



European Securities and  
Markets Authority

# Report to the EC

**Provision of banking-type ancillary services under CSDR**





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## Executive Summary

### Reasons for publication

In the context of the targeted review of CSDR launched by the European Commission at the end of 2020 ESMA was asked to provide an assessment of the conditions under which banking-type ancillary services can be provided under CSDR.

As to the scope of this assessment, ESMA referred to the requirement in Article 74(1)(i) CSDR, according to which ESMA shall, in cooperation with EBA and the competent authorities and the relevant authorities, submit annual reports to the European Commission providing assessments of trends, potential risks and vulnerabilities, and, where necessary, recommendations of preventative or remedial action in the markets for services covered by CSDR, including an assessment of the procedures and conditions under which CSDs have been authorised to designate credit institutions or themselves to provide banking-type ancillary services in accordance with Articles 54 and 55 of CSDR.

To facilitate the assessment, ESMA has addressed a survey on banking-type ancillary services in February 2021 to authorities and relevant market participants. The purpose of this report is to present the findings of this survey and ESMA's proposals on this issue for the CSDR Targeted Review.

### Contents

The present report is structured in 4 sections and 2 annexes.

Section 1 lists the legislative references and acronyms used. Section 2 introduces the report, describing its scope and the sources of information used for the analysis. Section 3 covers the findings of this report, divided in 2 subsections dedicated to (i) the authorisation process to provide banking-type ancillary services under CSDR and (ii) the conditions under which banking-type ancillary services can be provided under CSDR. Both subsections sections include an assessment of the current conditions and suggestions for improvement. Finally, Section 4 presents a summary of ESMA's proposals for the purposes of the EC CSDR Targeted Review. Then, Annex I provides the questions in the survey used as the baseline for the preparation of this report and Annex II includes the list of respondents to ESMA's survey.

### Main conclusions

***On the authorisation process to provide banking-type ancillary services:*** only five authorisation procedures have been launched and four of them have been completed so far, and at this stage no other CSD intends to apply. No major shortfall was detected, and the main concerns were raised by consulted authorities, in particular as to the one-month

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consultation period currently foreseen in CSDR, which appears too short. ESMA thus suggests extending it to three months, in line with the main CSDR authorisation process.

***On the conditions under which banking-type ancillary services can be provided:*** the main concern appears to be the strictness of the conditions governing the access by non-banking CSDs to banking services, given that no designated credit institution has been created and that the threshold applying to the provision of such services by regular commercial banks does not allow to satisfy certain CSDs' needs in commercial bank money, in particular to be able to offer settlement in foreign currencies.

ESMA therefore makes several proposals for consideration in the context of the CSDR Targeted Review: (i) allowing banking CSDs to provide banking-type ancillary services to non-banking CSDs, (ii) modifying the approach to access commercial banks and (iii) imposing less stringent requirements to non-banking CSDs offering only settlement in foreign currencies as banking-type services.

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# 1 Legislative references and acronyms

## 1.1 Legislative references

CRD	Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC
CRR	Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012
CSDR	Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012
EBA RTS on Prudential Requirements	Commission Delegated Regulation (EU) 2017/390 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on certain prudential requirements for central securities depositories and designated credit institutions offering banking-type ancillary services
RTS on CSD Requirements	Commission Delegated Regulation (EU) 2017/392 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on authorisation, supervisory and operational requirements for central securities depositories
MIFID II	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU

## 1.2 Acronyms

EBA	European Banking Authority
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EC	European Commission
EEA	European Economic Area
ESMA	European Securities and Markets Authority
EU	European Union
NCA	National Competent Authority, designated as per Article 11 of CSDR
PFMIs	CPMI-IOSCO Principles for financial market infrastructures (April 2012)

## 2 Introduction

1. According to Article 74 of CSDR, ESMA shall, in cooperation with EBA and the competent authorities and the relevant authorities, submit annual reports to the European Commission providing assessments of trends, potential risks and vulnerabilities, and, where necessary, recommendations of preventative or remedial action in the markets for services covered by CSDR.
2. Those reports shall notably include an assessment of the procedures and conditions under which CSDs have been authorised to designate credit institutions or themselves to provide banking-type ancillary services in accordance with Articles 54 and 55 of CSDR, including an assessment of the effects that such provision may have on financial stability and competition for settlement and banking-types ancillary services in the Union, which is the topic covered by this report.

### 2.1 Scope

3. This report covers the services provided by CSDs established in the EU. It does not cover the activities of central banks acting as CSDs in the EU given that, as per Article 1(4) of CSDR, they are exempted from certain CSDR requirements, including the requirements on the provision of banking-type ancillary services.

### 2.2 Sources of information

4. **Survey.** In preparation for this first report, ESMA staff have developed and launched a survey addressed to CSD national competent authorities (NCAs) and relevant European trade associations (ECSDA, EBF, EACH, FESE, AFME, ICMA, European Issuers).
5. **Respondents.** The 29 responses received by ESMA to the survey on banking-type ancillary services cover (please see the detailed list of respondents in Annex II):
  - 16 authorities, in various capacities: as CSDs' competent authorities (CAs) and/or as consulted authorities (i.e. authorities as referred to in points (a) to (e) of Article 55(4) CSDR),
  - 15 CSDs (including 4 "banking CSDs" out of 5), and
  - 2 trade associations.
6. The responses to the survey are the primary source of information that fed into this report and any conclusions drawn stem from the contributions of the authorities, the CSDs and the trade associations. They have been shared and discussed with the authorities and the EBA at expert level.
7. **CSD Register.** We have used the information transmitted to ESMA by NCAs in accordance with Articles 21 and 58 CSDR, in respect of each CSD authorised under CSDR. Under Article 58 CSDR, CSDs subject to a procedure for granting authorisation to provide or



extending banking-type ancillary services must provide ESMA with information on the banking-type services that it has been authorised to provide for its participants. This information is then published on ESMA's website<sup>1</sup>. In addition, we also used the information notified by NCAs to ESMA in accordance with Article 58(3) CSDR, in respect of those entities providing banking-type ancillary services according to their national law, prior to the entry into force of CSDR.

8. **Relevant currencies indicators.** We have also used the data gathered by ESMA since 2017 for the purpose of the yearly calculation of the indicators to determine the most relevant currencies in which settlement takes place, under Article 12(1) CSDR and Article 2(1) of the RTS on CSD Requirements, which specifies the conditions under which the Union currencies are considered to be the most relevant. The data provided by entities operating an SSS in the EEA have been specified in ESMA guidelines<sup>2</sup> and consist of the values of settlement instructions against payment settled in their systems (for the previous calendar year) per currency. This data is of particular relevance in relation to settlement performed by CSDs in foreign currencies.

### 3 Findings

9. A summary of the responses received to the ESMA survey on banking-type ancillary services is included below and covers the following aspects:
  - The process under which CSDs have been authorised to provide banking-type ancillary services, and
  - The conditions under which banking-type ancillary services are provided under CSDR.

