

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

Rene

* Surname

LORENZ

* Email (this won't be published)

rene.lorenz@bdb.de

* Organisation name

255 character(s) maximum

Association of German Banks

* 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.

0764199368-97

* Country of origin

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

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<input type="radio"/> Côte d'Ivoire	<input type="radio"/> Kosovo	<input type="radio"/> Réunion	<input type="radio"/> Venezuela
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- ☐ 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

* Please specify your activity field(s) or sector(s)

Banking Association

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.

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.

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

Please explain your answer to question 1:

5000 character(s) maximum

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

The BdB welcomes the focus on the SIU as a top priority and key enabler to boost competitiveness of the EU economy.

Targeted measures to mobilise savings and to deepen the EU capital market need, however, more than technical changes in the EU regulation. The evolvement of successful capital markets can serve as a blueprint. We therefore suggest that the COM takes a global benchmarking exercise of the measures such markets around the globe have taken. In our view, Sweden as a market inside the EU should be of particular interest, not only the USA or other third countries:

In Sweden, retail investment was fostered by encouraging the population to invest in shares and investment funds. Key enablers were a tax incentivised securities savings account (ISK) and funded pension systems in addition to direct retail investments. This also led to the creation of significant institutional market players and a thriving ecosystem for SMEs. For further info, please refer to reports of the OECD and of the Swedish government.

What is needed?

1. A culture of share ownership (a capital market mindset meaning the understanding of short term risk tolerance and long term reward).
2. Administratively simple access, process and information (including taxation).
3. Financial literacy (not only education but rather training to invest).

In order to support the COM with meaningful targeted measures, the COM should set out its vision or big picture on future EU capital markets. This seems to be missing in the current consultation.

We believe that the deep and globally attractive, liquid markets should be the objective. Targeted measures should therefore comprise:

- Fostering greater retail participation by creating retail investment culture
 - o Simplifying the Retail Investment Strategy (RIS) by deleting information overload and administrative complexity
 - o Enabling tax incentivised long-term investment savings
 - o Introducing guarantee-free securities based private pension schemes
- Member States promoting capital market funded pension systems
- Vitalising the securitisation market
- Fostering the EU clearing market
- Building an ecosystem including venture capital financing for start-ups, scale-ups and SMEs with capital markets being a serious exit option
- Successful, market driven shift to T+1
- Simplification of EU capital market regulation reducing administrative burden and red tape for market participants and intermediaries. Burden reduction for supervisory authorities must also translate into burden reduction for the supervised.

Due to the extent of technical questions in this consultation, our responses focus on specific sections and questions notwithstanding the above statements.

Proportionality should be understood as a regulatory design principle ensuring that all institutions, regardless of size, are not subject to duplicative, unnecessary or disproportionate obligations. The principle of proportionality, whose constitutional status is established in Article 5 TEU, applies to all EU institutions and bodies when exercising their powers. According to this principle, "... any financial or administrative burden (...) on economic operators and citizens must be as light as possible and proportionate to the aim pursued" (Article 5 protocol No 2 TEU). There is reasonable doubt that this principle has been applied to many of the

legal acts adopted in recent years. In this respect, the principle of “same business, same risk, same rules” should also apply.

However, simplifying and improving the regulatory framework for EU capital markets is an enabler for enhancing competitiveness and ensuring a stable and efficient financial services sector.

The increasing delegation of normative powers from the EU co-legislators to the COM and the ESAs has led to a growing number of Level 2 and Level 3 texts. The objective of ensuring faster and more uniform implementation of financial legislation has not been achieved. Moreover, Level 1 texts are often already in force and must be implemented before the necessary level 2 and 3 texts are published. This leads to significant problems in implementation, legal uncertainty and costs if the implementation based on these assumptions proves to be incorrect at a later date (e.g. EMIR 3.0). Unnecessary complexity in the regulatory framework should be eliminated. Additionally, a full review of ESMA's governance would be preferable and should include the following changes:

- Embedding competitiveness and growth of EU economy as a secondary objective of ESMA's mandate (which would work alongside the primary objectives of investor protection, orderly markets and financial stability),
- changing decision-making process (e.g. independent experts, new voting arrangements to reflect heterogeneous weight in the EU)
- Enlarging ESMA's mandate with reinforced powers for No-action-letters (provided that changes are made to ESMA's governance)

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 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
- ☒

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

Question 4.1 Please explain which barriers and how a Regulation could remove the barrier:

5000 character(s) maximum

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

The FCD is a key building block of the EU capital markets architecture by setting the EU minimum standard for the legal protection of collateral and netting agreements. However, the standards set by the FCD is too narrow and fragmented to establish a sufficiently uniform EU wide level of protections, especially considering the key role netting and collateral agreements play as risk mitigation tools and in view of the developments in capital markets in the last 20 years: In reality, the FCD only provides for a patchwork of varying levels of legal protections causing legal uncertainties and complexities for market participants investing in the EU markets.

The main deficiencies of the FCD are (i) the failure to ensure an independent protection of netting agreements (by only covering netting agreements combined with collateral agreements), (ii) the limited - and because of the opt outs – further fragmented - personal and material scope covering only a small section of market participants and transactions, instruments and assets, as well as (iii) the incomplete resolution of key legal issues (e.g. avoidance actions).

The deficiencies of the FCD could be effectively addressed by a Regulation defining a common EU baseline for the legal protection of financial collateral and netting agreements covering the following elements: The

independent protection of contractual netting, an expanded personal and material scope without opt-outs covering all relevant market participants (including corporates and 3rd country market participants) and all relevant transaction types, instruments and assets in order to ensure a uniform EU minimum level of protections irrespective of the differences between the national insolvency and collateral laws. A Regulation would provide more clarity and uniformity over these elements serving as the EU minimum protections. A similar level of protection could, however, be achieved via a Directive without opt-outs: The advantage of a Directive would be the closer integration of the minimum standards with the member states legal systems, in particular, contract, company and general insolvency law. In any event, the standards set by a Regulation (or Directive) should not preclude member states from providing for broader protections: A lowering of existing standards would have very serious negative implications for financial markets. For more detail see responses in Section 3.3.

