearing (compared to already extended or even 23-hour trading days), as we believe that European trading venues must retain the flexibility to define their own trading schedules. Any harmonization or shift toward 24-hour trading should be market-led, based on demonstrated investor demand, and technological capability. In light of the move to T+1, it is essential that operational cut-off times and post-trade deadlines be designed to support rather than restrict trading activity, particularly in the evening. The risk of inadvertently discouraging trading after a certain hour due to settlement constraints or disproportioned additional costs must be avoided. Longer trading hours may strain operational capabilities on exchanges, intermediaries, market makers, and post-trade service providers. A move toward continuous trading introduces challenges in trade reporting, transparency obligations, settlement processes, entitlement calculations (e.g. corporate actions and dividend rights), and staffing implications. Furthermore, there will be an increase in cybersecurity exposure and, subsequently, resilience requirements. Ensuring robust incident response, monitoring, and infrastructure protection mechanisms are thus key. Automation and digitalization across the entire value chain are fundamental for providing these services even outside normal working hours. Also see our response to Q47.

Question 49. In your view, do the advantages of extended / 24h trading outweigh the potential risks?

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

Please explain your answer to question 49:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As per the responses to questions 47 and 48, advantages and risks as well as the duration of extended trading hours depend on the asset class / instrument type and their market structure. For example,

cryptocurrency as well as (OTC) FX spot markets already trade 24/7 today. Offering listed derivatives on these products also on a 24h basis could therefore be beneficial. European benchmark indices like the EuroSTOXX 50 are often highly correlated to other equity indices traded in major Asian or US markets, which enables liquid markets in futures on the EuroSTOXX 50 also outside core European market hours (i.e. from 1:00am CET to 22:00pm CET). 24h trading for EuroSTOXX 50 futures might not be commercially viable as demand after the close of the US market at 22:00PM CET and before opening of the main Asian markets (Singapore opens at 1:00 am CET) will most likely be limited. In summary, the derivatives market Eurex already operates markets today up to 22h. Further extending hours to 24h is rather driven by operational / commercial considerations since the additional two trading hours will not materially impact the risk / benefit profile.

The role of multilateral vis-à-vis bilateral trading

Question 50. Based on the current legal framework, and considering developments in technology and market practices (including the development of smart order routing systems), is the dividing line between multilateral trading facilities and bilateral trading sufficiently clear?

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

Please explain your answer to question 50 and provide concrete examples:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

For equity markets, we observe that the distinction between bilateral and multilateral trading is increasingly blurred, which poses a problem of level playing field among market participants and for price efficiency (see our response to Question 52). Bilateral trading would encompass different trading models: all OTC trading, Systematic Internalizers, trading under the Negotiated Trade Waiver (Off Book on Exchange trading) and Request-For-Quote systems. For the DAX40 index for example, looking only at the distinction between multilateral (on exchange, lit and dark) systems and OTC, SIs and OBOE, the respective shares are for the former 66% and for the latter 34% (note that the figures are provided for addressable liquidity meaning excluding for instance non price forming trades or technical trades – data from BigXYT, April 2025) – Note that the results are similar for CAC40-. The growth of the OBOE segment is fueled by the workflow whereby liquidity providers quote directly to the buy-side via their execution management systems (EMS) leveraging actionable indications of interest (IOIs): the IOIs are sent directly to the order management systems of asset managers and other institutions. IOIs can also be broadcasted through a broker. One or several liquidity providers are using a system which allows for reaching out to multiple clients. The set up very much resembles the one of a multilateral system and we would in that sense consider that the current ESMA's Opinion on the Trading Venue Perimeter shall be reviewed.

Moreover, we do have concerns about the risk-taking requirement for SIs: in theory, all trades executed through an SI must be executed against the operator's proprietary account. SIs are prohibited, when dealing on their own account, from entering into matching arrangements with entities outside their group with the objective of executing de facto riskless back-to-back transactions in financial instruments outside trading venues. However, some investment firms appear to have developed models that allow third-party trading

firms to provide liquidity to SI clients. Hubs that may connect SIs with counterparties should be closely monitored to ensure they function strictly on a bilateral basis, and in case they do not but operate an internal matching system they must be authorized as an MTF. Such activities require oversight, as there is a risk that trading occurs on a multilateral rather than bilateral basis, potentially breaching existing regulation. If these hubs operate internal matching systems rather than strictly bilateral interactions, they should be authorized as Multilateral Trading Facilities (MTFs) to address the risk of breaching existing regulations. This levels the playing field and avoids unintended loopholes that could disadvantage multilateral systems and divert trading flow, ultimately harming market participants.

In general, we appreciate fostering competition between multilateral vs bilateral trading systems as we see this as trading alternatives to market players but not under different regulatory regimes. Both bilateral and multilateral systems should operate under the same regulatory structure. Therefore, we propose to the EU Commission either consider the classification of SIs as bilateral or multilateral on the basis of their actual activities and to require venue licensing where applies to harmonize regulations and ensure fairer market practices.

Question 51. In your view, what are the benefits stemming from competition between bilateral and multilateral execution venues?

Please explain your reasoning and differentiate between different categories of clients (professional investors vs retail investors)?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 52. In your view, what are the main drawbacks stemming from competition between bilateral and multilateral execution venues?

Please explain your reasoning and differentiate between different categories of clients (professional investors vs retail investors)?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The competition between bilateral trading and multilateral venues might appear attractive on the short term: competition shall bring costs down and stimulate innovation; competition can be healthy if not based on

uneven playing field and produces positive externalities and contributes to the growth of the economic welfare.

As per our response to Question 50, bilateral trading whether it is done through an SI or the negotiated trade waiver, has limited pre trade transparency requirements, which is not the case in particular for lit multilateral systems. It is important to recognize that bilateral trading is not automatically classified as non-addressable liquidity, but also includes liquidity which could take part of the price discovery process. In that sense, having a view only on lit venues' liquidity provides a truncated view of the available liquidity in Europe which in turn harms investors' interests in European markets, those investors being US, retail or institutionals.

We then believe that it is essential to address the lack of transparency in bilateral trading by:

- Including SIs to the pre trade consolidated tape: as developed in our response to Question 33, and under the mentioned pre-conditions, the liquidity provided by SIs which is pre trade transparent as per MiFIR could be displayed in the pre trade CT and with the SI MIC identifier in the post-trade CT.
- Reviewing transactions flagging: the activity of both SIs and under the negotiated trade waiver for OBOE transactions shall be flagged to allow to identify exactly the type of activity. Flagging of the trades executed at market closing price, executed at midpoint, whether done manually, identifying clearly negotiated transactions shall be introduced to have a clear picture of the liquidity (addressable) in the bilateral space. We find that both the revised MiFID II framework and ESMA's RTS 1 proposals fell short of delivering effective solutions on that aspect.

Without an adequate information to market participants and a clear view of the liquidity in Europe, it can only be considered at this stage that fragmentation has now reached another (higher) level and bilateral and multilateral trading can be used at the same level when bilateral venues in particular are actually not available to all investors and are not subject to the same regulatory constraints, especially regarding transparency.

The prices which are transparent and available to all are those of multilateral lit venues, which are the only exchanges which can qualify the "reference markets". With increase in fragmentation and more shift to bilateral trading venues, the price formation process can deteriorate, and even have a negative impact on IPOs. Bilateral trading is not where price formation takes place, to the contrary bilateral prices would be pegged to the reference price (see Quantifying systematic internalizers' activity: Their share in the equity market structure and role in the price discovery process, AMF, May 2020). Sufficient transparency, however, is crucial for the price formation process and, therefore, the well-functioning of capital markets. As liquidity shifts away from lit venues, the price formation process becomes increasingly weakened. A well-functioning price formation process enables trading to take place, delivers more efficient markets, where all investors, regulators and participants can have full confidence, and lowers capital costs for businesses.

Safeguarding the price formation process is therefore essential. This critical goal has been consistently raised by various parties to the debate, e.g. it must not be forgotten that the European market structure reflects both primary and secondary markets, which share a symbiotic relationship, and their efficient functioning is essential for capital formation, liquidity provision, and risk management — key factors for an attractive business and listing environment. Therefore, attention must be given to improving the depth of liquidity pools in lit venues, where companies list and the price formation takes place.

Question 53. In your view, do benefits stemming from competition between bilateral and multilateral execution venues outweigh the associated drawbacks?

Yes

- No
- Don't know / no opinion / not applicable

Please explain the reasoning of your answer to question 53 and differentiate between different categories of clients (professional investors vs retail investors):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 53.1 Would you see merit in requiring that retail orders be executed on multilateral and lit venues?

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

Please explain the reasoning for your answer to question 53.1, in particular please specify any impact that such a measure would have on the quality of execution of retail orders:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Requiring retail orders to be executed on multilateral and lit venues would offer significant benefits in terms of transparency and investor protection for retail investors, as well as for price formation and broader market integrity.

Multilateral lit venues offer significantly greater transparency than bilateral trading, which is particularly important for retail investors. This transparency ensures visibility to the best available prices and supports informed decision-making. Retail investors, who often lack the resources and expertise to navigate complex markets, benefit from the strict regulatory oversight governing these venues. Trading on lit and multilateral venues occurs on a fair, transparent, and non-discriminatory basis—unlike bilateral spaces that restrict access to select participants who have signed up with off-exchange liquidity providers. By reducing the risk of conflicts of interest and market manipulation, multilateral lit venues provide retail investors with fairer execution and stronger protection, while reinforcing overall market integrity.

Besides, the concentration of retail orders on multilateral lit venues would avoid the segmentation of the flow which we observe for retail orders captured by single dealer markets. As such, a larger volume of retail flow is also beneficial to market quality and lower costs. Mittal H. and K. Berkow show that all investors on trading venues would benefit from some spread reduction if retail orders were to mix with institutional orders, thanks to the mix of informed and uninformed flow. (The Good, The Bad & The Ugly of Payment for Order Flow, 2021, BestEx Research). Furthermore, requiring retail order execution on multilateral lit venues enhances

market resilience and stability, particularly during stress events. BigXYT's analysis of the "Liberation Day" volatility (April 7, 2025) demonstrated a significant shift in trading volume towards lit venues (CLOBs) as volatility increased, while other execution methods, including bilateral and off-exchange trading, experienced declines. This underscores retail investors' preference for transparent, regulated marketplaces during times of uncertainty. Concentrating retail flow on these venues ensures robust price discovery, reduces the risk of market fragmentation and manipulation, and provides stronger investor protection, ultimately contributing to a more stable and resilient market structure.

Question 54. Does the emergence of DLT-based/tokenised asset markets bring in a new element or dynamic, compared to bilateral versus multilateral venues?

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

Please explain your answer to question 54:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In our opinion, DLT-based/tokenized asset markets are not to be considered as a third category in comparison to multilateral and/or bilateral trading facilities. Indeed, it is an infrastructure where these trading facilities are operated. So, DLT-based/tokenized asset markets are applied as a technical system in multilateral and bilateral trading facilities, where liquidity providers can also participate. These markets have different technical and regulatory frameworks. For example, collaterals for derivative positions, in a DLT market, do not require any operations as the collateral itself is a code and the whole system is coded. Hence, in general, we would evaluate the emergence of DLT-based/tokenized asset markets as a new element in economic development, not even fully regulatory, in which existing infrastructures are being challenged in the whole industry. In that sense, this question is "not applicable" in our opinion as functionalities of a market infrastructure and a trading system are not directly comparable.

Question 54.1 Should our regulatory framework be adapted to reflect this change?

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

2.6.2. Single market maker venues

Question 55. In your view, what are the main benefits and drawbacks associated with so-called “single market maker venues” (i.e. where the venue operator limits market making to one participant)?

Please explain your reasoning, in particular when it comes to quality of execution:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The single dealer models can be found in the retail trading space and are located mainly in Germany. In the US, the model might look alike but has major differences: the market maker that captures the order flow pays to receive the clients' orders, he has an obligation to price improve and all payments and fees are transparent (Rule 605). With the growth of neo-brokers, the single dealer models have developed often on the back of the payment for order flow practice, according to which the execution venue where the dealer trades also pays the broker to get the order flow. Those models are basically a straight line between the broker receiving the client's order, the execution venue where the order is executed and the single counterpart of all orders. Those models are problematic because:

- The retail order flow is segmented: orders sent to the single-dealer platforms do not interact with each other; they have only one counterpart and the retail orders cannot participate to the price formation process. This aspect is problematic from the perspective of the price formation process (see our response to 53.1);
- When the best execution policy of the broker only includes one execution venue, there is no guarantee that the retail client will receive the best price. The single dealers have indeed no obligation of price improvement and prices are not constrained in particular outside of the regular trading hours (See Optiver Insights, March 2025, PFOF is going away, but the problem isn't).

Single market maker venues - registered as Regulated Markets - are a very specific construct that was made possible by a loophole in the regulation, which should have been fixed with the introduction of Art. 47 (1)(h) MiFID II: [a Regulated Market] “has at least three active members or users who have the ability to connect with all others for the purpose of price formation.” In addition to the minimum quantity of three (active) trading participants, multilateralism requires that each trading participant - irrespective of whether it is a dealer - must be able to interact with (at least) the other (two) trading participants for the purpose of price formation. Interaction means participation in the competitive price formation process on the exchange for all financial instruments admitted to exchange trading, i.e. in particular in the case of price improvements. In practice, this presupposes that all offers must be accessible to all trading participants and that all trading participants must be able to accept the offers. Market models in which the trading participants can only interact with a market maker/dealer for the purpose of price formation, i.e. where the market maker acts as an unavoidable counterparty for the buyer and seller, do not fulfill this requirement. Moreover, concentrating liquidity within a single market maker venue raises concerns about market resilience, particularly during stress events. BigXYT's analysis of trading behavior during the "Liberation Day" volatility (April 7, 2025) revealed a significant shift towards transparent, accessible venues (CLOBs) with diverse market participants, while less transparent or single-counterparty venues saw reduced activity. This underscores the importance of diverse liquidity provision and investor access to multiple counterparties for maintaining market stability and investor confidence. Single market maker venues inherently limit this diversification, potentially increasing vulnerabilities during market stress and discouraging participation when liquidity is most needed.