#### 3.1 THE CSDR BANKING AUTHORISATION PROCESS

##### 3.1.1 General overview of the process

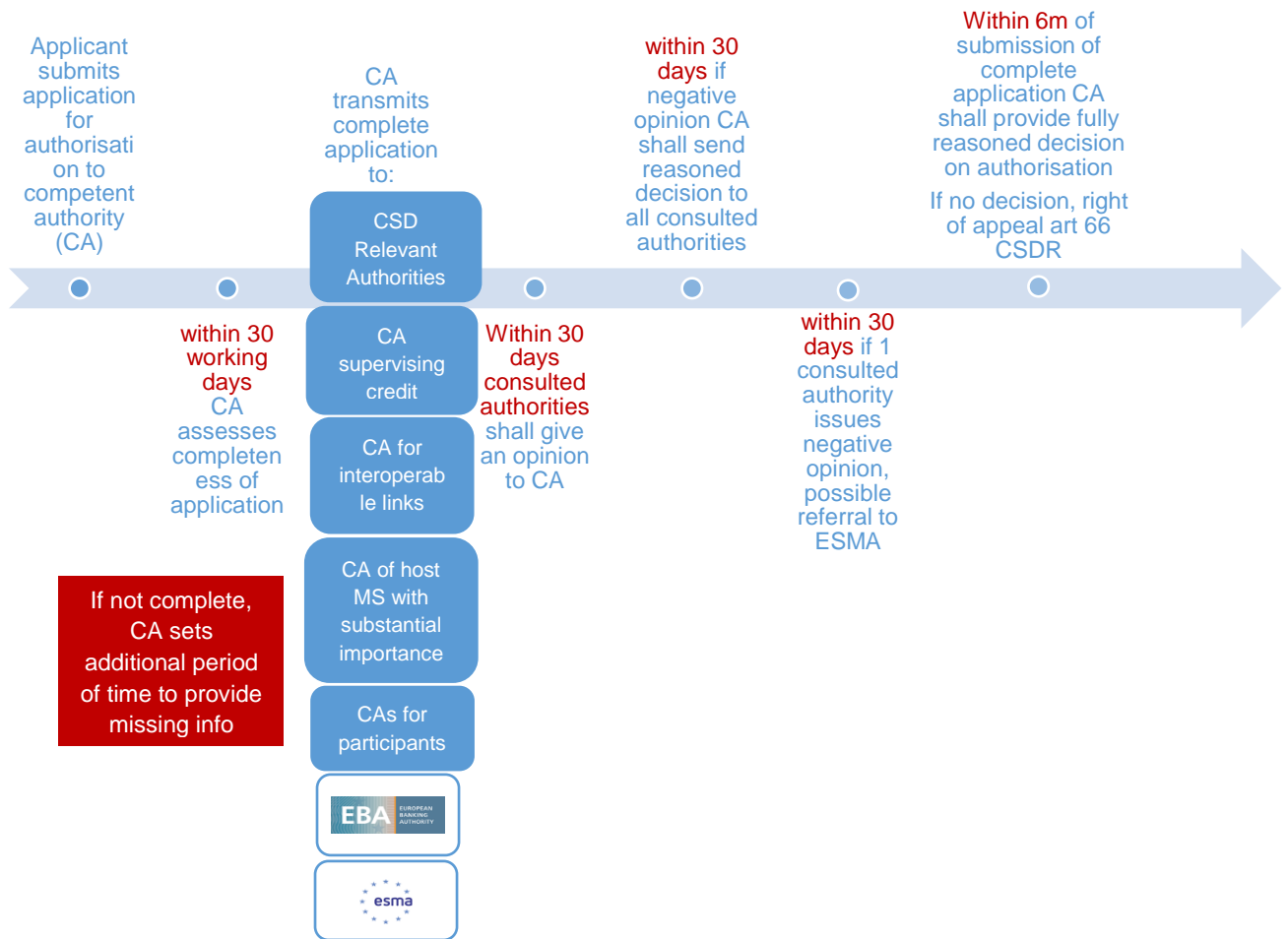
10. According to Article 54(1) CSDR, a CSD cannot provide banking-type ancillary services, as set out in section C of the annex, unless it has obtained an authorisation pursuant to Article 54 CSDR. Authorisation is necessary for the CSD either to offer itself such services under specific conditions or to designate one (or more) credit institutions to do so. The conditions and requirements to be met in order to obtain the authorisation are specified in Articles 54 and 55 CSDR.

11. Please see below an overview of the authorisation procedure:

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<sup>1</sup> [CSD Register](#) published on ESMA Website

<sup>2</sup> [Guidelines](#) on the Process for the Calculation of the Indicators to Determine the Most Relevant Currencies in which Settlement takes Place, 28 March 2018, ESMA70-708036281-66



12. **Pre-CSDR situation.** According to the information provided to ESMA by NCAs under Article 58(3) CSDR, by 16 December 2014, six CSDs provided banking services according to requirements of their national law: Euroclear Bank (BE), Clearstream Banking Luxembourg (LU), Clearstream Banking Frankfurt (DE), OEKB (AT), Keler (HU) and the former Estonian CSD, AS Eesti Väärtpaberikeskus<sup>3</sup>.

13. The ICSDs indicated that the services provided pre-CSDR were the same ones as those provided now.

14. **Overview of application procedures under Article 55 CSDR.** Five CSDs have filed for authorisation to provide banking-type ancillary services themselves under CSDR, out of which four have been authorised so far. The table below gives an overview of the process followed for each CSD:

<sup>3</sup> In 2014 Nasdaq was already ultimate owner of AS Eesti Väärtpaberikeskus. Nevertheless, back then, AS Eesti Väärtpaberikeskus was the registrar of the Estonian register of securities. Then inter alia the launch of T2S and the new regulatory requirements (i.e CSDR) incentivized Nasdaq to consolidate three Baltic CSDs to one Nasdaq CSD SE, licensed/reauthorized under CSDR. These strategic changes took few years, whereas aforementioned merger was finalized in September 2017.

Applicant CSD/CSD	Art 16 CSDR Application Date	Art 16 CSDR Authorisation date	Completeness and date of transmission of application to ESMA	Art 54 CSDR Authorisation date
AT - OeKB CSD GmbH	21/09/2017	01/08/2018	22/02/2018	01/08/2018
BE - Euroclear Bank (ICSD)	29/09/2017	04/12/2019	11/07/2019	04/12/2019
DE - Clearstream Banking AG	29/09/2017	21/01/2020	01/03/2021	not yet
HU - KELER Ltd.	29/09/2017	16/12/2020	21/07/2020	16/12/2020
LU - Clearstream Banking Luxembourg (ICSD)	29/09/2017	12/04/2021	12/10/2020	12/04/2021

15. For the 4 CSDs already authorised under Article 54 CSDR, the average time to receive the authorisation after the application was deemed complete was approximately 160 days so between 5 and 6 months, as prescribed by CSDR.

16. The responses to the survey relating to the application process of Euroclear Bank and CBL indicate that it can take up to 2 to 3 years for the application to be deemed complete by the NCAs, while the deadline for the provision of additional information by the CSD has been extended 2 and 4 times, respectively. Some of the reasons for the extension are IT adjustments to be made and information to be provided (inter alia, information on the credit and liquidity risk management framework).

### 3.1.2 Cooperation between authorities during the authorisation process

17. The 2 NCAs supervising the ICSDs have provided the list of authorities consulted for the purpose of Article 55 process, which are shown in table below:

CSDs	NCA	(a) Ras	(b) Banking authority	(c) Interoperable link NCA	(d) Substantial importance NCA	(e) Participants' NCA
Euroclear Bank -ICSD	BE NBB	Eurosystem UK BOE		LU CSSF	<ol style="list-style-type: none"> <li>1. AT FMA</li> <li>2. BG FSC</li> <li>3. HR Hanfa</li> <li>4. CY Cysec</li> <li>5. EE Finantsinspektsioon</li> <li>6. FI FSA</li> <li>7. FR AMF</li> <li>8. DE Bafin</li> <li>9. GR HCMC</li> <li>10. IE CBol - Ireland</li> <li>11. LT FCMC</li> <li>12. MT MFSA</li> </ol>	UK BOE

					13. PT CMVM 14. RO ASF 15. SK NBS 16. SI ATVP 17. NL De Nederlandsche Bank 18. NL AFM 19. DK FSA	
CBL - ICSD	LU CSSF	Eurosystem LU Central Bank UK BOE HR Croatian National Bank		BE NBB	1. AT FMA 2. BG FSC 3. CY Cysec 4. DE Bafin 5. FIN FSA 6. HR Hanfa – Croatia 7. IS Central Bank 8. IE CBoI 9. LV FCMC 10. LI FMA 11. LT Lietuvos Bankas 12. MT MFSA 13. NL National Bank 14. NO Finanstilsynet 15. PT CMVM 16. RO ASF 17. SK National Bank 18. SI ATVP	UK BOE DE Bafin FR AMF

20. LU CSSF has not received negative opinions from consulted authorities but comments from a number of consulted authorities, which were considered in the outcome of the authorisation, whereas BE NBB has reported that they had received one negative reasoned opinion in response to which they issued a reasoned decision addressing the concerns raised by that consulted authority, which confirmed it was the case, and that other consulted authorities despite issuing positive opinions had identified shortcomings which have been considered in the outcome of the authorisation and were reported to the CSD..

21. **Regarding the consulted authorities**, we have received answers from 7 of them, involved in various capacities in the authorisation process of the 5 applicant CSDs. In all the cases, they either provided a positive opinion or no opinion under Article 55(5) CSDR (which is deemed to be a positive opinion).

22. One of them mentioned having not been able to form an opinion as the documentation received had not been translated into English.

23. In most of the processes mentioned in the responses received, consulted authorities appeared not to have been informed about shortcomings identified by the CSDs' NCAs.

### 3.1.3 Expectations regarding future applications for authorisation to provide banking-type ancillary services

24. None of the respondents foresees an increase of the applications in the future:

- None of the responding CSDs intends to apply for initial authorization or extension of authorisation to provide ancillary banking-type services in the near future under the existing CSDR requirements which are deemed very detailed, partially stricter and limited in scope.
- No authority is aware of any interested institution – neither a CSD for providing services itself, nor a bank to set up a designated credit institution.

### 3.1.4 Assessment of the procedure under which CSDs have been authorised to provide banking-type ancillary services themselves

25. One authority considers that no improvement is needed or, if any change was to be agreed, it should not be significant, given that most CSDs providing banking-type ancillary services since before CSDR entered into force have already either obtained their authorisation or are undergoing the process, while a few others are of the opinion that the authorisation process should be improved.

#### Clarifying existing requirements

26. Two authorities mentioned that the scope of the aspects to be considered is not defined in CSDR. The reasoned opinion to be issued by the consulted authority shall be limited to taking into account the competent authority's responsibilities on the authorisation process. Moreover, the entire application file is provided by the NCA, making it difficult to identify which aspects should be considered. On the same line another authority noted that the quantity of information was disproportionate given the delay granted to review it and provide an opinion – so either the scope should be clarified and limited (e.g. to the risk management aspects and the recovery plan) or the delay for reviewing it should be extended.

