Contribution ID: 9a5056a4-4e00-4931-a35d-cfee67db9a43
Date: 02/02/2021 11:12:57

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

Nikolaj

* Surname

Pilgaard

* Email (this won't be published)

npi@fida.dk

* 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

Finance Denmark

* 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.

* 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

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. **Fo r 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**

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- ○ **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.

It has been relatively expensive to create the reporting, and the reporting requires continuous controlling to ensure the data quality, so we are doubtful whether the costs meet the outcome.

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.

Some members have had rather significant implementation costs and experience considerable running costs, while others collect data based on existing basic data structures.

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.

Finance Denmark is of the opinion that ESMA should have the full overview of the settlement volume and quality within EU, and in order to get good data quality all settlement internalisers must report all data. That would also ensure that all financial institutions are treated equally, so all financial institutions pay and contribute to this statistic.

The monitoring costs whether or not there is a threshold will remain the same and costs to amend systems will be huge due to the complexity of data collection across systems and countries and we therefore don't support implementation of a threshold.

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 (not a concern)	2 (rather not a concern)	3 (neutral)	4 (rather a concern)	5 (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.

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 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.

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.

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.

Finance Denmark is of the view that there is a serious lack of clarity on the scope of application of the following requirements under CSDR and further legal certainty is needed:

1. Buy-in should not be implemented as per February 1, 2022 and should be thoroughly analysed and then changed to a voluntary option while penalties should be a sufficient tool for achieving the aim of the settlement discipline rules - see further Q 32.2, 33.2 and 34.1
2. Discretionary buy-in regime should only apply to regulated entities - see further Q32.2
3. Which legal entities fall under the settlement discipline
4. Which securities fall under the settlement discipline; and
5. Which types of transaction fall under the settlement discipline.

Ad 3. Which legal entities fall under the settlement discipline?
In the Commission delegated regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline (the "CSDR delegated regulation") define a trading party in Article 1(f) as a party acting as principal in a securities transaction referred to in point (i) of the first subparagraph of Article 7(10) of Regulation (EU) No 909/2014 (CSDR). A principal is not defined neither in the Level 1 text nor in the Level 2 text. This is a significant deficiency in the regulation since a trading party is imposed several obligations in the regulation such as the launch of a buy-in process. Finance Denmark urges the Commission to provide a clear definition of a trading party in the regulation.

A need for further legal certainty is also required in relation to the identification of which party/parties has the obligation to initiate a buy-in in the numerous and very different trading and execution flows, i.e., who act as principal for example where a client order is routed to another broker for execution.

Ad 4. Which securities fall under the settlement discipline?
To help the market, we urge the Commission to empower ESMA or another relevant body, to provide a dynamic list of all securities subject to settlement discipline. A list comparable to the FIRD's list but concentrated on the settlement discipline. So that an uncertainty between two counterparties, as to whether a security is subject to the settlement discipline rules under CSDR or not, is minimized as much as possible.

Ad 5. Which types of transaction fall under the settlement discipline?
CSDR settlement discipline regime should be amended to clarify that settlement fails arising in the context of (a) margin transfers (transfer of financial instruments in connection with derivatives transactions in

accordance with a master agreement to mitigate risk); and (b) physical settlement of derivatives are not subject to settlement discipline. The master agreements (ISDA as well as local master agreement) already provide for rights and obligations between the parties as well as remedies in case of a failure to deliver the financial instruments.

The scope of the buy-in provisions must refer to secondary market trades only. The CSDR recitals and the spirit of the law also indicate this. Clarification on portfolio transfers, collateral management recordings and primary market transactions as being out of scope of the buy-in provisions is important, since the buy-in would otherwise not make sense, neither economically nor with respect to the consequences. For example, a portfolio transfer without change of beneficial ownership should not result in a buy-in against oneself.

Finance Denmark is of the opinion that the buy-in obligations only shall apply to transactions that are marked with the transaction type purchase or sale of securities, according to CSDR delegated regulation Article 5(4) (a). For this to work a clarification and harmonization of the transaction types must be implemented on either level 2 or level 3.

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.

