EUROPEAN CENTRAL BANK

EUROSYSTEM

AMI-SeCo response to the European Commission's public consultation on post-trade in a Capital Market Union

General Remarks

The European Commission launched a public consultation on post-trade in a Capital Market Union on the basis of the European Post Trade Forum (EPTF) **report** (hereafter referred to as "the consultation") and invited interested parties to submit comments on all matters by 15 November 2017. This document reflects the views of the **Advisory Group on Market Infrastructures for Securities and Collateral (hereafter the "AMI-SeCo")** on issues raised in the consultation.

The AMI-SeCo (the successor to the TARGET2-Securities (T2S) Advisory Group) brings together representatives of banks active in the European Union (EU) in their role as users of T2S and of collateral management services, central securities depositories (CSDs), central counterparties (CCPs) and national central banks. It advises the Eurosystem on all issues related to T2S, securities clearing and settlement, as well as collateral management, facilitating an active dialogue with market participants and financial market infrastructures (FMIs), with a view to fostering financial market integration in the field of securities and collateral management, and to providing advice on market infrastructures managed by the Eurosystem and on related projects.

The AMI-SeCo has closely followed the work of the EPTF and welcomes the opportunity to respond to the consultation. The AMI-SeCo response does not cover all the questions but aims to highlight the most relevant issues in respect of questions related to its work. In that context, the AMI-SeCo would like to stress the **need to follow up on the action plan to be decided upon and initiated by the Commission by further monitoring the process of removal of the barriers to efficient and resilient post-trading in the EU, allowing the emergence of a single domestic pan-European market.**

Specific remarks

1 Technological developments and their implications for post-trade (Question 2)

The AMI-SeCo notes that several technological innovations are currently being considered by market participants to assess their ability to increase the safety and efficiency of securities post-trading, including distributed ledger technology (DLT), artificial intelligence, big data analytics, robotic process automation (RPA), etc. However, for the purposes of the present question, the AMI-SeCo response will be limited to the use of DLT.

The AMI-SeCo believes that **the potential introduction of DLT solutions cannot supersede ongoing harmonisation efforts in the field of securities post-trading, but should rather be examined as a means to improve the future post-trading processes.** In other words, most if not all of the harmonisation items currently identified would still be prerequisites even in a DLT environment; it cannot be anticipated that DLT per se will eliminate all barriers. In that context, the AMI-SeCo wishes to draw attention to its recent publication on the possible impact of DLT on securities post-trade harmonisation and on the wider EU financial market integration.[1] Some key messages of the AMI-SeCo report which are relevant for the purposes of the present Consultation are summarised below.

1.1 Potential Benefits of DLT for post-trade (Question 2.a)

1.1.1 Real-time execution (Question 2.a)(i))

The AMI-SeCo believes that, if and when DLT solutions will be proven to be safe and to tolerate volumes typical of securities markets, they may yield substantial efficiency gains by means of straight-through processing (STP) among DLT network participants.

While T2S already allows instantaneous settlement of instructions sent via its participant CSDs, the still incomplete harmonisation of other legal, operational and technical aspects currently prevents real-time execution of some key post-trade functions.[2] The adoption of technological innovation enabling an STP solution, such as a common DLT solution or different interoperable distributed ledgers, could potentially allow **settlement immediately after trade on a 24/7/365 basis** (see

1 See the AMI-SeCo report:
http://www.ecb.europa.eu/paym/intro/governance/shared/pdf/201709_dlt_impact_on_harmonisation_and_integration.pdf.

2 The AMI-SeCo notes that real-time execution may not be needed for all post-trade functions.

Chapter 7 of the AMI-SeCo report). However, this would only be possible,[3] if interoperability with non-DLT systems would also be ensured (see Chapter 14 of the AMI-SeCo report), especially over a transition period, avoiding an alternative and sub-optimal fragmented solution with captive participation in terms of membership, currency and eligible securities.