27. On these points, views of one authority were that (i) each authority has the discretion to define the scope of its opinion as it deems adequate in line with its statutory competences and may make this scope clear and transparent in its opinion, and that (ii) obtaining the full application file is relevant as it is difficult to ex-ante identify which documents are relevant or not as, in addition, each CSD has its own unique way of organising its background documentation.

28. As to "the competent authorities responsible for the supervision of the participants of the CSD" (Article 55(4)(d) of CSDR): those authorities are not necessarily the competent authorities of CSDs and may concern several authorities in a given member state (as an example in France, AMF and ACPR). In addition, the consulted authorities may not be

familiar with CSDR, further justifying the need for both the clarification of the consultation scope and a longer consultation timeline.

29. **ESMA** is of the view that, in order to ensure a good cooperation and exchange, the consulted authorities sharing the same responsibilities in the authorisation process, should leverage on appropriate supervisory convergence tools (e.g. guidelines) or to have a dedicated forum to discuss their findings and compare their notes.

### **Extending the consultation deadline in Article 55(5) CSDR**

30. Many authorities suggested (i) extending the response time limit (e.g. to 3 months) to the consultation scope once the latter has been defined, in order to allow for a meaningful contribution to the process and (ii) modifying the wording of Article 55(5) CSDR to "may issue a reasoned opinion" (instead of "shall").
31. **ESMA** is of the view that the consultation period of the authorities consulted under Article 55(5) CSDR should be extended to three months. This could be considered in the context of the CSDR Review. It would require a change of Level 1 and would be in line with the consultation of the relevant authorities in the context of the general authorisation process under Article 17(4) CSDR, which allows for a three-month consultation period while, similarly to the banking authorisation process under Article 55 CSDR, the overall process lasts six months. This should also allow addressing to some extent the claims reported above that the scope of the opinion sought from the consulted authorities is disproportionate compared to the time granted for their review or that some of the consulted authorities might not be particularly familiar with CSDR.
32. **ESMA** would not be in favour of replacing "may" by "shall" in Article 55(5) CSDR as it may create some ambiguity as to the consequences of the absence of a reasoned opinion. As it is currently drafted a consulted authority may provide an opinion but in the absence of such opinion, it is deemed to have a positive one.

## **3.2 THE CONDITIONS OF PROVISION OF BANKING SERVICES UNDER CSDR**

### **3.2.1 General considerations on the offering of banking services by CSDs**

#### **Main advantages/disadvantages linked to the offering banking services**

33. Respondents listed the following main advantages and disadvantages in relation to the offering of banking services related to the settlement activity of CSDs:

<i>Main advantages/disadvantages</i>	
<b>For CSDs' participants</b>	<p>More services available to satisfy their needs, in particular for:</p> <ul style="list-style-type: none"> <li>- issuance/settlement in foreign currencies (a lot of issuers have small windows of opportunity to fund in other currencies (i.e. one month) and will often choose the CSD that has an existing commercial bank money setup as it is not possible to integrate into a central bank at an accelerated pace to satisfy a given project)</li> <li>- access to credit lines which avoids pre-funding and allows for lower costs (no third party has to be involved) and faster settlement</li> </ul> <p><b>However:</b> use of commercial bank money adds some risk to their set up as by definition it is riskier than the use of central bank money.</p>
<b>For CSDs</b>	<ul style="list-style-type: none"> <li>- More attractive offering of services to their clients, which gives a competitive advantage compared to other CSDs but also with other market participants such as global custodians (in this model the global custodian participates, or is a client of an entity that participates, in many CSDs and can, through a single platform and procedure, manage settlement in many markets and currencies).</li> <li>- Economies of scale through the provision of a wider range of core CSD and intermediary services (settlement services, custody services, banking services, investor CSD services, securities lending, collateral management services).</li> <li>- Lower risk given the qualified client base (in comparison with retail clients)</li> </ul> <p><b>However:</b> high regulatory compliance costs that limit the development of business cases</p>
<b>For commercial banks providing commercial bank money services to non-banking CSDs</b>	<ul style="list-style-type: none"> <li>- Not a profitable business in itself given the restricted client base and limited range of services.</li> <li>- Less economies of scale than CSDs: for a bank acting as a settlement bank, the ability to benefit from economies of scale is greatly reduced.</li> </ul>

### **Key barriers to enter the market of banking-type services ancillary to settlement**

34. Ten respondents, including authorities, CSDs and banks, considered the market for providing banking-type ancillary services to CSDs as not competitive, while others had no opinion.

35. The respondents identified the following key barriers to enter:

- In general: lack of a business case, particularly if only one national market is targeted, and compliance with specific national requirements could be an issue to enter more markets.
- For CSDs:
  - Strict regulatory requirements which entail high compliance costs (e.g. for credit and liquidity risks, in particular the requirement for liquidity and liquidity stress testing, sufficient qualifying liquid resources in each relevant currency) that may not be proportionate to the risks and volumes of banking-type services provided by smaller CSDs<sup>4</sup>.

In particular, the following illustrations were provided by CSDs, in respect of settlement in foreign currencies:

- *Asset services with a very limited risk profile that could be well mitigated through appropriate measures and should be allowed without the need to require a banking licence. For instance, certain types of instruments, typically bonds, can be issued in currencies other than the domestic one. However, the strict conditions set out in Article 54(5) CSDR results in a barrier preventing the possibility for non-banking CSDs to service the issuance in a non-domestic currency.*
- *The requirement to have at least two committed arrangements for each major currency (Art. 38(5) EBA RTS on Prudential requirements) leads to a review of activity at currency level. A committed liquidity provider cannot be easily found in every single major currency. The costs to set up committed facilities are significant. An adequate liquidity provider can only be selected through a lengthy process. Regarding the contract negotiation, there is no standard contract that fits all counterparties and there are always specific elements to consider that could delay negotiations.*
- Limitation on the range of services that can be provided (ancillary to CSD core services only).
- For CSDs within a group, the extremely high costs, regulatory requirements and lack of possible synergies or economies of scale.

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<sup>4</sup> Notably, asset services with a very limited risk profile that could be well mitigated through appropriate measure and should be allowed without the need to require a banking licence. For instance, certain types of instruments, typically bonds, can be issued in currencies other than the domestic one. However, the strict thresholds set out in Article 54(5) CSDR results in a barrier preventing the possibility for non-banking CSDs to service the issuance in a non-domestic currency.



- 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.
- For (potential) designated credit institutions: limitation as to the range of services that can be provided (ancillary to CSD core services only).
- For 'regular' commercial banks: the condition set out in Article 54(5) CSDR is too low to allow for a limited, but still significant multi-currency activity.

### **Switching of providers of ancillary banking-type services is difficult**

36. Respondents, including authorities and market participants, reported that it is difficult to switch providers of ancillary banking-type services, for the following reasons:

- For CSDs: the technological barriers are important (proprietary connections need to be standardised).
- For CSDs' participants: the process is complex and costly. Since very few CSDs offer such services it is often necessary to transfer all transaction-related securities and collateral (if applicable). This also often has to be coordinated with participants' clients and will therefore take a lot of time and effort involving several departments (e.g. operations and legal). Additionally, risk of errors come along with the transfer of high volumes and an adaptation of client contracts is also necessary. Finally, legal uncertainty could arise due to a possible change of legal system or country when switching to providers under another jurisdiction.

## **3.2.2 Assessment of the conditions under which CSDs provide banking services**

### **3.2.2.1 Conditions under which CSDs can provide banking services themselves (Art 54(3) CSDR)**

#### **Statistics on the provision of banking services by CSDs themselves**

37. Out of the 28 EEA CSDs, four CSDs have already been authorised under Article 54 CSDR to provide the following banking-type ancillary services<sup>5</sup> and a fifth one is in the process of being authorised:

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<sup>5</sup> As per the [ESMA CSD Register](#)

CSDs authorised to provide banking services							Services provided (as per Section C of CSDR Annex)
CSD	(a) Providing cash accounts to, and accepting deposits from, participants in a securities settlement system and holders of securities accounts, within the meaning of point 1 of Annex I to Directive 2013/36/EU	(b) Providing cash credit for reimbursement no later than the following business day, cash lending to pre-finance corporate actions and lending securities to holders of securities accounts, within the meaning of point 2 of Annex I to Directive 2013/36/EU	(c) Payment services involving processing of cash and foreign exchange transactions, within the meaning of point 4 of Annex I to Directive 2013/36/EU	(d) Guarantees and commitments related to securities lending and borrowing, within the meaning of point 6 of Annex I to Directive 2013/36/EU	(e) Treasury activities involving foreign exchange and transferable securities related to managing participants' long balances, within the meaning of points 7(b) and (e) of Annex I to Directive 2013/36/EU	Banking-type ancillary services allowed but not explicitly listed in Section C	
AT - OeKB CSD	X						
BE - Euroclear Bank (ICSD)	X	X	X	X	X	<ul style="list-style-type: none"> <li>- Executing buy-ins in connection with securities lending and borrowing services</li> <li>- Managing the CSD's own investment book</li> <li>- Managing the CSD's own treasury book</li> <li>- Managing the CSD's own hedging book</li> <li>- Fx spot transactions (currencies swaps on behalf of clients)</li> </ul>	
HU - KELER	X	X			X		