The SFD setting the EU standard for the protection of the functions of market infrastructures has similar deficiencies as the FCD in respect of its scope, specifically concerning the protection of the entire transaction path down to the party initiating the transaction and intermediaries as well as of 3rd country systems. As in the case of the FCD a Regulation would ensure more clarity and uniformity. However, a revised Directive defining a sufficiently clear common baseline, could largely achieve similar effects. For more detail see responses in Section 3.1.5.

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 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 suggest removing the cost section from the KID, as the costs are already included in their concrete form in the ex-ante cost information.

The ESAs already proposed in 2022 (ESAs Call for Advice on PRIIPs: ESA advice on the review of the PRIIPs Regulation (JC 2022 20) dated 29 April 2022) to amend the provision in Article 13(4) of the PRIIPs Regulation and thereby to waive the automated provision of the updated key information document following an essential change. Many clients still do not have an electronic mailbox and regularly receive this information by post letter. In practice, the decision whether to apply this process lies with the PRIIP manufacturer. Only the manufacturer is aware of the content changes in the document and can therefore assess whether an essential change has occurred in the individual case. In practice, in particular capital management companies often initiate the process as a precaution—for example, when changes in reported transaction costs occur during routine updates. Investors can only identify the actual change by comparing the respective versions of the document. In our view, the essential costs incurred (including printing and mailing approximately 25,000 letters per quarter by a single member institution) are disproportionate to the expected customer benefit, especially considering the resulting information overload for the investor. Based on experience, a change in an investor's investment decision is typically triggered by factors such as poor PRIIP performance, a shift in the investor's market expectations, or a loss of available liquidity on the investor's part, rather than by an update to the key information document. For the exact wording of the proposed change, we refer to the ESAs' proposal ("ESA advice on the review of the PRIIPs Regulation (JC 2022 20)") on pages 89 and 90. According to the ESAs' proposal, retail investors are sufficiently protected by the ability to request the most recent version of the key information document.

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.

Temporary regulatory pause for non-essential legislation [high priority]

We strongly advocate for a regulatory pause, e.g. for a period of two years, for all but absolutely indispensable new (burdensome) regulatory measures. Such a pause would enable a structured and comprehensive reassessment of the existing EU capital market regulatory framework, much of which has been layered successively in the post-crisis years without systematic evaluation of overall consistency, proportionality, or market impact.

A temporary standstill on non-essential regulatory initiatives would not only reduce immediate administrative burdens but also create space for market participants, regulators, and policymakers to jointly reflect on whether existing rules are still fit for purpose or should be recalibrated. With respect to new regulatory measures which are deemed essential there should still be a check in advance whether these would simplify existing rules or rather add further complexity, the latter case should of course be avoided.

Abolish not yet finalised (burdensome) regulatory initiatives like the Retail Investment Strategy (RIS) [high priority]

Generally, it is easier to avoid new bureaucracy than to eliminate existing bureaucracy. The RIS ideas which are currently being discussed in the trilogue run counter to the objective of unburdening the economy by reducing bureaucracy. Too much bureaucracy – as foreseeable induced by the RIS – in the securities business deters clients from investing in the capital markets. This conflicts with the original intention of both the RIS and the Savings and Investment Union (SIU) to encourage retail investors to invest in the European capital markets. In its original proposal of the RIS from May 2023, the former EU Commission had laid down a massive expansion of bureaucratic requirements and did not develop any proposals to encourage clients to invest in the European capital markets. In the meantime, with a view to its “simplification agenda” in the SIU strategy, the EU Commission has stated that it will not hesitate to withdraw the RIS if the trilogue negotiations do not meet these objectives. We welcome that the Commission has recognized that the RIS must be radically simplified in this context or – if no meaningful simplifications can be achieved – should be withdrawn completely. We have a clear preference for the latter as the existing MiFID already provide a very comprehensive and, in our view, sufficient rule set, especially with respect to product transparency and investor protection.

Improved legislative sequencing and regulatory clarity [high priority]

A recurring issue is the significant time lag between Level 1 legislation and its implementing Level 2 and Level 3 rules, which creates long periods of legal uncertainty and hinders planning. Key regulatory regimes have entered into force while core technical details were still undefined or under consultation. Better synchronisation between legislative and implementing acts possibly via transitional mechanisms or conditional phasing would greatly improve legal clarity and operational readiness. Key regulatory regimes could also be decided more at Level 1 and not be left to Level 2 and Level 3. This can speed up legislation, as the process currently stretched over levels 2 and 3 sometimes takes a very long time.

As there are too many cumulative layers of rules, we would suggest the following:

- Involve stakeholders in definition / design, impact assessment on EU competitiveness before releasing new rules
- Avoid the use of excessive level 2 and 3 mandates (we have observed an increasing volume of RTS, ITS, guidelines, guidance, Q&A over the last few years)
- Introduce a competitiveness dimension (international competitiveness and economic growth of EU / EU financial sector) in ESAs mandates
- Make the use of cost/benefit analyses more systematic
- Strengthen scrutiny from EU Commission

In terms of retail related issues: Experience with the legislative process on the retail investor strategy has once again highlighted how out of touch the EU Commission's initial proposals are in many areas. We therefore suggest setting up a panel of experts with practical representatives on the individual MiFID and PRIIPs topics. The Platform on Sustainable Finance could be a suitable blueprint. During the current revision of the Sustainable Finance Disclosure Regulation (SFDR), this body has developed proposals for the introduction of a suitable product categorization, which has received almost unreservedly positive feedback from many market participants. In our view, such an expert committee should first develop concepts on defined topics in order to use them as a starting point for legislative procedures.

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.

