

CSDR: Frequently asked questions

Regulation (EU) No 909/2014 of 23 July 2014¹ ('CSDR') lays down uniform requirements for the settlement of financial instruments, as well as for the organisation and conduct of central securities depositories ('CSDs') in the EU.

The publication of the CSDR in the Official Journal of the EU on 28 August 2014 has triggered some questions, essentially on (1) the timing of implementation, (2) the scope of the requirements and (3) the position of third country CSDs. These FAQs are designed to provide clarity on these three topics from the perspective of the Commission services, although only the Court of Justice of the EU can give an authoritative interpretation of Union legislation.

These FAQs may be updated as needed. If you wish to submit further questions, please use the functional mailbox: 'Markt-G2@ec.europa.eu'. Questions related to the regulatory and implementing technical standards to be adopted pursuant to the CSDR will be dealt with only after the adoption of those standards by the Commission.

I. TIMING

A. General issues

1. *When do the obligations under CSDR take effect?*

CSDR was published in the Official Journal of the EU on 28 August 2014 and entered into force on 17 September 2014. As with any other EU Regulation, its provisions are directly applicable (i.e. legally binding in all Member States without transposition into national law) as from the day of entry into force, unless otherwise specified.

2. *When will the technical standards enter into force?*

CSDR requires the European Securities and Markets Authority ('ESMA') and the European Banking Authority ('EBA') to submit the draft technical standards by 18 June 2015². The Commission should endorse them within three months of receipt unless it decides to amend or reject them. After adoption of the standards by the Commission, the European Parliament and Council have a period of 3 months to exercise their right of scrutiny (this period may be extended by 3 months at the initiative of the European Parliament or the Council). This period is reduced to 1 month if the Commission adopts the technical standards as submitted by ESMA or EBA without amendment (with a possibility to extend this period by 1 month at the initiative of the European Parliament or the Council). The standards are published in the Official Journal of the European Union immediately after the 'non-objection' period from the European Parliament and Council has elapsed and will then enter into force on the twentieth day following that of their publication (unless otherwise stated).

¹ OJ L 257, 28.08.2014, p. 1

² Except for the regulatory technical standard in Article 9(2) where no such deadline is provided

B. The rules on securities settlement (Title II)

3. *When will the dematerialisation requirements for transferable securities take effect?*

The requirement for any issuer established in the Union to arrange for its transferable securities referred to in Article 3(1) of the CSDR to be represented in book-entry form applies from:

- a) 1 January 2023 to transferrable securities issued after that date, and from
- b) 1 January 2025 to all transferable securities (see Article 76(2))

However, the requirement to record transferable securities in book-entry where such securities are the object of a transaction that takes place on a regulated trading venue (see Article 3(2), first subparagraph) applies from the day of entry into force of the CSDR (i.e. from 17 September 2014)

The same date (i.e. 17 September 2014) is relevant for the application of the requirement referred to in Article 3(2), second subparagraph, to record in book-entry form the transferrable securities that are transferred following a financial collateral arrangement.

4. *When will the rules on settlement cycle take effect?*

The general requirement to settle transactions in the financial instruments referred to in Article 5(1) on the intended settlement date applies from the date of entry into force of the CSDR (i.e. 17 September 2014).

The specific requirement referred to in Article 5(2) to settle transactions in transferable securities that are executed on trading venues no later than on the second business day after the trading takes place ('the T+2 requirement') applies from 1 January 2015 (see Article 76(3), first subparagraph).

The date of application of the T+2 requirement is further postponed for transactions in transferable securities that are executed on a trading venue and settled in a CSD that outsources its activities to a public entity (e.g. outsourcing in the context of the T2S) (see Article 76(3), second subparagraph). In this case, the T+2 requirement applies:

- a) at least six months before the CSD outsources its activities to a public entity (e.g. at least 6 months before the CSD starts using the T2S platform), and
- b) from 1 January 2016 at the latest.

5. *When will the rules on settlement discipline in Articles 6 and 7 take effect?*

The rules on settlement discipline referred to in Articles 6 and 7 apply from the date of entry into force of the relevant technical standards (see Article 76(4) and Article 76(5), first subparagraph).

6. How the specific rules referred to in Article 7(3) concerning SME-growth markets will be applied?

Article 7(3), second subparagraph, provides for a specific rule for SME-growth markets (i.e. in case of fails to settle transactions in financial instruments traded on an SME-growth market, the buy-in should be initiated within 15 days after the intended settlement date). Where the rules on settlement discipline become applicable (see Question 5), Multilateral trading facilities 'MTFs' that fulfil the requirements for being qualified as SME-growth markets under the conditions of Directive 2014/65/EU ('MiFID II')³ could benefit from this specific rule until they are registered as such in accordance with conditions of MiFID II or until 13 June 2017 if they decide not to apply for such registration.