However, the issue of **market liquidity** should be carefully considered and appropriate mitigating solutions should be developed in order for such a far-reaching change to possibly yield benefits. Pre-arranged lending agreements for cash and securities could be necessary to ensure adequate market liquidity is available in the case of instantaneous settlement. As the trading and holding books of each market participant could be aligned, settlement fails could be reduced (see Chapter 6 of the AMI-SeCo report). The AMI-SeCo is not aware of such mitigating solutions being currently available, at least on a large scale, and considers that real-time settlement is likely to have significant negative impacts on market liquidity, if real-time execution of post-trade functions is not accompanied by their introduction.

1.1.2 Certainty on "who owns what" (Question 2.a)(ii))

The AMI-SeCo considers that adoption of DLT has the potential to increase legal certainty on "who owns what" where no intermediaries are involved, provided that national securities laws establish clarity with regard to the legal status of records in the ledger (see Chapter 2 of the AMI-SeCo report).

1.1.3 Role of financial market infrastructures and financial markets structure (Question 2.a)(iii) and (iv))

The AMI-SeCo agrees that **DLT has the potential to redefine the role of FMIs as new services would likely become necessary** (e.g. validators, oracles, gatekeepers, coders of customisable smart contracts, etc.), but considers it **premature and infeasible to carry out a full impact assessment at this juncture, given numerous unknowns.** The AMI-SeCo acknowledges that current regulation requires the intervention of licensed FMIs for some classes of securities and the application of key provisions on settlement finality is linked to Settlement Finality Directive (SFD) designation (see Chapter 5 of the AMI-SeCo report). However, other DLT solutions may be deployed in niches of the market, where regulation allows, with a possible impact on market structure and competition between the intermediaries and FMIs involved.

3 Provided that instantaneous settlement proves to be desirable for market participants.

1.1.4 Cost benefits (Question 2.a)(v))

The AMI-SeCo acknowledges that the adoption of DLT solutions – combined with the necessary harmonisation in the field of post-trading – presents an opportunity to reduce the costs of several post-trading processes, provided that DLT systems are proven safe and are fully interoperable, allowing for consistent information sharing among market participants (see Chapter 14 of the AMI-SeCo report). The areas of post trade services where interoperable DLT solutions could bring efficiency gains include:

- **Reconciliation across different systems**, to the extent that a common DLT network will emerge or different solutions will interoperate;
- **Business and regulatory reporting**, if market participants and regulators agree on common interfaces and data standards (see Chapter 10 of the AMI-SeCo report);
- **Shareholder identification/registration**, voting and withholding tax processing, if all or some market participants agree on a common or interoperable solution to share data on end investors and a bottom-up flow of information to ensure shareholders' participation in decision- making;
- **Corporate action processing**, if market participants can use distributed ledgers to share a "golden copy" of corporate events (see Chapter 9 of the AMI-SeCo report);
- **Taxation processing**, provided that tax processes are harmonised or information on the tax status of end-beneficiaries allows national specificities to be dealt with in an efficient way;
- **Know-your-customer (KYC) processes**, if DLT solutions allow different institutions to share such processes with a clear allocation and tracking of responsibilities (see Chapter 12 of the AMI-SeCo report).

The rights of access (for issuers, market authorities, fiscal authorities, etc.) to a DLT need to be carefully analysed in order to address privacy concerns. Coordination mechanisms would need to ensure compliance with legal and regulatory requirements and a seamless, concurrent transition to the new framework by all involved actors.

1.2 Potential risks of DLT for post-trade markets (Question 2(b))

The AMI-SeCo considers that it may be **premature to perform a thorough assessment of the risks of deployment of DLT in post trade** (and in particular for FMIs), as applications are still at an early stage of development and their impact on current processes is unclear. It should be noted that technological innovation per se is not the main driver of possible efficiency gains, which could rather come as a result of changes to business processes that DLT and other innovations could facilitate, but only if properly planned and to the extent that they facilitate

interoperability. Technological innovation per se could actually become a barrier to integration in itself, if different non-interoperable solutions were to be developed and applied in different local markets or by different participants.

