

ECSDA Response to the Commission Call for Feedback to the CSDR REFIT

ECSDA is the European Central Securities Depositories (CSDs) Association. It represents 39 domestic and international CSDs across 35 European countries, including all EU Member States and all EEA countries.

CSDs perform an essential role in the financing of the economy by recording the issuance and subsequent changes in the legal ownership of all securities. The CSD Regulation is the core regulatory framework for the activities of ECSDA Members, and to a degree, its participants. As an Association of fully licensed CSDs under the CSDR, ECSDA has been working with the regulation, alongside the overall CSD community. As such, ECSDA Members are foremost positioned to assess the reach of the current CSDR Refit proposal and voice their suggestions.

Market feedback received by the Commission following the CSDR Consultation on 2 February 2021 (Consultation), has confirmed that:

- the requirements related to the provision of cross-border services in the EU need to be simplified and clarified to allow for more efficiency, particularly relating to the burdensome passporting requirements;
- the requirements for the provision of banking services are overly restrictive considering the restricted access to Commercial Bank Money (CoBM);
- the compliance costs are disproportionate in areas such as the review and evaluation process, possibly due to the need for further cooperation between authorities in home and host Member States; and
- the EU authorities have concerns regarding the insufficient insight into the activities of third-country CSDs.

ECSDA looks forward to contributing to an efficient CSD Regulation during the ongoing legislative process. The sections below outline our preliminary considerations.

Passporting: double-law test for CSDs leads to further complexity

The CSDR REFIT introduces some improvements under proposed Article 23(4) and (6) CSDR by (i) shortening the period of time to one month for the home competent authority to communicate passporting requests to the host competent authority and (ii) limiting the possibility for host Member States to refuse a passport.

However, these amendments do not fully address the concerns voiced during the Consultation. In particular, the assessment of the corporate law required under Articles 23 and 49(1) CSDR needs to be calibrated to effectively support CSDs' cross-border services and minimise barriers to cross-border investments, as opposed to further isolating issuers in their jurisdictions.

Avoid additional complexity to the supervisory convergence requirements

ECSDA members are eager to support Competent Authorities and their efforts to reach more convergence. However, the creation of colleges, in addition to the National Competent Authority (NCA) supervision, can only be a simplification if their remit is more clearly articulated. We do not believe the colleges are intended to be an additional layer of supervisory oversight, but rather a forum for information and alignment among NCAs, in pursuit of mitigating divergent guidance.

The Proposal requires further calibration to clearly define every NCA/Relevant Competent Authority role. If not, there may be a risk of overengineering the set-up of colleges and the remit

of their responsibilities. Consequently, there is a risk that the current wording leads to (i) less efficiency for CSDs, (ii) increase the time-to-market and (iii) reduce CSDs' international competitiveness to offer services to the market.

ECSDA suggests clarifying and simplifying the wording of the proposed amendments in pursuit of the Commission's aims as well as clarity and legal certainty.

Ensuring a better-balanced targeted exemption in the banking-type ancillary services regime

ECSDA welcomes the proposal for a targeted review of the use of CoBM for settlement, granting a mandate to EBA to review the exemption in CSDR, i.e. the thresholds below which the non-banking CSDs may use CoBM not subject to CSDR requirements. To ensure that the issues encountered in the current framework are addressed, there is merit in specifying the direction in which the thresholds may take in the level 1 text. This will help ensure that Level 2 properly addresses the difficulties encountered by some CSD without a banking license in coping with issuers' needs when issuing in multi-currency. In this regard, we believe that the relevant thresholds under Article 54(5) CSDR should be calibrated in the pursuit of a competitive EU CSD industry albeit while preserving financial stability and level playing field.

Such review is expected to increase flexibility without endangering the risk profile of CSDs, without watering down the rules applicable to ancillary banking services.

Further clarity under the Settlement Discipline Regime & settlement efficiency

With respect to the buy-in, the assessment of settlement efficiency must be clear, understandable, and precise to reach conclusive results on which ESMA may base its recommendations. ECSDA suggests leveraging the data received in the context of settlement fails reporting. This will avoid the creation of additional burdens in terms of costs and operational effort on CSDs.

ECSDA welcomes the proposal trying to clarify the scope of the procedure for settlement fails that are caused by "*factors not attributable to the participants to the transaction*". It is our understanding that those circumstances will be defined in accordance with ESMA/EC Q&A and discussion held with ESMA in the context of the [ECSDA Penalties Framework](#). A harmonised approach set in level 1 and level 2 measures will avoid misinterpretation, additional complexities, and operational risk for CSDs managing the application of the penalty mechanism.

Finally, ECSDA notes an increasing trend towards further settlement internalisation, thereby circumventing the CSDR Regime and its transparency objectives and avoiding the costs and penalties of the Settlement Discipline Regime.

Reasonable third-country relationship

ECSDA considers the third-country notification procedure raised by the Proposal as a reasonable way forward in addressing information gaps. However, under the notification and application for recognition procedure, we would recommend providing details on how the process should be conducted by a Third-Country CSD. Potential gaps in the description of requirements will cause procedural and legal uncertainty within the CSD community and its clients.

ECSDA looks forward to contributing to the policy-making process. We are eager to provide wording proposals to help the policymakers to further calibrate the CSDR in support of a more efficient and resilient settlement and CSD industry in the EU.