LU - CBL (ICSD)	X	X	X	X		
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31. Three banking CSDs provided the following information on the banking services they provide, for 2020:

<i>CSD name</i>	<i>Banking-type ancillary services effectively provided</i>	<i>Total value of cash settlement settled by the CSD directly or through credit institutions</i>	<i>CSD's exposure stemming from the provision of such services on average (in EUR)</i>	<i>CSD's maximum exposure stemming from the provision of such services (in EUR)</i>	<i>Share of the revenue of the CSD's banking activities in the CSD's overall revenue</i>
Clearstream Banking SA	a, b, c and d of Annex, Section C of CSDR	84,705,530,238	33,531,490,886.49	83,373,301,138.73	14%
KELER Ltd.	a of Annex, Section C of CSDR		252 746 963	421 084 785	5.5%
	b of Annex, Section C of CSDR		551 547	9 258 453	
	e of Annex, Section C of CSDR		87 182 264	162 389 026	
Clearstream Banking AG (under DE banking law, as it is not yet authorised under CSDR Art 54)	a, b and c of Annex, Section C of CSDR	1,374,603,054	9,752,761,965.43	23,535,424,760.38	2.4%

### Assessment of the current conditions

38. The current conditions applicable to the provision of banking services ancillary to settlement derive from the fact that CRD does not specifically address intra-day credit and liquidity risks resulting from the provision of banking services ancillary to settlement, and therefore specific enhanced credit and liquidity risk mitigation requirements, including a risk-based capital surcharge which reflects the relevant risks were required<sup>6</sup>. Such enhanced credit and liquidity risk mitigation requirements, following the global standards for financial market infrastructures and the principles for 'Monitoring tools for intra-day

<sup>6</sup> CSDR, Recital 47

liquidity management' published in April 2013 by the Basel Committee on Banking Supervision have been specified in the EBA RTS on Prudential Requirements.

39. Most respondents deemed the current prudential requirements under which banking-type ancillary services can be provided by CSDs, although strict and sometimes difficult and costly to implement, to be overall appropriate in view of the risks undertaken by CSDs. It has been mentioned that some specific rules with regard to intraday liquidity risk management and collateral hierarchy required CSDs to change their risk management and operational process which led to extensive discussions about the legal interpretation of such provisions. However, any new regulation leads to further effort to adapt the risk management framework and discussion on its interpretation.

### Suggestions for improvement

#### **Broadening the definition of the banking-type ancillary services**

40. Section C of the CSDR Annex provides for a list of banking-type services that can be provided as ancillary services by CSDs. Although it is a non-exhaustive list, all such services must be provided under the condition that they are “*directly related to core or ancillary services listed in Sections A and B*” of the CSDR Annex.
41. Most respondents (including authorities and CSDs) were not in favour of introducing more flexibility around banking-type ancillary services in connection with core and non-ancillary banking services (including to support innovation, DLT and/or new technological development supporting core or non-ancillary services).
42. The arguments in favour of more flexibility made were that it would be beneficial for the development of innovative technologies, to ensure legal certainty and establish clear rules, to help preventing obstacles related to new solutions/technologies.
43. However, according to most respondents, the current level of flexibility granted by the applicable framework readily caters for the activities being developed by CSDs and fully supports innovation. Notwithstanding that, some respondents were of the view that the new CSDR text should enable the CSD to expand their offering of banking services beyond the reach of their CSD activity, but only to the extent that these are captured by the risk management policies and subject to reporting. This should include intra-group flows and also interactions with the financial actors offering services equivalent to the CSDs, such as the upcoming DLT platforms (that have the initial recording and custody services).
44. **ESMA** is of the view that at this stage there does not seem to be a need for more flexibility around the definition of banking-type ancillary services that can be provided by CSDs. No specific example of services not qualifying under the current definition has been provided and should a CSD be interested in offering such type of services, the potential additional risks for the core CSD activity that these services might bring should be carefully considered.

### ***Allowing non-committed facilities to qualify as liquid resources***

45. Article 34(c) (Managing Liquidity Risks) of EBA RTS on Prudential requirements includes “committed lines of credit or similar agreements” as qualifying liquid resources for CSDs.
46. Three market participants suggested that non-committed facilities (e.g. FX transactions entered into under ISDA master agreements or repurchase transactions under GMRA master agreements) should be deemed as qualifying liquid resources for the purposes of Article 34 of EBA RTS on Prudential requirements, whereas all responding authorities are against such enlargement.
47. Arguments brought forward in favour of this inclusion are the depth and liquidity of the FX and repo markets. CSDs report that the alternative solutions<sup>7</sup> they use to comply with CSDR requirements are costly for them (commitment fees have to be paid) which eventually increases costs for investors.
48. A few authorities have raised several arguments against such inclusion, disputing the idea that these facilities would bring any liquidity, that due to their uncommitted nature, uncommitted facilities cannot be considered as giving enough certainty on the amount of cash which can be generated, and that in general, the requirements should be in line with CPMI-IOSCO PFMI<sup>8</sup> and comparable banking rules to define the criteria applicable for qualifying liquid resources.
49. **ESMA** understands that a draft Q&A on a closely related topic<sup>9</sup> has already been submitted to EBA and currently is under examination by the European Commission, as it has been deemed to require interpretation of Union law. As to this specific issue raised here in relation to Article 34 of EBA RTS on Prudential requirements, at this stage, and without prejudice to the interpretation of Union law that the European Commission is expected to

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<sup>7</sup> According to a group of CSDs:

- On FX transactions: considering the CSDR does not accept these agreements as liquidity arrangements to fulfil CSDR requirements, a CSD has to establish committed FX swap facilities.

- On repo transactions: As CSDR does not accept these agreements as liquidity arrangements to fulfil its requirements, These facilities are only offered by some FX market participants. a CSD has to resort to other instruments such as:

1) Committed repo facilities are only offered by some repo market participants.

2) The access to CCP cleared repo markets requires quite significant efforts. Because of the risk-profile access to CCP is usually only granted to banks with local presence, an alternative access path would be to seek a “sponsorship access” through an existing CCP participant, if at all available. Local requirements may hinder access for CSDs (e.g. access to the Japanese repo clearing requires a local presence), while the legal framework applicable to CCPs in different jurisdictions also vary significantly, for instance between the US and Europe. Here some additional harmonization efforts would be a plus to facilitate access.

3) Access to central bank facilities is significantly restricted for foreign CSDs.

<sup>8</sup> Cf. CPMI-IOSCO [Principles for financial market infrastructures](#) (BIS, 2012) - Principle 7: Liquidity risk, Key consideration 5: *For the purpose of meeting its minimum liquid resource requirement, an FMI's qualifying liquid resources in each currency include cash at the central bank of issue and at creditworthy commercial banks, committed lines of credit, committed foreign exchange swaps, and committed repos, as well as highly marketable collateral held in custody and investments that are readily available and convertible into cash with prearranged and highly reliable funding arrangements, even in extreme but plausible market conditions. If an FMI has access to routine credit at the central bank of issue, the FMI may count such access as part of the minimum requirement to the extent it has collateral that is eligible for pledging to (or for conducting other appropriate forms of transactions with) the relevant central bank. All such resources should be available when needed*

<sup>9</sup> The draft Q&A relates to Article 38 of EBA RTS on Prudential requirements on Arrangements in order to convert collateral or investment into cash using prearranged and highly reliable funding arrangements, and aims at clarifying the proprieties of the arrangement to qualify collateral as “qualifying liquid resource”.

provide, ESMA shares the view of the authorities that have responded to this survey and does not consider appropriate to consider non-committed facilities as liquid resources.

### 3.2.2.2 Conditions applicable to designated credit institutions (Article 54(4) CSDR)

50. Such type of credit institution still has to be created.

51. Respondents including authorities and market participants stressed that this is mainly due to the strictness of the requirements to appoint such a designated credit institution, in particular paragraph (d) of Article 54(4) CSDR, which strictly limits the activity such credit institution should have: they should “*only provide the banking-type ancillary services referred to in Section C of [CSDR Annex] and not to carry out any other activities*”, which creates a lack of business opportunity.

52. Two respondents also mentioned a limited demand (low volumes of activity) for such type of entity.

#### **Suggestion for improvement: broadening the scope of business of designated credit institutions**

53. Although many respondents acknowledge the failure to set up the credit institutions as foreseen in Article 54(4) CSDR, only one authority suggested that the requirement in paragraph (d) of said article, which limits the scope of business of designated credit institutions to the banking-type ancillary services listed in Section C of CSDR Annex, should be removed.

