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Targeted consultation on the review of the Regulation on improving securities settlement in the European Union and on central securities depositories

Fields marked with * are mandatory.

Introduction

1. Background to this consultation

Central Securities Depositories (CSDs) are systemically important institutions for financial markets. They operate the infrastructure (so-called securities settlement systems (SSS)) that enables securities settlement. CSDs also play a crucial role in the primary market, by centralising the initial recording of newly issued securities. Furthermore, they ensure the maintenance of securities accounts that record how many securities have been issued by whom and each change in the holding of those securities. CSDs also play a crucial role for the financing of the economy. Apart from their role in the primary issuance process, securities collateral posted by companies, banks and other institutions to raise funds flows through securities settlement systems operated by CSDs. CSDs also play an essential role for the implementation of monetary policy by central banks as they settle securities in central bank monetary policy operations.

Regulation (EU) No 909/2014 on central securities depositories (CSDR) aims to increase the safety and improve settlement efficiency as well as provide a set of common requirements for CSDs across the EU. It does this by introducing:

- shorter settlement periods
- cash penalties and other deterrents for settlement fails
- strict organisational, conduct of business and prudential requirements for CSDs
- a passport system allowing authorised CSDs to provide their services across the EU
- increased prudential and supervisory requirements for CSDs and other institutions providing banking services that support securities settlement
- increased cooperation requirements for authorities across Member States with respect to CSDs providing their services in relation to financial instruments constituted under the law of a Member State other than that of their authorisation and to CSDs establishing a branch in another Member State

Thus, CSDR plays a pivotal role in the post-trade harmonisation efforts in the EU, enhancing the legal and operational conditions in particular for cross-border settlement in the Union, while promoting cross-border competition within the single market. There have been diverging interpretations and application of the requirements related to cross-border activity. The Commission expects to be able to assess if there has been any evolution in the provision of CSDR core services on a cross-border basis and whether the objective of improving this activity is being reached.

2. Report on the Regulation

Article 75 of CSDR requires the Commission to review and prepare a general report on the Regulation and submit it to the European Parliament and the Council by 19 September 2019. However, a comprehensive review of CSDR is not possible at this point in time considering that some CSDR requirements did not apply until the entry into force of the relevant regulatory technical standards in March 2017 and that some EU CSDs were only recently authorised under CSDR.

Nevertheless, the forthcoming Commission report should consider a wide range of specific areas where targeted action may be necessary to ensure the fulfilment of the objectives of CSDR in a more proportionate, efficient and effective manner. Recent developments, in particular the pressure put on markets by the COVID-19 pandemic, have brought a lot of attention to the implementation of rules emerging from CSDR. For example, certain stakeholders argue that mandatory buy-ins would have been disproportionate as they would have heavily impacted market making and liquidity for certain asset classes (in particular the non-cleared bond market).

Furthermore, under Article 81(2c) of Regulation (EU) No 2010/10 establishing a European Supervisory Authority (European Securities and Markets Authority), the Commission is required, after consulting all relevant authorities and stakeholders, to conduct a comprehensive assessment of the potential supervision of third-country CSDs by ESMA exploring certain aspects, including recognition based on systemic importance, ongoing compliance, fines and periodic penalty payments.

The Commission 2021 work programme and the 2020 Capital Markets Union action plan already announce the Commission's intention to come forward with a legislative proposal to simplify CSDR and contribute to the development of a more integrated post-trading landscape in the EU. Enhanced competition among CSDs would lower the costs incurred by investors and companies in cross-border transactions and strengthen cross-border investment. The legislative proposal will also contribute to achieving an EU-rulebook in this area. Moreover, in its resolution on further development of the Capital Markets Union, the European Parliament has invited the Commission to review the settlement discipline regime under CSDR in view of the COVID-19 crisis and Brexit (European Parliament resolution of 8 October 2020 on further development of the Capital Markets Union (CMU): improving access to capital market finance, in particular by SMEs, and further enabling retail investor participation (2020/2036(INI)), para. 21.).

In the preparation of its report on the CSDR review, the Commission objective is to consult as wide a group of stakeholders as possible. In September 2020, the Commission held a Member States' Expert Group meeting, with the participation also of the ECB and the European Securities and Markets Authority (ESMA), where the issues to be examined within the context of the CSDR review were discussed.

In addition, under Article 74 of CSDR, ESMA is required to submit a number of reports to the Commission on the implementation of the Regulation annually. A first set of reports on: (a) internalised settlement and (b) the cross-border provision of services by CSDs and the handling of applications to provide notary and central maintenance services on a cross-border basis, were submitted to the Commission on 5 November 2020. Given the lack of available and meaningful data until a sufficient number of CSDs was authorised, which was considered to have been reached in 2020, no reports were submitted to the Commission before that point in time. Input from the ESMA reports will also feed into the forthcoming Commission report.

3. Responding to this consultation

The purpose of this document is to consult all stakeholders on their views and experiences in the implementation of CSDR to date. Interested parties are invited to respond by 2 February 2021 to the present online questionnaire. The responses to this consultation will provide important guidance to the Commission services in preparing their final report.

Responses to this consultation are expected to be of most use where issues raised in response to the questions are supported with quantitative data or detailed narrative, and accompanied by specific suggestions for solutions to address them. Such suggestions may relate to either the Regulation or to relevant delegated and implementing acts. Supplementary questions providing for free text responses may appear depending on the response to a multiple choice question.

All interested stakeholders are invited to respond to the questions set out below; please note that some questions indicate that feedback is sought only from specific types of stakeholders.

As mentioned above, it is acknowledged that certain core requirements and procedures provided for under CSDR are yet to be implemented. In particular, at this stage the settlement discipline regime is not yet in force. Nonetheless, the Commission services welcome the views of stakeholders as to any identified issues with respect to the implementation of upcoming requirements. Recent developments in the market due to the COVID-19 crisis may also be considered in the overall assessment.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-csdr-review@ec.europa.eu.

More information on

- this consultation
- the consultation document
- Central securities depositories (CSDs)
- the protection of personal data regime for this consultation

About you

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* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- (•) English
- Estonian

- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* I am giving my contribution as

- Academic/research institution
- (•) Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

* First name

Urban

* Surname

Funered

* Email (this won't be published)

urban@fondhandlarna.se

* In which of the following categories does your organisation fall?

- ○ Organisation representing CSDs
- ○ Organisation representing issuers
- ○ Organisation representing investors' interests
- ◉ Other

* Organisation name

255 character(s) maximum

Swedish Securities Markets Association

* Organisation size

- ◉ Micro (1 to 9 employees)
- ○ Small (10 to 49 employees)
- ○ Medium (50 to 249 employees)
- ○ Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making.

