Contribution ID: 9802ee30-3c82-4a32-b2f7-fd59be7838ec
Date: 02/02/2021 17:58:42

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

---

* 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

Lucie

* Surname

Gallagher

* Email (this won't be published)

lgallagher@euronext.com

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

- ○ Central Counterparties (CCPs)
- ◉ Central Securities Depositories (CSDs)
- ○ Other

* Organisation name

255 character(s) maximum

Euronext

* 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.

17804464809-28

* 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)

- [x] 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.

[x] 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.

The Euronext Group (through its CSDs Interbolsa, Euronext VPS and VP Securities) believes that, by and large, the application process does not necessitate refinement or any major clarifications in the Regulation or the relevant Delegated Acts.

It is true that in some cases the process can be somewhat burdensome and lengthy due to the complexity of the CSDs' businesses as well as the high level of requirements set out in CSDR. However, given that most of the CSDs in the Union have already been authorized under CSDR, there is not a strong case for amending the authorization process.

That being said, the Euronext Group does point to some difficulties related not so much to the authorization process but rather the Review & Evaluation process (R&E) as described in our responses to questions 3 and 3.1.

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:

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

An end-date cannot be contemplated without introducing serious disruptions to the market.

In relation to this question, it is also relevant to mention that CSDR was not included in the EEA Agreement before 1 January 2020. For CSDs from EEA-countries, the deadline for application was 30 June 2020. For CSDs from EEA countries, time is need for the authorization process in line with what has been the case for EU CSDs.

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 Review and Evaluation (R&E) is a yearly process by which national competent authorities (NCAs) need to review and evaluate any significant changes which have been made since the initial CSDR filing or the previous R&E.

The Euronext Group would see merit in amending the frequency of the annual review process so that it be carried out by the NCAs over a period of at least three years instead of one year as currently established. The current process can be seen as being time and resource consuming, with no real and effective benefits in terms of CSDs supervision seeing as NCAs have ongoing supervisory powers and that, under CSDR, any change to the information formerly provided must be notified by the CSD to its NCA without undue delay.

Indeed, it is important to take into account NCAs' ongoing supervisory activities when considering the frequency of the Review and Evaluation process so that the process truly brings added value and is in line with what should be a primarily risk-based supervisory approach (as opposed to a detailed administrative and consequently burdensome approach).

In essence, we do not believe that a change of frequency of the Review and Evaluation process will lead to a ‘supervisory gap’ in light of the ongoing supervisory powers that NCAs have at their disposal and the requirement for CSDs, as well as CSDs independent auditors to promptly inform its NCA of any substantive changes affecting the compliance with the conditions for authorisation as provided by Article 16(4) of CSDR.

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.

- [x] 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:

5000 character(s) maximum

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

N/A

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.

For the time being, the Euronext Group does not believe that there are specific aspects of the Review and Evaluation process, other than its frequency that should be examined in the CSDR Review. Indeed, it is still too early to undertake a full review of the review and evaluation process as outlined in CSDR.

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
- [x] 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 Euronext Group is supportive of furthering supervisory convergence across the EU. There is however a need to recognize the importance of national supervisors' understanding of the practical operations of the entities they supervise and the primary role that they have to play in their respective jurisdictions.

At this stage, the Euronext Group does not see a case for making any radical changes to the current framework as a means of enhancing the cooperation among all authorities (NCAs and Relevant Authorities) involved in authorization, review and evaluation of CSDs (e.g. through colleges).

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.

Fostering supervisory convergence is important to ensure consistent and efficient supervision. The Euronext Group believes that ESMA and EBA have a role to play in furthering such convergence in the CSD space. For this, ESMA and EBA can use the tools they currently have at their disposal to further supervisory convergence. Indeed, we believe the ESAs' current governance structures should enable them to provide a forum for open dialogue and exchange of information, and contribute to the current efforts of convergence. For example, the peer review could be a way of increasing cooperation among supervisory authorities where warranted.

We urge that any proposed changes to the current supervisory framework and powers should primarily address proven gaps and shortcomings that prevent the NCAs and ESAs from fulfilling their current mandate correctly. It is imperative that the current role of NCAs and the principle of subsidiarity not be compromised. Interaction and proper allocation of roles between the ESAs and NCAs are vital elements of the supervisory system, bringing together local expertise, direct contact with market participants and, crucially, local accountability, with a European overview of supervisory standards and convergence practices.

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.

It is our assessment that despite the passporting regime introduced by CSDR, cross-border activity, namely the possibility for CSDs to offer services as Issuer CSDs for instruments issued under the law of another Member State has not sufficiently increased. Overall, the passport process has regrettably been significantly more burdensome than what was intended by the legislator.