Question 56. Are you aware of any existing practices that may restrict the presence of multiple market makers/liquidity providers on these venues?

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

Please explain your answer to question 56 and provide concrete examples and specific restrictions or costs obstacles:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In particular in Germany, the models around retail trading have developed in a specific direction where single dealer models have been coexisting with the practice of Payment For Order Flow. The latter has reinforced the emergence of a straight-line model where the broker receiving payment sends the orders to a single execution venue and the relevant venue is a single SI only making the payments. This model might in the future without PFOF be replaced with ownerships along the chain: if the broker acquires the trading venue, then the segmentation of the order flow and its execution with the single dealer is cemented. Where the owner of the trading venue is also the investment firm acting as SI on the venue, there is no interest for the dealer to allow for any competition; that would remove the monopoly status of the SI – note that some trading venues might also have a "factice" competitor on the venue.

Question 56.1. In your view, are these practices justified?

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

Please explain your answer to question 56.1 and flag any potential risks in terms of efficiency of trading:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Given the arguments developed in our response to Question 55 and 56, we do not consider that these practices are justified. Those constructs where a single market maker is the counterpart of all trades are segmenting the retail flow versus institutional flow and do not have any obligation to their counterpart in terms of price improvement. Pushed to the more extreme case where brokers would own the execution venue, those models can negate best execution considerations and at the same time avoid any regulation of PFOF because of the integration of the different steps of the value chain. These arrangements concentrate order flow even more than traditional PFOF and pose significant risks to best execution and competition. There is no competition to get the order flow and potentially no regulatory requirements on best execution like price improvement. Furthermore, these practices raise significant concerns about market resilience and could exacerbate stress events. The BigXYT analysis of "Liberation Day" (April 7, 2025) highlighted how, during market volatility, investors favored transparent venues with diverse market participation (CLOBs), while single-counterparty or less transparent venues saw reduced activity. Single market maker models, by concentrating liquidity within a single entity, create potential bottlenecks and vulnerabilities. During stress, this concentration could trigger wider disruptions if the single market maker faces operational issues or is

unable to manage increased order flow. Such scenarios could lead to significant price dislocations, exacerbate liquidity shortages, and discourage market participation, ultimately undermining financial stability.

2.6.3. Ghost liquidity

Question 57. Market developments have led to changes in the order submission strategy by certain high frequency traders, such as the submission of more orders than the amount that is really intended to be executed. This may imply that ‘consolidated’ liquidity (measured as the simple aggregate of a given financial instrument available across all trading venues) is likely to be an overstatement of the actual liquidity that an average trader can access. The difference between measured liquidity and tradeable liquidity is often referred to as ‘Ghost Liquidity’.

Do you believe that practices associated with Ghost Liquidity are conducive to adequate levels and ‘quality’ of liquidity and price formation on trading venues?

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

Please explain the reasoning for your answer to question 57:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2.7. Other issues on trading

Question 58. Please provide any further suggestions to improve the integration, competitiveness, simplification, and efficiency of trading in the EU.

Please provide supporting evidence for any suggestions:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Prudential Regime for Investment Firms: Investment firms generally do not engage in traditional credit institution activities such as deposit-taking or lending. Yet, in the current IFR/D prudential regime, larger market makers can be classified as banks which is inappropriate given the limited risks they pose to the market and their specific activities. This is particularly true for proprietary trading firms that often trade on their own account, without providing investment services or advice to clients, but are essential for liquidity provision (per MiFID II rules), spread quality and contribute to the well functioning of European markets. This classification puts an undue burden on these firms and results in disproportionate requirements. A revision of the IFR/D framework could contribute to enhancing liquidity and trading, safeguarding competition and strengthening the competitiveness of EU markets.

Preserve Pre-Trade Transparency for Non-Equity Instruments: Pre-trade transparency is removed for various trading systems except central limit order book and periodic auctions for non-equities. The result might be arbitrary application and race to the bottom in terms of transparency thresholds on RMs that have trade registration or block trading system, when they still decide to apply threshold for certain products as well as uneven playing field between regulated traded venues and voice trading systems, RFQs etc. We recommend reviewing pre-trade transparency requirements for selected trading models for non-equity instruments. At least partial remedy could be provided for ETDs (except commodities) in Level 2 by ESMA by extending the definition of CLOB to other systems highly connected to order book, e.g., trade registration systems.

Transaction Reporting: The scope of the transaction reporting data as per MiFIR Art. 26(5) does include data available to the trading venue but also information the trading venue must request from the trading participant that can be rather difficult to obtain and after cumbersome processes. Even more, the requested data is primarily personal data, which must be provided by the trading participant in a very short timeframe as the deadline for the trading venue to provide the transaction reports to the regulators is only by T+1 end of business. The trading venue must also ensure that the information provided by the trading participant is accurate, complete and submitted in time to allow the trading venue to fulfill the reporting obligation for the regulator. We suggest repealing the obligation for trading venues to report on behalf of non MiFIR member firms.

Reporting Requirements Timelines: Regulatory updates—via new manuals and guidelines—occur frequently and vary in scope. Even minor updates can require significant technical changes to trading infrastructure, making it impractical for venues to release new system versions each time. We recommend extending implementation timelines to at least one year.

Conformance Testing Scope: Investment firms should be responsible for testing and certifying their own algorithms. Trading venues cannot efficiently validate participant algorithms. We propose limiting conformance testing to "trading systems" only, excluding "algorithms" and "trading strategies."

HFT Criteria: Current HFT thresholds, set a decade ago, are outdated and easily triggered due to advances in algorithmic trading. ESMA should periodically review and recalibrate these thresholds based on market data to reflect modern trading speeds and reduce unnecessary classification as HFT.

Regulated Market Making (RMM) criteria: Currently EU requirements are broad and RMM framework is not sufficiently clear that leads to different local interpretations/logic and applications, putting such exchanges as Eurex with stricter legal interpretation into competitive disadvantage limiting participation especially from third countries. Additionally, the requirement of making schemes public is also broad and might lead to different interpretation within the EU. It should be either completely removed or kept high-level.

Harmonization and level playing field across the EU rules to be reflected in RTS 8, potential removal of publication requirements for the schemes or making it rather harmonized and high-level.

Retail investment strategy: ETDs are currently classified as high-risk products (score "7") under RIS as well as PRIIPs. ETDs while traded on a highly regulated market and cleared by a licensed CCP are considered highly risky, thus, signaling such a reputation to the market, especially to retail investors. Our proposal is to rename it as "complex" for perception and reputational reasons, thus, potentially attracting more clients such as retailers.

3. Post-trading

Issues with respect to post trading identified to date fall into three main areas:

- barriers to cross-border settlement
- barriers to the application of new technology and new market practices
- unharmonised and inefficient market practices and application of law, as well as disproportionate compliance costs.

This consultation aims to further specify the above barriers, as well as understand current market practices and costs borne by market participants, be they fees or other compliance costs. This section seeks feedback on possible measures, legislative or non-legislative, to achieve more integrated, modern post-trading infrastructures. Respondents are asked to provide concrete examples to support answers provided, and, where possible, quantitative and qualitative information.

3.1. Barriers to cross-border settlement and other CSD services

3.1.1. Cross-border provision of CSD services and freedom of issuance

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 1. What are the main barriers to the provision of cross-border CSD services in the EU and to freedom of issuance in any CSD in the EU?

Please select as many answers as you like

- procedures mandated by EU or national laws (e.g. passporting)
- other legal or regulatory requirements (national or EU)
- lack of clarity and/or complexity on the applicable legal or regulatory framework (national or EU)
- supervisory practice (national or EU)
- market practice (national or EU)
- operational requirements (national or EU)
- differences in national legal, regulatory or operational requirements
- technical/technological aspects
- language
- Other

Please explain the reasoning for your answer to question 1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Deutsche Börse Group is of the view that, if all issuers and their agents were to fully adopt the AMI-SeCo's SCORE Corporate Actions Standards (in particular using the standardized templates for corporate events notifications provided therein) to announce the corporate actions to the issuer CSDs, meaningful progress towards harmonization of issuance practices and straight-through-processing (STP) of asset servicing across the EU Member States could be achieved (which, according to the CSDR, exercise the notary function and must be the first intermediary in the custody chain to receive this information as many national specificities remain to be taken into account).

To further enhance the visibility to investors, the issuer CSDs may, in addition to informing the holders of relevant securities as today, provide this information also to a common digital space such as ESMA's European Single Access Point for financial information. Such an approach would require the actors (issuer /issuer agents) to resolve the existing problem at the correct place in the custody chain and, if adopted, it would involve minimal developments down the custody chain.

It is important to improve the current situation in which announcements are published in non-structured ways in national official journals with various providers scrubbing and adding pieces of information, which ultimately creates high costs and room for different interpretations. According to estimates, around 50% of the cost to process corporate events is spent today by custodians to source the correct information – while liability risks and costs remain high.

In addition, it is important to note that the CSDR Refit (Art. 23) has included a revamped and streamlined CSD passporting regime, which is expected to be phased-in in 2025. This will further strengthen cross-border business activities for CSDs.

Generally, the EU should ensure that the common rule, i.e. that financial services passporting regimes allow businesses authorized in one Member State to provide their services throughout the EU Single Market, also effectively functions in the CSD space.

In that context, it is also important to observe that the EU will establish new CSD supervisory colleges. These could help CSD operators to tackle challenging practices by certain national competent authorities by providing a true European supervisory forum. CSD operators could hence work in a better cooperative spirit with the full college to improve cross-border activities.

In turn, however, it is also important to realize that any public intervention via a bigger role for the ECB's T2S system (as proposed in the Noyer report) will not overcome the actual existing national barriers and therefore not lead to a more integrated CSD landscape.

Instead, the overarching approach should be focused on empowering CSD operators to drive natural integration and consolidation via enhanced cross-border activities, including reduced national barriers, the new CSD passporting regime, and a better supervisory dialogue on cross-border endeavors via the new CSD college.

As a general principle, it must be considered that cross border provision of CSDs service, and consequent willingness to activate a passporting procedure according to CSDR is connected to the existence of a business case, i.e. issuers willing to initially register securities with a foreign CSDs, hence it is connected to listing places and cross border investment.

Question 2. Are there barriers to the freedom of issuance in the EU (e.g. requirements to use domestic CSDs for issuance/immobilisation /dematerialisation of securities, requirements in the corporate or similar law of the Member State under which the securities are constituted)?



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

Please justify your answer to question 2, in particular identifying potential risks:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not observe any formal rules/ or regulatory barriers mandating the use of domestic central securities depositories for the issuance, immobilization/dematerialization, or dematerialization of securities nor do we identify requirements preventing per se the initial registration of securities in CSDs in a foreign CSD.

However, in practice, the need to comply with applicable corporate law provisions and national tax legislations may result in additional operational and administrative costs. These costs typically arise from the need to design and implement specific procedures tailored to the legal and fiscal frameworks of the relevant jurisdictions. Such procedures may include adaptations to accommodate shareholder rights, withholding tax treatments, and reporting obligations, which could differ significantly between jurisdictions.

Therefore, while there are no outright legal prohibitions or restrictions, practical considerations related to legal compliance and tax treatment may indirectly influence the capability of a CSD to offer services to foreign issuers.

In fact, EU CSDs have proven to be highly efficient and competitive – illustrated by fast-track issuance processes of only 5 minutes, same day settlement, and access to international markets. This should, however, not be understood as a reason to not conduct further work to boost integration. When looking at the key reasons that act as barriers to further cross-border integration and the overall consolidation of CSDs, it is important to realize that the EU settlement landscape remains largely fragmented across long-standing and well-known national laws.

The EU also hosts the ICSD system (Euroclear Bank and Clearstream Banking Luxembourg) which represents Europe's largest and most liquid settlement system. The ICSDs operate the Eurobond market, which at EUR 14.4 TN outstanding is by far the EU's largest securities market and the world's 3rd largest fixed income market (after the US and China). The Eurobond market competes successfully with Asian and US markets and attracts business from issuers and investors across the globe to EU financial markets infrastructure. In the ICSDs, liquidity is further enhanced as investor clients of the ICSDs prefer to hold securities issued in domestic markets in Asia, the Americas, and Europe into the ICSDs because of superior liquidity pooling and financing tools. As such, the EU already hosts a globally successful securities settlement infrastructure that it can build on to achieve the objectives of the SIU.

For example, CSDR Art. 23 introduced new bureaucratic hurdles for securities issuance under foreign law in the form of intra EU passporting. As a result, it became easier for the ICSDs to allow issuance from outside the EU than from inside.

Beyond taxation realities for citizens and investors, the EU should also continue its work on the debt-equity bias. Despite recent regulatory impetus on this front, a cultural bias towards debt remains even though empirical realities suggest a much more profound change is needed. However, focus should be placed on the equal treatment of equity and refraining from imposing new fiscal barriers to debt financing.

If more efficient, digital, and scalable processes in the post-trade area are desired, there should also be a

stronger focus on the creation of the product itself in a digital way. Hence standardization of the terms and conditions is crucial, as well as an overall harmonization of the products and classes of products (e.g. via an EU ISIN code, common definitions on “Force Majeure”, standardization on what features/datapoints a “bond” needs to have, etc.) and a more harmonized EU framework for securities, perhaps by advancing the discussion around 28th regime.

Today, around 70 per cent of international securities are based on UK executable law, even if the securities are traded, cleared and settled on EU market. Therefore, EU-wide harmonized standards for legal terms and conditions would bring more legal certainty, as a security based on a consistent EU standard could be more easily issued in various Member States – instead of having to follow several different national laws.

Standardization of securities would structurally reduce costs next to boosting integration and could also make other securities-related services more efficient (like securities lending or securitization for instance). To further improve issuance practices and asset servicing, machine-readable and standardized announcements of issuers are needed, which are to be sent directly or via issuer agents to the respective issuer CSDs. In that respect, if all issuers and their agents were to fully adopt the AMI-SeCo’s SCORE Corporate Actions Standards to announce the corporate actions to the issuer CSDs, meaningful progress towards harmonization of issuance practices and straight-through-processing (STP) of asset servicing across the EU could be achieved.