7. When will the reporting requirements for settlement internalisers referred to in Article 9(1) take effect?

The reporting requirements for settlement internalisers referred to in Article 9(1) will apply from the date of entry into force of the relevant implementing technical standard (see Article 76(6)).

C. The rules applicable to CSDs (Title III and IV)

8. When do CSDs need to apply for authorisation under the CSDR?

CSDs established in a Member State that are currently providing CSD services need to apply for authorisation under CSDR within six months after the entry into force of the relevant technical standards (see Article 69(2)).

CSDs already active in the EU can continue to provide their services during this transitional period subject to any applicable national regimes until they have been authorised under the CSDR (see Article 69(4)).

9. When do CSDs need to comply with the requirements defined under Title III and IV of the CSDR?

CSDs remain subject to the rules of their national regime until a decision has been made on their authorisation under the CSDR. Therefore, in accordance with Article 69(4) of the CSDR, they must begin to comply with the requirements set out under Title III and IV of CSDR and relevant technical standards as from their authorisation.

Given that CSDs operated by the members of the ESCB and other assimilated bodies are exempted from authorisation requirements under CSDR (see Article 1(4)), they will need to comply with the requirements of the CSDR within one year from the date of entry into force of the relevant technical standards (Article 69(5)).

³ 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, (OJ) L 173 of 12.6.2014, p. 349

D. The rules applicable to Member States (Title V)

10. *When do the Member States need to lay down the rules on sanctions under the CSDR?*

The CSDR rules on sanctions enter into force on 17 September 2014. However, the CSDR rules require further implementation through national legislation of the Member States. In particular, the CSDR requires the Member States to lay down rules on administrative sanctions applicable to infringements of the CSDR. In addition, the CSDR provides that Member States may decide not to lay down rules for administrative sanctions applicable to such infringements where they are already subject to criminal sanctions in accordance with their national laws (see Article 61(1), second subparagraph of the CSDR).

In both cases the Member States should notify the Commission and ESMA of their rules on sanctions required under CSDR by 18 September 2016 at the latest (see Article 61(1), third subparagraph). This implies that such national rules should be in place by that date at the latest.

E. The rules applicable to other entities subject to the CSDR

11. *When do entities other than CSDs need to comply with CSDR?*

Although the focus of the Regulation is CSDs, there are several provisions imposing requirements on entities other than CSDs, for instance:

- Article 37(2): the requirement to ensure the integrity of the issue may involve entities other than CSDs;
- Article 38(5) and (6): the segregation requirements referred to apply not only to CSDs but also to their participants;
- Article 54(4) to (6) and Article 59: requirements may apply to credit institutions designated by a CSD to provide banking ancillary services.

In all such cases, however, the requirements imply the existence of an authorised/recognised CSD. It follows that those requirements only become relevant where the CSD whose activity triggers the involvement of those other entities is authorised or recognised under the CSDR.

II. SCOPE

A. General issue

12. *What is the scope of the CSDR as regards the financial instruments covered?*

According to Article 1(2), the CSDR applies to the settlement of all financial instruments unless otherwise explicitly specified in a given provision of the CSDR, i.e. Articles 3 and 5(2) are only applicable to transferable securities. In the absence of such an explicit limitation, a given provision of the CSDR applies to all financial instruments.

B. The rules on securities settlement

13. *Is Article 3(2) applicable to transferable securities issued by issuers established in third countries?*

Article 3(2) requires that transferable securities are recorded in book-entry form in a CSD on or before the intended settlement date where a transaction in such securities takes place on a trading venue or where such securities are transferred following a financial collateral arrangement.

This requirement applies to all transferable securities, including those issued by the issuers established in third countries, to the extent that the settlement of the transactions in such securities takes place in a securities settlement system governed by the law of a Member State.

14. *What is the scope of the requirement to settle no later than on the second business day after the trading takes place (Article 5(2), first sentence)?*

Article 5(2) of the CSDR introduces a mandatory length of the settlement cycle applicable to all transactions in transferrable securities which are executed on a trading venue. Such transactions should be settled no later than on the second business day after the trading takes place (the 'T+2 requirement'). This means that the intended settlement date of such transaction should be set at the second business day after trading or less. It is important to note that this duration is a maximum and settlement cycles shorter than T+2 are compliant with the CSDR.

This requirement is relevant for all types of transactions in transferrable securities that are executed on a trading venue, including complex operations composed of several transactions, such as repurchase or securities lending agreements. In case of such complex operations, the requirement applies to the first transaction involving the transfer of securities (see recital (13)).