7777147632-40

* Country of origin

Please add your country of origin, or that of your organisation.

○ Afghanistan	○ Djibouti	○ Libya	○ Saint Martin
○ Åland Islands	○ Dominica	○ Liechtenstein	○ Saint Pierre and Miquelon
○ Albania	○ Dominican Republic	○ Lithuania	○ Saint Vincent and the Grenadines
○ Algeria	○ Ecuador	○ Luxembourg	○ Samoa

- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar /Burma
- Namibia
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden

- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom

- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

* Field of activity or sector (if applicable):

- [ ] Accounting
- [ ] Auditing
- [ ] Banking
- [ ] Credit rating agencies
- [ ] Insurance
- [ ] Pension provision
- [ ] Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)

- ☐ Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- ☐ Social entrepreneurship
- ☑ Other
- ☐ Not applicable

* Please specify your activity field(s) or sector(s):

Trade association for securities dealers active on the Swedish market

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association, 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

* **Contribution publication privacy settings**

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- ○ **Anonymous**
  Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.
- ◉ **Public**
  Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

☑ I agree with the personal data protection provisions

I. CSD Authorisation & review and evaluation processes

CSDs are subject to authorisation and supervision by the competent authorities of their home Member Sate which examine how CSDs operate on a daily basis, carry out regular reviews and take appropriate action when necessary.

Under Articles 16 and 54 of CSDR, CSDs should obtain an authorisation to provide core CSD services as well as non-banking and banking-type ancillary services. Article 69(4) however allows CSDs authorised under national law prior to the adoption of CSDR to continue operating under such national law until they have been authorised under the new CSDR rules.

As of August 2020, 22 out of 30 existing EU CSDs are authorised under Articles 16 and/or 54 CSDR. ESMA's register of EU CSDs shows that the time to complete the authorisation process varies significantly and that 7 existing EU CSDs have not yet been authorised under CSDR, while one CSD has been authorised under Article 16 of CSDR, but not yet under Article 54 of CSDR (i.e. for banking-type ancillary services). The size and complexity of CSDs and the different services they offer, as well as their initial level of compliance with primary and secondary legislation at the time of its adoption, may explain, at least partially, such differences. Furthermore, there is also anecdotal evidence from some stakeholders that the administrative burden of the authorisation process under CSDR, or as applied by some NCAs, can act as a barrier to new market entrants, thereby limiting competition. Similar feedback suggests that the authorisation process might lack proportionality in circumstances where not all requirements are relevant to the activity envisaged by the applicant.

Once a CSD has been authorised, CSDR requires national competent authorities (NCAs) to review CSD's compliance with rules emerging from the Regulation and to evaluate risks to which a CSD is or might be exposed, as well as risks it might create. This review and evaluation must be done at least on an annual basis. Its depth and frequency is to be established by NCAs taking into consideration the size, nature and systemic importance of the CSD under supervision. The detail of the information to be provided on an annual basis by CSDs to NCAs is set forth in Delegated Regulation (EU) 2017/392.

Looking forward, the lessons learnt from the way the authorisation procedures have run should also be useful for the CSDs' annual review and evaluation by their competent authorities. It has been argued that annual reviews should be integrated in NCAs' supervisory activities in such a way that they bring added value, suit their risk-based supervisory approach and ensure supervisory convergence at Union level.

Question 1. Given the length of time it has taken, and is still taking in some instances, to authorise CSDs under CSDR, do you consider that the application process would benefit from some refinement and/or clarification in the Regulation or the relevant delegated acts?

- Yes, some aspects of CSDR or the relevant delegated acts would merit clarification, although no legislative or regulatory amendment would be required.
- Yes, the CSDs authorisation process should be amended to be made more efficient.
- No, the length and complexity of the authorisation process reflects the complexity of CSDs' businesses.
- No, most of the CSDs in the Union have already been authorised under CSDR, there is no case for amending the authorisation process.
- Other

Question 1.1 Please explain your answer to question 1, providing where possible quantitative evidence and/or examples:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 2. Should an end date be introduced to the grandfathering clause of CSDR?

- Yes
- No
- Don’t know / no opinion / not relevant

Question 3. Concerning the annual review process, should its frequency be amended?

- Yes
- No
- Don’t know / no opinion / not relevant

Please explain your answer to Question 3, providing where possible quantitative evidence and/or examples:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Articles 41 and 42 of Commission Delegated Regulation (EU) 2017/392 prescribe the information and the statistical data that CSDs should provide to NCAs on an annual basis.

Question 4.1 Do you consider this information and statistical data to be relevant for the review and evaluation process described in Article 22 of CSDR?

- Yes, all information and statistical data are relevant.
- No, not all information and statistical data should be required to be provided on an annual basis.
- Don’t know / no opinion / not relevant

Question 4.2 Do you consider these requirements to be proportionate?

- Yes, all information and statistical data must be provided on an annual basis.
- No, not all information and statistical data should be required to be provided on an annual basis.
- Don’t know / no opinion / not relevant

Question 5. Are there specific aspects of the review and evaluation process, other than its frequency and the content of the information and statistical data to be provided by CSDs, that should be examined in the CSDR review?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 6. Do you think that the cooperation among all authorities (NCAs and Relevant Authorities) involved in the authorisation, review and evaluation of CSDs could be enhanced (e.g. through colleges)?

- Yes
- No
- Don’t know / no opinion / not relevant

Question 6.1 Please explain your answer to Question 6 providing, where possible, quantitative evidence and/or examples:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 7. How do you think ESMA’s role could be enhanced in order to ensure supervisory convergence in the supervision of CSDs (for example

with possible further empowerments for regulatory technical standards and /or guidelines, or an enhanced role in supervisory colleges, or direct supervisory responsibilities)?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

II. Cross-border provision of services in the EU

A core objective of CSDR is the creation of a single market for CSDs. CSDR provides important opportunities for cross-border activities by CSDs within the Union as it grants CSDs authorised in one Member State with a "passport" to provide their services in the EU without the need for further authorisation. This means also that CSD groups should be able to consolidate certain aspects of their operations in a much more efficient way. When a CSD provides its services in a Member State other than where it is established, the competent authority of the home Member State is responsible for the supervision of that CSD.

The procedure through which a CSD authorised in an EU Member State can provide notary and central maintenance services in relation to financial instruments constituted under the law of another EU Member State or to set up a branch in another Member State is set out in Article 23(3) to 23(7) of CSDR and is based on the cooperation of the CSD's home Member State competent authority with the host Member State competent authority. In that case, the home Member State competent authority bears the primary responsibility to determine the adequacy of the administrative structure and the financial situation of the CSD wishing to provide its services in the host Member State.