Question 3. Are there barriers to cross-border asset servicing and processing of corporate actions, e.g. how Member States compile the list of key relevant provisions of their corporate or similar law, which apply in the context of cross-border issuance (Article 49, [Central Securities Depositories Regulation \(CSDR\)](#))?

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

How many barriers to cross-border asset servicing and processing have you identified?

- 1 barrier
- 2 barriers
- 3 barriers

Barrier 1 - Cross-border asset servicing and processing

	Describe barrier 1 to cross-border asset servicing and processing
Explanation of the barrier	<p>The EU still lacks harmonized national laws as well as common rulebooks, tax regimes and market specificities. There are also different standards related to securities issuance, settlement and corporate action processes. Fragmentation in the post-trade processes is mainly related to administration of securities, which leads to complexity in the cross-border asset servicing, collateral management and exercise of ownership rights. This discourages investors from engaging in cross-border investments. There is a lack of harmonization and standardization in post-trade regarding the rules that govern the attribution of entitlements and the exercise of shareholders' voting rights. Cross-border investors are hindered from effectively and fully participating in crucial decisions such as dividend payments or mergers and acquisitions. For investors, the management of intricate and varying processes for asset servicing remains both inefficient and costly.</p> <p>To further improve issuance practices and asset servicing, machine-readable and standardized announcements of issuers are needed, which are to be sent directly or via issuer agents to the respective issuer CSDs. In that respect, if all issuers and their agents were to fully adopt the AMI-SeCo's SCORE Corporate Actions Standards to announce the corporate actions to the issuer CSDs, meaningful progress towards harmonization of issuance practices and straight-through-processing (STP) of asset servicing across the EU could be achieved.</p> <p>The European financial market remains highly fragmented, particularly due to the differences in national corporate laws across Member States. This lack of harmonization presents significant challenges for Central Securities Depositories (CSDs) when they try to operate across borders.</p> <p>To address this, the EU introduced a "passporting" regime under the Central Securities Depositories Regulation (CSDR). This mechanism was intended to allow CSDs to provide services in other Member States without needing separate authorizations in each jurisdiction. However, despite recent improvements introduced by the CSDR Refit (Regulation 2023/2845), the process still faces critical hurdles.</p> <p>At the heart of the issue lies a lack of common understanding about what "corporate law" really means in the context of Article 49(1) of the CSDR. Each Member State seems to have its own interpretation. As a result, the</p>

passporting process has become unnecessarily complicated, costly, and time-consuming. The ESMA “Key Provisions” lists, meant to clarify what legal requirements apply in each country, are part of the problem:
 Some lists include entire codes of law without specifying the relevant parts.

Others are only available in national languages, with limited or vague English summaries. In many cases, these lists cover legal areas that have nothing to do with the actual services that CSDs provide. This inconsistency means that CSDs must often navigate a maze of irrelevant or unclear rules, sometimes forcing them to abandon plans to offer cross-border services altogether (e.g. in Norway, Bulgaria, and Croatia).

These issues go beyond administrative inconvenience. They represent a barrier to the deeper integration of EU capital markets, which is crucial for attracting investors and increasing access to equity financing across the Union.

When legal requirements are ambiguous or overreaching, CSDs face uncertainty and higher costs. This weakens competition and reduces efficiency—ultimately undermining the EU’s goals for a more unified capital market.

Reason(s) why it is a barrier

Specific legal requirement(s) that create(s) the barrier, if relevant (national or EU level)

Supervisory or market practice(s) (national or EU level) that create the barrier, if relevant

Operational requirements that create the barrier (national or EU level)

Technical/technological aspect(s) related to the barrier, if relevant

Member State(s) in which the barrier exists, if relevant

Estimation of the costs of the barrier

Potential solution(s) to remove or lower the barrier, in descending order of importance

Suggestions for solutions can include for instance legislative changes (specifying which changes are being suggested), use of supervisory convergence tools (specifying which tools are being suggested), centralised EU supervision, adoption of market practice(s).

Data on the potential costs and benefits of the suggested solution(s)

We propose:

1. Define “corporate law” more precisely under Article 49 of CSDR—focusing only on provisions that govern the relationship between issuers and investors (like voting rights or dividends).
2. Exclude irrelevant legal areas, such as rules on internal CSD organization, account management, or asset recording, which go beyond the intended scope.
3. Improve the quality and structure of the ESMA Key Provisions lists—using a standardized template and clearer distinctions between issuer obligations and those that actually apply to CSDs.
4. Ensure that national authorities align their requirements with the spirit of CSDR, which aims to reduce regulatory complexity, not increase it.
5. Respect the principle of home-country supervision. CSDs should not be subject to overlapping national regimes when passporting, as this undermines the concept of a single EU rulebook.
6. Increase transparency around which rules apply and why—Member States should clearly explain the relevance of each provision they include.

Assess the priority level for addressing barrier 1 to cross-border asset servicing and processing:

- High priority
 - Medium priority
 - Low priority
 - Don't know / no opinion / not applicable
-

Question 4. Are there barriers stemming from national laws, regulatory /supervisory or operational requirements?

For example:

- setting out **restrictions for the place of settlement** for primary or secondary market transactions
 - preventing securities issued by entities from **other EU Member States** from being issued, maintained or settled in the national CSD
 - imposing **additional requirements on CSDs**, established in another Member State, wishing to provide services to national issuers and/or participants)
- Yes
 - No
 - Don't know / no opinion / not applicable

How many barriers stemming from national laws, regulatory/supervisory or operational requirements have you identified?

- 1 barrier
 - 2 barriers
 - 3 barriers
-

Question 5. Are there any additional barriers to the provision of cross-border CSD services which are not mentioned above?

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

3.1.2. Links

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 6. What are the main barriers to building an efficient network of links between EU CSDs?

Please select as many answers as you like

- legal or regulatory requirements (or lack thereof)
- fiscal requirements
- supervisory practice
- market practice
- operational requirements
- differences in national legal, regulatory or operational requirements
- technical/technological aspects
- other

Barrier due to legal or regulatory requirements (or lack thereof) - Links

	Describe the barrier due to legal or regulatory requirements (or lack thereof)
Explanation of the barrier	<p>In the context of efficient network of links, it should not be forgotten that the EU's pan-European cross-border Target2Securities (T2S) System has made an important contribution in the context of market integration. However, T2S does not cover all EU Member States, and presents a number of technical barriers that render cross-border settlement less efficient across the EU.</p> <p>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.</p>
Reason(s) why it is a barrier	
Specific legal requirement(s) that create(s) the barrier, if relevant (national or EU level)	
Supervisory or market practice(s) (national or EU level) that create the barrier, if relevant	
Operational requirements that create the barrier (national or EU level)	
Technical/technological aspect(s) related to the barrier, if relevant	

Member State(s) in which the barrier exists, if relevant	
Estimation of the costs of the barrier and an explanation of how these costs could be reduced	
<p>Potential solution(s) to remove or lower the barrier, in descending order of importance</p> <p>Suggestions for solutions can include for instance legislative changes (specifying which changes are being suggested), use of supervisory convergence tools (specifying which tools are being suggested), centralised EU supervision, adoption of market practice(s).</p>	<p>Working on improving these bottlenecks will constitute an important element to achieve a less fragmented post-trade landscape. In addition, the attractiveness of T2S could be significantly enhanced by introducing incentives via targeted fee rebates based on volume contributions. This would incentivize participation and reward those entities that contribute most, thereby creating a race to the top.</p> <p>There are already a number of CSDs in Europe, which have wide network of CSD links. Participants in such CSDs, or in CSDs to which these CSDs are linked, have the practical possibility to do the majority of their cross-border business by making use of cross-CSD settlements at infrastructure level. However, only a minority of CSD participants are starting to make use of this opportunity and most CSD participants continue to use predominantly intra-CSD settlements.</p> <p>An example of this is the current model of holding collateral by the Eurosystem NCBs, which continue to rely predominantly on their national CSDs and other NCBs instead of opening a securities account in a more interlinked CSD in the EU. Another example are commercial banks, which continue to rely on internalized settlements and on multiple accounts in many CSDs in Europe instead of centralizing settlements in one securities account in a well-connected European CSD.</p>
Data on the potential costs and benefits of the suggested solution(s)	

Assess the priority level for addressing the barrier due to legal or regulatory requirements (or lack thereof):

- High priority
- Medium priority
- Low priority
- Don't know / no opinion / not applicable

Barrier due to market practice - Links

	Describe the barrier due to market practice
Explanation of the barrier	
Reason(s) why it is a barrier	
Specific legal requirement(s) that create(s) the barrier, if relevant (national or EU level)	
Supervisory or market practice(s) (national or EU level) that create the barrier, if relevant	
Operational requirements that create the barrier (national or EU level)	
Technical/technological aspect(s) related to the barrier, if relevant	
Member State(s) in which the barrier exists, if relevant	
Estimation of the costs of the barrier and an explanation of how these costs could be reduced	
Potential solution(s) to remove or lower the barrier, in descending order of importance	

Suggestions for solutions can include for instance legislative changes (specifying which changes are being suggested), use of supervisory convergence tools (specifying which tools are being suggested), centralised EU supervision, adoption of market practice(s).

Data on the potential costs and benefits of the suggested solution(s)

Assess the priority level for addressing the barrier due to market practice:

- High priority
- Medium priority
- Low priority
- Don't know / no opinion / not applicable

Barrier due to technical/technological aspects - Links

	Describe the barrier due to technical /technological aspects
Explanation of the barrier	
Reason(s) why it is a barrier	
Specific legal requirement(s) that create(s) the barrier, if relevant (national or EU level)	
Supervisory or market practice(s) (national or EU level) that create the barrier, if relevant	
Operational requirements that create the barrier (national or EU level)	
Technical/technological aspect(s) related to the barrier, if relevant	
Member State(s) in which the barrier exists, if relevant	
Estimation of the costs of the barrier and an explanation of how these costs could be reduced	

Potential solution(s) to remove or lower the barrier, **in descending order of importance**

Suggestions for solutions can include for instance legislative changes (specifying which changes are being suggested), use of supervisory convergence tools (specifying which tools are being suggested), centralised EU supervision, adoption of market practice(s).

Data on the potential costs and benefits of the suggested solution(s)

Assess the priority level for addressing the barrier due to technical /technological aspects:

- High priority
 - Medium priority
 - Low priority
 - Don't know / no opinion / not applicable
-

Question 7. Are there barriers related to the establishment of links?

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

How many barriers related to the establishment of links have you identified?

- 1 barrier
- 2 barriers
- 3 barriers

Barrier 1 - Establishment of links

	Describe barrier 1 related to the establishment of links
Explanation of the barrier	<p>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)</p> <p>DBG has a strategy for creating links between EU markets (via so called CSD-link arrangements) with the aim to facilitate further cross-border securities settlement in the EU. T2S is considered a major building block towards a more integrated post-trade landscape and the CMU, which has removed several of the original Giovannini barriers related to cross-border settlement.</p> <p>Furthermore, we have observed that not all CSDs apply an “open access” model today.</p>
Reason(s) why it is a barrier	
Specific legal requirement(s) that create(s) the barrier, if relevant (national or EU level)	
Supervisory or market practice(s) (national or EU level) that create the barrier, if relevant	
Operational requirements that create the barrier (national or EU level)	
Technical/technological aspect(s) related to the barrier, if relevant	

Member State(s) in which the barrier exists, if relevant	
Estimation of the costs of the barrier and an explanation of how these costs could be reduced	
<p>Potential solution(s) to remove or lower the barrier, in descending order of importance</p> <p>Suggestions for solutions can include for instance legislative changes (specifying which changes are being suggested), use of supervisory convergence tools (specifying which tools are being suggested), centralised EU supervision, adoption of market practice(s).</p>	
Data on the potential costs and benefits of the suggested solution(s)	

Assess the priority level for addressing barrier 1 related to the establishment of links:

- High priority
 - Medium priority
 - Low priority
 - Don't know / no opinion / not applicable
-

Question 8. Are there barriers related to the maintenance of links?

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

How many barriers related to the maintenance of links have you identified?

- 1 barrier
 - 2 barriers
 - 3 barriers
-

Question 9. Are there barriers related to the **classification (i.e. customised, standard indirect, interoperable) and/or whether they are **unilateral or bilateral links**?**

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

Please justify your answer to question 9, in particular identifying potential risks:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 10. Are there barriers related to the improper use of existing links?

-

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

Please justify your answer to question 10, in particular identifying potential risks:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 11. Is the cost of settlement via links taken into account when negotiating securities transactions?

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

Please justify your answer to question 11, in particular identifying potential risks:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 12. In view of the growing use of 'relayed links', does Art. 48, CSDR adequately capture current market practice?

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

Please explain your answer to question 12:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 13. Is the use of relayed links creating barriers to cross-border settlement?

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

Please justify your answer to question 13, in particular identifying potential risks:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 14. Does the use of relayed links improve cross-border settlement?

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

Please explain your answer to question 14:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

DBG has a model in which by having direct links between all three CSDs, any of those CSDs can benefit from the links of the others. Thus, even a small CSD like LuxCSD, which has direct links with CBF and CBL, offers custody services for a very large pool of securities to its participants.

Question 15. Who should be involved in the process for the authorisation of establishing a link as well as the ongoing supervision thereof?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 16. Should all links be standard links?

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

Please explain your answer to question 16:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 17. Should all links be interoperable links?

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

Please explain your answer to question 17:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 18. Should all links be bilateral?

- Yes
- No
-

Don't know / no opinion / not applicable

Please explain your answer to question 18:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A small CSD may not be interested to offer cross-border services and does not need to have a bilateral link. At the same time, by giving access to a larger CSD, this will allow market participants to have the access to the universe of securities issued in that CSD by having an account with the bigger CSD.

Question 19. Should all CSDs be mandated to establish a minimum number of links with other EU CSDs?

