
Consultation Response

AMI-SeCo SEG Survey on Barriers to Post Trade Integration

January 2024

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to respond to this survey. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is registered on the EU Transparency Register, registration number 65110063986-76.

We summarise below our high-level response to the consultation, which is followed by answers to the individual questions raised.

Initial High-Level Remarks

AFME supports measures to increase the competitiveness of EU capital markets, and to make markets more efficient, to the benefit of corporate issuers and end investors. Capital markets are underpinned by the post trading system. Improving the efficiency and integration of post trade processes will help deliver the objectives of the Capital Markets Union project.

We recommend that the post trade ecosystem is reviewed holistically. Barriers are not discrete and there are significant synergies and interplays between different processes – such as corporate actions, tax and collateral management.

We note that improving levels of efficiency and integration should also be considered in the broader context of other EU policy objectives relating to post trade activities. In particular, the aspiration to reduce settlement fails (potentially through more stringent settlement discipline rules) and the potential consideration of a shortening of the settlement cycle. Removing barriers to post trade integration will likely be necessary to support these aims.

AFME has identified four foundational principles that improvements to the post trade ecosystem should deliver. Under each of these themes, we have outlined some more specific action areas to be addressed.

1. Competition and User Choice

EU markets have a unique structure, in which there is a multitude of financial market infrastructures. We should recognise this reality, and deliver an ecosystem in which these FMIs compete against one another on a level-playing field, offering market participants genuine choice. FMIs must interoperate seamlessly, allowing market participants to use the service providers that best fit their business needs, without choice of trading venue constraining choice of CCP or CSD.

Barriers/Areas for improvement

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- In some markets, on-exchange flows have to be cleared through certain CCPs and potentially settled through certain CSD (either trading or collateral activity)
- A lack of interoperability between CCPs results in clearing members requiring multiple CCPs per market.
- CSD links allow participants in one CSD to access securities issued in another CSD without being a direct participant. Current CSD Link arrangements within the EU are uneven – meaning some CSDs cannot provide participants with the same level of access to other issuer CSDs.
- In primary markets, some markets mandate that new issuances are settled through specific CSDs, limiting user choice.
- Some instruments cannot be settled in certain CSDs, which is a significant barrier. All securities issued within the EU should be able to be settled at all EU CSDs.

2. Efficiency

Inefficiencies in post trade processes can create additional complexities and costs for market participants, acting as a drag on performance and ultimately inhibiting the attractiveness and competitiveness of EU markets.

Barriers/Areas for improvement

- Regulatory reporting obligations within the EU can be onerous, and in many cases there are overlaps between the requirements of different regimes (including MiFIR, SFTR, CSDR, for example). Market participants would benefit from a more streamlined, consistent regulatory reporting regime.
- Whilst T2S has improved cash and collateral management, further measures could be taken to optimise collateral utilisation and promote efficient cash management. This includes wider adoption of DCAs and exploring ways to enhance the netting and pooling of collateral across different markets.
- AFME has identified a number of recommendations¹ for reducing settlement fails, to help reduce risks and costs for market participants. One recommended area of focus is to improve pre-settlement matching processes to ensure that matching issues (in particular on cross-border instructions) are resolved prior to settlement date, reducing the likelihood of a settlement fail.
- Settlement efficiency in post-trade processes, as well as more broadly post-trade integration across the industry, are the result of a cohesive and synergic organisation of the activities and behaviours of a multitude of different actors across the post-trade spectrum. With specific reference to the full suite of processes that start with an executed trade and lead to the successful conclusion of its settlement, there should be a coordination of activities on two “parallel” workflows:
 - a) the correct and efficient processing of settlement instructions through the chain of intermediaries, custodians, settlement agents and the relevant settlement system(s), as well as
 - b) the punctual provision of necessary resources (cash and securities) at the right place and the right time for the settlements to be completed (i.e. correct and timely position realignments, optimal use of partial settlement, funding arrangements, including related FX, repos, collateral management, lending and borrowing processes).
- Additional analysis for further efficiency and integration should also be carried out with respect to all other activities surrounding securities investments (such as issuances, corporate events, income distributions, withholding tax, shareholder engagement, etc.), so as to ensure best practices and agreed markets standards are fully adhered to / implemented.