Despite the fact that most of the applying CSDs have been able to obtain a “passport” to offer notary and central maintenance services in one or several other Member States, anecdotal information from stakeholders has indicated that this process has been significantly more burdensome than previously thought. This, in turn, could potentially lead to a reduction in the level of cross-border activity, limiting potential efficiency gains and, potentially, competition. This may be due to differing interpretations of CSDR’s requirements related to the provision of services in another Member State, but could also arise from the requirements themselves. Challenges mentioned include, but are not necessarily limited to, the role of the host NCA in granting the passport and supervision cooperation among NCAs, the determination of the law applicable to the issuance and the assessment of the measures the CSD intends to take to allow its users to comply with the national law under which the securities are constituted.

Note that question 8 is mainly intended for issuers.

Question 8. One of the main objectives of CSDR is to improve competition between CSDs so as to enable market participants a choice of provider and reduce reliance on any one infrastructure provider.

In your view, has competition in the provision of CSD services increased or improved in your country of establishment in recent years?

- Yes
- No
- Don't know / no opinion / not relevant

Question 8.1 Please explain your answer to Question 8, providing where possible quantitative evidence and/or concrete examples.

Please indicate where possible the impact of CSDR on:

a. **the number of CDs active in the market**

b. **the quality of the services provided**

c. **the cost of the services provided**

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Note that question 9 is mainly intended for CSDs and/or issuers.

Question 9. Are there aspects of CSDR that would merit clarification in order to improve the provision of notary/issuance, central maintenance and settlement services across the borders within the Union?

- Yes
- No
- Don't know / no opinion / not relevant

Question 9.1 Please explain your answer to Question 9, providing where possible quantitative evidence and/or concrete examples:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Note that questions 10, 11 and 12 are mainly intended for CSDs.

Question 10. Have you encountered any particular difficulty in the process of obtaining the CSDR "passport" in one or several Member States different to the one of your place of establishment?

- Yes
- No
- Don't know / no opinion / not relevant

Question 11. In how many Member States do you currently serve issuers by making use of your CSDR "passport"?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 12. Are there any obstacles in the provision of services to issuers in a Member State for which you have obtained the CSDR "passport" that actually prevent you from providing such services?

- Yes
- No
- Don't know / no opinion / not relevant

Question 12.1 Please explain your answer to Question 12, providing where possible quantitative evidence and/or concrete examples:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 13. Do you think that the cooperation amongst NCAs would be improved if colleges were established for [or cooperative arrangements were always involved in] the Article 23 process?

- Yes
- No
- Don't know / no opinion / not relevant

Question 13.1 Please explain your answer to Question 13, providing where possible quantitative evidence and/or concrete examples:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 14. How do you think ESMA's role could be enhanced in order to ensure supervisory convergence in the supervision of CSDs that provide their services on a cross-border basis within the EU?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

III. Internalised settlement

Article 9 of CSDR provides for internalised settlement reporting, whereby a settlement “internaliser” must report to the competent authority of its place of establishment, on a quarterly basis, the aggregated volume and value of all securities transactions that it settles outside a securities settlement system (SSS). The information which is required to be included in the quarterly internalised settlement reports is specified in Commission Delegated Regulation (EU) 2017/391, while the format of reports is outlined in Commission Implementing Regulation (EU) 2017/393.

The first internalised settlement reports were due to the competent authorities by 12 July 2019 and contained details of transactions settled internally from 1 April 2019 to 30 June 2019.

The objective of internalised settlement reporting is to enable NCAs to monitor and identify the risks (e.g. operational, legal) associated with internalised settlement. The identification of such risks or of any trends seems to have been limited to date. Nevertheless, the reported figures show very high volumes and values, high concentration, as well as high settlement fail rates. This proves the importance of monitoring the internalised settlement activity. Data quality issues (e.g. clarification of the exact scope of the requirement, development and implementation of IT tools and systems, correct implementation of reporting formats, etc.) and the relatively short timeframe since the start of this reporting regime (Q2 2019) may have limited any such analysis of risks and/or trends.

As part of its fitness check on supervisory reporting requirements, the Commission has committed to assessing whether the reporting objectives are set correctly (relevance), whether the requirements meet the objectives (effectiveness, EU added value), whether they are consistent across the different legislative acts (coherence), and whether the costs and burden of supervisory reporting are reasonable and proportionate (efficiency). Furthermore, the Commission is aware that changes to reporting requirements may imply costs and as such the overall benefits of any amendment to an established reporting requirement should exceed its costs.

Question 15. Article 2 of Delegated Regulation (EU) 2017/391 establishes the data which internalised settlement reports should contain.

Do you consider this data meets the objectives of relevance, effectiveness, EU added value, coherence and efficiency?

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not relevant

Question 15.1 Please explain your answer to Question 15, providing where possible quantitative evidence and/or concrete examples:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

SSMA has no opinion since our members only produce the report and do not use it in their own business. It is only the NCAs with the aggregated view that can judge the relevance, effectiveness, added value etc. SSMA members have just recently implemented the reporting routines. It is therefore too early to see the effect of the reporting requirements and if there are any needs for amendments to the regulation. The members fear that changes to the reporting regime might lead to additional implementation costs with limited value. If the internalised settlement reporting is deemed not efficient for its purpose, we would suggest making an in-depth review to evaluate whether it would be possible to remove this reporting regime all together. The relevant risks should be covered within other reporting legislations.

Question 15.2 If you are an entity falling under the definition of "settlement internaliser", what have been the costs you have incurred to comply with the internalised settlement reporting regime?

Where possible, please compare those costs to the volumes of your average annual activity of internalised settlement:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 16. Do you think that a threshold for a minimum level of settlement internalisation activity should be set for entities to be subject to the obligation to report internalised settlement?

- ○ Yes, based on the volume of internalised settlement
- ○ Yes, based on the value of internalised settlement
- ○ Yes, based on other criterion
- ◉ No
- ○ Don't know / no opinion / not relevant

Question 16.1 Please explain your answer to Question 16, providing where possible quantitative evidence and/or examples.

Please indicate:

- **whether you consider that the introduction of such a threshold could endanger the capacity of NCAs to exercise their supervisory powers efficiently**
- **The cost implications of complying or monitoring compliance with such a threshold**

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

SSMA sees no rationale in introducing a minimum threshold for internalised settlement. Most of our members would have to do the same work and monitoring anyway, in case they pass the threshold, and it would only create uncertainty. The consistency and continuity of data will also be interrupted if some parties

report now and then, based on whether they are above or below the threshold. It would be difficult to set an appropriate level. We also foresee difficulties with parties being close to the threshold. How would reporting be done when close to the threshold? It could mean a situation where a member ends up reporting one period, but not the next and vice versa. The quality of the reporting would also be worse if not all entities report under this regulation.

