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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SEC(2022) 160
Subject:	Regulatory Scrutiny Board Opinion on Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 909/2014 as regards settlement discipline, cross-border provision of services, supervisory cooperation, provision of banking-type ancillary services and requirements for third-country central securities depositories

Delegations will find attached document SEC(2022) 160.

Encl.: SEC(2022) 160

EUROPEAN COMMISSION

SEC(2022) 160

29.10.2021

REGULATORY SCRUTINY BOARD OPINION

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 909/2014 as regards settlement discipline, cross-border provision of services, supervisory cooperation, provision of banking-type ancillary services and requirements for third-country central securities depositories

COM(2022) 120
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EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Central securities depositories – review of EU rules

Overall opinion: POSITIVE

(A) Policy context

Central Securities Depositories (CSDs) play an essential role in financing the EU economy. They record issuance of securities and subsequent changes in the legal ownership of securities transactions, where they ensure exchange of securities against cash (settlement). At the end of 2019, EU CSDs held EUR 53 trillion in securities and recorded transactions to the amount of EUR 1120 trillion.

The CSD Regulation came into force in 2014 and aimed to facilitate cross-border settlement and enhance the safety and efficiency of the settlement markets. However, an evaluation reveals (i) limited progress in cross-border services, (ii) disproportionate compliance costs in certain areas and (iii) insufficient surveillance of third-country CSDs. The report considers that if these problems are not addressed, the EU post-trade landscape will remain fragmented, and they will impair the growth of the EU capital market.

(B) Summary of findings

The Board notes the useful additional information provided in advance of the meeting and commitments to make changes to the report.

The Board gives a positive opinion. The Board also considers that the report could further improve with respect to the following aspects:

(1) The report does not fully explain the background of some of the problems identified.

(2) The set of options is not sufficiently complete and for some options the report is not clear enough on how they would function.

(C) What to improve

(1) The report should clarify the interplay between this initiative and the Communication on open strategic autonomy in the financial field. It should explain better how the initiative would ensure that also less advanced markets in the EU would have access to competitive

This opinion concerns a draft impact assessment which may differ from the final version.

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CSD services.

(2) The report should explain better why passporting, which is an established practice in many financial markets, does not seem to work properly in this segment. It should clarify why these cumbersome rules were introduced and what has changed since then.

(3) The report should better explain the origin of the introduction of mandatory buy-ins. It should explain how the benefit-to-cost assessment of the settlement discipline measures has changed compared to what was initially envisaged and what new evidence has emerged since then. Additionally, the report should clarify what the preferred option – the two-step approach – on mandatory buy-ins concretely entails, when and on what basis the second step could kick-in, and how this would be triggered.

(4) The report should consider all relevant options or sub-options, in particular on the supervision of CSDs. It should also clarify which options are complementary and which are mutually exclusive. The analysis should identify combined options as separate options upfront and subsequently assess and compare them along the other options.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG may proceed with the initiative.

The DG must take these recommendations into account before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Central securities depositories – review of EU rules
Reference number	PLAN/2020/8721
Submitted to RSB on	29 September 2021
Date of RSB meeting	27 October 2021

ANNEX – Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

Summary of costs and benefits

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
	Direct benefits	
Simplified passporting process and easier provision of cross-border services by CSDs.		Clarified and simplified passporting process, lowering administrative costs for both CSDs and NCAs.
	One-off reduction of administrative costs for CSDs: estimated at ca. EUR 5 850 000 for CSDs.	It is estimated that this can bring about one-off savings of, on average, EUR 585 000 per CSD. The total figure assumes that at least 10 other CSDs passport in 26 Member States.
	Ongoing reduction of compliance costs for CSDs: estimated at ca. EUR 390 000 for CSDs per year for CSDs.	Savings of, on average, EUR 39 000 per year per CSD. It is estimated that the notification process would reduce by 75% the costs of passporting. The total figure assumes that 10 CSDs would benefit from the new regime for passporting in 26 Member States.
	One-off reduction of administrative costs for NCAs: estimated at ca. EUR 590 000 for all NCAs.	Total saving of, on average, ca. EUR 59 000 per NCA. Assumptions: the notification process would reduce by 75% the costs of passporting The total figure also assumes that 26 NCAs benefit from these savings for 10 CSDs passporting into their respective Member States.
Direct increase of cross-border competition between CSDs, benefiting to investors and issuers.	No estimate available.	The replacement of the passporting procedure with a notification reduces the costs of cross-border entry and thereby facilitates competition. In addition, an improved framework for the cross-border provision of services through the establishment of mandatory colleges could lead to increased supervisory convergence,

