Financial Market Infrastructures, a case of "ethics without ethics"

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The role of Central Securities Depositories (CSDs) as Financial Market Infrastructures (FMIs)

Within the financial sector, there is an array of actors. They include retail and corporate banking organisations, payment companies, wealth management entities, trade repositories, custodians, securities settlement systems, and central banks. Within this diverse ecosystem, Euroclear Bank and Clearstream, both based in Europe, operate as the only international central securities depositories (ICSDs) in the world. The Depository Trust and Clearing Corporation (DTCC) also plays a major role in this financial ecosystem, although it is not an ICSD. These three institutions ' core activities are transaction settlement, asset servicing and collateral management, in addition to being a securities repository. Such activities make them, like all CSDs, a Financial Market Infrastructure (FMI), which has been defined "as a multilateral system among participating institutions, including the operator of the system, used for the purposes of clearing, settling, or recording payments, securities, derivatives, or other financial transactions." (BIS and IOSCO, 2012). This makes Euroclear or Clearstream. and FMIs in general, an essential platform for the market to function and at the same time, an outcome of the running of such a market (Aglietta and Orléan, 2002). As explained in "Plumbers and Visionaries: Securities Settlement and Europe's Financial Market" (Norman, 2007), CSDs and FMIs often play the role of plumbers, meaning that they are not really working in daylight, in direct contact with laymen and customers. Rather, as an underground network of plumbing and infrastructures, they allow the system to run its activities in the best possible way. The stability of the international financial system is based on its structure and on the smoothness of the interactions between its stakeholders (Eichengreen, 2002). These infrastructures are often forgotten in the literature on ethics and finance, which is odd, bearing in mind the central place that they hold.

FMIs and Regulations

The role of FMIs, like plumbing or other infrastructures such as electricity grids or telecom networks, is to make sure that the financial market is working safely and efficiently (Norman, 2007). This will generate trust and confidence in the market and its infrastructure, while a malfunctioning market would undermine trust and potentially lead to a collapse of the monetary system (Aglietta and Orléan, 2002). Two different features are consequently brought into focus: competition and market power management, and risk management. These features are covered by various legal frameworks and regulations such as the EU's Central Securities Depositories Regulation (CSDR), whose role is to "promote safe, efficient and smooth settlement" and the CPMI-IOSCO Principles, which "provide guidance for addressing risks and efficiency in FMIs" (BIS and IOSCO, 2012). It is clear that "poorly designed and operated FMIs can contribute to and exacerbate systemic crises if the risks of these systems are not adequately managed, and as a result, financial shocks could be passed from one participant or FMI to others." (Urbain, 2019). This is why the CPMI-IOSCO Principles put a major focus on safety, resilience and risk-management, as indicated by Principle 2, on governance arrangements, and Principle 3, focused on risk-management frameworks (BIS and IOSCO, 2012). These are in line with the global movement towards more accountability and transparency in the financial sector, notably emphasised by the European Market Infrastructure Regulation (EMIR), the Markets in Financial Instruments Directive (MiFID) and other regulations. After the 2008 crisis, regulators put the focus on robustness and making sure that the financial system was as stable and transparent as possible. This focus sometimes also created tensions and conflicts between regulators and FMIs.

In the light of such regulations, one can say that transparency, resilience, efficiency and risk-management are the cornerstones of a robust and well-designed FMI. To make sure that the FMIs are indeed robust, they are often regulated and audited by various institutions such as the European Central Bank (ECB), the National Bank of Belgium

(NBB) or the European Securities and Markets Authority (ESMA). The effectiveness and efficiency of the financial market depend on various actors, which makes it sometimes difficult to regulate. On the other hand, it is precisely the number of actors that allows the system to be resilient and that safeguards business continuity, despite (or because of) a sometimes onerous regulatory framework. (Kuriata, 2011). The weight and complexity of these regulations can also lead to issues such as shadow-banking; indeed many stakeholders find some regulations such as MiFID "excessively complex" (Norman, 2007). The recent collapse of Archegos Capital Management reveals much about the banking industry: "Each bank may have felt comfortable with their exposure to Archegos, assuming they could always ditch its positions to cover themselves. But they failed to appreciate that if everyone has to dump tens of billions of dollars worth of equities, the collateral they may have embedded in their contracts is going to be wholly inadequate." (Wigglesworth, 2021). The problem was not the lack of compliance with the regulatory frameworks but the lack of depth of such frameworks and the transparency in their implementation. Both actors and regulators can find it hard to grasp the intricacies of the financial system and markets, making the relationship between these players difficult and complex; a curious mix of confrontation and collaboration, with both parties seemingly afraid of the power of the other.