1.2.1 Operational risks (Question 2.b)(i))

Clear rules on settlement finality (see Chapter 5 of the AMI-SeCo report) would likely require the use of deterministic validation algorithms (see Chapter 1 of the AMI-SeCo report) and therefore restricted participation. This type of validation raises concerns about operational performance in networks with large number of validators.

In the case of unrestricted DLT networks, the AMI-SeCo wishes to draw attention to the risk of tampering that is inherent to such platforms where adherence with the system rules is typically based exclusively on the economic incentives of network participants.

Any DLT solution would need to find the optimal trade-off between the range of potential DLT participants, their resilience in the case of a cyber attack (see Chapter 11 of the AMI-SeCo report), performance needs and the need for clearly defined moments of finality.

1.2.2 Legal Risks (Question 2.b)(ii))

The AMI-SeCo takes the view that **anti-money laundering (AML) and anti-terrorist financing (ATF) concerns** would be a major issue in the case of an unrestricted DLT, due to the absence of identities attached to participants in the network. On the other hand, in a restricted network, some trusted nodes could address KYC and AML/ATF requirements – similarly to what happens in current systems. A single KYC process that can be used for a common purpose by all network participants would however be necessary to facilitate compliance with the regulation and the efficient resolution of disputes (see Chapter 12 of the AMI-SeCo report). That would require clear governance arrangements and a clear allocation of responsibilities among all entities involved.

In that context, the AMI-SeCo would like to stress **the importance of clear governance arrangements** which are only possible in the case of restricted DLT networks.

1.3 DLT adoption under the current legal environment (Question 2.c) and d))

The use of DLT in securities markets would **need to comply with existing EU regulatory requirements**, in particular with the need for an authorised legal entity acting as operator if required for the type of assets recorded in the ledger. There seems to be no regulatory impediment to the deployment of certain forms of

restricted DLT as long as the entities involved in the management of the distributed ledger are able to comply with such provisions and to the extent that applicable national law recognises the effects of records in a distributed ledger (see Chapters 2 and 3 of the AMI-SeCo report).

However, significant legal barriers related to the deployment of DLT in post-trading are embedded in national securities law. For instance **are tokens legally recognised as securities or do they represent rights in securities? Which is the legal status of smart contracts built on a DLT and how "asset transfers" through smart contracts interact with national proprietary laws?**

In addition, the **lack of harmonisation in certain post trade areas** (as presented by the EPTF report and covered in this Consultation) may prevent the application of DLT such as smart contracts in the field of post-trade services. Finally, the determination of the moment(s) of settlement finality might prove to be challenging, in particular for non-deterministic consensus algorithms.

2 Remaining post-trade barriers to integrated financial markets and solutions (Question 6)

The AMI-SeCo broadly agrees that that some of the barriers identified in the Giovannini reports have been dismantled, and that there has been progress towards the removal of other Giovannini barriers. The main drivers of the removal of the barriers to the provision of efficient and integrated pan-European post-trade services, as identified in the Giovannini reports, are: **(i) the harmonisation of the regulatory framework for post-trade services** (e.g. the Markets in Financial Instruments Directive, the Markets in Financial Instruments Regulation, the European Market Infrastructure Regulation, the Central Securities Depository Regulation, etc.) **(ii) the launch of T2S and the implementation of the T2S harmonisation agenda**, which have eliminated several barriers across T2S markets;[4] **(iii) industry-driven initiatives** (e.g. ISO messaging standards, market standards for corporate actions processing etc.).

The AMI-SeCo takes note of the evolution of the post-trade landscape in the past 15 years and concurs with the findings of the EPTF report that **the scope of some (not yet dismantled) Giovannini barriers has changed, while new post-trade barriers have emerged.** Overall, the AMI-SeCo believes that despite the achievements in removing some of the Giovannini barriers, there are still significant barriers to efficient and integrated post-trade markets in the EU and to the smooth functioning of a Capital Markets Union (CMU). Further initiatives by public authorities and industry-driven work could eliminate the remaining barriers.