IV. CSDR and technological innovation

CSDs and providers of ancillary services increasingly explore new technologies in relation to 'traditional' assets in digital form and crypto-assets that qualify as financial instruments. Two aspects can be distinguished: on the one hand the use of new technologies to service traditional assets (in digital form) and on the other hand, services provided for crypto-assets.

While CSDR is meant to be technology-neutral, the Commission services have received feedback from various stakeholders (including following the public consultation on an EU framework for markets in crypto-assets that ended in March 2020) who argue that some of its rules create obstacles to the use of distributed ledger technology (DLT) and the tokenisation of securities. However, feedback received so far by the Commission in this respect has not allowed for the full specification of those obstacles and potential solutions or proposals to address them in the framework of CSDR in order to ensure the full potential of these technological innovations with regard to the settlement of securities.

Furthermore, some of the feedback received suggests that certain definitions contained in the CSDR would require specific clarification to contextualise them in an environment where DLT is used and securities are tokenised. Some of these definitions are for example "securities account", "dematerialised form" or "settlement".

On 24 September 2020, as part of the digital finance package, a Commission proposal for a Regulation on a pilot regime on market infrastructures based on distributed ledger technology has been published. Under this proposal, a CSD operating a DLT SSS would be able to benefit from certain exemptions from CSDR rules that may be difficult to apply in a DLT context (e.g. exemptions from the application of the notion of transfer of orders, securities account or cash settlement). This should help stakeholders test in practice potential solutions.

Question 17. Do you consider that certain changes to the rules are necessary to facilitate the use of new technologies, such as DLT, in the framework of CSDR, while increasing the safety and improving settlement efficiency?

- ○ Yes
- ○ No
- ◉ The pilot regime is sufficient at this stage
- ○ Don't know / no opinion / not relevant

Question 18. Would you see any particular issue (legal, operational, technical) with applying the following requirements of the CSDR in a DLT environment?

Please rate each proposal from 1 to 5.

	1	2	3	4	5	

	(not a concern)	(rather not a concern)	(neutral)	(rather a concern)	(strong concern)	Don't know / No opinion
Definition of 'central securities depository' and whether platforms can be authorised as a CSD operating a SSS which is designated under Directive 98/26/EC (Settlement Finality Directive (SFD))	◉	○	○	○	○	○
Definition of 'securities settlement system' and whether a blockchain /DLT platform can be qualified as a SSS under the SFD	◉	○	○	○	○	○
Whether and under which conditions records on a DLT platform can fulfil the functions of securities accounts and what can be qualified as credits and debits to such an account;	◉	○	○	○	○	○

Whether records on a DLT platform can be qualified as securities account in a CSD as required for securities traded on a venue within the meaning of of Directive 2014/65/EU (MiFID II)	◉	○	○	○	○	○
Definition of ‘book entry form’ and ‘dematerialised form'	◉	○	○	○	○	○
Definition of “settlement” which according to the CSDR means the completion of a securities transaction where it is concluded with the aim of discharging the obligations of the parties to that transaction through the transfer of cash or securities, or both; clarification of what could qualify as such a transfer of cash or securities on a	◉	○	○	○	○	○

DLT network/ clarification what constitutes an obligation and what would qualify as a discharge of the obligation in a DLT environment						
What could constitute delivery versus payment (DVP) in a DLT network, considering that the cash leg is not processed in the network/ what could constitute delivery versus delivery (DVD) or payment versus payment (PVP) in case one of the legs of the transaction is processed in another system (e.g. a traditional system or another DLT network)	◉	○	○	○	○	○
What entity could qualify as a settlement internaliser, that executes transfer orders	◉	○	○	○	○	○

other than through an SSS						

Question 18.1 Please explain your answers to question 18 (if needed), including how the relevant rules should be modified:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Rules should be technology neutral and provide for an environment that is safe and clear from a technical, operational and legal perspective, and in most cases it ought to be possible to apply relevant CSD rules also to DLTs. It would in this context be useful if the Commission could, working together with relevant market participants, provide a “guide” describing how different rules will apply in a DLT context. We would also propose that a “platform” with experts and market participants be set up, where issues that arise may be discussed and where solutions could be worked out and proposed.

Question 18.2 Do you consider that any other changes need to be made, either in CSDR or the delegated acts to ensure that CSDR is technologically neutral and could enable and/or facilitate the use of DLT?

- (●) Yes
- ( ) No
- ( ) Don’t know / no opinion / not relevant

Question 18.3 If yes, please indicate the provisions and make the relevant suggestions:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We consider that the existing CSDR framework will, to a large extent, work also for new technologies, such as DLT, subject to the fact that there may be specific rules that will over time have to be adjusted when we have more practical experience in this field. It would be useful if the Commission could, working together with relevant market participants, provide a “guide” describing how different rules will apply in a DLT context. We would also propose that a “platform” with experts and market participants be set up, where issues that arise may be discussed and where solutions could be worked out and proposed.

Question 19. Do you consider that the book-entry requirements under CSDR are compatible with crypto-assets that qualify as financial instruments?

- (●) Yes
- ( ) No
- ( ) Don’t know / no opinion / not relevant

Question 19.1 Please explain your answer to question 19:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The question refers to “crypto-assets that qualify as financial instruments” but the question is if all crypto-assets do qualify as financial instruments. It is thus important that we have a clear definition of “financial instruments”.

Question 20. Would you see any particular issue (legal, operational, technical) with applying the current rules in a DLT environment?

Please rate each proposal from 1 to 5.

	1 (not a concern)	2 (rather not a concern)	3 (neutral)	4 (rather a concern)	5 (strong concern)	Don't know / No opinion
Rules on settlement periods for the settlement of certain types of financial instruments in a SSS	◉	○	○	○	○	○
Rules on measures to prevent settlement fails	◉	○	○	○	○	○
Organisational requirements for CSDs	○	○	○	◉	○	○
Rules on outsourcing of services or activities to a third party	○	○	○	◉	○	○
Rules on communication procedures with market participants and other market infrastructures	◉	○	○	○	○	○

Rules on the protection of securities of participants and those of their clients	○	○	○	◉	○	○
Rules regarding the integrity of the issue and appropriate reconciliation measures	◉	○	○	○	○	○
Rules on cash settlement	◉	○	○	○	○	○
Rules on requirements for participation	◉	○	○	○	○	○
Rules on requirements for CSD links	◉	○	○	○	○	○
Rules on access between CSDs and access between a CSD and another market infrastructure	◉	○	○	○	○	○
Rules on legal risks, in particular as regards enforceability	○	○	○	◉	○	○

Question 20.1 Please explain your answers to question 20, in particular what specific problems the use of DLT raises:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As regards organisational requirements, there will be a need for expertise on DLT. It may be necessary to distinguish between privately and publicly controlled DLTs, as the former could possibly be considered as a form of outsourcing. Rules protecting the securities of participants and their clients should be thoroughly

analysed to make sure that they work properly in the DLT environment, to the same extent e.g. as under MiFID II and UCITS. Rules on legal risks, e.g. on liability and enforceability, will also be important and should be thoroughly analysed. Questions to consider include what securities laws will apply and if transactions can be reversed/consequences in such situations.