ICSDs' position and policies – Euroclear

With such an environment in mind, the ICSDs mentioned above seek to reassure the various stakeholders, including regulators, clients and other partners, and reinforce their systemically important position as trustworthy CSDs that are able to operate as robust and reliable FMIs. These companies are fully aware of their systemic position and of the duties and responsibilities that come with it. In Euroclear's third "Our responsibility" report, it highlights five key areas: Governance, Marketplace, Environment, Workplace and Community. Interestingly, none of these aspects focuses on the global role of finance. Governance and Marketplace address regulators' concerns, such as more robust markets, the "due diligence process for the selection of new suppliers",and mitigating the risk of cyber attacks. Environment focuses on greener solutions for Euroclear's mobility and electricity needs, while the other two areas highlight on how to help people. The entire report devotes considerable effort to reassuring the public that Euroclear will fulfil its mission to operate as "an open and resilient infrastructure" which helps "clients cut through complexity, lower costs and mitigate risks" (Euroclear, 2020). Furthermore, the company's strategy puts the emphasis on "being a systemically important, resilient and robust infrastructure at the heart of the financial industry's ecosystem", which also reflects the central focus of Euroclear's Materiality matrix: the company's top six priorities are directly linked with the "Marketplace" stream. Finally, the heart of Euroclear's corporate culture and values is found in the acronym "REACH", which stands for Respect, Effective, Accountable, Client-first and Helpful. These values underline Euroclear's commitment to be seen as a trustworthy partner which will ensure that the system works. The focus that the National Bank of Belgium (NBB) puts on "operational resilience, including business continuity" (NBB, 2020) seems to confirm that the major requirement for Euroclear is to make sure that transactions can happen the way they should, in line with the law and the various legal frameworks by which Euroclear and other FMIs are impacted.

ICSDs' position and policies – Clearstream

Clearstream's major focuses do not differ greatly from Euroclear's. It directly states on its website that one of the most important elements in the post-trade industry is trust and that "given the complexity, speed and quantity of assets involved [in the world's financial system], a fast, secure and trusted third-party is absolutely essential for settling transactions" (Clearstream). The Luxemburg-based ICSD presents itself as a tool that enables secure transactions and additionally ensures that they are processed as planned. Like Euroclear, Clearstream wants to move towards more sustainability in the financial ecosystem. However, in line with Euroclear, Clearstream's sustainability impact is limited. Despite offering "sustainable" services and financing, the company stresses that it is not the right actor to lead such a change. In the presentation of these products, Clearstream states that "fair, reliable and stable market infrastructures as well as transparent reporting and the availability of high-quality information are at the core of sustainable economies." The focus is on the transparency and trust which Clearstream can provide, but not on the means of achieving sustainable finance, or its ultimate purposes, which are clearly beyond Clearstream's scope. The major areas that the company highlights are indeed the same as those it was designed to promote (Norman, 2007).

ICSDs' position and policies – DTCC

It seems that all the major CSDs are "trapped" in the same dilemma. On the one hand, they have a lot of market power and influence to make things change but, on the other hand, they remain bound by their responsibilities to make the market work in a resilient, trustworthy and effective way. The DTCC faces the same issue. Its public communications suggest that it could be the right actor to foster more ethical and sustainable finance but it remains constrained by its mission as an FMI to "provide stability and efficiency in the global capital markets" with a focus "on exceptional service" (DTCC). When addressing its "impact", DTCC emphasises that it can lead transformative change by "mitigating risk; advancing cutting-edge technology; collaborating to solve industry-wide challenges; driving down costs and creating efficiencies". Once again, the focus is on the efficiency and resilience of the market. It is understandable that such companies struggle to have a major impact on sustainability when they are ultimately only used for their plumbing and safeguarding technical expertise. Adding to their constraints, they must comply with various laws and regulations which clearly define their roles and responsibilities. In this respect, DTCC's "ethical business practices" only focus on compliance with no mention of new products, partnerships or investments (DTCC, 2020), purely simply because these are not part of the regulated remit of CSDs.

