

Ms Mairead McGuinness
Commissioner for Financial Services,
Financial Stability and Capital Markets
Union
European Commission
Rue de la Loi/ Wetstraat 200
B-1049 Brussels
Belgium

Ref: ESMA's Proposals regarding the Review of the CSD Regulation (CSDR)

Dear Commissioner McGuinness,

In light of the European Commission's current review of Regulation (EU) No 909/2014 of the European Parliament and of the Council (CSDR), I am writing to highlight to you ESMA's views on a number of key points that should be addressed in this review.

ESMA has already provided input to the European Commission through two reports (on [CSD cross border services](#), and on [internalised settlement](#)) published in November 2020, and, in the coming months, will provide further input through the publication of two more reports on banking-type ancillary services, and on the use of technological innovation by CSDs.

In addition to this, ESMA would like to bring to the attention of the European Commission through this letter proposals on the following important topics for your consideration as part of the CSDR Review:

- 1) the status of TARGET2-Securities (T2S);
- 2) the arrangement for the supervision/oversight of T2S;
- 3) the third-country CSD (TC-CSD) recognition regime;
- 4) the frequency of ESMA reports to the European Commission on CSDR implementation.

Regarding **T2S**, we would like to make the following proposals:

T2S is a systemically important common settlement platform, providing settlement services in central bank money for the majority of EEA CSDs, and it is currently entirely out of the scope of CSDR. At present, T2S is monitored on the basis of some selected Principles for Financial

Market Infrastructures (PFMIs) included in the ECB Oversight Framework, which is a light approach considering the systemic importance of this platform for the EEA. ESMA believes that it is important to strengthen the possibilities for the T2S CSDs, and the NCAs supervising them, to be able to better manage the risks that stem from outsourcing settlement activities to the T2S platform.

Following the experience of the first years of the implementation of CSDR, the functioning of T2S and the interactions amongst the relevant stakeholders, ESMA believes that it is no longer appropriate to exclude such a systemic settlement platform completely from the scope of CSDR.

ESMA is also of the view that it is important to ensure the most appropriate arrangement for T2S supervision and oversight, in order to enable adequate risk mitigation related to the services provided by this systemically important settlement platform, as well as proper recognition of the roles of the relevant authorities and adequate assessment of the relevant requirements.

Currently, the oversight of T2S is performed by the ECB that has established separate functions for the oversight and the operation of T2S. In addition, a cooperative framework has been established on a voluntary basis via an MoU between the ECB oversight function, ESMA, the competent authorities of the CSDs participating in T2S, and the central banks overseeing the CSDs.

ESMA believes that the importance of this arrangement should be adequately reflected in the CSDR, considering the systemic importance of T2S for the EU and the significance of having an adequate cooperative regime across all relevant authorities. ESMA considers that CSDR should be amended in order to ensure that the legislative framework provides for a cooperative arrangement in respect of the supervision/oversight of T2S, with clear roles for the participating authorities (NCAs of CSDs outsourcing services to T2S, central banks, the ECB as lead overseer, and ESMA as having a supervisory convergence role). This cooperative arrangement could take the form of a college of supervisors.

With regard to **the TC-CSD recognition regime**, ESMA supports an enhanced regime, including the following main components:

- a) Requirement for TC-CSDs to notify ESMA regarding services provided in the EEA;
- b) Broadening the scope of the TC-CSD recognition regime by also covering the provision of settlement services in the EEA

Regarding **point a) above**, we would like to emphasise that currently, prior to an equivalence decision being issued by the European Commission in respect of a third country framework, and the TC-CSD applying for ESMA recognition, there is no information available either at EEA

level (ESMA, European Commission) or at the level of NCAs as to the activity of TC-CSDs in the EEA, unless provided by the TC-CSDs on a pure voluntary basis.

The current TC-CSD recognition regime only applies (i) from the moment the European Commission has issued an equivalence decision in respect of a third country framework for CSDs, and (ii) to only two out of the three CSDR core services (notary and central maintenance), while the provision of settlement services remains invisible to the EEA supervisors. This allows only for a very late and partial view of the activities of TC-CSDs in the EEA and leads to an unlevel playing field between TC-CSDs and EEA CSDs.

Therefore, ESMA considers that TC-CSDs should be required to notify ESMA if they provide/intend to provide CSDR core services in respect of financial instruments constituted under the law of an EEA State, including by setting up a branch. Based on these notifications, ESMA would inform the European Commission and would publish the list of TC-CSDs and services they provide in the EEA. This would increase transparency, facilitate risk assessment, and the prioritisation of potential equivalence decisions by the European Commission.