¹ https://www.afme.eu/Portals/0/DispatchFeaturedImages/AFME_SettlementEfficiency2023_07%20final.pdf

3. Transparency

Increased transparency is necessary across several dimensions. Transparency over applicable costs and charges enables market participants to better compare service providers and thus enhances competition. Increased transparency can also help facilitate more efficient processes.

Barriers/Areas for improvement

- Market participants would benefit from greater transparency and simplicity in the fee schedules provided by market infrastructures, which ensure that, for all participants, the same fees are charged for the same services. This should also include transparency around how costs are attributed – for example, the extent to which FMI development projects will be funded from additional charges to users.
- Furthermore, the level of cross-CSD settlement remains low. This is driven in part by higher costs of instructing cross-border as compared to intra-CSD.
- Shareholder Identification processes may similarly benefit from enhanced transparency regarding fees, ensuring the issuer can accurately estimate its costs before initiating an identification request.
- Separately, increased transparency in settlement processes – i.e. improving the ability of market participants to identify mismatches – would help reduce settlement fails. Further consideration should be given to the potential adoption of a UTI (unique transaction identifier) to help deliver this.

4. Harmonised Standards

Harmonising market standards across Europe remains a corner stone of achieving integrated capital markets. The areas where harmonisation is required are typically well-identified already, and good progress has been made. However, there is still more to be done.

Barriers/Areas for improvement

- All markets should follow agreed market standards for corporate events and general meetings and increased compliance to the standards should be promoted by regulators. This will ultimately lead to increased operational efficiency, lower operational costs, and fewer errors in processing corporate actions.
- This should also include exchanging information in agreed formats, to enable straight-through-processing and machine readability and be promoted by regulators.
- An expansion of the T2S network to include additional CSDs and markets would also help to increase levels of harmonisation.
- The current disharmonised processes related to withholding tax do not promote cross border issuances, and hinder cross-border investment.

Responses to Individual Questions

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

DLT-Based Platforms

- Since the previous Giovannini/EPTF report, there has been an emergence of experimentation with DLT-based platforms. This is anticipated to continue growing in coming years.
- The likely co-existence of multiple DLT-based platforms with various applications and potentially specialising in different types of financial product, gives rise to the strong possibility of new barriers and divergent market practices.
- Consolidating and harmonising emerging market standards/practices at an early stage will be critical to support the scaling of DLT-based platforms in an efficient manner.
- However, this may require action on a global level.
- **We envisage that the AMI-SeCo could play a significant role in tracking and coordinating the development of market standards in this space.**

Impact of (Pre-)Issuance Processes

- Issuance and pre-issuance practices can have an impact on post-trade operational activities.
- For example, non-compliance with various standards for corporate action processing as outlined in the SCoRE rulebook
 - Standard 4: “Rounding Rules
 - Standard 5: “Negative cash flows”
 - Standard 6: “Business Day Rule”
 - Standard 7: “Securities amount data”

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

Withholding Tax Reclaims

- We support ongoing work by public authorities, notably the FASTER proposal, to increase the harmonisation of withholding tax relief procedures and to reduce their length, complexity and cost. There are a number of specific barriers for intermediaries in the chain of custody to support withholding tax reclaims on behalf of their clients.
- (1) In order for intermediaries to provide withholding tax relief on passive income from portfolio investment, **it is critical that clear guidance is made available by source country Tax Administrations**

on the service providers' responsibilities and obligations as a part of the relief at source or reclaim procedures, as well as ensuring that any liability is apportioned appropriately between stakeholders. Intermediaries can complete due diligence into client eligibility based on information obtained in the ordinary course of business. Intermediaries typically process high volumes of payments and generally have limited sight of all circumstances surrounding their client's transactions. As such, intermediaries generally rely on information and representations received from clients.