The DLTPR is too restrictive. See our answers in the respective section 4.4.

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

Please explain your answer to question 9:

5000 character(s) maximum

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

In our opinion, in EU countries are in many areas too heterogenous for a stronger centralized supervision so far.

Deepening and broadening the EU financial market is more important than focusing on a centralized EU supervision. That can only be a second step. We are yet against a broadened EU-level supervision. Especially when national business models and regular supervisory practices are concerned.

A more centralized approached could only makes sense in pan-European circumstances, for instance in a

cross-border context. The respective benefits then largely depend on careful institutional design and legal clarity. Any shift in supervisory responsibility must also be accompanied by clear definitions of mandates, robust governance, and appropriate resource allocation. In most cases, however, the exchange between EU supervision with national supervisors should be intensified, particularly in areas where local market knowledge and proximity to firms remain critical, such as conduct supervision or retail market oversight. A national supervisory authority is already very familiar with these country-specific features from regular market surveys.

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 specify to what other barrier(s) you refer in your answer to question 1 and explain your answer:

5000 character(s) maximum

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

Many of these barriers were mentioned in the EPTF report. The report from the Securities Group (SEG) is expected soon, in which current barriers will be documented. These relate to the areas mentioned here.

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

How many barriers to freedom of issuance have you identified?

- ☒ 1 barrier
- ☐ 2 barriers
- ☐ 3 barriers

Barrier 1 - Freedom of issuance

	Describe barrier 1 to freedom of issuance
Explanation of the barrier	Yes, this is partly due to the different company laws. A 28th regime could be a possible solution.
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 to freedom of issuance:

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

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>Further development of the existing standards and compliance with them should be pursued more consistently.</p> <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 standardised 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 harmonisation of issuance practices and straight-through-processing (STP) of asset servicing across the EU could be achieved.</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	
<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 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

Barrier 1 - Stemming from national laws, regulatory/supervisory or operational requirements

	Describe barrier 1 stemming from national laws, regulatory/supervisory or operational requirements
Explanation of the barrier	See above Question 3.
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 stemming from national laws, regulatory/supervisory or operational requirements:

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

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

How many additional barriers have you identified?

- ☒ 1 barrier
- ☐ 2 barriers
- ☐ 3 barriers

Additional barrier 1

	Describe additional barrier 1
Explanation of the barrier	Yes, in some EU countries the law stipulates that the national CSD must be labelled for settlement. E.g. for government loans. Trading venues also stipulate this to some extent. Art 37 (2) MiFID should be amended to remove these barriers.
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 additional barrier 1:

- ☒ High priority
- ☐ Medium priority
- ☐ Low priority
- ☐ 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

How many other main barriers to building an efficient network of links between EU CSDs have you identified?

- ☒ 1 barrier
- ☐ 2 barriers
- ☐ 3 barriers

Barrier 1 - Other main barriers - Links

	Describe other main barrier 1
Explanation of the barrier	<p>If possible, T2S standards should also apply outside of T2S.</p> <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> <p>Working on improving these bottlenecks will constitute an important element to achieve a less fragmented post-trade landscape.</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 the other main barrier 1 to building an efficient network of links:

- ☒ 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
-

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

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

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
-

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

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

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

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.

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.

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.

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.

Currently, only 4% of settlements in T2S are cross-border. The following means could significantly improve the T2S platform as collaborative infrastructure settlement platform, contributing to further efficiency in Europe and encouraging market-driven innovation in a collaborative approach:

- achieve efficient cross-border settlement by reducing technical limitations and implementing relevant T2S change requests promptly;

- simplify the settlement of non-T2S issued securities.

The European Commission should further harmonize underlying regimes to push for cross-border settlements in T2S.

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.

As long as there is more than one CSD in the EU, links are required.

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.

See above under question 1 (3.1.1.).

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.

Same (CSDR) rules to apply for CSDs that are run by Central Banks.

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

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

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.

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.

More transparency could help to reduce cost. T2S fee schedule should be consulted in order to achieve a comparable fee structure. Promote competition through transparency. Partial settlement should be incentivised through lower costs. This would also have a positive impact on settlement discipline.

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.

See above under question 25. Price changes should be announced in good time.

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.

Choice should be retained.

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

Please explain your answer to question 32:

5000 character(s) maximum

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

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.

See above under 3.1.3.

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.

This could lead to more competition, provided that the CSDs adapt their systems better to T2S and no longer maintain their own systems, which are not necessary. This would save costs.

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.

The following areas are prioritised: Technology, operations, resilience. In addition, the change and release management process in T2S should be made more efficient.

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

How many barriers that affect legal certainty of acquisitions and dispositions have you identified?



1 barrier

☐ 2 barriers

☐ 3 barriers

Barrier 1 - Legal certainty of acquisitions and dispositions

	Describe barrier 1 that affect legal certainty of acquisitions and dispositions
Explanation of the barrier	EPTF barrier 11.
Reason(s) why it is a barrier	
Specific legal requirement(s) that create(s) the barrier, if relevant (national or EU level)	
Which financial instrument the barrier refers to	
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	
Type of intermediary structure(s)/chain(s) that create(s) the barrier, if relevant	

Estimation of the costs of the barrier and a description of where the additional costs come from and how much they are	
<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 that affect legal certainty of acquisitions and dispositions:

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

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 39.1. Are the barriers the same or are there different barriers where the provision of CSD services are made through DLT?

5000 character(s) maximum

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

There is a lack of regulation in the EU as to which law applies, e.g. modelled on the Financial Collateral Directive (Art. 9).

How many barriers for investors to obtain legal certainty have you identified?

- ☐ 1 barrier
- ☐ 2 barriers
- ☐ 3 barriers

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
-

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
-

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

How many barriers to the provision of issuance / maintenance / settlement services via new technologies have you identified?

