ÖSTERREICHISCHE FMA·FINANZMARKTAUFSICHT

OESTERREICHISCHE NATIONALBANK
EUROSYSTEM

Europäische Kommission
Generaldirektion Finanzstabilität,
Finanzdienstleistungen und Kapitalmarktunion

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Via E-Mail an: fisma-csdr-review@ec.europa.eu

BEREICH Integrierte Aufsicht
GZ FMA-LE0001.230/0001-INT/2021
(bitte immer anführen!)

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WIEN, AM 27.01.2021

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

Sehr geehrte Damen und Herren,

bezugnehmend auf die öffentliche Konsultation der Europäischen Kommission zu einem

„*Review of Regulation on improving securities settlement in the European Union and on central securities depositories*“

erlauben wir uns Ihnen anbei die offizielle Stellungnahme, die die Österreichischen Finanzmarktaufsichtsbehörde (FMA) gemeinsam mit der Oesterreichischen Nationalbank (OeNB) erstattet, zukommen zu lassen. Zugleich nutzen wir die Gelegenheit, drei wesentliche Anliegen aus der Stellungnahme hervorzuheben:

1. Die bestehende Pflicht zur Abwicklungsplanung für CSDs kann ohne eigenes Abwicklungsregime nicht effektiv erfüllt werden. Deswegen sollte entweder ein eigenes EU-Abwicklungsregime für CSDs eingeführt oder die Planungspflicht abgeschafft oder die Pflicht auf eine „best effort basis“ eingeschränkt werden.

2. Im Rahmen des regelmäßigen Überprüfungsprozesses für CSDs sollte die zuständige Behörde mehr Ermessensspielraum im Hinblick auf die Frequenz und die Prüffelder haben. Der gesamte Aufsichtsrahmen sollte proportionaler werden – zum Beispiel auch durch Einführung von kleinen und nicht komplexen CSDs

3. Die Pflicht zur „Verbuchung in Bucheffektenform“ (book-entry form) durch einen „CSD“ sollte klargestellt werden. Für den „CSD“ ist nicht klar, ob nur EU-CSDs oder in verschiedenen denkbaren Varianten auch Drittstaaten-CSDs gemeint sind. Für die Verbuchung ist wiederum unklar, ob nur die Transaktion von einem EU-CSD (als investor CSD) verbucht werden muss und die Sammelurkunde bei einem Drittstaaten-CSD liegen darf oder ob auch die Sammelurkunde bei einem EU-CSD liegen muss (als issuer CSD).

Die Stellungnahme wurde zur leichteren Auswertung auch in das ECAS-EU-Survey-Tool unter Verwendung des Links auf der Seite <https://ec.europa.eu/info/consultations/finance-2020-csdr-review_en> eingegeben.

Wir ersuchen höflich um Berücksichtigung unserer Anregungen und stehen für Rückfragen sehr gerne zur Verfügung.

Finanzmarktaufsichtsbehörde
Bereich Integrierte Aufsicht

Für den Vorstand

MMag.a Dr.in Julia Lemonia Raptis, LLM LLM

Dr. Christoph Seggermann

elektronisch gefertigt

Signaturwert	TCf5Eyt0VdSKihAGXoxzrR/xVB0O96mLpdTWnFTyytzrcGriEAnyKPXp2EyO34pi5ZD2lr09VURDvmR0p57t Fpck86sKsnPppehnyM84626IAX9N0DPDw10wTIgrR8WpFxR5/8GpcqxW1mDuPp00E5GWt7i5MsNEKu+LVnzK YAmQLuDbLDJ3QQgL2UvgXzCLkmel6phcCwEEfTLZ/5s1C9dY/yCUkRaCacqGEEB4QTyEXZqFT1YTQhA6WIsw RA9KtuR9vgV7t+GYnQ0wQprciS6xR/umuWRJGcE49xDl1+hoiZR6jdhrZP9iG9IzlyzPH2h1etiHyG+P0quG tAY+Tw==	
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EUROPEAN COMMISSION
Directorate-General for Financial Stability, Financial Services and Capital Markets Union

TARGETED CONSULTATION DOCUMENT

REVIEW OF REGULATION ON IMPROVING SECURITIES SETTLEMENT IN THE EUROPEAN UNION AND ON CENTRAL SECURITIES DEPOSITORIES

Disclaimer

This document is a working document of the Commission services for consultation and does not prejudge the final decision that the Commission may take.