4 For the T2S contribution to the removal of Giovannini barriers across T2S markets, see https://www.ecb.europa.eu/paym/t2s/about/html/giovannini.en.html.

3 Barriers listed in the EPTF report (Questions 7-10)

The AMI-SeCo acknowledges that the issues listed by the EPTF as remaining barriers constitute barriers to efficient and integrated post-trade markets in the EU and wishes to draw particular attention to the following aspects:

3.1 Corporate actions and general meetings processes – EPTF Barrier 1 (Question 8.1)

The AMI-SeCo considers the **fragmented corporate action and general meeting processes** as a significant post-trade barrier and wishes to draw attention to the work on harmonisation in this field carried out and monitored as part of the T2S harmonisation activities. In terms of the T2S standards on corporate actions on flows (market claims, transformations and buyer protection), all T2S markets have shown remarkable progress towards compliance, although several markets are currently assessed as still being non-compliant. In terms of the corporate action market standards (as defined by the Corporate Actions Joint Working Group (CAJWG) sponsored by the Commission), there has also been significant progress towards compliance. In addition, on-going work on corporate actions from the collateral management perspective within the AMI-SeCo is also worth highlighting as an activity that will further expand the scope of harmonisation work in this field in the near future.

3.2 Information messaging standards – EPTF Barrier 2 (Question 8.2)

The **lack of convergence and harmonisation in messaging standards** has been on the radar of the AMI-SeCo and its predecessor, the T2S Advisory Group. With the launch of T2S and the implementation of the T2S harmonisation agenda, T2S markets have already achieved a remarkable degree of harmonisation in areas such as settlement, reporting and reference data messaging, fostering financial integration in general and facilitating pan-European settlement in the domestic European market (i.e. national and across borders within the EU representing the single domestic market) in particular. The AMI-SeCo, however, acknowledges that harmonisation efforts on messaging are still required in a wider financial integration context than T2S and emphasises the need to use state-of-the-art global standards and practices for securities settlement, custody and collateral management, and transaction referencing (such as ISO 20022). In the AMI-SeCo's view, it is important that the implementation of harmonised processes and messaging standards by the market is coordinated in order to limit the associated costs for the industry, investors and issuers.

3.3 Legal barriers

The AMI-SeCo acknowledges that points 8 to 11 represent **significant legal barriers to an integrated, safe and efficient post-trade environment in the EU**. The AMI-SeCo recalls[5] the T2S Advisory Group's response to the Commission's public consultation on building a Capital Markets Union (Question 26) and believes that the CMU Action Plan can act as a catalyst in removing these legal barriers. In particular, the AMI-SeCo would invite the Commission to consider the following actions:

3.3.1 Uncertainty as to the legal soundness of risk mitigation techniques – EPTF Barrier 8 (Question 8.6)

The AMI-SeCo recognises the need to **improve the legal protection for collateral-takers and the enforceability of close-out netting arrangements** in pan-European settings.

3.3.2 Legal uncertainty as to ownership rights in book-entry securities – EPTF Barriers 9 and 11 (Question 8.7)

The AMI-SeCo notes that the introduction of T2S, per se, does not remove the legal risks potentially associated with the transfer and holding of securities across jurisdictions. Therefore, the AMI-SeCo would welcome a **comprehensive legislative conflict-of-laws solution regarding the ownership rights in book-entry securities**, which should not only be limited to the CSDs, but should also encompass all financial institutions, intermediaries and investors in the value chain involved in the issuance, investment, trading and post-trading of securities. In addition, the AMI-SeCo believes that **further harmonisation of securities law applicable to the acquisition, transfer and collateralisation of securities** would improve pan-European settlement in the domestic European market and therefore increase pan-European investment – in line with the CMU agenda.