CSDR provides a framework for the free provision of CSD services, as well as the free issuance of securities, in any EU / EEA Member State. Nevertheless, the rules in CSDR Article 23 – together with divergent application by National Competent Authorities (NCAs) of Article 23 and the closely related Article 49.1 list – have reduced the possibility for CSDs to offer services as Issuer CSDs for instruments issued under the law of another Member State.

It is crucial to address this issue since the rules as currently set out in Article 23 – together with divergent application by National Competent Authorities frustrates the CSDR objective to enable opportunities for cross-border activities by CSDs within the European Union. If this issue is not addressed, the current trend could ultimately stifle the development of cross-border activity and competition of CSDs in the European Union especially for the provision of core services, particularly issuance.

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.

The Euronext Group, through its CSDs Interbolsa, Euronext VPS and VP Securities, believes that there are aspects of CSDR that would merit clarification in order to improve the provision of notary/issuance, central maintenance and settlement services across borders within the EU.

The fundamental issue stems from the fact that authorisation under CSDR does not grant automatic passporting rights. The supplemental authorisation required in Article 23, combined with divergent application, frustrates cross-border activity and has the potential to ultimately harm competition of CSDs in the European Union.

Indeed, having to apply for a very large number of passports undoubtedly represents a lot of costs and is a particularly burdensome endeavor. The sheer number of passports one has to apply for under CSDR points to the burdensome nature of the framework as it is currently set out. In addition, it is worth noting that the burden and costs associated with the passporting regime are that much greater in a situation where uncertainties regarding the implementation of the passporting regime remain.

The current situation frustrates the objective of CSDR to improve the provision of notary/issuance, central maintenance and settlement services across borders within the EU. Having to apply for a new passport each time a CSD wants to expand their service offering to another country has the potential to deter CSDs from expanding their cross-border offering. Whilst it possible under CSDR for CSDs to provide cross-border services, the current framework greatly slows down the pace at which CSDs can truly develop their offering in order to provide more cross-border services to serve more countries in the EU. In light of this, the current framework can be viewed as an obstacle to furthering competition of CSDs in the European Union contrary to the goal of the Capital Markets Union (CMU).

The current framework for passporting needs to be adapted in order to enable more cross-jurisdictional issuances in the EU thus enabling issuers to reach investors in other EU jurisdictions and foster competition in the EU.

For this, Euronext Group proposes that authorization under CSDR should grant full passporting rights to CSDs. It is our view that CSDR authorized CSDs should not have to conduct any further authorisation or notification process in any EU Member State different from the home Member State.

Euronext Group would underline that bonds and shares are different markets with different dynamics. Bond markets are very dynamic and competitive - the complexities of the passporting regime are therefore particularly problematic for the issuance of bonds since they harm CSDs' ability to attract bond issuance from abroad. In light of this, an alternative to the proposal above would be to have a simplified and more efficient passporting regime set out in CSDR which is explicitly limited to shares rather than to "transferable securities". Limiting the scope of Article 23 only to shares would make sense since this would greatly simplify the determination of the host Member State. Indeed, the determination of the relevant host Member State is easier for shares because the law that usually governs the shares is the law of the issuer. This is not the case for bonds where different laws can apply such as the law of the issuer (for corporate aspects) or the law (s) contractually chosen to govern some (economic) rights. It is worth noting that, ESMA makes a similar assessment of the situation on this point in its November 2020 Report to the European Commission on cross-border services and handling of applications under Article 23 of CSDR (p.35). In such a scenario it is our view that not only bonds but also funds should be excluded from the scope of the passporting regime in order to motivate the funds to be registered with a CSD as it is a much safer environment compared to the transfer agents.

One way of making a passporting regime that is limited to shares more efficient than the passporting regime currently in place would be for the CSDR Article 49.1 list for each country to only contain specific individual law provisions (and not general references to various legislative instruments), and have each provision contain a thorough explanation of why it is deemed relevant for foreign CSDs to comply with.

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.

CSDR has unintentionally introduced barriers in areas which touch upon cross-border service offering by CSDs, especially for core services resulting in complex and costly analyses and delay in passport process for services that have been offered by a CSD for decades (typically on debt instruments). Level 2 legislation has further aggravated this situation and includes exchange of information and formal supervisory co-operation arrangements whenever such cross-border activity is deemed significant in the host Member State.

As a result, CSDs have experienced the passporting process to lead to unintended barriers at EU level.

Some of the difficulties encountered by CSDs during the process of obtaining the CSDR passport include:

- Additional reporting requirements;
- The divergent requirements from different NCAs with regard to the reading of Article 23 and Article 49;
- More information and data to support the application in comparison to the ones required by European legislation and Supervisors;
- More direct involvement in the supervision on the requesting CSD;
- CSDs can no longer allow issuers to issue securities according to the law of an EU Member State other than the one where securities are centrally held unless they have received authorisation from that Member State.