The responses to this consultation paper will provide important guidance to the Commission when preparing, if considered appropriate, a formal Commission proposal.

You are invited to reply **by 2 February 2021** at the latest to the **online questionnaire** available on the following webpage:
https://ec.europa.eu/info/publications/finance-consultations-2020-csdr-review_en

Please note that in order to ensure a fair and transparent consultation process **only responses received through the online questionnaire will be taken into account and included in the report summarising the responses**.

This consultation follows the normal rules of the European Commission for public consultations. Responses will be published unless respondents indicate otherwise in the online questionnaire.

Responses authorised for publication will be published on the following webpage: https://ec.europa.eu/info/publications/finance-consultations-2020-csdr-review_en

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) 909/2014 on central securities depositories[1](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

[1] Regulation (EU) 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) 236/2012, OJ L 257, 28.8.2014.

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) 2010/10 establishing a European Supervisory Authority (European Securities and Markets Authority),[2] 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[3] and the 2020 Capital Markets Union action plan[4]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.[5]

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

[2] Regulation (EU) 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, OJ L 331, 15.12.2010.

[3] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Commission Work Programme 2021 - A Union of vitality in a world of fragility", COM (2020) 290 final.

[4] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "A Capital Markets Union for people and businesses-new action plan", COM (2020) 590 final.

[5] 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.

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. 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.

CONSULTATION QUESTIONS

1. CSD AUTHORISATION & REVIEW AND EVALUATION PROCESSES

CSDs are subject to authorisation and supervision by the competent authorities of their home Member State 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[6] CSDs[7] 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[8] 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 Commission 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,

[6] This should be read as 'EEA' given that CSDR has been incorporated into the EEA Agreement as of 1 January 2020.

[7] Excluding CSDs managed by Central Banks (and other Member States' national bodies performing similar functions or other public bodies charged with or intervening in the management of public debt in the Union) which are exempted from the authorisation requirements under Article 1(4) of CSDR.

[8] CSDR applies in the EEA EFTA States since 1 January 2020 following the incorporation of CSDR into the EEA Agreement. (a CSD from an EEA EFTA State has not been authorised under CSDR either)

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.

According to our knowledge there are currently 25 EU CSDs already authorised under CSDR. This is the vast majority of all EU CSDs. All other EEA CSDs (and some EU third-country CSDs) are in the process of working to receive the licence under the EU Regulation. Until the end of this process, they can benefit from the grandfathering clause to perform their operations. For this reason, there is no need to change the application and authorisation requirements as at this stage all CSDs already have finished or are currently processing the authorisation phase.

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

☒ Yes

☐ No

☐ Don't know / no opinion

Question 2.1. Please explain your answer to Question 2, providing where possible examples.

In our view, grandfathering rights should be timely limited. CSDs have had the possibility to benefit from this clause since the beginning of the authorisation processes under CSDR. Nevertheless, the final aim should be that the rules of CSDR will be fully considered in the near future. So in our view, there should be an end date introduced in CSDR. Regarding the end date of the grandfathering clause, we do not have a concrete proposal.

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

☒ Yes

☐ No

☐ Don't know / no opinion

Question 3.1 If you responded yes to question 3, what should be the frequency of such reviews?

☐ Once every two years

☐ Once every three years

☒ At the discretion of NCAs

Question 3.1. Please explain your answer to Question 3, providing where possible quantitative evidence and/or examples.

In our view, it should be the decision of the NCA to decide on the frequency of the annual review of the supervised CSD. The NCA knows best about the business and current developments of the supervised CSD. For this reason, the decision on scope and frequency should be in the hands of CSD NCAs, whereby a review should be undertaken at least every three years. This would also be in line with proportionality, which is very important for small NCAs and CSDs. It should be avoided to make a single rule/requirement covering all CSDs, as they are different in size, complexity, business and organisation. With regards to the review of CSDs, we generally believe that the CSDR does not sufficiently take into account the principle of proportionality. Against this background, new criteria would need to be introduced, e.g. based on the model of the banking package on CRR II/CRD V, focusing on proportionality aspects such as size, risk and importance of institutes. Such „small and non complex CSDs" should benefit from more proportionate rules regarding the scope, the granularity and the frequency of the supervisory engagement.

