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

Fields marked with * are mandatory.

Introduction

1. Background to this consultation

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

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

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

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

2. Report on the Regulation

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

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

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

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

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

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

3. Responding to this consultation

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.

As per the suggested answers above, the AMF and Banque de France note that most of the CSDs in the Union have already been authorised under CSDR. It is therefore preferable not to change the authorisation rules, which could complicate the process and delay the authorisation of CSDs that have yet to obtain it. On the contrary, the authorization period, that was opened for years, should now be brought to a swift conclusion: therefore, the grandfather clause could end in 2022. In addition, such an unlimited extension could possibly create an unlevel playing field situation with regard to the roll-out of new activities. For instance, the Pilot Regime Regulation (PRR) as it is currently drafted an authorization under CSDR being granted before any DLT experimentation is undertaken while others could immediately embark on the experiment with the benefit of the grandfather clause. If the grandfather clause was not to be amended, it should be clarified that a CSD with pending authorization under CSDR should not be authorized to roll-out new activities such as DLT experiment.

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

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

Question 2.1 Please explain your answer to Question 2, providing where possible examples, and indicating what the end date for the grandfathering clause should be:

5000 character(s) maximum

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

Please see answer to question 1.1 above. The delays in the authorisation of certain CSDs tends to create an unlevel playing field among the industry, since some CSDs are still subject to the transitional provisions and therefore to rules different from the CSDs already authorised under CSDR (e.g. passeporting rules).
The grandfather clause could end in 2022.

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

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

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
- ○ 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.

The annual frequency pace of R&E involves the inevitable repetition of a significant amount of data and facts from one review to another. Moreover, the various findings are likely to be repeated in the same dynamic. Given the pace of change in major regulatory and operational management projects, it may be more appropriate to space out annual reviews. Article 22 could be amended in order to have a less frequent R&E, such as on a tri-annual basis for example. A new version of this article could however provide that the competent authority may, per topic and based on its analysis, determine that a more frequent review and evaluation is necessary.

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 4.3 Please explain your answers to Questions 4.1 and 4.2, providing where possible quantitative evidence and/or examples, also specifying which information and/or statistical data are not relevant or could be provided on a less frequent basis:

5000 character(s) maximum

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

The issue is more on the frequency than the information and data to be provided in the context of the review and evaluation. If the frequency is changed, the content of the information provided by CSDs in this context is still 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.

No.

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.

The exchange of information and cooperation between authorities provided for in Articles 13 and 14 should be clarified and strengthened. If the Regulation refers the responsibility for the approval and supervision of the CSD to the sole competent authority of the home Member State, the gradual pan-Europeanisation of

CSDs or groups of CSDs, must be supported by a more fluid, timely-provided sharing of information between the competent authorities of CSDs.
In order to facilitate the provision of cross-border services and the development of pan-european CSD activities, whilst avoiding the risk of forum-shopping behaviours, it is necessary to ensure a great level of harmonization of supervisory and communication practices between NCAs, ESMA and RAs.
In that view, AMF and Banque de France could consider strengthening cooperation in terms of supervision, including through colleges.
AMF and Banque de France could also consider including new provisions creating requirements specifically for a closer cooperation between NCAs of CSDs that belong to a same group.

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.

An enhanced role of ESMA could be envisaged, both with further empowerments of RTS and / or guidelines, and an enhanced role in colleges (under the conditions that CSDR colleges are considered as supervisory colleges as defined by regulation 1095/2010). The French authorities support the idea of including in CSDR the requirement for CSDs to set up mandatory colleges in the two following cases : (i) a CSD acquires substantial importance in several Member States and (ii) two or more EU CSDs are owned by a single parent company (in which case a college should be set up at the level of such parent company)).

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.

Given the substantial importance for the functioning of the securities markets of the compliance by issuers with national corporate or similar laws, it is not desirable that the granting of the passport becomes automatic. This is a key point for the French authorities.

However, the passport granting process could be standardised and clarified in order to streamline and harmonize the procedure and limit the bureaucratic burden on the CSDs but also on the NCAs that transmit their applications. In particular, the requirements regarding "the measures the CSD intends to take to allow its users to comply with the national corporate or similar law" referred to in Article 49(1) should be better specified and should not lead to additional requirements being imposed through national law to passeported CSDs in addition and beyond the requirements of CSDR.

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 10.1 If you answered "yes" to Question 10, please explain your answer, 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.