The instrumentalist view of CSDs

In the intense debate about ethics and finance – or, more specifically, ethics in finance – we strongly feel that FMIs and CSDs occupy a special place, stuck between a will to enact change and limited ability to initiate that change. In a purely instrumentalist view, Euroclear, Clearstream, DTCC and other FMIs, like other infrastructures or commodities, can and should be seen as tools whose main – and perhaps sole – purpose is to operate the way they were designed to work. This purpose can also be seen as a closely regulated duty which is the reflected by the mission statements, values and corporate responsibilities discussed above.

However, in addition to this "instrumentalist' view", FMIs also have a duty to make the market more efficient and resilient, in line with the regulations previously mentioned. While the companies' first task is purely operational, the second task has a qualitative aspect. For example, several features need to be present to achieve a competitive financial market. One such feature is transparency, the reason why the EU implemented MiFID and MiFID2, which aim to make EU financial markets "more robust and transparent." A key point underlined by the directives is that "the rules strengthen the transparency requirements that apply before and after financial instruments are traded, for instance when market participants have to publish information regarding the prices of financial instruments. These requirements are calibrated differently depending on the type of financial instrument" (EU, 2014). More information on securities liquidity in the market will make it safer and will reduce the risk (Duchêne and Zaoui, 2012). Furthermore, the asymmetry of information and understanding about the market usually makes it less transparent and less effective (Kuriata, 2011), while "perfect information" would increase competition and efficiency. Liquidity is thus a serious issue for all FMIs, which have invested heavily in this area. Euroclear's LiquidityDrive (Euroclear, 2020) is one example, while Clearstream has developed innovative solutions for the ETF market (Clearstream, 2019). In both cases, these ICSDs have worked hard to achieve this qualitative aspect of their duty by supporting a better financial market.

This dual role puts Clearstream and the other companies in a dual position, since maintaining and improving the network are two very different roles with a range of ethical implications. Moreover, the various conflicts of interest that may arise within the industry is itself an ethical challenge to find "common ground" that will suit every party (Payne, 2007). Overall, it seems that both the regulators and the CSDs want to foster transparency, risk-aversion and accountability to enable the market to function smoothly and remain stable, resilient and effective. , However, such a dual role, involving both maintenance and qualitative improvement, may have ethical implications which surpass the instrumentalist view of FMIs.

Ethics without ethics

As stated above, we believe that FMIs can be seen purely as tools or infrastructures within the financial system. When regarded as such, FMIs need specific ethics and ways to evaluate their moral behaviour. Retail and corporate banks and wealth management firms companies can have major environmental or societal impacts based simply on what they choose to invest in. By contrast, FMIs do not face similar ethical dilemmas when seen as instruments guaranteeing market stability and resilience. FMIs are not confronted with the question of the choice or decision that is central, and standard, in economy theory (Mardellat, 2013). On the one hand, Euroclear or Clearstream can never refuse an issuer, except on risk-based or legal grounds, just as a hammer cannot choose what it will be used for. On the other hand, it is important for the market that the CSDs maintain this neutrality in order to enable other stakeholders to choose and decide. As noted by Kuriata, "financial markets contribute to the positives of life when their functions perform correctly and efficiently" (Kuriata, 2011); and as Norman puts it: "securities markets are only as good as the infrastructure that supports them" (Norman, 2007). One can therefore say that the most ethical way of working is to help the market run as it was designed, in order to pursue and promote ethical behaviours and outputs. As with other infrastructures, one can design specific ethical rules based on the need for an efficient and effective operation, as one might expect from any instrument or tool.

Money as a tool

Within the financial world, one of the most famous tools that divides philosophers and economists is money (Duchêne and Zaoui, 2012). In a pure instrumentalist view, money can be simply seen as a tool or an instrument that creates a pledge of security. Furthermore, Mardellat, when analysing the role of money in the "three pure forms of economy philosophy" (Mardellat, 2013), argues that money is ultimately always seen as an instrument facilitating relationships and connections; "money is what money does". Therefore, Duchêne and Zaoui contend that the philosophical discourse around money is purely a technical one (Duchêne and Zaoui, 2012). Under these circumstances, ethics based on feelings, such as the ethics of care, are simply "too beautiful to work" (Duchêne and Zaoui, 2012), especially since a tool, or a network, has no feelings.

