

INCEPTION IMPACT ASSESSMENT

Inception Impact Assessments aim to inform citizens and stakeholders about the Commission's plans in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Citizens and stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options.

TITLE OF THE INITIATIVE	<i>Central Securities Depositories – review of EU rules</i>
LEAD DG (RESPONSIBLE UNIT)	FISMA C2
LIKELY TYPE OF INITIATIVE	<i>Legislative proposal</i>
INDICATIVE PLANNING	Q4 2021
ADDITIONAL INFORMATION	https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-markets/post-trade-services/central-securities-depositories-csds

The Inception Impact Assessment is provided for information purposes only. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by the Inception impact assessment, including its timing, are subject to change.

A. Context, Problem definition and Subsidiarity Check

Context

Central Security Depositories (CSDs) are institutions of systemic importance for financial markets. CSDs allow the registration and safekeeping of securities, the settlement of securities in exchange for cash, they track how many securities have been issued and by whom as well as each change in the holding of these securities.

Regulation (EU) No 909/2014 on improving securities settlement in the European Union and on central securities depositories (CSDR) aims to increase the safety in securities settlement and improve settlement efficiency. Furthermore, it provides a set of common requirements for CSDs across the EU, thereby ensuring a single market for securities settlement within the Union.

The Commission 2021 Work Programme and the 2020 Capital Markets Union Action Plan announced that the Commission will consider amending existing rules to simplify CSDR and contribute to the development of a more integrated post-trading landscape in the EU (CSDR REFIT).

CSDR REFIT will build on the conclusions of a Commission report to be published in the first half of 2021. That report is required under Article 75 of CSDR and will also cover the requirement to conduct a comprehensive assessment of the potential supervision of third-country CSDs by the European Securities and Markets Agency as required by Article 81(2c) of Regulation (EU) No 1095/2010. The impact assessment underpinning this initiative will be prepared in parallel with the evaluation of CSDR.

Problem the initiative aims to tackle

Experience with the application of CSDR until now seems to indicate that there may be a need to adapt and simplify certain requirements, thereby reducing the burden imposed on stakeholders involved and improving the efficiency of the rules. Likewise, there are stakeholders that point to a need to review the framework applicable to the cross-border provision of services within the EU in order to ensure a true single market for CSDs. The present REFIT initiative will aim at addressing a number of the identified problems in specific areas:

- **CSD authorisation and review & evaluation process:** *CSDR prescribes the processes of CSDs' initial authorisation as well as their annual review and evaluation by NCAs of the Member State of their authorisation. The administrative burden of certain requirements for authorisation may be disproportionate to both CSDs and NCAs, e.g. where not all requirements are relevant for the activity of an applicant CSD. Furthermore, the annual review and evaluation may be burdensome and with limited added value considering that, due to the size and complexity of CSDs and the NCAs' resources, it may be difficult for the relevant exercise to be performed properly so frequently.*
- **Cross-border provision of services within the EU:** *The procedure through which a CSD authorised in an EU Member State can provide notary and central maintenance services in relation to financial instruments constituted under the law of another EU Member State or to set up a branch in another Member State is set out in CSDR and is based on the cooperation of the CSD's home and host NCAs.*

Nonetheless, this process seems to have been significantly more burdensome than previously thought, which could potentially lead to a reduced level of cross-border activity, limiting potential efficiency gains, increasing costs for post-trade services and, thereby, reducing competition.

- **Internalised settlement:** an entity settling transactions outside of a securities settlement system must report to the NCA of its place of establishment the aggregated volume and value of those transactions. While the data gathered by NCAs seems to be useful, the fact that this requirement applies to all entities internalising settlement without distinction on the frequency, the volumes or the values of the transactions they settle internally may be considered as disproportionate.
- **Technological Innovation:** Technological innovation in financial markets has significantly progressed since the adoption of CSDR. CSDs and providers of ancillary services increasingly explore new technologies in relation to 'traditional' assets in digital form, such as tokenised financial instruments. In order to facilitate the use of this innovation, some aspects of CSDR (e.g. definitions, such as the definition of "settlement") may need to be adapted to ensure that CSDs, providers of ancillary services and their clients can exploit fully the benefits that these new technologies may bring.
- **Authorisation to provide banking-type ancillary services:** the provision of banking-type ancillary services (such as the provision of credit) is subject to some limitations in CSDR. While these limitations are justified in terms of risk mitigation, some of them may have had unintended consequences in the ability of CSDs to provide certain services. Targeted adjustments may therefore be required to improve the provision of banking-type ancillary services to the extent they would not endanger financial stability.

Stakeholders have also raised concerns with the **settlement discipline framework** (i.e. the measures aimed at preventing and addressing failures in the settlement of securities transactions) which however will only apply from 1 February 2022. The questions received in relation to the scope of that framework cast doubts on the clarity of the current rules as well as their potential impact outside the sphere of securities trading and settlement. Moreover, some stakeholders have raised concerns about the proportionality of the rules, in particular in light of experiences during the market turmoil of the first wave of the COVID-19 crisis.