Question 20.2 If you consider that there are legal, operational or technical issues with applying other rules regarding CSD services in a DLT environment (including other provisions of CSDR, national rules regarding CSDs implementing the EU acquis, supervisory practices, interpretation,), please indicate them and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

V. Authorisation to provide banking-type ancillary services

According to Article 54 of CSDR, the provision of banking-type ancillary services by CSDs is allowed either by themselves or through one or more limited license credit institutions, provided that some requirements are complied with in terms of risk mitigation, additional capital surcharge and cooperation of supervisors in authorising and supervising the provision of these banking services to CSD users. It seems that limited license credit institutions do not exist yet. Article 54(5) foresees an exception to conditions applying to credit institutions that offer to settle the cash payments for part of the CSD's securities settlement system, if the total value of such cash settlement through accounts opened with those credit institutions, calculated over a one-year period, is less than one per cent of the total value of all securities transactions against cash settled in the books of the CSD and does not exceed a maximum of EUR 2,5 billion per year. CSDs have voiced in the past difficulties regarding cash settlement in foreign currencies. Questions in this section aim at identifying these and other potential concerns as well as possible ways forward.

Note that questions 21 to 26 included are mainly intended for CSDs.

Question 21. Do you provide banking services ancillary to settlement to your participants?

- Yes
- No
- Don't know / no opinion / not relevant

Question 22. Do you think that the conditions set in Article 54(3) for the provision of banking-type ancillary services by CSDs are proportionate and help cover the additional risks that these activities imply?

- Yes
- No
- Don’t know / no opinion / not relevant

Question 23. In your view, are there banking-type ancillary services that cannot be provided by CSDs under the current regime for this type of services?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 24. Concerning settlement in foreign currencies, have you faced any particular difficulty?

- Yes
- No
- Don’t know / no opinion / not relevant

Question 24.1 Please explain your answer to question 24 providing concrete examples and quantitative evidence:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 25. What are the main reasons CSDs do not seek to be authorised to provide banking-type ancillary services?

Please explain in particular if this is so due to obstacles created by the regulatory framework:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 26. Have you made use of the option to designate a credit institution to provide banking type ancillary services to CSDs?

- Yes
- No
- Don’t know / no opinion / not relevant

Question 27. In your view, are the thresholds foreseen in Article 54(5) set at an adequate level?

- Yes
- No
- Don’t know / no opinion / not relevant

Question 28. Do you think that the conditions set out in Article 54(4) for the provision of banking-type ancillary services by a designated credit institution are proportionate and help cover the additional risks that these activities imply?

- Yes
- No
- Don’t know / no opinion / not relevant

Question 29. Why do you think there are so few, if any, credit institutions with limited license to provide banking-type ancillary services to CSDs?

Please explain in particular if this is so due to obstacles created by the regulatory framework:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 30. Are there requirements within Title IV of CSDR which should be specifically reviewed in order to improve the efficiency of the provision of banking-type ancillary services to and/or by CSDs while ensuring financial stability?

- Yes
- No
- Don't know / no opinion / not relevant

Question 30.1 Please explain your answer to question 30, providing where possible quantitative evidence and/or concrete examples:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

VI. Scope

CSDR lays down a series of requirements for the settlement of financial instruments in the Union and harmonised rules on the organisation and conduct of CSDs. While the scope of rules applicable to CSDs seems clear, the requirements applying to the settlement of financial instruments has given rise to numerous questions. A certain number of these questions has been addressed by ESMA, especially in relation to the scope of requirements on internalised settlement, relevant currencies or the substantial importance of a CSD.

Article 2(1)(8) of CSDR defines financial instruments in accordance with the definition of financial instruments in Directive 2014/65/EU on markets in financial instruments (MiFID II) (i.e. transferable securities, money-market instruments, units in collective investment undertakings, various types of derivatives and emission allowances). Some CSDR provisions explicitly restrict the scope of their applicability to a subset of the above definition, e.g. Articles 3 on book entry-form (only transferable securities) and Article 5 on the intended settlement date. Other provisions are not explicit or refer generally to financial instruments or securities (e.g. Article 23 on the provision of services in another Member State).

In the case, for instance, of the settlement discipline, stakeholders have indicated that the different provisions of CSDR setting out the scope of the requirements such as settlement fails reporting, cash penalties or buy-ins are not always clear. This lack of legal certainty could potentially lead to reducing the efficiency in securities settlement. Furthermore, feedback from some stakeholders suggests that in some circumstances the drafting of CSDR in relation to the scope of the settlement discipline is clear, however, its application could bring unintended consequences.

Question 31. Do you consider that certain requirements in CSDR would benefit from targeted measures in order to provide further legal certainty on their scope of application?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Question 31.1 If you answered "yes" to Question 31, please specify which provisions could benefit from such clarification and provide concrete examples:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The settlement discipline rules in Articles 6 and 7 of CSDR clearly place regulatory obligations on CSDs, CCPs, trading venues and investment firms, all of which are regulated entities. Article 30 of the Regulatory Technical Standards on settlement discipline – EU 2018/1229 (the RTS) however seems to widen the scope of the regulation as obligations are placed on "trading parties", defined as "a party acting as principal in a securities transaction". This definition is somewhat ambiguous, but it could be interpreted as the end investor, who may be a non-regulated legal entity, e.g. an SME or private individual. Most SMEs or private individuals do not have the competence or the resources to comply with, for example, the obligations stipulated in the buy-in rules. Our finding is that this has a potential impact on certain types of transactions not cleared by a CCP and not executed on a trading venue.

We would like to illustrate this with examples:

- A transaction to sell/purchase securities takes place bilaterally (outside of a trading venue) between two non-regulated customers. The two non-regulated customers hence become the "trading parties" and instruct their respective custody banks to settle the transaction.
- A transaction could also be an agreed securities transfer between two retail customers (e.g. gift, inheritance etc). The two retail customers become the "trading parties" and they provide instructions to their respective custody banks about the transfer.

