



EUROPEAN CENTRAL BANK

EUROSYSTEM

Advisory Group on Market Infrastructures for Securities and Collateral (AMI-SeCo)¹

the Chair

Ms Tatyana Panova

Head of Unit – Capital Markets Union

European Commission

sent via email

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**Feedback on post-trade related recommendations by the High Level
Forum on Capital Markets Union**

16 July 2020

Dear Ms Panova,

I am writing to you in my capacity as chair of the Eurosystem's Advisory Group on Market Infrastructures for Securities and Collateral (AMI-SeCo). The AMI-SeCo appreciates the possibility to provide comments and observations in relation to the post-trade aspects of the Report by the High-level Forum on the Capital Markets Union (HLF) published on 10 June 2020. The AMI-SeCo represents a wide community of financial market stakeholders including national and international Central Securities Depositories (CSDs), market participants, Eurosystem central banks and industry associations. In addition to fulfilling its governance responsibilities with respect to the Eurosystem's TARGET2-Securities service (T2S), the AMI-SeCo focuses on fostering harmonisation of securities settlement and post-trade services in Europe.

The AMI-SeCo welcomes the HLF report and the recommendations made therein. With a view to the action plan by European Commission the AMI-SeCo would like to take the opportunity to provide some additional background and further considerations that could naturally not be covered in detail in the HLF Report. In particular, the AMI-SeCo would like to draw the attention to the fact that the HLF's recommendations in the post-trade domain are consistent with but also, to some extent, complementary only to the recommendations made by the European Commission's European Post-Trade Forum (EPTF)

¹ The AMI-SeCo is a market advisory body to the Eurosystem consisting of stakeholders relevant in the post-trade industry. The views and positions of the AMI-SeCo do not necessarily reflect the views and positions of the European Central Bank

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in 2017². Therefore, when designing follow-up actions the AMI-SeCo proposes to take into account also the recommendations of the EPTF report. Furthermore, the AMI-SeCo would like to stress the critical role and relevance that financial market harmonisation standards play in the post-trade field (covering also collateral management)³. Such standards that have been developed and maintained by key financial market stakeholders and whose compliance is monitored and assessed inter alia by the AMI-SeCo have been pivotal in complementing regulation in the area of post-trading. The AMI-SeCo thinks that such complementary approach has proven helpful in several instances, as it has allowed the industry to develop harmonized processes within existing regulatory frameworks. Industry standards have the key benefits of (i) allowing coordination in technical matters as drafted by the key experts as well (ii) in maintaining flexibility in responding to change in light of potential future developments. The AMI-SeCo is convinced that the further regulatory action is needed, as recommended by the HLF Report, but that it is important that the framework set by regulation can still facilitate the necessary adaptations through appropriate harmonisation standards across the European Union. Therefore, the AMI-SeCo welcomes in particular the call for stronger coordination where appropriate by regulatory action which can ensure a very wide adherence to common post-trade processes and technical standards to achieve a high level of harmonization and help bring about a true single market for capital.

As regards the post-trade aspects covered by the HLF Report, the AMI-SeCo would like to provide the European Commission with the following specific observations:

On withholding tax procedures:

In its letter of January 2020 to the HLF Chair the AMI-SeCo emphasized the importance of harmonization of withholding tax processes in Europe and recalled a set of key considerations that previous industry work has crystallized. The AMI-SeCo continues to believe that harmonizing withholding tax procedures will be a “game changer” for the Capital Markets Union and thus fully supports the recommendations by the HLF. In order to facilitate the follow-up action by the European Commission in this area the AMI-SeCo wishes to recall the key elements of previous industry work which would contribute to the beneficial impact of the recommendations on the CMU.

The process for correctly applying withholding tax on income on securities is necessarily very tightly connected to the process of distributing income on securities. With respect to the process of distributing income on securities, there is already a set of fully recognized pan-European standards as well as the existing European legal requirements which provide a strong foundation for a high degree of harmonisation of tax processes. At the same time the AMI-SeCo notes that a lack of harmonisation of tax processes is an important reason why in some cases market participants cannot comply with these market standards.

In addition, the following elements of harmonization could be considered as building blocks for a fully integrated set of tax processing rules in the single market:

² https://ec.europa.eu/info/publications/170515-eptf-report_en

³ The most relevant of these are the AMI-SeCo's [T2S](#) and [SCoRE harmonisation](#) standards as well as the [CAJWG's corporate action standards](#).

- Harmonised approach for the identification of taxpayers promoting the use of the LEI and / or relying on e-IDAS.
- Efforts towards harmonisation in the process of certification of residence for tax purposes across Member States (e.g. via common Certificate of Residence template / standardised documentation requirements, acceptance of electronic certificates across Europe based on standardised communication protocols).
- A consistent application by tax authorities of the record date principle so that tax processing is based on record date positions, which would facilitate also a review of the rationale for the usage of "ex" and "cum" indicators.
- More generally, a set of harmonised rules (e.g. in the form of pan-European principles) for tax processing that would be compatible with existing market standards for corporate actions processing, either in current form of these standards, or in a modified form that takes into account the harmonised principles for tax processing.

On shareholder identification, exercise of voting rights and corporate actions:

The AMI-SeCo fully supports the recommendations by the HLF in this area and offers the following points as additional considerations:

- The revised SRD only provides for a minimum harmonisation of the "information relating to shareholder identity". This will allow discrepancies among Member States' implementing measures on the information on 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 this 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 in implementing new rules by Member States.
- As mentioned on earlier occasions, the AMI-SeCo considers the fragmented corporate action processes and general meeting processes as a significant post-trade barrier, despite existing market standards. and wishes to draw attention to the work on harmonisation in this field carried out and monitored as part of the AMI-SeCo's harmonisation activities as well as in a wider industry context. There are today widely recognized market standards for corporate action processing which build on and are consistent with each other and which can form the basis of a single corporate action rulebook for Europe (T2S corporate action standards, CAJWG market standard for corporate actions and Joint Working Group on General Meetings (JWGGM) standards and the AMI-SeCo SCoRE corporate action standards). Regulatory coordination making common processes mandatory would greatly support compliance with the existing industry standards also in technical details which would result in fully harmonized


implementation and truly single market for corporate actions.⁴

On harmonisation of insolvency laws:

Finally, the AMI-SeCo welcomes the recommendations by the HLF on a legislative proposal for a targeted harmonisation of central elements in corporate insolvency law. Lack of harmonisation in insolvency procedures is major obstacle to cross-border investments. Creditors tend to invest in jurisdictions where insolvency frameworks are simple and effective in protecting their interests in case of debtors' defaults. As also highlighted in the recommendations by the EPTF, risk mitigation actions taken by intermediaries providing post-trade services should be legally protected. Especially, close-out netting agreements in cross-border settings should be sufficiently protected as well as collateral takers, such as settlement agents guaranteeing the execution of transactions, e.g. when providing credit to support liquidity of trading. Furthermore, default management procedures of CCPs should not be challenged under relevant applicable insolvency laws. This is an area where harmonisation would greatly benefit the related securities post-trade processes and contribute to more efficient and uniform processing of insolvency events for pending securities settlement obligations.

The AMI-SeCo stands ready to support the European Commission in its efforts and future work to further integrate the European post-trade market and achieving Capital Markets Union.

Yours sincerely,



Ulrich Bindseil

Chair of the AMI-SeCo

⁴ It should also be noted that the HLF's recommendation on European Single Access Point (ESAP) for company information will also bring benefits in the broader area of transparency and communication with shareholders.