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

Please explain your answer to question 19:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It is not necessary for all CSDs in T2S to establish a minimum number of links in T2S. What is important though is that for securities issued in CSDs in T2S, the links between CSDs in T2S should be established in a way so as to enable to use the full functionality of T2S for cross-CSD settlement, i.e. when settling transfers in such securities between participants in T2S CSDs, such transfers should benefit from the automatic realignments in T2S.

If nevertheless such a requirement were to be imposed on all CSDs in T2S, it should focus rather on the universe of securities to which a CSD link would give access to.

Question 20. Should the comprehensive risk assessment for the validation of a link be carried out by ESMA?

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

Please explain your answer to question 20:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 21. Are there any barriers or material challenges to the establishment of links between CSDs and other infrastructures?

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

Question 22. Have you had a request for a link refused?

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

3.1.3. Settlement services in the EU

Question 23. How could settlement in T2S be further enhanced in order to build a deeper and more integrated market in the EU and facilitate cross-CSD settlement?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

To promote T2S as a strong and efficient post-trading backbone for European capital markets, we propose to create incentives for further EU Member States and market participants to migrate flows to T2S, thereby increasing the efficiency of European post-trade markets and de-risking European capital markets by using Central Bank Money. This could be achieved by:

1. The ECB introducing volume-based pricing on T2S as a market mechanism to incentivize the use of T2S by all market participants, including settlement dark pools to further reduce fragmentation, and as such encourage all market participants with scale capacities to invest in innovation.
2. The ECB should allow efficient cross-border settlement, reduce technical limitations, and implement open change requests promptly. Currently, only 4% of settlements in T2S are cross-border. Key is also to ensure the ECB will simplify the settlement of non-T2S issued securities – first steps in this direction are planned for mid-2026.
3. The European Member States that are not yet participating in T2S (8 out of 27 Member States) should rethink their decision and join T2S in order to foster the efficiency of European capital markets.
4. The European Commission should further harmonize underlying regimes to push for cross-border settlements in T2S.
5. Regulators should introduce measures to limit internalizing settlement and dark pool flows, as internalized flows have a much lower settlement efficiency than those via T2S.
6. The European Commission should change the unbalanced treatment of penalty rules under CSDR. Additional thresholds should be implemented for internalized transactions so as not to avoid costs under the penalty regime outside of T2S.
7. In addition, T2S-CSDs should not be allowed to impose surcharges on cross-border settlements

ensuring a European-wide level playing field.

8. The ECB should further improve liquidity management via the expansion of auto-collateralization in T2S and optimize cash settlement in central bank money. Furthermore, existing Corporate Action Standards and SCoRE Standards should be fully adopted by market participants to streamline European settlement infrastructure.

By adopting these recommendations, the pan-European T2S platform can be significantly improved as a collaborative infrastructure settlement platform, contributing to further efficiency in Europe by fully utilizing the benefits of Clearstream Europe being the one entry gate. Bringing T2S to full performance as one European settlement platform will also encourage market-driven innovation in a collaborative approach.

Question 24. Should links between CSDs participating in T2S no longer be required to enable settlement in T2S in any of the financial instruments available in T2S?

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

Please explain your answer to question 24:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 25. Are there any national market practices, laws, rules/regulations, or operational requirements which hinder the participation in T2S or cross-CSD settlement?

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

Please explain your answer to question 25 and provide details:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In our view, stronger EU-level coordination is needed to override conflicting national rules. Some of the key obstacles stemming from conflicting national rules may include, among others: i) divergent CA processing, as some markets still use manual processes, ii) tax and legal conflict, such as withholding tax and insolvency law; iii) some jurisdictions may impose additional requirements beyond T2S standards.

Question 26. What can be done to ensure progress and take-up by T2S participants of already agreed harmonised standards and market practices (e.g. market standards for corporate actions, SCoRE corporate actions standards, T2S corporate action standards, other T2S harmonisation standards, other relevant global or European market standards and market practices)?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Not all participants of T2S follow the same rules. We would further support the establishment of a dashboard through regulatory enforcement / industry collaboration.

Question 27. Do you comply with the abovementioned standards and market practices (e.g. market standards for corporate actions, SCoRE corporate actions standards, T2S corporate action standards, other T2S harmonisation standards, other relevant global or European market standards and market practices)?

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

Please explain your answer to question 27:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 28. Should T2S harmonisation standards be applied more widely across the EU, in order to create a more harmonised settlement environment across the EU?

- Yes

- No
- Don't know / no opinion / not applicable

Which standards are most needed in the non-T2S EU settlement environment?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain your answer to question 28:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The European Commission should further harmonize underlying regimes to push for cross-border settlements in T2S. Regulators should introduce measures to limit internalizing settlement and dark pool flows, as internalized flows have a much lower settlement efficiency than those via T2S.

Question 29. Should the costs of settlement be reduced?

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

Please explain what could be done to reduce the costs settlement?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

in context of T2S, the non-existence of a volume-based pricing as within T2S reduces incentives for settlement via T2S. This would be urgently needed as a market mechanism to convince all market participants to move to T2S and enable them to digest the additional cost layer to the system.

Additionally, some T2S-CSDs impose surcharges, which add additional cost for any cross-border settlement that takes place thus inhibiting the potential efficiency gain that T2S brings. This adds additional costs to the settlement process and should be prevented as a market practice.

Question 30. Should the transparency of settlement pricing and CSD services be improved (in substance and format), for example with a standard template that would facilitate comparison of prices and service offering?

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

Please explain your answer to question 30:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 31. Should all CSDs settling the cash leg in Euro be required to connect to T2S?

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

Please explain your answer to question 31:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 32. Are there difficulties in accessing settlement in foreign currencies, not only in the T2S environment?

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

Question 33. Is there a need for additional currencies to be settled in T2S?

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

Please explain your answer to question 33:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 34. Should T2S be able to provide other CSD services, including issuance services and asset servicing services?

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

Please explain your answer to question 34:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 35. What improvements (e.g. organisational, operational, contractual, etc.) could be introduced to T2S to support a broader and more resilient use of it?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We would like to draw the attention to the recent IT incidents of T2S as it has a massive impact on the whole industry when such large EU settlement service provider is down.

Improvements to the T2S governance would be appreciated, esp. regarding change request management, CR planning and too complex implementation, which seems too complex, unflexible and time consuming.

3.1.4. Legal certainty

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 36. Are there barriers from national legal or regulatory requirements that affect legal certainty of acquisitions and dispositions in financial instruments, or cash or cash equivalent cross-border?

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

Please justify your answer to question 36, in particular identifying potential risks:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

All European jurisdictions provide for a legal framework that ensures legal certainty regarding the acquisition, disposition, and ownership of securities. This legal certainty is a foundational pillar of the financial system, as it underpins the integrity, predictability, and enforceability of transactions in both primary and secondary markets. In particular, national laws across the EU and EEA define the legal mechanisms through which securities can be validly transferred, assigned, or pledged, and they ensure that such transactions are legally recognized and protected against third-party claims.

These frameworks also typically include provisions governing the registration of ownership, the exercise of rights by holders (such as voting or dividend entitlements), and the protection of good faith acquirers, thereby contributing to the overall robustness of the post-trade infrastructure. Moreover, the determination of the applicable law is clearly established under conflict-of-law rules, most notably through the principles enshrined in EU legislation such as the Rome I and Rome II Regulations, and, in the context of securities, Article 9 of the Financial Collateral Directive (2002/47/EC) and Article 9 of the Settlement Finality Directive (98/26/EC).

These provide guidance on how to determine which jurisdiction's law governs proprietary aspects of securities held through intermediated systems. However, while all European jurisdictions do provide for a legal framework that ensures certainty of acquisition, disposition, and ownership, the specific rules and mechanisms used to achieve that certainty vary significantly from one country to another. This variation does not lead to a lack of legal certainty within each individual jurisdiction—on the contrary, domestic legal systems are generally well-established coherent, and reliable.

Importantly, this fragmentation does not undermine the legal validity of transactions, although it might be considered as a layer of complexity in a cross-border scenario due to the need to navigate for instance, differences in how ownership is recorded (e.g. direct vs. indirect holding systems), how securities are constituted, or how pledges and other rights are enforced can require tailored legal, operational, and technical solutions for each market.

Question 37. Does the law applicable to the assets and to the CSD influence a decision to acquire or dispose of financial instruments cross-border?

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

Please justify your answer to question 37, in particular identifying potential risks:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 38. Are there barriers for issuers to obtain legal certainty on the ownership of the securities issued in a CSD or any other registrar?

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

Please justify your answer to question 38, in particular identifying potential risks:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 39. Are there barriers for investors to obtain legal certainty on their rights and powers (e.g. ownership rights, rights in relation to corporate events) and for intermediaries to have legal certainty on their duties in relation to financial instruments, cash or cash equivalent, issued in /maintained in/settled by a CSD?

-

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

Question 40. Are there any barriers to pool assets from different jurisdictions?

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

Question 41. Are there barriers, e.g. due to the lack of certainty on the applicable law, to the cross-border provision of services (e.g. issuance or asset servicing) and/or use of services?

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

How many barriers to the cross-border provision and/or use of services have you identified?

- 1 barrier
 - 2 barriers
 - 3 barriers
-

Question 42. Are there barriers to the cross-border provision or use of CSD services due to the lack of certainty on the applicable law?

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

Please justify your answer to question 42, in particular identifying potential risks:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In a DLT-based market infrastructure scenario, the continued applicability of domestic securities laws—as also acknowledged by the DLT Pilot Regime—requires Member States to adapt their legal frameworks accordingly. As a result, several jurisdictions have amended their national securities laws to ensure

compatibility with DLT technologies, with the aim of preserving legal certainty regarding the validity of the issuance, the enforceability of investor rights, and the integrity of securities ownership structures.

This evolving landscape is giving rise to a new form of legal fragmentation in the digital domain, which warrants close attention from policymakers. Given the divergent national approaches and varying definitions of dematerialized and digital securities, the cross-border deployment of new digital technologies such as (but not limited to) DLT becomes considerably more complex, time-consuming, and resource-intensive than even traditional issuance in physical form.

In light of these challenges, it may be appropriate to consider the development of an optional EU-level supranational legal framework for digital securities (i.e. 28th regime). Such a framework could promote greater legal harmonization and support the efficient adoption of digital technologies across the Union's capital markets.

Such framework would not need to replace national laws in their entirety, but could instead be narrowly focused on critical legal aspects directly impacted by the shift to digital infrastructures—notably: the holding model, including the legal recognition of direct or indirect holding structures in DLT environments; the legal certainty regarding the moment and conditions under which title is effectively transferred in DLT environments, taking into account the diversity of potential DLT models, including decentralized record-keeping architectures, peer-to-peer transaction settings, and varying consensus mechanisms that may impact the recognition and enforceability of ownership transfers

Question 43. Are there barriers to pooling assets from different jurisdictions?

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

Question 44. Are there legal certainty barriers to the provision of cross-border asset servicing?

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

Question 45. Are there barriers stemming from national laws affecting the legal certainty of acquisitions and dispositions in financial instruments, or cash or cash equivalent?

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

Question 46. Are there new barriers that create legal uncertainty in the provision of issuance / maintenance / settlement services via new technologies (e.g. where bridges are used between different distributed ledgers in the issuing and minting process)?

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

Please justify your answer to question 2, in particular identifying potential risks:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Respective laws are appropriate and sound and should also be used for the application of new technologies e.g. DLT, in a manner that ensures that regulations stay tech neutral.

Question 47. Is there a legal certainty barrier due to the absence of a conflict of law rule, related to proprietary, contractual and system-related aspects, under the CSDR (to complement those under the SFD/FCD etc.)?

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

Question 47.1. Are the barriers the same or are there different barriers where DLT is used, considering the divergences and uncertainties on the substantive law on the creation, holding and transfer of digital assets/tokens?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

While CSDR Refit has significantly improved legal certainty surrounding cross-border issuance services, particularly through the Article 23 passporting procedure, some residual uncertainty remains regarding the interplay between the law of the system and the law governing the instruments themselves. This can create potential conflicts related to proprietary, contractual, and system-related aspects, especially in jurisdictions with specific requirements for CSD account structures or insolvency regimes still imposed on non-local CSDs.

Further, clarification on conflict-of-law rules within CSDR would enhance the existing framework and minimize the discussions with local regulators. Therefore, the answer is Yes, especially if there is an opportunity to enhance the visibility and clarity of the conflict of law rule to establish expressly the PRIMA

rule and to remove any potential doubts or alternative interpretation from local laws/local regulators.

The question on the clear and express recognition of the law of the system should also be relevant from a DLT perspective when the DLT platform is the relevant system. However, in the absence of common approach regarding the creation of dematerialized securities and also digital assets / tokens among the Member States, it is very difficult to identify barriers. In addition, CSDR does not address proprietary and contractual related matters. In this respect, CSDR could not be considered as setting up barriers as it is left to each of the Member States.

How many barriers related to proprietary, contractual and system-related aspects, under the CSDR have you identified?

- 1 barrier
- 2 barriers
- 3 barriers

Question 48. Can the existing approach to conflict of laws under the SFD and the FCD be applied to DLT based networks/systems and collateral transactions?

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

Please explain your answer to question 48:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The conflict of laws rule aims at organizing the coexistence of rules applicable in different jurisdictions. The approach taken in CFD (Article 9) can be formally applied as there is a dedicated article to conflict of laws that is addressing the main legal matters. The approach taken in SFD should not be applied as it can certainly be improved as less specific and structured as the conflict of law rules is clearly not identified as such in the directive.

Question 49.1. What is the preferred connecting factor in relation to proprietary aspects related to transactions on a DLT system?

Please select as many answers as you like

- The law chosen by the participants to a transaction
- The law chosen by the network participants
- The law of the legal entity operating the DLT-based system on which digital assets are recorded
-

In relation to a digital asset of which there is an issuer, the domestic law of the State where the issuer is established

- The place of the relevant operating authority/administrator (PROPA)
- The primary residence of the encryption private master keyholder (PREMA)
- Other

Question 49.2. What is the preferred connecting factor in relation to contractual aspects related to transactions on a DLT system?