Basis for EU intervention (legal basis and subsidiarity check)

The legal basis for CSDR is Article 114 of the Treaty on the Functioning of the European Union (TFEU) and any amendments to it would have the same legal basis. The objectives of CSDR are to increase the safety and improve settlement efficiency as well as provide a set of common requirements for CSDs across the EU, thereby enhancing the legal and operational conditions in particular for cross-border settlement in the Union, while promoting cross-border competition within the single market. These objectives cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of actions, be better achieved at Union level in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU).

B. Objectives and Policy options

The aim of the initiative is to ensure that the objectives of CSDR - to promote safe, efficient and smooth settlement by laying down uniform requirements for the settlement of financial instruments in the Union and rules on the organisation and conduct of CSDs – are met in a more proportionate, effective and efficient manner. In addition, the initiative will aim at simplifying any CSDR requirements which may impose an unnecessary burden. This is particularly significant given the importance of ensuring an economy that works for people and of completing the Capital Markets Union.

Without any EU action, some actors would continue to be subject to potentially disproportionate requirements, CSD services may be more costly than necessary, cross-border settlement within the single market would not be further enhanced and the potential benefits from reducing unnecessary administrative burdens and market fragmentation would not be secured.

Interpretative communication by the Commission or other non-binding instruments will be considered. The policy options will also include a targeted revision of the legislative framework in order to simplify the requirements in the areas where problems have been identified and achieve its objectives in a more proportionate, effective and efficient manner.

C. Preliminary Assessment of Expected Impacts

Likely economic impacts

The likely economic impacts will be assessed in detail in the Impact Assessment. The Impact Assessment will take into account: the trade-offs between less burdensome rules to lower the costs and any potential negative impact on financial stability; the impact of amending rules currently in force on those stakeholders that made investments to comply with them; the impacts of achieving a single market and enhancing competition amongst CSDs. Nevertheless, a more integrated post-trading infrastructure in Europe will enable resilient financial markets

<i>that will support post-COVID recovery and long-term economic development.</i>
Likely social impacts
<i>Not anticipated</i>
Likely environmental impacts
<i>Not anticipated</i>
Likely impacts on fundamental rights
<i>Not anticipated</i>
Likely impacts on simplification and/or administrative burden
<i>The final impacts will depend on the options chosen. However, the aim of the initiative is to ensure that the objectives of the CSDR are met in a more proportionate, effective and efficient manner. Its expected impact is simplification and increased transparency of legislation and reduction of unnecessary administrative burden.</i>
<i>A revised and simplified regulatory framework may imply initial one-off costs for national administrative authorities but could reduce administrative costs for them in the long run. Subsequent revision of the relevant technical standards by the ESAs might be necessary.</i>
D. Evidence Base, Data collection and Better Regulation Instruments
Impact assessment
<i>An Impact Assessment will support the preparation of this initiative and inform the Commission's decision. The Impact Assessment work started in Q3 2020 with the organisation of a meeting of Member States' experts on the CSDR review.</i>
Evidence base and data collection
<ul style="list-style-type: none"> <i>In September 2020, the Commission held a Member States' Expert Group meeting, with the participation of the European Central Bank (ECB) and ESMA.</i> <i>In November 2020, ESMA submitted to the Commission reports on two issues (cross-border provision of services and internalised settlement) as required under Article 74 of CSDR. The data contained in the reports will be used as appropriate in the Impact Assessment. In Q2 2021, ESMA will provide the Commission with two reports, namely on the provision of banking-type ancillary services and the use of FinTech by CSDs.</i> <i>In December 2020, the Commission launched a targeted consultation on the CSDR review asking stakeholders' feedback on specific areas, namely: authorisation and review and evaluation; cross-border provision of services within the EU; internalised settlement; technological innovation; authorisation to provide banking-type ancillary services; questions on scope; settlement discipline; and the framework for third-country CSDs.</i>
<i>Ad hoc requests for advice will be sent to ESMA where there is a need to obtain additional data on specific issues. Where available and to the extent possible, public sources of information, other data gathered from the industry, and existing studies will also be used to enrich the analysis provided in the Impact Assessment. Any necessary additional analytical and technical work will be carried out by experts of the Commission and in cooperation, where appropriate, with the relevant Commission Working Group of Member State experts.</i>
Consultation of citizens and stakeholders
<i>A targeted consultation on the CSDR review took place in the period from December 2020 to February 2021. The consultation generated more than 90 contributions from a broad range of stakeholders and certain confidential responses were submitted directly via email. The consultation and the summary of the responses can be found at https://ec.europa.eu/info/consultations/finance-2020-csdr-review_en .</i>
<i>In a related area, the European Commission carried out a public consultation entitled Consultation on an EU framework for markets in crypto-assets between 19 December 2019 to 19 March 2020. 198 respondents replied to that consultation. The respondents to that consultation raised also certain issues in relation to CSDR . The consultation is available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12089-Directive-regulation-establishing-a-European-framework-for-markets-in-crypto-assets/public-consultation .</i>
Will an Implementation plan be established?
<i>Depending on the complexity of the proposal, an implementation plan could be envisaged.</i>