3.3.3 Shortcomings of EU rules on finality – EPTF Barrier 10 (Question 8.8)

The AMI-SeCo notes that the post-trade landscape has evolved since the SFD was originally adopted in 1998. First, the SFD does not take into account the crucial role of delivery versus payment (DvP) as a securities settlement mechanism intended to address principal risk. Second, the SFD should provide more clarity with regard to the treatment of clearing instructions in CCPs, the finality of margin or collateral transfers to a CCP from its participants and the status of settlement

5 https://www.ecb.europa.eu/paym/t2s/progress/pdf/ag/20150513_ag_response_to_cmu_consultation.pdf.

instructions issued by CCPs as a necessary part of their default management procedures. The AMI-SeCo acknowledges that the SFD is a fundamental legal act on the basis of which all EU FMIs currently operate. Therefore, a thorough impact assessment of such legislation on current post-trade processes will be of particular importance.

3.4 Lack of harmonisation of registration and investor identification rules and procedures (Question 9)

The **lack of efficient shareholder identification and registration processes in pan-European settings** has long been on the radar of the AMI-SeCo and its predecessor, the T2S Advisory Group. In most EU countries, there are well-established models for identifying national shareholders. However, there is no harmonised European model enabling issuers to identify their owners in a pan-European environment. Issuers have therefore highlighted that, as a consequence of increased pan-European activity in T2S, shareholder transparency issues might emerge across borders. A key concern is how to retrieve specific holders' information via the omnibus account in CSD link arrangements.[6]

In line with the T2S Advisory Group's response to the Commission's public consultation on building a Capital Markets Union,[7] the AMI-SeCo welcomes the findings of the EPTF report on shareholder identification and registration processes at the EU level and wishes to share some reflections.

The AMI-SeCo believes that **the recasting of the Shareholder Rights Directive** (SRD)[8] can improve and **clarify shareholder transparency in the domestic pan-European market and contribute to higher efficiency in related procedures.** According to the revised SRD, Member States have to ensure that issuers have the right to identify their shareholders in pan-European settings.[9] The AMI-SeCo

6 This issue of shareholder transparency was addressed in the early stages of the T2S project by a dedicated T2S group (the Task Force on Shareholder Transparency) set up by the T2S Advisory Group in December 2009. The task force presented its final report to the T2S Advisory Group in March 2011. The report included a description of possible decentralised and centralised technical models (one of the options being the T2S platform) for exchanging shareholder information across borders in the EU. The conclusions of the task force were supported by the vast majority of the members of the T2S Advisory Group: (i) the creation of an ISO message standard for disclosures; (ii) an amendment to the Transparency Directive; and (iii) a possible market practice for exchanging shareholders' disclosure requests and responses, to be developed by the market via European Central Securities Depositories Association. In addition, in the context of the EPTG and EPTF work as well as in its response to the Commission's public consultation on building a Capital Markets Union, the T2S Advisory Group identified as important targets for harmonisation the two connected areas of intra-EU shareholder transparency and the registration procedures linked to the operating and regulatory frameworks of European issuer CSDs.

7 https://www.ecb.europa.eu/paym/t2s/progress/pdf/ag/20150513_ag_response_to_cmu_consultation.pdf.

8 Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement, OJ L 132, 20.5.2017, pp. 1-25.

9 In particular, issuers have the right to obtain information relating to shareholder identity but they are allowed to exclude that right with respect to shareholders of companies having their registered office in their territory, if they hold less than a certain percentage of shares or voting rights which shall not exceed 0,5 % (Article 3a(1) of the SRD). Intermediaries that disclose information regarding shareholder identity must not be considered to be in breach of any restriction on disclosure of information (Article 3a(6) of the SRD).

welcomes this positive development but would like to suggest **a number of topics which could benefit from further work, possibly in the context of the CMU Action Plan.**

- **The recasting of the SRD only provides for a minimum harmonisation of the "information relating to shareholder identity"**.[10] As a result, the AMI-SeCo is concerned that the recasting will allow discrepancies among Member States' implementing measures with regard to the information regarding shareholder identity (data fields) that has to be transmitted by the intermediaries to the issuer or its agent. Such diverging implementation may create an additional operational burden for intermediaries that have to pass on information to issuers or their agents, which, in turn, may result in operational errors, including the provision of incomplete or incorrect information. In that context, the AMI-SeCo supports targeted industry action and/or legal amendments with regard to the information concerning shareholder identity, in order to prevent or address possible discrepancies among Member States.