- ☒ 1 barrier
- ☐ 2 barriers
- ☐ 3 barriers

Barrier 1 - Provision of issuance / maintenance / settlement services via new technologies

	Describe barrier 1 to the provision of issuance / maintenance / settlement services via new technologies
Explanation of the barrier	There should be a European regulation according to which law a decentralised transfer of rights/values takes place.
Reason(s) why it is a barrier	
Specific legal requirement(s) that create(s) the barrier, if relevant (national or EU level)	
Which financial instrument the barrier refers to	
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	
Type of intermediary structure(s)/chain(s) that create(s) the barrier, if relevant	

Estimation of the costs of the barrier and a description of where the additional costs come from and how much they are

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 to the provision of issuance / maintenance / settlement services via new technologies:

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

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 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.

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

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

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 – and not the other way round (same business – same rules).

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.

Question 51. Are there any other barriers to legal certainty which are not mentioned above?

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

How many barriers other barriers to legal certainty have you identified?

☒

1 barrier

☐ 2 barriers

☐ 3 barriers

Barrier 1 - Other barriers to legal certainty

	Describe barrier 1 other barriers to legal certainty
Explanation of the barrier	See above under question 1 under section 3.1.1.
Reason(s) why it is a barrier	
Specific legal requirement(s) that create(s) the barrier, if relevant (national or EU level)	
Which financial instrument the barrier refers to	
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	
Type of intermediary structure(s)/chain(s) that create(s) the barrier, if relevant	

Estimation of the costs of the barrier and a description of where the additional costs come from and how much they are	
<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 other barriers to legal certainty:

- ☒ High priority
- ☐ Medium priority
- ☐ Low priority
- ☐ 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

Barrier 1 - Smooth operation of the settlement finality framework

	Describe barrier 1 to the smooth operation of the settlement finality framework
Explanation of the barrier	<p>Overly narrow personal and material scope:</p> <p>The minimum standard of protections set by the SFD is limited and fragmented across the EU because of the narrow personal as well as material scope and the many opt-outs.</p> <p>One, the SFD protections do not necessarily/clearly cover 3rd country systems (which works as barrier for the access of EU market participants to these systems affecting their international competitiveness).</p> <p>Two, they also do not clearly/sufficient protect the entire transaction chain down from the system, its members and intermediaries to the party initiating the transaction. This issue has become more critical as more and more market participants rely on intermediaries to access systems (in particular to CCPs for derivatives/client clearing) and suffer legal uncertainties because of the insufficient level of protections for ushc indirect access.</p> <p>Three, as the SFD was introduced more than 20 years ago its focus was on securities and payment settlement: Due to a number of amendments the SFD now largely also covers other systems, in particular, central counterparty clearing of derivatives (CCP-clearing). However, CCP-clearing is often only addressed indirectly or as an add-on. A modernisation of the SFD would allow for a full integration of CCP-clearing into all aspects of the SFD and on an equal level as and independently from payment and securities settlement systems.</p>
Reason(s) why it is a barrier	<p>The fragmentation of the protections across the EU result in legal uncertainties for cross-border transactions (requiring an independent legal analysis for each relevant EU-jurisdictions) and can also affect the ability of EU market participants to access 3rd country systems and thus their international competitiveness.</p>
Specific legal requirement(s) that create(s) the barrier, if relevant (national or EU level)	<p>See above</p>

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	
<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>	Legislative Change (modernisation/expansion of SFD)
Data on the potential costs and benefits of the suggested solution(s)	

Assess the priority level for addressing barrier 1 to the smooth operation of the settlement finality framework:

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

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.

See response to Question 51.

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

How many barriers for the market or market participants, in particular in a cross-border environment, have you identified?

- ☒ 1 barrier
- ☐ 2 barriers
- ☐ 3 barriers

Barrier 1 - Market or market participants, in particular in a cross-border environment

	Describe barrier 1 for the market or market participants, in particular in a cross-border environment
Explanation of the barrier	The very narrow personal and material scope and existing opt-outs diminish the effectiveness of the SFD as a minimum common standard of protections across the EU and is causing legal uncertainties for intra-EU cross border transactions as well as cross border transactions with 3rd countries (uncertainty over the protection of 3rd country systems) - see already response to Q52 above and to Q63 below (3rd country systems).
Reason(s) why it is a barrier	See above
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	
<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>	Legislative Change (modernisation/expansion of SFD)
Data on the potential costs and benefits of the suggested solution(s)	

Assess the priority level for addressing barrier 1 for the market or market participants, in particular in a cross-border environment:

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

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
-

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.

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

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
-

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
-

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
-

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
-

How many barriers to efficient collateral management have you identified?

- ☒ 1 barrier
- ☐ 2 barriers
- ☐ 3 barriers

Barrier 1 - Efficient collateral management

	Describe barrier 1 to efficient collateral management
Explanation of the barrier	<p>The FCD and SFD are closely connected since transactions entered into a system covered by the SFD are often based on bilateral agreements covered by the FCD. Likewise, the netting and collateralisation mechanisms of system under the SFD may be based on or identical to bilateral agreements covered by the FCD.</p> <p>Any inconsistency between the FCD and SFD, especially regarding the personal and material scope, can therefore cause legal uncertainties.</p>
Reason(s) why it is a barrier	Inconsistencies can result in uncertainties and will require independent legal analysis across all member states.
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	
<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>The modernisation of the FCD and the SFD will need to be closely coordinated to ensure a consistent and efficiently interlinked framework of protections.</p>
Data on the potential costs and benefits of the suggested solution(s)	

Assess the priority level for addressing barrier 1 to efficient collateral management:

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

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.

See responses to Questions 52, 53 and 60 above.

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
-

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	A failure to extend the SFD protections to 3rd country system by member state (or uncertainty over the extent of the protections) is directly detrimental to all EU market participants since the lack of or uncertainty over the level of protection will either result in an outright exclusion of EU-market participants from that system (which also means that EU market participants cannot interact with EU market participants from jurisdictions with such insufficient SFD-protections via that system) or result in added requirements or legal uncertainties for the affected EU-market participants and any other party interacting with that EU-market participant.
Reason(s) why it is a barrier	See above
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	
<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 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
-

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
-

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
-

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.

