Financial services : clearing and settlement of cross-border transactions

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PURPOSE : to present a Commission communication which sets out the first steps toward developing a policy on clearing and settlement in the EU. CONTENT : clearing and settlement are the processes by which securities market transactions are finalised and are integral to the functioning of the financial system. In the context of completing the internal market for financial services, it is crucial to have efficient (i.e. cost-effective, competitive and safe) clearing and settlement arrangements for the EU as a whole. The existing clearing and settlement arrangements within the EU are largely efficient in respect of domestic securities transactions. However, these arrangements are national-based and do not combine to provide efficient post-trade processing of cross-border transactions. Without provision for efficient cross-border clearing and settlement, the full benefit of an internal market for financial services cannot be realised. Much of the inefficiency in EU cross-border clearing and settlement derives from fragmentation due to national differences in technical requirements/market practice, tax procedures and laws applying to securities. Moreover, in the absence of a common regulatory approach to clearing and settlement activity, concerns over operational and prudential risks may also act as an impediment to the development of cross-border activity. The creation of an integrated clearing and settlement environment is, therefore, an essential pre-condition for efficient post-trade processing of all securities transactions within the EU. To this end, the Commission has identified two main policy objectives. The first objective is to remove barriers to the finalisation of individual cross-border transactions in the form of national differences in technical requirements/market practice, tax procedures and laws applying to securities. The Commission considers that the removal of barriers related to technical requirements will be primarily in the hands of the private sector. Nevertheless, national and EU authorities can play a role in removing these barriers by encouraging harmonisation through the development of standards. The remaining barriers will require public intervention, as in the case of defining the legal system that is applicable to securities transactions and holdings in the EU. As the removal of barriers alone would not necessarily result in a fair and competitive environment, the second objective is to remove competitive distortions or unequal treatment of entities performing similar clearing and settlement activities. A fully integrated EU clearing and settlement infrastructure would require that rights of access to systems be comprehensive, transparent, objective and, above all, effective. Market participants should not be constrained in making investment decisions by the location of counterparty, securities or infrastructure. There should be generalised access (i. e. by all markets, infrastructure providers and market participants) to all necessary systems. A first step in achieving this objective is envisaged in the proposed revision of the Investment Services Directive, which provides for the possibility of choice of systems for post-trade activity. The parallel application of competition policy can be used to reinforce these measures. This Communication does not discuss the merits of differentarchitectures or models for providing pan-EU clearing and settlement services. The choice of architecture should be determined by the market, subject to legitimate public-policy constraints (e.g. adequate competition, appropriate investor protection and minimised systemic risk.) However, it is essential to create an environment in which market forces can deliver the most appropriate architecture for an efficient clearing and settlement infrastructure for the EU. This Communication is the first step toward developing a policy on clearing and settlement in the EU.