In case such transactions do not settle as agreed, a retail customer, or a non-regulated entity such as an SME, could end up being the trading party that does not receive the securities and therefore would need to carry out a buy-in. That customer thereby also has to appoint a buy-in agent as well as to calculate the cash compensation amount if a buy-in is not possible.

Although, prolonged settlement fails in the above described situations only occur very infrequently, they will be of great concern for the responsible parties when they do occur and will have the custody banks update its customer agreements, processes and customer support activities to live up to the regulation.

There is a risk that non-professional investors would refrain from performing the transactions described

above because of the inherent risk that they would need to carry out a buy-in transaction and designate a buy-in agent.

In our opinion, prescribing a mandatory obligation for a purchaser to make a replacement purchase is also a quite radical intervention in the contractual law and the relationship between contractual parties. In particular when a pre-defined mandatory obligation aimed to remedy the fail is placed on the non-failing party. We would therefore, with reference to the above-mentioned problems related to the legal certainty as well as to the radical intervention in the contractual law and the relationship between contractual parties, recommend a removal of mandatory buy-ins.

If a removal of mandatory buy-ins is not possible we would suggest that transactions not cleared by a CCP and not executed on a trading venue should be excluded from the mandatory buy-in requirement. If this is not supported, and the requirement to perform mandatory buy-in also for OTC transactions remains, we propose that when the non-failing trading party is NOT a regulated entity, the obligation to perform buy-in is placed on its account servicer, e.g. its custodian. When the non-failing trading party IS a regulated entity, the obligation will remain as per the RTS.

Question 31.2 If you answered "yes" to Question 31, please specify what clarifications/targeted measures could provide further legal certainty:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We are of the view that further clarity is needed as regards to which legal entities fall under the settlement discipline rules. The level one text refers to “participants” as defined in the Directive on settlement finality (98 /26/EC) while the level two text, the Regulatory Technical Standards on settlement discipline – EU 2018 /1229 (the RTS) refers to “trading parties” in article 1(f). The reference to “trading parties” in the RTS creates uncertainty as regards the scope. As a matter of fact, since “trading party” is defined in the RTS as “a party acting as principal” it is unclear whether CSDR is intended to place regulatory burdens also on companies and individuals that are not already the subject of financial market regulations. This is relevant both for legal entities and individuals, and for several CSDR obligations, and in particular regarding settlement discipline.

We are therefore of the opinion that further clarification is needed to ensure that mandatory buy-in obligations are only imposed on regulated entities. In case a trading party is not a regulated entity, and mandatory buy-in for OTC transactions remains part of the settlement discipline regime, we recommend that the account servicer of the non-regulated trading party, e.g the custody bank, should perform the buy-in obligation on behalf of its non-regulated customer.

Question 32. Do you consider that the scope of certain requirements, even where it is clear, could lead to unintended consequences on the efficiency of market operations?

- (●) Yes
- ( ) No
- ( ) Don’t know / no opinion / not relevant

Question 32.1 If you answered "yes" to Question 32, please specify which provisions are concerned.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

- Parallel systems for collection and distribution of penalties:

The RTS Article 19 would effectively result in the existence of two parallel systems for the collection and distribution of penalties for failed settlements, provided by CSDs and CCPs respectively. Such setup would be unnecessarily complex and inefficient, lead to additional system requirements and thereby bring about additional administrative burden and costs for CCPs, CSDs and their members. Two different layers of actors to the collection/distribution process will also lead to less harmonisation and standardisation of the penalties process. A simplification of the process for market participants, eliminates the need for additional technology build by CCPs, clearing members and all parties in the chain and would also be a more sustainable choice.

- Provision of market maker services:

A market maker's role is to provide liquidity to the market throughout the day. In a well-functioning market, liquidity is relatively stable over time. The market maker in this aspect plays an important role for less liquid instruments when providing buy and sell prices to investors for securities where it is not possible to simultaneously find an investor with an opposite interest.

The market maker regularly provides sell prices without holding the securities. If the investor buys securities, the market maker in his turn covers the short position by searching for a seller. If the market maker would need to take into account the cost, time and administrative procedures for having to execute a potential buy in, if he does not himself receive the securities he just sold to the investor, there is a risk that he would no longer want to remain a market maker for illiquid securities. The attached risk and cost related to having to execute a potential buy-in will be too difficult to estimate. Also, if the market maker needs to ensure that he already holds the securities for which he quotes a price he would have to reduce the number of securities for which he acts as a market maker due to the high capital requirement cost for holding less liquid securities in the trading book. To compensate for the cost of holding securities in the trading book he would also need to quote less aggressive prices. Hence there is a substantial risk that a mandatory buy-in requirement on illiquid instruments would lead to a reduction in market liquidity as well as to a deterioration in price formation for those instruments and thereby to less efficient secondary markets. As the functioning of secondary markets has a direct impact on the functioning of primary markets it could even lead to higher financing costs for small and medium issuers as market liquidity of the related securities is generally lower than for larger issuers. In periods of market turmoil, we see a risk that this problem could also be extended to more liquid securities.

Question 32.2 If you answered "yes" to Question 32, please specify what targeted measures could be implemented to avoid those unintended consequences while achieving the general objective of improving the efficiency of securities settlement in the Union:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

- Parallel systems for collection and distribution of penalties:

We propose, in line with the proposal by EACH, a deletion of RTS Article 19 and that Article 17 is applied consistently for all transactions.

- Provision of market making services:
If our suggestion in questions 31 and 34.1 to remove mandatory buy-ins is not supported, we would suggest that illiquid securities be exempted from the mandatory buy-in requirements.

VII. Settlement Discipline

CSDR includes a set of measures to prevent and address failures in the settlement of securities transactions ('settlement fails'), commonly referred to as 'settlement discipline' measures. Application of the relevant rules in CSDR is dependent on the date of entry into force of Commission Delegated Regulation (EU) 2018/1229 on settlement discipline, which specifies the following:

a. measures to prevent settlement fails, including measures to be taken by financial institutions to limit the number of settlement fails as well as procedures and measures to be put in place by CSDs to facilitate and incentivise timely settlement of securities transactions;

b. measures to address settlement fails, including the requirements for monitoring and reporting of settlement fails by CSDs; the management by CSDs of cash penalties paid by their users causing settlement fails; the details of an appropriate buy-in process following settlement fails; the specific rules and exemptions concerning the buy-in process and the conditions under which a CSD may discontinue its services to users that cause settlement fails.