Please select as many answers as you like

- The law chosen by the participants to a transaction
- The law chosen by the network participants
- The law of the legal entity operating the DLT-based system on which digital assets are recorded
- In relation to a digital asset of which there is an issuer, the domestic law of the State where the issuer is established
- The place of the relevant operating authority/administrator (PROPA)
- The primary residence of the encryption private master keyholder (PREMA)
- Other

Please specify to what other connecting factor(s) in relation to contractual aspects you refer in your answer to question 49.2:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Conflicts of law rules in the context of DLT Systems are an unresolved issue for which we support the need for clarification. The selection of the most appropriate criteria depends the specific characteristics of the DLT model used (e.g. permissioned vs. permissionless).

In general, in the context of transactions on a DLT system, the choice of an appropriate connecting factor for conflict-of-laws purposes should reflect the legal nature of the relationship concerned—i.e., whether proprietary, contractual, or system-related.

Question 49.3. What is the preferred connecting factor in relation to system-related aspects related to transactions on a DLT system?

Please select as many answers as you like

- The law chosen by the participants to a transaction
- The law chosen by the network participants
- The law of the legal entity operating the DLT-based system on which digital assets are recorded
-

In relation to a digital asset of which there is an issuer, the domestic law of the State where the issuer is established

- The place of the relevant operating authority/administrator (PROPA)
- The primary residence of the encryption private master keyholder (PREMA)
- Other

Please specify to what other connecting factor(s) in relation to system-related aspects you refer in your answer to question 49.3:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The preferred connection factor would be the law of the system on which the relevant transactions in relation to digital assets are recorded.

Question 49.4. Would the differences between permissioned and permissionless DLT systems, warrant different rules on conflict of laws)?

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

Please explain your answer to question 49.4:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Technical solutions should follow respective laws and regulations.

Question 50. Considering various new types of settlement assets (including tokenised central bank money, electronic money tokens and tokenised commercial bank money) and the different nature of native (only created and represented on the DLT) and non-native (existing outside of the DLT) assets, should the same conflict of law rules apply to all these settlement assets?

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

Please explain your answer to question 50:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The law of the relevant system should continue to apply consistently.

Question 51. Are there any other barriers to legal certainty which are not mentioned above?

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

3.1.5. Barriers and other aspects under the SFD

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 52. What are the main barriers to the smooth operation of the settlement finality framework in the EU?

Please indicate how many barriers have you identified?

- 1 barrier
- 2 barriers
- 3 barriers

Please justify your answer to question 52, in particular identifying potential risks:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No barriers – SFD works fine.

Question 53. Are there any aspects of the SFD that have created barriers for the market or market participants, in particular in a cross-border environment?

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

Please justify your answer to question 53, in particular identifying potential risks:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 54. Do the definitions, in particular the definition of a “system” and “transfer orders”, result in barriers related to the change in market practice in the set-up of systems as well as the use of DLT?

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

How many barriers related to the change in market practice in the set-up of systems as well as the use of DLT have you identified?

- 1 barrier
- 2 barriers
- 3 barriers

Barrier 1 - Change in market practice in the set-up of systems as well as the use of DLT

	<p>Describe barrier 1 related to the change in market practice in the set-up of systems as well as the use of DLT</p>
<p>Explanation of the barrier</p>	<p>Article 39 CSDR requires CSDs to provide settlement services only within a settlement system in the meaning of the Settlement Finality Directive (SFD).</p>
<p>Reason(s) why it is a barrier</p>	<p>The operation of a system in accordance with the SFD requires the operator of the system to fully control the underlying technical infrastructure. This prevents CSDs from developing innovative settlement solutions based on DLT that enhance the efficiency of capital markets. The DLT Pilot regime has addressed this problem but is too restrictive in terms of scope and limitation in time to justify major investments in the research and development of such DLT solutions.</p> <p>This restriction leads to a significant innovation barrier in one of the most significant technological opportunities in capital markets in recent years.</p>
<p>Specific legal requirement(s) that create(s) the barrier, if relevant (national or EU level)</p>	
<p>Supervisory or market practice(s) (national or EU level) that create the barrier, if relevant</p>	
<p>Operational requirements that create the barrier (national or EU level)</p>	
<p>Technical/technological aspect(s) related to the barrier, if relevant</p>	

Member State(s) in which the barrier exists, if relevant	
Estimation of the costs of the barrier	
<p>Potential solution(s) to remove or lower the barrier, in descending order of importance</p> <p>Suggestions for solutions can include for instance legislative changes (specifying which changes are being suggested), use of supervisory convergence tools (specifying which tools are being suggested), centralised EU supervision, adoption of market practice(s).</p>	<p>Removal of the restrictions of Article 39 CSDR and SFD to enable CSDs to make use of decentralized settlement infrastructures and to choose to apply for recognition of such system as securities settlement system in the meaning of SFD or not as appropriate for the respective use case. In addition, CSDR outsourcing rules should not apply to a decentralized system.</p>
Data on the potential costs and benefits of the suggested solution(s)	

Assess the priority level for addressing barrier 1 related to the change in market practice in the set-up of systems as well as the use of DLT:

- High priority
- Medium priority
- Low priority
- Don't know / no opinion / not applicable

Barrier 2 - Change in market practice in the set-up of systems as well as the use of DLT

	<p>Describe barrier 2 related to the change in market practice in the set-up of systems as well as the use of DLT</p>
<p>Explanation of the barrier</p>	<p>Some tokenized financial instruments are not necessarily deposited with a CSD (as operator of a securities settlement system) or a financial institution but may instead be held in alternative arrangements. A concrete example are crypto securities (Kryptowertpapiere) issued under the German Electronic Securities Act (Gesetz über elektronische Wertpapiere – “eWpG”) which may be held in a so-called crypto securities register (Kryptowertpapierregister). While the administration of a crypto securities register is a licensable activity under the German Banking Act, the operator of the crypto securities register may not be a securities settlement system or a financial institution within the meaning of Article 2 para. 17 EMIR. This is particularly due to the fact that the EMIR definition of “financial institution” refers to CRD banking services which do not encompass services solely regulated under domestic law, such as the operation of a crypto securities register pursuant to the eWpG.</p>
<p>Reason(s) why it is a barrier</p>	<p>From a risk management perspective, a CCP should be able to accept financial instruments that meet the conditions specified in Annex I Section 1 RTS 153/2013. EMIR as collateral independent of the underlying technology However, the requirement from Art. 47 para 3 cited above, currently undermines the ability of CCPs to accept DLT-based financial instruments.</p>
<p>Specific legal requirement(s) that create(s) the barrier, if relevant (national or EU level)</p>	
<p>Supervisory or market practice(s) (national or EU level) that create the barrier, if relevant</p>	

Operational requirements that create the barrier (national or EU level)	
Technical/technological aspect(s) related to the barrier, if relevant	
Member State(s) in which the barrier exists, if relevant	
Estimation of the costs of the barrier	
<p>Potential solution(s) to remove or lower the barrier, in descending order of importance</p> <p>Suggestions for solutions can include for instance legislative changes (specifying which changes are being suggested), use of supervisory convergence tools (specifying which tools are being suggested), centralised EU supervision, adoption of market practice(s).</p>	<p>Clarification is required that tokenized financial instruments / DLT-securities held in such alternative arrangements (governed under national law) likewise satisfy the requirement of Article 47 para. 3 EMIR.</p>
Data on the potential costs and benefits of the suggested solution(s)	

Assess the priority level for addressing barrier 2 related to the change in market practice in the set-up of systems as well as the use of DLT:

- High priority
 - Medium priority
 - Low priority
 - Don't know / no opinion / not applicable
-

Question 55. Is SFD protection important for settlement systems, such as those based on DLT, that settle trades instantly and atomically, and not on a deferred net basis or in settlement batches?

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

Please explain your answer to question 55:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SFD protection is important for settlement systems based on DLT but not sufficient as the counterparty risk is still present in different forms of settlement (instantly, atomic or batches). See also the response to Question 56.

When considering settlement mechanisms in digital or DLT environment, it is important to recognize that settlement is not inherently atomic. Despite the conceptual appeal of atomic settlement—where two or more linked transactions are executed simultaneously, such that either all occur or none do—a residual risk of reversal may still persist, particularly in complex or “cross-chain” settlement environments, depending on the envisaged scenario. This risk might arise for example due to technical issues (e.g. network latency, smart contract errors, or inconsistent consensus timing) and issues concerning the legal enforceability of the smart contracts and can be exacerbated if the moment at which title is deemed transferred is not harmonized in a multijurisdictional scenario.

Thus, certain functionalities of a CCP remain essential (t+x, intraday cash, etc.) in a DLT based settlement systems as well. This reinforces the need for flexibility in how market infrastructure evolves. Not all market participants seek or require atomic settlement; therefore, developments in market structure should be driven by functional and operational needs – not by the technology itself. Technological solutions must serve the needs of the financial system.

Question 56. Should settlement systems that achieve probabilistic (operational) settlement finality be designated and benefit from SFD protections?

- Yes

- No
- Don't know / no opinion / not applicable

Please explain how settlement finality could be achieved in such a case and why this would be desirable:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

What would "probabilistic settlement finality" mean for the end user in the case of insolvency of an actor /market operator? Whom would the asset belong to?

Would a CCP be of added value in the following scenario where the probabilistic settlement is not reaching a final state due to roll-back of a hashed transaction: Imagine A transfers Asset to B as a settlement of a CCP cleared transaction. The transfer is executed on chain and hashed in Block N. After Block N+3, the chain forks into a longer chain starting from Block N-1 (just prior to the hashed transfer A to B). The chain would disregard blocks N to N+3 and continue with the longer sub-chain N' to N+4' meaning that the transaction was never settled. In a world without a CCP it depends on the good will of A to re-instruct the settlement. With a CCP, the CCP might force A to re-instruct or re-instruct on A's behalf.

To the spot: A CCP might ensure settlement finality by re-instruction in unlikely events of roll-backs of transactions due to probabilistic settlements.

Question 57. Are the criteria that need to be met for a system to be designated under the SFD creating unjustified barriers to entrance?

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

Please justify your answer to question 57, in particular identifying potential risks:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 58. Do diverging national practices for notifying systems create an uneven level playing field or legal uncertainty?

- Yes
- No
-

Don't know / no opinion / not applicable

How many barriers creating an uneven level playing field or legal uncertainty have you identified?

- 1 barrier
- 2 barriers
- 3 barriers

Barrier 1 - Uneven level playing field or legal uncertainty

	Describe barrier 1 creating an uneven level playing field or legal uncertainty
Explanation of the barrier	
Reason(s) why it is a barrier	
Specific legal requirement(s) that create(s) the barrier, if relevant (national or EU level)	
Supervisory or market practice(s) (national or EU level) that create the barrier, if relevant	
Operational requirements that create the barrier (national or EU level)	
Technical/technological aspect(s) related to the barrier, if relevant	
Member State(s) in which the barrier exists, if relevant	
Estimation of the costs of the barrier	

Potential solution(s) to remove or lower the barrier, **in descending order of importance**

Suggestions for solutions can include for instance legislative changes (specifying which changes are being suggested), use of supervisory convergence tools (specifying which tools are being suggested), centralised EU supervision, adoption of market practice(s).

Data on the potential costs and benefits of the suggested solution(s)

Assess the priority level for addressing barrier 1 creating an uneven level playing field or legal uncertainty:

- High priority
 - Medium priority
 - Low priority
 - Don't know / no opinion / not applicable
-

Question 59. For the purposes of designating a system under the SFD, are the current list of participants, the designation process and the focus on entities rather than on the service provided creating barriers for new entities to provide settlement services in a system designated under that Directive?

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

Please justify your answer to question 59, in particular identifying potential risks:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The directive should not be changed to focus on the services provided. This would increase complexity as well as less transparency of who is doing what, how and in which quality, lead to further fragmentation within the post-trade market, questions of interoperability between and connectivity of these different service providers, questions of effective supervision and ultimately less investor protection.

Question 60. Does the non-aligned definition of 'collateral security' (SFD) and 'financial collateral' (FCD) create complexities for efficient collateral management?

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

Please justify your answer to question 60, in particular identifying potential risks:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There is no need for substantial amendments to the SFD – the existing framework functions well as it stands. The directive is not intended as a broad, catch-all solution for the entire market. Rather it is a targeted legal tool that provides certainty around settlement finality. It ensures that transactions are protected against disruptions caused by inconsistent or overly burdensome national insolvency regimes. Clients can rely on this legal certainty when transacting through approved systems.

To offer settlement finality under the SFD, there must be a defined system with an identifiable system operator. This operator ensures a coherent set of rules applies equally to all participants, maintain legal and operational certainty. In a DLT-based environment, however this becomes problematic: DLT systems are typically decentralized and lack a clearly defined entity “in charge”. The key question becomes: Who qualifies as the operator in such a decentralized context as required by the SFD?

Question 61. Is there legal certainty on the scope of the settlement finality protection under SFD?

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

Please explain your answer to question 61:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 62. Is the lack of harmonised settlement finality moments in SFD (i. e. leaving it to the rules of the system or national law) creating legal uncertainty and preventing the development of a single capital market?

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

Please justify your answer to question 62, in particular identifying potential risks:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Settlement finality moments are fully harmonized in T2S, with the cash and securities leg. Contractual nature, operational reality. That's why the SFD is a minimum harmonization, deferring to the CSDs rules, in accordance with the contractual nature and operational reality of settlement.

Question 63. The SFD does not apply to third-country systems, however, Member States can extend the protections in the SFD to domestic institutions participating directly in third-country systems and to any relevant collateral security ('extension for third-country systems').

Is the lack of transparency related to Member States extending for third-country systems creating barriers to the provision of services in the single market or creating a non-level playing field for EU entities?

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

How many barriers to the provision of services in the single market have you identified?