Article 1(f) in CSDR delegated regulation should be reviewed to give a clear definition of a trading party. In the current text there is a reference to the party acting as principal in a securities transaction, but since the concept of principal is not defined in the regulation this is of little guidance.

CSDR delegated regulation Article 28 and 30 should be reviewed to give a clear definition of which party has the obligation to initiate a buy-in process and what are the specific roles of the other parties as described in these articles?

With reference to the above concerning types of transactions CSDR Article 5 and 7(10) should be amended accordingly, including a narrowing of the definition in article 1 (f) of the CSDR delegated regulation.

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.

Finance Denmark is of the opinion that the buy-in regime shall be changed from a mandatory obligation to a voluntary option, please see Q 32.2 for further explanation. This change should be reflected in CSDR Article

7(3) and in the level 2 text. Only the penalty regime in the CSDR delegated regulation should take effect as of February 1, 2022.

Furthermore, it should be clarified that the buy-in option only applies to regulated entities on trading level and not on entities on CSD level or intermediaries in the chain, please see Q 32.2 for further comments regarding retail clients in a segregated market/direct holding market.

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.

No mandatory buy-in regime
Finance Denmark urges the Commission to reconsider the need for a mandatory buy-in regime. We do not believe that a mandatory buy-in regime is necessary if we have a well-functioning penalty regime. Please see for further comments on this in Q 34.1. Instead, there should be a discretionary right of the purchasing party to initiate a buy-in on a failed transaction, and the regulation should set out a high-level, harmonised framework for this process. The currently proposed buy-in regime removes optionality for end investors and raises transaction costs.

Should a mandatory buy-in provision remain applicable for transactions cleared on a CCP, we believe that there needs to be a provision in the legislation for deactivating (for a certain period of time) a mandatory obligation or a voluntary right to initiate a buy-in.
Following the migration of DKK to T2S, the Danish market experienced unforeseen settlement disturbances. One of the tools used by the community to avoid further stress to the market in the immediate weeks following the T2S migration, was to put the CCP buy-in regime on hold for DKK. This serious step was taken in close cooperation with market participants, market infrastructure (the CCP) and competent authorities. If such an option is not possible due to legislative limitations following the implementation of the Settlement Discipline Regime on 1 February 2022, the European post-trade market may be seriously challenged should a similar situation occur. Similarly, an option for deactivation could serve the same purpose in situations where other markets or technological issues causes disturbances, e.g. in relation to a single ISIN, a group of securities, a market or indeed even a CSD.
We therefore urge the Commission to re-consider the present wording of the Settlement Discipline Regime and take the above mentioned comments into account by way of including an option for the Competent Authority to deactivate buy-in.

Discretionary buy-in regime should only apply to regulated entities
Finance Denmark believes that there is an imbalance in which the buy-in rules affect segregated markets (by others also named direct holding markets) and omnibus markets respectively and, consequently, unjustified differences in the settlement discipline regime under CSDR applicable to the two different market structures.

Settlement of transactions in segregated markets are usually done at the CSD level which brings the settlement discipline rules in scope, cf. Article 5(1) and Article 7(10) of CSDR – as opposed to omnibus markets where settlement of a specific transaction does not take place in the CSD system. If our understanding of the buy-in regime is correct and, as a consequence of the fact that settlement in segregated markets is executed in the CSD system, a retail customer of a custodian bank (the ”Bank”), when acting as a trading party (e.g. vis-a-vis the Bank), is also subject to be in scope for the buy-in regime

when the transaction is not cleared and not executed on a trading venue.

The lack of a clear definition of a trading party as mentioned in Question 31.1 does also leads to, what we assume as an unintended consequence, that retail customers are bound to comply with the buy-in obligations.
If the buy-in regime also applies to retail customers, we see the following implications:
• it would be very burdensome on the retail customer to appoint a buy-in agent, if at all possible, as
o a retail customer does not have the competences or resources to comply with the buy-in obligations.
o a retail customer is not likely to have its own agreement with a buy-in agent in advance, and
o if the Bank is to appoint the buy-in agent on behalf of the retail client, this will come at a cost for the customer, who is also very likely to be required to provide collateral.
• the retail customer would be placed in a worse position than retail customers in omnibus markets who are trading with their own bank, as such transactions would presumably not be settled at the CSD level and thereby be out of scope of the buy-in rules of the CSDR (as only a net position – and not a transaction – would be settled at the CSD level).