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

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

Question 4.3. Please explain your answers to Questions 4.1 and 4.2, providing where possible quantitative evidence and/or examples. If you answered "no" to any of them or to both, please also specify which information and/or statistical data are not relevant or could

be provided on a less frequent basis.

The required amount of information for the review is very large and granular. In our view, this is not proportionate. CSD NCAs should have the possibility to decide (e.g. on an annual basis) which set of information is required and necessary for the review period. Therefore, NCAs could focus on the scope and depth of the review that they perform in the relevant period.

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?

In our view, more flexibility could be introduced for NCAs regarding the scope and depth of the review in order to consider proportionality. Further, NCAs should not be obliged to perform reviews e.g. for provisions or activities which have not been changed compared to the last review.

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

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

In our view, the roles and rights/duties of NCAs and relevant authorities are not always clear in CSDR. Thus, clear roles and duties should be assigned for those parties. However, this should only be applicable in cases where CSDR foresees a mandatory cooperation. Further cooperation, e.g. through colleges should not be introduced in CSDR mandatorily, but should be possible on request or on a voluntary basis.

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)?

In our view, ESMA already plays an important role in ensuring supervisory convergence with regards to supervision of CSDs. Supervision should stay in the hands of CSD NCAs and therefore we do not support ESMA having direct supervisory responsibilities.

2. 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.

Question 8. Question for issuers - 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

Question 8.1: Please explain your answer to Question 8, providing where possible quantitative evidence and/or concrete examples. [Insert text box]. Please indicate where possible the impact of CSDR on: (a) the number of CSDs active in the market; (b) the quality of the services provided; (c) the cost of the services provided.

Question 9. Question for issuers/CSDs – 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

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

Question 10. Question for CSDs – 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

Question 10.1: If you answered "yes" to Question 10, please explain your answer, providing where possible quantitative evidence and/or concrete examples.

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

Question 12. Question for CSDs – 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

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

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

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

In our view, CSDR already gives enough room for cooperation and information exchange among NCAs. Our experiences shows that cooperation among NCAs has been hampered in some cases mostly because of the way, in which certain NCAs interpret their duty of cooperation. Their respective attitude will not change with the introduction of colleges. Instead, there should be a clear definition in Article 23, what each NCA and relevant authority has to do in what time (clear roles with duties and rights).

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?

ESMA should have the mandate to further specify the roles and duties in the cooperation between NCAs and relevant authorities under Article 23 of CSDR.

3. 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,[9] while the format of reports is outlined in Commission Implementing Regulation EU 2017/393.[10]

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

[9] Commission Delegated Regulation (EU) 2017/391 of 11 November 2016 further specifying the content of the reporting on internalised settlements, OJ L 65, 10.3.2017, p. 44–47.

[10] Commission Implementing Regulation (EU) 2017/393 of 11 November 2016 laying down implementing technical standards with regard to the templates and procedures for the reporting and transmission of information on internalised settlements in accordance with Regulation (EU) 909/2014 of the European Parliament and of the Council, OJ L 65, 10.3.2017, p. 116–144.

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 Commission 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

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

We believe that the double counting of trades (for both sides of the trade) is not necessary as it is already clear that it is an internalised trade within the reporting entity. Thus, we believe that it is sufficient to count the volume only once (i.e. at trade level). Concerning the failed settlements, we believe that it would provide better insight if the data would be split between the number of trades affected and the number of days for failed settlement. This would provide NCAs with a better understanding whether it affects only few trades for long periods or a lot of trades with only short periods of failure. This should be a adequate compromise, as a detailed report of numbers of days for each individual failed trade would face more backdraft from the industry.

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.