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

Other main barriers - Use of DLT for the provision of CSD services

	Describe the other main barriers
Explanation of the barrier	DLT pilot regime is limited in its scope and timeframe and therefore not encouraging market participants to adopt DLT-based transactions to a larger scale.
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.

No, because also MiCAR focuses only on crypto assets, but refers to existing regulation for traditional investment assets in tokenized form. Furthermore, the DLTPR lays the foundation for new market roles needed due to the advanced technical set-up.

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 explain your answer to question 74:

5000 character(s) maximum

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

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.

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.

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.

DLT pilot regime explicitly allows for integrated TSS roles.

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

How many other barriers have you identified?

- ☒ 1 barrier
- ☐ 2 barriers
- ☐ 3 barriers

Barrier 1 - Other barriers

	Describe other barrier 1
Explanation of the barrier	Missing secondary market trading facilities (due to limitations of EU DLTPR).
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 other barrier 1:

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

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.

No, as blockchains with deterministic finality would rather be chosen for this purpose.

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.

Central securities depositories already offer services in connection with and/or on the basis of DLT.

When integrating third-party providers that offer services in a decentralised manner via the DLT, CSDs should ensure that they can use the CSD services without discrimination, e.g. via an interface. Under no circumstances should the result be that all intermediaries have to connect to all DLT providers. That would be complex and expensive.

There are also regulations, such as Art. 3 CSDR, which should be reviewed. The following guidelines should be observed:

- Regulation should be technology-neutral
- But: Same business, same rules

Careful consideration must be given to how the level of protection for investors and the market can be maintained even when DLT is used.

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 specify which functions and which market participants, and state reasons:

5000 character(s) maximum

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

In a DLT environment, certain functions traditionally assigned to or reserved for a CSD can potentially be performed safely, securely, and effectively by other market participants (e.g. a crypto registrar and crypto custodians) or by the DLT infrastructure itself.

DLT inherently provides a secure and immutable record-keeping mechanism that can perform the function of maintaining securities records (safekeeping/notarisation).

Furthermore:

Issuance/Initial Recording: Issuers can directly mint tokenised securities on a DLT network, performing the initial recording function.

Settlement Finality: Atomic Delivery versus Payment (DvP) can potentially be achieved directly on-chain via smart contracts, performed by the transacting parties and the DLT protocol logic, rather than requiring a separate CSD settlement system.

These functions can be performed by issuers, regulated DLT service providers, or the network participants, provided that the DLT network is designed with appropriate governance, security protocols, and legal certainty regarding ownership and settlement finality. This allows for a potential disaggregation of CSD services, with specific functions distributed among different entities or handled by the technology itself.

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 type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Securities settlement system	<input 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 type="radio"/>
Book entry form	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Dematerialised form	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Settlement	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Delivery versus payment (DVP)	<input 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 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 type="radio"/>	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rules on organisational requirements for CSDs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rules on communication procedures with market participants and other market infrastructures	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rules regarding the integrity of the issue and appropriate reconciliation measures	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 type="radio"/>
Rules on requirements for participation	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rules on requirements for CSD links	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rules on legal risks, in particular as regards enforceability	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Any other rules	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain the exact nature of your concern with the rules on organisational requirements for CSDs provide suggested solutions that would ensure a level playing field between different providers of CSD services, if you have any, and explain how these solutions would ensure an equivalent mitigation of risks:

5000 character(s) maximum

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

Organisational requirements should not refer to legal entities, in case there is no longer one, but the service is automated in a DLT system.

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

Barrier 1 - Integration of EU markets and/or consolidation of financial market infrastructures

	Describe barrier 1 to the integration of EU markets and/or consolidation of financial market infrastructures
Explanation of the barrier	<p>Insufficient uniform minimum standard for the protection of contractual netting agreements independent from financial collateral agreements:</p> <p>The current lack of an independent minimum standard for the protection of contractual netting agreements where not combined with a financial collateral agreement causes uncertainties and a fragmentation of the EU legal framework for contractual netting agreements (which are widely used as a standard risk mitigation tool for financial derivatives and securities finance transactions (cleared and uncleared) by a wide range of capital market participants.</p>
Reason(s) why it is a barrier	<p>The lack of a uniform EU minimum standard for the independent protection of contractual netting agreements (in all relevant forms) leads to differences between and uncertainties over the level of legal protections for netting agreements used as standard risk mitigation instrument for financial transactions (regularly based on international, regional or local standard netting agreements).</p> <p>Because of these differences and uncertainties, market participants active in the EU markets need to analyse the legal effectiveness of netting agreements for each EU jurisdiction separately and are exposed to additional legal uncertainties and complexities in case of intra-EU transactions. This significantly impedes the development of a truly integrated EU capital market.</p> <p>The legal differences also produce operationa and regulatory complexities as these have to be addressed in the contractual set-up, the operational set-up for netting and margining (e.g. requiring the establishment of split netting /collateral sets) and also impact the prudential capital requirements.</p> <p>Netting agreements are key risk mitigation tools for capital market transactions widely used by all market</p>

	participants. A clear minimum EU base line for the legal protection of the effectiveness of netting agreements would directly reduce legal risks, increase the efficiency of capital markets transactions and foster more intra-EU market activity.
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	
<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>Legislative change: Modernisation of the FCD (as a regulation or a directive) with the introduction of the independent protection of contractual netting agreements, an expanded and modernised minimum personal and material scope and further clarifications of key legal issues – see also responses to Section 1/Q4 and the response regarding Barrier 2 immediately below.</p>
Data on the potential costs and benefits of the suggested solution(s)	

Assess the priority level for addressing barrier 1 to the integration of EU markets and/or consolidation of financial market infrastructures:

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

Barrier 2 - Integration of EU markets and/or consolidation of financial market infrastructures

	Describe barrier 2 to the integration of EU markets and/or consolidation of financial market infrastructures
Explanation of the barrier	<p>Too narrow and fragmented material and personal scope of FCD protections for collateral and/or netting agreements:</p> <p>The present limitation of the personal scope (with opt-outs) to a list of specified regulated entities (which only constitute a sub-set of the regulated market participants) and the opt-outs which allow an even further reduction of the scope (e.g. by limiting the application of the FCD to non-regulated entities (corporates) only to cases where they transact with a listed regulated entity) excludes a significant section of capital market participants from the scope of the FCD.</p> <p>The limitation of the material scope to a list of specified types of collateral/assets (with opt-outs) excludes many instruments/ assets which are not clearly captured by the definitions or cause legal uncertainties over the eligibility of many instruments/assets which are now commonly used for transactions (guarantees, EU and non-EU emission rights, voluntary carbon credits (VCC), tokenized/crypto assets, credit claims etc.).</p>
Reason(s) why it is a barrier	<p>The limitations regarding the personal and material scope result in a fragmentation of the EU legal framework for contractual netting agreements for derivatives and securities finance transactions and also collateral agreements for all types of capital market transactions: Market participants active in the EU markets thus have to analyse each EU jurisdiction separately and are exposed to additional legal uncertainties and complexities in case of intra-EU transactions. This significantly impedes the development of a truly integrated EU capital market.</p> <p>The fragmentation of the personal and material (product) scope leads to operational burdens and affects the efficiency of the execution transactions, inter alia requiring the creation of separate netting and collateral sets for the different product classes, affects the prudential capital requirements and also causes uncertainties in respect of EU regulatory margin requirements, specifically EMIR and CRR (which presuppose the legal effectiveness of</p>

	<p>netting and collateral arrangements).</p> <p>Netting and collateral agreements are key risk mitigation tools for capital market transactions widely used by all market participants. A clear minimum EU base line for the legal protection of the effectiveness of these tools would directly reduce legal risks and foster more intra-EU capital market activity.</p>
Specific legal requirement(s) that create(s) the barrier, if relevant (national or EU level)	See above
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	
<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>Legislative change: Modernised FCD with an expanded personal and material scope as Regulation or Directive setting a true uniform minimum standard of protections for netting and collateral agreements.</p>

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

Assess the priority level for addressing barrier 2 to the integration of EU markets and/or consolidation of financial market infrastructures:

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

Barrier 3 - Integration of EU markets and/or consolidation of financial market infrastructures

	<p>Describe barrier 3 to the integration of EU markets and/or consolidation of financial market infrastructures</p>
<p>Explanation of the barrier</p>	<p>Insufficient clarity over certain legal concepts and issues which can cause legal uncertainties over the level of protection afforded by the FCD regarding both netting and collateral agreements, including:</p> <ul style="list-style-type: none">- Lack of a sufficiently clear and comprehensive protection of collateral agreements for variation / and initial margin against avoidance actions: Uncertainty over the full extent of the protections afforded under the FCD which – in Art. 8 (3) only addresses these complex collateralisation techniques involving constant/regular calculation and adjustment of collateral in a very general manner.- Uncertainties over the understanding of the concept of “possession” and “control, specifically the lack of a clarification that established/ common collateralisation market practices (such as contractual provisions on the treatment voting rights /corporate action regarding assets used as collateral) do not negatively affect the classification of assets as financial collateral under the FCD.
<p>Reason(s) why it is a barrier</p>	<p>Because of the uncertainties and legal differences between member states, market participants active in the EU markets have to analyse each EU jurisdiction separately and are exposed to additional legal uncertainties and complexities in case of intra-EU transactions. This significantly impedes the development of a truly integrated EU capital market.</p>
<p>Specific legal requirement(s) that create(s) the barrier, if relevant (national or EU level)</p>	

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	
<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>Legislative change: Modernised FCD with an expanded personal and material scope as Regulation or Directive setting a true uniform minimum standard of protections for netting and collateral agreements.</p>
Data on the potential costs and benefits of the suggested solution(s)	

Assess the priority level for addressing barrier 3 to the integration of EU markets and/or consolidation of financial market infrastructures:

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

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.

No: It is currently unclear to whether/to what extent certain types of tokenised assets/crypto assets may be eligible as financial collateral: The FCD protections should be clearly extended to these types of assets (of course on the basis and subject to an adequate legal/regulatory framework for such assets).

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.

The personal scope should be extended to cover all capital market participants and, in particular, all regulated market participants (including insurers, re-insurers, IAF, AIFM, IORP, payment service providers, e-

money institutions, CSDs and all other financial market infrastructures (independent from a potential banking license) as well as energy and commodity traders and corporates.

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

How many barriers related to the scope of the FCD have you identified?

- ☒ 1 barrier
- ☐ 2 barriers
- ☐ 3 barriers

Barrier 1 - Scope of the FCD

	Describe barrier 1 related to the scope of the FCD
Explanation of the barrier	See response to Qestion 84/Barrier 2.
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 related to the scope of the FCD:

- ☒ High priority
 - ☐ Medium priority
 - ☐ Low priority
 - ☐ 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.

See response to Question 85 above.

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.

There is currently some uncertainty over the understanding of the concept of "possession" and "control" and also "accounts"/"book entry":

Specifically, it is not clear and the analysis for each jurisdiction can differ, whether and to what extent established/common market practices regarding collateralisation/margining (e.g. provisions on the treatment of voting rights /corporate action regarding assets used as collateral) may affect the qualification of assets as

financial collateral.

Because of the uncertainties and legal differences between member states, market participants active in the EU have to analyse each EU jurisdiction separately and are exposed to additional legal uncertainties and complexities in case of intra-EU transactions. This significantly impedes the development of a truly integrated EU capital market.