Commission Delegated Regulation (EU) 2018/1229 was supposed to enter into force on 13 September 2020. However, in May 2020 the Commission adopted a Commission Delegated Regulation amending it, thereby postponing its date of entry into force from 13 September 2020 to 1 February 2021. This short delay was considered necessary to take into account the additional time needed for the establishment of some essential features for the functioning of the new framework (e.g. the necessary ISO messages, the joint penalty mechanism of CSDs that use a common settlement infrastructure and the need for proper testing of the new functionalities).

During the COVID-19 crisis, many stakeholders asked for a further postponement of the entry into force of Commission Delegated Regulation 2018/1229. Those stakeholders argued that the COVID-19 pandemic impacted the overall implementation of regulatory projects and IT deliveries by CSDs and their participants and that, as a result of that, they will not be able to comply with the requirements of the RTS on settlement discipline by 1 February 2021. On 23 October 2020, the Commission endorsed ESMA's proposal to postpone further the entry into force of the RTS on settlement discipline to 1 February 2022.

Question 33. Do you consider that a revision of the settlement discipline regime of CSDR is necessary?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

Question 33.1 If you answered yes to Question 33, please indicate which elements of the settlement discipline regime should be reviewed:

you can select more than one option

- [x] Rules relating to the buy-in
- [x] Rules on penalties
- [ ]

Rules on the reporting of settlement fails

Other

Question 34. The Commission has received input from various stakeholders concerning the settlement discipline framework.

Please indicate whether you agree (rating from 1 to 5) with the statements below:

	1 (disagree)	2 (rather disagree)	3 (neutral)	4 (rather agree)	5 (fully agree)	Don't know / No opinion
Buy-ins should be mandatory	◉	○	○	○	○	○
Buy-ins should be voluntary	○	○	○	○	◉	○
Rules on buy-ins should be differentiated, taking into account different markets, instruments and transaction types	○	○	○	○	◉	○
A pass on mechanism should be introduced	○	○	○	○	◉	○
The rules on the use of buy-in agents should be amended	○	○	○	○	◉	○
The scope of the buy-in regime and the exemptions applicable	○	○	○	○	◉	○

should be clarified						
The asymmetry in the reimbursement for changes in market prices should be eliminated	○	○	○	○	◉	○
The CSDR penalties framework can have procyclical effects	○	○	○	○	○	◉
The penalty rates should be revised	○	○	○	○	◉	○
The penalty regime should not apply to certain types of transactions (e.g. market claims in cash)	○	○	○	○	◉	○

Question 34.1 Please explain your answers to question 34, providing where possible quantitative evidence and concrete examples:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

1,2,3) Mandatory buy-ins should be removed
We sympathise with the ambition to improve settlement discipline but prescribing a mandatory obligation for a buyer to make a replacement purchase is a radical intervention in the contractual law and the relationship between contractual parties. In particular when a pre-defined mandatory obligation to remedy the fail is placed on the non-failing party. We are also concerned about the negative effects that mandatory buy-ins could have on markets as described in section 6. Generally, it is difficult to get a view of the risks and negative effects that mandatory buy-ins could have on the market when applied to all markets, instruments and transactions. We would therefore recommend a removal of mandatory buy-ins. A high settlement rate is better achieved by using cash penalties. In case mandatory buy-ins are not completely removed we would suggest that at least OTC transactions (not cleared by a CCP or executed on a trading venue) as well as illiquid securities be removed from the buy-in requirement.
4) Mandatory buy-in rules without pass on mechanism to affect market prices
If a removal of mandatory buy-ins is impossible, a pass on mechanism is necessary to avoid unintended negative consequences. Mandatory buy-ins, without a mechanism to help identifying which buy-ins should

be triggered, would lead to unnecessary buy-ins being made which would affect market prices and bring about costs and increased risks from unintended long positions. If the related risk is significant for the institution it could seriously impact its ability to remain active and help providing liquidity on the secondary market and thus contribute negatively to market functioning. CSDR settlement discipline assumes coordination to avoid unnecessary buy-ins, but there is no system support provided by CSDs nor does the CSDR settlement discipline stipulate how and when such instructions may be omitted from the mandatory buy-in requirement.
5)Uncertainty regarding buy-in agent rules
The role of a formal buy-in agent is unnecessary to perform a buy-in. Market participants can use their existing brokers. There is unclarity as regards the buy-in agent function. According to the RTS, and depending on the type of transaction, the CCP or the receiving trading party shall appoint a buy-in agent to execute the buy-in. The agent shall not have any conflict of interest in the execution of the buy-in but it remains unclear which type of entities can take on the role as an agent. Is it possible to set-up bilateral agreements between two competitors/institutions to take on the role as an agent for each other for all or certain securities, or for a particular buy-in trade? Or does it have to be pre-defined institutions serving all financial institutions in the market they have undertaken to serve? It is also unclear how to proceed with a buy-in if there is no agent available for certain markets or securities. Two entities started to prepare for setting up buy-in agent services for the Swedish market in 2020, but they did not even together cover all securities that would fall under the buy-in obligation. Being forced to use different processes for buy-ins, depending on if there are buy-in agents for all markets/securities or not, would lead to market inefficiencies. Also, limited interest in becoming an agent and the resulting limitations in competition would lead to inefficiencies. Further clarification on how to proceed with a buy-in of securities not covered by the offering of a potential buy-in agent is welcome. Also, to avoid ending up in a situation where there is no available buy-in agent for all types of securities or in a situation with little or no competition between potential buy-in agents we would prefer clarification that it is possible to use the same counterparties as are already used today when proceeding a buy-in.
6) Scope of the buy-in regime
Please see section 6
9) Penalty rate revision
Changes to the buy-in rules are of higher priority than changes to the cash penalty rules. Market participants have already invested in systems aimed at handling the cash penalty requirements. Hence, changes to cash penalty rules that would lead to a systemic impact should be avoided. Nevertheless, if it does not have any systemic impact, it could, at a later stage, be useful to adjust the penalty rates for some markets if the settlement ratio is unsatisfactory.
10) Remove certain transactions from penalty regime
There are transactions supposed to increase settlement efficiency and enable settlement in time, like securities lending transfers. By delineating the kinds of transactions to which the penalty regime should apply, many types of corporate action transactions and primary issuance transactions can be safely excluded as a result. Cash movements in and of themselves at CSDs, such as market claims in cash and penalties for late payment should be explicitly excluded from the penalty regime.

Question 35. Would the application of the settlement discipline regime during the market turmoil provoked by COVID-19 in March and April 2020 have had a significant impact on the market?