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

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

We believe that the introduction of thresholds would not bring any simplification to the current reporting regime, as every small entity already had to implement a reporting system since Go-Live. In addition, they would need to continuously calculate whether they cross the given threshold and be ready to report the internalised settlement in such case (thus, they would still need to update their reporting system) unless the thresholds are set that high that they can fundamentally exclude to ever cross it. This could lead to a situation that a reporting entity needs to send data in Q1 and Q2, might be below the threshold in Q3 (i.e. not obliged to send data) and then crosses the threshold again in Q4. NCA's would never know if they forgot to send data in Q3 or are exempt and need to further investigate on a case by case basis to verify the completeness of data. We are not in favour of such an on/off situation, where it is not clear, e.g. by the type of entity, if the entity is exempt or not and the definition of the reporting obligation (its exemption) depends on a volatile criterion.

If you answered "yes" to Question 16, please also consider whether such a threshold should be set at national level or at Union level.

4. 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[11]) 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

[11] According to point (1) of Article 3(1) of the Commission proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 (COM/2020/593 final) 'distributed ledger technology' or 'DLT' means a type of technology that support the distributed recording of encrypted data.

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.[12] 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

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 (not a concern	2 (rather not a concern)	3 (neutral)	4 (rather a concern)	5 (strong concern)	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))					**X**	
Definition of					**X**	

[12] Proposal for a Regulation of the European Parliament and of the Council on a pilot regime for market infrastructures based on distributed ledger technology, COM/2020/594 final.

'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;				**X**		
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 Directive 2014/65/EU (MiFID II)				**X**		
Definition of 'book entry form' and 'dematerialised form'				**X**		
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				**X**		

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)				**X**		
What entity could qualify as a settlement internaliser, that executes transfer orders other than through an SSS				**X**		

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

Without going into further details as regards the answers to questions 18, we would like to re-emphasize that the Commission Proposal for a Regulation on a pilot regime on market infrastructures based on distributed ledger technology does not solve resp. adequately tackle central issues as regards the use of decentralised ledgers by CSD and thus in centralised systems:

The definitions of DLT market infrastructure (DLT-MTF and DLT-CSD) are misleading, as these have to be operated by a central instance and thus cannot constitute a DLT system. Both, the terminology and the proposed "solution" do not seem appropriate to allow secondary market trading for de-centrally deposited securities / financial instruments.

The description of the "DLT market infrastructure" conveys the impression that it is merely

a "solution" for off-chain trading of de-centrally stored assets. Such assets (e.g. ERC-20-tokens of the Ethereum-Blockchain) cannot be recorded by a central instance on a distributed (= decentralised) ledger. Therefore, the proposed Pilot Regime Regulation seems to be rather unsuitable for commonly used DLT-systems, Blockchain-protocols and assets based on them.

The envisioned approach does not seem to cover decentralised DLT-protocols. Does this mean that e.g. decentralised trading platforms (hence, no operator, as they are mainly operated de-centrally and autonomously through self-executing smart contracts) would be illegal under the new regime? Are there plans for provisions on how to deal with platforms and crypto-assets that do not have a central issuer/operator? Additionally, it should be considered that limiting the proposed Pilot Regime Regulation to traditional financial instruments (bonds and shares) that are non-liquid (see recital 12) may not inform European legislators regarding many pressing issues the market is currently facing, as many assets currently existing within the crypto-space would not fall within the scope of this proposed regulation. This may lead to the outcome that the full potential lying within the Pilot Regime in question may not be achieved. Important types of crypto-assets that already fall within the regulatory perimeter are not covered (e.g. units in AIF / UCITs). As it stands, these innovative (and often problematic) financial instruments in the crypto-space would not be covered – only the technical representation of the most basic financial instruments would be in the proposed Pilot Regime Regulation's remit. This could limit the usefulness of the information generated by this approach and may slow down the development of a more universal regime.

Furthermore, the option to waive (potentially any) existing legal obligations, which are in conflict with DLT, seems problematic from a same-business-same-rules as well as from a level-playing-field perspective (non-discriminatory technology-neutral application of EU law). In this context, it needs to be examined if the proposed approach is in accordance with EU primary law and national constitutional law (the possibility to potentially waive any legal obligation stemming from European law seems to be problematic considering the principle of legal certainty called "*Bestimmtheitsgebot*" of Austrian constitutional law). Moreover, such waivers could result in liability claims against NCAs depending on the national public liability framework.