The above legal concepts/terms should be clarified in order to ensure a consistent interpretation across the EU and also ensuring that standard/established collateralisation practices do not negatively affect the classification as financial collateral.

Similar clarifications in respect of standard/established practices for the booking of collateral ("book-entry" and "accounts") should also be considered.

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.

The list of eligible types of collateral should be expanded to cover a wider range of assets and instruments in view of evolving market practices and developments. This should include the following:

- Guarantees,
- EU and non-EU emission rights,
- voluntary carbon credits (VCC),
- credit claims,
- tokenized/crypto assets etc.

See also response to Question 84/Barrier 2 regarding the overly narrow personal and material scope. The narrowness of the personal scope (especially the limitation of the application of the FCD to non-regulated entities (corporates) only to cases where they transact with a listed regulated entity) also affects the already narrow material scope of the FCD. The resulting fragmented personal and material scope significantly reduces the effectiveness of the FCD to provide for a sufficient level of EU wide common protections for cross- border transactions.

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.

The benefits of the protections of the FCD should be extended to a wider range of capital market participants, including non-regulated entities/corporates and should no longer be contingent upon other party being a qualified financial counterparty since corporates play a significant role in the EU capital markets and rely as much as regulated entities on netting and collateral agreements to manage and mitigate their risks.

See also response to Question 84/Barrier 2.

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

How many barriers created by the non-aligned definition of 'collateral security' and 'financial collateral' have you identified?

- ☒ 1 barrier

- ☐ 2 barriers
- ☐ 3 barriers

Barrier 1 - Created by the non-aligned definition of ‘collateral security’ and ‘financial collateral’

	Describe barrier 1 created by the non-aligned definition of ‘collateral security’ and ‘financial collateral’
Explanation of the barrier	<p>The protections of the SFD and the FCD have significant overlap since market participants relying on systems for their transactions also rely on contractual netting and collateral agreements protected by the FCD to access the systems and the systems themselves may enter into such agreements in order to manage their risks (and their rules and regulations may incorporate elements of standard bilateral netting and/or collateral agreements).</p> <p>Consistency between the SFD and FCD is therefore vital to ensure a coherent and effective application of both the SFD and FCD across all capital market transactions – see also response to Section 3.1.5/Q60.</p>
Reason(s) why it is a barrier	See above and response to Section 3.1.5/Q60.
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	
<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>Legislative change/close coordination of the modernisation of the SFD and FCD.</p>
Data on the potential costs and benefits of the suggested solution(s)	

Assess the priority level for addressing barrier 1 created by the non-aligned definition of ‘collateral security’ and ‘financial collateral’:

- ☒ High priority
 - ☐ Medium priority
 - ☐ Low priority
 - ☐ 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

How many barriers to the single market created by opt-out provisions for Member States have you identified?

- ☒ 1 barrier
- ☐ 2 barriers
- ☐ 3 barriers

Barrier 1 - Single market - opt-out provisions for Member States

	Describe barrier 1 to the single market created by opt-out provisions for Member States
Explanation of the barrier	See response to Q84 Barrier 2: Legal uncertainties due to narrow and fragmented personal and material scope furthered by opt-outs.
Reason(s) why it is a barrier	See response to Question to 84 Barrier 2. Legal differences and uncertainties require market participants to analyse each EU member state jurisdiction independently and are exposed to additional legal uncertainties and complexities in case of intra-EU transactions. This significantly impedes the development of a truly integrated EU capital market.
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 to the single market created by opt-out provisions for Member States:

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

Barrier 2 - Single market - opt-out provisions for Member States

	Describe barrier 2 to the single market created by opt-out provisions for Member States
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 2 to the single market created by opt-out provisions for Member States:

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

Barrier 3 - Single market - opt-out provisions for Member States

	Describe barrier 3 to the single market created by opt-out provisions for Member States
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 3 to the single market created by opt-out provisions for Member States:

- ☐ High priority
 - ☐ Medium priority
 - ☐ Low priority
 - ☐ 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	Due to the deficiencies of the FCD (no independent protection of netting agreements and narrow/limited personal scope of the FCD-protections – see responses to Q 84/ Barriers 1 and 2) the level of protections for netting agreements varies significantly across the EU.
Reason(s) why it is a barrier	Market participants have to assess the effectiveness of netting agreements as risk mitigation instruments for derivatives and securities financing transactions separately for each EU member state and the level of protection, especially regarding the scope of counterparty types as well as transaction types and underlyings which may or may not be covered by a netting agreement, can differ significantly between member states: This exposes market participants to considerable legal uncertainties and complexities in case of intra-EU transactions and significantly impedes the development of a truly integrated EU capital market.
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	
<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 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.

Yes, there is a clear need for a further and independent harmonisation of the EU legal framework for netting agreements: While many member states provide for significantly wider level of protection of netting agreements than required under the FCD, especially extending protections to netting agreements which are not combined with a financial collateral agreement, other member states only provide protections within the narrow limits of the FCD. To this end the definition of “close-out netting provision” in Art. 1 (n) FCD should be amended to cover the close-out netting mechanism in contractual netting agreements which are not combined with financial collateral agreements arrangements by deleting the references to “financial collateral arrangements”.

As already addressed in the response to Q84/Barrier 1, the current lack of an independent minimum standard for the protection of contractual netting agreements where not combined with a financial collateral agreement causes uncertainties and a fragmentation of the EU legal framework for contractual netting agreements (which are widely used as a standard risk mitigation tool for financial derivatives and securities finance transactions (cleared and uncleared) by a wide range of capital market participants. Because of these differences between the members states and existing uncertainties, market participants market participants active in the EU markets have to analyse the legal effectiveness of netting agreements for each EU jurisdiction separately and are exposed to additional legal uncertainties and complexities in case of intra-EU transactions. This significantly impedes the development of a truly integrated EU capital market.