Many obstacles also result from the level 2 and level 3 legislation.

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.

The difficulties encountered by regulators in applying the passporting regime means that it is currently not possible to answer in how many Member States we currently serve issuers by making use of the CSDR “passport”.

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.

Euronext Group believes that the complexity of the passporting process has not necessarily prevented CSDs from offering issuer-CSD services in the country of establishment of the CSD for securities constituted under the laws of another Member State. It has, however, seriously slowed down and frustrated such ambitions.

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.

The Euronext Group is supportive of furthering supervisory convergence across the EU. There is however a need to recognize the importance of national supervisors’ understanding of the practical operations of the entities they supervise and the primary role that they have to play in their respective jurisdictions.

At this stage, the Euronext Group does not see a case for establishing colleges for the Article 23 process as a means of improving the cooperation among NCAs in this area.

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.

Fostering supervisory convergence is important to ensure consistent and efficient supervision ensuring that the legislation is implemented as intended by the legislator. The Euronext Group believes that ESMA and EBA have a role to play in furthering such convergence in the CSD space. For this, ESMA and EBA can use the tools they currently have at their disposal to further supervisory convergence. Indeed, we believe the ESAs' current governance structures should enable them to provide a forum for open dialogue and exchange of information, and contribute to the current efforts of convergence.

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.

Euronext Group does not have a detailed view on whether the data established in Article 2 of Commission Delegated Regulation (EU) 2017/391 meets the objectives of relevance, effectiveness, EU added value, coherence and efficiency.

Nevertheless, Euronext Group would briefly note the large volumes of settlement internalisation reported in the ESMA report on CSDR Internalised Settlement dated 5 November 2020. Euronext Group supports the findings of the ESMA report and believes that they deserve deeper consideration of authorities.

We also support continued monitoring of the settlement internalisation volumes. We believe that the authorities should be particularly attentive to the possible attempts of circumventing the CSDR requirements, such as circumventing the settlement discipline (SDR) requirements by means of further settlement internalisation. Risks of settlement internalisation should be continuously monitored, and measures could be taken by the authorities where appropriate.

It is of particular note, that internalised settlement in connection to the above, creates implications from a tax perspective as these changes of beneficial ownership are not communicated to the CSDs. Thus, creating reconciliation problems down the chain and, hence, potentially leading to short selling scenarios.

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.

N/A

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.

N/A

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 Euronext Group, through its CSDs Interbolsa, Euronext VPS and VP Securities believes that CSDR level 1 is a technology-neutral legislation for CSDs to service crypto-assets considered as MiFID financial instruments. In light of this, Euronext Group does not believe that there is any particular issue to note in the level 1 text when using a permissioned DLT platform with a centralised validation model. CSDR is indeed technology-neutral, as demonstrated by the existence today of regulated CSDs using DLT. For this reason, Euronext group has indicated all requirements listed in question 18 as 'not a concern'.

Generally speaking, we do not see any incompatibility per se between technology and the CSDR framework which we view as being technology neutral. It our view that any adaptations of the CSDR regulation in relation to DLT needs to be looked at within a properly calibrated DLT pilot regime. The main benefit of a Distributed Ledger Technology (DLT) Pilot Regime lies in its ability to gather all DLT initiatives in a supervised innovation hub. This would provide room for experimentation while ensuring regulatory oversight of the activities, services and products, particularly in respect of investor protection.

We believe that the DLT Pilot Regime should be framed by appropriate quantitative thresholds which would be both enable (i) to ensure systemic risks prevention and a sufficient level of investors protection and (ii) enough room to enable experimentation on the relevant market segments. The current thresholds defined by the EU Commission in its proposal for a DLT pilot regime (€200m market capitalisation for equities and €500m issuance size for bonds) would open-up the pilot to more than 50% of equities and bond instruments listed in Europe (source: FESE, 2020). Euronext believes these thresholds, for the initial pilot phase, should be narrowed to €30m market capitalization for equities and €30m issuance size for bonds, which would already enable to run the pilot on c.30% of equity and bond instruments listed in the EU (source: FESE) and specifically enable the new DLT infrastructures to address the most relevant segment for this experimentation; i.e. capital raising and investments in start-ups and scale-ups. This market capitalisation threshold takes into consideration:

i) the average amount of initial capital raised by start-ups and scale-ups via "standard" (i.e. non DLT) private equity markets (which amount to the issuance of €10.5m on average in Europe in 2019, source: Invest Europe) and via securities token offerings (which amount to €8.0m per capital raise on average globally, source: PWC) ; and,
ii) A comfortable buffer to allow growth in valuation over the course of the pilot regime, set at 200% (thereby converting the average equity issuance of €10m into a €30m equity market capitalisation threshold). By way of comparison, the benchmarks in the valuation growth of non-DLT start-up and scale-ups on public markets amount to +28% for the Tech 40 index and +46% for the Biotech index in total over a 5-year period. Source: Euronext, 2020 YTD.