The main challenges faced during the passeporting process generally pertain to the perimeter of the CSD responsibility towards the compliance by the issuer with the national laws as well as the perimeter of the national laws to be taken into account by the CSD which by essence is limited to the provision of the core services.
Regarding the laws to be considered, the main issues identified are as follows:

- the scope of host Member State laws and provisions to be considered for the purpose of evaluating the assessement of the measures intended to be taken to allow the users to comply with the national laws;
- the diversity of national laws that need to be considered, that makes each request specific;
- the heterogeneity of proposed measures by CSD to take into account national law that varies from CSDs that put the burden on the issuer itself as a condition for admission of securities without further conditions, to the detailed explanations by the CSD of the various setup of issuances processes for which the host MS is not necessarily familiar with.

Moreover, it is not clear in CSDR which national law Article 49(1) of CSDR refers to, in particular, when the financial instrument issued is a bond. The answer to this question in the Q&A 9 does not seem efficient since it could imply that for a single issuance in respect of which it provides core services a CSD might be required to request two separate passports (i.e. one in the Member State of the issuer and one in the Member State from which the national law has been contractually chosen by the issuer).
This situation might create additional delays and is therefore not in line with the objective of CSDR to facilitate the provision of CSD services on a cross border basis. This issue should be tackled in Level 1 of CSDR with a view to streamline the process and to ensure that only one passport would be required for any one issuance.
Regarding the process, AMF and Banque de France noticed that the following topics may create hurdles:

- the review by host Member State NCAs of the assessment of the measures the CSD intends to take to allow its users to comply with the national law referred to in Article 49.1 (which is sometimes very detailed);
- the imbalance between the time allotted by CSDR for the host MS to review the application and the complexity of the issues at stake ;
- the only interaction contemplated in CSDR regarding the “freedom to provide services in another Member State” is either to grant or to refuse the notification, whereas the notification that is received may be lacunar, incomplete or elaborated with a different reading of CSDR requirements (as an example the French AMF has received notification which do not contain any assessment of the measures since they were deemed not relevant – even after the Q&A was published).

AMF and Banque de France also note that it is not clear in CSDR under which conditions the host MS NCAs may reject the assessment to be carried out in accordance with article 23.3(e) and, in such case, what are the criterion that are used to do so and whether the passporting process should thus be put on hold until the issue is resolved.
AMF and Banque de France appreciate that this issue was dealt with at ESMA level by limiting the number of iterations and clarified in CSDR Q&A 9, but it would seem more appropriate to clarify these issues in Level 1 or Level 2 of CSDR directly.
In light of the above, it would be useful if the Commission could adopt, in coordination with ESMA, a delegated act specifying the topics mentioned below and currently only addressed at Level 3 through Q&A9:

- the scope and content of the passporting applications in terms of services and financial instruments (this could be based on answers (a), (b) and (c) of Q&A 9);
- the timing of the passporting application (i.e. that a CSD applying to be authorised under CSDR should be able to submit passporting applications during the authorisation process, the passporting application depending of the outcome of the authorisation process). This would replace answer (d) to Q&A 9, which was a temporary fix to a more structural issue in CSDR. This would also require a change in article 23(2) of CSDR in order to replace “authorised CSD” by “authorised CSD or applicant CSD”;
- which changes should be considered as changing the range of services provided within the territory of a host Member State (this could be based on answer (e) to Q&A 9); and
- the process that host NCAs should follow when refusing to approve an assessment made in accordance with article 23(6) of CSDR (this could be based on answer (g) to Q&A 9).

This delegated act could be provided for by a new paragraph 8 in article 23 (and amended article 67).

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.

AMF and Banque de France believe that the establishment of supervisory colleges is consistent with the objective of a competitive single market and would be the adequate location for the exchange of information between competent authorities. These colleges are already envisaged by Article 24.4 para 2, but only where the CSD has acquired systemic importance in more than one Member State.
AMF and Banque de France therefore support mandatory colleges for the monitoring of the activities of the CSD when : (a) a CSD has acquired substantial importance in several Member States or (b) two or more EU CSDs are owned by a single parent company, and clearly state that these colleges are supervisory colleges in the meaning of Regulation 1095/2010.
In any case, an improvement of crossborder exchange of information and supervision becomes necessary with the rise of passeported services and at a later stage, the possible consolidation of the sector around increasingly systemic firms. To follow such a trend will also enhance the credibility of European supervision vis-à-vis third countries and to improve the attractiveness of European financial markets.

