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July 12, 2021

European Commission Report on the Review of the Central Securities Depositories Regulation (CSDR)

[33683]

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TO: Global Operations Advisory Committee
Global Operations Advisory Committee - Asia
ICI Global Regulated Funds Committee
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ICI Global Trading & Markets Committee
Operations Committee

Securities Operations Advisory Committee RE: European Commission Report on the Review of the Central Securities Depositories Regulation (CSDR)

On 1 July 2021, the European Commission ("the Commission") published[\[1\]](#) a report[\[2\]](#) ("the Report") on the Central Securities Depositories Regulation (CSDR).[\[3\]](#) As outlined below, the Commission has identified where further action may be required to achieve the CSDR's objectives in a more proportionate, effective, and efficient manner.

Background

The CSDR entered into force on 17 September 2014. Some provisions applied from 1 January 2015, whereas the application of other aspects such as the settlement discipline regime (SDR) was deferred and subsequently delayed.[\[4\]](#) On 24 August 2020, the application of the SDR was delayed from 13 September 2020 to 1 February 2021[\[5\]](#) and in response to recommendations from the European Securities and Markets Authority (ESMA)[\[6\]](#) in its CSDR report,[\[7\]](#) was further postponed until 1 February 2022.[\[8\]](#) The High-Level Forum on the Capital Markets Union (CMU) recommended that the Commission undertake a targeted review of the CSDR to improve supervisory convergence amongst national competent authorities (NCAs).[\[9\]](#) On 8 December 2020, the Commission published a target consultation on the review of the CSDR[\[10\]](#) to which ICI Global responded with respect to the SDR related questions[\[11\]](#) and overall the Commission received 91 responses.[\[12\]](#) Following the conclusion of the consultation, ICI Global co-signed a letter with other trade associations to the Commission and ESMA requesting clarity on the CSDR review and the implementation schedule of the SDR.

The CSDR[13] required the Commission to prepare a general report on a range of issues by 19 September 2019. Various factors, including the deferral and delay of the SDR led to the postponement of the Report. Furthermore, the Commission signalled in its 2021 work programme[14] and new Capital Markets Union (CMU) action plan[15] that it was considering presenting a legislative proposal to amend the CSDR, subject to an impact assessment that would examine the most appropriate solutions in more depth. ESMA also wrote[16] to the Commission highlighting key points that should be addressed in the review, notably excluding the SDR due to the Commission's own consultation on those provisions.

Report

In the Report, the Commission sets out its conclusion that, in broad terms, the CSDR is achieving its original objectives to enhance the efficiency of settlement in the EU and the soundness of Central Securities Depositories (CSDs). As such, in most areas the Commission believes it would be premature to consider significant changes due to the relative recent application of requirements. Nevertheless, the Commission acknowledges the concerns that have been raised with respect to the implementation of specific rules, including cross-border provision of services, access to commercial bank money, the SDR and the framework for third-country CSDs.

The Commission identifies the following six, principal issues which it believes warrant further consideration and evaluation:

- Clarifying and simplifying burdensome requirements related to the provision of services by CSDs domestically and cross-border
- Improving supervisory convergence amongst authorities involved in CSDs' supervision
- Facilitating the provision of banking-type ancillary services
- Reducing disproportionate burdens and costs related to settlement discipline
- Enhancing the framework for third-country CSDs
- Use of technological innovation

Reducing Disproportionate Burdens and Costs Related to Settlement Discipline

The Commission notes that the CSDR is due to apply from 1 February 2022, including the introduction of cash penalties for CSD participants in case of settlement fails, and mandatory buy-ins where a CSD participant fails to deliver the security within a fixed extension period. The Commission highlights the significant attention the SDR attracted during its consultation and the resolution passed by the European Parliament inviting the Commission to review the SDR considering the COVID-19 crisis and Brexit.[17]

The Commission recalls that almost all respondents to the consultation noted that there is a significant lack of clarity as to the scope of application of the mandatory buy-in rules and called for these rules to be reviewed, with a large majority in favour of voluntary rather than mandatory buy-ins. Respondents argued that mandatory buy-ins will reduce liquidity in the market, increase costs for investors and place EU CSDs at a competitive disadvantage when competing with third-country CSDs that do not have to comply with similar rules. Furthermore, most respondents considered that the SDR, in particular mandatory buy-ins, would have had a significant negative impact on the market during the market turmoil provoked by COVID-19 as it would have: (i) increased liquidity pressure, (ii) increased the cost of securities at risk of being bought-in, and (iii) hampered the ability to hedge.