- (●) Yes
- ( ) No

Don’t know / no opinion / not relevant

Question 35.1 Please explain your answer to Question 35, describing all the potential impacts (e.g. liquidity, financial stability, etc.) and providing quantitative evidence and/ or examples where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It is possible to interpret question 35 in two different ways. Either one could read it as a question whether the application of the settlement discipline regime during the market turmoil in March and April 2020 would have had a significant impact on the settlement ratio, i.e. improved it, or one could read it as if it would have had a significant impact on market functioning e.g. market volatility and liquidity. According to the first interpretation we would answer “No”. We believe that in very stressed markets market participants will focus on reducing the amount of risk in their books without taking into account the consequences and costs of potential settlement fails. According to the second interpretation we would answer “Yes” as the settlement discipline regime rules would likely have impacted market makers’ ability and willingness to act as liquidity providers (see answer to question 32 “Provision of market maker services” for an explanation).

Question 36. Which suggestions do you have for the improvement of the settlement discipline framework in CSDR?

Where possible, for each suggestion indicate which costs and benefits you and other market participants would incur:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please see answer to question 34.

A general comment is that a mandatory buy-in regime will lead to large costs for the involved parties in terms of for example IT-development, the establishment of legal arrangements, information to customers, adjusting all administrative processes and education of the staff involved. Also, the whole mandatory buy-in process is set to be very complex and therefore require additional staff for manual processing. In order to avoid unnecessary and costly solutions and also for sustainability reasons we are of the view that a thorough review of the buy-in rules should be considered.

The CSDR settlement discipline rules require the use of certain complex reference instrument data, e. g.

- for the determination of in-scope instruments
- for the determination of penalty rates
- for the determination of market value/prices
- exchange rates etc.

Such reference data is not (centrally) available today for the new processes. Our recommendation is for such data to be centrally placed at the disposal of the market participants, for example by ESMA, similar to for example the FIRDS database used for Mifid related instrument data.

VIII. Framework for third-country CSDs

Article 25(1) of CSDR provides that third-county CSDs may provide their services in the EU, including through setting up branches on the territory of the EU.

Article 25(2) requires a third-country CSD to apply for recognition to ESMA in two specific cases:

a. where it intends to provide certain core CSD services (issuance and central maintenance services related to financial instruments governed by the law of a Member State); or

b. where it intends to provide its services in the EU through a branch set up in a Member State.

Services other than those described (including settlement services) do not require recognition by ESMA under Article 25 CSDR.

ESMA may recognise a third-country CSD that wishes to provide issuance and central maintenance services only where the conditions referred to in Article 25(4) of CSDR are met. One of those conditions is that the Commission has adopted an implementing act determining that the regulatory framework applicable to CSDs of that third country is equivalent in accordance with CSDR.

One CSD has applied to date for recognition to ESMA, i.e. the UK CSD in the context of Brexit. At least two other CSDs have contacted ESMA and have expressed their intention to apply for recognition as third-country CSDs. However, according to the current provisions of Article 25 of CSDR, the recognition process is only triggered once there is an equivalence decision issued by the European Commission in respect of a particular third country. In the meantime, according to Article 69(4) of CSDR, third-country CSDs can continue providing services in the EU under the national regimes.

Question 37. Do you use the services of third-country CSDs for the issuance of securities constituted under the law of the EU Member State where you are established?

- Yes
- No
- Don’t know / no opinion / not relevant

Question 38. Do you consider that an end-date to the grandfathering provision of Article 69(4) of CSDR should be introduced?

- Yes
- No
- Don’t know / no opinion / not relevant

Question 39. Do you think that a notification requirement should be introduced for third-country CSDs operating under the grandfathering clause, requiring them to inform the competent authorities of the Member States where they offer their services and ESMA?

- Yes
- No
- Don’t know / no opinion / not relevant

Question 39.1 Please explain your answer to question 39, providing where possible examples:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 40. Do you consider that there is (or may exist in the future) an unlevel playing field between EU CSDs, that are subject to the EU regulatory and supervisory framework of CSDR, and third-country CSDs that provide / may provide in the future their services in the EU?

- Yes
- No
- Don't know / no opinion / not relevant

Question 40.1 Please explain your answer to question 40, elaborating on specific areas and providing concrete examples:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 41. Which aspects of the third-country CSDs regime under CSDR do you consider require revision / further clarification?

Please rate each proposal from 1 to 5:

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	Don't know / No opinion
Introduction of a requirement for third-country CDS						

to be recognised in order to provide settlement services in the EU for financial instruments constituted under the law of a Member State	○	○	○	○	○	○
Clarification of term "financial instruments constituted under the law of a Member State" in Article 25(2) of CSDR	○	○	○	○	○	○
Recognition of third-country CSDs based on their systemic importance for the Union or for one or more of its Member States	○	○	○	○	○	○
Enhancement of ESMA's supervisory tools over recognised third-country CSDs	○	○	○	○	○	○

Question 41.1 Please explain your answers to question 41, providing where possible concrete examples:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 42. If you consider that there are other aspects of the third-country CSDs regime under CSDR that require revision/further clarification, please indicate them below providing examples, if needed:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

IX. Other areas to be potentially considered in the CSDR Review

Question 43. What other topics not covered by the questions above do you consider should be addressed in the CSDR review (e.g. are there other substantive barriers to competition in relation to CSD services which are not referred to in the above sections? Is there a need for further measures to limit the impact on taxpayers of the failure of CSDs)?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There is a lack of time to prepare for the RTS go-live date of February 1, 2022, since any changes to contracts between banks and clients have up to six months' notice. Therefore, any substantial changes to the current texts, following this review and with the new texts being published according to the proposed schedule, would require a review of timing.

Nevertheless, if there is a decision to completely remove mandatory buy-ins, our members would be ready to implement the rules related to the penalty regime on time.

Additionally, for the purpose of efficiency and sustainability we would like to avoid having to develop the systems necessary for a first set of rules and thereafter having to make system changes following possible alterations. As a matter of fact, as we are of the opinion that substantial changes to the penalty regime should be avoided but that the buy-in rules need a more thorough review, we suggest that the

implementation of the cash penalty rules take place on February 1, 2022, but that the implementation of revised buy-in rules take place at a later stage in case they are not fully removed.

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) below. **Please make sure you do not include any personal data in the file you upload if you want to remain anonymous**.

The maximum file size is 1 MB.
You can upload several files.
Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

Useful links

More on this consultation (https://ec.europa.eu/info/publications/finance-consultations-2020-csdr-review_en)

Consultation document (https://ec.europa.eu/info/files/2020-csdr-review-consultation-document_en)

More on central securities depositories (CSDs) (https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-markets/post-trade-services/central-securities-depositories-csds_en)

Specific privacy statement (https://ec.europa.eu/info/files/2020-csdr-review-specific-privacy-statement_en)

More on the Transparency register (http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

Contact

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