- (2) In recent years, several Tax Administrations have introduced updated guidance in relation to the manner in which reclaims are filed: either through introduction additional eligibility requirements (e.g. holding periods) or changes to the process itself (e.g. moving to electronic reclaims). **Any such changes to guidance should be communicated to the market with sufficient lead-time for impacted stakeholders to implement the necessary changes.**

Example: The German market transitioned from paper-based filing procedure to an electronic filing procedure on January 1, 2023 with a transition period until June 30, 2023. The electronic filing procedure made available by the German Tax Administration ahead of the removal of the paper-based procedure, does not allow for income and related reclaim and beneficial owner information to be uploaded on a bulk-basis, but required for each reclaim to be keyed-in individually. Considering the volume of reclaims as well as the risks related to manual entry of information, it is not feasible for Global Custodians to utilise the functionality. Whilst the German Tax Authority is working on 'mass upload interface' (2024 Go-live) that will allow for reclaims to be uploaded using an XML schema, the gap between the retirement of the paper based process and availability of 'mass upload interface' is an example of an implementation plan that ultimately causes delays in reclaim filings and therefore investors receiving withholding tax refunds and the availability of those funds for further investment within the EU.

- (3) A number of EU member states have introduced guidance that defines the 'withholding tax reclaim entitlement date' as being different from the 'income entitlement date' which creates discrepancies between the party that is entitled to a dividend income payment and the party entitled to file a withholding tax reclaim in relation to that same dividend income payment. Discrepancies in entitlement positions for reclaims and income can be systemically complex to manage. Global Custodians are generally not able to support reclaims in circumstance where the investor has a reclaim entitlement but no income entitlement, as such investors may not be able to benefit from withholding tax relief in an instance where such discrepancy in income and reclaim entitlement occurs. **EU Tax Administrations should align dividend income and reclaim entitlement as well as issue clear guidance on withholding tax relief eligibility.**

Examples: In Denmark, the claimant must be the beneficial owner of the securities on AGM date (typically ex-1). In instances where the issuer distributes an additional extraordinary dividend, the reclaim entitlement date is the date when the board confirms the distribution of the extraordinary dividend. In certain instances the industry has observed that the gap between the confirmation date for an extraordinary dividend date and record date can be up to 12 days.

In 2022 the Austrian Administrative court issued a decision that confirmed reclaim entitlement date as being AGM date – 1. The decision applied on all past, open and future reclaims, which in some instances resulted in clawbacks of relief for reclaims already granted by the Austrian Tax Administration, which created uncertainty for investors and service providers alike. Generally, record date is not within a set number of days from the AGM date. In 2023, new legislation was published on July 21 confirming the

alignment of the dividend and income entitlement (subject to the tax beneficial owner meeting holding period requirements) with effect from July 1, 2023.

- (4) In most cases, in order to benefit from withholding tax relief under the provisions of a double taxation treaty, source country Tax Administrations require investors to submit a Certificate of Tax Residency (COTR). Differences are often experienced between 1) the format that the investor's own Certificates of Tax Residency issued by the Local Tax Authority and 2) the requirements of the source country tax administration.

Example: Portugal: In order for an Investment Fund and Pension Fund to benefit from double taxation treaty relief, the Portuguese Tax Authority requires the investor's local Tax Authority to issue a COTR (or a supporting document to the COTR) confirming information beyond what is required in the standard tax residency confirmation including 1) whether the investor is a legal entity 2) fully liable for tax and 3) that the fund is the final beneficiary of the income payment. A number of Investor Tax Authorities are unable to issue COTRs with the additional language required by the Portuguese Tax Authority and therefore making the investor unable to file withholding tax reclaims/benefit from tax relief.