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

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An enhanced role of ESMA could be envisaged, both with further emporwements of RTS and / or guidelines, and an enhanced role in colleges (under the conditions that CSDR colleges are considered as supervisory colleges as defined by regulation 1095/2010). The French authorities support the idea of including in CSDR the requirement for CSDs to set up mandatory colleges in the two following cases : (i) a CSD acquires substantial importance in several Member States and (ii) two or more EU CSDs are owned by a single parent company (in which case a college should be set up at the level of such parent company)).

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.

AMF and Banque de France consider that the information provided by settlement internalisers is useful. However, the entry into force of the reporting obligations and the use of the resulting data is still relatively recent. Quality of the data needs to be improved before drawing definitive conclusions regarding the relevance and efficiency of this reporting.

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

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

5000 character(s) maximum

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

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

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

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

Please indicate:

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

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

Rather than introducing thresholds, which would not necessarily simplify the process, it is preferable to focus for the time being on improving the quality of these data. AMF and Banque de France also note that the introduction of thresholds would raise questions as how to monitor compliance with such thresholds as well as regarding the most relevant criteria to set them. Given the recent implementation of such reporting obligations, it seems too early to be in a position to carry out a meaningful cost-benefit analysis regarding the potential creation of thresholds.

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.

The pilot regime which intends to foster innovation by allowing experimentations with some derogations to certain specific provisions of CSDR would be sufficient at this stage, depending on the outcome of the ongoing discussions in its respect.

The debate regarding technological neutrality however remains open at this stage. The AMF would like to point out that it has published in March 2020 a paper on its website regarding the application of financial regulations to security tokens, which includes developments regarding CSDR aspects (available in English : https://www.amf-france.org/fr/sites/default/files/private/2020-10/legal-analysis-security-tokens-amf-en.pdf).

Finally, further clarifications could also be made to the definitions of the SFD, on which CSDR definitions are also grounded. Those changes to these definitions should be carefully weighed, given the structural and broad impacts they may have on all systems and more generally on financial markets.

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

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

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

5000 character(s) maximum

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

In that respect, the future pilot regime will help to identify these other changes

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.

In line with what France had suggested in its April 2020 response to the Commission's crypto consultation, ESMA could clarify through a Q&A that the “dematerialised form” defined in article 2.1 4) may encompass the DLT.
However there is no need for immediate change in CSDR on this matter as stated before, taking into account the fact that the Pilot Regime is precisely designed to assess the materiality of the issue.

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

5000 character(s) maximum

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

AMF and Banque de France remain committed to a strict separation of central depository and banking activities in order to avoid importing a risk of bankruptcy due to banking activities on the CSD's core activities. Indeed, while the three functions of a central depository present mainly operational risks that are unlikely to lead to a failure, the banking services present credit and liquidity risks which may have knock-on effects.

However, a reassessment of the thresholds of the exemption defined in Article 54.5 for access to commercial bank liquidity in foreign currency could be considered: it would allow CSDs without a banking licence - and therefore not taking any risk - to offer settlement in foreign currency. However, this recalibration will have to be defined carefully: protection against contagion of risks related to the ancillary activities of a settlement bank to settlement activities is indeed a major concern in order to avoid introducing significant credit and liquidity risks in settlement mechanisms. Experiences over the last decades have shown that small exposures could have broad spill over effects into the financial system, any new calibration should therefore remain cautious.

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 28.1 Please explain your answer to question 28, providing where possible concrete examples:

5000 character(s) maximum

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

Reviewing Article 54.4(d) could be considered with a view to enlarge the possibilities for third party providers to carry out other activities that would make their business model viable. Any changes in this respect should however take into account the risks that such other activities may generate for the designated credit institution and, eventually, for the CSD.

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.

One argument generally brought forward is the fact that due to the limited activity and the limited number of potential transactions such kind of credit institutions would not be viable from an economic standpoint.

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 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.

The scope of the penalties and buy-in mechanisms could be further clarified. In particular, AMF and Banque de France note that, as per the current provisions of Article 7, the buy-in mechanism may apply in the context of corporate actions, which would not make sense. A clarification of the scope of the notion of "transaction" in this context could be useful or, alternatively, an exclusion of corporate actions from the buy-in mechanism.

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.