As concerns **point b) above**, the settlement service is a core service under CSDR, and it has significant implications in terms of the safety of settlement, settlement finality, mitigation of settlement risks, and ultimately financial stability and investor protection. According to Article 25 of CSDR, TC-CSDs can provide settlement services freely in any EEA State and can thus compete with EEA CSDs without being subject to any scrutiny in the EEA. This results in an unlevel playing field between TC-CSDs and EEA CSDs. The unlevel playing field issue will become more exacerbated with the entry into force of the Commission Delegated Regulation (EU) 2018/1229 (RTS on settlement discipline) on the 1st of February 2022, as there is a significant risk, as already highlighted by EEA CSDs and ECSDA, that settlement activity may migrate from EEA CSDs to TC-CSDs, with the latter subject to more lenient requirements.

Having regard to the above, ESMA believes that the scope of the TC-CSD recognition regime should cover settlement services in addition to notary and central maintenance services. This would ensure a level playing field and fair competition between EEA CSDs and TC-CSDs, with adequate mitigation of the risks related to settlement services in respect of financial instruments constituted under the law of an EEA State.

Finally, with reference **to the frequency of ESMA reports to the European Commission on CSDR implementation**, we would like to highlight the need to recalibrate the frequency of the ESMA reports. CSDR currently envisages that ESMA should, in cooperation with national authorities and the EBA, prepare annual reports on 12 topics and communicate them to the EC by 30 April of the following year. This requirement appears to be disproportionate considering: a) the nature of certain topics, which would not require an annual update and b) the impact in terms of resources for ESMA and national authorities. ESMA's proposal on reducing the frequency of the reports under Article 74 of CSDR is included in the Annex to this letter.



Should you or your staff want to discuss further the enclosed proposals or require any further detailed information please do not hesitate to contact me or Fabrizio Planta, Head of the Markets and Data Reporting Department (fabrizio.planta@esma.europa.eu).

Yours sincerely,

Anneli Tuominen

CC: Irene Tinagli, MEP, Chair of the Committee on Economic and Monetary Affairs, European Parliament

João Leão, President of the ECOFIN Council, Council of the European Union

Jeppe Tranholm-Mikkelsen, Secretary-General of the Council of the European Union

John Berrigan, Director-General, DG Financial Stability, Financial Services and Capital Markets Union, European Commission

Annex

Proposal to Amend Article 74 of CSDR
(Calibration of CSDR Reports to the European Commission)

<i>Topics for annual reports to the EC under Article 74 of CSDR</i>	<i>Topic to be covered by a regular ESMA report?</i>	<i>Suggested revised frequency</i>
a- settlement efficiency	Yes	Entry into force of settlement discipline on 1/02/2022; every two years as of 2024
b- appropriateness of penalties for settlement fails	Yes	Entry into force of settlement discipline on 1/02/2022; every two years as of 2024
c- measuring internalised settlement	Yes	Every two years, with the next report to be delivered in 2023 (given that the first one was published in November 2020)
d- cross-border provision of services	Yes	To be merged with (f) and (h) Every 3 years as of 2023 (based on frequency of peer reviews on this topic, see point h) below)
e- handling of access requests in Articles 49 (issuers), 52 (CSD links) and 53 (trading venues and CCPs)	No	Upon request from the EC, subject to the identification of issues by the NCAs (through the PTSC)
f- handling of applications submitted in accordance with the procedures provision of cross-border services	Yes	To be merged with (d) and (h) Every 3 years as of 2023 (based on frequency of peer reviews on this topic, see below point h)
g- handling of TC-CSD applications	No	So far, ESMA has only received the UK CSD (EUI) application in the Brexit context. To be covered once there are more TC-CSD applications (depending on the EC equivalence decisions), upon request from the EC
h- where applicable, the findings of the peer review process for cross-border supervision	Yes	First peer review to be launched in Q2 2021; to be conducted at least every 3 years. To be merged with (d) and (f); Every 3 years as of 2023

i- application of civil liability rules of Member States relating to the losses attributable to CSDs	No	Upon request from the EC, subject to the identification of issues by the NCAs (through the PTSC)
j- procedures and conditions under which CSDs have been authorised to designate credit institutions or themselves to provide banking-type ancillary services	No	A first report on this topic will be published in 2021, then, upon request from the EC, subject to the identification of issues by the NCAs (through the PTSC)
k- application of the rules referred to in Article 38 on protection of securities of participants and those of their clients (asset segregation rules)	No	Upon request from the EC, subject to the identification of issues by the NCAs (through the PTSC)
l- application of sanctions	No	Upon request from the EC, subject to the identification of issues by the NCAs (through the PTSC)