- **The implementing technical standards (ITS) on shareholder identification** covering the format of information to be transmitted, the format of the request, including security and interoperability, and the deadlines to be complied with (Article 3a(8) of the SRD), which are to be enacted by 10 September 2018, **may considerably impede the harmonisation of market standards for the transmission of information regarding shareholder identity, if they are adopted in the form of a delegated directive**, since a directive would bear the risk of diverging implementation across Member States. In order to prevent possible operational challenges, the AMI-SeCo supports the adoption of a delegated regulation, which could achieve full-scale legal harmonisation and prevent discrepancies among market practices. In that context, the AMI-SeCo supports targeted industry initiatives aimed at harmonising market standards for the transmission of information regarding shareholder identity.

- **The process of identifying bondholders**, which is linked to certain corporate actions (such as interest payments or (early) bond redemption by the issuer, or debt reorganisation/refinancing) **is not addressed by the SRD.** The lack of effective, harmonised processes for the identification of bondholders in pan-European settings in the domestic European market can adversely affect pan-European investment in debt securities as well as the good governance of European companies in the event they encounter financial difficulties.

- **The recast SRD has no direct impact on registration processes,** although the "information regarding shareholder identity" that has to be transmitted to

10 See Article 2(j) of the recast SRD: "information regarding shareholder identity" means information allowing the identity of a shareholder to be established, including at least the following information:

(i) name and contact details (including full address and, where available, email address) of the shareholder, and, where it is a legal person, its registration number, or, if no registration number is available, its unique identifier, such as legal entity identifier;

(ii) the number of shares held; and

(iii) only insofar they are requested by the company, one or more of the following details: the categories or classes of the shares held or the date from which the shares have been held".

issuers or their agents (Article 3a(1) of the SRD) could be used in order to update a company's register. Despite the complexity and the regulatory/legal implications of the registration procedures, the AMI-SeCo believes that there are further important steps to be taken in order to achieve full harmonisation regarding how to manage registration procedures in across different CSDs.

3.5 Insufficient withholding tax procedures (Question 10)

The AMI-SeCo shares the assessment that significant inefficiencies exist in the current withholding tax collection procedures across EU jurisdictions, as outlined in the EPTF report. Tax relief at source – where available – can only be granted with the help of an entity that has tax withholding responsibilities. In many cases, national tax rules reserve tax withholding responsibilities for local intermediaries and thus "force" foreign intermediaries to use local fiscal agents. More generally, each country has its own national procedures to deal with tax relief and these are often complex to manage for foreign investors, in particular for investors investing in securities from multiple countries.

Accordingly, **the AMI-SeCo welcomes the call for targeted actions by EU and national public authorities, as defined in the EPTF report.** In line with the T2S Advisory Group's response to the Commission's Consultation on building a Capital Markets Union,[11] the AMI-SeCo **supports the full set of recommendations issued by the Tax Barriers' Business Advisory Group (T-BAG),**[12] which aims to establish workable solutions to implement the principles outlined in the 2009 Commission Recommendation on withholding tax relief procedures.[13] However, the AMI-SeCo invites the Commission to place particular **emphasis on the following actions in the context of the CMU agenda:**

(a) **Establishment of a common and standardised Authorized Intermediary Agreement (AIA) between a financial intermediary and a Member State:** Although the AMI-SeCo supports the full range of the T-BAG recommendations, it attaches particular importance to the recommendation regarding the establishment of a common and standardised AIA between a financial intermediary and a Member State (Recommendation 1 of the T-BAG report). A standardised AIA will ensure that market participants and intermediaries planning to offer withholding tax agent services for financial transactions have to comply with a single rule book and face no discrimination from national authorities.

11 https://www.ecb.europa.eu/paym/t2s/progress/pdf/ag/20150513_ag_response_to_cmu_consultation.pdf.