The implementation of the Pilot Regime Regulation in connection with the purpose of the Regulation (Article 2 DLT-Pilot) is unclear. In particular, it is not clear how and in what role a CSD acts within the framework of a decentralized technical classification system (DLT). However, since the Pilot Regime Regulation stipulates that MTFs and CSDs are required to authorize trading in the context of DLTs, it remains questionable how this is implemented in practice. If a decentralized technical system is centralized, the purpose of the Regulation cannot be fully pursued.

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

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

As mentioned above (see answer to question 18.1.) we see a big challenge in combining the use of distributed ledgers with centralised systems necessary for CSDs and SSSs. Accordingly, there are certainly aspects and provisions of the CSDR and the corresponding delegated acts which may have to be amended/changed. However, we are not yet in the position to make concrete suggestions.

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

Question 19.1. Please explain your answer to question 19.

As already mentioned in our answers to questions 18.1 and 18.3, we see a huge challenge in combining the use of distributed ledgers with the centralised systems necessary for CSDs and SSSs. The same is true for crypto-assets in general and for making crypto-assets compatible with the book-entry requirements in particular. We are currently not in the position to make further proposals on how to best reconcile crypto-assets with the book-entry requirements.

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 standing for "not a concern" and 5 for "strong concern".

	1 (not a concern	2 (rather not a concern)	3 (neutral)	4 (rather a concern)	5 (strong concern)	No opinion
Rules on settlement periods for the settlement of certain types of financial instruments in a SSS				**X**		
Rules on measures to prevent settlement fails				**X**		
Organisational requirements for CSDs			**X**			
Rules on outsourcing of services or activities to a third par				**X**		
Rules on communication			**X**			

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

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

Please see our answer to question 18.1 stating general comments on the use of DLT by CSDs and operators of SSS.

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.

Please see above answers to question 18.1.

5. 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.

Questions for CSDs

Question 21.1 If you answered "yes" to Question 21, did you provide these services prior to the entry into force of CSDR?

☐ Yes

☐ No

Question 21.2. If you answered "yes" to Question 21, have you been authorised to provide those services under Articles 54 and 55 of CSDR?

☐ Yes

☐ In the process of the authorisation

☐ No

Question 21.3. If you were providing banking services ancillary to settlement prior to the entry into force of CSDR and you are not providing them anymore, or you limited their provision below the threshold as defined in Article 54(5), please explain the reasoning behind your decision.

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

Question 22.1: If you answered "no" to Question 22, please elaborate further and provide quantitative evidence and/or examples.

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?

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

☐ Yes

☐ No

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

Question 24.2: If you answered yes to question 24 and based on the quantitative evidence you might have provided to support your answer, how could the settlement of transactions in a foreign currency be facilitated? Please provide concrete examples.

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.

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

☐ Yes

☐ No

Question 26.1: If you answered "no" to Question 26, please explain why.

Questions for all stakeholders:

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

Question 27.1: Please explain your answer to question 27, providing where possible

concrete examples. If you answered "no", please provide where possible quantitative evidence (including any suggestion on different threshold levels).

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

Question 28.1: Please explain your answer to question 28, providing where possible concrete examples. If you answered "no", please provide where possible quantitative evidence.

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.

We do not have experience in this field, as there is only one CSD operative in Austria.

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

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

6. 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

Question 31.1: If you answered "yes" to Question 31, please specify what clarifications/targeted measures could provide further legal certainty.

As regards the recording of securities in book-entry form in a "CSD", it should be clarified whether in the context of Article 3 (para 2) CSDR, this means recording
- only **in a CSD** as defined in Article 2 para 1 No 1 CSDR (**"EU-CSD"**), which would exclude recording at any **third-country CSD** (as defined in Article 2 para 1 No 2 CSDR) **or**
- **in a EU-CSD or in a third-country CSD or** - in case the recording concerns securities constituted under the law of a Member State referred to in the second subparagraph of Article 49 para 1 - **in a third-country CSD recognised by ESMA** in accordance with Article 25 CSDR alternatively.