As an apparatus or a technique, money is trusted and used *because* it does not have any feelings – and therefore because we all know that it will always be accepted (Aglietta and Orléan, 2002). With a $10 bill, you can either buy a pair of socks, beer, cocaine or a t-shirt that was made in China or Bangladesh by underaged workers. Money does not care, and that is precisely why people trust it. As a financial instrument, money does not possess any intrinsic ethics or values; call it "operational ethics" or, more bluntly, "ethics without ethics". The neutrality of money and FMIs mean that they do not have the influence of actual phenomena (Duchêne et Zaoui, 2012). For example, if you take a hammer, you can use it to fix something or to smash someone's skull. The hammer's neutrality means that it has no influence on how one would – or should – use it. The same goes for FMIs. It is politics which should define what can or cannot be done with FMIs and money, just as it is politics – or more specifically laws – which ensures that it is illegal to smash someone's head with a hammer.

Limits of the pure instrumentalist view

However, although the comparison between an ICSD and a hammer brings valuable insights, it also has its limits. Firstly, as noted above, an ICSD works more as a network, with interconnections and interdependencies which a simple hammer does not possess. Furthermore, this network is so complex that it cannot be easily replaced. Such a special place in the financial ecosystem gives ICSDs a lot of power but also brings significant responsibilities. Although the companies usually take these responsibilities seriously, they can at times overlook the power that goes with them. Euroclear and Clearstream maintain a peculiar relationship with regulators, as if both parties feel they are David facing Goliath. In reality, both have substantial power and should seek to collaborate rather than confront each other. The "ethics without ethics" framework is thus well-adapted to fit Euroclear and Clearstream's circumstances, since it allows ICSDs to remain neutral in possible market disputes. By contrast, the companies' risk-adverse culture amounts to abandoning neutrality by denying their own power.

The hammer comparison also falls short in grasping the qualitative aspect of the ICSDs' work. As explained above, their role is not only to maintain the plumbing but also to make it more efficient. The hammer does not own any responsibility for its own self-improvement while ICSDs are duty-bound to strive continuously to ensure that the market thrives achieves greater resilience, transparency, and so on. This duty might also impose limits on the ethics that we presented, since any improvement requires a decision to move in a particular direction. For example, when ICSDs decide to invest in cybersecurity or to devote money to the development of new products, that decision can never be neutral. The efficiency of the market will be affected by the fact that they decide to invest in one product rather than another. Although that aspect does not necessarily overthrow our "ethics without ethics" framework, it establishes a ceiling for the model, while also defining the limits of purely instrumental FMIs. Their decisions will impose new norms which will directly influence the neutrality, resilience and efficiency of the market. Such decisions are also a reminder for the ICSDs of their own power and responsibilities. Thus, they can close the loop of "ethics without ethics" - the pure instrumentalisation of FMIs – which should allow the market to work efficiently and as it was designed to operate. This is only possible when regulators and these infrastructures sit around the table to discuss, to share, and to make the system move forward.

A Kantian approach to "ethics without ethics"

The pursuit of such "ethics without ethics" falls within the scope of Kantian ethics. In the *Groundwork of the Metaphysics of Morals* (1785), Kant invites us to "act only according to that maxim whereby [we] can at the same time will that it should become a universal law." In the further development of his categorical imperative, Kant introduces the test for universality: would there be a contradiction in everyone, always and everywhere, acting according to this maxim? One possible contradiction would be that the universalisation of the maxim makes the realisation of the action impossible. Kant gives the example of an individual applying for a loan while already knowing that he would not be able to repay it. When trying to universalise such a maxim, we quickly realise that the non-repaying of the loan would lead to banks never granting loans at all and that it would, therefore, make the realisation of the action (applying for a loan which the lender already knows he cannot repay) impossible.

We believe that "operational ethics" – or "ethics without ethics" – follow the same reasoning in the case of the guarantees-offering and network-maintaining services that FMIs provide. If a CSD decided, for a reason outside the legal framework, to refuse either a transaction settlement or to give access to a new issuer, it would directly forfeit the faith and trust that financial institutions have invested in it. The same is true for money and the use of the $10 bill mentioned above. When trying to universalise such a way of working, we are rapidly faced by the same issue as our "non-repayer": the impossibility to act in such a way ever again. This could explain why the regulatory framework ensures that such cases do not happen; for example, CSDR clearly defines access rules, price transparency, and safety considerations. Similar definitions are found in Euroclear's REACH values and in DTCC's capabilities statement. All these companies focus on reassuring stakeholders that the service will keep on running as it should.