54. **ESMA** is of the view that removing the limit on the range of banking services to be provided by such credit institution would make them very similar to ‘regular’ commercial banks, which might help supporting the ‘business case’. This would require a change in Article 54(4) CSDR and a review of the prudential conditions applying to such credit institution, in order to take into account the additional risks introduced by this extension of range of services.

However, ESMA notes that nothing guarantees that such a ‘revised’ credit designated institution would effectively be created and, for the purpose of the CSDR review, considers that other proposals described in this report to improve non-banking CSDs’ access to commercial bank money, in particular modifying the approach under Article 54(5) CSDR to allow ‘regular’ commercial banks to provide cash settlement services to CSDs (cf. next section) and using banking CSDs to provide services to the non-banking ones (cf. section 3.2.2.3 below) appear at this stage as potentially more effective.

### 3.2.2.3 Conditions under which CSDs can use a ‘regular’ commercial bank (Art 54(5) CSDR)

55. Article 54(5) CSDR provides for an exemption to the need to use a designated credit institution as defined in Article 54(4) CSDR, thus allowing non-banking CSDs to “*settle the cash payments for part of the CSD’s securities settlement system*” (typically to process corporate actions payments or settle securities transactions in foreign currencies) without being authorised under Article 54 CSDR.

56. However, the use of commercial bank money is allowed only:

- a. Where it is not practical and available to settle in central bank accounts as provided in Article 40(1) CSDR, and
- b. Up to a certain level i.e. “*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*”. This threshold is monitored at least once a year by the competent authority of the CSD, which will be required to seek authorisation in accordance with Article 54(4) CSDR within six months if the threshold has been exceeded.

#### **Assessment of the conditions: Article 54(5) CSDR threshold is not appropriate**

57. Views of the respondents were split, however most CSDs deem this threshold to be too low to address their needs in commercial bank money.

58. The few CSDs that find the threshold appropriate indicated that the needs in commercial bank money were satisfied.

#### **Suggestions for improvement: Modifying Article 54(5) CSDR approach**

59. There was no suggestion for a new threshold at a specific higher level as, as one respondent said, “*a one-size-fits-all solution is not adaptable to medium and large markets and this approach solution has proven to be inefficient.*”

60. One authority had strong concerns against such an increase, as:

- a. increasing the threshold too much would be unfair to banking CSDs and would also cause risks, as CSDs that remain under this threshold do not need to mitigate credit and liquidity risks (here CSDR diverges from the PFMI where all FMIs need to mitigate those risks, not just those providing banking-type ancillary services). It was argued that, if the threshold was increased, additional requirements for CSDs to address the corresponding credit and liquidity risks, would need to be imposed on these CSDs as well (without necessarily imposing all requirements applicable to CSD-banking service providers).

- b. it would be difficult to find an appropriate threshold or an approach to determine a threshold (e.g. by the NCAs) that would both suit all CSDs and at the same time still guarantee a level playing field.
61. Some market participants suggested a case-by-case, risk-based approach, taking into account:
- a. the risk of default of the commercial bank and the amounts at stake, which should be low enough so that the smooth operation of CSD services is not jeopardised, and/or
  - b. each CSD's market profile and the currencies used.
62. It was also proposed to complement this approach by considering a set of limitations/additional conditions in order to ensure that developing settlement in commercial bank money does not result in additional systemic risk, such as:
- a bank with European oversight;
  - a systemically important financial institution in the respective home country;
  - long term issuer ratio higher than Aa2/A+.
63. **ESMA** notes however that no 'regular' commercial bank operating in the EU today is subject to the regulatory requirements needed to mitigate the very distinct risks that are caused by the provision of these services. ESMA believes it is crucial that, if institutions other than the designated credit institutions as meant in Article 54(4) CSDR are allowed to provide such services to CSDs, additional risk mitigating measures need to be defined for the CSDs that wish to use such a commercial bank and/or certain additional risk requirements are defined for these credit institutions to address the specific credit and liquidity risks. Such additional measures would need to be thoroughly investigated in cooperation with the EBA.
64. It was also suggested that it would be preferable to define the conditions/criteria in Level 2 measures rather than having them set in the Level 1 text.
65. **ESMA** is of the view that indeed it would be more effective to set the principles of the new approach in Level 1, while detailed conditions or criteria could be defined in Level 2 measures by ESMA and EBA.
66. Such considerations could help ensuring that the limited license credit institutions have professional risk management and that the risk is adequately spread. The objective of amending the threshold as outlined above is to allow for CSDs to offer settlement in commercial bank money in all relevant currencies until a critical mass is reached and so that the CSDs in question can then move to exploring offering settlement in central bank money.
- ESMA** believes that such strategy based on reaching a 'critical mass' can be questioned as it is not obvious for CSDs to obtain access to central bank money for settlement in a foreign currency, as it is dependent of the involved central bank's policy.



67. Along that line, one respondent, suggesting an adjustment according to the reality of each CSD market profile and used currencies proposed in particular that the limit of 2.5 billion per year should be removed and that the limit of 1% should be increased according to the result of a proper analysis that should be performed on different use cases gathered per market and according to the specific service risks and market profile.
68. **ESMA** is of the view that such a modification should be considered for the purpose of the CSDR Review. Indeed, using existing commercial banks' capacities appears to be less complex than creating new type of credit institution such as those envisaged under Article 54(3) CSDR (as envisaged under Section 3.2.2.2 above). It would require a Level 1 change (at least Article 55(4) CSDR) and accompanying Level 2 measures as to how new conditions/criteria should be determined on a case-by-case basis. This proposal however raises the question of who will determine the applicable conditions/criteria per CSD, and if this is done by the NCA of each CSD's willing to use such services, supervisory convergence measures might be necessary to ensure a level-playing field.

### 3.2.3 The issue of settlement in foreign currencies

#### 3.2.3.1 Description of the issue

69. Article 40(1) CSDR requests cash settlements to be made "*through accounts opened with a central bank of issue of the relevant currency where practical and available*". It is complemented by Article 40(2) CSDR which provides that "*where it is not practical and available to settle in central bank accounts as provided in paragraph 1, a CSD may offer to settle the cash payments for all or part of its securities settlement systems through accounts opened with a credit institution or through its own accounts. If a CSD offers to settle in accounts opened with a credit institution or through its own accounts, it shall do so in accordance with the provisions of Title IV [on provision of banking-type ancillary services for CSD participants]*".
70. One respondent explained that CSDs not licensed to provide banking services (non-banking 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-term 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, avoid exchange rate risk, etc.). This is particularly the case for bonds. In these cases, non-banking CSDs face difficulties in addressing the demands of issuers because of the reasons outlined below.
71. Currently, the barrier to entry to provide issuance and settlement services in foreign currencies is very high, as CSDR requires EEA CSDs to either:
- connect to the relevant central bank;
  - obtain themselves a limited purpose banking licence (Article 54(3) CSDR), which allow them to offer cash accounts themselves to their participants;
  - appoint a designated credit institution (Article 54(4) CSDR);

- d. settle in a regular commercial bank (i.e. cash accounts in foreign currencies are provided by commercial banks acting as settlement agents) under the conditions set in Article 54(5) CSDR.

72. However, in practice it appears that:

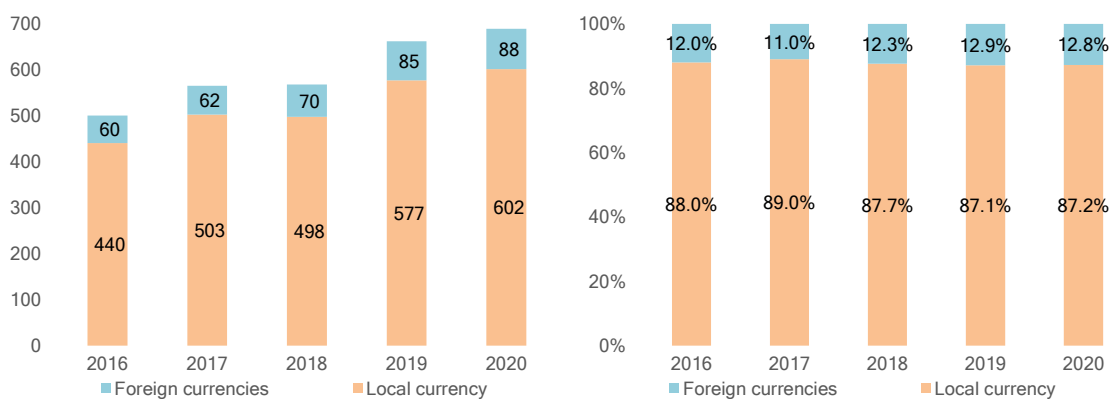
- a. it is often the case that central banks limit access of foreign entities to their accounts<sup>10</sup>;
- b. only 4 to 5 CSDs have or will have a banking license under Article 54(3) CSDR;
- c. no designated credit institution has been created so far under Article 54(4) CSDR;
- d. as further developed in section 7.2.2.3 above, the current conditions to use a regular commercial bank defined under Article 54(5) CSDR seem not adapted for most of the industry.