		thus removing additional barriers to cross-border competition. This will benefit both investors and issuers and will increase market efficiency.
Enhanced supervisory convergence.	No estimate available.	The introduction of mandatory colleges would benefit EU CSDs operating cross-border due to the legal certainty related to the enhancement of supervisory convergence and reduction of the level of interactions of CSDs with various national competent authorities across the EU. This would also enhance supervision of CSDs operating cross-border preventing spill-over effects and allow for better management of systemic risk.
Reinforced level playing field for CSDs, both within the EU and outside the EU.	No estimate available.	Within the EU: mandatory colleges would help ensuring consistency of supervision across Member States, thus ensuring level playing field and benefiting EU CSDs. Outside the EU: end date of the grandfathering clause for third-country CSDs would ensure level playing field with third-country CSDs, benefiting EU CSDs.
Additional opportunities for CSDs that do not hold a banking license.	It is estimated that additional EUR 16 billion settlement in foreign currencies could be expected annually[1]. If extrapolated to the total number of EEA non-banking CSDs, this could mean an **additional annual possible offering of at least EUR 80 billion[2] of settlement in foreign currencies**.	Increasing the threshold could enable some CSDs to develop their services to investors both domestically and cross-border, benefitting investors and issuers through a more competitive offering.
More proportionate approach to the treatment of settlement fails.	**Delayed implementation costs for investors and issuers** with a postponement in the introduction of the mandatory buy-in: estimated at **ca. EUR 1.5 billion**.[3] **Reduction of annual operational/ subscription fees for connecting to a buy-in agent** to handle government bond fails in one CSD, estimated	Average cost per market participant to set up a connection to a buy-in agent is estimated, on average to be EUR 1 million, based on stakeholder input. This results in a total figure of EUR 1.5 billion for all in-scope EU market participants[7]. Such costs savings could be temporary (i.e. until the buy-in regime enters into force) or permanent (e.g.

[1] Based on anonymised confidential information provided to DG FISMA services. This figure is based on the current total absolute value of settlement of CSDs and applied to potential growth in settlement of CSDs. This gives an anticipated total of settlement in foreign currencies. The current absolute values in foreign currencies are then subtracted, which gives the anticipated total net gain from the proposed CSDR changes.

[2] This estimate of benefits does not take into account whether it would affect existing settlement in foreign currencies undertaken by CSDs already authorised to provide ancillary banking services.

[3] This is supported by confidential information provided to DG FISMA services.

	between EUR 598 900 294 and EUR 1 197 800 588, according to one estimate.[4] Introduction of a pass-on mechanism could reduce costs by 37.5%, according to one estimate[5]. Deferred introduction of mandatory buy-in will prevent some trading volumes disappearing or migrating outside the EU (Estimated at up to 4% - 5% of trade volume, equal to EUR 7 trillion annually[6]).	if conditions for the entry into force of the buy-in regime are never met). The targeted amendments contemplated for cash penalties and mandatory buy-in would also bring necessary clarifications and reduce the complexity and the burden of managing a buy-in process, hence reducing costs for investors, market infrastructure providers and authorities alike.
Improved supervisory capabilities for ESMA and NCAs.	No estimate available.	ESMA and NCAs would have more information and would be able to better identify and monitor risks. Amendments to the pass-on mechanism would mean fewer buy-ins and would contribute to market stability.
Indirect benefits		
Increased protection of issuers and investors.	No estimate available.	Enhanced supervision of EU CSDs through the establishment of colleges and of third-country CSDs through the end-date for the grandfathering clause and the introduction of the notification requirements would lead to improved supervision of CSDs and thus a better protection of issuers and investors.

[7] Confidential information provided to DG FISMA.

[4] Data provided by ICMA in its response the CSDR targeted consultation, https://www.icmagroup.org/assets/documents/Regulatory/Secondary-markets/CSDR-Settlement-Regulation/ICMACSDR-Review-Targeted-ConsultationFeb-21Detailed-response-020221.pdf..

[5] For explanation and calculation of costs savings see J.P. Morgan public consultation reply, Q. 34.1.

[6] Based on confidential data provided to DG FISMA services indicated that 4%-5% of trade volume could cease to occur. Annual equity and equity-like instrument trading volumes and bond trading volumes were equal to EUR 128 trillion end-2019 (See chapter "1.3.2 Size of the market" of the Impact Assessment), giving a figure of up to EUR 7 trillion.