There is an imbalance and unjustified differences with which the buy-in rules affect segregated markets and omnibus markets respectively resulting in a lack of level playing field between the markets.

We do not believe that the above-described situations were intended at the outset for which reason we encourage the Commission to revisit the regulation with the aim of ensuring similar rules for omnibus and segregated markets and reflecting the nature of risks and settlement efficiency within the different market structures. To this end, before introducing settlement discipline rules, specifically mandatory buy-in, thorough analysis of settlement failures and their root causes should be undertaken.

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
- [x] Other

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

5000 character(s) maximum

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

Firstly, we would like to underline the urgent need for clarification on the timeline for the review and possible amendments as well as the implementation date of February 1, 2022. Most institutions have three to six months' notice on amendments to contracts. This will force institutions to amend contracts with clients to be compliant with the CSDR delegated regulation "AS IS" this summer and well before there are any clarification and/or possible amendments by the Commission. This will be very costly if the CSDR delegated regulation is then amended later by the Commission. We therefore urge the Commission to publish a statement on further delaying the implementation date or granting a grace period from February 1, 2022 for at least 12 months to give institutions sufficient time to amend contracts.

Secondly, as mentioned in Q 32.1 the mandatory buy-in regime should be replaced be a voluntary buy-in regime and a provision for the possibility of suspension as mentioned in Q 32.2 should be added.

Thirdly, we are as mentioned in Q 32.1 concerned about retail customers being responsible for appointing a buy-in agent and provide collateral etc. This seems to be unintended consequences of the CSDR level 1 and 2.

Finally, it should not be mandatory to appoint a buy-in agent and instead the buy-in process should be inspired by the current market practices. CSDR delegated regulation Article 24 should be amended accordingly.

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.

The obligation to execute a buy-in should be converted into a voluntary right of a trading party to initiate and trading parties to incorporate provisions into relevant contracts ensuring that purchasers retain the right to activate a buy-in should they wish to do so. This should be supported by a Level 2 framework, in conjunction with market-led development of best practices, which lays out the common parameters for the buy-in process to ensure consistency in application across the market. All provisions related to the operational mechanics of the buy-in process, including details of the extension period and cash compensation process, should be removed from CSDR and instead follow market practice as appropriate. In this context, we deem it of critical importance to draft with the utmost care and attention the relevant rules which turn buy-in into an optional right.

Timing of CSDR review and the current application date for CDSR delegated regulation is critical. In our view it is imperative that significant changes to the Settlement Discipline Regime are agreed upon and, hence, that the current legal framework in CSDR delegated regulation will be amended. This also requires that competent authorities at national and EU level already at this point in time decide that CSDR delegated regulation, or at least the buy-in regime, shall not take effect at the stipulated date in February 2022 in order for the industry not to use further implementation resources on rules which are expected to be amended /deleted.

Furthermore, we would like to point to the issue of the possibility that there might not always exist a buy-in agent that can provide a buy-in service in some securities and/or markets. In such cases it will be impossible to comply with a mandatory buy-in obligation. Therefore, the rules on buy-in agents should be changed from mandatory to voluntary, meaning that a purchasing party should not be obliged to use a buy-in agent if a buy-in is initiated.

The addressee of the buy-in provisions should be changed: Buy-in rights and obligations should be placed on the trading parties, and not on the receiving and delivering CSD participants. The buy-in is a means to enforce obligations of a trading contract. Operational intermediaries should not be involved. Payment of buy-in costs and/or cash compensation should not require the involvement or responsibility of the CSD participant, please also see Q 32.1 and 32.2.

Finance Denmark believes that the penalty framework is an effectful tool in the aim for improving settlement rates. In fact, if the penalty rates have an adequate level it will have a preventive effect and a mandatory buy-in regime would not be necessary to implement. Based on this we suggest that the Commission look into the possibility of including a review procedure to periodically perform an impact study/market consultation followed by a review of the rates and recalibrate the applicable penalty rates to support the intentions behind the regulation.

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.

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.

Pls see Q 33.2

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

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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.

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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