73. This issue had already been put on its watchlist by the EPTF in its 2017 report<sup>11</sup>. Given the answers received to the ESMA survey, no improvement seems to have been made since that time, so the purpose of this section is to investigate on this issue, to have a better idea of how settlement in foreign currencies is currently undertaken by EEA CSDs and understand better the limitations mentioned above.

### 3.2.3.2 Statistics on settlement in foreign currencies

74. According to the data received from the 28 CSDs operating in the EEA, 12 CSDs (OeKB, Euroclear Bank, CSD Prague, CBR, VP Securities, Keler, CBL, Nasdaq CSD, Malta Stock Exchange, KDPW, Depozitarul Central, Euroclear Sweden) currently settle in foreign currencies (in total 40 currencies, including EEA currencies).

75. Share of the yearly settlement activity in foreign currencies of all EEA CSDs (in EUR and per share): since 2016 there has been a 30% increase in value, but this share remains stable in the overall settlement activity of CSDs.



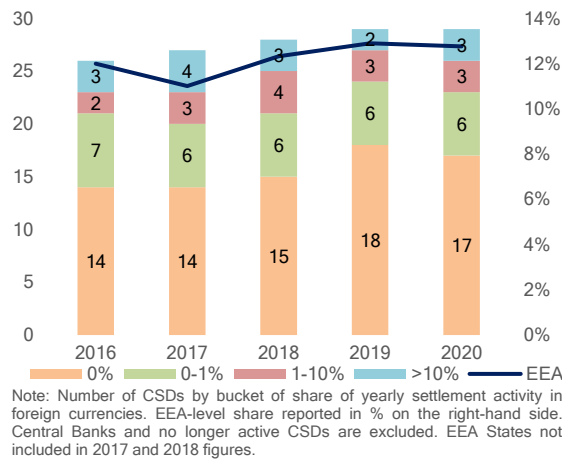
Note: Yearly settlement activity of EEA CSDs broken down by local vs. foreign currencies, in EUR tn. Central Banks and no longer active CSDs are excluded. EEA States not included in 2017 and 2018 figures.

Note: Yearly settlement activity of EEA CSDs broken down by local vs. foreign currencies, in %. Central Banks and no longer active CSDs are excluded. EEA States not included in 2017 and 2018 figures.

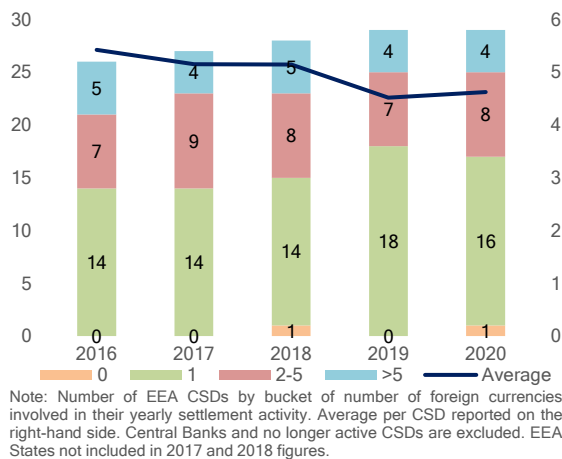
<sup>10</sup> EPTF [report](#), 15 May 2017: “in some rare cases, a CSD can offer central bank money settlement in another currency than the domestic currency” (eg. SEK settlement in VP Securities) (p.115)

<sup>11</sup> Ibid., p115-117: EPTF Barrier WL2: Obstacles to DvP settlement in foreign currencies at CSDs.

76. At CSD level, share of yearly settlement activity in foreign currencies:

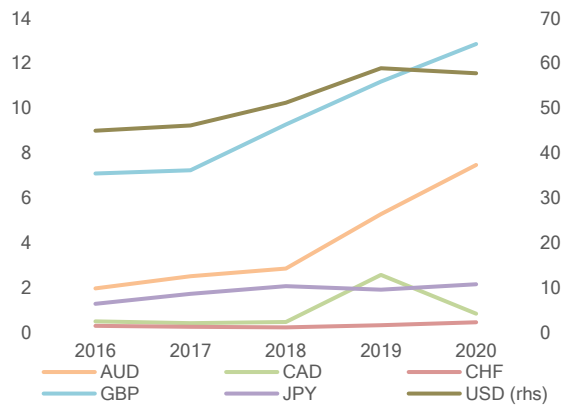


77. Number of currencies (including domestic) involved in the settlement activity of EEA CSDs:



This graph shows that only 4 CSDs use more than 4 foreign currencies in their settlement activity (among those CSDs, one uses 10 foreign currencies, while the 3 others use between 25 and 33 currencies). The other CSDs using foreign currencies each uses between 1 and 2 foreign currencies.

78. Yearly settlement activity of EEA CSDs by foreign currency (in EUR):



Note: Yearly settlement activity of EEA CSDs for selected foreign currencies, in EUR bn. Central Banks and no longer active CSDs are excluded. EEA States not included in 2017 and 2018 figures.

79. Access by a sample of CSDs to central banks of issue or CCPs clearing repos in the relevant currencies (please note that more CSDs have access to central bank money):

CSD name	Currencies used in SSS	Access to the relevant central bank of issue
<b>CSD Prague (CZ)</b>	EUR	Direct access to the National Bank of Slovakia since 2020.
<b>Clearstream Banking AG (DE)</b>	AUD CAD CHF CNY CZK DKK GBP HKD HUF JPY MXN NOK NZD PLN RUB SEK SGD TRY USD ZAR	Only access to the relevant Central Bank for CHF.
<b>Keller Ltd. (HU)</b>	ARS AUD BAM BGN CAD CHF CNY COP CZK DKK EGP EUR GBP HKD HRK ILS ISK JPY KRW MXN NOK NZD PEN PHP PLN QAR RON RSD RUB SAR SEK SGD THB TRY USD ZAR	No
<b>Clearstream Banking SA (LU)</b>	BGN CHF CZK DKK HRK HUF ISK NOK PLN RON SEK AED ARS AUD BRL CAD CNY GBP GEL HKD IDR ILS JPY KRW KWD	No

KZT	MXN	MYR
NZD	PEN	PHP
QAR	RUB	SAR
SGD	THB	TRY
USD	UYU	ZAR

<b>Euronext (Interbolsa)</b>	AUD	CAD	CHF	No
	CNY	GBP	JPY	
	NOK	SEK	USD	

#### 80. Expectations in terms of settlement in foreign currencies over the next 3-5 years.

Three non-banking CSDs reported that they expect to settle more foreign currencies (between 5 and 6 EEA and non-EEA currencies) in the years to come.

#### 3.2.3.3 Improving CSDs' access to foreign currencies

81. Several suggestions have been made to improve CSDs' access to foreign currencies:

- allowing CSDs with a banking licence to provide services to CSDs without a banking licence
- improving access to 'regular' commercial banks by modifying Article 54(5) CSDR
- imposing less stringent requirements to settlement in foreign currencies
- facilitating access to central banks.

#### ***Allowing banking CSDs to provide ancillary banking-type services to non-banking CSDs***

82. Article 54(4)(c) CSDR does not allow the authorised CSDs to provide ancillary banking services to other CSDs. ESMA looked for the views of authorities and CSDs as to whether they would consider it appropriate allowing a CSD with a banking licence to provide banking-type ancillary services to another CSD (including a CSD without a banking licence), as a way to facilitate the provision of banking services by non-banking CSDs.

83. Twelve respondents (including authorities and two groups of CSDs, as well as CSDs not belonging to a group) were positive, while another group of CSDs did not consider this appropriate and other respondents did not provide an opinion.

- Authorities argued that this would enable CSDs without a banking a license to access commercial bank money, which could allow smaller CSDs that had to reduce their activity in foreign currencies to pick up that business again, to the condition that the risks resulting from this practice are properly managed i.e. additional risk requirements will need to be imposed by the CSDs obtaining these services.
- One group of CSDs argued that this would enable intra-group synergies, in particular from a liquidity management perspective (it being understood that one CSD of the group shall not shift its credit and liquidity risks and the costs to the other group CSD). However, exceptions to soften the requirements intragroup could be introduced.

Potentiating synergies between non-banking CSD/banking CSD of the same group and managing proceeds flows in other currencies than EUR would also be beneficial.

84. However, some comments were more nuanced:

- One authority argued that this could intensify the concentration risk.
- One authority considers that in this case the banking services should not be provided to the non-banking CSD, but to that CSD's participant, such CSD playing only an agent role.
- One group of CSDs considered it would be premature given the many open questions on the scope of banking ancillary services and the availability of these services already in the market (type of service offering, impact on prudential banking requirements, conflict of interests, risk of contagion, etc.). If this possibility was envisaged, the provision of such banking-type ancillary services should be considered as a discretionary commercial service offer. The decision would need to be made at the discretion of the banking CSD, on a case-by-case basis as the operational set-up and risks would be CSD-specific.