See answer to the previous questions

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
- [ ] Rules on penalties
- [ ] Rules on the reporting of settlement fails
- [ ] Other

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

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

	1 (disagree)	2 (rather disagree)	3 (neutral)	4 (rather agree)	5 (fully agree)	Don't know / No opinion
Buy-ins should be mandatory	( )	( )	(●)	( )	( )	( )
Buy-ins should be voluntary	( )	( )	(●)	( )	( )	( )
Rules on buy-ins should be differentiated, taking into account different markets, instruments and transaction types	( )	( )	(●)	( )	( )	( )
A pass on mechanism						

should be introduced	○	○	○	○	◉	○
The rules on the use of buy-in agents should be amended	○	○	○	○	◉	○
The scope of the buy-in regime and the exemptions applicable should be clarified	○	○	◉	○	○	○
The asymmetry in the reimbursement for changes in market prices should be eliminated	○	○	○	○	◉	○
The CSDR penalties framework can have procyclical effects	○	○	○	○	○	◉
The penalty rates should be revised	○	○	○	○	○	◉
The penalty regime should not apply to certain types of transactions (e.g. market claims in cash)	○	○	○	○	○	◉

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

5000 character(s) maximum

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

Please see answer to question 36 below.

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.

AMF and Banque de France would like to stress that the Commission has made the right choice in deciding to postpone the entry into force of the settlement discipline regime (SDR). The chosen date gives enough time to the markets participants, who have been able to adapt their timelines to the Covid situation and have a longer period to deploy the IT solutions necessary for the application of the SDR.

However, a distinction could be made between penalties and mandatory buy-in. While there is agreement that penalties should improve DvP, not only do the criticisms that were made against buy-in remain, but they were also reinforced during the Covid crisis, which highlighted some of the negative consequences that the regime could have. Rather than considering some exclusions that could be needed (such as collateral, triparty or DBV repurchase transactions), it is necessary to reflect on the usefulness of a more phased-in

approach whereby the entry into force of the buy-in provisions would be further postponed whilst the penalties mechanism would not. This would allow all stakeholders to have a sufficient insight and studies regarding the efficiency of the penalties mechanism alone on settlement efficiency in order to be able to determine, as a second step, whether the buy-in mechanism should remain mandatory.

In any case, by the time (and if) it is eventually implemented, the buy-in regime should be review in order to tackle some issues already raised by the industry (e.g. pass-on mechanism, asymmetry of payments, role of the buy-in agent).

Finally, consideration could be given to entrusting the ESMA, under a mandate from the Commission with the maintenance of a database of securities subject to the settlement discipline regime (SDR), streamlining, in particular, the access to a reference price.

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 38.1 Please explain your answer to question 38:

5000 character(s) maximum

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

AMF and Banque de France agree that it is difficult to assess at this stage the effectiveness and efficiency of the third country system. However, it could be useful to analyse, whether i) the grand-fathering clause set up by Article 69.4 does not allow third country CSDs to offer services to EU investors by exempting themselves from the CSDR provisions; ii) the text does not give rise to requirements for extra-territorial supervision of EU CSDs in particular in the case of settlement of financial instruments constituted under a third country law.

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.

A notification requirement may be useful in order to have a better view as to the situation of cross-border provision of services by Third country CSDs.

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.

This cannot be excluded when third country CSDs benefit from the grandfathering clause. It should be noted in this respect that the unlevel playing field might become a bigger issue once the settlement discipline regime enters into force.

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.

AMF and Banque de France support the idea of clarifying term "financial instruments constituted under the law of a Member State" in Article 25(2) of CSDR in order to have a clear and common understanding of the relevant criteria (i.e. law of the issuer or law of contractually elected).

AMF and Banque de France also supports the idea of enhancing ESMA’s supervisory tools over TC CSDs. This would be consistent with the increased role of ESMA regarding third country supervised entities (e.g. in the context of the benchmark administration as well as supervision of CCPs) and would ensure a common EU supervisory approach toward third country CSDs.

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

5000 character(s) maximum

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

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

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

5000 character(s) maximum

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

- AMF and Banque de France note that there is not necessarily a resolution authority designated in each European country, given the fact that CSDs were not included at European level as entities that should be subject to resolution regulation. In the absence of a resolution authority, it is currently unclear who is in charge of drafting the resolution plan mentioned in Article 22.3. Adding, in this article, a reference to resolution plans established by the CSD or its resolution authority, as applicable, would help clarifying that without a resolution authority, the CSD itself drafts its resolution plan.

- CSD links are fundamental to improve the primary market distribution of securities and provide support to secondary market transactions, especially in cross-border situations. Therefore, it would be useful to add to the procedure for CSD links a deadline for the operational implementation of this link once an agreement on the request access has been granted.

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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