Registration

- In some markets, registration is a mandatory requirement, whilst it is optional in others.
- There is also divergence between markets where it is mandatory on whether this applies only to proxy voting or also to (parts of) settlement processes.
- Various securities are issued across European markets with the adoption of "control enhancing mechanisms" (such as multiple voting right shares, non-voting shares, preference shares, share transfer restrictions, etc.).² Although there are clearly numerous motivations for the adoption of such measures from a corporate law and corporate governance perspective, it should be recognised that these measures might create market differences and specificities in the ensuing operational processes for investors and intermediaries.

Sanctions Screening

- Where clients choose to hold their assets has a bearing on the asset holding risk. Not all clients may be aware of the risk of holding assets in CSD 1 instead of CSD 2, believing that regulation and legal regimes are equal. Divergent application of directives such as AMLD and sanctions regimes have a direct correlation to asset safety and country risk.
- Divergence in sanctions applied between different jurisdictions, for example the EU sanctions applied to the Russian CSD compared to OFAC and OFSI, creates additional complexity and uncertainty for market participants.

² <https://ec.europa.eu/docsroom/documents/14881/attachments/2/translations/en/renditions/pdf>

Regulatory and Legal Divergence

- Directives vs Regulation: Directives such as MiFID and SRDII create a fragmented regulatory landscape that burdens implementation, challenges the operating environment and processing models and confuse investors. For each directive there can be 27 forms of implementation which adds cost and complexity in the region. AFME supports a single regulation supported uniformly by all Member States that removes the risk of different interpretation and application.
- There are also national law differences in definitions of key terms. For example, the definition of “shareholder” for SRDII purposes still depends on the national law of each security’s country of issuance. This is particularly problematic in cases of cross-border investment, which typically have longer custody chains (i.e. multiple intermediaries between issuer and end investor.)
- The need in some markets (Germany, Sweden, Switzerland to name a few) to have registration upon settlement in order to ascertain who the ‘shareholder’ is also another barrier as in this applies in some markets whereas in others Issuer utilise their right for ‘Shareholder Information’.
- The general meeting process as not been fully aligned under SRD II whilst the key principles could have addressed this. For example, there is no harmonised timetable within Europe therefore each market has a different Record Date in relation to the General Meeting. Cross border voting remains a barrier depending on which depository the shares are deposited in.
- Issuers are not mandated to announce the results of the General Meeting, therefore this is not immediately available to ‘investors’.
- Thresholds on shareholder identification vary therefore causes risk and issues together with how the holding chain can invoice Issuers for the information, which is not yet standardised and requires formal regulation for all European countries to adhere to.

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

Transaction Type taxonomy/usage

- We note that not all CSDs support all trade types on a consistent basis. This can lead to the instruction being ‘NACK’ed at the CSD’s SWIFT gateway, and will need to be amended by the settlement intermediary (or overridden by the CSD) to a conforming value.
- This lack of consistency would be particularly problematic in the context of the CSDR settlement discipline regime, if exemptions based on certain transaction types are introduced. This would require transaction type to be a mandatory matching field to ensure accurate population.
- There is therefore a need for **a common taxonomy of ISO transaction codes agreed by all market participants from CSD to end investor**. This should avoid duplicative or ambiguous codes.
- Ideally, this should be completed before the application of any amendments to delegated regulations as required by the CSDR Refit.
- For reference, please see attached AFME 2021 survey of CSD transaction type availability (responses received from 16 CSDs)