85. **ESMA** is of the view that this possibility for banking CSDs to provide banking services to non-banking CSDs should be considered in the context of the CSDR Review. It would require changes in Article 54(3) CSDR and a review of Level 2 prudential requirements. ESMA notes however that this suggestion came mainly from groups including a banking CSD, and is based on the possibility to create synergies within groups, and therefore ESMA would also recommend examining other suggestions to be implemented in combination with this one, in order to cater for the needs in commercial bank money of non-banking CSDs which do not belong to groups of CSDs including a banking CSDs.

#### ***Improving access to commercial banks: modifying Article 54(5) CSDR approach***

86. Please refer to section 3.2.2.3 above for more details on this proposal.

#### ***Imposing less stringent requirements to settlement in foreign currencies***

87. One authority noted that imposing the same requirements to CSDs that intend to settle the cash leg of currencies other than its domestic currency (Article 40(2) CSDR) and to those that offer some other services listed in CSDR Annex, section C might be disproportionate. The distinguishing criteria could instead be whether those activities break the financial neutrality of the CSD settling activity so that the CSD faces liquidity or credit risk. That authority suggested that a CSD could be allowed to open currency denominated accounts in the issuing central bank/commercial banks that mirror the aggregated balances in each currency opened by its participants if, in order to keep CSDs financial neutrality and to avoid risk, this authorisation does not enable CSDs to incur a credit risk while settling instructions (they could not provide credit or auto collateralization facilities). Furthermore, a regulation analogous to MiFID II clients funds (Article 16(9) MiFID II, Article 2 Delegate Directive 2017/593) could be put in place.

88. Another authority considered that in case of banking services consisting only of the provision of cash accounts for settlement, the risk for both sides is limited due to settlement model – cash is transferred on account just before settlement (so in fact no huge amounts that would be deposited for uncertain time period).
89. On the same line, a non-banking CSD also suggested that further calibration of requirements should be provided to differentiate CSDs providing banking types services supporting settlements (e.g. for settlement in foreign currency) and CSDs providing extension of credit/liquidity facility to settlement participant for the purpose of the settlement.
90. **ESMA** considers that this suggestion would need to be further investigated, in particular with the EBA as the implications on prudential requirements applicable to such range of services might need to be carefully examined, and if followed, would require changes at Level 1 and at Level 2.

### ***Facilitating access to foreign central banks***

91. In their responses to the survey, CSDs explained that access to central banks is complicated by:
- a. Eligibility rules of the central banks: in many cases central banks will not allow a CSD to open a direct account unless that CSD is locally incorporated in the respective country with the relevant license (AED, AUD, BGN, BHD, CAD, CNY, GEL, UYU, ZAR, USD, etc.); sometimes it is totally impossible to open a direct account (RUB, HUF, ARS, etc.).
  - b. Connection costs: connecting to a 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. 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. Therefore, this investment makes sense only after the CSD reaches a 'critical mass' for the settlement in the given currency.
  - c. Formalities required to open an account and length of such process, given the thorough assessment that central banks conduct to allow access to their systems.
92. **ESMA** considers that it should first be noted that CSDR is not applicable to institutions outside its geographic scope and, more importantly, is not an appropriate tool to impose obligations on central banks.

## 4 Summary of proposals for the CSDR Targeted Review

93. **CSDR banking authorisation process**: although being at a stage where all CSDs have applied to be authorised to provide banking-type ancillary services under CSDR have either already been authorised or should be authorised in the coming months, and that no additional CSD appears to be willing to apply for authorisation under Article 54 CSDR, certain aspects of the procedure could be improved or clarified. This concerns in particular the involvement of the authorities to be consulted under Article 55(4)(a) to (e) CSDR.
94. For the purpose of the CSDR Targeted Review, an **extension of the consultation period** under Article 55(5) CSDR from 30 days to three months should be considered, as this would require a change in CSDR.
95. **Conditions under which banking services can be provided under CSDR**: The most pressing issue appears to be the limited access by non-banking CSDs to commercial bank money, in particular to be able to offer settlement in foreign currencies to their participants, which limits their business development and competitiveness. Several suggestions have been made to improve the situation, and ESMA believe the following ones (and possibly several of them in combination) could be considered for the purpose of the CSDR Targeted Review:
- a. **Allowing banking CSDs to provide banking-type ancillary services to non-banking CSDs**. This would require a Level 1 change and the additional risks would need to be appropriately addressed through additional credit and liquidity requirements to be defined at Level 2.
  - b. **Modifying the approach to access commercial banks set under Article 54(5) CSDR**: rather than having a one-size-fits-all requirement included in Level 1, the suggestion would be to establish the principle of a risk-based, case-by-case approach in CSDR, with more details to be provided through Level 2 measures as to the criteria under which CSDs could use commercial banks and to the conditions relating to commercial banks providing such services. Dedicated supervisory convergence tools should be considered in order to ensure level playing field.
  - c. **Imposing less stringent requirements to non-banking CSDs offering only settlement in foreign currencies as banking-type services** should also be considered and further investigated – and assessed against the other suggestions. This would require a change in the approach adopted so far, at Level 1 and Level 2.



## 5 Annexes

### 5.1 Annex I – Questionnaire

1. **[NCAs]** In relation to each CSD for which you are NCA which has applied for an authorisation under Articles 54 and 55 of CSDR, please provide the information below:

Jurisdiction	NCA name	Name of the (applicant) CSD	Banking services provided under the pre-CSDR national legislation	Date of application under Article 55 of CSDR	Ancillary banking-type services listed in the application provided under Article 55 of CSDR	Application to provide banking-type ancillary services itself or through a designated credit institution	If completeness has been declared, date of completeness	How many times did you extend the deadline for the provision of additional information by the CSD?	Which information was missing?	If an authorisation has been granted under Article 54 of CSDR, date of authorisation
[list of EEA States]	[blank space]	[list of EEA CSDs]	[several choices: list of services in Annex I to Dir 2013/36/EC]	[DD/MM/YYYY]	[several choices: services explicitly listed in Section C of CSDR Annex + other]	[by the same legal entity / through a designated credit institution]	[DD/MM/YYYY]	[blank space]	[free text]	[DD/MM/YYYY]

2. **[NCAs]** Were there any CSDs for which you are NCA authorised under the pre-CSDR national legislation to provide banking type ancillary services which did not apply for authorisation under Articles 54 and 55 of CSDR? [Y/N]

If so, how many? *[insert text box]*

**On cooperation between authorities during the authorisation process**

3. **[NCAs] As NCA of an applicant CSD**, please indicate which authorities you have consulted (one line per consulted authority, possibility to select several capacities):

Applicant CSD	NCA	Authorities consulted	Capacity in which the authority was consulted	If shortcomings have been identified by consulted authorities, have they been considered in the outcome of the authorisation and reported to the CSD?
[list of EEA CSDs]	[list of NCAs]	[list of authorities' names]	[several choices: list of capacities as per art 55(4) of CSDR]	[Y/N]

4. **[Consulted authorities] As a consulted authority** (as referred to in points a) to e) of Article 55(4) of CSDR), please indicate, for each application process in which your authority was involved:

Consulted Authority (under points a) to e) of Article 55(4) of CSDR)	Applicant CSD	Capacity in which your authority was consulted	Did your authority provide an opinion?	Was your authority informed about the shortcomings identified by the CA (final shortcomings reported to the CSD)?	In case your opinion negative, did the NCA wishing to grant authorisation provided your authority with a reasoned decision to address it?
[ [list of authorities' names]	[list of EEA CSDs]	[several choices: list of capacities as per points a) to e) of Article 55(4) of CSDR]	[no opinion/ positive opinion/ negative opinion]	[Y/N]	[Y/N]

**Questions on the banking authorisation process**

5. **[CSDs, NCAs, consulted authorities]** Please indicate the main challenges encountered throughout the process in general (e.g. the scope of the consultation, the delay to provide a reasoned opinion, etc.). *[insert text box]*

6. **[CSDs, NCAs, consulted authorities]** Please indicate the requirements, whether substantive or procedural, which were the most challenging to implement. *[insert text box]*
7. **[CSDs, NCAs, consulted authorities]** Do you consider the process should be improved?
- a. No opinion
  - b. Yes. In that case please provide suggestions for improvement and/or potential amendments to the existing requirements. *[insert text box]*
  - c. No
8. **CSDs, NCAs, consulted authorities, EBA]** Do you foresee an increase of the applications, or do you intend to apply, for authorisation to provide ancillary banking-type services in the future?
- a. No opinion.
  - b. Yes. Please justify your answer. *[insert text box]*
  - c. No. Please justify your answer. *[insert text box]*

