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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT Accompanying the document 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
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Delegations will find attached document SWD(2022) 76 final.

Encl.: SWD(2022) 76 final



Brussels, 16.3.2022
SWD(2022) 76 final

COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

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 final} - {SEC(2022) 160 final} - {SWD(2022) 75 final}

Executive Summary Sheet

Impact assessment on [proposal for CSDR REFIT].

A. Need for action

Why? What is the problem being addressed?

Central securities depositories (CSDs) have an essential role in the financing of an economy, recording issuance and subsequent changes in the legal ownership of all securities transactions. End 2019, EUR 53 trillion of securities were held by EU CSDs and transactions completed valued around EUR 1 120 trillion.

In 2014, the aim of CSDR was to facilitate cross-border settlement, enhance the safety of settlement markets and make settlement more efficient. Seven years after CSDR's adoption, stakeholders see: (i) limited progress in the provision of cross-border services by CSDs; (ii) specific areas where the compliance costs are disproportionate; and (iii) EU authorities indicating that there is insufficient insight into the activities of third-country CSDs. The evaluation identified the following reasons for these problems: (i) burdensome and unclear passporting requirements; (ii) insufficient cooperation between authorities in home and host Member States; (iii) restrictive requirements for the provision of banking services; (iv) unclear and burdensome requirements for settlement discipline; and (v) insufficient information about the activities of third-country CSDs in the EU. If these problems are not addressed, a crucial foundation stone of a capital markets union will remain inefficient, to the detriment of investors, issuers, banks, and CSDs. The EU post-trade landscape will remain fragmented along national lines, impairing investment and limiting opportunities for issuance, to the detriment of the financial system and growth in the EU.

What is this initiative expected to achieve?

The aim remains to ensure the safety and efficiency of settlement markets. It specifically aims to simplify the passporting regime, enhance cooperation between supervisors in the EU, enhance CSDs' access to banking services related to settlement, clarify and make more proportionate settlement discipline measures and ensure that EU authorities have the necessary information on the activities of third-country CSDs.

What is the value added of action at the EU level?

The 2020 Capital Markets Union Action Plan (CMU) underlined that amending CSDR could help develop a more integrated post-trading landscape in the EU and contribute to the development of CMU. The objectives of CSDR cannot be achieved by the Member States and national supervisors alone: they cannot solve the difficulties arising from burdensome and unclear requirements or the risks resulting from diverging national supervisory practices, in particular where they stem from primary or secondary legislation. National authorities cannot address risks to EU financial stability that could potentially arise from the lack of information on the activities of third-country CSDs. As such, the objectives of CSDR can, due to the scale and nature of the actions, be better achieved at EU level in accordance with the principle of subsidiarity as set out in Article 5 of the TFEU.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

The proposed package of options includes: a simplified passporting procedure for cross-border services; establishment of mandatory supervisory colleges; facilitating the provision of banking-type ancillary services; amendments to the settlement discipline regime; and changes to the rules for third-country CSDs.

The proposed policy options are legislative, as the operation of settlement services in the EU is governed by CSDR. CSDR has a comprehensive regulatory framework for the settlement of financial instruments in the EU as well as common rules on the organisation and conduct of CSDs to promote safe and efficient settlement. CSDs are systemically important institutions for financial markets and need to operate under a unified regulatory framework to ensure the integrity of the single market for financial services. Indeed, many of the problems stem from the provisions of CSDR. For these reasons, in general, non-legislative options were not considered.

A wide range of options were assessed to address the problems identified. Some were discarded at an early stage as inconsistent with the EU legal framework or with the aim to ensure a resilient and efficient market for settlement in the EU, i.e. introducing a requirement for central banks to facilitate CSDs' access to central bank money or an unlimited use of banks to provide banking-type ancillary services. Others were dismissed as cost

inefficient (introduction of EU supervision).
Who supports which option?
The chosen options enjoy broad stakeholder support. The majority of stakeholders support, in general terms, measures to facilitate the cross-border provision of services. CSDs, in particular, strongly support clarifications to the passporting rules and the rules for banking-type ancillary services. Many stakeholders support enhanced cooperation between authorities or the possibility to have more information on third-country CSDs providing services in the EU. The vast majority of respondents to the public consultation support a more proportionate settlement discipline regime.
C. Impacts of the preferred option
What are the benefits of the preferred option (if any, otherwise main ones)?
The overall package of options will have a positive effect through a more proportionate regulation of CSDs and an enhanced competitiveness of the EU settlement market. Simplifying the passporting procedure with a simple notification at host Member State level (instead of a prior approval as currently foreseen) could save CSDs EUR 10 million in the first year and ca. EUR 4 million annually thereafter. Supervisory changes related to the establishment of supervisory colleges or amendments to the provision of banking-type ancillary services would streamline procedures, resulting in more coherent supervision and easier access to certain services. These benefits are difficult to quantify, but are expected to be significant for businesses and regulators. With regards to the clarification and postponement of elements of the settlement discipline regime, the main benefits would be deferred costs; i.e. connection costs to buy-in agents for market participants or the amount of trade that would not disappear or migrate to non-EU venues (estimated at 4%-5% of total turnover). The simplification of the passporting procedure and more clarity on the settlement discipline regime could alleviate some of ESMA's administrative burden in terms of Q&As. Finally, the impact of the preferred policy options on national authorities should be generally positive. In particular, NCAs could face lower costs and time spent on passporting if the host NCAs are simply notified.
What are the costs of the preferred option (if any, otherwise main ones)?
In terms of costs, ESMA would mainly be impacted by the participation in mandatory colleges and the notification requirement for third-country CSDs, although the latter would be one-off cost. The overall impact of the preferred policy options on NCAs would be net positive. Costs may be incurred by NCAs due to (i) the need to monitor more closely the ancillary banking activities carried out under the new proposed framework (i.e. higher thresholds and possibility for banking CSDs to provide banking services to non-banking CSDs) (ii) their participation in (or organisation of) mandatory colleges. However, at the same time, NCAs should face lower costs from the simplified passporting procedures. Finally, due to the notification requirement for third-country CSDs, NCAs could have increased information through ESMA to identify and monitor risks. These costs are difficult to quantify but would be limited as supervisory arrangements are not changed. No social or environmental impacts are expected.
How will businesses, SMEs and micro-enterprises be affected?
The proposed policy options should not have any direct material impact on businesses. However, they will create a more efficient and sound settlement system, notably through removing inefficiencies and promoting competitiveness (e.g. through measures to facilitate the cross-border provision of services and reduce disproportionate costs). This will indirectly positively impact all businesses, but SMEs in particular who could benefit from lower cost of capital as their, at present, less liquid securities could become more liquid. Together the proposed amendments could help attract SMEs to capital markets and contribute to the development of a robust and integrated EU financial market.
Will there be significant impacts on national budgets and administrations?
No. The impact of the preferred policy options on NCAs would be limited but generally positive.
Will there be other significant impacts?
No.
D. Follow up
When will the policy be reviewed?
The policy's effectiveness will be considered against CSDR's general objectives and the specific objectives of the review, 5 years after the measures apply. Indicators include: number of CSDs providing cross-border services; number of supervisory colleges established; number of CSDs accessing banking services; growth of settlement in foreign currencies; settlement efficiency rates; number of third-country CSDs applying for recognition/filing a notification.

