



Brussels, 01 February 2021

## **Euroclear SA/NV**

**Response to European Commission's targeted consultation on**

**“Review of regulation on improving securities  
settlement in the European Union and on Central  
Securities Depositories”**



## INTRODUCTION

Euroclear supports the Commission in pursuing a targeted consultation on the CSD Regulation (CSDR). The regulatory environment for CSDs subject to CSDR is still relatively new and has yet to be fully tested in relation to the objectives of the Capital Markets Union (CMU) or the Single Market. Hence, we welcome the opportunity to review the CSDR in a focused manner within the broader context of the CMU Action Plan and the EU's ambitions for a strong € and EU sovereignty.

The Euroclear group is the world's leading provider of domestic and cross-border settlement and related services for bond, equity and fund transactions. The Euroclear group holds assets under custody for a value of €31 trillion and settled transactions for a value of €837 trillion in 2019. Our corporate structure ensures that we give the very highest priority to client interests. The group includes Euroclear Bank, an international Central Securities Depository (CSD) also authorised as a credit institution, as well as the national CSDs Euroclear Belgium, Euroclear Finland, Euroclear France, Euroclear Nederland, Euroclear Sweden and Euroclear UK & Ireland. All of the Euroclear CSDs have been authorised under the CSD Regulation or derived legislation.

Euroclear sits at the centre of the European Union while maintaining the world's largest ecosystem when it comes to connecting issuers and investors. As a cross-border group of CSDs, Euroclear supports local capital markets while also ensuring integration in the EU through CSD links and cross-CSD activity in T2S. Euroclear Bank, the international CSD, services both EU and non-EU economies through cross-border activity in its own eco-system which connects international investors to European issuers and which secures the investments of European investors in non-European issuers.

In addition to the comments we provide in response to the detailed questions, we hereby offer our summarised views on how we believe securities settlement in the European Union can be further enhanced. We would welcome the opportunity to further discuss with the Commission's services and remain at the Commission's disposal to provide complementary information.

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## EXECUTIVE SUMMARY

More than a decade after the financial crisis, the post-trade efficiency and resilience have significantly improved. As a systemically important financial market infrastructure, Euroclear CSDs have worked hard to meet the highest possible standards prescribed in CSDR and to adapt to harmonisation efforts resulting from T2S, or still ongoing in the context of ECMS and the integration of T2/T2S. The CSDR policy objectives in terms of resilience and efficiency have largely been achieved.

On the other hand, the ambition the EU had in frame of its single market objectives (i.e. to have greater competition and market integration) is only partially being realised for the moment. Further efforts are needed to address some of the more politically difficult areas of harmonisation. Euroclear continues to be a dedicated supporter of further harmonisation efforts in the context of barriers which were identified by the European Post Trade Forum ("EPTF") (legal uncertainties, corporate actions, reporting, etc.) CSDs already play an important role in the EU to overcome such fragmentation on a cross-border basis. We fully subscribe to the Next CMU High-Level Group report<sup>1</sup> that: "International CSDs are a unique European piece of financial market integration, which the EU should leverage to achieve market integration and global relevance for EU financial markets."

The regulatory environment for CSDs subject to CSDR is nevertheless still relatively new. The Settlement Discipline Regime remains to be tested against the background of a challenging geo-political environment. A detailed and full legislative review of CSDR would come too soon and in our view would need to be conducted in the context of a more fundamental analysis on how the whole securities value chain (trading, clearing and settlement) has evolved over the last years. A detailed review should consider how the infrastructures and their roles/activity have evolved following the introduction of MiFID, EMIR, CSDR, T2S, etc. This could inform EU authorities on a broader review of CSDR or the other pieces of legislation.

Hence, we focus our comments on those elements in CSDR which have created unintended, and at times even detrimental, consequences for the required further integration. New barriers which are not linked to EPTF and which result largely from divergence in the interpretation and implementation of CSDR. New barriers which in our view can largely be addressed through targeted amendments or additional guidance.