**Questions on the conditions applying to the provision of banking-type ancillary services by CSDs**

9. **[CSDs providing banking-type ancillary services]** please provide the following information (one row per year and per service):

CSD's name	Year (one row per year)	Banking-type ancillary service effectively provided (one row per service)	Total value of cash settlement settled by the CSD directly or through credit institutions (per year and per CSD/credit institution)	% of the total value of cash settlement of all securities transactions settled against cash (per year and per CSD/credit institution)	CSD's exposure stemming from the provision of such services on average per year (in euros)	CSD's maximum exposure stemming from the provision of such services per year (in euros)	Revenue per each service per year (in euros)	Total revenue of the CSD's banking activities, per year (in euros)	Total revenue of the CSD's overall activities (including banking services) per year (in euros)

[list of EEA CSDs]	[application under CSDR -2020]	[services explicitly listed in Section C of CSDR Annex + other]	[blank space]	[blank space]	[blank space]	[blank space]	[blank space]	[blank space]	[blank space]
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10. [CSDs not authorised under Articles 54 and 55 of CSDR] Please indicate:

CSD's name	Year	Which credit institution(s) do you use as settlement agent(s)?	Total value of cash settlement settled by the CSD directly or through credit institutions (per year and per CSD/credit institution)	% of the total value of cash settlement of all securities transactions settled against cash (per year and per CSD/credit institution)
[list of EEA CSDs]	[application under CSDR – 2020]	[blank space]	[blank space]	[blank space]

11. Cash settlement of securities transactions in foreign currencies:

a) [CSDs] Access to foreign currencies – please indicate:

CSD's name	Which foreign currencies are used in your SSS? (EEA States and third countries' currencies) (one row per currency)	Do you have access to the relevant central bank of issue, or CCP(s) clearing repos in these foreign currencies? (per each currency)	If not, have there been unsuccessful attempts to access central banks and CCPs? (per each currency)	If not, which credit institution do you use? (per each currency)	In how many other foreign currencies do you identify the need to settle instructions in the next 3 to 5 years? Please list the currencies. (EEA States and third countries' currencies)	Do you think the access to foreign currencies should be improved?

[list of EEA CSDs]	[blank space]	[Y/N] If Yes, please specify: - which central banks and CCPs you have access to; - since when; - the type of access.	[Y/N] If Yes, please provide details and indicate the reasons. [insert text box]	[blank space]	[blank space]	[Y/N] If Yes, please provide details. [insert text box]
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b) **[CSDs]** Settlement of foreign currencies – please indicate:

CSD's name	Year	Foreign currencies used to settle securities transactions in your SSS per year  (one row per currency)	% of the value of settlement of securities transactions settled in cash accounts opened in the CSD's own book, per currency and year	% of the value of settlement of securities transactions settled in cash accounts opened with a credit institution acting as settlement agent, per currency and year	% of the value of settlement of securities transactions settled in a central bank, per currency and year
[list of EEA CSDs]	[application under CSDR – 2020)	[blank space]			

12. **[CSDs]** Article 54(5) of CSDR provides for an exemption from the requirement to use a limited purpose credit institution to provide banking-type ancillary services for CSDs whose total value of cash settlement through accounts opened with credit institutions referred to in paragraph (2) of the same article, 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.

Does this exemption allow you to address your needs in commercial bank money?

a. Yes.

b. No. In this case, which thresholds/ratios would appropriately address your needs in commercial bank money? Please justify your answer. *[insert text box]*

13. **[EBA, NCAs, RAs, CSDs]** Do you consider the conditions under which a CSD may provide banking-type ancillary services, including prudential requirements and capital constraints are appropriate?

Yes. Please justify your answer. *[insert text box]*

No. Please justify your answer and if possible, provide suggestions for improvement. *[insert text box]*

No opinion.

14. **[EBA, NCAs, RAs, CSDs]** Do you consider that non-committed facilities (e.g. transactions entered into under ISDA or GMRA master agreements) should be deemed qualifying liquid resources for the purposes of Article 34 of Commission Delegated Regulation (EU) 2017/390?

a. Yes. Please justify your answer. *[insert text box]*

b. No. Please justify your answer. *[insert text box]*

c. No opinion.

15. **[EBA, NCAs, RAs, CSDs]** Would you consider it appropriate that a CSD with a banking licence should be able to provide banking-type ancillary services to another CSD (including a CSD without a banking licence)?

a. Yes. Please justify your answer. *[insert text box]*

b. No. Please justify your answer. *[insert text box]*

c. No opinion.

16. **[EBA, NCAs, RAs, CSDs]** Do you consider that there should be further flexibility around banking-type ancillary services in connection with core and non-ancillary banking services (including support innovation, DLT and/or new technological development supporting core or non-ancillary services)?

a. Yes. Please justify your answer. *[insert text box]*

b. No. Please justify your answer. *[insert text box]*

c. No opinion.

17. **[EBA, RAs, EBF]** Are you aware of any institutions with a limited banking licence allowing it to provide banking-type ancillary services to CSDs?
- a. Yes
  - b. No. If no, why? *[insert text box]*
18. **[EBA, RAs, EBF]** Why do credit institutions not provide banking services to CSDs, apart from the settlement of cash payments in accordance with Article 54(5) of CSDR?  
*[insert text box]*
19. **[EBA, RAs, CSDs, EBF]** Is the market for providing banking-type services ancillary to CSD services competitive?
- a. Yes. What are the main drivers of competition? Please justify your answer. *[insert text box]*
  - b. No. Please justify your answer. *[insert text box]*
  - c. No opinion.
20. **[EBA, RAs, CSDs, EBF]** What are the key barriers to entry? *[insert text box]*
21. **[EBA, RAs, CSDs, EBF]** Are there barriers to CSDs providing ancillary banking-type services?
- a. Yes. If so, what are these? *[insert text box]* Did you consider offering ancillary services and decide against it? If so, why? *[insert text box]*
  - b. No
  - c. No opinion
22. **[EBA, RAs, CSDs, EBF]** Is it difficult to switch providers of ancillary banking-type services (at the level of CSDs, CSDs' participants, and participants' clients)?
- a. Yes. Please justify your answer. *[insert text box]*
  - b. No. Please justify your answer. *[insert text box]*
  - c. No opinion.

23. **[EBF]** What are the main advantages/ disadvantages in offering banking services related to settlement activity of CSDs? *[insert text box]*



## 5.2 Annex II – List of respondents

### Authorities

Belgium	National Bank of Belgium (NBB)
Bulgaria	Financial Supervision Commission
Czech Republic	Czech National Bank
Denmark	Danish Financial Supervisory Authority
Estonia	Estonian Financial Supervision and Resolution Authority (Finantsinspektsioon)
Finland	FIN-FSA
France	Autorité des marchés financiers
Germany	BaFin (Bundesanstalt für Finanzdienstleistungsaufsicht)
Latvia	Financial and Capital Market Commission (Finanšu un kapitāla tirgus komisija)
Luxembourg	CSSF
Malta	Malta Financial Services Authority
Norway	Finanstilsynet
Slovak Republic	National Bank of Slovakia
Slovenia	Securities Market Agency
Spain	CNMV
Sweden	Finansinspektionen

### CSDs/groups of CSDs

		<i>Applicant CSD/CSD [colors for groups of companies]</i>	<i>Art 16 CSDR Authorisation date [authorisation as CSD under CSDR]</i>	<i>Art 54 CSDR Application [Banking services authorisation process]</i>	<i>Art 54 CSDR Authorisation date</i>
1	BE	CIK (Euroclear Belgium)	23/04/2019	no	
2	BE	Euroclear Bank [ICSD]	04/12/2019	yes	04/12/2019
3	CZ	Centrální depozitář cenných papírů, a.s. (CSD Prague)	21/12/2018	no	n/a
4	DE	Clearstream Banking AG (Deutsche Boerse Group)	21/01/2020	yes	not yet
5	DK	VP Securities A/S (Euronext Group)	03/01/2018	no	n/a
6	FR	Euroclear France	16/04/2019	no	n/a
7	HR	Croatian Central Depository & Clearing Company Inc. (SKDD)	not yet	no	n/a
8	HU	KELER Ltd.	16/12/2020	yes	16/12/2020
9	IT	Monte Titoli spa (Euronext Group)	18/12/2019	no	
10	LU	LuxCSD S.A. (Deutsche Boerse Group)	15/04/2020	no	n/a
11	LU	Clearstream Banking Luxembourg [ICSD] (Deutsche Boerse Group)	12/04/2021	yes	12/04/2021

12	NL	<b>Euroclear Nederland</b>	02/05/2019	no	n/a
13	NO	<b>Euronext VPS NO (Euronext Group)</b>	not yet	no	n/a
14	PT	<b>Interbolsa (Euronext Group)</b>	12/07/2018	no	n/a
15	SE	<b>Euroclear Sweden AB</b>	14/11/2019	no	n/a

### Trade Associations

EBF	European Banking Federation
BdB	Association of German Banks