CSD Cut-off times, Partial Settlement and Partial Release

- Reducing settlement fails has been identified as a key policy objective in the EU. An important part of delivering on this ambition is to optimise the settlement of available inventory, which requires harmonised availability and maximised usage of CSD functionality for partial settlement and partial release.
- We support removal of the derogations under the CSDR delegated regulation which remove the obligations for certain CSDs to offer partial settlement (alongside similar derogations for hold and release). FMIs in the region should offer uniform functionality, which maximises the opportunity for settlement including cross-border.
- There is also a requirement for CSD participants and their clients to support and use partial settlement. However, a CSD participant can only use it if the CSD(s) it connects to supports partial settlement. Noting that CSD participants are often intermediaries providing CSD connectivity to their clients through omnibus accounts, partial release should also be a mandatory CSD functionality.
- Lack of harmonisation persists also in the batch timings of different CSDs processes as well as auto-cancellation of unsettled partials that do not meet certain requirements.
- Further analysis should consider increased alignment of CSD timetables to optimise settlement of available inventory. This helps reduce settlement fails and the associated costs of cash penalties, capital charges and additional funding costs:
 - ICSD bridge – NTS and RTS cut-offs and alignment of batch timings for partial settlement
 - T2S - ICSDs – NTS and RTS cut-offs and alignment of batch timings for partial settlement
 - Possibility of real-time partial settlement in T2S
 - Alignment of DVP and FOP market cut-off deadlines
 - Sequencing of T2S vs ICSDs and X-ICSDs instructions
 - Different processing approach and timing across CCPs
 - Existence of specific forms to be completed by certain CSDs in order to process cross-border instructions
- As part of AFME's 2023 Report on Improving the Settlement Efficiency Landscape in Europe³, we conducted analysis on cut-off times and functionality available at European CSDs.

	CSD Name	T2 S? (Y/N)	Auto Partial? (Y/N)	Partial Release? (Y/N)	Real-time Settlement? (Y/N)	No. daily batches	DVP Cut-off	FOP Cut-off	Comments
AT	OeKB	Y	Y	Y	Y	-	16:00 CET	18:00 CET	
BE	Euroclear Belgium	Y	Y	Y	Y	-	16:00 CET	18:00 CET	
BE	NBB-SSS	Y	Y	Y	Y	-	16:00 CET	18:00 CET	
BG	CD AD	Y	N	N	N	3 FOP 14 DVP	17:00 EET (16:00 CET)	19:00 EET (18:00 CET)	

³ https://www.afme.eu/Portals/0/DispatchFeaturedImages/AFME_SettlementEfficiency2023_07%20final.pdf

BG	BNB	Y	N	N	Y	-	16:45 EET (15:45 CET)	16:45 EET (15:45 CET)	
CH	SIX SIS	Y	Y*	N	N	?	16:50 CET**	21:50 CET**	<i>*for on-exchange or T2S transactions only **T2S transactions follow T2S cut- offs</i>
CY	CSE	N	N	N	N	2	14:00 EET (13:00 CET)	14:00 EET (13:00 CET)	
CZ	CSD Prague	N	Y	Y	N	9	13:00 CET*	17:00 CET	<i>*Local currency. DVP EUR until 15:30 CET</i>
CZ	SKD	N	N	N	Y	-	16:00 CET	17:00 CET	
DE	Clearstream Banking Frankfurt	Y	Y	Y	Y	-	16:00 CET	18:00 CET	
DK	Euronext Securities Copenhagen	Y	Y	Y	Y	-	14:15 CET*	15:30 CET*	<i>*T2S Transactions follow T2S cut- offs</i>
EE	Nasdaq CSD (Estonia)	Y	N	N	Y	-	17:00 EET (16:00 CET)	19:00 EET (18:00 CET)	
ES	Iberclear	Y	Y	Y	Y	-	16:00 CET	18:00 CET	
FI	Euroclear Finland	Y	Y	Y	Y	-	17:00 EET (16:00 CET)	19:00 EET (18:00 CET)	
FR	Euroclear France	Y	Y	Y	Y	-	16:00 CET	18:00 CET	
GR	ATHEX CSD	N	N	N	N	25	17:00 EET (16:00 CET)	18:15 EET (17:15 CET)	
GR	Bank of Greece (BoG)	Y	Y	Y	Y	-	16:00 EET (15:00 CET)	18:00 EET (17:00 CET)	
HR	SKDD	Y	N	N	N	32	16:00 CET	18:00 CET	
HU	KELER	Y	Y	N*	Y	-	17:30 CET	18:00 CET	<i>*expected in 2024</i>
ICS D	Clearstream Banking Luxembourg	N	Y	Y	Y	-	16:00 CET*	20:00 CET*	<i>*EUR. Different cut-offs for other currencies</i>
ICS D	Euroclear Bank	N	Y	N	Y	-	16:00 CET*	19:30 CET*	<i>*EUR. Different cut-offs for other currencies</i>