- 1 barrier
- 2 barriers
- 3 barriers

Barrier 1 - Provision of services in the single market

	Describe barrier 1 to the provision of services in the single market
Explanation of the barrier	The protections of the SFD apply fully and without discrimination in the event of an insolvency of a third-country participant in an SFD system. However, since the SFD does not cover third-country systems regardless of whether such systems are established inside or outside the EU, transactions and collateral posted by EU participants in such systems and related netting are not protected under the SFD.
Reason(s) why it is a barrier	
Specific legal requirement(s) that create(s) the barrier, if relevant (national or EU level)	
Supervisory or market practice(s) (national or EU level) that create the barrier, if relevant	
Operational requirements that create the barrier (national or EU level)	
Technical/technological aspect(s) related to the barrier, if relevant	
Member State(s) in which the barrier exists, if relevant	
Estimation of the costs of the barrier	

Potential solution(s) to remove or lower the barrier, in descending order of importance

Suggestions for solutions can include for instance legislative changes (specifying which changes are being suggested), use of supervisory convergence tools (specifying which tools are being suggested), centralised EU supervision, adoption of market practice(s).

Data on the potential costs and benefits of the suggested solution(s)

The SFD should provide rules on the recognition of third-country systems under certain preconditions so that EU participants of such third-country systems would be afforded a similar level of protection as is the case for EU systems today. Some member states (e.g. Germany) have already made use of the discretion mentioned in recital (7) of the SFD to include third-country systems in the scope of the SFD on a domestic level, but these national rules are somewhat open when it comes to the preconditions that third-country systems have to meet in order to fall within the scope of the SFD.

We would advocate that in the future there should be a common EU approach on the question of what qualifies a foreign system as a third-country system, how it is designated as such from an EU perspective, and what the legal effects are for EU institutions considering possible conflicts of law.

Assess the priority level for addressing barrier 1 to the provision of services in the single market:

- High priority
 - Medium priority
 - Low priority
 - Don't know / no opinion / not applicable
-

Question 64. Stakeholders have indicated they would like to have an overview of all participants in different SFD designated systems, e.g. shared on one website publicly accessible.

Is the lack of transparency related to the participants of designated systems creating barriers to the single market?

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

Please justify your answer to question 64, in particular identifying potential risks:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 65. Has the fact that SFD designation is not mandatory for all systemically important systems (except when mandated under Art. 2(1) and 2 (10) CSDR and Art. 17(4)(b) EMIR), including payment systems, created barriers to the single market?

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

Question 66. Are there any national barriers in relation to legal certainty arising from how the SFD is transposed in the Member States?

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

Question 67. Some stakeholders suggested a centralised overview over the insolvency of participants of all SFD designated systems is needed, ie. published on a common centralised website.

Is a lack of transparency related to the insolvency of participants of designated systems creating barriers to the single market?

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

Please justify your answer to question 67, in particular identifying potential risks:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not consider the lack of transparency related to the insolvency of participants a matter of “barrier” on a single market.

1. The insolvency of the participants of an SSS does not create obstacles to anyone's access, just additional and inconsistent actions on the SSSs.
2. The absence of centralized broadcasting of such information to all relevant SSSs with a same level of information essential for the management of the instructions by the system creates an unnecessary level of complexity for the system. The determination of the date on which instructions can no longer benefit from the finality might be understood differently by the involved systems depending on the moment in time (and how) such systems have been informed (and it is also true for the payment of the settlement cash penalties). The SFD definition of insolvency proceedings stipulates that “insolvency proceedings’ shall mean any collective measure provided for in the law of a Member State, or a third country, either to wind up the participant or to reorganize it, where such measure involves the suspending of, or imposing limitations on, transfers or payments”.

According to Article 6.1 of SFD, “the moment of opening of insolvency proceedings shall be the moment when the relevant judicial or administrative authority handed down its decision”, irrespective of the various retroactive effects for the suspension on transfers or payments that could be decided by the judge, keeping in mind that the opening of an insolvency proceeding does not imply necessarily a suspension of the payment at the date of the opening of such insolvency by a judgement. In some judgements, the date of suspension of payment could be set retroactively by the judge.

The fact to consider the sole judgement date could imply to disregard the decision of the judge having set a retroactive date for the suspension of transfers or payment based on the situation of the entity and for good reasons. If the suspension date were to be ignored and payments still processed as entered in the system before the judgement date, it cannot be excluded that it could create unforeseen damaged for the purposes of the insolvency / liquidation. Furthermore, for certain participants of a CSD, the insolvency also implies a withdrawal of license and a loss of capacity to qualify as participant in a system. Alike the suspension of payment, the withdrawal of license could also intervene before the date of opening of insolvency proceedings against a participant.

There are some options to consider:

- To simplify the definition of insolvency proceedings and to align it with the prevalent interpretation of the NCAs and ESMA in this respect, i.e. the sole date of the judgement shall be taken into account irrespective of the effect of the judgement and the suspension of payments date or withdrawals of license and the resulting loss of capacity as participant. It would mean to remove “where such measure involves the suspending of, or imposing limitations on, transfers or payments”. It would mean for the SSS to take into account the sole date of the judgement to apply finality and to remove those instructions not benefitting from it without any deeper analysis legal of the judgements. The risk is that some payments are processed notwithstanding the decision of the judge; or
- As the relevant judicial or administrative authority shall immediately notify that decision to the appropriate authority chosen by its Member State as per Articles 6.2 and 6.3 of SFD, to ensure that all relevant CSDs have the same information about the judgement with a date that is certain in order to avoid any discrepancies among the systems. As the ESMA is notified as per Article 6.3 SFD, why ESMA could not take the responsibility to publish such information on its website (translated and easily accessible and identifiable by the public). Until now, information on insolvency is available locally (ex. Havilland or Euram Bank) on the NCAs websites.
- To require from an insolvency law point of view, an obligation for the judge to include in the opening judgement information related to the settlement finality and the settlement penalties payments involving entity being participants in SSS to ease the processing by the involved system without any deeper analysis legal of the judgements and/or without exchanging with the NCA on the payments to be processed (the NCA is not necessarily available to provide interpretations in these situations given in most of the cases the responsibility of the NCA is shifted to an ad hoc liquidator (ex. Havilland Bank proceedings)).

Question 68. Are there any other barriers created by the SFD which are not mentioned above?

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

Please justify your answer to question 68, in particular identifying potential risks:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 69. How should irrevocability of “reserved” or “booked” digital assets be achieved?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 70. Is the point in time when a disposition becomes irrevocable problematic to pinpoint in DLT-based settlement systems, and in particular those with probabilistic settlement?

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

Please explain your answer to question 70:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

3.2. Barriers to the application of new technology and new market practices

3.2.1. Applicability of the CSDR to DLT-based CSDs and the provision of services

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 71. Considering the core functions of a CSD, i.e. those of notary, central maintenance and settlement, is the current legal framework appropriate to mitigate and control risks that could arise from the use of DLT?

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

Please explain your answer to question 71:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

From our point of view, CSDR offers a very good framework to mitigate and control risks. For the purpose of the usage of DLT; we would appreciate it if the level of security would be upheld and applied to new technology. This does not mean lowering the bar to allow technology, but to clearly define what is required to make use of the opportunities in a secure way.

Additionally, and taking other question of the consultation into consideration, we are not convinced that the focus on tiered authorizations based on the offering of individual services / core functions will contribute to an acceptable level of security, if the requirements would be watered down.

Question 72. What are the main barriers in the EU framework to the use of DLT for the provision of CSD services, also in light of the experience gained through the DLTPR?

Please select as many answers as you like

- legal or regulatory requirements (or lack thereof)
- fiscal requirements
- supervisory practice
- market practice
- operational requirements
- differences in national legal, regulatory or operational requirements
- technical/technological aspects
- other

Barrier due to legal or regulatory requirements (or lack thereof) - Use of DLT for the provision of CSD services

	Describe the barrier due to legal or regulatory requirements (or lack thereof)
Explanation of the barrier	
Reason(s) why it is a barrier	
Specific legal requirement(s) that create(s) the barrier, if relevant (national or EU level)	
Supervisory or market practice(s) (national or EU level) that create the barrier, if relevant	
Operational requirements that create the barrier (national or EU level)	
Technical/technological aspect(s) related to the barrier, if relevant	
Member State(s) in which the barrier exists, if relevant	
Estimation of the costs of the barrier	

Potential solution(s) to remove or lower the barrier, **in descending order of importance**

Suggestions for solutions can include for instance legislative changes (specifying which changes are being suggested), use of supervisory convergence tools (specifying which tools are being suggested), centralised EU supervision, adoption of market practice(s).

Data on the potential costs and benefits of the suggested solution(s)

Assess the priority level for addressing the barrier due to legal or regulatory requirements (or lack thereof):

- High priority
- Medium priority
- Low priority
- Don't know / no opinion / not applicable

Barrier due to technical/technological aspects - Use of DLT for the provision of CSD services

	Describe the barrier due to technical /technological aspects
Explanation of the barrier	
Reason(s) why it is a barrier	
Specific legal requirement(s) that create(s) the barrier, if relevant (national or EU level)	
Supervisory or market practice(s) (national or EU level) that create the barrier, if relevant	
Operational requirements that create the barrier (national or EU level)	
Technical/technological aspect(s) related to the barrier, if relevant	
Member State(s) in which the barrier exists, if relevant	
Estimation of the costs of the barrier	

Potential solution(s) to remove or lower the barrier, **in descending order of importance**

Suggestions for solutions can include for instance legislative changes (specifying which changes are being suggested), use of supervisory convergence tools (specifying which tools are being suggested), centralised EU supervision, adoption of market practice(s).

Data on the potential costs and benefits of the suggested solution(s)

Assess the priority level for addressing the barrier due to technical /technological aspects:

- High priority
- Medium priority
- Low priority
- Don't know / no opinion / not applicable

Other main barriers - Use of DLT for the provision of CSD services

	Describe the other main barriers
Explanation of the barrier	
Reason(s) why it is a barrier	
Specific legal requirement(s) that create(s) the barrier, if relevant (national or EU level)	
Supervisory or market practice(s) (national or EU level) that create the barrier, if relevant	
Operational requirements that create the barrier (national or EU level)	
Technical/technological aspect(s) related to the barrier, if relevant	
Member State(s) in which the barrier exists, if relevant	
Estimation of the costs of the barrier	
Potential solution(s) to remove or lower the barrier, in descending order of importance	

Suggestions for solutions can include for instance legislative changes (specifying which changes are being suggested), use of supervisory convergence tools (specifying which tools are being suggested), centralised EU supervision, adoption of market practice(s).

Data on the potential costs and benefits of the suggested solution(s)

Assess the priority level for addressing the other main barriers to the use of DLT for the provision of CSD services:

- High priority
 - Medium priority
 - Low priority
 - Don't know / no opinion / not applicable
-

Question 73. Are there any legal barriers to ensure the integrity of the issue, segregation and custody requirements also in the context of DLT-based issuance and settlement?

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

Please justify your answer to question 2, in particular identifying potential risks:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 74. Does the definition of cash need to be refined to take into account technological developments affecting the provision of cash, in particular the emergence of tokenised central bank money, tokenised commercial bank money and electronic money tokens?

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

Please specify how the use of such settlement assets can be facilitated while maintaining a high level of safety for cash settlement in DLT market infrastructures:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We would appreciate it if the usage of the aforementioned settlement assets were considered more when it came to the definition of cash. It would help us if CSDs were allowed to settle everything, which is not central bank money, internally by making use of these settlement asset (e.g. FIAT, crypto-assets, ART ...).

It would further be helpful to give legal clarity that wholesale Central Bank Digital Currency (wCBDC) may be used the same way as other forms of central bank money. For example, it should be clarified in Art. 38 of RTS 153/2013 EMIR that wCBDC should be classified as cash. This will ensure that counterparties may use wCBDC as cash collateral.

Question 75. Could the use of DLT help reduce the reporting burden?

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

Please explain your answer to question 75:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Rather not realistic in the near future: as a precondition the respective regulatory bodies or NCAs (receivers of reporting) would need to be ready to withdraw reporting data directly from a DLT where the relevant data was (initially) created and made available to them. In such a way those authorities could actively extract exactly that data they are interested in without creating a burden to a third party to deliver.

In case of relevant data was not created (initially) on DLT but on other (proprietary) systems, we do think that DLT would require completely new channels, connections and formats that needed to be newly established both on side of authorities and companies. Whether these IT changes would be beneficial needs to be assessed.

Question 76. Would a per-service authorisation of CSD services, with compliance requirements proportionate to the risk of the individual service, make the CSDR more technologically neutral and contribute to removing barriers to adoption of new technologies, such as DLT?

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

Please explain your answer to question 76:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

While a per-service authorization framework for CSD services under CSDR might appear to offer potential benefits in terms of technological neutrality, a closer examination reveals several significant risks that could undermine the existing efficiencies and integrity of the European financial market. Granting authorization for

individual services to a variety of actors, could lead to a fragmentation of the post-trade environment. This fragmentation would necessitate complex interoperability solutions, potentially increasing costs for customers and introducing new operational risks and security vulnerabilities, which are also hard to monitor from a competent authority's perspective.

Furthermore, a per-service approach could diminish transparency for investors, making it more challenging to understand the roles and responsibilities of different actors in the settlement process. This reduced transparency could erode investor confidence and ultimately impact market integrity. The current framework, with its comprehensive authorization procedures, provides a clear and robust foundation for investor protection. Introducing a more granular approach might inadvertently weaken these protections. This is especially true as it would be hard to find the right balance of security for each individual service.

Finally, the pursuit of the goal to include new technologies into the post trade area technological should not come at the expense of the overall stability and efficiency of the market. The current CSDR framework has already achieved a high level of harmonization and efficiency in core CSD services and tech-neutrality, even though adjustments are always welcome. Deconstructing this framework at the service level could introduce unnecessary complexity and risk jeopardizing the significant progress achieved to date.

A holistic approach to regulatory development, considering the interconnectedness of CSD services, remains crucial for maintaining market integrity and investor trust.