An enhanced and modernised legal framework for the independent protection of netting agreements would also reflect the fact the netting agreements have become a standard risk mitigation tool for practically all market participants and are - in recognition of this risk mitigation function – addressed in significant detail by

many EU regulatory instruments introduced in the past 20 years (e.g. CRR, EMIR and the BRRD).

In addition, the definition of netting agreement should be clarified and expanded to clearly cover the various types currently in use such as cross-product netting agreements (netting agreements for derivatives and securities finance transactions and/or “master” netting agreements which combine more than one netting agreement).

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

How many other barriers created by the FCD have you identified?

- ☐ 1 barrier
- ☐ 2 barriers
- ☒ 3 barriers

Barrier 1 - Other barriers created by the FCD

	Describe other barrier 1 created by the FCD
Explanation of the barrier	<p>Uncertainty over the protections provided by the FCD (and SFD) in view of various restructuring and recovery actions which can interfere with the core functions of netting and collateral agreements.</p>
Reason(s) why it is a barrier	<p>The laws of member states and also some EU legal instruments provide for various forms of pre-insolvency or restructuring measures which can negatively impact the core functionalities of netting and/or financial collateral agreements (especially stays, suspensions of termination rights or special rights to transfer assets/liabilities).</p> <p>While this is not necessarily intended, the mere possibility that such measures may apply to netting agreements (and also collateral agreements) will directly invalidate their key functionality and thus render them ineffective as risk mitigation tools.</p> <p>Examples of such pre-insolvency/restructuring measures which can invalidate the function of netting agreements are</p> <p>(i) asset/liability transfer rights which do not exempt netting agreements or do not safeguard that all transactions under a netting agreement are to be treated as a single agreement which can only be terminated or transferred as a whole) and</p> <p>(ii) stays/suspension rights which block the termination mechanism of netting agreements upon an event of default (which is essential to the central risk mitigation function of the netting agreement by ensuring that the risks for both parties are limited at all times to the net amount of all outstanding positions and claims at the time of the insolvency or other default).</p> <p>Uncertainty over the reach of such insolvency/restructuring measures which could impact the core function of netting and/or financial collateral agreements (especially suspensions of termination rights or the ability transfer assets/liabilities) can undermine their risk mitigating functions: Counterparties relying on these risk mitigating instruments would be directly exposed to significantly higher risk. They would also be forced to de-recognise the netting for balance sheet and capital requirements purposes.</p>

	A clarification in the FCD setting out certain basic safeguards for the core function of netting agreement against measures invalidating the close-out netting mechanism or endangering the single agreement concept by allowing any form of cherry picking would resolve the existing uncertainties in many member states while being in line with similar protections under other EU instruments (such as the BRRD).
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).	Clarification in the FCD.

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

Assess the priority level for addressing other barrier 1 created by the FCD:

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

Barrier 2 - Other barriers created by the FCD

	Describe other barrier 2 created by the FCD
Explanation of the barrier	<p>Lack of rules ensuring</p> <ul style="list-style-type: none">- the EU wide recognition of financial collateral arrangements (a collateral agreement qualifying as financial collateral agreement in one member state is not necessarily recognised as such, and- that collateral agreements in respect credit claims (including security assignments of claims) are subject to the same conflict laws across the EU).
Reason(s) why it is a barrier	<p>The lack of common recognition and conflict law rules cause legal uncertainties and risk.</p>
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 other barrier 2 created by the FCD:

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

Barrier 3 - Other barriers created by the FCD

	Describe other barrier 3 created by the FCD
Explanation of the barrier	Definition/understanding of the concept of “evidence in writing: While the FCD already ensures that the term writing also covers electronic formats it could be considered to expand the understanding to ensure that member states recognise all established forms of electronic communication/confirmations as “legally equivalent” for the purposes of the FCD.
Reason(s) why it is a barrier	A further clarification would eliminate legal uncertainties and ensure that the FCD is future proof.
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 other barrier 3 created by the FCD:

- ☐ High priority
- ☐ Medium priority
- ☒ Low priority
- ☐ 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

Please explain your answer to question 99:

5000 character(s) maximum

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

There are no material risks stemming from settlement outside of a CSD. Internalised settlement takes place on the books of intermediaries who are subject to a robust regulatory and prudential framework, and have appropriate controls in place to ensure accurate, safe and timely settlement of internalised instructions. The current reporting obligation provides transparency on the volume of transactions subject to internalised settlement. Creating additional reporting requirements would be costly and burdensome exercise for little to no value-add, and would be antithetical to the Commission's regulatory simplification agenda.

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.

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.

As noted in our response to the previous question, creating additional reporting requirements would be costly and burdensome exercise, including for NCAs, for little to no value-add, and would be antithetical to the Commission's regulatory simplification agenda.

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.

We do not observe any material risks arising from internalised settlement, which allows for quicker, more efficient and lower cost settlement. We believe that operational risks are appropriately managed by firms' internal controls, and legal risks are managed through contractual arrangements in place with counterparties.

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.

The costs and complexities of implementing said rules would be completely disproportionate to the low volume of internalised settlement, and not aligned with the policy objective of regulatory simplification and burden reduction.

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 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

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
-

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

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

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

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.

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

More on this consultation (https://finance.ec.europa.eu/regulation-and-supervision/consultations-0/targeted-consultation-integration-eu-capital-markets-2025_en)

Consultation document (https://finance.ec.europa.eu/document/download/8c77fb5f-4fe6-4fa0-8fe6-293a94c43b26_en?filename=2025-markets-integration-supervision-consultation-document_en.pdf)

More on savings and investments union (https://finance.ec.europa.eu/regulation-and-supervision/savings-and-investments-union_en)

Specific privacy statement (https://finance.ec.europa.eu/document/download/0509b999-58ff-40e0-a1d0-dd723da2b7df_en?filename=2025-markets-integration-supervision-specific-privacy-statement_en.pdf)

Contact

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