In addition, Euronext recommends a bond issuance threshold of €30m and, consequently, the threshold on the total market value that a DLT MTF/CSD can record, to be set at €400m.

These thresholds broadly reflect the current range of DLT ecosystems in the scope of the DLT Pilot Regime, allowing for an experimental framework which would be conducive to attracting investor interest in this new technology, whilst safeguarding issuers and investors. These would allow for the introduction of regulatory exemptions but with a more appropriate size of the DLT Pilot Regime. It is our view that this approach is proportionate as it promotes innovation while maintaining thresholds that protect the continued trust in 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 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.

Book-entry accounts are technically also digital in nature and not physical accounts, so it is difficult to imagine why DLT Addresses would not constitute accounts in the same way (assuming we talk about account-based DLT as opposed to the UTXO model).

This view is confirmed by ESMA in its Advice on ICO and crypto-assets published in January 2019 CSDR does not prescribe any particular method for the initial book-entry form recording, meaning that any technology, including DLT, could virtually be used, provided that the book-entry form is with an authorised CSD.

There are examples today of CSDs that use DLT to record securities, in particular commercial papers.

That being said, Euronext would underline that the book entry requirements rely on the identification of someone but DLT is offering is possibility of having no book operator. That is however something that cannot yet be readily defined.

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.

For Euronext Group, CSDR level 1 is technology-neutral for CSDs to service crypto-assets considered as MiFID financial instruments. Because we do not believe there is any particular issue in the level 1 text when using a permissioned DLT platform with a centralized validation model, all requirements listed in question 18 have therefore been qualified as ‘not a concern’.

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.

The Euronext Group views CSDR as a technology-neutral legislation. Indeed, some CSDs already experiment or use the technology in their activities. We do not see that the CSDR de facto prevents the use of the DLT technology.

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

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

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

- ( ) Yes
- ( ) In the process of the authorisation
- (●) No
- ( ) Don't know / no opinion / not relevant

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

5000 character(s) maximum

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

N/A

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.

Please refer to our answers to questions 24 (24.1 and 24.2), as well as 28 (and 28.1).

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.

Euronext CSDs frequently encounter situations where issuers request to issue a new instrument in a foreign currency, such as sovereign and corporate bonds, ETFs, plus commercial papers and short termed bonds. Issuers in Europe generally issue in domestic currency but also regularly need to issue in foreign currencies because of macro factors (interest rates, investor's appetite for USD, etc.). This is particularly the case for bonds. In these cases, Euronext regrettably faces difficulties in addressing the demands of issuers because of the reasons outlined below.

Currently, the barrier to entry to provide issuance / settlement in foreign currencies is very high today as it requires as per CSDR either:

i) to connect to the relevant central bank; or
ii) to obtain a limited purpose banking license, or
iii) to appoint a designated credit institution (Article 54(5)).

In the spirit of CSDR, it is our assessment that CSDs should aim at providing settlement in Central Bank money. However, since the connection and implementation costs to connect with Central Banks are high, CSDs would ideally use commercial bank money until a significant business volume is reached to justify the investment to connect to another Central Bank.

Connecting to another Central Bank implies significant costs and necessitates scale. CSDs wishing to do so need to capture very important amounts of business in a given currency to make the investment of integrating to a central bank feasible. Euronext Group has undertaken a study internally to calculate the investment required for implementing a central bank money solution. Firstly, it is important to note that the costs required differ significantly depending on whether a CSD is considering implementing a central bank solution in the EU/EEA or outside the EU. Practically speaking, this means that a CSD like VP Securities, would need to settle the equivalent of between 102 bn EUR (for instance NOK and SEK) and 545 bn EUR (USD, GBP,CHF, JPY) per currency to be able to justify implementing a central bank money set-up with an expected cost recovery of five years.

Article 54(5) does provide another possibility for offering settlement in foreign currencies however the thresholds currently defined are much too low and as such do not allow the majority of European CSDs to seriously compete in the settlement in foreign currencies space.