Thus, we oppose the idea of a "modular" or "pick and choose concept"

No modular regime ("slice & dice") approach where providers offer only some of the three core services regulated in the CSDR. Imagine this comparison: would you trust a pilot of a plane, who has only a license to landing the plane, but not starting and flying it? Just as a pilot flying a plane requires comprehensive training for all aspects of flight, ensuring the safety of all on board, so too should CSDs be regulated with a comprehensive oversight of their interconnected functions to safeguard the stability and security of the European financial markets.

Question 77. Are there any legal barriers for DLT service providers in providing trading, settlement and clearing in an integrated manner, within one entity?

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

Please justify your answer to question 75, in particular identifying potential risks:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The question posed is misguided – there is no explicit legal barriers preventing the combination of trading, clearing, and settlement functions within a single entity. The relevant question is whether such a combination makes sense from an operational and risk management perspective.

Merging trading, settlement and clearing into an integrated manner introduces significant risks that may be unforeseen or difficult to anticipate. There are sound reasons – deeply rooted in both regulatory principles and historical developments – for why these functions have been separated: Segregation of duties ensures

that each function operates independently, reducing the risk of conflicts of interest and systemic failures. Introducing a model of one entity contaminates the risk profile of CCPs, which are meant to remain neutral and insulated from market risks. This is particularly critical in the case of certain derivatives, where risk may persist even after settlement.

Thus, while technological innovation may invite the consolidation of roles, we must stick to the regulatory and systemic rationales for maintain a clear separation among the three functions (trading, clearing and settlement).

Therefore the concept of the DLT TSS should also be integrated in the CSDR/MiFID to allow established market infrastructure to use this, if they want in future under the regulatory framework of CSDR and MiFID.

Question 78. Are there any other barriers that you consider relevant for the DLT based provision of CSD services?

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

Please justify your answer to question 78, in particular identifying potential risks:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 79. In particular in permissionless blockchains, validators have the ability to choose which transactions to prioritise for validation and decide on the order of transaction settlement.

Can this feature negatively affect orderly settlement and how can it be mitigated?

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

Please explain your answer to question 79:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It is not only that validators can affect the order of transaction settlement – they can also decide to not at all process a transaction. This poses a serious risk to the orderly settlement of transactions on permissionless blockchains. This disqualifies so-structured blockchains for the use of issuance and settlement services, in general. However, those shortfalls can be overcome if (a set of) validators can be grouped under a contractual governance framework where they would act under certain conditions and rules.

Question 80. Does the emergence of DLT-based tokenised financial instruments require changes to the provision of CSD services or the requirement to use a CSD?

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

Please explain your answer to question 80:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The emergence of DLT-based tokenized financial instruments does not necessitate a fundamental change in the provision of CSD services or the requirement to use a CSD. While these instruments leverage new technology, their core function remains the same: they represent ownership and transfer value. Therefore, maintaining the high regulatory standards achieved in the aftermath of the 2008 financial crisis, including the use of CSDs, is essential for investor protection, market integrity, and overall financial stability.

Integrating DLT-based instruments into the existing framework allows for consistent application of rules regarding ownership transparency, asset segregation, and corporate actions processing. This approach also simplifies regulatory oversight, ensures compliance with AML/KYC regulations, fosters interoperability between DLT platforms and traditional markets, and provides much-needed legal certainty for market participants. Gradual adaptation of CSD services to accommodate DLT-based instruments, rather than wide-ranging changes or exemptions, ensures continued robust protection of the financial system while fostering responsible innovation.

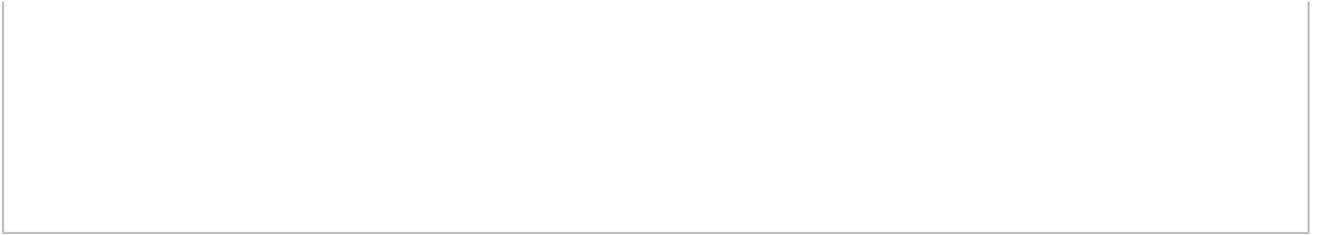
Question 81. Can certain functions normally assigned to or reserved for a CSD be safely, securely and effectively be performed by other market participants in a DLT environment?

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

Please explain your answer to question 81:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.



3.2.2. Detailed questions on the applicability of the CSDR and SFD to DLT-based CSDs

Question 82. Are there barriers or concerns with the technological neutrality of the CSDR definitions listed below or any other definitions or concepts included in CSDR and SFD in particular in the context of DLT?

	1 (not a concern)	2 (rather not a concern)	3 (neutral)	4 (rather a concern)	5 (strong concern)	Don't know - No opinion - Not applicable
Central securities depository	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Securities settlement system	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Securities account	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Book entry form	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Dematerialised form	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Settlement	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Delivery versus payment (DVP)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Any other definitions or concepts in CSDR and SFD	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Question 83. Would you have any concerns about the technological neutrality of the following CSDR rules?

	1 (not a concern)	2 (rather not a concern)	3 (neutral)	4 (rather a concern)	5 (strong concern)	Don't know - No opinion - Not applicable
Rules on measures to prevent settlement fails	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rules on measures to address settlement fails (e.g. cash penalties, monitoring and reporting settlement fails)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rules on organisational requirements for CSDs	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rules on outsourcing of services or activities to a third party	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Rules on communication procedures with market participants and other market infrastructures	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rules on the protection of securities of participants and those of their clients	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Rules regarding the integrity of the issue and appropriate reconciliation measures	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rules on cash settlement	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Rules on requirements for participation	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rules on requirements for CSD links	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Rules on access between CSDs and access between a CSD and another market infrastructure	<input checked="" type="radio"/>	<input type="radio"/>				
Rules on legal risks, in particular as regards enforceability	<input checked="" type="radio"/>	<input type="radio"/>				
Any other rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

3.3. Barriers and other aspects under the FCD

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 84. What are the main barriers to the integration of EU markets and /or consolidation of financial market infrastructures related to the FCD?

How many barriers have you identified?

- 1 barrier
 - 2 barriers
 - 3 barriers
-

Question 85. Is there sufficient clarity regarding the use of tokenised assets as financial collateral in the context of financial collateral arrangements under the FCD?

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

Please explain your answer to question 85:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 86. In the last FCD consultation, the addition re-insurers, alternative investment funds (AIF), institutions for occupational retirement provision (IORPs), crypto-asset service providers, all non-natural persons, non-financial market participants which regularly enter into physically or financially settled forward contracts for commodities or EU allowances (EUAs) was suggested by stakeholders. It was also asked if payment institutions, e-money institutions and CSDs should be added to the scope.

Please provide any views you may have of one or several of the suggested potential additional participants:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We believe that extending the scope of the FCD to payment and e-money institutions is logical since they are similarly regulated to credit institutions. However, this question seems to be of limited practical relevance for DBG given the regulatory status of its group companies (and the admission criteria of its client-facing entities). Additionally, FCD should at least include CSDs in its scope since these might fall outside the existing definition of a “credit institution” going forward due to the introduction of the new supervisory regime under the CSDR.

Question 87. Are there barriers related to the scope of the FCD (i.e. parties eligible as collateral taker and collateral provider, definition of financial collateral, definition of cash)?

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

Question 88. Do you see legal uncertainty related to the recognition of tokenised financial instruments as collateral under the FCD?

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

Please explain your answer to question 88 and describe these uncertainties:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

CCPs and CSDs should be allowed to use “tokenised financial instruments” in their processes going forward.

Question 89. Do the definitions and concepts in the FCD, including the notion of ‘possession and control’, ‘accounts’ and ‘book-entry’ result in barriers or legal uncertainty, e.g. due to the change in market practices, the use of DLT?

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

Please explain your answer to question 89:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We consider that the concepts of ‘possession’ and ‘control’ in the FCD do not present any problems in the provision of cross-border collateral. As such, these do not require any additional clarification. Even though the terms “possession and control” might be defined and applied slightly differently under different national laws, this poses no problem as long as the governing law itself is unambiguous.

Question 90. Is the list of collateral providers and collateral takers limiting the applicability of the FCD in a detrimental manner for DLT-based financial collateral arrangements?

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

Please explain your answer to question 90:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 91. Do you think that collateral other than cash, financial instruments and credit claims should be made eligible under the FCD, in particular in light of DLT based financial collateral arrangements?

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

Please list what other forms of collateral should be considered as eligible and explain why:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We consider that positions in a DLT may have the same function as cash, financial instruments and credit claims but do not necessarily fall under the respective definitions under the FCD. The definitions should therefore cater for respective future development.

Question 92. Do you see the need to change the current approach that only financial collateral arrangements should be protected where at least one of the parties is a public authority, central bank or financial institution?

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

Please explain your answer to question 92:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 93. Is the non-aligned definition of 'collateral security' under the SFD and 'financial collateral' under the FCD creating barriers?

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

Question 94. Are the opt-out provisions for Member States creating any barriers to the single market?

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

Question 95. Have you encountered problems with the recognition /application of close-out netting provisions under the FCD (both national and cross-border)?

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

How many barriers related to the recognition/application of close-out netting provisions have you identified?

- 1 barrier
- 2 barriers
- 3 barriers

Barrier 1 - Recognition/application of close-out netting provisions

	Describe barrier 1 related to the recognition /application of close-out netting provisions
Explanation of the barrier	An express provision stating that national avoidance provisions are not applicable to close-out netting provisions would further strengthen the legal certainty with respect to the calculation of final close-out amounts in case of the occurrence of a termination. Although national avoidance provisions generally require the fulfilment of additional requirements, a clear statement would remove the remaining avoidance risk.
Reason(s) why it is a barrier	
Specific legal requirement(s) that create(s) the barrier, if relevant (national or EU level)	
Supervisory or market practice(s) (national or EU level) that create the barrier, if relevant	
Operational requirements that create the barrier (national or EU level)	
Technical/technological aspect(s) related to the barrier, if relevant	
Member State(s) in which the barrier exists, if relevant	
Estimation of the costs of the barrier	

Potential solution(s) to remove or lower the barrier, **in descending order of importance**

Suggestions for solutions can include for instance legislative changes (specifying which changes are being suggested), use of supervisory convergence tools (specifying which tools are being suggested), centralised EU supervision, adoption of market practice(s).

An express provision stating that national avoidance provisions are not applicable to close-out netting provisions would further strengthen the legal certainty with respect to the calculation of final close-out amounts in case of the occurrence of a termination. Although national avoidance provisions generally require the fulfilment of additional requirements, a clear statement would remove the remaining avoidance risk.

Data on the potential costs and benefits of the suggested solution(s)

Assess the priority level for addressing barrier 1 related to the recognition /application of close-out netting provisions:

- High priority
 - Medium priority
 - Low priority
 - Don't know / no opinion / not applicable
-

Question 96. As noted in the [Commission report on the review of SFD and FCD \(COM\(2023\)345 final\)](#), given the FCD deals primarily with financial collateral and only peripherally with netting (only as one of the methods that can be used to enforce collateral arrangements), do you consider that there is a need for further harmonisation of the treatment of contractual netting in general and close-out netting in particular?

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

Please explain your answer to question 96:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 97. Are there any other barriers created by the FCD which are not mentioned above?

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

Question 98. If there is any other issues you would like to address regarding FCD financial collateral in a DLT environment, please describe them:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

3.4. Uneven/inefficient market practices and disproportionate compliance costs

3.4.1. Internalised settlement

Question 99. Does the current reporting obligation of internalised settlement allow for an accurate identification of the risks stemming from settlement outside of a CSD?

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

Question 99.1. Which additional information (for example the identification of the trading venues where the respective financial instruments are admitted to trading or traded) should be included in the internalised settlement reporting?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The Savings and Investments Union (SIU) aims to address market fragmentation and create a more integrated financial market across Europe. Looking closer into the details of fragmentation:

- besides the high fragmentation of EU securities markets (27 different national insolvency, securities and tax laws) and
- a high level of fragmentation of the trading flows (with more than 500 trading and execution venues across all asset classes)
- the EU's post-trading landscape is marked by a high level of settlement internalization.

Thus, an important element as part of the future SIU concerns the realities around "settlement internalization", i.e. executing transfer orders on behalf of clients or on one's own account outside a CSD. Systemic internalization occurs when market participants perform settlement functions internally (in order to reduce costs, maintain control over operations) and thus by-passing regulated CSDs.

ESMA had noticed a strong increase in the number of internalized settlement instructions at EEA level, climbing from 68 million internalized settlement instructions in Q2/2019 to 116 million in Q3/2020 with a high degree of concentration of around 85 per cent (Q3/2020) in just five EU Member States (DE, BE, NL, IT, SE). Also, in terms of value of settlement internalization, there is a very strong concentration trend with just a few million euros in some cases to several tens of trillion euros for the jurisdictions with more internalized settlement activity. The majority of internalized settlement instructions (based on their number) concerns equities, followed by sovereign debt,

These flows do not contribute to the ideas around cross-border business and also do not go through the T2S system – thereby increasing implicit costs and driving fragmentation. Further, penalties are not applied for settlement internalization: banks which settle via CSDs are subject to penalties for settlement failures, whereas banks using systemic internalization do not face these penalties. This discrepancy creates an unlevel playing field and leads to higher settlement fail rates when banks internalize settlements. A possible solution could be to restrict the maximum level of fail rates. Where the settlement fail rate (in a certain product) is significantly higher than in the CSD environment, failing settlement volumes in the internalized universe could be mandated to be sent to a CSD.

Thus, reporting obligation of internalized settlement would allow for an accurate identification of the risks stemming from settlement outside of a CSDs.