IR	Euroclear Bank	Y	Y	N	Y	-	15:30 GMT (16:30 CET)	18:30 GMT (19:30 CET)	
IS	Nasdaq CSD (Iceland)	N	N	N	N	?	15:20 GMT (16:20 CET)	17:00 GMT (18:00 CET)	
IT	Euronext Securities Milan	Y	Y	Y	Y	-	16:00 CET	18:00 CET	
LT	Nasdaq CSD (Lithuania)	Y	N	N	Y	-	17:00 EET (16:00 CET)	19:00 EET (18:00 CET)	
LU	LuxCSD	Y	Y	Y	Y	-	16:00 CET	18:00 CET	
LV	Nasdaq CSD (Latvia)	Y	N	N	Y	-	17:00 EET (16:00 CET)	19:00 EET (18:00 CET)	
MT	MSE	Y	N	N	Y	-	14:55 CET	17:55 CET	
NE	Euroclear Nederland	Y	Y	Y	Y	-	16:00 CET	18:00 CET	
NO	Euronext Securities Oslo	Y	Y	N	N	3	14:15 CET	14:15 CET	
PL	KDPW	N	N*	N*	Y**	1 FOP 3 DVP	17:00 CET	18:30 CET	<i>*expected in 2024</i> <i>**Batch settlement until 15:30 CET,</i> <i>real-time thereafter</i>
PL	CRBS	N	N*	N*	N	1 FOP 3 DVP	17:30 CET	17:30 CET	<i>*expected in 2024</i>
PT	Euronext Securities Porto	Y	Y	Y	Y	-	16:00 CET	18:00 CET	
RO	Depozitarul Central S.A.	Y	N	N	Y*	2	14:30 EET** (13:30 CET)	16:30 EET (15:30 CET)	<i>**For on-exchange transactions,</i> <i>16:30 EET for OTC</i>
RO	NBR	N	N	N	Y	-	16:45 EET (15:45 CET)	17:40 EET (16:40 CET)	
SI	KDD	Y	N	N	Y	-	16:00 CET	18:00 CET	
SK	CDCP	Y	N*	N*	Y	-	16:00 CET	18:00 CET	<i>*expected in 2024</i>
SW	Euroclear Sweden	N	Y	Y	N	5	15:30 CET	17:00 CET	

UK	Euroclear UK and International	N	Y	N	N	?	15:45 GMT (16:45 CET)	18:00 GMT (19:00 CET)	
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Other examples

- Certain ISINs are not eligible to settle in the CSD of the market where the instrument is traded. For example “Argenx SE” (ISIN NL0010832176) is traded on Euronext Brussels and settles in Euroclear Netherlands. Whilst we support the freedom of issuance there needs to be similar freedom and flexibility in the settlement.
- Certain ISINs are not eligible to settle on the ICSD bridge, requiring a ‘bridging’ settlement involving another CSD in order to deliver the securities to the eligible ICSD. This adds cost, time and complexity and can create settlement fails. Similarly, there is a lack of instrument interoperability between Clearstream Luxembourg and Clearstream Frankfurt.
- Certain ISINs are listed in T2S markets in currencies not eligible for T2S settlement. For example, listings in Euronext Paris in USD need to be directed to ICSDs for settlement.
- Non-Guaranteed instruments which require settlement ‘back to back’ with another exchange member can encounter difficulties when the CCP does not accept the instrument, despite the trade being traded on-exchange. The main markets where such trades and issues exist are the Euronext and Nordic markets. The instrument “Solvac” is an example and results in a convoluted settlement process.