15. *What is the scope of Article 5(2) as regards the place of settlement?*

The requirement to settle the transactions in transferable securities executed on trading venues no later than on the second business day after the trading takes place (the so-called "T+2 requirement") applies to the extent that the settlement of such transactions takes place in a securities settlement system governed by the law of a Member State.

16. *What is the scope of the settlement discipline measures referred to in Article 7(2) to (9) as regards the financial instruments covered?*

Article 7(10) provides that the settlement discipline measures referred to in Article 7(2) to (9) apply to financial instruments referred to in Article 5(1) (i.e. transferable securities, money-market instruments, units in collective investment undertakings and emission allowances) that are:

- a) admitted to trading on trading venues (OTC transactions)⁴; or
- b) traded on a trading venues (non-OTC transactions)⁵; or

⁴ Point (c) of Article 7(10) of the CSDR

c) cleared by a CCP (OTC and non-OTC transactions regardless of whether the financial instruments are or not admitted to trading on trading venues)⁶.

Article 7(10) therefore excludes from the scope of application of Article 7(2) to (9), transactions in financial instruments that are not admitted to trading and not cleared by a CCP.

17. To whom should settlement internalisers report their activities as required under Article 9(1)?

Under Article 9(1) of the CSDR, a settlement internaliser is required to report about its securities settlement activities to the competent authority designated by the Member State of its establishment to supervise CSDs. A list of the competent authorities for CSDs across the EU will be published on ESMA's website (see Article 11(2)).

C. The rules applicable to CSDs and their users

18. Which are the requirements to be observed by CSDs when establishing adequate recovery and resolution plans as referred to in Article 22 of the CSDR?

Article 22 of the CSDR requires CSDs to have recovery and resolution plans to ensure the continuity of their critical operations and core functions taking into account the size, systemic importance, nature, scale and complexity of the activities of the CSD concerned. Those plans should observe any relevant law applicable to them in the Member State where the concerned CSD is established, including any requirement deriving from Directive 2014/59/EU ('BRRD')⁷ where the CSD is also authorised to provide banking-type ancillary services.

19. Does CSDR allow CSDs to offer omnibus segregation only?

No. Article 38 (3) and (4) of the CSDR provides that CSDs should offer individual client segregation and omnibus client segregation. CSDs authorised under CSDR must, therefore, offer at least these two types of segregation.

⁵ Point (b) of Article 7(10) of the CSDR

⁶ Point (a) of Article 7(10) of the CSDR

⁷ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, (OJ) L 173 of 12.6.2014, p. 190).

20. Does CSDR allow participants to a securities settlement system operated by a CSD to offer omnibus segregation only?

No. Article 38(5) requires each participant to offer its clients at least the choice between omnibus client segregation and individual client segregation.

21. Given that the scope of Article 49(1) concerning the right of access of any EU issuer to any EU CSD is limited to securities admitted to trading on EU trading venues, can a Member State retain the restriction in national law that securities which are not admitted to trading need to be recorded in a national CSD?

No. Such a restriction would be contrary to Article 23 of the CSDR, which allows any authorised CSD to provide any CSD service, including the initial recording of securities issued by issuers established in any Member State.

22. Can CSDs or designated credit institutions offer banking-type ancillary services to entities which are neither their users nor their clients?

No. Point (c) of Article 54(3) and point (d) of Article 54(4) of CSDR provide that the authorisation to provide banking-type ancillary services is limited to the provision of those services ('limited licence' requirement). A CSD or designated credit institution cannot therefore provide banking-type ancillary services to entities that are not using CSD services because in this case such services could not be considered as ancillary to a CSD service (there would be no link between the banking service and a CSD service). Moreover, a CSD or designated credit institutions should provide their services to the users of the CSD for which an authorisation has been obtained under Article 54. They should not provide their services to the users of other CSDs unless those CSDs have obtained an authorisation for that purpose under Article 54.

D. Third country CSDs

23. When is a third country CSD required to be recognised under the CSDR?

Article 25(1) provides that third county CSDs may provide their services in the EU, including through setting up branches on the territory of the EU.

Article 25(2) requires a third country CSD to apply for recognition under the CSDR in two specific cases:

(a) where it intends to provide certain core CSD services (issuance and central maintenance services related to financial instruments governed by the law of an Member State); or

(b) where it intends to provide its services in the EU through a branch set up in a Member State.

Any services other than those provided above are not subject to recognition by ESMA under Article 25 CSDR.

24. At which moment does a third country CSD need to apply for recognition under CSDR?

Where a third country CSD provides CSD services in a Member State that require recognition under CSDR (see previous question) , it must apply for recognition under CSDR within six months after the entry into force of the relevant technical standards or the Commission equivalence decision (see Article 69(3)).

During this transitional period, third country CSDs providing CSD services that require recognition under CSDR remain subject to existing national regimes until they have been recognised under CSDR (see Article 69(4)).