Euronext Group has undertaken a study internally and found that the thresholds outlined in article 54(5) are very sensitive in regard to the turnover ratio of different bonds and that the turnover ratio for different CSDs differ. Practically speaking, this means that a CSD with a low turnover ratio (Issuer CSDs with smaller investor base) can issue a lot more before reaching the thresholds contained in article 54(5) whereas a CSD with a high turnover ratio (having more investors, support collateral management) can issue a lot less before reaching the threshold. For example, a CSD with a turnover ratio of approximately 11 (for example VP Securities) would only be able to issue 229 m euros before it exceeds the thresholds set by article 54(5) (i.e. less than half a benchmark bond), which does not result in revenues that justify offering such a solution.

The result of the situation outlined above is that there is currently no real competition on foreign currencies issuance in Europe. This is highly detrimental to the objective of competition / integration put forward by CSDR. In consequence, the Euronext Group urges the Commission to adjust the thresholds contained in article 54(5) and proposes alternative thresholds which would be more meaningful and practical.

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

Please provide concrete examples.

5000 character(s) maximum

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

In order to start competing for issuance in other currencies (USD, GBP, CHF, NOK etc.) Euronext CSDs

need to be able to carry out commercial bank settlement with a threshold that would allow for more than a bare minimum of settlement as is currently provided by article 54(5).

As outlined in our response to question 24.2 Euronext Group has undertaken a study internally and found that the thresholds outlined in article 54(5) are very sensitive in regard to the turnover ratio of different bonds and that the turnover ratio for different CSDs differ. Practically speaking, this means that a CSD with a low turnover ratio (issuer CSDs with smaller investor base) can issue a lot more before reaching the thresholds contained in article 54(5) whereas a CSD with a high turnover ratio (having more investors, support collateral management) can issue a lot less before reaching the threshold. This mean that, for example, a CSD with a turnover ratio of approximately 11 (such as VP Securities) would only be able to issue 229 m euros before it exceeds the thresholds set by article 54(5) (i.e. less than half a benchmark bond), which does not result in revenues that justify offering such a solution. Past this threshold, there would be no possibility to offer issuance to others in the same or other commercial bank money currencies. This level of issuance would hardly cover the costs required to put the service in place. Furthermore, this greatly restricts the business offering CSDs can market themselves as providing to their customers.

In light of this, we urge policymakers to increase the threshold and the percentage contained in Article 54(5). The current threshold requires an adjustment according to the reality of each CSD market profile and the currencies used, in order to be meaningful and practical. A one-size-fits-all solution is not adaptable to all markets. An increase of the current threshold, per applicable currency, would allow more CSDs, without a banking license to provide designated credit institutions services, also acknowledging that cash settlement procedures in CSDs are processed individually.

Euronext Group therefore proposes to amend the provisions of article 54(5) as follows (c.f. below), reflecting the relative differences in the sizes of the CSDs within EU, and aiming at fostering competition by letting the thresholds cater for either the size of the CSD or the total amount of the cash settlement provided by credit institutions:

Euronext proposed changes to Article 54(5)

Paragraph 4 shall not apply to credit institutions referred to in point (b) of paragraph 2 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, per applicable currency is less than two per cent of the total value of all securities transactions against cash settled in the books of the CSD for EU/EEA currencies and 10% for other currencies or does not exceed a maximum of EUR 2,5 billion per year.

The competent authority shall monitor at least once per year that the threshold defined in the first subparagraph is respected and report its findings to ESMA. Where the competent authority determines that the threshold has been exceeded, it shall require the CSD concerned to seek authorisation in accordance with paragraph 4. The CSD concerned shall submit its application for authorisation within six months.

Amending the thresholds as outlined above would allow for CSD's to offer settlement in commercial bank money in all relevant currencies until critical mass is reached and then move to exploring offering settlement in central bank money.

In this context, Euronext also puts forward potential additional conditions to be considered when looking to further develop settlement in commercial bank money. Specifically, acceptance criteria for choosing a commercial bank could be: 1) A bank with European oversight; or 2) SIFI institute in the respective home country; or 3) Credit rating higher than Aa2/A+ or similar.

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.

The reasons may be different from one market to another. CSDs may in some markets be discouraged by their ecosystem to step into this route. However, from a Euronext Group experience the high costs are the main issue, which can explain why CSDs do not seek to be authorized to provide banking-type ancillary services. The main contentious point being the lack of economies of scale due to fragmentation and associated high cost.

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

5000 character(s) maximum

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

No CSD in Europe has been able to make use of this option, besides under the threshold, as no credit institution that meets the requirements exists. Euronext Group views the requirements may be deterrent to such a set-up. The CSDs and the markets would benefit from an increase in the threshold and the percentage used in Article 54(5) in order for them to be meaningful and practical.

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, and, where possible, quantitative evidence (including any suggestion on different threshold levels):

5000 character(s) maximum

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

No, the thresholds foreseen in article 54(5) are not set at an adequate level.