12 http://ec.europa.eu/internal_market/financial-markets/docs/clearing/tbag/130524_tbag-report-2013_en.pdf.

13 Commission Recommendation on withholding tax relief procedures Brussels, 19.10.2009, COM(2009)7924 final. In order to observe the status of implementation in T2S markets, a survey was conducted in the T2S community in the course of 2014. The survey results clearly showed that none of the T2S markets was planning to fully comply with the T-BAG recommendations. This is partly due to the fact that national tax authorities were focusing on other higher-priority initiatives aimed at tackling tax fraud and tax evasion in the EU. In addition, some T2S market representatives responded by saying that the T-BAG recommendations needed to be updated and fully aligned with the international initiatives in this area.

(b) **Legislative action ensuring the implementation of the T-BAG recommendations,** as already anticipated in the T-BAG report (Annex 4), **or any other future "soft" legal instrument in the field of withholding tax**, if no other means of coordination and implementation prove to be successful.

(c) **Full alignment of the T-BAG recommendations with other international initiatives on the withholding tax procedures** (e.g. by the OECD).

Lastly, the AMI-SeCo wishes to recall the **T2S Advisory Group proposal** made to the Commission with the aim of improving, simplifying and harmonising market claim processing.[14] In this proposal, three important steps are set out, namely **to treat market claims on dividend payments as indemnities, to eliminate the use of ex and cum indicators and to take further the work on simplifying and harmonising the documentation, evidentiary, and information transmission requirements relating to tax relief processes**. The AMI-SeCo hopes that the Commission will take into account the outcome of this work in the context of other (wider-reaching) future initiatives in the field of withholding tax procedures.

4 EPTF Watch list barriers (Question 12)

The AMI-SeCo broadly agrees that the issues listed in Question 12 need to be followed in the future and would like to highlight the following points:

4.1 National restrictions on the activity of primary dealers and market makers – EPTF WL Barrier 1

The AMI-SeCo takes note of potential issues relating to national restrictions in the post trade domain on the activity of primary dealers and market-makers and also that the EPTF report addresses this issue to the AMI-SeCo.[15] In this context, it should be noted that the AMI-SeCo would need to collect further information to assess the exact nature of such restrictions and in particular whether harmonisation efforts are required in this area.

14 https://www.ecb.europa.eu/paym/t2s/progress/pdf/ag/20161130_ag_discussion_note_on_harmonisation_of_tax_processing.pdf?659772f5645f2c04444785240a10d177.

15 The EPTF report proposes the establishment of a working group under the auspices of AMI-SeCo to further investigate the issue and suggest actions, as deemed necessary. The work should be undertaken in close collaboration with the relevant industry associations, including the International Capital Market Association, the Association for Financial Markets in Europe and the European Central Securities Depositories Association. The working group could also coordinate its work with Debt Management Offices, e.g. through the Economic and Financial Committee's Sub-Committee on EU Sovereign Debt Markets (ESDM). However, the EPTF report acknowledges that it will ultimately be up to the relevant national governments to take the necessary action to address national restrictions on the activity of primary dealers and market-makers.

4.2 Insufficient collateral mobility – EPTF WL Barrier 4

The AMI-SeCo highlights that insufficient collateral mobility may become an important issue in European financial markets and will continue to work on post-trade harmonisation in the field of collateral management which could contribute to a better mobility of collateral. The AMI-SeCo has started to analyse possible barriers to efficient collateral management, with a view to agreeing on harmonised business processes, workflows and messages based on international (ISO 20022) standards.

The AMI-SeCo agrees with the description and assessment of the issues identified in the EPFT report related to collateral mobility, and in particular with the analysis of the different issue categories (i.e. restrictions on holding patterns, requirements that limit the ability or willingness of collateral market participants, and frictional difficulties), with the description and analysis of the list of issues raised by members of the Contact Group on Euro Securities Infrastructures (COGESI) (i.e. prompt access to collateral, effective pan-European connections, triparty interoperability and collateral management practices), as well as with the proposed way forward

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