A dual operational and qualitative role

The categorical imperative stated above should always lead Clearstream, Euroclear and others to invest in the best possible way to allow the market to work the way it should. This will uphold the neutrality, fairness and efficiency of the market and bring "operational ethics" into force to maintain and safeguard these features. Although the qualitative and normative aspects of the ICSDs' decisions are not encompassed in the "ethics without ethics" framework, the latter cannot be fully implemented if the companies deny their qualitative role within the financial market. Given the limited number of FMIs, they have a major responsibility to allow "ethics without ethics", even though it is this ethical "non-framework" which allows them at times - voluntarily or not – to bypass that responsibility.

Such complex but nonetheless crucial environments need to be monitored closely. Like money, FMIs are what they do, so one must pay close attention to the regulatory framework that will then define and frame the activities of ICSDs and other FMIs. Money, as a tool, is a public good (Aglietta and Orléan, 2002; Duchêne and Zaoui, 2012) and Clearstream even describes itself as a "public service mission". Therefore, the supervision and the framing of financial activities fall under the power of the sovereign (Duchêne et Zaoui, 2012). The heavy regulatory weight that rests on ICSDs' shoulders is thus legitimate since the use of the FMI as a tool remains a political responsibility.

Partnerships and collaboration

"Ethics without ethics", when seeing FMIs as tools, bring us back to the philosophy of technology. As a purely instrumentalist perspective, the philosophy of technology always applies to the person using it, rather than the technology itself (Hottois, 1984). As tools become more efficient and transparent, just like financial markets, users (individuals, private and public institutions) tend to forget their existence and how they work. Only results and outputs matter. Thus the philosophy of technology applies to FMIs when they are only seen as tools working within the distinctive framework of "ethics without ethics".

However, the role of philosophy in the case of FMIs is not simply to state that "financial markets are not working". It is to ask the right questions and propose solutions. We agree with the Belgian philosopher Gilbert Hottois that part of the answer to the problem of technology can be found in Aristotelian prudence – *phronesis* (Hottois, 1984). Given the financial environment and ethical dilemmas that FMIs face, we believe that this "practical virtue" rests in collaboration and discussion between the major stakeholders.

Discussion between public and private entities

Today, the lack of collaboration makes the situation of CSDs sometimes difficult to bear. Their dilemma could be summarised as follows: in order to make the market and the network as smooth and resilient as possible, they need to make profits that can be invested in further development. At the same time, to make the market as smooth and transparent as possible they may also need to offer some services for free. Faced with these obligations, the companies hide behind their instrumentalisation and try to devise distinctive solutions that usually lead to maintaining the existing market. That is not how one fosters change, especially towards more sustainable, inclusive and diverse finance. Yet there is an escape from this dilemma. Governments and politicians have a lot more power to drive change than individuals or small communities (Duchêne and Zaoui, 2012), and as money and FMIs can be seen as public goods or services, a paradigm shift is possible. The "ethics without ethics" framework reactivates the need to question political actions and choices. It also reaffirms the fundamental requirement for collaboration and discussion, especially given the limits of pure instrumentalisation described above. If EU member states or other countries simply decide to develop a new CSDR, without further consultation or examination with CSDs, this will simply increase the tension between existing entities, leaving Clearstream, Euroclear and other companies in an awkward position. We believe that the pure instrumentalist view of FMIs needs to be superseded by partnerships and a shared will to build a better financial systems. When only seen as tools, "ethics without ethics" will always prevail and block any possible evolution of the financial landscape. FMIs have a decisive role to play in the evolution of such a landscape, but this will not be possible as long as they are seen (or see themselves) only as a plumbing network.

Public consultative ethics committees

One of many potential solutions is the creation of public consultative ethics committees within each FMI or country. We support this proposal. Such a committee, including gathering officials from the ICSD, external experts, philosophers, and perhaps even lawyers or teachers, could foster the necessary collaboration towards the common good of the market. Such a committee could also reinforce collaboration between FMIs and institutions, with some "external experts" appointed from the NBB, the EU, or other major players such as SWIFT. Just as the Comité consultatif de Bioéthique Belge (CCBwas created to give advice and to inform on bioethics issues, the financial system also needs to put ethics centre stage. The establishment of such a committee will obviously face many obstacles, such as the difficulty of finding neutral members and guaranteeing their independence. However, the dilemmas faced by FMIs clearly highlight the need for interdisciplinarity, collaboration and collective intelligence. A common ethics committee could be a major asset to help overcome the problems created by "ethics without ethics". •

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