The thresholds outlined in article 54(5) are very sensitive in regard to the turnover ratio of different bonds and that the turnover ratio for different CSDs differ. Practically speaking, this means that a CSD with a low turnover ratio (Issuer CSDs with smaller investor base) can issue a lot more before reaching the thresholds contained in article 54(5) whereas a CSD with a high turnover ratio (having more investors, support collateral management) can issue a lot less before reaching the threshold. This mean that, for example, a CSD with a turnover ratio of approximately 11 (such as VP Securities) would only be able to issue 229 m euros before it exceeds the thresholds set by article 54(5) (i.e. less than half a benchmark bond), which does not result in revenues that justify offering such a solution. Past this threshold, there would be no possibility to offer issuance to others in the same or other commercial bank money currencies. This level of issuance would hardly cover the costs required to put the service in place. Furthermore, this greatly restricts the business offering CSDs can market themselves as providing to their customers.

In light of this, we urge policymakers to increase the threshold and the percentage contained in Article 54(5). The current threshold requires an adjustment according to the reality of each CSD market profile and the currencies used, in order to be meaningful and practical. A one-size-fits-all solution is not adaptable to all markets. An increase of the current threshold, per applicable currency, would allow more CSDs, without a banking license to provide designated credit institutions services, also acknowledging that cash settlement procedures in CSDs are processed individually.

Euronext Group therefore proposes to amend the provisions of article 54(5) as follows (c.f. below), reflecting the relative differences in the sizes of the CSDs within EU, and aiming at fostering competition by letting the thresholds cater for either the size of the CSD or the total amount of the cash settlement provided by credit institutions:

Euronext proposed changes to Article 54(5):
Paragraph 4 shall not apply to credit institutions referred to in point (b) of paragraph 2 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, per applicable currency is less than two per cent of the total value of all securities transactions against cash settled in the books of the CSD for EU/EEA currencies and 10% for other currencies or does not exceed a maximum of EUR 2,5 billion per year.

The competent authority shall monitor at least once per year that the threshold defined in the first subparagraph is respected and report its findings to ESMA. Where the competent authority determines that the threshold has been exceeded, it shall require the CSD concerned to seek authorisation in accordance with paragraph 4. The CSD concerned shall submit its application for authorisation within six months.

Amending the thresholds as outlined above would allow for CSD's to offer settlement in commercial bank money in all relevant currencies until critical mass is reached and then move to exploring offering settlement in central bank money.

In this context, Euronext also puts forward potential additional conditions to be considered when looking to

further develop settlement in commercial bank money. Specifically, acceptance criteria for choosing a commercial bank could be: 1) A bank with European oversight; or 2) SIFI institute in the respective home country; or 3) Credit rating higher than Aa2/A+ or similar.

Euronext CSDs encounter situations where issuers request to issue a new instrument in a foreign currency, such as sovereign and corporate bonds. In these cases, as Euronext CSDs do not have a banking license nor having a possibility to access all relevant central banks, we face difficulties in addressing the demands of issuers. This is largely due to the fact that the thresholds in art. 54(5) are not set at an adequate level.

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, and, where possible, quantitative evidence:

5000 character(s) maximum

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

Considering the stringent requirements around the very particular limited-purpose bank that can be a designated credit institution, there is no institution offering such cash settlement services to CSDs. It seems that there is no business case in it when the service is to be carried out from a limited-purpose bank and only provided in support of CSD(s)’ service.

Euronext Group believes that the absence of offering from credit institutions shows that the conditions are not proportional.

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.

Please refer to our answers to question 26.1 and 28.1.

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.

N/A

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.

Indeed, the CSDR can benefit from further clarity in the areas outlined in the consultation document. The Euronext Group believes that there is an unclarity with regard to the incoherence of scope of different CSDR articles.

The authorities should be careful not to pursue the objective of full legal certainty by aiming at a prescriptive and exhaustive legislative guidance. In our experience, discussions linked to such prescriptive approach risk to engage a variety of resources on the side of both authorities and industry, without necessarily a sufficient value-added. Preferably, any exemption list / Level 3 guidance should maintain a certain degree of flexibility to allow each CSD to ensure that it operates against its own legal / risk assessment of the requirements, considering its set-up, service offering and local jurisdiction. We would favour a pragmatic approach based on the demand for legal certainty only on targeted articles. Although some clarifications are necessary to provide further legal certainty, Euronext would caution against additional guidance that is too prescriptive.

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.

Euronext Group believes that further clarity is necessary in regard to the scope of certain articles contained in CSDR:

Article 3 and 5, including the recently added question raised in the context of the Digital Finance package, we are unclear in particular with regard to where CSDs can service crypto-assets under CSDR.

