



OECD Centre for Tax Policy and Administration
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Submitted via email - cfa@oecd.org
Dated: 14 December 2020

Dear Madam, Dear Sir,

The European financial market associations, EACH, ECSDA, and FESE, welcome the publication of the Pillar One blueprint and the public consultation linked to it.

The purpose of this letter is to provide supplementary information relevant to the position set out in our previous correspondence with the OECD on the 22 October 2019¹ and restate why we believe that Trading Venues (TVs), Central Counter Parties (CCPs) and Central Securities Depositories (CSDs) should be specifically excluded from Amount A.

TVs, CCPs and CSDs are market infrastructures with very specific roles within the financial services industry. They ensure that the trading, clearing, settlement and custody of financial instruments are performed in an efficient way and in a risk-controlled environment.

As a general comment, the associations believe that it is important to ensure a level playing field across the financial sector as a whole. We would suggest that an exception for the Financial Service business limited to the “banking, insurance and asset managers sectors” is bound to create competitive distortions across the sector, without sufficient justification for the rest of the sector to be included in the scope of the new taxing right based on the type of activities carried out.

We understand that industries falling in the scope of Pillar One are determined based on two categories of activities: Automated Digital Services and Consumer Facing Businesses. Although most of our Member’s activities would evidently fall out-of-scope under the current proposal², we believe a specific exclusion would be warranted, in a similar way as done for the other Financial Services businesses already excluded (banking, insurance, and asset management).

¹ [Joint ECSDA, EACH and FESE response to OECD consultation regarding Secretariat Proposal for a “Unified Approach” under Pillar One, 22 October 2019 \(link\)](#)

¹ “Financial Market Infrastructures” considered in this letter are:

- CCPs and CSDs as defined by CPMI-IOSCO in the Principles for Financial Market Infrastructures (PFMIs)
- Trading Venues as defined by the Markets in Financial Instruments Directive (Article 4(24)) of Directive 2014/65/EU) including regulated market, an MTF or an OTF.

² Table 2.2 from the impact assessment document (Section K in the NACE Rev. 2 classification)



Please find below the rationale, following the reasoning presented in the blueprint, for which we believe Trading Venues, Central Counterparties and Central Securities Depository should be excluded.

Consumer Facing Businesses (CFB)

Market infrastructures performing trading, clearing and settlement are not consumer-facing entities but wholesale financial institutions. Our Member's clients are almost exclusively composed of legal entities, with a great majority of them being regulated as financial institutions (and excluded under the Pillar One current blueprint proposal).

The profile of our client base is very concentrated on financial institutions due to our service offering but also due to regulatory restrictions in terms of the client profile that can be accepted as participants.

Trading Venues, CCPs and CSDs operate under dedicated global and European legislation which addresses the trading and post-trading layers of financial markets. The legislative texts applicable to our industries are, *inter alia*, the Markets in Financial Instruments Directive (MiFID) for Trading Venues, the European Market Infrastructure Regulation (EMIR) for CCPs, and the Central Securities Depositories Regulation (CSDR) for CSDs. These legislative texts impose strict requirements on the profile of participants that can be accepted by the market infrastructures, which very often excludes *de facto* natural persons. In addition, several CSDs and CCPs are currently authorised to operate as financial institutions subject to further prudential regulatory obligations. Therefore, the trading, clearing and settlement landscape is subject to robust non-tax regulations consistent with recognised industry standards. Due regard should be given to the constraints those regulations impose upon them and the potential unintended effects that Pillar One might have. Further, there is potential for a clash between the way that Amount A works and the objectives of such non-tax regulatory regimes, as rightfully recognised under point 127.

At the global level, CCPs and CSDs follow the globally applicable CPMI-IOSCO Principle for Financial Market Infrastructures, from which are derived the EU regulations EMIR and CSDR.

Automated Digital Services (ADS)

Digital functionality is widely used in each of the market infrastructures' sector. Nevertheless, it is generally used to automate what people used to do, whether in conducting their legacy activities or in risk-management functions. The purpose of the digital transition performed by Trading Venues, CCPs and CSDs over the last 50 years was primarily aiming at reducing risk, enhancing standardisation and increasing efficiency for market participants. This is the case when, for example, the processing of financial securities along the different stages of the value chain changed from a physical form to an electronic and digital form; or when an electronic router started to handle trading orders. Over this period, the core services performed by trading venues, CCPs and CSDs did not fundamentally change.

As for other financial services listed in Pillar One, the grounds for the exemption of the scope according to which "human intervention and judgement is normally a feature of the use of digital functionality in FS business" also holds true for trading, clearing and settlement services. Indeed,



human intervention remains a critical feature throughout the lifecycle of a security, when issued, transacted, settled or held in custody (e.g. order confirmation, corporate action processing, reconciliation, etc.)

For these reasons, market infrastructures should not generally involve business defined in the positive list of ADS business, for the purposes of the new taxing right.