The Commission notes that a few stakeholders were in favour of mandatory buy-ins, arguing that: voluntary buy-ins today do not incentivise the optimisation of back-office procedures that can also cause settlement fails; there will be significant hesitation to execute voluntary buy-ins against large market participants; and they have already made significant investments to comply with the framework.

In light of stakeholder feedback, the Commission states that it is considering proposing certain amendments to the SDR, in particular the mandatory buy-in rules, subject to an impact assessment to make them more proportionate and avoid potential undesired consequences.

Next Steps

The Commission has stated that it will adopt a legislative reform proposal for the CSDR in Q4 2021^[18] but this may be delayed until Q1 2022, potentially around the time that the SDR is currently due to enter into force.

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endnotes

[1] European Commission Publications: Report on the settlement (sic) and central securities depositories regulation (CSDR), 1 July 2021, available at https://ec.europa.eu/info/publications/210701-csdr-report_en

[2] https://ec.europa.eu/finance/docs/policy/210701-csdr-report_en.pdf

[3] Regulation (EU) 909/2014 on central securities depositories, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0909>

[4] See ICI Memorandum No. 32717, RE: CSDR: Postponement of Settlement Discipline Provisions, 28 August 2020, available at <https://www.ici.org/memo32717>

[5] ESMA Press Release: ESMA Proposes to further postpone CSDR Settlement Discipline, 28 August 2020, available at <https://www.esma.europa.eu/press-news/esma-news/esma-proposes-further-postpone-csdr-settlement-discipline>

[6] Commission Delegated Regulation 2020/1212 with regard to regulatory technical standards on settlement discipline, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1598357115362&uri=CELEX:32020R1212>

[7] ESMA Report: CSDR RTS in Settlement Discipline - Postponement until 1 February 2022, 26 August 2020, available at https://www.esma.europa.eu/sites/default/files/library/esma70-156-3490_final_report_-_csdr_rts_on_settlement_discipline_-_postponement_until_1_february_2022.pdf

- [8] Commission Delegated Regulation (EU) 2021/70 concerning the regulatory technical standards on settlement discipline as regards entry into force, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32021R0070>
- [9] See ICI Memorandum No. 32531, RE: High-Level Forum on the EU Capital Markets Union Publishes Final Report, 16 June 2020, available at <https://www.ici.org/memo32531>
- [10] Targeted consultation on the review of the (CSDR) on improving securities settlement in the European Union and on central securities depositories, available at https://ec.europa.eu/info/consultations/finance-2020-csdr-review_en
- [11] ICI Global Response to European Commission Consultation on CSDR, available at <https://www.ici.org/system/files/attachments/pdf/33081a.pdf>
- [12] Summary report of the targeted consultation document on the review of regulation on improving securities settlement in the European Union and on central securities depositories, available at https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/2020-csdr-review-summary-of-responses_en.pdf
- [13] Article 75, CSDR
- [14] Action 28 of the Commission's REFIT initiatives under the auspices of its "an economy that works for people" high level priority, European Commission Work Programme 2021, 19 October 2020, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0690>
- [15] Action 13: The Commission will consider amending rules to improve the cross-border provision of settlement services in the EU, Capital Markets Union for people and businesses- new action plan, 24 September 2020, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:590:FIN>
- [16] Letter from Anneli Tuominen, Interim Chair, ESMA to Mairead McGuinness, Commissioner for Financial Services, Financial Stability and Capital Markets Union, dated 20 May 2021, available at https://www.esma.europa.eu/sites/default/files/library/esma70-156-4519_letter_to_ec_-_csdr_review.pdf
- [17] Para 21, European Parliament resolution of 8 October 2020 on further development of the Capital Markets Union (CMU): improving access to capital market finance, in particular by SMEs, and further enabling retail investor participation (2020/2036(INI)), available at https://www.europarl.europa.eu/doceo/document/A-9-2020-0155_EN.html
- [18] Inception Impact Assessment, CSDR, available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12649-Financial-markets-central-securities-depositories-review-of-EU-rules-_en