ESMA had observed high settlement internalization fail rates; see link and report p16f and 30f – which states an increase in settlement fail rates (number of instructions) from around 4% to 10%. This Nov 2020 report is the most recent ESMA work on the topic and observation period is unfortunately limited. Therefore, policymakers in their attempt for more efficiencies shall not forget that one out of ten instructions in the internalized part of the market fails; CSD fail rates are comparably lower. Further reporting obligation of internalized settlement would show the underlying figures and could lead towards better settlement efficiencies in the market.

[esma70-156-3729_csdr_report_to_ec_-_internalised_settlement.pdf](#)

Question 99.2. Which additional information (for example the identification of the trading venues where the respective financial instruments are admitted to trading or traded) should be included in the internalised settlement reporting?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 99.3. What would be the operational implications for supervisors of expanding these reporting obligations?

Should the reporting be done directly to ESMA and not to national competent authorities?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We are neutral to whom the reporting is provided as long as the figures are collected, assessed and the operational implications are integrated into a joint report by the supervisors (ESMA and national competent authorities).

Question 99.4. What would be the cost implications of such additional reporting?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Given the potential insights on settlement internalizations, the benefits for increased settlement efficiency, market structure and transparency on indirect costs for users are outweighing the costs of such reporting.

Question 100. Should settlement internalisers with very high internalised settlement activity (in terms of value and volume) be required to publish information on their internalised settlement activity including settlement fail rates (similar to the annual data on settlement fails published by CSDs)?

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

Please explain your answer to question 100:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Internalized flows do not contribute to the ideas around cross-border business and also do not go through the T2S system – thereby increasing implicit costs and driving fragmentation. Further, fails penalties are not applied for settlement internalization: banks which settle via CSDs are subject to penalties for settlement failures, whereas banks using systemic internalization do not face these penalties. This discrepancy creates an unlevel playing field and lead to higher settlement fail rates when banks internalize settlements.

A possible solution could be to restrict the maximum level of fail rates. Where the settlement fail rate (in a certain product) is significantly higher than in the CSD environment, failing settlement volumes in the internalized universe could be mandated to be sent to a CSD.

Question 101. Would you identify additional risks other than operational and legal risks stemming from internalised settlement?

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

Please explain your answer to question 101:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Fragmentation is broader dispersed than the much discussed fragmentation of regulated market infrastructures, which leads to an unlevel playing field, if settlement internalization is not considered into the equation.

Question 102. Should some/all rules pertaining to settlement discipline and /or other CSDR requirements currently applicable to settlement at CSD level be also applicable to internalised settlement?

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

Please explain your answer to question 102:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Same business, same rules principle should apply – with the benefits of avoiding fragmentation, leading to more cross-border flows and this scaling at T2S would reduce the costs for each participating party. Currently the T2S seems to be an “empty highway” as SIs are not participating.

Further, same penalty rules should apply to SIs (see answer above) as for banks which settle via CSDs that are subject to penalties for settlement failures, whereas banks using systemic internalization do not face these penalties. This discrepancy creates an unlevel playing field, cost-arbitrage and leads to higher settlement fail rates when banks internalize settlements.

3.4.2. Information sharing

Question 103. Is the role of the CSDR college as envisaged in CSDR refit sufficient to ensure efficient and complete information sharing between different authorities under CSDR?

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

Question 104. Are there barriers to information sharing between authorities and/or authorities/market participants that hinder the smooth provision of CSD services and the supervision thereof?

- Yes
- No

- Don't know / no opinion / not applicable

Question 104.1. Should the document and information flows supporting the process for authorisation of CSDs and the review and evaluation of CSDs and their activities be simplified and streamlined, for example through the use of a central platform in a way that ensures all authorities involved are well informed and able to identify risks and take action to address them in accordance with their roles?

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

Please explain your answer to questions 104 and 104.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

CSDR Supervisory College has not yet been implemented, so it is difficult to assess how well the information sharing will look like.

Importantly, ensuring convergence is key to contribute to a well-functioning financial system in the EU. In some countries, we have observed the lack of English versions of documents (e.g. tax-related documents) which poses an unnecessary administrative burden that needs to be addressed.

Data sharing between authorities should only be allowed, if there is a regulatory basis.

Question 105. Are there duplications and/or overlaps in the reporting requirements between national, European competent or relevant authorities?

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

Please explain your answer to question 105.

If you consider that there is an issue, please clearly describe the issue, which legal, regulatory or operational requirements should be amended to resolve it, the solution(s) you have in mind to resolve it (including drafting suggestions, where possible), and the potential impact of the solution(s) you propose:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

3.4.3. Authorisation procedures

Question 106. Is the authorisation procedure for CSDs too long and/or burdensome?

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

Question 107. Is the procedure for the extension of CSD authorisation and for outsourcing of services and activities too long and/or burdensome?

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

Please explain your answer to question 107.

If you consider that there is an issue, please clearly describe the issue, which legal, regulatory or operational requirements should be amended to resolve it, the solution(s) you have in mind to resolve it (including drafting suggestions, where possible), and the potential impact of the solution(s) you propose:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Article 30(1) CSDR and Article 49 RTS 2017/392 fully compare staff sharing with other CSDs belonging to the same group to outsourcing with third party providers, mainly in terms of prior authorization requirement.

This approach does not accommodate the specificities of group structures where CSDs belonging to the same group create common teams to consolidate the organizational model without prejudice to each CSDs' performance.

CSDs belonging to the same group should be allowed to define the organizational structure that better suits

their strategy, subject only to notification (instead of prior authorization) to NCAs of each of the involved CSDs. This principle should be reflected clearly in CSDR text.

Articles 17(3) and 19(2) CSDR provide for a pre-filing phase during which relevant NCA should check completeness of the application for authorization within 30 days. These provisions are subject to different supervisory practices that might lead to unintended extension of the timeline of the authorization procedure. The pre-filing should be applicable to the initial authorization of CSDs where it is reasonable given the number of information required under implementing technical standards. For all the other authorization processes, as provided under article 19, this phase would not be justified considering the scope of authorization is narrower.

In terms of expected gain, the removal of this pre-filing will ensure clearer timeline of the authorization process without prejudice for the possibility of NCAs to ask relevant information during the authorization process that could last up to 6 months.

Furthermore, to support competition and innovation in the CSDs landscape we believe that new services provided by the CSD even though not listed under Sections B of the annex should be subject only to notification procedure whether they do not entail credit or liquidity risk for the CSDs (e.g. data services, ICT services etc.).

Only additional services entailing credit or liquidity risk should be subject to authorization that should be aimed to assess if operational model defined by the CSD ensures proper management of credit and liquidity risk, where relevant (e.g. fiscal services etc.).

Question 108. Is the procedure for the authorisation to provide banking ancillary services too long and/or burdensome?

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

Question 109. Are the current authorisation/supervisory approval processes under CSDR suitable, or could it benefit from some refinements/streamlining and/or clarifications?

- the current approval processes are suitable
- the current approval processes could benefit from some refinements /streamlining and/or clarifications
- Don't know / no opinion / not applicable

Please explain your answer to question 109.

If you consider that there is an issue, please clearly describe the issue, which legal, regulatory or operational requirements should be amended to resolve it, the solution(s) you have in mind to resolve it (including drafting suggestions, where possible), and the potential impact of the solution(s) you propose:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 110. Are the current authorisation processes/supervisory approval under CSDR creating legal barriers for (potential) new entrants wishing to provide CSD services?

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

Question 111. Do you consider that market participants, who provide only one core service (for example, notary, central maintenance or settlement) should be covered by some/all elements of CSDR?

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

Please explain your answer to question 111 and explain what would be the benefits or risks.

If you consider that there is an issue, please clearly describe the issue, which legal, regulatory or operational requirements should be amended to resolve

it, the solution(s) you have in mind to resolve it (including drafting suggestions, where possible), and the potential impact of the solution(s) you propose:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please see Chapter 3.2.1. question 76:

In terms of level playing field between different market participants, the 'same function, same rules' principle should apply. In our view, "similar services" that are not covered by the CSDR should not be allowed - market participants should not be allowed to offer services outside the CSDR framework.

Furthermore, all 3 services mentioned in the question should be allowed for CSDs only, given the systemic risk they may carry, however this could create further fragmentation.

Question 112. Could there be benefits to a tiered authorisation (i.e. per service) for CSDs being introduced, e.g. to enable the requirements to reflect the different nature of different core services?

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

Please explain your answer to question 112:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please see our response in the Chapter 3.2.1. question 76.

3.5. Interaction between the CSDR and other EU legislation

Question 113. Are there are issues between the CSDR and other EU legislation?

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

Please explain your answer to question 113.

Please clearly describe the issue, which legal, regulatory or operational requirements should be amended to resolve it, the solution(s) you have in mind to resolve it (including drafting suggestions, where possible), and the potential impact of the solution(s) you propose:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

DLTPR, SFD, UCITS/AIFMD

The CSDR and other rules and regulations have evolved over time and there are no major issues or contradictions between them. However, one particular example which comes to mind with room to improvement would be the relationship between the DLTPR and CSDR. Currently, the transition from the sandboxed environment of the Pilot Regime to the fully regulated CSDR framework is cumbersome. This disconnect hinders innovation and the broader adoption of DLT in financial markets. We propose to see two regimes (as well as MiFID II) more in an integrated manner, while maintaining the high regulatory standards of the CSDR and modernizing/digitalizing the CSDR. Still, the framework needs to be modernized to accommodate the specificities of new technologies like DLT and facilitate a smoother transition for firms "graduating" from the Pilot Regime, without sacrificing security, investor protection and market stability.

Please also see also our answers given in chapter 4.4., Q27

3.6. Other issues on post-trading

Question 114. Other matters that could potentially contribute to removing barriers to the consolidation of post-trading infrastructure, to improving the EU's capital markets attractiveness while reducing fragmentation and to improving integration in post-trade services might also be important.

Please provide any further suggestions to improve the integration, competitiveness, and efficiency of post-trade services (including clearing and settlement) in the EU. Please provide supporting evidence for any suggestions:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SIU ambitions should be leveraged to support the EU clearing ecosystem's global competitiveness and efficiency thereby further strengthening financial stability. Hence, the EU should address regulatory hurdles that prevent an uptake of voluntary clearing and unlock efficiencies for the EU buy- and sell-side. In particular, the EU should:

Level the playing field to boost global competitiveness

- Unlike CCPs in other jurisdictions (e.g. UK, US) EU CCPs cannot treat a Clearing Member's (CM) affiliate business as CM business due to regulatory ambiguity. Affiliate transactions are instead treated as client transactions, preventing netting and risk off-set efficiencies for the CM. Currently, clearing in the EU is hence at a competitive disadvantage. Allowing affiliate business to be treated as proprietary business of CMs would ensure a level playing field and unlock efficiencies, incentivizing more clearing activities in the EU.

- The EU anti-procyclicality (APC) and margin transparency requirements should be aligned with the new global standards for CCP margin transparency and responsiveness. Prescriptive APC tools should be reconsidered. Compared to non-EU CCPs and bilateral markets, APC and margin transparency rules applying to EU CCPs have no equivalents, resulting in a competitive disadvantage for EU CCPs.

Align risk standards between non-centrally cleared & centrally cleared markets to enhance financial stability

- The FX market is the largest financial market in the world but unlike the interest rate derivatives market has neither bilateral margin standards nor a clearing obligation. It is therefore more attractive for market participants to settle FX transactions bilaterally than through CCPs, as there are exemptions from regulatory standards in the bilateral space. These exemptions should be reviewed to create a risk-adequate incentive for central clearing.

- The EU should ensure that bilateral haircuts in SFT markets are risk adequate as recently recommended by the ESRB. Currently, most SFT transactions in the EU have a haircut of zero and it is questionable if all of those are truly risk sensitive. In comparison, other jurisdictions (UK, US) are in the process of following the FSB recommendations to install bilateral SFT haircuts to mitigate risks, for instance around NBF1 leverage, and some even implement a clearing mandate for treasury transactions.

- To deepen the EU clearing ecosystem, the current incentives that make bilateral clearing more attractive than central clearing for the public sector (e.g., 0% risk weighting & lack of margin requirements for bilateral transactions) should be addressed. ESMA should further recognize the minimal credit risk of public entities when providing the EMIR 3.0 mandated guidance for public entities' clearing, harmonizing the best practice of waiving margin and default fund contributions based on a harmonized zero-risk-weight approach. Remove regulatory hurdles for market participants that voluntarily clear SFTs

- The EU should allow CMs to recognize offsetting risks across products (e.g. derivatives vs SFTs) for cleared transactions as this would result in substantial capital cost savings and allow CMs to take on more client clearing activities, ultimately deepening the EU clearing ecosystem and unlocking efficiencies for CMs and end-clients alike. To this end, the CRR should be adapted to improve the recognition of cross product netting when calculating capital requirements.

- In the spirit of EMIR 3.0, the strict collateral concentration and diversification rules applied to funds should be further adapted risk-adequately for CCP cleared SFTs, and funds should not be restricted from re-using or raising margins on cleared SFT markets, which currently requires funds to find other funding sources and makes clearing economically unattractive. Further targeted changes to MMFR and UCITS-D would be required to truly unlock efficiencies for the EU buy-side.

- EIOPA's technical advice to overcome the unfavorable capital treatment of (re-) insurers compared to traditional CMs when accessing CCPs directly is a welcomed step to address another regulatory barrier to unlock efficiencies and promote a further uptake of voluntary clearing in the EU. Nevertheless, the recommended changes are limited to centrally cleared derivatives and should be expanded to cleared SFTs.

- Banks should be allowed to treat centrally cleared SFT transactions under the NSFR more favorably to acknowledge the risk reducing characteristics of cleared SFTs. Currently, cleared SFT transactions receive no preferential treatment, while banks receive highly favorable available stable funding benefits borrowing short-term on a bilateral basis and when clearing those same borrowings from government/public sector and

non-financial counterparties. Therefore, banks should be able to apply a 50% ASF and a 0% required stable funding in respect of centrally cleared SFT transaction calculating NSFR.

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) below. **Please make sure you do not include any personal data in the file you upload if you want to remain anonymous.**

The maximum file size is 1 MB.

You can upload several files.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

Useful links

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