We welcome any further discussion, and in this respect, ECSDA, EACH and FESE remain available for potential clarifications if needed.

Signatories

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About ECSDA

The European Central Securities Depositories Association (ECSDA) represents 40 Central Securities Depositories (CSDs) in Europe, operating in 40 countries. As regulated financial market infrastructures, CSDs play a vital role in supporting safe and efficient securities transactions, both domestic and cross-border.

ECSDA is registered in the European Union Transparency Register: 92773882668-44.

The list of ECSDA members is available on www.ecsda.eu/members/list-of-members

If you have any questions, please contact ECSDA Secretariat at info@ecsda.eu or +32 (0)2 230 99 01.

ECSDA's Members are:

- AIX CSD, Kazakhstan
- ATHEXCSD, Greece
- CDCP SR, Slovakia
- Central Depository AD, Bulgaria
- Clearstream Banking AG, Germany
- Clearstream International, Luxembourg
- CRHoV, Serbia
- CRHoV RS, Bosnia Herzegovina
- CSD & CC Montenegro
- CSD AD Skopje, North Macedonia
- CSD Prague, Czech Republic
- CSE, Cyprus
- Depozitarul Central, Romania



- Euroclear Bank, Belgium
- Euroclear Belgium
- Euroclear Finland
- Euroclear France
- Euroclear Nederland
- Euroclear Sweden
- Euroclear UK & Ireland
- Euronext VPS, Norway
- Iberclear, Spain
- ID2S, France
- Interbolsa, Portugal
- KACD, Kazakhstan
- KDD, Slovenia
- KDPW, Poland
- Keler Ltd., Hungary
- LuxCSD, Luxembourg
- MSE, Malta
- MKK, Turkey
- Monte Titoli, Italy
- Nasdaq CSD SE (Latvia, Estonia, Lithuania, Iceland)
- NSD, Russia
- NDU, Ukraine
- OeKB CSD GmbH, Austria
- RVP Bosnia Herzegovina
- SIX SIS Ltd., Switzerland
- SKDD, Croatia
- VP Securities, Denmark

About EACH

The European Association of CCP Clearing Houses (EACH) represents the interests of Central Counterparties Clearing Houses (CCPs) in Europe since 1992. EACH currently has 20 members from 15 different European countries and is registered in the European Union Transparency Register with number 36897011311-96.

The list of EACH members is available on www.eachccp.eu/members/

If you have any questions on EACH, please contact EACH Secretariat at info@eachccp.eu or +32(0)22061260.

EACH's Members are:

- Athex Clear S.A.
- BME Clearing S.A.
- CC&G (Cassa di Compensazione e Garanzia S.p.A.)
- CCP Austria
- CCP NCC
- ECC (European Commodity Clearing AG)
- Eurex Clearing
- EuroCCP (European Central Counterparty N.V.)
- ICE Clear Europe
- IRGiT
- KDPW_CCP S.A.
- KELER CCP
- LCH Ltd
- LCH S.A.
- LME Clear
- Nasdaq Clearing
- OMIClear
- SIX x-clear AG
- Takasbank



About FESE

The Federation of European Securities Exchanges (FESE) represents 36 exchanges in equities, bonds, derivatives and commodities through 18 Full Members from 30 countries, as well as 1 Affiliate Member and 1 Observer Member.

At the end of October 2020, FESE members had companies listed on their markets, of which are foreign companies contributing towards European integration and providing broad and liquid access to Europe's capital markets. Many of our members also organise specialised markets that allow small and medium sized companies across Europe to access capital markets; companies were listed in these specialised markets/segments in equity, increasing choice for investors and issuers. Through their RM and MTF operations, FESE members are keen to support the European Commission's objective of creating a Capital Markets Union. FESE is registered in the European Union Transparency Register: 71488206456-23.

FESE's Members are:

- Athens Stock Exchange
- Börse Stuttgart
- Bolsas y Mercados Españoles (BME)
- Bucharest Stock Exchange
- Bulgarian Stock Exchange
- Budapest Stock Exchange
- Cyprus Stock Exchange
- Deutsche Börse AG
- Euronext incorporating:
 - Euronext Amsterdam
 - Euronext Brussels
 - Euronext Dublin
 - Euronext Lisbon
 - Euronext Oslo
 - Euronext Paris
- ICE Futures
- London Metal Exchange
- Luxembourg Stock Exchange
- Malta Stock Exchange
- NASDAQ Group inc. incorporating:
 - Nasdaq Nordics
 - Nasdaq Baltics
- SIX Swiss Exchange
- Warsaw Stock Exchange
- Wiener Börse incorporating:
 - Prague Stock Exchange
 - Vienna Stock Exchange
- Zagreb Stock Exchange
- Tel-Aviv Stock Exchange – Affiliate Member
- Moscow Exchange Group – Observer Member