The current wording of Article 3 para 2 seems to imply the former interpretation [recording (only) in a (EU-)CSD as defined in Article 2 para 1 No 1 CSDR].

Furthermore, it should be clarified whether recording of securities in book-entry form in a EU-CSD also means that the global certificate/global note ("*Sammelurkunde*" in German) for such securities has to be registered with/kept by an EU-CSD (acting as issuer CSD) or whether the global certificate/global note may also be registered with/kept by a third-country CSD (acting as Issuer CSD) as long as there is at least also a recording of securities

in book-entry form in an EU-CSD (acting as investor CSD).

Question 31.2 If you answered "yes" to Question 31, please specify which provisions could benefit from such clarification and provide concrete examples.

Article 3 para 2 CSDR.

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

Question 32.2 If you answered "yes" to Question 32, please specify which provisions are concerned.

7. 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[13], 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

[13] Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline (OJ L 230, 13.9.2018, p. 1).

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

Question 33.1: If you answered yes to Question 33, please indicate which elements of the settlement discipline regime should be reviewed:
(you may choose more than one options)

☒ Rules relating to the buy-in

☒ Rules on penalties

☐ Rules on the reporting of settlement fails

☐ Other

Question 33.2: If you answered "Other" to Question 33.1, please specify to which elements you are referring.

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 (agree)	No opinion
Buy-ins should be mandatory					**X**	
Buy-ins should be voluntary	**X**					
Rules on buy-ins should be				**X**		

differentiated, taking into account different markets, instruments and transaction types						
A pass on mechanism should be introduced[14]				**X**		

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

Our main concern relates to the general process of the penalty collection as in our view it seems to be too complex. The envisaged penalty regime of CSDR could lead to duplicative requirements for CCPs, CSDs and the members and participants of both. This should be avoided as it increases complexity and potential for errors. Specifically, we believe that the current rules could lead to a parallel system for collection and distribution of penalties for failed settlements for CSDs, CCPs and their users. In our view, one single party should process the collection of penalties for settlement fails.

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

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.

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.

8. FRAMEWORK FOR THIRD-COUNTRY CSDS

[14] E.g. a mechanism providing that where a settlement fail is the cause of multiple settlement fails through a transaction chain, it should be possible for a single buy-in to be initiated with the intention to settle the entire chain of fails and to avoid multiple buy-ins being processed at the same time, and that where a receiving trading party in a transaction chain initiates the buy-in process, all other receiving trading parties in that transaction chain are relieved of any obligation to initiate a buy-in process

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

Question 37.1 If you answered "Yes" to question 37, please indicate which services of a third- country CSD you use.

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

Question 38.1. Please explain your answer to question 38. If "yes", please indicate what that end-date should be explaining your reasoning.

In our view, grandfathering rights should be timely limited. A concrete end-date still has to be developed.

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

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

Please refer to our answer to question 38.

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

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

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 (relevant)	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.

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.

9. OTHER AREAS TO BE POTENTIALLY CONSIDERED IN THE CSDR REVIEW

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)?

According to **Article 22 para 3 CSDR** *the competent authority shall ensure that an adequate resolution plan is established and maintained for each CSD so as to ensure continuity of at least its core functions, having regard to the size, systemic importance, nature, scale and complexity of the activities of the CSD concerned and any relevant resolution plan established in accordance with Directive 2014/59/EU.*

The establishment of a resolution plan that effectively ensures continuity of (at least) the core functions of a CSD is only possible if there is a resolution regime for CSDs in place in the respective national law or Union law [or if the CSD is subject to the bank resolution regime because it provides banking-type ancillary services and is accordingly authorised as a credit institution in accordance with Article 54 (f) CSDR), as effectively ensuring continuity of (at least) the core functions of a CSD is not possible under general insolvency law.

Accordingly, the EC should either propose a resolution regime for CSDs (including the possibility to transfer core functions to CSDs to other Member States as there is normally not more than one CSD in each Member State) in order to enable effective compliance with Article 22 para 3 CSDR. Alternatively, Article 22 para 3 should be deleted or amended as follows:

The competent authority shall ensure <u>on a best efforts basis</u> that an adequate resolution plan is established and maintained for each CSD so as to ensure continuity of at least its core functions.