**1. We ask for targeted corrections, simplification and/or clarification of those elements which create a disproportionate burden or even potentially new barriers which impact the EU's competitiveness:**

- a. **Passporting:** While CSDR has harmonised the conditions for conducting CSD business, amongst others with a view to opening up for competition, it has - unfortunately and unintentionally - made it more complex, costly and long to accept foreign securities compared to the process before CSDR. We are aware that some NCAs deem a more explicit provision on supervisory cooperation arrangements a pre-requisite to further consolidation of CSDs. Without taking a view on what such provision should look like, we do support any initiative which fosters a more integrated Europe.
- b. **The Review and Evaluation process:** This is a yearly process by which National Competent Authorities (NCA) need to review and evaluate any significant changes which have been made since the initial CSDR filing or the previous Review and Evaluation. We have noted that this process gives rise to different approaches and expectations amongst NCAs, hence creating an important recurrent cost for both CSDs and NCAs as well as unequal level playing field amongst CSDs.
- c. **The treatment of CCP penalties in the Settlement Discipline Regime framework:** We support the request of EACH to remove RTS Art.19, so as to allow for a single operational process at the level of the CSD and the CCP and its members. We would encourage an amendment of the text ahead of the implementation date, so as to avoid re-work and duplication of efforts.

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<sup>1</sup> Savings and Sustainable Investment Union, The Next CMU High-Level Group, Report to Ministers and presented to the Finnish Presidency, p.16, October 2019.



- d. **We are aware of significant market concerns related to the implementation of the mandatory buy-in regime.** While included in CSDR, the effect of this regime will be felt on EU27 capital markets, not only at the post-trade infrastructure layer. We therefore welcome the Commission's openness to look at the Settlement Discipline Regime (SDR) before its implementation and we hope that a suitable solution will be found to the challenges posed by the current mandatory buy-in rules. Decoupling the implementation dates quickly (and before the CSDR review) could be a solution as this would allow for sufficient time to define a buy-in regime that best supports the CMU objectives and improves the level playing field for EU CSDs versus CSDs in markets where no mandatory buy-in is required.
2. **We would welcome more supervisory convergence supporting the policy objectives in the practical implementation of CSDR, while also encouraging an interpretation that supports efficiencies of scale and group governance.** More supervisory convergence would benefit further regional market integration as well as local CSDs which are part of a cross-border group of CSDs. Notably ESMA, EBA and/or ECB could play a more active role to ensure consistent and efficient (i.e. non-duplicative) supervision:
  - a. **Through targeted amendments of CSDR**, integrating also some of the progressive insights in the context of T2S (for example on suspension of settlement as a measure of last resort).
  - b. **By fostering an interpretation and/or targeted amendments that support efficiencies of scale:** Horizontally integrated CSDs with a centralized management in a group structure, should be able to benefit from such set-up by reaching a higher level of integration.
  - c. **By clarifying the interaction between CSDR and other financial legislation / global standards** which impact directly or indirectly the CSD and its regulatory regime. Certain topics which are relevant for CSDs and which are governed by CSDR, are also governed by other financial legislation which is relevant for the entities in scope of such legislation. The requirements in CSDR should prevail over the (indirect) ones in other financial legislation when the CSD and its services is the area of relevance. Likewise, the interpretation of some of the CSDR banking provisions would benefit from alignment between EBA/ESMA and the industry and clarifying RTS or Q&As.
3. **We believe that clarifications may be needed to allow CSDs using DLT to settle crypto-assets within the existing regulatory framework.** CSDs could service crypto-assets considered as MiFID financial instruments by using a permissioned DLT platform with a centralised validation model. This model would allow for the trade life cycle of DLT transferable securities to be completed in a manner that fits into the existing regulatory framework. Although we believe that there would be no immediate need for level 1 changes in CSDR, clarifications seem required to provide legal certainty to the industry and drive market adoption. Such clarifications, possibly to be made in parallel to the pilot regime, would support the EU Digital Finance Strategy and the Capital Market Union. They would ensure the EU legislative framework enables the use of innovative technologies.

## CONCLUSION

We ask the Commission to focus its targeted review of CSDR on those elements which are most expected to benefit the CMU and the EU competitiveness, i.e. removal of unintended and detrimental consequences from the CSDR implementation which create new barriers. We also encourage the EU authorities to enhance convergence and seek a wider scale for the interpretation of CSDR requirements. Finally, clarifications in CSDR may be needed to support CSDs participation in a new and innovative landscape. Further information has been included in our detailed answers to the consultation.