Article 7, on settlement discipline:

- Regarding the scope of instruments: CSDs intend to use ESMA databases to identify the scope of securities for the application of settlement discipline. We also lack clarity on the possibility of CSDs to use the databases as a formal and single source of information. Euronext CSDs would welcome further clarity in this area
- Regarding the scope of transactions: We believe the policy intention of Article 5 is among others the increased settlement efficiency of secondary market activity. Article 7 specifies further that one of the measures to achieve it is by penalising those parties in a financial settlement transaction that fail to deliver cash or securities on the Intended Settlement Date. By consequence, the Article in our view aims at

capturing secondary market settlement transactions that fail to settle on the intended settlement date, other than for reasons external to either party. Hence, as it is assumed in the ECSDA Settlement Penalties Framework, CSDs need to exclude a specified by ECSDA and T2S list of transactions from their operational processes. This is, however, not clearly mentioned in the text and hence gives rise to questions. It may be helpful indeed to acknowledge more explicitly that transactions which fail to settle due to 'external reasons' should not be deemed in scope of settlement fails reporting and/or penalties processing, for example.

Article 23, on freedom to provide services in another Member State. Euronext Group's assessment is that although the objective of CSDR was to improve competition and increase cross-border transactions, Article 23 as currently set out in the regulation has not succeeded in enabling such a change (please see our proposals on this topic as laid out in our answer to question 9.1).

Article 40, on cash settlement, Euronext CSDs are unclear on when a CSD can actually settle in commercial bank money.

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.

As outlined in our response to question 9.1, the Euronext Group believes that there are aspects of CSDR that would benefit from some adjustments in order to improve the provision of notary/issuance, central maintenance and settlement services across borders within the EU.

The fundamental issue stems from that fact that authorisation under CSDR does not grant automatic passporting rights. The supplemental authorisation required in Article 23, combined with divergent application, frustrates cross-border activity and has the potential to ultimately harm competition of CSDs in the European Union.

In light of this, Euronext Group would like to underline to the Commission that the current framework for passporting needs to be adapted so as not to lead to unintended consequences on the efficiency of market operations or frustrate increased competition in the EU. Indeed, there is a need to revisit the passporting framework in order to enable more cross-jurisdictional issuances in the EU thus enabling issuers to reach investors in other EU jurisdictions and ultimately foster competition in the EU.

Please see Euronext's proposal on this point outlined below (response to question 32.1).

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.

Euronext Group proposes that authorization under CSDR should grant full passporting rights to CSDs. It is our view that CSDR authorized CSDs should not have to conduct any further authorisation or notification process in any EU Member State different from the home Member State.

Euronext Group would underline that bonds and shares are different markets with different dynamics. Bond markets are very dynamic and competitive - the complexities of the passporting regime are therefore particularly problematic for the issuance of bonds since they harm CSDs' ability to attract bond issuance from abroad. In light of this, an alternative to the proposal above would be to have a simplified and more efficient passporting regime set out in CSDR which is explicitly limited to shares rather than to "transferable securities". Limiting the scope of Article 23 only to shares would make sense since this would greatly simplify the determination of the host Member State. Indeed, the determination of the relevant host Member State is easier for shares because the law that usually governs the shares is the law of the issuer. This is not the case for bonds where different laws can apply such as the law of the issuer (for corporate aspects) or the law (s) contractually chosen to govern some (economic) rights. It is worth noting that, ESMA makes a similar assessment of the situation on this point in its November 2020 Report to the European Commission on cross-border services and handling of applications under Article 23 of CSDR (p.35).

One way of making a passporting regime that is limited to shares more efficient than the passporting regime currently in place would be for the CSDR Article 49.1 list for each country to only contain specific individual law provisions (and not general references to various legislative instruments), and have each provision contain a thorough explanation of why it is deemed relevant for foreign CSDs to comply with.

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

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

The timing of amendments to the Settlement Discipline Regime in light of the approaching enter into force:

The Euronext Group are concerned by the timing difference between the entry into force of the regulatory requirements in February 2022 and any consequent modifications of the requirements. Such modifications could change the underlying obligations and render obsolete the developments and arrangements within a short notice, thereby resulting in significant lost spending of resources.

The Euronext Group are advanced in the IT developments, preparations and support for the Settlement Discipline Regime, and would appreciate not seeing significant changes in the text, which could lead to undoing some of these developments.

It is therefore highly appreciated, if any changes are kept as limited as possible, and only in those areas where the regime would benefit from minor corrections or amendments. Thereby ensuring a coherent timeline, avoiding the decommissioning or modification of any development that would be necessary to comply with CSDR and the SDR RTS.