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

Portfolio Transfers

- Portfolio/asset transfers occur when an investor transfers his portfolio of securities from one custodian (or financial services provider which also provides custody services) to another.
- Such transfers require the transmission of investor and asset information from the delivering custodian to the receiving custodian, but this information is currently not provided in a harmonised way and is typically done ad hoc via email and data files with different formats. We note that there is no common taxonomy for transaction type usage.
- There is also no set timeframe for processing transfer requests.
- This lack of harmonisation is a major source of delays when transferring assets, delays which mean investors are unable to sell inflight positions to take advantage of new investment opportunities or to address short term financial needs.
- Investors also face a lack of clarity on the timeframe such a portfolio transfer will take.
- Whilst a European Working Group on Portfolio Transfers (EWGPT) was set up by the European Banking Federation (EBF) in November 2014 to recommend basic principles and best market practices to exchange information needed in a securities portfolio transfer in T2S, this did not produce the desired effect and portfolio transfers throughout Europe and continue to be a complex, opaque and inefficient process.
- These delays and lack of transparency are not conducive to free movement of capital between member states, since an investor in the EU faces unreasonable difficulties when changing providers, which can stifle competition and thus is still a barrier to post trade integration.

- Therefore the AMI-SeCo should specifically address asset transfers as a barrier to be removed to deliver the objectives of the Capital Markets Union project.

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

CSDR Settlement Fails Reporting

- The industry's aspiration to make substantial improvement to settlement efficiency is undermined by the lack of high quality, granular, reliable, standardised and publicly available data. The provision of improved data quality will help to underpin the policy objectives of CSDR and to enable the industry to better identify areas of inefficiency.
- AFME notes that current public data on settlement efficiency rates, such as those provided in ESMA's Trends, Risks and Vulnerabilities Report ("TRV") or the ECB's T2S Annual Report, is limited in scope and detail. This is despite the large volume of data currently available at the CSDs, some of which – under Article 14 of Commission Delegated Regulation EU 2018/1229 – is already reported to National Competent Authorities by CSDs, and shared with ESMA.
- In addition, judging from the information made available by CSDs and the ECB to their participants, it is evident that current fail reporting parameters and the methodology deployed differs across the CSD community, even between CSDs belonging to the same group. Collectively, this leads to ambiguity and a distorted view of settlement fails. For example, CSDs count a single trade that fails –as an example– over a span of 3 days, as 3 different fails, rather than a single trade or transaction that fails for a duration of 3 days. As a result, this misrepresents the true picture, as the CSD triples the number of trades that fail.
- AFME has previously written to ESMA to request the regular publication of more detailed information regarding settlement efficiency rates and trends, which will provide a more well-rounded data set than Annex I and II of the aforementioned delegated regulation which, in our opinion, is not sufficiently comprehensive for the following reasons:
 - Only settlement fails for lack of securities and lack of cash are recorded. This presupposes that all fails are matched and therefore eliminates all other fail reasons.
 - Only the average duration of settlement fails are reported. This indicator needs to be more specific if any policy decisions are to be triggered by the duration of a trade's failure (e.g. introducing 'progressive penalties' or Mandatory Buy-ins.
 - The main reasons for settlement fails are reported as free text, which will soon be non-standard. It will be more precise for the ISO fail reason code to be reported.
 - The type of transaction must be granular and not limited to purchase or sale of financial instruments, collateral management operations, securities lending and borrowing, repurchase transactions and lastly 'other transactions' which is too broad.
 - All ISO transaction codes should be reported – this is vital to align with any exclusions from measures to address settlement fails.
- AFME therefore recommends the following data points:
 - Breakdown of settlement instructions by age of settlement fail;
 - Breakdown of settlement instructions by instrument type based on MIFID II classifications;
 - Breakdown of settlement instructions by transaction type;