Increased transparency in the market.	No estimate available.	The implementation of a notification requirement by third-country CSDs regarding the activities they carry out within the EU and/or with EU participants would also indirectly benefit market stability, as it would help identify which third-country CSDs provide services and in which volumes, thus increasing transparency in the market and help identify potential systemic risk.
Increased competition between CSDs regarding the provision of settlement services is foreign currencies, benefitting investors and issuers.	No estimate available.	Issuers and investors would have more choice in terms of financing arrangements, issuance and risk diversification in their cross-border investments.
Reduction of administrative burden related to the development of Q&As.	No estimate available.	Clarifications regarding the settlement discipline regime (penalties and buy-in) would lessen the administrative burden on ESMA related to replying to Q&A's.
Streamlined cooperation of authorities.	No estimate available.	Ongoing costs will be reduced for NCAs due to the streamlined cooperation of authorities through the creation of colleges.

II. Overview of costs – Preferred option							
		Citizens/Consumers [Investors/ Issuers]		Businesses [Market Infrastructure providers, CSDs]		Administrations [NCAs, ESMA]	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Replacing of passporting with a notification	Direct costs	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact apart from (neglible) costs changing current procedures.	Marginal costs to assess notificatio ns.
	Indirect costs	No cost	No cost	No cost	No cost	No cost	No cost

		impact	impact	impact	impact	impact	impact
Establish colleges	Direct costs	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact	Establishment of colleges EUR 260000
	Indirect costs	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact
Targeted amendment to allow banking CSDs to offer services to other CSDs	Direct costs	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact as within current supervisory arrangements	No cost impact as within current supervisory arrangements
	Indirect costs	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact
Amend threshold for banking services	Direct costs	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact as within current supervisory arrangements	No cost impact as within current supervisory arrangements
	Indirect costs	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact
Targeted amendment to settlement discipline regime	Direct costs	Marginal adaptation costs to the clarified rules, i.e. removing out-of-scope transactions and setting	No cost impact.	Marginal adaptation costs to the clarified rules. In case of adaptation costs to amended buy-in rules, these can become	No cost impact.	No cost impact.	Reduction of costs related to settlement monitoring and compliance, guidance provided to market

		up a pass-on mechanism.		sunk cost (if mandatory buy-in will be abandoned).			participants.
	Indirect costs	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact
Deferred introduction of mandatory buy-in	Direct costs	No cost impact	No cost impact	Costs related to the setting up of a mandatory buy-in (i.e. setting up or connecting to a buy-in agent) may prove to be sunk costs if mandatory buy-in is abandoned.	Some reporting costs as CSDs will need to provide more accurate and timely data as to the evolution of settlement efficiency to support decision on the implementation of mandatory buy-in.	No cost impact	Some costs related to settlement fail monitoring, occassionally going beyond current requirements, and assessment of the evolution of fail rate to support decision on the implementation of mandatory buy-in.
	Indirect costs	Setting up cost for collecting cash penalties, but this is largely already prepared by the market participants.	Higher cost of financial transactions that enter delayed settlement (Cash penalties added to a transaction cost)[8]. These cost are manageable for the market.	Cost related to the implementation of cash penalties. These costs are marginal and largely implemented.	No cost impact	No cost impact	Potential costs related to determining the need and terms of introduction of mandatory buy-in.

[8] The initiative supported by this Impact Assessment does not introduce cash penalties, so its costs cannot be directly attributed to it. However, the costs of cash penalties in terms of impact on market pricing have not been incurred as cash penalties have not yet entered into force.

Ending the grand-fathering clause	Direct costs	No cost impact	No cost impact	Third country CSDs would incur costs attributed to seeking authorisation from ESMA.	Third country CSDs would incur recurrent additional costs related to compliance with relevant EU rules (in case third country rules are deemed not equivalent with EU rules) and potentially operating two settlement regimes (a EU one and a third country one).	Marginal costs for ESMA related to setting up procedure for handling equivalence decisions from third-country CSDs.	Marginally increased costs for ESMA for handling authorization requests from third country CSDs.
	Indirect costs	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact
Notification requirement for third country CSDs	Direct costs	No cost impact	No cost impact	Third country CSDs would incur costs attributed to the notification process with ESMA.	No cost impact	Marginal costs for ESMA related to setting up procedure for handling third-country CSD notifications.	Marginally increased costs related to handling new notifications. ESMA estimated costs for one third-country CSD notification would amount to ca. EUR 2 600 per notification.
	Indirect costs	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact	No cost impact

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