Mandatory Buy-ins:

Euronext Group are aware of significant market concerns related to the implementation of the mandatory buy-in regime, and believe that the European Commission should be attentive to the views of the industry, as evidenced with statistical data. However, Euronext Group welcome initiatives that contribute to strengthening the stability of the financial markets and support high settlement efficiency rates. There seems to be merit in introducing a mandatory buy-in regime as part of the CSDR Settlement Discipline Regime, provided it is designed in line with the mechanics of a well-functioning market infrastructure. A buy-in regime should also be implemented consistently across OTC and On-Exchange trading, ensuring a continued level playing field across On-Exchange markets, CCPs and OTC markets.

Settlement fails penalties for cleared transactions (CSDR SDR RTS Article 19):

With regard to the treatment of penalties for cleared transactions under the Settlement Discipline Regime, Euronext Group would support a proposal to remove Settlement Discipline RTS Article 19, so as to allow for a single operational process at the level of the CSD and the CCP and its members, provided sufficient time to amend any current development.

Rules on reporting of penalties of settlement fails:

Euronext Group would welcome the issuance of the awaited ESMA guidelines on the Settlement fails penalties reporting. Based on the guidelines, we will be able to better assess the answer to this question. We believe that the CSDR review consultation should allow for further input on this matter at a later stage.

Scope of penalties (transactions and instruments):

Concerning the application to certain types of transactions within the penalty regime, Euronext Group support ECSDA in the request that the penalties regime should not apply to certain types of transactions. In particular, that the exemptions as presented during the bilateral dialogue between ECSDA and ESMA are formally approved, such as for Corporate Actions on Stock (e.g. initial creation transactions and redemptions), and T2S technical realignments and other transactions out of participants' control, such as collateral management-related transactions.

In addition, Euronext Group suggests to exclude fund instruments from the scope of penalties, both to align fund instruments with e.g. debt and equities, but also to highlight that the introduction of penalties for funds registered and settled through the CSD infrastructure, will discourage funds currently settled outside a CSD from being issued through a CSD. The prospect of penalties, in conjunction with other CSDR constraints, seems also to have a number of investment funds to reconsider staying registered with a CSD already. Consequently, Euronext Group believes that penalties will have adverse effects on competition for the funds industry, and harm the level playing field of funds registered at a CSD as compared to funds handled by a Transfer Agent.

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	2	3	4	5	Don't know /

	(disagree)	(rather disagree)	(neutral)	(rather agree)	(fully agree)	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 refer to responses to question 33.2.

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.

Please refer to responses to question 33.2.

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

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

5000 character(s) maximum

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

Please refer to responses to question 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 38.1 Please explain your answer to question 38, indicating what that end-date should be explaining your reasoning:

5000 character(s) maximum

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

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.

There could be merit in a notification requirement being introduced, in order for the competent authorities of the member states and ESMA to be made aware that a third-country CSD provides CSD services in the EU, fostering a level playing field among CSDs in the EU/EEA and third country CSD service providers.

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.

In its analysis of third country legislation as part of the equivalence proceedings, Euronext Group believes the European Commission should place a strong emphasis on ensuring the two regulatory regimes provide for a level playing field. Where significant differences are apparent, no equivalence decision should be forthcoming. The equivalence proceedings themselves, therefore, should guarantee that there is a level playing field between EU/EEA CSDs and third-country CSD service providers. We would also advise continued scrutiny of third-country CSD providers which have been deemed equivalent, so that revocation of the equivalence is possible if needed.

At the same time, the Euronext Group believes that reciprocity is a major element to be considered in the equivalence decision by the European authorities. While the EU has established an approach of competing CSDs within the EU, that may not be the case in certain third countries where local CSDs are the only providers of core services to issuers and the entry of foreign CSDs (by law or practice) is not allowed. That is an important factor for the European Commission equivalence decision. Failure of considering such elements, EU/EEA CSDs could cause an unlevelled playing field.

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.

Please refer to responses to question 40.1

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.

N/A

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.

The Euronext Group, through its CSDs Interbolsa, Euronext VPS and VP Securities, welcomes the opportunity to provide input to the Commission on the CSDR review and share our views and experiences in the implementation of CSDR to date.

Although there are certain matters where targeted clarifications and adjustments would greatly benefit the application and implantation of the regime, notably the passporting framework as laid in Article 23 and the thresholds contained in Article 54(5) in relation to the provision of banking-type ancillary services, Euronext Group believes that it is still too early to undertake an exhaustive review of CSDR.

Therefore, for the time being, Euronext Group does not believe there to be other topics than those addressed in the consultation paper that should be addressed in the CSDR review.

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

fisma-csdr-review@ec.europa.eu