- Breakdown of settlement instructions by all ISO fail reasons;
- Breakdown of settlement instructions by country of issuance of the security
- Breakdown of settlement instructions by settlement location;
- Breakdown of settlement instructions by “matching time” (highlighting cases of ‘late instructing’ and ‘late matching’);
- Breakdown of settlement instructions by asset class;
- Breakdown of cancellation instructions relating to both matched (bilaterally cancelled) and unmatched (unilaterally cancelled) per asset class, per transaction type, per settlement location, etc;
- Comparison of settlement rates for domestic instructions vs cross-border instructions;
- Total and average volume and value of CSDR cash penalties issued per day;
- Breakdown of CSDR cash penalties by type (LMFP v SEFP), with segregation by asset class, transaction type, settlement location, etc.
- Furthermore, we consider that it would be beneficial to request each CSD to publish information on the use of partial settlement functionality, recording: the percentage of settlement instructions by transaction type, by asset class, in which the CSD participants have enabled partial settlement in accounts designated as a participant’s own account or a participant’s client account (and if available, as individual vs omnibus client accounts).

Withholding Tax

- Service providers, such as Custodians, often support withholding tax relief services across a number of markets for diverse client bases which include residents in multiple jurisdictions who choose to invest across the EU’s securities markets.
- As a result, Custodians are exposed to multiple reporting regimes for which they must comply. Whilst they have access to a variety of data points pertaining to their clients and their investments, there is still a disconnect between a Tax Authority’s expectation of what data available vs. what the custodian is able to access.
- Additionally, Custodians are faced with reporting requirements with different schema and data requirements by source country Tax Authorities as well as differences in reporting schema for the same reporting standard requiring for more extensive/flexible builds by service providers.
- **Whilst the potential implementation of FASTER may respond to some of the above challenges, where the directive is not made specific enough of the data points to be collected and the definitions of terms (e.g. financial arrangement), there is a risk of these complexities and inefficiencies to continue to exist.**

National-specific reporting regimes

- Reporting requirements imposed on the consumers of cross-border services, e.g. the German AWW reporting act, as a deterrent to the appointment of cross-border service providers.

Monitoring of Harmonisation Progress

- The current dashboard for tracking harmonisation progress is relatively limited. A more nuanced and granular methodology for measuring progress would be beneficial.

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

Collateral Mobility

- Collateral must possess the capability to swiftly and efficiently traverse borders and systems through both tri-party and bilateral collateral management processes. This means having the ability to mobilise collateral promptly based on demand, ensuring it reaches the required destination and aligns with regulatory requirements.
- The industry frequently identifies the lack of collateral mobility as a significant constraint.
- The challenges in collateral mobility stem from the intricate nature of the current post-trade environment. This complexity arises due to the presence of numerous collateral givers and takers, and various locations where securities used as collateral are held.
- Parties involved may opt to hold intended delivery or receipt securities at different issuer CSDs, investor CSDs, or custodians.
- A collateral giver might need to provide collateral to multiple takers, while a collateral taker might receive collateral from different givers, and each party may choose diverse locations to hold the collateral securities.
- From a triparty collateral management point of view, managing collateral across borders adds complexity to the sourcing and movement of collateral to / from triparty agents within existing tri-party models.
- The AMI-SeCo context aims to analyse opportunities for aligning static data / information and collateral deadlines. This initiative also plans to address ongoing efforts for the harmonization of collateral management activities focusing on resolving frictional problems.
- Such harmonization is particularly relevant to the Eurosystem's ongoing review of collateralisation arrangements and its assessment of the business case for developing a common ECMS.

Tax

- In addition to the specific issues raised in relation to withholding tax reclaim procedures, there are additional barriers to harmonisation such as:
 - No common definition of beneficial ownership for tax
 - By country implementation of holding period rules requiring service providers to build solutions that cater for current and potentially future requirements that may have different entitlement rules and holding period calculation basis.
 - Non-existence of workable RAS/Quick Refund (i.e. income adjustment procedures) in certain source market jurisdictions.
- Non-existence of non-local language guidance on procedures and entitlement rules.
- Existence of national-specific financial transaction taxes

Communication between issuers and investors

- ESAP
- Consolidated Tape

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